

Islam and Disability

Islam and Disability: Perspectives in Islamic Theology and Jurisprudence

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*to my wife, Karima
to my cute twins, Khadija and Maryam
to my mother, Farwziyya
&
to the memory of my father, Mostafa
with all love and gratitude*

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Mohammed Ghaly,
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Chapter One: Introduction

1.1 United Nations Organization: Global Interest in People with Disabilities

According to the latest reports of the United Nations Organization, people with disabilities are the world's largest minority. They are 650 million people representing about 10% of the global population on earth. According to the World Health Organization (WHO), this figure is increasing through population growth, medical advances and the ageing process. In countries with life expectancies over 70 years, individuals spend on average about 8 years, or 11.5% of their life span, living with disabilities. The UN Development Programme (UNDP) stated that 80% of persons with disabilities live in developing countries.¹ The UN Special Rapporteur declared in 2000, "In all countries, in all types of living conditions, the consequences of disability interfere in the lives of disabled persons to a degree which is not at all accepted."² These facts have been one of the decisive factors that spurred an increasing international interest in improving the conditions of people with disabilities.

As the main body representing countries all over the world, the activities of the United Nations Organization reflects this international interest. On December 20, 1971, the UN General Assembly proclaimed the Declaration on the Rights of the Mentally Retarded Persons calling for national and international action to ensure that this declaration will be used as a common basis and frame of reference for the protection of the rights of those people.³ This was followed by the Declaration on the Rights of the Disabled People proclaimed by the UN General Assembly on December 9, 1975.⁴ After almost one year, precisely on December 16, 1976, the UN General Assembly adopted the resolution no. 31/123 by which it proclaimed the year 1981 the International Year of Disabled Persons.⁵ The period 1983-1992 was declared by the UN as the decade of people with disabilities.⁶ On December 20, 1993, the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities were adopted by the United Nations General Assembly in its resolution 48/96.⁷ The latest development in this regard was the Convention on the Rights of Persons with Disabilities adopted on December 13, 2006 by the United Nations. The Optional Protocol of this convention was opened for signature by all states at the United Nations Headquarters in New York on March 30, 2007.⁸

This increasing concern for disability-related issues and the rights of people with disabilities has also evoked interest in the position of religion as part of

¹ Convention on the Rights of Persons with Disabilities (2006).

² Robinson, Mary (1998), p. 1.

³ Declaration on the Rights of Mentally Retarded Persons (1971).

⁴ Declaration on the Rights of Disabled Persons (1975).

⁵ International Year of Disabled Persons (1981).

⁶ Robinson, Mary (1998), p. 1.

⁷ Ibid.

⁸ Convention on the Rights of Persons with Disabilities and Optional Protocol (2007).

people's cultures vis-a-vis the phenomenon of disability. Many of the UN documents on people with disabilities made reference to this dimension, especially the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities on which the 12th rule was dedicated to religion.⁹ In this framework, religious studies on people with disabilities gained an increasing interest. Before delving into Islam in particular, some remarks on religious studies in general are in order.

1.2 Religion and Disabilities

There is a multi-dimensional relation between disability and religion. Broadly speaking religion plays an important role in the lives of millions of people worldwide. Eighty percent of the world's population identify as adherents of one of the major or minor world religious traditions.¹⁰ Like others in societies around the world, people with disabilities have been directly or indirectly influenced by religion throughout history.¹¹ Both physical and mental healings have been an integral part of religion throughout the history of humanity.¹² Despite such a relation between religion and disability, literature on the impact of religious beliefs or practises on people with disabilities, however, was sparsely distributed across the fields of studies in health, ageing and disability.¹³

Since the publication of Osler's article in the *British Medical Journal* of 1910,¹⁴ studies of religion and health have continued steadily over the decades.¹⁵ Of all studies in the area of religion and health, there were only few studies on religion, religious activities, prayer and health in the population of persons with disabilities and especially intellectual disability.¹⁶ Since the 1950s, a number of investigators have examined the role of religion in the lives of parents and caregivers of people with disabilities. They have provided consistent evidence that religious orientation plays an important role as a coping strategy in the lives of those people.¹⁷ In her *The Psychology of Disability*,¹⁸ C.L. Vash was one of the few writers who referred to spirituality in

⁹ *Standard Rules on the Equalisation of Opportunities for Persons with Disabilities* (1993).

¹⁰ Selway, Deborah & Adrian F. Ashman (1998), p. 429, quoting from Bernstein, E., D. Calhoun, et al (eds.) (1995).

¹¹ Selway, Deborah & Adrian F. Ashman (1998), p. 429.

¹² Issa, Ihsan al- (2000), p. 3, quoting from Alexander, F.G. & S.T. Selsnick (1966); Kilpatrick, S. et al (1999), p. 389.

¹³ Selway, Deborah & Adrian F. Ashman (1998), p. 429; Issa, Ihsan al- (2000), p. 3.

¹⁴ See Osler, W. (1910), pp. 1470-1472.

¹⁵ Selway, Deborah & Adrian F. Ashman (1998), p. 434.

¹⁶ Ibid; Merrick, Joav, Mohammed Morad & Udi Levy (2001), p. 115.

¹⁷ Selway, Deborah & Adrian F. Ashman (1998), p. 433. As for examples of such studies, see Zuk, G.H. (1959), pp. 139-147; Zuk, G. H. et al (1961), pp. 525-540. Zuk, G.H. (1962), pp. 405-408; Gangy, R. et al (1977), pp. 15-21. Schmitt, R. (1978), pp. 80-87.

¹⁸ See Vash, C.L. (1981), pp. 18 & 19. For an investigation of early reviews on religion and mental health in particular, see Hofmann, Hans (1961), esp. pp. 273-329; Schumaker, J.F. (1992), esp. 11-18; Koenig, H.G. (1992), pp. 177-188; Issa, Ihsan al- (2000), esp. pp. 4-6. As for religion and psychology in general the situation is much better. From the turn of the century until the present day pastors, professors, psychiatrists, psychologists, social scientists and others have produced a formidable literature exploring the relationship between religion and psychology, see Stokes,

relation to disability. She noted that specific religious beliefs may or may not be helpful in defining disability positively. For example, a belief that disability was a form of divine punishment did not aid individuals, whereas a belief that disability was a part of God's purpose (or interpreted in another way to imbue the experience with meaning and purpose) could prove helpful.¹⁹ Another study dealt specifically with people with disabilities and the effect of religion on their health and well-being.²⁰ In 1999, a Dutch study entitled *Zorg in Kleur* (Care in Colour) handled the issue of people with mental disabilities of Surinamese and Antillean origins living in the Netherlands. The main aim of this study was to give information on the cultural backgrounds of those people counting belief as one of the cultural aspects. Focusing on belief as an important cultural aspect, the third chapter of this study gave an overall simple information on Christianity, Hinduism, Islam, Brua and Winti and the standpoint of these beliefs towards mental disability.²¹

Spirituality appeared lately with increasing frequency in the research literature, and a paradigm involving mind-body-spirit interaction is emerging. The relationship of spirituality to disability and illness is at the centre of a growing body of knowledge.²² However, observers still opine that much work remains to be done in understanding the religious and spiritual dimensions of disability and rehabilitation. Specifically, more research is needed that examines not only the association of religious and spiritual involvement but also the ways people deploy their religion or spirituality to cope with the challenges of disability and rehabilitation.²³ More specific techniques from the religious counselling literature may also prove useful to those unfamiliar with these techniques.²⁴

Another form of response to the dire need of more concern to the issue of religion and disability was holding a number of congresses for the promotion of this issue. For instance, a series of conferences entitled, "That All May Worship: An Interfaith Welcome for People with Disabilities" have been organised by the National Organisation on Disability (NOD) since 1992.²⁵ The

Allison G. (1978), pp. 273-278; Loomis, Earl A. (1963), pp. 1748-1759. Due to the importance of this issue, *Journal of Religion and Health* has dedicated its quarter issue, spring 2003 for investigating, in varying degrees, the question of the relationship between psychology and religion in the context of human health, see Leeming, David (2003), pp. 3 & 4. For an Islamic perspective in this issue, see Haque, Amber (1998), pp. 97-116.

¹⁹ Selway, Deborah & Adrian F. Ashman (1998), p. 435.

²⁰ Do Rozario, L. (1994).

²¹ Weel, Saskia van der (1999), p. 12.

²² See Kaye, J. & Senthil Kumar Raghavan (2002), pp. 231-242. The same holds true to the relation between religion and mental health, see Rogers, Steven A. et al (2002), pp. 167-178; Haque, Amber (2004), p. 45.

²³ Kilpatrick, S. et al (1999), pp. 399 & 400.

²⁴ Worthington, E.L. et al (1996), pp. 448-487; Kilpatrick, S. et al (1999), p. 400.

²⁵ See <http://www.sacredplaces.org> (accessed July 15, 2007). In the same year, the American Association on Mental Retardation (AAMR) drafted the revised definition of mental retardation which was the first termination and classification system in developmental disabilities to include the importance of spiritual supports. See Gaventra, William C. (2001), pp. 29 & 30-32.

conferences brought together people of every faith to identify and remove physical and spiritual barriers, and to promote dialogue between people with disabilities and religious leaders.²⁶ In May 1995, a conference entitled, “The Role of Spirituality and Religiousness in Rehabilitation and the Lives of Persons with Disabilities” was conducted in Bethesda, Maryland, United States.²⁷ This meeting brought together academic researchers from a diverse range of disciplines together with clergy and people with disabilities who were researchers, clergy or advocates. The goals of the meeting were to review the work in the field, provide an opportunity for dialogue among a variety of disciplines, attain a greater conceptual clarity of the different dimensions involved and develop a research agenda.²⁸ The conference came up with a number of recommendations among which were the encouragement of collaboration among persons from a variety of faiths and cultural groups and also the adoption of a vigorous approach to access a broad range of literature relevant to the spirituality and religiousness of people with disabilities. Such reviews should examine the content, implicit methodological assumptions and limitations to knowledge contained in this literature.²⁹ In the same trend, the International Association for the Scientific Study of Intellectual Disabilities (IASSID) held a conference in 2000 whose theme was “From Theory to Practice”³⁰ focusing on the importance of spirituality and religion in supports and services for people with intellectual disabilities. The aim was to have a series of international voices that could represent practitioners and researchers from major faith traditions and different parts of the world.³¹ Papers presented in this conference were published by *Journal of Religion, Disability & Health (JR DH)*, vol. 5, no. 2/3 and simultaneously in a separate book.³²

Noteworthy in this regard is that a number of modern studies focused on studying people with disabilities within the perspective of one specific religion. Concerning Judaism for instance, Tzvi Marx³³ submitted his doctoral thesis in 1993 to Utrecht University, the Netherlands on *Halakha & Handicap: Jewish Law and Ethics on Disability*.³⁴ A reedited and abridged form of this thesis was published in 2002 under the title *Disability in Jewish Law*.³⁵ In 1998, Judith Z.

²⁶ <http://www.wfn.org/2002/09/msg00084.html> (accessed July 15, 2007).

²⁷ See Underwood-Gordon, L., et al (1997), p. 255.

²⁸ Ibid.

²⁹ Ibid, pp. 256 & 257.

³⁰ Gaventra, William C. & David L. Coulter (eds.) (2001), p. 31.

³¹ Ibid, p. xv. However, this conference lacked papers about Eastern or African Religions. See Gaventra, William C. & David L. Coulter (eds.) (2001), p. xvi.

³² See Gaventra, William C. & David L. Coulter (eds.) (2001).

³³ He is the director of the Israel-Diaspora Center of Education at the Shalom Hartman Institute of Jerusalem and coordinator of its center for religious pluralism. For more information on his curriculum vitae, see Marx, Tzvi C. (1992-3), p. 945.

³⁴ Marx, Tzvi C. (1992-3).

³⁵ Marx, Tzvi C. (2002). Tzvi Marx referred to previous sources conducted in this field such as Joseph Blau’s “The Defective in Jewish Law” (1916) and Carl Astor’s Who Makes People Different (1985). See Marx, Tzvi C. (2002), p. I, note I.

Abrams³⁶ brought out her *Judaism and Disability: Portrayals in Ancient Texts from the Tanach through the Bavli*.³⁷ Christianity witnessed also a number of crucial studies studying the status of people with disabilities within Christian perspectives.³⁸ In 1990 Simon Timothy Horne submitted his doctoral thesis to the University of Birmingham on *Injury and Blessing: A Challenge to Current Readings of Biblical Discourse concerning Impairment*.³⁹ One of the important writers in this field was Nancy Eiesland, an associate professor of sociology of religion, Candler School of Theology, who also spoke out of her own experience with a congenital disability. In 1994, she published *The Disabled God: Toward a Liberatory Theology of Disability*.⁴⁰ Four years later, the same author co-edited *Human Disability and the Service of God: Reassessing Religious Practice*.⁴¹ Lately in 2002, Jennie Weiss Block, the non-disabled person who has been an active advocate for two decades in the disability rights movement,⁴² published her normative study *The Copious Hosting: A Theology of Access for People with Disabilities*.⁴³

1.3 Islam

As member states of the UN, Islamic countries were involved in many of the activities promoting interest in people with disabilities such as the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities endorsed by the UN in 1993⁴⁴ and the Convention on the Rights of People

³⁶ She is the founder and director of *Maqom*, a School for Adult Talmud Study, 1995-present. For more information on her curriculum vitae, see <http://www.maqom.com/cv.pdf>

³⁷ The author produced other publications some of which are somehow related to this topic, see for instance, Abrams, Judith (1990); Abrams, Judith & David L. Freeman (1999); Abrams, Judith (2003). For a complete list of all Abram's published books and articles, see http://www.cu.edu/ColemanInstitute/archives/webfile_year_1996_Present.pdf

³⁸ I hereby submit my deep thanks especially to Nancy Eiesland an associate Professor of Sociology of Religion, Candler School of Theology, Emron University and Miss Jacqueline Kool, the Dutch theologian for their fruitful help. For those interested in further publications on the issue of disability in Christianity, for books see Bishop, M.E., (ed.), (1995); Govig, S. (1989); Kutz-Mellem, Sharon (1998); Clare, Eli, (1999); Pailin, D., (1992); Fontaine, C. (1995); Okhuijsen, G. and C. van Opzeeland, (1992); Wilke, H.H., (1980). As for articles, see Blair, W.D., (2003), pp. 69-80; Byzek, J., (2001), pp. 29-48; Creamer, D. (2003), pp. 57-68; Selway, Deborah & Adrian F. Ashman, (1998), pp. 429-439; Treloar, L.L., (2002), pp. 594-603; Kaye J. & S.K. Raghavan, (2002), pp. 231-242; Meakes, E., et al (2002), pp. 37-46; Sorensen, Marshall E. et al. (2003), pp. 57-76.

³⁹ Horne, Simon Timothy (1999). I hereby submit my thanks to Tzvi Marx for drawing my attention to this source.

⁴⁰ Eiesland, Nancy (1994).

⁴¹ See Eiesland, Nancy & Don E. Saliers (eds.) (1998). In the same year, Eiesland published also an article on disabled women in particular. See Eiesland, Nancy (1998).

⁴² See Richards, Penny (2003), <http://www.theotherside.org/resources/disabilities/>

⁴³ See Block, Jennie Weiss (2002).

⁴⁴ For the contributions of a number of Islamic countries in the last questionnaire done by WHO to control the implantation of the Standard Rules, see *The UN Standard Rules on the Equalization of Opportunities for Persons with Disability: Main Report*, World Health Organisation, 2001, pp. 92 & 93, 115-117, 120-122, 159-160, 164 & 165, 166 & 167, 178-180, 193 & 194, 213 & 214 & 233-235.

with Disabilities adopted by the UN in 2006.⁴⁵ Islamic countries' interest in this front-page issue was also crystallized in a big number of conferences some of which were organized in cooperation with UN or WHO. For instance, the year 1981 witnessed the Kuwait Regional Conference on the Disabled held in April and issued the *Arab Declaration on Work with the Disabled*.⁴⁶

Some of these conferences focused on the importance of studying the viewpoint of Islam concerning disability-related issues. For instance, during the period September 29-October 2, 1997, the tenth Juristic Medical Symposium entitled *Al-Mushāwara al-buldāniyya ḥawl tashrī'āt al-ṣiḥḥa al-nafsiyya bimā fī dhālik al-sharī'a al-islāmiyya* (Regional Conference on Legislations of Psychological Health in Different Religious Codes of Law including the Islamic Law) was held in Kuwait. This symposium was organised by the Islamic Organisation for Medical Sciences in cooperation with the World Health Organisation, East Mediterranean Regional Office (WHO, EMRO). Eleven papers submitted to this symposium tackled the topic of disability from an Islamic perspective.⁴⁷ A parallel conference was held during the period October 23-26, 2000 in Riyadh, Saudi Arabia. The conference was organised by the Disabled Children's Association and Prince Salman Center for Disability Research. In this conference, more than 200 papers were submitted. The conference adopted important resolutions among which was the encouragement of research on perspectives within Islam on people with disabilities.⁴⁸ The last example to mention in this respect is the international conference entitled "Rehabilitation of the Disabled and Care for the Elderly in the Islamic World: Strategies for the 21st Century." This conference was held by the Islamic World Council on Disability and Rehabilitation during the period

⁴⁵ The list of signatories included a number of Islamic countries such as Algeria, Egypt, Turkey, Morocco, Sudan and Yemen. For a full list of the signatory states and regional integration organizations, see <http://www.un.org/esa/socdev/enable/conventionsign.htm> (accessed on May 13, 2005).

⁴⁶ See <http://cirrie.buffalo.edu/bibliography/MEast3.html>. For other similar conferences, see <http://cirrie.buffalo.edu/bibliography/MEast2.html>; http://www.disabilityworld.org/05-06_01/news/riconf.shtml; http://www.deakin.edu.au/tedca/ncet/issues_and_events/calendar.html; <http://www.worldenable.net/beirut2003/journal28may.htm>; <http://www.worldenable.net/beirut2003/arabicdefault.asp>; http://www.dpi.org/en/events/world_summit/06-23-03_summit2004.htm (all accessed on May 13, 2005).

⁴⁷ See 'Awadī, 'Abd al-Rahmān 'Abd Allāh al- & Ahmad Rajā'ī al-Jundī (eds.) (1422-2001), vol. 1, pp. 345-372, 395-443, vol. 2, pp. 481-517, 523-538, 601-636, 725-735, 734-775 & 777-833. I hereby submit his due thanks to Dr. Ahmad al-Jundī, the general secretary assistant of the Islamic Organisation for Medical Sciences for providing him with a copy of this publication because it was not available for the public.

⁴⁸ An article published by *Ain-al-Yaqeen* magazine on November 3, 2003, an electronic version is available on <http://www.ain-al-yaqeen.com/issues/20001103/feat7en.htm> (accessed on May 13, 2005). For An Arabic version of the same article, see <http://www.ain-al-yaqeen.com/issues/20001103/feat7ar.htm> (accessed on May 13, 2005). All what I could get was a general report on the activities and summaries of the papers submitted in the conference, see *Barnāmaj wa al-Mulakhkhasāt al-'ilmiyya, al-: al-mu'tamar al-dawlī al-thānī li al-i'āqa wa al-ta'hīl* (2000).

February 10-12, 2001 in Khartoum, Republic of Sudan.⁴⁹ Among the topics of this conference were the rights of disabled persons from the viewpoint of the Islamic Sharī'a such as medical treatment, rehabilitation, work, training, exemption from tax and custom duty payment, equality, participation, social integration and equal opportunities.⁵⁰

Undoubtedly all these activities participated in evoking considerable interest among modern scholars of Islam as well. More than one scholar expressed his call to promote research studying the status of people with disabilities in Islam such as the two Saudi scholars 'Abd Allāh b. Jibrīn (b. 1352/1933)⁵¹ and 'Abd al-Muḥsin b. Nāṣir Āl 'Abīkān (the head of the advisory body for legal aspects which participated in drafting the legal code of disability in the Kingdom of Saudi Arabia).⁵² This holds true to the extent that some scholars called for developing a special branch of Islamic jurisprudence focusing exclusively on people with disabilities under the title *Fiqh al-i'āqa wa al-mu'awwaqīn* "fiqh of disability and people with disabilities". This term – as far as I am aware – was coined first by the Shī'ite scholar Muḥammad Shams al-Dīn in a paper presented to the tenth Juristic Medical Symposium held by the Islamic Organisation for Medical Sciences (IOMS) and World Health Organisation (WHO) in 1997, Kuwait. This call was met with approval for instance by the well-known scholar, Yūsuf al-Qaraḍāwī.⁵³

1.3.1 Modern Studies on the Position of People with Disabilities in the Islamic Normative Sources

The online-published bibliography by the British researcher M. Miles might be the sole instrument, so far, which lists modern studies relevant to the thematic field of "Islam and disability". The version published on July 24, 2002, entitled *Disability in the Middle East*, listed 1060 items covering the historical period between Antiquity and 2002.⁵⁴ An updated version will appear under the title *Islam, Disability & Deafness: A Modern and Historical Bibliography, with some Annotation*. In this new version, Miles reduced the items to about 140 in total, adding a number of the new studies that appeared after 2002.⁵⁵ The majority of the studies included in the bibliography were sociological, anthropological or historical in nature.

⁴⁹ http://www.deakin.edu.au/tedca/ncet/issues_and_events/calendar.html (accessed on May 13, 2005).

⁵⁰ <http://leb.net/pipermail/lexington-net/2000-August/002302.html> (accessed on May 13, 2005). Unfortunately, I could not get access to any of the papers presented in this conference.

⁵¹ On him, see <http://www.ibn-jebreen.com/book.php?cat=0&book=75&toc=4747> (accessed on August 7, 2007).

⁵² See Shāyī', 'Abd al-Ilāh b. 'Uthmān b. 'Abd Allāh (1420/1999), pp. 5& 6.

⁵³ 'Awadī, 'Abd al-Rahmān 'Abd Allāh al- & Ahmad Rajā'ī al-Jundī (eds.) (1422-2001), vol. 1, pp. 276 & 301.

⁵⁴ The bibliography was available at <http://www.socsci.kun.nl/ped/whp/histeduc/mmiles/mesabib1.html>; <http://cirie.buffalo.edu/bibliography/MEasttoc.html>. However, none of these links is active anymore.

⁵⁵ I hereby submit my thanks to M. Miles who provided me with this new version he finished on April 10, 2007.

Below, I will review thirteen studies whose writers can be considered as my forerunners in this field. I restricted myself to the books⁵⁶ that I could access and which provided information relevant to either Islamic theology or Islamic law.⁵⁷ Four of these studies have been cited in the new version of the aforementioned bibliography.⁵⁸ With the exception of the earliest study, conducted in 1965, all studies mentioned below were written after 1981, the International Year of the Disabled as declared by the UN. Apparently, the concern given by the UN to the subject also stirred considerable interest in the Islamic milieu. Some of the authors wrote specifically that the UN activities in this regard drew their attention to write about disability in Islam.⁵⁹

The main characteristic of all studies mentioned below is the piecemeal approach which focuses on a specific aspect of Islam or on a specific disability.

The late Egyptian scholar Aḥmad al-Sharabāṣī (1918-1980)⁶⁰ chose to write on blind people only in his *Fī ‘ālam al-makfūfīn* (Inside the World of the Blind). The book consisted of two volumes, the first of which was published in 1375/1956⁶¹ whereas the second is undated; it is however clear from the introduction of the second volume that it was not simultaneously published with the first volume.⁶²

As for sources, al-Sharabāṣī complained that he did not have forerunners in this field, a fact that made his task more difficult. However, it is clear that one of the main sources of al-Sharabāṣī was *Nakt al-himyān fī nukat al-‘umyār*⁶³

⁵⁶ A number of articles helped me also to get an idea about the research field on disability in Islam. One of the early contributors in this field is M. Miles, see for instance Miles, M. (1981), pp. 125-134; Miles, M. (1995), pp. 49-69; Miles, M. (1) (2002), pp. 53-76. Rispler-Chaim wrote also more than one relevant article, see Rispler-Chaim, Vardit (1996); Rispler-Chaim, Vardit (1999). In 1997, a number of papers with relevance were submitted to the aforementioned tenth Juristic Medical Symposium held in Kuwait, see ‘Awaḍī, ‘Abd al-Raḥmān ‘Abd Allāh al- & Aḥmad Rajā’ī al-Jundī (eds.) (1422-2001), vol. 1, pp. 345-372, 395-443, vol. 2, pp. 481-517, 523-538, 601-636, 725-735, 734-775 & 777-833. For other articles, see Abū Ghudda, ‘Abd al-Sattār (1411/1991), pp. 215-239; Scalenghe, Sara (2004-2005), pp. 10-25; Bazna, Maysaa S. & Tarek A. Hatab (2005), pp. 5-27.

⁵⁷ For a general idea about modern literary, linguistic or historical works written on people with disability in the Islamic culture, see Ghaly, Mohammed M.I. (2005-2006), pp. 21 & 22.

⁵⁸ They are Dols, Michael W. (1992); ‘Abd Allāh, Laylā Muḥammad (1418/1997); Shāyī‘, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1418/1997); Shāyī‘, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1419/1998); Rispler-Chaim, Vardit (2007). It is to be noted that two sources were mentioned in the old version but disappeared in the new one, namely Sharabāṣī, Aḥmad al- (1375/1956) & Matrodi ‘Abdulrahman Sulayman al- (1991).

⁵⁹ See for instance, Quḍāt, Muṣṭafa al- (1406/1985), pp. a & b.

⁶⁰ On him, see <http://www.islamonline.net/Arabic/history/1422/12/article19.shtml> (accessed August 14, 2007).

⁶¹ Sharabāṣī, Aḥmad al- (1375/1956).

⁶² Sharabāṣī, Aḥmad al- (1), vol. 2, p. 4.

⁶³ *Himyān* is an arabised word denoting the purse tied on one’s waist where money and precious things are preserved in and *nakt* denotes drawing out or extracting. See Rāzī, Muḥammad b. Abī Bakr b. ‘Abd al-Qādir al- (1415/1995), vol. 1, p. 291; Ibn Manẓūr, Muḥammad b. Makram (1), vol. 15, p. 364. Thus *Nakt al-himyān* is drawing out this precious stuff kept in the purse. It is clear that al-Ṣafadī realized the novelty of his study’s topic.

(Extracting the Precious of the Anecdotes of the Blind)⁶⁴ written by Ṣalāḥ al-Dīn Khalīl b. Aybak al-Ṣafadī (d. 764/1363).⁶⁵

Information recorded in this book is mainly historical, literary or linguistic in nature. Meager information with relevance to Islamic theology was noted in passing when the author raised, in the first volume, the question, why God created blindness although it is bad and disliked? Although most of these answers were medical in nature, some answers were loaded by theological interpretations. Additionally, the writer wrote a chapter in the second volume where he tried to collect the juristic rulings with relevance to the blind from fiqh manuals. It is clear that the author was not aware of earlier attempts in this respect made by early jurists such as Abū Ḥāmid al-Ghazālī and others (see below 1.4.2 Islamic Jurisprudence).

Sharabāṣī's attempt of collecting juristic rulings on blind people was further developed and detailed by the Jordanian researcher, Muṣṭafa Aḥmad al-Quḍāt in his *Aḥkām al-mu'waqīn fī a-sharī'a al-islāmiyya: aḥkām al-ūmyān* (The Rulings of the Disabled in the Islamic Sharī'a: The Rulings of the Blind). This is an unpublished M.A. thesis submitted to Dār al-Ḥadīth al-Ḥasaniyya in Morocco in 1406/1985.⁶⁶ Similar to his forerunner al-Sharabāṣī, al-Quḍāt complained the rarity of available sources on this topic. He made reference to al-Sharabāṣī's *Fī 'ālam al-makfūfīn* and his main source *Nakt al-himyān* by al-Ṣafadī. Al-Quḍāt traced the rulings with pertinence to blind people dispersed in different chapters in the fiqh manuals and put them together in one study.

In line with al-Sharabāṣī and al-Quḍāt, the Egyptian researcher, Laylā 'Abd Allāh Muḥammad 'Abd Allāh wrote on people with dumbness in Islamic jurisprudence. Her study *Aḥkām al-akhras fī al-fiqh al-islāmī* (Rulings on the Dumb in Islamic Jurisprudence) was originally an M.A. thesis submitted to al-Azhar University in Cairo in 1996 and was published in the form of a book in 1997.⁶⁷ Following the same pattern as al-Quḍāt in his M.A. thesis, the writer here also divided the rulings with relevance to dumbness into those falling under the category of devotional practices (*'ibādāt*), social dealings (*mu'āmalāt*), personal affairs (*aḥwāl shakṣiyya*) and penal laws (*jīnāyāt*).

The last author who focused on a specific type of disabilities is Michael W. Dols in his study *Majnūn: Madman in Medieval Islamic Society* which was posthumously published in 1992 under the redaction of Dania E. Immisch.⁶⁸

⁶⁴ Two edited versions of this book appeared, the first was in February 1911 at the request of Khedive 'Abbās Ḥilmī II to be distributed in the Fourth International Conference for bettering the conditions of the blind, see Ṣafadī, Ṣalāḥ al-Dīn Khalīl b. Aybak al- (1329/1911) and for the other version, see Ṣafadī, Ṣalāḥ al-Dīn Khalīl b. Aybak al- (1997). Dr. Husayn 'Abd al-Razzāq (Lecturer of Arabic literature in al-Imam Muḥammad b. Su'ūd University, Saudi Arabia) found that biographies given by Ṣafadī were not comprehensive. So, he decided to make a supplement in which he added those that were supposed to be recorded in al-Ṣafadī's *Nakt al-himyān* and *al-Shu'ūr bi al-'Ūr*, see Husayn, 'Abd al-Razzāq (1420/1999), pp. 19 & 28.

⁶⁵ On him, see Rosenthal, F. (2003), vol. VIII, pp. 758-760.

⁶⁶ Quḍāt, Muṣṭafa al- (1406/1985).

⁶⁷ 'Abd Allāh, Laylā Muḥammad (1418/1997).

⁶⁸ Dols, Michael W. (1992).

This work is an extended essay in social history. As indicated from the title, the book is exclusively concerned with people with madness (*junūn*). This massive study was based on a great number of sources reaching up to 784. This great number comprised sources in wide range of aspects such as medicine, belles-letters, chronicles, biographical dictionaries, geographers' and travellers' accounts and Islamic Law.

This study consists of three main sections. The first section "Healing, Natural and Supernatural: Medicine, Religion and Magic" examines the medical context and its relation to the development of the Islamic sciences and institutions and the practice of religious healing in Islam. The second section, "Perception: Profane and Sacred" studied three main varieties of *junūn* known to medieval Islamic society, viz., the Romantic Fool, Wise Fool and Holy fool. The third section, "Unreason: Privilege and Deprivation" investigated *junūn* as a condition which affected the *taklīf* (legal liability) of the person afflicted with. The main benefit of the book for my dissertation was the discussions on religious healing in Islam when the author spoke about Prophetic medicine.

The main study which reviewed the juristic rulings with relevance to people with disabilities as recorded in early fiqh manuals was *Aḥkām al-mu'awwaqīn fī al-fiqh al-islāmī* (Rulings of the Disabled in Islamic Jurisprudence) by the Jordanian researcher Sarī Zayd al-Kīlānī. This is an unpublished dissertation submitted to al-Azhar University in Cairo but the date of which has remained unknown to me.⁶⁹ Al-Kīlānī's approach is almost the same as that adopted in the two M.A. theses written by Laylā 'Abd Allāh and al-Quḍāt. He restricted himself to collecting the rulings with pertinence to people with disabilities available in the fiqh manuals. He also arranged the different topics in his dissertation exactly as adopted in these early manuals. However, unlike Laylā and al-Quḍāt, al-Kīlānī did not restrict himself to a specific sort of disability.

Recently, Vardit Rispler-Chaim (Haifa University) studied the position of people with disabilities in Islamic law in her *Disability in Islamic Law*. This work was published in 2007 and I could get a copy of it when I was in the finishing stage of writing my dissertation. Because of its importance and direct relevance to that part of my dissertation which focuses on Islamic jurisprudence, I did my best to incorporate it into the final version of my work. It is to be noted in this respect that the author made use of a study entitled *Ḥuqūq al-mu'awwaqīn fī al-sharī'a al-islāmiyya* (The Rights of the Disabled in Islamic Sharī'a) by Mūsā al-Bāṣīt. According to Rispler-Chaim, the book was published in Palestine in 2000. She made an English summary of it at the end of her study. I did my best to get a copy of this book but in vain. However, scanning the summary presented by Rispler-Chaim, one gets the impression that the content is very similar to the other modern Arabic studies mentioned above.

Although the book really forms an addition for the non-Arabic speaking reader, it would have saved the author much time if she had known about the

⁶⁹ Kīlānī, Sarī Zayd al- (1).

other Arabic studies which also collected the juristic rulings with relevance to people with disabilities such as those of al-Quḍāt, Laylā ‘Abd Allāh and especially Sarī al-Kīlānī. In this respect, her book could be seen as a summary and translation of studies conducted by al-Quḍāt, Laylā ‘Abd Allāh and Sarī al-Kīlānī. However, the book also adds many new elements for which the author deserves our appreciation. For instance, the writer was clearly aware that she was writing for Western readers and thus tried and, to my mind, succeeded most of the time in transcending the time-gap between the early fiqh manuals and the modern time. One of the informative parts of the book was the appendix where the author included complete translations of a number of important fatwas with direct relevance to people with disabilities, concluded by an overall presentation of Mūsā al-Bāṣīt’s book.

Other studies focused on a specific aspect of Islamic literature. The main example in this regard is the work of the Saudi writer ‘Abd al-Ilāh b. ‘Uthmān al-Shāyī⁷⁰. He wrote a three-book series entitled *Ārā’ al-‘ulamā’ al-muslimīn ḥawl al-i‘āqa* (Views of Muslim Scholars on Disability), which first appeared in 1996. In this series, al-Shāyī⁷⁰ wrote three books where he reviewed the viewpoints of one scholar in each book. The three scholars all belong to the Ḥanbalī School. He started by Ibn al-Qayyim (published in 1416/1996), then Ibn Taymiyya (published in 1420/1999) and finally Ibn Qudāma (published in 1420/2000).⁷⁰ The author based himself on sources written by these scholars and available in printed form. The book on Ibn al-Qayyim was based on eighteen works written by him, the book on Ibn Taymiyya on ten of his works and finally that on Ibn Qudāma on his juristic encyclopaedia, *Al-Mughnī* (The Sufficient). The author’s methodology was the same in the three books. He started each book with a biographical sketch about the scholar in focus followed by selected passages from the printed books of the concerned scholar deemed by him, without clarifying a specific criterion for selection, as relevant to the issues of disability.

A further publication by al-Shāyī⁷⁰ is his *Al-Lu’lu’ al-thamīn min fatāwā al-mu‘awwaqīn* (The Precious Pearls of the Fatwas on the Disabled) where he focuses completely on fatwas. This book consists of two volumes; the first was published in 1418/1997, the second in 1419/2000.⁷¹ The two volumes were dedicated to fatwas issued by Saudi Scholars with relevance to people with disabilities. Some the fatwas were responses to questions posed by the author himself to the Saudi Scholar ‘Abd Allāh b. Jibrīn whereas the majority of fatwas were already available in other fatwa collections and the author brought them together.

Two studies focused on the social position of people with disabilities. The Syrian scholar Sa‘dī Abū Jayb (b.1932) wrote *Al-Mu‘awwaq wa al-mujtama‘ fī*

⁷⁰ Shāyī⁷⁰, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1416/1996); Shāyī⁷⁰, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1420/1999); Shāyī⁷⁰, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1420/2000).

⁷¹ Shāyī⁷⁰, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1418/1997); Shāyī⁷⁰, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1419/1998).

al-sharīʿa al-islāmiyya (The Disabled and Society in the Islamic Sharīʿa).⁷² This small-size book (78 pages), published in 1402/1982, was originally a paper submitted to a symposium on providing care for people with disabilities held in Damascus during the period April 19-22, 1982. One of the main ideas recurrently elaborated throughout the book was the difference between ostensible (*zāhira*) disability and real (*ḥaqīqiyya*) disability. According to the author, ostensible disability is what afflicts body whereas real disability is what befalls the soul and thus drives the person away from God, the Creator. In the religion of Islam, the author added, it is the real rather than the ostensible disability which injures one's status and dignity. In the same vein, the Saudi researcher, ʿAbdulrahman Sulayman al-Matrodi wrote *The Disadvantaged in Islamic Society*. This study is an unpublished PhD thesis presented to the University of Glasgow in 1991.⁷³ The author made use of the already quoted work by Saʿdī Abū Jayb. This study, as stated by the writer, is a detailed presentation rather than a critical examination of the Islamic approach to the solution of the problem of poverty as a concomitant result of disability. Adopting a very flexible and broad interpretation for the term “disability”, the researcher divided disabilities into four main categories, viz., physical, mental, social and multi disability. Under the third category, the writer spoke about orphans, widows and divorcees. To the author, those different categories share a common form of social disability. As indicated from the title, all these categories of the disabled are living with troubles. They are, as termed by the author, the “disadvantaged” in society.

Three studies investigated the rights of people with disabilities. Focusing on the financial rights in particular, Mohammed M. Ghaly wrote *The Financial Rights of People with Disabilities: The Perspectives of the Islamic Sharīʿa and the Case of Muslims in the Netherlands*, his unpublished M.A. thesis submitted to Leiden University in 2002.⁷⁴ This thesis was the starting point of the current dissertation. The first part of it reviewed the main financial rights of the disabled in the juristic sources of Islam. These rights were classified on the basis of the social setting in which a person with disability may live in, namely, family, society and finally state. The second part of the thesis examined the reality of Muslims with disabilities and their families living in the Netherlands focusing on the financial services provided by the Dutch government on one hand and the other on the religious side represented by Islam as understood and practised by disabled Muslims and their families living in the Netherlands.

The other two studies broadened the scope of the rights of people with disabilities according to the Sharīʿa. The Moroccan scholar Muṣṭafā Ibn Ḥamza wrote *Ḥuqūq al-muʿawwaqīn fī al-islām* (The Rights of the Disabled in Islam), published in Morocco, 1414/1993.⁷⁵ Although the book was small in size (64 pages in total), it had a solid scientific content. This book was the first to come

⁷² Abū Jayb, Saʿdī (1402/1982).

⁷³ Matrodi ʿAbdulrahman Sulayman al- (1991).

⁷⁴ See Ghaly, Mohammed M.I. (2002).

⁷⁵ Ibn Ḥamza, Muṣṭafā (1414/1993).

across in the beginning of my research and that I benefited a lot from the eruditeness of the author and the divisions he made in it. In this study, the author divided the rights into financial and non-financial and divided disabilities into mental and physical ones.

As for people with mental disabilities, the main rights mentioned by the author were equality to others, integration in the community, education and rehabilitation, familial stability and the protection of their properties. The writer concluded this point by speaking about people with mental disabilities in the Islamic community especially at the time of the Prophet of Islam in order to show to what extent these rights were applied in social life. Concerning the rights of people with physical disabilities, the author mentioned the right of moral esteem or social honour, facilitating their daily activities, guiding and improving their capabilities and the social care in which *zakāh* is to play a substantial financial role. To conclude this point, the author gave practical examples to show the status of people with disabilities in early Islamic society.

The Jordanian researcher, Muṣṭafa al-Quḍāt broadened the topic a bit more by conducting a comparative study between Islamic law and positive laws. This was in his *Huqūq al-mu'awwaqīn bayn al-sharī'a al-islāmiyya wa al-qānūn* (Rights of the Disabled between Islamic Sharī'a and Law). This is a PhD dissertation, a further development of his M.A. thesis on blind people, submitted to Dār al-Ḥadīth al-Ḥasaniyya in Morocco in 1992.⁷⁶ The dissertation was published in Jordan in 2002.⁷⁷ The researcher divided his dissertation into two main parts. The first part reviewed the main rights of people with disabilities, while the second part discussed the means of realising and guaranteeing these rights. He divided the rights into basic rights on the one hand and civil, political and social rights on the other. Basic rights included the right to live, right of having a name and lineage, the right of secrecy concerning correspondence and private affairs, the right to learn and finally the right to work. Under the category of civil rights, the researcher discussed issues like marriage, inheritance and ownership. Political rights included discussions on nationality and homeland. The social rights comprised health care, transportation, sportive games and means of entertainment.

Critical Assessment

Unaware of the above-mentioned studies,⁷⁸ Sara Scalenghe (PhD, Georgetown University) recently wrote “The study of disability in the medieval Islamic world is still in its infancy.”⁷⁹ I believe the abovementioned thirteen studies would make us speak about childhood rather than infancy in this field. At any rate, these studies can be all described as pioneering studies and every author

⁷⁶ Quḍāt, Muṣṭafa al- (1412/1992).

⁷⁷ Quḍāt, Muṣṭafa al- (2002). Being able to get an access to the dissertation rather than the published book, all references below and throughout this study are based on the unpublished version.

⁷⁸ Among the aforementioned studies, Scalenghe was aware of just one, Dols, Michael W. (1992).

⁷⁹ Scalenghe, Sara (2007), p. 208.

was aware of this fact. Yet, most of the authors were not aware of their forerunners. I hope this study would make them know each other. A number of critical remarks on these studies are due.

The authors tried to gather the scattered information in early sources and collect them in one study. However, it seems that they thought this was possible only in Islamic jurisprudence rather than Islamic theology. Theological discussions on disabilities occupied, if they were ever mentioned, a very marginal position only. Thus discussions on Islamic theology in my dissertation here is a new addition in this field.

As for Islamic jurisprudence, these studies were satisfied with consulting early fiqh manuals to pick out the rulings with relevance to people with different disabilities such as the blind, the lame, the deaf, etc. Doing so, some of the crucial issues for people with disabilities in the modern time were not handled because they were not discussed in a specific chapter in the fiqh manuals. We give here just a few examples.

Speaking about the dignity of people with disabilities, modern studies depended mainly on general remarks stressing the dignity accorded to every human being in Islam or just stating that the juristic rulings with pertinence to people with disabilities indicate that their dignity was guaranteed. To my mind this is half of the story. Main juristic discussions on the dignity of people with disabilities took place outside the fiqh manuals. Physiognomic sources, biographical studies on Muslim jurists and Ibn Fahd's *Al-Nukat al-zirāf* add credit to this fact. A topic such as medical treatment of people with disabilities was also not seriously handled by any of the above-mentioned studies. That is because medical treatment was handled by early jurists as part of broad chapters such as *janā'iz* (death-rituals). As a pre-death ritual, jurists spoke about sickness and its relevant juristic rulings. Additionally, questions like how people with disabilities would earn their livelihood were hardly the focus of detailed discussions in the modern studies.

1.4 Research Question, Methodological Approach and Focus

In this study, special concern is given to the frequently expressed calls of conducting studies elaborating on the status of people with disabilities in Islam and simultaneously to the gaps of the previous studies we have already discussed. Bearing in mind that none of the main Islamic sources consulted in this study formulated a comprehensive survey of the status of people with disabilities in Islam, it would have been anachronistic to approach these sources with the intention of finding such a pronouncement. The attempt here is rather to piece together the disparate and sporadic information on disability in these sources and to mould them into a coherent and systematic form. In this sense, the approach adopted in this study can be characterised as “systematic and constructive”. Another characteristic of the approach in this study is its closeness to the human-rights tendency which is prevalent at present in global discussions and studies on disabilities. The main stream of UN documents on people with disabilities is continuously stressing the rights of this group of

people. The same holds true for a large number of modern studies which handled the status of people with disabilities within an Islamic perspective.⁸⁰ The reader searching for the rights of people with disabilities such as medical treatment, employment, financial care, marital life, etc. will easily find suitable information in this study.

Islamic sources present Islam as a religion composed of a number of rules that its adherents are asked to abide by. These rules are divided into those related to beliefs (*ʿitiqādiyya*) or to practical actions (*ʿamaliyya*).⁸¹ The former were the subject of Islamic Theology (*ʿaqīda*) whereas the latter were the subject of Islamic Jurisprudence (*fiqh*). Thus portraying an over-all view of persons with disabilities in Islam necessitates studying the relevant discussions in these two Islamic sciences. In this sense, surveying the broad spectrum of perspectives and discussions on people with disabilities evinced in these two main Islamic sciences, viz., Islamic Theology and Islamic Jurisprudence will be the main focus of this study. Based on what has been stated here, the main question in this dissertation is: **what is the status of people with disabilities in Islam as viewed by Islamic Theology and Islamic Jurisprudence?**

This multi-faceted question is handled throughout the eight chapters which compose this dissertation. Besides this introductory chapter which gives overall remarks, the other seven chapters examine the status of people with disabilities in **Islamic Theology** and **Islamic Jurisprudence**. **Chapters Two** and **Three** are dedicated to the discussions with relevance to Muslim beliefs. **Chapters Four** till **Eight** investigate the status of people with disabilities as revealed in the detailed practical rulings (*al-aḥkām al-ʿamaliyya*) reflecting some of the rights of people with disabilities. Before delving into further details, the concepts of these two sciences and the main focus in each of them in this study are to be elaborated.

1.4.1 Islamic Theology

“Theology” is originally a Greek word composed of *theos* (God) and *logos* (discourse). This western term was used to denote the science of studying the religious beliefs.⁸² The Islamic science studying these beliefs had more than one name, the most famous of which was *ʿilm al-kalām*.⁸³ However, there are other names for this science such as *al-fiqh al-akbar*,⁸⁴ *ʿilm uṣūl al-dīn*,⁸⁵ *ʿilm al-*

⁸⁰ For sources whose titles bear the word “rights”, see for instance, Ibn Ḥamza, Muṣṭafā (1414/1993); Quḍāt, Muṣṭafā al- (1412/1992); ʿAbd Allāh, Muḥammad ʿAbd Allāh (1422/2001), pp. vol. 2, pp. 665-721; Muṭawwaʿ, Munīra Khālīd al- (1422-2001), vol. 2, pp. 641-657; Shirbīnī, Luṭfī al- (2001), vol. 2, pp. 601-636; Abū Ghudda, ʿAbd al-Sattār (2001), vol. 2, pp. 734-775; Yasīn, Muḥammad Naʿīm (2001), vol. 2, pp. 777-833.

⁸¹ Taftazānī, Saʿd al-Dīn Masʿūd b. ʿUmar al- (1), p. 30; Bayāḍī, Kamāl al-Dīn Aḥmad al- (1949), pp. 28 & 29; Bukhārī, ʿAbd al-ʿAzīz b. Aḥmad b. Muḥammad al- (1), p. 7.

⁸² See, Eliade, Mercea (1987), p. 455; Hastings, James (1974), vol., 5, p. 293; *The New Encyclopaedia Britannica* (1982), item “theology”, p. 247; Hodgson, Peter Crafts (1994), p. 3; Williams, John Rodman (1996), p. 16; McGrath, Alister E. (1998), p. 1.

⁸³ See Ibn Khaldūn (1984), vol. 1, p. 466; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 12.

⁸⁴ One of the oldest names given to this science and attributed to Imam Abū Ḥanīfa. See Bayāḍī, Kamāl al-Dīn Aḥmad al- (1949), pp. 28 & 29; Shāfiʿī, Hasan Maḥmūd al- (1411/1991), p. 26.

‘*aqā’id*’,⁸⁶ ‘*ilm al-tawḥīd*’,⁸⁷ ‘*ilm al-tawḥīd wa al-ṣifāt*’⁸⁸ and ‘*ilm al-naẓar wa al-istidlāl*’.⁸⁹

The subject matter of this science was the religious beliefs (‘*aqā’id*’) of Muslims. This science was concerned with firmly establishing these beliefs by adducing proofs and banishing doubts.⁹⁰ The main themes of this science were in the first place the *ilāhiyyāt* or *naẓariyyāt* (speculative theology) discussing mainly, on philosophical grounds, the existence of God, the Creation and the necessity of the Prophethood. The second part was the *sam‘iyyāt* (traditional theology) containing a systematic elaboration of the doctrine based on the data of the revelation. The *nubuwwāt* (matters pertaining to Prophethood) were usually classified under the category of *sam‘iyyāt* but, according to some authors, represented a distinct category constituting a link between *ilāhiyyāt* or *naẓariyyāt* and *sam‘iyyāt*.⁹¹

Discussions on disability-related issues are to be located in the first theme, i.e., the *ilāhiyyāt* because it dealt with (a) the existence of God (*wujūd Allāh*) and His attributes and (b) the actions of God (*af‘āluhū ta‘ālā*).⁹² One of the main topics of *ilāhiyyāt* in which these two items were discussed was *al-qaḍā’ wa al-qadar* (Fate and Predestination).⁹³ *Al-Qaḍā’ wa al-qadar* in Islamic Theology focused on two main points. The main concern was given to the issue of man’s freedom to act and God’s Predestination. This point falls beyond the focus of this study.⁹⁴ The second point was the adversities, afflictions and

⁸⁵ See Gimaret, D. (2003), vol. X, pp. 930 & 931. It is also noteworthy to state that the expression *uṣūl al-dīn* occurs in the titles of many treatises on Islamic Theology. For such treatises representing the Ash‘arī viewpoint, see Baghdādī, Abū Maṣū‘ al-Qāhir al- (1346/1928); Juwaynī, Abū al-Ma‘ālī, al- (1969). For the Ḥanafī-Māturīdī viewpoint, see Bazdawī, Abū al-Yusr al- (1307/1889); Nasafī, Maymūn b. Muḥammad al- (1990). For the Ḥanbalī viewpoint see Abū Ya‘lā, Ibn al-Farrā’ (1974). For the Mu‘tazilī viewpoint, see Ibn al-Malāḥimī, (1991).

⁸⁶ Shāfi‘ī, Ḥasan Maḥmūd al- (1411/1991), p. 30; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 12.

⁸⁷ Bukhārī, ‘Abd al-‘Azīz b. Aḥmad b. Muḥammad al- (1), vol. 1, p. 7; Wālī, Husayn (1909), p. 123; Jād al-Ḥaqq, ‘Alī Jād al-Ḥaqq (1979); Shāfi‘ī, Ḥasan Maḥmūd al- (1411/1991), p. 30; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 12; Gardet, L. (1), (2003).

⁸⁸ Taftazānī, Sa‘d al-Dīn Mas‘ūd b. ‘Umar al- (1), p. 4, Shāfi‘ī, Ḥasan Maḥmūd al- (1411/1991), pp. 30 & 31.

⁸⁹ Shāfi‘ī, Ḥasan Maḥmūd al- (1411/1991), p. 32.

⁹⁰ Bayḍāwī, ‘Abd Allāh b. ‘Umar al- (1323/1905), p. 4; Ījī, ‘Aḍud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 1, p. 30; Ibn Khaldūn (1984), vol. 1, p. 458 Gardet, L. (1) (2003), vol. III, pp. 1141-1150.

⁹¹ Shāfi‘ī, Ḥasan Maḥmūd al- (1411/1991), pp. 20 & 21; Gardet, L. (1) (2003)

⁹² Gardet, L. (2) (2003), vol. I, pp. 342 & 343.

⁹³ “*Al-Qaḍā’ wa al-qadar*” when combined into one expression these two words have the overall meaning of the Decree of God, both the eternal Decree (the most frequent meaning of *qaḍā’*) and the Decree given existence in time (The most frequent meaning of *qadar*). For further details over the meanings and definitions of *al-qaḍā’* and *al-qadar*, see Mudhārī, Ibrāhīm b. Muṣṭafā al-Ḥalabī al- (1358/1939) pp. 32-55. In this book, al-Mudhārī gave sixteen definitions for the term *al-qaḍā’ wa al-qadar*. See also Nawawī, Abu Zakariyya Yaḥyā b. Sharaf al- (1392 A.H.), Vol. 1, pp. 154 & 155; Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 11, p. 509; Būṭī, Mohammed Sa‘īd Ramaḍān, al-, (2001), pp. 37, 38, 210, 217, 221, 233; Gardet, L. (2003), vol. IV, pp. 365-367.

⁹⁴ This point was one of the very knotty issues that busied the minds of theologians from the

misfortunes befalling creatures as an essential part of God's predetermined course of events and this point was the focus of this study. It is noteworthy to state that Muslim theologians did not speak about disabilities as a distinct topic. One can hardly find any chapter speaking about people with disabilities in particular. Abū al-Ḥasan Al-Ash'arī's (d. 324/935-6) chapter entitled *Mas'ala fī ilām al-atfāl* "Question Concerning the Torture of the Infants" in his book *Al-Ibāna* (Illumination) could be an exception in this regard. In this chapter, al-Ash'arī spoke about children who get afflicted with leprosy which cuts off their hands and their feet.⁹⁵ Disabilities were usually included in discussions on broader terms like *muṣība*⁹⁶ (affliction or calamity), *sayyi'a*⁹⁷ (misfortune or evil), *sharr*⁹⁸ (evil) and the like. These are Qur'anic terms whose interpretation by the Companions of the Prophet (*saḥāba*), their Successors (*tābi'ūn*) and scholars of Qur'anic exegesis (*tafsīr*) show that different sorts of disabilities were included in their purport.⁹⁹

One of the key-terms which permeated the theological discussions in Islamic sources on disability was *ta'īl* whose most used English equivalent is "theodicy". For a better understanding of theological discussions to follow, a note on this Arabic term and its English equivalent is in order.

The term "*ta'īl*" denoted literally causation or search for the causes and referred to the logical relationship between cause and effect.¹⁰⁰ This term was used by Muslim jurists and theologians in two different contexts. In the juridical usage, *ta'īl* and its derivative *'illa* (effective cause), did not exactly refer to a casual relationship between two phenomena. It meant rather the *ratio* of the law, its value and its purpose.¹⁰¹ Besides Abū Ḥāmid al-Ghazālī (d. 1111) who discussed the issue of *ta'īl* extensively in his book *Shifā' al-ghalīl*

early Islamic history up to the present time and that is why most of the books and compilations written on *al-qaḍā' wa al-qadar* focused on this point and gave less or no attention to the other point which is our concern here. For those interested in having an idea about this point, see for instance Obermann, Julian (1935); Rehman, Mutazid Wali-ur, (1939); Watt, W. Montgomery (1948); Siddiqi, Mazheruddin (1953); Vahiduddin, S (1968); Ansari, Zafar Ishaq (1969), vol. XVI, pp. 65-78; Schmidtke, Sabine (2001); Frolov, Dmitry V. (2002).

⁹⁵ Ash'arī, Abū al-Ḥasan 'Alī b. Ismā'īl al- (1397/1977), pp. 193 & 194; Ash'arī, Abū al-Ḥasan 'Alī b. Ismā'īl al- (1940), pp. 112 & 113.

⁹⁶ For the derivatives and meaning of this term, see Fayyūmī, Aḥmad b. Muḥammad b. 'Alī al- (1), pp. 349 & 350.

⁹⁷ For the derivatives and meaning of this term, see Ibid, p. 298.

⁹⁸ For the derivatives and meaning of this term, see Ibid, p. 309.

⁹⁹ For instance, *muṣība* has been interpreted as disability and sickness in general, see Bayḍāwī, 'Abd Allāh b. 'Umar al- (1416/1996), vol. 5, p. 303; Qurṭubī, Abū 'Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 16, pp. 30 & 31 & vol. 17, p. 257; vol. 4, p. 315; Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 27, p. 234; Ibn al-Jawzī (1404/1983), vol. 8, p. 173; Nasafī, Abū al-Barakāt al- (1), vol. 14, p. 219. Also *sayyi'a* has interpreted as a synonym for *muṣība*, see Ibn al-Jawzī (1404/1983), vol. 2, p. 139; Ibn Taymiyya (1), vol. 1, p. 42; Alūsī, Abū al-Faḍl Maḥmūd al- (1), vol. 12, p. 15. As for *sharr* (pl. *shurūr*), Ibn al-Qayyim named pains and adversities in life as evils (*shurūr*). See Ibn al-Qayyim (1348/1929), vol. 1, p. 376.

¹⁰⁰ See Kamali, Muhammad Hashim (2003), pp. 46-51, see also pp. 27, 280, 299 & 332.

¹⁰¹ For further information on this usage of *ta'īl* see Hasan, Ahmad (1974), pp. 95-127; Kamali, Muhammad Hashim (2003), pp. 46-51, see also pp. 27, 280, 299 & 332.

(Quenching the Thirst), more than one Muslim jurist composed books bearing the title *ta'ālil* dedicated to investigating the values and purposes of the law.¹⁰²

The theological usage of *ta'ālil* was more concerned with God's actions. In other words, *ta'ālil* in this sense indicated the quest for the divine wise purposes (*hikam*) for God's actions.¹⁰³ The purport of *ta'ālil* was not restricted to evolving arguments to clarify or justify pain, suffering, evil and the like. *Ta'ālil* was a generic term indicating that God's actions can be rationalized whether these actions were deemed good or bad from the human perspective. Ending up in Paradise or Hell in the Hereafter and the question whether this was dependent on one's good deeds or bad deeds in this life or on God's foreordained judgment, all such issues were discussed within the broad spectrum of *ta'ālil*.¹⁰⁴ Considering the main focus of this study, our discussions will be restricted to those bids of developing rational arguments in order to clarify or justify the existence of disabilities and other forms of suffering. This restricted sense of *ta'ālil* is close to the term "theodicy" coined by Gottfried Leibniz (d. 1716) from the Greek *theos* (God) and *dikē* (justice).¹⁰⁵

To recapitulate, disability as viewed in Islamic theology is a very under-researched topic if not a completely unstudied subject. This is in spite of the fact that among the voices calling for studying the status of people with disabilities in Islam, clear calls expressed the importance of focusing on Islamic theology in this respect.¹⁰⁶ To my mind, relevant discussions available in theological sources of Islam fall also within the human-rights approach. To a believing person afflicted with disabilities, answering the ontological and theological questions about the existence of disability in life and how to deal with it according to the norms of his religion is by no means less important or less urgent than answering his financial and medical needs.

1.4.2 Islamic Jurisprudence (*Fiqh*)

Fiqh is linguistically "understanding, knowledge, intelligence", and thus applied to any branch of knowledge (as in *fiqh al-lughah*, the science of lexicography). In the technical sense it is the knowledge of the practical religious rulings from their detailed proofs.¹⁰⁷ "Jurisprudence" is the most common English equivalent for the Arabic term *fiqh*. However, "Jurisprudence" does not convey the full meaning of "*fiqh*". For instance, *fiqh* handles all issues in life whether

¹⁰² Just to mention some of these scholars, we refer to Ibn al-'Izz from the Hanafī school, see Zāda, 'Abd al-Rahmān b. Muḥammad Shaykhī (1), vol., 1, p. 245, 'Abd al-Malik b. 'Abd al-'Azīz al-Mājjishūn from the Mālikī school, Abū al-Walīd al-Bājī from the same school, see Ḥaṭṭāb, Abū 'Abd Allāh al- (1412/1992), vol. 6, p. 93 and a third Mālikī jurist, Abū 'Abd Allāh al-Māzīrī, see Zayn al-Dīn, 'Abd al-Rahīm b. al-Ḥusayn al-'Irāqī (1), vol. 8, p. 100.

¹⁰³ See for instance, Ibn Taymiyya (7), vol. 8, pp. 377-381; Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol.1, pp. 181 & 182.

¹⁰⁴ See for instance Hasan, Ahmad (1974), pp. 98-101.

¹⁰⁵ See Leibniz, G.W. (1951); Green Ronald M. (1997), p. 431; Hoover, John R. (2002), p. 1.

¹⁰⁶ See for instance, see 'Abd al-Rahmān 'Abd Allāh al-'Awaḍī & Aḥmad Rajā'ī al-Jundī (eds.) (1422-2001), vol. 2, pp. 577, 582 & 587.

¹⁰⁷ See Ashqar, 'Umar Sulaymān al- (1413/1991), pp.9-18; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 11-15 & vol. 32, pp. 193 & 194.

those between the humans on one hand and God on the other (*‘ibādāt*) or those between humans only (*mu‘āmalāt*). However, “Jurisprudence” is restricted to the inter-human issues and has nothing to do with what happens between man and God.¹⁰⁸

The subject matter of this science was the practical rulings derived from the detailed proofs of the Shari‘a, such as the Qur’anic verses and the Prophetic traditions. These rulings were always discussed by the Muslim jurists under two main headings, i.e., *‘ibādāt* (the liturgical and religious observances) and *mu‘āmalāt* (social dealings) which included more or less the rest.¹⁰⁹ A number of jurists added the heading of *‘uqūbāt* (punishments) or *munakaḥāt* (marriage affairs).¹¹⁰ Rulings pertaining to people with disabilities were disseminated throughout these chapters. In this regard, the exceptional phenomenon of allotting a specific chapter to people with disabilities in juristic sources is in order.

Speaking about allotting an independent chapter to the juristic rulings of the hermaphrodite, Vardit Rispler-Chaim said, “... the blind and the lame, the deaf and the dumb, whose disabilities are detected in higher percentages in both infants and adults, and are evident, have never been allotted separate chapters and are only sporadically discussed in the fiqh.” This statement should not be taken without reservation especially concerning the blind. For instance, the contemporary Kuwaiti scholar ‘Abd Allāh Muḥammad ‘Abd Allāh said that the Shāfi‘ī jurist, Abū Yahyā Zakariyyā al-Anṣārī (d. 926/1520) was the first to write a chapter entitled *Bāb aḥkām al-a‘mā* (A Chapter on the Rulings of the Blind) in his book *Tahrīr tanqīḥ al-lubāb*.¹¹¹ Moreover, al-Anṣārī was not the first in this respect but just following a tradition done by earlier Shāfi‘ī jurists such as Abū Ḥāmid al-Ghazālī (d. 1111) in his book in *al-Rawnaq* (glamour),¹¹² al-Nawawī (d. 676/1277), in *Al-Majmū‘ sharḥ al-muhadhdhab*,¹¹³ and al-Suyūṭī (d. 911/1505) in *Al-Ashbāḥ wa al-naẓā’ir* (The Similar and Parallels).¹¹⁴ The

¹⁰⁸ See Ashqar, ‘Umar Sulaymān al- (1413/1991), pp. 35 & 36; Goldziher, I & Joseph Schacht (2003), vol. II, pp. 886 & 887. For more differences between *Fiqh* and Jurisprudence, see Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. I, pp. 20-22.

¹⁰⁹ Ashqar, ‘Umar Sulaymān al- (1413/1991), pp. 20-24; Bousquet, G.H. (2003), vol. III, pp. 647 & 648; Bernand, M. (2003), vol. II, pp. 255-257.

¹¹⁰ Ashqar, ‘Umar Sulaymān al- (1413/1991), p. 21.

¹¹¹ See Anṣārī, Abū Yahyā Zakariyya al- (1), pp. 140 & 141; ‘Abd Allāh, Muḥammad ‘Abd Allāh (1422/2001), vol. 2, p. 678. As for the title *Tahrīr tanqīḥ al-lubāb*, literally it is “Editing the Review of the Essence”. *Lubāb al-fiqh* (Essence or Core of Fiqh) is a book composed by Imam al-Juwaynī (d. 478/1085) then it was abridged by Burhān al-Dīn b. Ibrāhīm b. Musā al-Karkī al-Shāfi‘ī (d. 826) and called it *Tanqīḥ al-lubāb* (Reviewing the Essence). Abū Yahyā Zakariyya al-Anṣārī re-abridged *Tanqīḥ al-lubāb* and called it *Tahrīr tanqīḥ al-lubāb* “Editing the Review of the Essence”. See Khalīfā, Ḥājī (1412-1992), vol. 2, p. 1541.

¹¹² This has been stated by those who quoted from him such as al-Suyūṭī, see Suyūṭī, Jalāl al-Dīn al- (1403/1983), pp. 251. However, I could not trace this book whether in a manuscript or in an edited form.

¹¹³ Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 368. *Al-Majmū‘* lit. is the collected or the grand-total, *sharḥ* means, explanation and *Al-Muhadhdhab* is a title of the book which literally means the refined. Thus the title can be translated as *The Collected in Explaining the Refined*.

¹¹⁴ See Suyūṭī, Jalāl al-Dīn al- (1403/1983), pp. 251-253.

same tradition can also be traced among Ḥanafī jurists such as Ibn Nujaym (d. 970/1563) in *Al-Ashbāh wa al-naẓā'ir* (The Similar and Parallels) and the commentary on this book by Aḥmad b. Muḥammad al-Ḥamawī (d. 1098/1687) in *Ghamz 'uyūn al-baṣā'ir fī sharḥ al-ashbāh wa al-naẓā'ir* (Winking the Fountains of Insights in Explaining the Similar and Parallels).¹¹⁵

To recapitulate, the disability-related issues in this science cannot be adequately studied through the subject matter but through the terms used for denoting disabilities. In a bid to systemise such rulings and put them in a context understandable to the current reality, the main focus of this study was the main practical means by which people afflicted with disabilities can still live, in the social and the financial sense, a fairly satisfactory life. Bearing in mind that these practical means are always produced in the modern time under the broad term “rights”, a note will first be dedicated to the equivalent term in Arabic, i.e., “*ḥaqq*”, in order to avoid any possible confusion or misunderstanding about the use of this modern term in a juristic sense.

Linguistically, *ḥaqq* is either “truth”, i.e., “what corresponds to facts” and its opposite is *bāṭil* (untrue) or the established fact (*al-thābit*) and therefore “reality”.¹¹⁶ In the technical sense, *ḥaqq* had two main definitions based on these two linguistic denotations. In the theological context, derived directly from the first linguistic denotation, it referred to the judgement identical to truth and thus used to indicate the contentions, beliefs, religions and sects in the sense that they include the *ḥaqq*; its opposite is *bāṭil* (untrue).¹¹⁷ In the juristic context, based on the second linguistic denotation, *ḥaqq* referred to what has been established to someone by the Islamic Shari‘a for his/her interest.¹¹⁸ However, there may be a propensity in the classical Islamic sources towards obligations rather than rights. Thus the right to life, for instance, is expressed in the Islamic system as the duty to save life.¹¹⁹ A closer examination, however, reveals that a mere propensity in the style of communication does not have a negative effect upon the substance and the validity of rights in the Shari‘a. The ruling conveyed the notion of right (when viewed from the vantage point of a right-bearer) or the notion of obligation (when viewed from the position of the party responsible for putting this right into practice). Hence, all what was done by the modern studies was that they have just reversed the focal point, i.e., by using “rights” instead of “obligations” but the main content

¹¹⁵ See Ḥamawī, Aḥmad b. Muḥammad al- (1405/1985), pp. 334 & 335.

¹¹⁶ See Jurjānī, ‘Alī b. Muḥammad b. ‘Alī al- (1405/1984), vol. 1, p. 120; Rāzī, Muḥammad b. Abī Bakr b. ‘Abd al-Qādir al- (1415/1995), vol. 1, p. 62; Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 6, p. 148; Ibn ‘Abidīn, Muḥammad Amīn b. ‘Umar (1), vol. 5, p. 187.

¹¹⁷ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 18, p. 7.

¹¹⁸ Ibid, vol. 3, p. 10.

¹¹⁹ See Grīsha, ‘Alī (1987), p. 31 & 32; Badawi, Mohamed Zaki (2001), in an unpublished lecture, *Islam and citizenship*, delivered in the conference, “Does the Muslim Citizen Exist?” held in Rotterdam, the Netherlands, 2001 and organised by the Dutch Organisation Islam & Burgerschap (Islam and citizenship). For further details and critical study on this lecture, see Ghaly, Mohammed M.I. (2001).

and purport remained in both cases the same.¹²⁰

Furthermore, the term *ḥaqq* always involved in Islam a sense of nobility and also sometimes sacredness. The Qur'anic use of this term indicated that it was sometimes in order to refer to God (Qur'ān 6:62, 20:114, 22:06) and other times to the holy scripture of Muslims, i.e., the Qur'ān (Qur'ān 4:170, 5:48, 10:94). Also guiding to the *ḥaqq* (Qur'ān 10:35), hurling it against *al-bāṭil* (the false) (Qur'ān 21:18) and making it finally victorious is the affair of God Himself (Qur'ān 17:81). All this clothed this term with a specific halo in the Islamic context.¹²¹

As for the divisions of *ḥuqūq* (rights), they were divided on more than one level. Here we chose the divisions with relevance to our concern here, i.e., people with disabilities. In terms of the recipient of *ḥuqūq*, Muslim jurists distinguished between two main spheres of *ḥuqūq*, namely, *ḥuqūq Allāh* (lit. claims or rights of God or public rights) and *ḥuqūq al-ʿibād* or *ḥuqūq al-ādamiyyīn* (claims or rights of men or human beings). The first sphere stood for the rights of the Islamic community at large. Attributing these rights to God was only for the sake of glorifying their value and stressing the exhaustiveness of their benefits lest they will be accorded to a specific person. The second sphere covered claims of private individuals in their dealings with each other.¹²² In terms of their content, *ḥuqūq* were divided into financial (*mālīyya*) and non-financial (*ghayr mālīyya*).¹²³ In terms of enforceability, *ḥuqūq* were divided into religious (*dīnī*) and juridical (*qaḍāʾī*). The former, although validated by the Shariʿa, cannot be proven or enforced by court. Most of the rights of God (i.e. *ʿibādāt*, *kaffārāt*, etc.) fell in this category. Rights without a particular party as the right-bearer such as religious endowment (*waqf*) for the poor and the indigent fell also into this category.¹²⁴ Juridical rights, on the other hand, are susceptible to proof at the behest of the right-bearer, and the Shariʿa court had the power to adjudicate them. One of the examples of this right was the wife's right to maintenance by her husband.¹²⁵

Although the term *ḥaqq*, pl. *ḥuqūq* was not restricted to people with disabilities per se, it was always connected with them, especially in the modern literature. Expressions like *ḥuqūq al-muʿawwaqīn* (rights of people with disabilities) have become key expressions in modern literature on people with disabilities in Islam.¹²⁶ Bearing in mind the prevalence of the term “rights of

¹²⁰ Kamali, Muhammad Hashim (1993), p. 340.

¹²¹ Abū Ghudda, ʿAbd al-Sattār (1411/1991), p. 216.

¹²² See Bukhārī, ʿAbd al-ʿAzīz b. Aḥmad b. Muḥammad al- (1), vol. 4, pp. 134 & 135; Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 6, p. 148; Ibn al-Qayyim (1973), vol. 1, p. 108; Kamali, Muhammad Hashim (1993), p. 348; Hoexter, Miriam (1995), p. 134; Nashmī, ʿAjīl Jāsīm al- (1423/2002), p. 163.

¹²³ Ibn Qudāma, Abū ʿAbd Allāh Muḥammad b. Aḥmad al-Maqdisī (2), vol. 10, p. 218; Nashmī, ʿAjīl Jāsīm al- (1423/2002), pp. 164-166.

¹²⁴ Kamali, Muhammad Hashim (1993), p. 348.

¹²⁵ Ibid, p. 349.

¹²⁶ See for instance, Miles, M. (1981), p. 128; ʿAwaḍī, ʿAbd al-Raḥmān ʿAbd Allāh al- & Aḥmad Rajāʾī al-Jundī (eds.) (1422-2001), vol. 1, p.8 & vol. 2, p. 472; Such expressions have been also used in the titles of some books and articles, see Ibn Ḥamza, Muṣṭafā (1414/1993); Minyāwī,

people with disabilities” at the present time, it was a key-term throughout presenting discussions in juristic sources about people with disabilities.

1.5 Structure and Organisation of the Study

Chapters Two and Three, dedicated to studying people with disabilities in **Islamic Theology**, handles two main questions, viz., “Why does disability exist since Allah is the Omnipotent, All-Just and All-Merciful?” and “What should be done if someone got afflicted with disability?” Theological discussions on the first question can be classified under the theme of “Speculative Theology” whereas discussions on the second questions under the theme of “Practical Theology”. The former represents a bid to explain the ontology of disabilities and sufferings. The latter investigates how to live with such disabilities and misfortunes. These two arguments are respectively the topics of **Chapter Two** and **Three**.

Chapter Two (Speculative Theology), handles the theological clarifications and justifications put forward by Muslim scholars in response to the existence of disabilities and evil in general. As a theistic religion, a belief in the perfect image and spotless character of God was always a central point. The existence of disabilities, pains or evils in general should not cast doubts on the perfect character of God. This was a strict guideline or red line that should not be transgressed and different groups, despite their discrepancies, stuck to this line. As exception in this respect, two main groups existed throughout the Islamic history whose contentions were seen as casting doubts on the perfect character of God. The introductory remarks of this chapter showed that one group was declared heretics and infidels. The other group, mainly represented by Sufi figures, was tolerated because expressing such opinions was seen as lovers’ disputes, which might sometimes occur between lovers without disturbing their friendly relations.

Beyond these two exceptions, Muslim theologians tried to come up with solutions that do not harm the perfect character of God. This holds true to the extent that a group of Muslim scholars, especially among Sufis and philosophers, did not see a *real* pradaox. They opined that it was irrelevant to raise the question, “how to understand or justify the presence of nasty and painful things in the light of the fact that God the Compassionate, the Merciful is the Supreme Power and that He has control over this universe?” To them, the existence of disabilities and different forms of pains and sufferings do not cause theological or ontological problems. This approach mainly prevailed within Sufi and philosophical milieus. Each of these two groups had their own method to show that the aforementioned question does not create a *real* problem. From the side of the Sufis, the most elaborate and comprehensive presentation was given by Abū Ḥāmid al-Ghazālī (d. 1111). As for philosophers, Ibn Sīnā (d. 429/1037), the most influential Muslim philosopher, will be the main focus in this respect. First of all, he seems to have been the

Muḥammad Badr al- (2001); Abū Ghudda, ‘Abd al-Sattār (2001); Yāsīn, Muḥammad Na‘īm (2001).

first among them all to preoccupy himself with the problem of evil.¹²⁷ Additionally, to my knowledge, he is the main philosopher, if not the sole one, who focuses on disability within the broader framework of evil. Shams Inati's study on Ibn Sīnā's theodicy of evil is the main study upon which I depended to review Ibn Sīnā's discussions on disabilities.¹²⁸

However, the majority of Muslim theologians conceded that the existence of disabilities and other forms of pains and sufferings represented a theological problem that should be handled. However, attempts to explain or solve this problem should not be at the expense of God's perfect character. Elaborating His perfect divine character in the light of pains prevalent in this life, the advocates of this trend went through heated discussions about two main sides of the character of God, each represented by a number of divine names and attributes. The first side was God's omnipotence emphasising that nothing taking place in life can escape His unlimited power. The second side was God's solicitude for the welfare of His creatures. This side shows that God takes care of His creatures and treats them with beneficence, justice, wisdom, etc. Laying more emphasis on one side than the other or trying to create a balance between the two resulted in three main approaches, termed in this study as **anti-theodicy** approach, **pro-theodicy** approach and **middle-course** approach each of which will be discussed in a separate chapter.

It is worthy to note in this regard that the categorization adopted in this regard has been reached after extensive readings. However, it is not directly quoted from one single source and thus remains mine. I have deliberately avoided a school-based categorization by dividing theologians' viewpoints on the basis of the theological school they were known to abide by. As we shall see, within almost every school, advocates of each of the trends and approaches mentioned can be traced. This holds even true for some prominent scholars such as Abū Ḥāmid al-Ghazālī (d. 1111) whose opinions in one specific source can be classified in one category whereas his opinions in other sources are to be categorized in a completely different cadre. Modern scholars in Islam can also be easily integrated within this form of categorization because they adopt an eclectically-oriented approach combining elements from different theological schools.

The first approach, termed in this study as **anti-theodicy approach**, stresses that the perfect character of God can be seen first and foremost in the first side of God's character, especially God's self-sufficiency and omnipotence. In the case of disabilities and other forms of misfortunes in life, judging God's acts in accordance with the same criteria used for judging human acts would diminish God's unlimited power and thus tarnish His perfect character. In this sense, no attempts should be done to search for wise purposes (*ḥikam*) for God's acts including pain and all what can be deemed evil. In short, theodicy cannot be

¹²⁷ Inati, Shams C. (2000), p. 65.

¹²⁸ For an overall presentation of Ibn Sīnā's discussions on theodicying the existence of disabilities, see Inati, Shams C. (2000), pp. 67-85. For a modernized presentation of Ibn Sīnā's views on evils in general, see Muṭahharī, Murtaḍā al- (1424/2003), pp. 153-170 & 186.

practised. This approach was mainly theorised throughout the Ash‘arī theological manuals. For instance, the founder of the school, Abū al-Ḥasan al-Ash‘arī (d. 324/935-6)¹²⁹ wrote a chapter, in his book *al-Ibāna* (Illumination), under the title “Question concerning the torture of the infants”.¹³⁰ In his book, *Al-Mawāqif* (Viewpoints), the well-known Ash‘arī theologian ‘Aḍud al-Dīn al-Ījī (d. 757/1355) also wrote a whole chapter on theodicy (*ta‘līl*).¹³¹ Lately, the contemporary Egyptian scholar Muḥammad al-Sayyid al-Julaynid (Cairo University) handled the issue of theodicy in the Ash‘arī school in his book on good and evil.¹³² Finally, G. Legenhausen, (Texas Southern University, USA) wrote an article elaborating and to some extent advocating the Ash‘arī view on the theodicy.¹³³

The second approach, termed in this study as **pro-theodicy approach**, laid more stress on the second side of God’s character especially on His justice and wisdom. The proponents of this approach tried to explain or justify the existence of evil, pain and suffering in a way that would never harm God’s justice or wisdom. They said that man, because of his freedom to act in life, is the agent of a large part of evils and pains in this life. Such evils are to be ascribed to their agent, namely, man, who is liable to do just and unjust acts. God is not responsible for these evils and cannot be questioned for their existence in our life. However, another part of pains and sufferings take place in life beyond man’s choice such as being inflicted with blindness, leprosy and other illnesses. God is responsible for these pains only and they are just and wise. They have been done by God for specific benefits and wise purposes (*ḥikam*). In this sense, the Mu‘tazila refused to call such acts “evils” and say that they are to be classified as forms of *fitna* (temptation) or *ibtīlā’* (test).¹³⁴ Whether disability took place as part of man’s action, other people’s action or directly by God and thus beyond the human control, there should be a specific wise purpose that can be discerned by the human intellect. In this framework, very detailed and sometimes extremely complicated attempts were done to search for these possible wise purposes. The advocates of this approach came basically from the Mu‘tazilī theological school. Broad lines of their doctrines in this respect found proponents in the circles of Twelver Shi‘ism (Shi‘a Imāmiyya) such as Ibn Bābawayh known as al-Shaykh al-Ṣadūq (d. 391/1001),¹³⁵ al-Shaykh al-Mufīd (d. 413/1022),¹³⁶ al-Sharīf al-Murtaḍā (d. 436/1044),¹³⁷ and al-Muṭahhar al-Ḥillī (d. 726/1325).¹³⁸ They all held largely

¹²⁹ On him, see Watt, W. Montgomery (4) (2003), vol. 1, pp. 694 & 695.

¹³⁰ Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (1940), pp. 112 & 113.

¹³¹ Ījī, ‘Aḍud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 1, pp. 422-474.

¹³² Julaynid, Muḥammad al-Sayyid al- (1981).

¹³³ Legenhausen, G. (1988), pp. 257-266.

¹³⁴ Julaynid, Muḥammad al-Sayyid al- (1981), pp. 63 & 64.

¹³⁵ On him, see Fyzee, Asaf A.A. (2003), vol. III, pp. 226 & 227.

¹³⁶ On him, see Madelung, Wilfred (2003), vol. VII, pp. 312 & 313.

¹³⁷ On him, see Brockelmann, Carl (2) (2003), vol. VII, p. 634.

¹³⁸ On him, see Jafri, S.H.M. (2003), vol. III, p. 390.

similar opinions about suffering and its compensation.¹³⁹ Keeping in mind that the Mu‘tazilī presentation of issues with relevance to this approach was one of the most detailed and elaborated ones throughout the Islamic history, their doctrines were taken as the main points of discussion. Cross-references to Shī‘ī sources were given just to know where to trace them and notice they are in line with the Mu‘tazilī thought. The main source which theorized and developed this approach in the Mu‘tazilī school was the well-known encyclopaedia of al-Qādī ‘Abd al-Jabbār (d. 415/1025)¹⁴⁰, *Al-Mughnī fī abwāb al-‘adl wa al-tawhīd* (The Sufficient on Themes of Justice and Oneness) which recorded the Mu‘tazilī theology in its complete form.¹⁴¹ Mu‘tazilī contentions, especially as elaborated in *Al-Mughnī*, on pain and suffering in general have been recently studied by the Dutch researcher Margaretha Heemskerk. She wrote her PhD dissertation on pain and compensation in the Mu‘tazilī doctrine¹⁴² which was later on published under the title *Suffering in the Mu‘tazilī Theology*.¹⁴³ Heemskerk is the basic study upon which the discussions in this respect are based. As for the Shī‘ī sources, three main sources give an overall overview in this issue, namely, Ibn Bābawayh’s *Risālat al-i‘tiqād* (Treatise on Creed),¹⁴⁴ al-Shaykh al-Mufīd’s *Awā‘il al-maqālāt fī al-madhāhib wa al-mukhtārāt* (The First Treatises on Chosen Doctrines),¹⁴⁵ al-Hillī’s *Al-Bāb al-ḥadī ‘ashar* (The Eleventh Chapter).¹⁴⁶ However, the centrality of the image of God in the theology of this approach escaped the attention of Heemskerk. To compensate this shortage, two main studies were consulted while introducing viewpoints of the advocates of this approach on the perfect character of God. These two studies are *The Islamic Conception of Justice* by Majid Khadduri (1908-2007) and *God and His Attributes: Lessons on Islamic Doctrine*¹⁴⁷ by the Shī‘ī scholar, Sayyid Mujtaba Musavi Lari (b. 1314/1935).¹⁴⁸

The third approach, termed as **middle-course approach**, tried to find a middle ground between the aforementioned two approaches. They first criticised the one-sided tendency adopted by these approaches in interpreting the perfect character of God. Within this approach, all God’s attributes were deemed as complementary rather than contradicting each other. To them, divine omnipotence should be grasped in parallel with His unmatched mercy, justice and all-wisdom. One should not be stressed at the expense of the other.

¹³⁹ See Fyzee, Asaf A. A. (1942); Hillī, Ḥasan b. Yūsuf b. ‘Alī b. al-Muṭahhar al- (1958); Ibn Taymiyya (1406/1985), vol. 1, pp. 129, 447, vol. 2, pp. 100, 101 & 242; Muṭahharī, Murtaḍā al- (1424/2003), p. 64; Hoover, Jon (2002), pp. 273, Shihadeh, Ayman (2006), vol. 2, p. 772; Heemskerk, Margaretha T. (2006), vol. 5, pp. 135 & 136.

¹⁴⁰ On him, see ‘Uthmān, ‘Abd al-Karīm (1968); Heemskerk, Margaretha T. (2000), pp. 36-53.

¹⁴¹ ‘Abd al-Jabbār, al-Qādī Abū al-Ḥasan (1380-1389/1960-1969).

¹⁴² Heemskerk, Margaretha T. (1995).

¹⁴³ Heemskerk, Margaretha T. (2000).

¹⁴⁴ Fyzee, Asaf A. A. (1942).

¹⁴⁵ ‘Ukbarī, Muḥammad b. Muḥammad b. al-Nu‘mān al- (Known as al-Shaykh al-Mufīd) (1371/1951).

¹⁴⁶ Hillī, Ḥasan b. Yūsuf b. ‘Alī b. al-Muṭahhar al- (1958).

¹⁴⁷ Lari, Sayyid Mujtaba Musavi (2003).

¹⁴⁸ On him, see Lari, Sayyid Mujtaba Musavi (2003), pp. 5-7.

As for the theodicy, they also tried to find a middle-ground by saying that behind every divine act there must be one or many wise purposes but they are not necessarily detectable all the time by the human intellect. Basing themselves mainly on the scriptural texts from the Qurʾān and Sunna on one hand and making use of rational arguments on the other, they counted a number of possible wise purposes for the existence of disabilities and other forms of suffering in life. The advocates of this approach represented the majority of early and late Muslim scholars within the circles of theologians (*mutakallimūn*) jurists (*fuqahāʾ*), traditionists (*ahl al-ḥadīth*), interpreters of the Qurʾān (*mufasssīrūn*), Sufis, early and late philosophers such as Abū al-Barakāt (d. ca. 550/1155) and a large number of the late Ashʿarites who departed from their school in this specific respect.¹⁴⁹ In his book, *Kitāb al-tawḥīd* (Book of Oneness), Abū Maṣṣūr al-Māturīdī (d. ca. 333/944)¹⁵⁰ contributed to this approach by a chapter entitled, *al-Dalīl ʿalā anna li al-ʿālam Muḥdith* (The Evidence that the Cosmos has One Who Gave It Temporal Existence). Besides al-Māturīdī, four main scholars played important roles in theorizing this approach and elaborating its doctrines. Dispersed throughout his different works, Ibn Taymiyya (d. 728/1328)¹⁵¹ handled recurrently the issue of the theodicy and the divine acts. He issued also a well-detailed and lengthy fatwa on the theodicy.¹⁵² Recently, the dispersed discussions of Ibn Taymiyya were collected and analysed in Jon R. Hoover's PhD dissertation defended at the University of Birmingham¹⁵³ and published in 2007 under the title *Ibn Taymiyya's Theodicy of Perpetual Optimism*.¹⁵⁴ Ibn al-Qayyim (d. 751/1350) also dedicated a large portion of his writings to the issue of the theodicy. His main work on this issue was *Shifāʾ al-ʿalīl fī masāʾil al-qaḍāʾ wa al-qadar wa al-ḥikma wa al-taʿlīl* (Healing the Sick on Issues of Fate, Predetermination, Wisdom and Theodicy).¹⁵⁵ The third figure in this regard was al-ʿIzz b. ʿAbd al-Salām (d. 660/1066) who wrote a book on afflictions, calamities and misfortunes (*Al-Fitan wa al-balāya wa al-mihan wa al-razāya*) in which he counted about seventeen benefits (*fawāʾid*) for them.¹⁵⁶ Noteworthy to mention in this regard is that al-ʿIzz b. ʿAbd al-Salām used the term benefits (*fawāʾid*) rather than wise purposes (*ḥikam*). This is may be because of his support of the Ashʿarī viewpoint that God cannot be questioned and that the wisdom behind His divine acts should not be investigated.¹⁵⁷ Anyhow, what al-ʿIzz termed as

¹⁴⁹ Māturīdī, Abū Maṣṣūr al- (1), pp. 135 & 136; Ibn Taymiyya (1), vol. 8, p. 89; Ibn Taymiyya (7), vol. 8, p. 377; Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, pp. 187 & 188.

¹⁵⁰ On him, see Madelung, Wilfred (1) (2003), vol. VI, pp. 846 & 847.

¹⁵¹ On him, see Bazzār, Abū Hafṣ ʿUmar b. ʿAlī b. Mūsā al- (1400/1979); Laoust, H. (1) (2003).

¹⁵² Ibn Taymiyya (1), vol. 8, pp. 81-158.

¹⁵³ Hoover, Jon (2002). I hereby submit my deep gratitude for Jon Hoover who provided me with a copy of this dissertaion.

¹⁵⁴ Hoover, Jon (2007). Because of the late date of publication, I did not manage to consult this new version of the dissertation. Thus Hoover's dissertation remained the main source in this study.

¹⁵⁵ Ibn al-Qayyim (1398/1977).

¹⁵⁶ Ibn ʿAbd al-Salām, al-ʿIzz (1992); Qāsīmī, Jamāl al-Dīn al- (1424/2003), pp. 490-494.

¹⁵⁷ See Ibn ʿAbd al-Salām, al-ʿIzz (1), pp. 73-77.

“benefits” and was classified by the others as “wise purposes” aimed to present a logical justification for the calamities and sufferings taking place in this life. So, difference in terminology, in this respect, is not of great importance. Finally, there is the Yemeni scholar Ibn al-Wazīr (d. 840/1436) who studied the issue of theodicy in his well-known book *Īthār al-ḥaqq ‘alā al-khalq* (Preferring the True [God] to the Creatures).¹⁵⁸

Abū Ḥāmid al-Ghazālī was a controversial figure in this regard. According to Ibn al-Wazīr, he was one of the main proponents of this middle-course approach.¹⁵⁹ Sherman Jackson (professor of Arabic and Islamic Studies, University of Michigan) also argued that that Ash‘arīs such as al-Ghazālī and later theologians did not reject rational considerations of utility but only Mu‘tazilī objectivism.¹⁶⁰ Muhammad al-Sayyid al-Julaynid (Cairo University) spoke of two Ghazālīs. The first Ghazālī was the Ash‘arī theologian who abode by the main doctrines of the Ash‘arī School and would rather belong to the anti-theodicy approach. The other Ghazālī was the free thinker who had his own independent thinking and thus spoke about the wise purposes (*ḥikam*) of the divine acts.¹⁶¹ In response to al-Julaynid, Hoover stated that “a careful reading of al-Ghazālī’s text reveals that while purpose and causality indeed seem to pervade the discussion, the key term *‘illa* does not appear, and the text could be interpreted to exclude causality in God’s will. Also, al-Ghazālī explains that, while mercy involves pain and tenderness from the merciful, this does not apply to God whose perfection does not involve feeling pain for one in need. This fits well with the traditional Ash‘arī understanding of God.”¹⁶² Hoover advocated his point by Richard Frank’s opinion that al-Ghazālī explicitly denied that God acts for a purpose (*gharaḍ*) or for compensations (*‘iwad*).¹⁶³ To my mind, it is unfair to enshrine al-Ghazālī within the traditional Ash‘arī viewpoint concerning theodicy although he unequivocally advocated this viewpoint in some of his works. He has, as al-Julaynid indicated, expressed other viewpoints which can easily be categorized within this middle-course approach. One of the treatises attributed to al-Ghazālī deals with the divine wisdom to be traced in the created beings (*Al-Ḥikma fī makhlūqāt Allāh ‘Azz wa Jal*).¹⁶⁴ However, al-Ghazālī’s writings show that he can still be classified, as shown above, among the Sufis who adopted a no-problem approach.

In the modern time, the middle-course approach was also advocated by a number of scholars and researchers. In his book, *Fī ‘ālam al-makfūfīn* (Inside the World of the Blind), the late Egyptian scholar, Aḥmad al-Sharabāṣī (1918-1980) raised the question, why God created blindness although it is bad and disliked? Possible answers advanced by al-Sharabāṣī took about 25 pages most

¹⁵⁸ Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, pp. 108-204.

¹⁵⁹ Ibid, vol. 1, p. 188.

¹⁶⁰ Jackson, Sherman A. (1996), pp. 32-32; on the same viewpoint, see also Ormsby, Eric L. (1984), p. 47.

¹⁶¹ Julaynid, Muhammad al-Sayyid al- (1981), pp. 198-220.

¹⁶² Hoover, Jon (2002), pp. 117 & 118.

¹⁶³ Frank, Richard (1994), p. 16.

¹⁶⁴ Ghazālī, Abū Ḥāmid al- (1327/1909), pp. 15-96.

of which were related to medical interpretations rather theological wise purposes.¹⁶⁵ The Saudi researcher Muḥammad Rabīʿ Hadī al-Madkhalī wrote his M.A. thesis on the wisdom and theodicy of the divine acts (*Al-Ḥikma wa al-taʿlīl fī afʿāl Allāh taʿālā*).¹⁶⁶ Zuhayr Muḥammad al-Zamīlī made the question, “Why did God make diseases?” a title for his book *Līmādhā jaʿala Allāh al-amrād*.¹⁶⁷ Besides these two studies, modern Muslim scholars handled the issue of theodicy while studying the broad topic of God’s fate and predestination (*qaḍāʾ* and *qadar*) such as Yūsuf al-Qaraḍāwī (b. 1926)¹⁶⁸ and Muḥammad Saʿīd Ramaḍān al-Būṭī (b. 1929).¹⁶⁹ The late Egyptian scholar Muḥammad Mutwallī al-Shaʿrāwī (1911-1988) also handled the issue of theodicy in his book on good and evil.¹⁷⁰

Besides these figures, a huge relevant literature is available in commentaries on Qurʾān and Ḥadīth and sometimes even in juristic sources. Although there is almost no mention of the term theodicy (*taʿlīl*), the scholars discussed calamities, misfortunes and other issues with direct relevance to theodicy. If we classified this huge material as theodicy-related texts, then the statements, given by more than one researcher, on the rarity of theodicy texts and the non-centrality of this issue in Islamic thought should be taken with reservation.¹⁷¹

Chapter Three (Practical Theology) handles the question, “What should be done if someone got afflicted with disability?” In their bids to explain the existence of disabilities in the light of the powerful and merciful God, Muslim scholars were aware that their rational arguments may not bring full relief to all questioners nor bring these questions to an end. On the contrary, some of the arguments could trigger more questions on which the answers could endlessly create other questions and fall ultimately in a viscous circle. Restoring relief and maintain peaceful relations with God in such intriguing issues, as the sources indicated, one is in need of both mental satisfaction and spiritual serenity. The aforementioned theological arguments could create a sort of mental satisfaction but not necessarily spiritual serenity. Methods of attaining spiritual serenity are the main focus of this chapter.

Scholars who were engaged in writing about spiritual serenity and the methods to gain it during the times of afflictions came mainly from the mystic milieus because healing one’s soul was one of the main functions of Sufism. However, there is nothing to make us believe that means and methods mentioned below were rejected by scholars who advocated other approaches. The clearest two examples in this regard are the mystic Abū al-Qāsim al-Qushayrī (d. 465/1072) who had an Ashʿarī background¹⁷² and the Muʿtazilī

¹⁶⁵ See Sharabāshī, Aḥmad al- (1375/1956), vol. 1, pp. 260-285.

¹⁶⁶ Madkhalī, Muḥammad Rabīʿ Hadī al- (1409/1988).

¹⁶⁷ Zamīlī, Zuhayr Muḥammad al- (1409/1988).

¹⁶⁸ Qaraḍāwī, Yūsuf al- (1421/2000), pp. 82-87.

¹⁶⁹ Būṭī, Muḥammad Saʿīd Ramaḍān al- (2001), pp. 188-206.

¹⁷⁰ See Shaʿrawī, Muḥammad M. al- (1995), esp. 58 & 59.

¹⁷¹ For some of those who expressed such statements, see Watt, W. Montgomery (1979), p. 5; Ormsby, Eric L. (1984), p. 54.

¹⁷² On him, see Qushayrī, ʿAbd al-Karīm al- (1968), pp. 4-8, esp. 6; Qushayrī, al- (1990), pp. i-

scholar al-Zamakhsharī (d. 538/1144)¹⁷³ who wrote a book, mentioned below, with relevance to our topic here.

To achieve this spiritual serenity in the case of being afflicted with calamities in general, Muslim scholars evolved two main genres of a psychology-oriented literature. These writings were meant to appease the bitter feelings of sorrow and anguish that can be caused by calamities. Some of them spoke about *‘ilāj al-muṣība* (curing the calamity).¹⁷⁴ Others wrote on *tasliyat ahl al-maṣā’ib* (consoling people with calamities).¹⁷⁵ Some writings focused on specific calamities, the most well-known of which was the death of one’s child.¹⁷⁶ Disabilities, especially blindness, did not escape the attention of writers on this topic. As a good witness in this respect, we mention titles such as *Tasliyat al-ḍarīr* (Consoling the Blind) by al-Zamakhsharī, *Ta’jīl al-bishāra li man ṣabar ‘alā dhahāb al-baṣar* (Accelerating the Good Omen for Those Who have Patience upon Losing their Eyesight) by the Damascene scholar Muḥammad b. Ṭulūn (1475-1546)¹⁷⁷ and *Tasliyat al-‘amā ‘an baliyyat al-‘amā* (Consoling the Blind from the Affliction of Blindness) by the Ḥanafī jurist Mulla ‘Alī b. Sulṭān al-Harawī al-Qārī (d. ca. 1605).¹⁷⁸ The Meccan scholar Ibn Fahd (d. 1547) concluded his book on people with disabilities with a chapter on the rewards and blessings accorded to those afflicted with calamities.¹⁷⁹

Besides this genre whose sources are mostly non-extant or either unavailable in printed form, there was the broad mystic genre which is also of direct relevance to the topic of gaining spiritual relief in the case of calamities. In this broad mystic genre, Muslim scholars considered calamities and afflictions as one of the obstacles that the servant (*‘abd*) undergoes in his travel to the Creator. They elaborated a number of states (*aḥwāl*) and stations (*maqāmāt*) that one should pass by. Three main moral attitudes have been recurrently mentioned as necessary tools to overcome the repercussions of afflictions and tribulations, namely servitude (*‘ubūdiyya*), patience (*ṣabr*) and gratitude (*shukr*). In the first genre, patience and to a lesser extent gratitude were the focal points. To my knowledge, servitude did not play an important role in that genre.

In his well-known *Al-Risāla fī ‘ilm al-taṣawwuf* (Epistle on Sufism) regarded by many as “one of the most comprehensive compendiums of Ṣufī thought” and the “Bible of Sufism”¹⁸⁰ Abū al-Qāsim al-Qushayrī (d. 465/1072) divided the Sufī path into a) states (*aḥwāl*) and b) stations (*maqāmāt*); the former are

xvii, esp. iv.

¹⁷³ Ḥusayn, ‘Abd al-Razzāq (1420/1999), p. 19. On the author, see Ibn al-‘Imād (1), vol. 2, pp. 118-120; Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol.20, pp. 151-156.

¹⁷⁴ See for instance, Ibn al-Qayyim (1407/1986), vol. 4, pp. 188-196

¹⁷⁵ Manbijī, Muḥammad b. Muḥammad al- (1347/1929).

¹⁷⁶ See for instance, Ibn Nāṣir al-Dīn, Muḥammad b. ‘Abd Allāh (1420/1999); Suyūṭī, Jalāl al-Dīn al- (1304/1880). For a Shī‘ī source on the same topic, see ‘Alamī, Zayn al-Dīn Jabā’ī al- (1923).

¹⁷⁷ Ibn Fahd (d. 954/1547), folio 15a; Ghaly, Mohammed M.I. (2005-2006), p. 21.

¹⁷⁸ There two editions available viz., Qārī, ‘Alī b. Sulṭān b. Muḥammad al-Harawī al- (1993); Qārī, ‘Alī b. Sulṭān b. Muḥammad al-Harawī al- (1994). On the author, see Ziriklī, KHayr al-Dīn al- (2002), vol. 5, p. 12.

¹⁷⁹ Ibn Fahd (d. 954/1547), folios 56b-61a.

¹⁸⁰ Snir, Reuven (1999), p. 132.

always a gift from God whereas the latter can be reached, to a certain extent, by one's own striving. However, both were indispensable in the Sufi path.¹⁸¹ Servitude (*‘ubūdiyya*) was the first state in al-Qushayrī's presentation,¹⁸² which serves here as the starting point for the seekers of spiritual relief among those afflicted with disabilities or other forms of suffering. Ibn Taymiyya (d. 728/1328) also wrote a short epistle on this topic entitled *Risāla fī al-‘ubūdiyya* (Epistle on Servitude).¹⁸³ Although he did not classify it as one of the states, the Ḥanbalī theologian and jurist, Ibn al-Qayyim (d. 751/1350) studied this term extensively in his Sufi treatise and opined that all stations and states that one has to pass by are but branches and reflections of servitude. To him, servitude is also the main starting point.¹⁸⁴ Currently, this concept is still vivid among the Sufi orders such as the Shādhiliyya which is mainly based on deep immersion in this state of *‘ubūdiyya*.¹⁸⁵ Recent interest in this topic is clear from the comments, abridgements and elaborations made by modern Muslim scholars of the viewpoints of Ibn Taymiyya and Ibn al-Qayyim in this regard.¹⁸⁶

According to al-Qushayrī, patience and gratitude belong to the stations.¹⁸⁷ These two moral attitudes were classical topics recurrently presented in almost every mystic treatise.¹⁸⁸ The most comprehensive treatment of these two moral attitudes comes from the hand of Ibn al-Qayyim who dedicated a whole book to both topics.¹⁸⁹ This book was the main source in the discussions to follow on these two points. Patience and gratitude are currently fashionable subjects for religious sermons (*khuṭab*) which are available as audiotapes and sometimes in the form of printed books.¹⁹⁰ One of the well-known books written recently on the topic of patience is that of Yūsuf al-Qaraḍāwī under the title *Al-Ṣabr fī al-Qur’ān* (Patience in the Qur’ān).¹⁹¹

Chapters Four till **Eight**, dedicated to **Islamic jurisprudence**, focus on what can be termed in our present time as the rights of people with disabilities. The main question can be formulated as, “what is the social and financial position of people with disabilities as recorded in the juristic sources of Islam?” Aspects chosen to fathom out this position were mainly based on the availability of relevant information in juristic sources on one hand and their centrality for making the life of people with disabilities more tolerable on the other. It will be noticed also that the different aspects of the social and financial position of people with disabilities as discussed in this part are also central in modern

¹⁸¹ Ibid, p. 137.

¹⁸² Ibid, p. 136.

¹⁸³ Ibn Taymiyya (1401/1981).

¹⁸⁴ See Ibn al-Qayyim (1393/1973), vol. 1, pp. 97-110 & 123.

¹⁸⁵ Lory, P. (2003), vol. IX, pp. 172-175.

¹⁸⁶ See for instance, Rājiḥī, ‘Abd al-‘Azīz al- (1420/199); Ibn al-Qayyim (1411/1991).

¹⁸⁷ See Qushayrī, al- (1990), pp. 131-139, 147-156.

¹⁸⁸ See for instance, Ghazālī, Abū Ḥamid, al- (1), vol. 4, pp. 60-141; Harawī, ‘Abd Allāh Al-Anṣārī al- (1962), pp. 49-51, 53 & 54; Ibn al-Qayyim (1393/1973), vol. 2, pp. 152-170, 242-258.

¹⁸⁹ Ibn al-Qayyim (1). An abridged translation of this book was recently composed by Nasiruddin al-Khattab, see Ibn al-Qayyim (1998).

¹⁹⁰ See for instance, Khālīd, ‘Amr (2002).

¹⁹¹ Qaraḍāwī, Yūsuf al- (1410/1989).

discussions on people with disabilities especially as reflected in the UN documents in this respect. Although all five chapters examining juristic discussions with relevance to people with disabilities cover both their social and financial position, **Chapter Four** can be seen as focusing more on the social side whereas the other four chapters focus more on the financial side.

Chapter Four (Human Dignity of People with Disabilities) fathoms out whether disabilities injure, harm or diminish the dignity guaranteed in Islam for human beings in general. Dignity of people with disabilities is very central at the moment in discussions on the rights of people with disabilities. As early as 1975, the UN Declaration on the Rights of Disabled persons stressed that, “Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.”¹⁹² The latest UN document in this regard, Convention on the Rights of Persons with Disabilities, declares in its first principle that “the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”¹⁹³

Broadly speaking, early and modern scholars were unanimous on the fact that dignity has been a proven right conferred by God on every human being irrespective of colour, race or religion. For instance, al-Alūsī (d. 1270/1854) says that “everyone and all members of the human race, including the pious and the sinner are endowed with dignity, nobility and honour whose magnificence cannot be exclusively expounded and identified.”¹⁹⁴ The purport of this sentence can also be encountered in statements attributed to the Companions of the Prophet and modern scholars as well.¹⁹⁵ Speaking about the dignity of people with disability in Islam, previous studies referred all the time to this generic dignity designated for every human being, including of course those with disability.¹⁹⁶ Discussions of Muslim jurists in this regard, which were sometimes heated ones, took place on the dignity of people with disabilities in particular. This dignity is investigated on the theoretical and practical level.

The theoretical level studies physiognomy of which the main purport was that a physical defect or deformity reflects a similar one in one’s soul. In other words, people with bad or ugly outlook have a similar character. In this framework, people with physical disabilities can be easily discriminated and offended because of their apparent physical abnormality. Concerning

¹⁹² Declaration on the Rights of Disabled Persons (1975).

¹⁹³ Convention on the Rights of Persons with Disabilities (2006).

¹⁹⁴ Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 15, p. 117, quoted by Kamali, Muhammad Hashim (2002), p. 2.

¹⁹⁵ See Kamali, Muhammad Hashim (2002), pp. 2-9

¹⁹⁶ See for instance, Quḍāt, Muṣṭafa al- (1406/1985), pp. 1 & 2; ‘Abd Allāh, Laylā Muḥammad (1418/1997), pp. 25-32.

physiognomy in general, the late Youssef Mourad (d. 1902-1966)¹⁹⁷, the late ‘Abd al-Karīm ‘Adiyy (1917-1985),¹⁹⁸ Robert Hoyland (University of St. Andrews)¹⁹⁹ and Antonella Ghersetti (Universita Ca’ Foscari, Venice)²⁰⁰ are the three main modern researchers who made laudable efforts in studying physiognomy as a topic in Arabic and Islamic literature.²⁰¹ Recently Simon Swain edited an insightful study on Polemon’s physiognomy from classical antiquity to Medieval Islam.²⁰² Beyond the cursory references to juristic sources in the aforementioned studies, combining between physiognomy on one hand and the image of people with disabilities in juristic circles on the other hand was a completely unstudied topic prior to this dissertation. Thus, this chapter is a bid to open up this new dimension.

The focus in this regard was on the standpoints of Muslim jurists towards physiognomy and its influence on the dignity of people with disabilities within two main legal schools, namely, the Shāfi‘ī and the Ḥanbalī Schools. It was just the available information that has imposed this choice. Outside these two schools, pertinent information was scanty and within the Ḥanafī School it was almost absent. Moreover, such information did not make clear what type of *firāsa* was meant in such discussions. However, a note in passing was given at the end of the chapter to clarify the standpoints of other schools in the light of the available information.

As for the Shāfi‘ī School, available sources indicate clearly that a number of Shāfi‘ī jurists were impressed by the newly-introduced science of Greek physiognomy and its practical benefits. They were advocates of this new science and wrote important books in this field where they did not fail to find arguments from the Qur’ān and Sunna defending this science or at least its main premise, viz., “inference from physical makeup about nature/disposition/character” (*al-istidlāl bi al-khalq ‘alā al-khuluq*).²⁰³ One of

¹⁹⁷ On him, see ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 707, 708 & 722-724.

¹⁹⁸ He was a member of the Academy of the Arabic Language in Damascus during the period 1979-1985. For more information, see Fahhām, Shākir al- (1980), vol. 55, issue, 3, pp. 580-600; Naffākh, Ahmad Rātib al- (1985), vol. 60, issue, 3, pp. 625 & 626. He expressed his views on *firāsa* in his extensive book review of the Arabic translation of Youssef Mourad’s *La Physiognomonie arabe et le Kitāb al-Firāsa de Fakhr Al-Dīn Al-Rāzi*, see ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue, 1, p. 355.

¹⁹⁹ For more information, see <http://www.st-andrews.ac.uk/academic/history/arabic/staff/hoyland.shtml>

²⁰⁰ For more information, see http://www.unive.it/nqcontent.cfm?a_id=415&persona=000943&vista=pubb_sir

²⁰¹ Mourad, Youssef (1939); ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 707-728, vol. 58, issue 1, pp. 343-365, vol. 58, issue 2, pp. 161-193, vol. 58, issue, 3, pp. 570-631; Ghersetti, Antonella (1996); Ghersetti, Antonella (1999); Ghersetti, Antonella & Swain Simon (2007); Hoyland, Robert (2005); Hoyland, Robert (2007); Hoyland, Robert (1) (2007). See for instance, ‘Adiyy, ‘Abd al-Karīm (1982-1983); vol. 57, issue 4, p. 709; Porter, Martin (2005), p. 61; Hoyland, Robert (2005), p. 361, esp. note 4. For some titles on this topic which are not mentioned by Holyland, Autuori, A. (1983), no. 43, pp. 43-60; Ghersetti, Antonella (1996); Ghersetti, Antonella (1999), esp. pp. iii-xxvii.

²⁰² Swain, Simon (ed.) (2007).

²⁰³ For a detailed presentations of these argumentations, see Mourad, Youssef (1939), Rāzi, Fakhr

the early texts, which can be an allusion to this premise, is written by the Shāfi‘ī prolific scholar, Abū Ḥāmid al-Ghazālī (d. 505/1111), “The exterior form that is attractive to look at is the surest indication of a virtuous soul, for the light of the soul, when it fully shines, would penetrate the body. That is because the external appearance (*mazhar*) and the inner nature (*makhbar*) are most often inseparable. This is why the authorities on *firāsa* occupy themselves first with the physical looks when getting to know the internal states of people.”²⁰⁴ Another context in which al-Ghazālī handled *firāsa* was his comments on Muslim philosophers such as Ibn Sīnā (Avicenna) the first to incorporate physiognomy *firāsa* in the Greek sense in the recognized Islamic sciences. In his *Maqāṣid al-falāsifa* (Objectives of the Philosophers) al-Ghazālī mentioned the categorization of Ibn Sīnā but in a different order and with committing some sciences including *al-firāsa*.²⁰⁵ In *Tahāfut al-falāsifa* (Incoherence of the Philosophers), al-Ghazālī mentioned the categorization of sciences including *firāsa* in the Greek sense. Al-Ghazālī’s comment was that “the Sacred Law does not require a dispute over them except on a few points which we have mentioned”.²⁰⁶ None of the critical points raised by al-Ghazālī tackled *firāsa*.²⁰⁷ A list of the important names who wrote discrete books or treatises on this science would include Fakhr al-Dīn al-Rāzī (d. 606/1209)²⁰⁸, Shams al-Dīn al-Dimashqī (d. 727/1327), Ibn al-Durayhim al-Mawṣilī (d. 762/1360)²⁰⁹ and Zayn al-‘Ābidīn al-Ghumrī (d. 970/1562).²¹⁰

The main point in this regard is a number of “physiognomic” statements ascribed to al-Shāfi‘ī (d. 205/820) which are full of offending and discriminatory remarks. The attempt here is to check the authenticity of these statements and see if they penetrated the fiqh manuals.

Concerning the Ḥanbalī School, viewpoints of four well-known Ḥanbalī jurists are discussed. Viewpoints of Ibn al-Jawzī (d. 597/1200)²¹¹ and Ibn al-Qayyim (d. 751/1350)²¹² are presented under the heading “paradoxical standpoints” because their viewpoints, as recorded in their own sources, were sometimes advocating the purport of physiognomy and other times contradicting it. Viewpoints of Ibn Taymiyya (d. 728/1328)²¹³ and Zayn al-Dīn

al-Dīn al- (1939), pp. 5 & 6; Ansārī, Abū Ṭālib al- (1332/1914), pp. 2 & 3; Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 2a-4b; Ibn al-Akfānī (1989), p. 417; Hoyland, Robert (2005), pp. 363-365.

²⁰⁴ Ghazālī, Abū Ḥāmid al- (1), vol. 4, p. 105; a bit different version of English translation of this passage appears in Hoyland, Robert (2005), p. 362.

²⁰⁵ Ghazālī, Abū Ḥāmid al- (2), pp. 134-140; Mourad, Youssef (1939), p. 24; ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 713 & 725.

²⁰⁶ Ghazālī, Abū Ḥāmid al- (3), p. 232; Ghazālī, Abū Ḥāmid al- (1958), p. 180.

²⁰⁷ Ghazālī, Abū Ḥāmid al- (3), p. 234; Ghazālī, Abū Ḥāmid al- (1958), p. 181.

²⁰⁸ Rāzī, Fakhr al-Dīn al- (1939).

²⁰⁹ Khalifa, Ḥājji (1412-1992), vol. 2, p. 997.

²¹⁰ Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562); Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (d. 970/1562).

²¹¹ On him, see Laoust, H. (3) (2003), vol. III, pp. 751 & 752.

²¹² Laoust, H. (3) (2003), vol. III, pp. 821 & 822.

²¹³ On him, see Bazzār, Abū Hafṣ ‘Umar b. ‘Alī b. Mūsā al- (1400/1979); Laoust, H. (1) (2003).

Ibn Rajab (d. 795/1393)²¹⁴ are presented under the heading “counterpoise-trials” in the sense that their viewpoints balanced, at least within the Ḥanbalī School, the paradoxical standpoints expressed by Ibn al-Jawzī and Ibn al-Qayyim.

The practical level attempts to give the issue of the dignity of people with disabilities a practical touch. For instance, would writing a book enumerating prominent figures with disabilities throughout history be seen by a jurist as breaching the dignity of those people? If so, what would be his reaction? A 16th century book entitled *Al-Nukat al-zirāf fī man ibtuliya bi al-‘āhāt min al-ashrāf* (The Cute Anecdotes on Luminaries Afflicted with Disabilities), which is still in manuscript form, answered these questions in reality. This book triggered vigorous debates that continued from its appearance in 1541 until 1543. By studying this work, this dissertation unfolded this hitherto unstudied work and focused on the two-year debate between the author of the book (Ibn Fahd) and a well-known contemporaneous jurist (Ibn Ḥajar al-Haytamī). It is to be noted that the debate went beyond these two figures to include damaging a book and the issuing of various fatwas from different Islamic cities supporting the author of the book.

To unfold this material, besides the manuscript of Ibn Fahd, we made use of the two-page fatwa published in the fatwa collection of Ibn Ḥajar entitled *Al-Fatāwā al-fiqhiyya al-kubrā* (Grand Juridical Fatwas).²¹⁵ *Al-Zawājir ‘an iqtirāf al-kabā’ir* (Restraints against Committing Grave Sins) where Ibn Ḥajar handles the theme of *ghība* (backbiting)²¹⁶ would be of benefit for comparative reasons. That is because, as indicated by the author in the introduction, *Al-Zawājir* was written after 1546, i.e. at least five years after issuing the fatwa under discussion.²¹⁷

As stated above, the remaining five chapters focus more on the financial position of people with disabilities by elaborating a number of aspects each of them occupying a separate chapter. These aspects are deemed financial in the sense that enjoying them would bring or cost money in the normal course of events. Keeping in view that work is the main financial revenue which brings money; juristic discussions on the employability of people with disabilities were the starting point in this regard and thus are the topic of **Chapter Five**. Because disability is, normally speaking, the main obstacle to find a suitable job, possibilities of medical treatment for people with disabilities is fathomed out from a juristic perspective in **Chapter Six**. **Chapter Seven** and **Eight** discuss the overall theme of financial security in the case of being unable to achieve any of

²¹⁴ He is known to be the last great representative of medieval Ḥanablism, see Laoust, H. (2003), vol. III, p. 822; Laoust, H. (2) (2003), vol. III, p. 161.

²¹⁵ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, pp. 82-83.

²¹⁶ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1994), pp. 8-33.

²¹⁷ For further information on this figure, see Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 1, pp. 2-5; Ibn al-‘Imād (1), vol. 4, p. 370-72; Hīla, Muḥammad Ḥabīb al- (1994), pp. 197-213; Schacht, J. & C. van Arendonk (2003), vol. III, pp. 778b-779b. For the case between him and Ibn Ziyad, see Ibn Ḥajar al-Haytamī, Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 3, pp. 2-38.

the first two rights. In other words, how can such a person with a disability still enjoy financial security if he/she cannot work and his disability cannot be treated?

By discussing employment, **Chapter Five** handles one of the fundamental rights of people with disabilities. According to the International Labour Organization (ILO), work of decent quality is the most effective means of escaping the vicious circle of marginalization, poverty and social exclusion.²¹⁸ The United Nations report published in August 2006 states that unemployment among the disabled is as high as 80% in some countries. Often employers assume that persons with disabilities are unable to work. However, an estimated 386 million of the world's working-age people are disabled.²¹⁹ This large-scale prevailing unemployment costs the global economy an estimated 1.9 trillion US dollars per year.²²⁰ ILO appeals that barriers which disabled people face in getting jobs and taking their place in society can and should be overcome through a variety of policy measures, regulations, programmes, and services.²²¹ In this vein, the latest UN Convention on the Rights of People with Disabilities, article 8, asks for promoting the recognition of the skills, merits and abilities of persons with disabilities and of their contributions to the workplace and the labour market.²²² The Optional Protocol of this convention opened for signature by all states and by regional integration organizations at United Nations Headquarters in New York on March 30, 2007. The list of signatories includes a number of Islamic countries such as Algeria, Egypt, Turkey, Morocco, Sudan and Yemen.²²³

As for Islamic sources, we find that *ʿamal*, the most well-known equivalent now for “work”, is one of the most repeated words in the Qurʾān. The different derivatives of this word are mentioned almost 330 times in the Qurʾān. If we count the references to the notion of work without being limited to the term *ʿamal*, the aforementioned number will be easily doubled.²²⁴ However, this Qurʾanic term which is now standardised in modern Islamic and Arabic literature speaking about work, work opportunities and rights of workers²²⁵ does not help a lot to trace the juristic discussions with relevance to this topic. The two chapters entitled “*ijāra*” and “*jiʿāla*” in classical fiqh manuals represent the main door to trace relevant juristic discussions on employability of people with disabilities. After a general introduction about these two terms, the chapter

²¹⁸http://www.ilo.org/global/Themes/Skills_Knowledge_and_Employability/DisabilityandWork/lang--en/index.htm (accessed June 15, 2007).

²¹⁹ Convention on the Rights of People with Disabilities (2006), p. 2

²²⁰ International Labour Organization (2006).

²²¹ http://www.ilo.org/global/Themes/Skills_Knowledge_and_Employability/DisabilityandWork/lang--en/index.htm (accessed June 15, 2007).

²²² *Draft Resolution: Convention on the Rights of Persons with Disabilities* (2006), p. 10.

²²³ For a full list of the of signatory states and regional integration organizations, see <http://www.un.org/esa/socdev/enable/conventionsign.htm>

²²⁴ Bannā, Jamāl al- (1985).

²²⁵ See for instance, Qurashī, Bāqir, Sharīf al- (1402/1982); ʿAwad, al-Sayyid Ḥanafī (1998); Baqarī, Aḥmad Māhir al- (1998); Kharsān, Muḥammad Hādī al- (2002).

reviews the juristic discussion on employing people with disabilities in four jobs which are always associated with high prestige especially in religious milieus. The list would include the positions of muezzin (one who makes call or *adhān* for prayer), *imām* (one who leads the ritual prayer), judge and the chief leader of the state.

Chapter Six reviews the juristic sources searching for viewpoints and attitudes towards treating disabilities. Two main methods are traced. The first method, termed in juristic sources as “physical medicine”, is based on using medicines and drugs as known within the realm of medical science at the present time. The second method, called “spiritual medicine”, makes use of specific religious formulae including texts from the Qur’ān, words ascribed to the Prophet of Islam, etc. This chapter gave a detailed overview of these two methods within Islamic jurisprudence, the attitudes of Muslim jurists towards these two methods and finally “treatments” developed within each method to prevent the occurrence of disability or to cure it.

In the midst of the immense literature available on medicine in Islam,²²⁶ one can hardly find something specific on treating disabilities. The only book I am aware of on this topic is *Al-I‘āqa fī al-turāth al-‘arabī al-islāmī* (Disability in the Arabic Islamic Literature) which collected the scattered sections and information on different mental and physical disabilities in medical sources written by early Muslim physicians.²²⁷ Mental disabilities might be more fortunate mainly because of the writings of Michael Dols (d. 1989).²²⁸ Studies which handled disability within Islamic jurisprudence (*fiqh*) are almost silent on the issue of the treatment of these disabilities.²²⁹ Muṣṭafa al-Qudāt (Jordan University) could be the main exception by his reference, under the heading “the right of people with disabilities to live”, to two main points, viz., abortion and transplanting amputated organs.²³⁰ The same points are discussed by Vardit Rispler-Chaim (Haifa University) in *Islamic Medical Ethics in the Twentieth Century*.²³¹ The present chapter, by studying the opinions within early and modern Islamic jurisprudence on different methods of treating disabilities, tackles an almost non-trodden field in modern literature.

Bearing in mind the possibility of being neither able to find a paid job nor to cure the disability, **Chapters Seven** and **Eight** focus on the means of achieving financial security for this group of people. These two chapters are based mainly on information available in my M.A. thesis, *The Financial Rights of People with Disabilities*, which collected sporadic discussions of early and modern jurists

²²⁶ For a general overview, see Hamarneh, Sami (1964); Ebied, Rifaat Y (1971); Agha, Zouhir M. (1983); Savage-Smith, Emilie et al (2003), vol. X, pp. 459-461.

²²⁷ See ‘Ajūba, Mukhtār Ibrāhīm et al (1417/1996).

²²⁸ See for instance, Dols, Michael W. (1987); Dols, Michael W. (1992).

²²⁹ See for instance, Qudāt, Muṣṭafa al- (1406/1985); Kīlānī, Sarī Zayd al- (1); Rispler-Chaim, Vardit (2007).

²³⁰ Qudāt, Muṣṭafa al- (1412/1992), pp. 45 ff & 67-71.

²³¹ Rispler-Chaim, Vardit (1993), pp. 7-18 & 28-43. As the title of the book indicates, the topic of the whole book, and this goes also for the few discussions with relevance to disability, is limited to the twentieth century.

throughout many and different sources. However, the previously mentioned modern studies on people with disabilities were of great benefit in this chapter.

Surveying the juristic sources shows that if disability was a barrier to find a job and if this disability could not be cured, ending up in a miserable destituteness should not be the third option. These sources presented a number of financial revenues through which this group of people can afford their needs. In this chapter, five main financial revenues are in focus. Failing to fulfil the financial needs of a person with disability within the family circle, society and state still have their own roles in securing financial security for people with disabilities.

Chapter Seven reviews the main financial revenues within one's family through which the financial needs of people with disabilities can be afforded. As a form of social solidarity among the family members, maintenance (*nafaqa*) is incumbent upon the well-off members in order to support the poor members of the family. People with disabilities such as parents, children, wives and relatives are entitled to receive *nafaqa* from the rich members of the family. As family members, people with disabilities can still enjoy financial support from a bequest (*waṣīyya*), or family endowment (*waqf ahli*). Detailed juristic discussions on the regulations of these three financial revenues are elaborated focusing on those with relevance to people with disabilities.

Chapter Eight discusses two main financial revenues which people with disabilities can benefit from as members of society. These two revenues are welfare endowment (*waqf khayrī*) and *zakāt*. These two are supposed to fulfil the financial needs of people with disabilities. In case they are not sufficient, jurists discussed whether extra financial obligations can be imposed on the rich to fill in this financial gap. Relevant juristic discussions are elaborated in detail in this chapter.

1.6 Terminology Used

Approaching Islamic sources to search for relevant material on “disability” is practically impossible without understanding the terminology used.

Information available in Islamic sources indicates that using precise and non-offensive terminology was a point of consideration in Muslim milieus. It was related, for instance, that some of the Companions of the Prophet called a person with mental insanity “*majnūn* (insane)” in a context that could indicate contempt. Thereupon, the Prophet, in a bid to restate the term, is reported to have said, “This [man] is *muṣāb*, (sick or ill). *Junūn* (insanity) comes [only] as a result of constant disobedience of God – The Almighty.”²³² In the modern time, changes in terminology reflect a different logic of the understanding of disability as a phenomenon. That is why it has undergone an unremitting process of revisions.²³³

²³² Qaysarānī, Muḥammad b. Ṭāhīr al- (1415/1994), vol. 1, p. 679; Ḥusaynī, Ibrāhīm b. Muḥammad al- (1401/1980), Ḥadīth No. 692, vol. 1, p. 260; Abū Ghudda, ‘Abd al-Sattār, (1411/1991), p. 227; Ibn Ḥamza, Muṣṭafā (1414/1993), p. 18.

²³³ The International Classification of Impairments, Disabilities and Handicaps (ICIDH), 1980

1.6.1 English Usage

There are two main stages to be observed in the development of the English terminology used in this regard. The first stage is represented by the International Classification of Impairments, Disabilities and Handicaps (ICIDH) which was first published by the World Health Organisation for trial purposes in 1980. This classification adopted three main terms, viz., impairment, disability and handicap. Impairment was used to mean “any loss or abnormality of psychological or anatomical structure or function.” Disability was interpreted as “any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.” Finally, handicap was defined as “a disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.”²³⁴ Commenting on these definitions, Deborah Kaplan (Director of the World Institute on Disability) said that handicap is therefore a distortion of the relationship between disabled persons and their environment. It occurs when they encounter cultural, physical or social barriers, which prevent their access to the various systems of society that are available to other citizens.²³⁵

After these three terms, a new stage was presented by the International Classification of Functioning, Disability and Health (ICF). This new classification replaced the old one after systematic field trials and international consultation over years and had been finally endorsed by the fifty-fourth World Health Assembly for international use on May 22, 2001 (resolution WHA54.21).²³⁶ New terms were used in this classification with specific meanings that differed from everyday usage and were intended to allow positive experiences to be described.²³⁷

In the 2001 version of ICF, “disability” was defined as an umbrella term for impairments, activity limitations and participation restrictions. It denoted the negative aspects of the interaction between an individual (with a health condition) and that individual’s contextual factors (environmental and personal factors).²³⁸ Again the main items of this definition were further defined as follows:

Impairment is “a loss or abnormality in body structure or physiological function (including mental functions).” Abnormality here is used strictly to

that has been revised and thus replaced by the International Classification of Functioning, Disability and Health (ICF), 2001 adds credit to this fact. See also Devlieger, Patrick J. (1999), p. 346.

²³⁴ Beneken, M.M. & J.M.S. Hendriks (1997), p. 5; *U.N. Decade of Disabled Persons: 1983-1992*, 1983. World Programme of Action Concerning Disabled Persons. New York: United Nations.

²³⁵ See <http://graham.main.nc.us/~bhammel/INS/disab.html> & <http://www.accessiblesociety.org/topics/demographics-identity/dkaplanpaper.htm>

²³⁶ World Health Organization (2001), p. 3.

²³⁷ Ibid.

²³⁸ Ibid, p. 213.

refer to a significant variation from established statistical norms (i.e., as a deviation from a population within measured standard norms) and should be only used in this sense.

*Activity limitations*²³⁹ are “difficulties that an individual may have in executing activities. An activity limitation may range from slight to a severe deviation in terms of quantity or quality in executing the activity in a manner to the extent that is expected of people without the health condition.”

*Participation restrictions*²⁴⁰ are “problems an individual may experience in involvement in life situations. The presence of a participation restriction was determined by comparing an individual’s participation to that which is expected of an individual without disability in that culture or society.”²⁴¹

Despite all these collective efforts exerted by the WHO, there is still no consensus among specialists on either the preferable or the objectionable terminology.²⁴² For instance, expressions such as “cripple” and “gimp” have gone out of favor within the disabled community because of their negative connotations of passivity and the implication that impairment is the primary identifiable attribute. Nonetheless, some people with disabilities continue to use “cripple” as a rhetorical device.²⁴³ Also, euphemisms for persons with disabilities such as “differently abled”, “physically challenged” and “handicapable” have been rejected by some people arguing that they are verbal garbage describing everyone and no one.²⁴⁴

Rispler-Chaim was right when she pointed out that quarrels around the right term or definition for “what is disability?” or “who are people with disabilities?” are not only semantic in nature. Political, economic and cultural dimensions can also play crucial roles in this regard. For instance, being classified as a person with disability in many societies and countries today would entail social and legal alleviations and economic assistance from the state, either as direct financial support or as discounted services offered to this category of people. What is and is not viewed as disability, Rispler-Chaim added, depends on cultural criteria.²⁴⁵ The same holds true for terminology, the terms seen as offending in a specific time or specific place can be welcomed in other times or other places. Thus relativism remains the dominant factor in all terms and definitions used in this field.

In this study, the first person language, i.e., “persons with disabilities” is the most frequent used in this study. That is because it is the phrase acceptable to most people with disabilities. Moreover, this usage underscored the conviction

²³⁹ “Activity limitations” replaces the term “disability” used in the 1980 version of ICIDH. See World Health Organization (2001), p. 213, fn. 18.

²⁴⁰ “Participation restrictions” replaces the term “handicap” used in the 1980 version of ICIDH. See World Health Organization (2001), p. 213, fn. 19.

²⁴¹ World Health Organization (2001), p. 213.

²⁴² Stein, Scott, http://www.wfthecoliseum.com/articles/sticks%20and%20stones/crippled_words.html

²⁴³ Eiesland, Nancy (1994), p. 26; Mairs, Nancy (1986), pp. 10 & 11.

²⁴⁴ Eiesland, Nancy (1994), p. 26.

²⁴⁵ Rispler-Chaim, Vardit (2007), p. 2

that an individual's disability is just one of many personal characteristics, rather than being synonymous or coexistent with that person's self.²⁴⁶ In recent civil rights legislation, including the American Disabilities Act of 1990, the expression "persons with disabilities" was employed most regularly. In the literature of the disability rights movement, this designation is also the prominent one.²⁴⁷

1.6.2 Arabic Usage

The most common Arabic equivalents used now for disability are *i'āqa*,²⁴⁸ *āwaq* and *ta'wīq*. The passive participles of these verbal nouns, a person with disability, are respectively *mu'āq*, *ma'ūq* and *mu'awwaq*. There are also various euphemisms used in the modern literature to refer to people with disabilities such as *al-fi'āt al-khāṣṣa* (special groups), *dhawū al-iḥtiyājāt al-khāṣṣa* (people with special needs), *al-afrād ghayr al-'ādiyyīn* (the abnormal individuals), etc.²⁴⁹

Also the terminology used in the aforementioned (ICF) international classifications issued by the WHO was rendered into Arabic. For instance, *'ajz* was used as an equivalent for disability,²⁵⁰ *i'āqa* for handicap,²⁵¹ *i'tilāl* for impairment, *al-wazā'if wa al-bunā al-jismiyya* for body functions and structures²⁵², *al-anṣiḥa* for activities, *al-taḥaddud fī al-anṣiḥa* for activity limitations²⁵³, *al-musāhama* for participation²⁵⁴ and *al-taqalluṣ fī al-musāhama* for participation restrictions.²⁵⁵

However, these terms cannot be traced in early Islamic literature. Even if we come across one of the derivatives of such terms, the significance would not be the same as that of the modern term.²⁵⁶ To give just one example, the stem *'w-q* – of which the derivatives *ta'wīq* and *āwaq* are the most common in this regard – is recorded in the classical Arabic lexicons but with other meanings.²⁵⁷ For instance, *'ā'iq* [pluralized, *'awā'iq*] is that [thing] driving away from what is

²⁴⁶ Ibid, p. 27; <http://www.sacredplaces.org/PSP-InfoClearingHouse/articles/That%20All%20May%20Worship.htm>

²⁴⁷ Ibid, p. 27.

²⁴⁸ This is the most common Arabic equivalent for disability. However some scholars indicate that it is linguistically incorrect and prefer the other two terms, see Ibn Ḥamza, Muṣṭafā (1414/1993); <http://www.qaradawi.net/arabic/meetings/shreai-&-hayaa/prog-27.htm>

²⁴⁹ See Mūsā, Nāṣir b. 'Alī al- (2001), p. 20 & 21.

²⁵⁰ Munazzamat al-Ṣiḥḥa al-'Ālamiyya (2001), p. 28. See also Wazana, Ṭal'at b. Ḥamza al- (1412/2000), pp. 1 & 2.

²⁵¹ Munazzamat al-Ṣiḥḥa al-'Ālamiyya (2001), p. 327. Paging is based on an electronic version. I hereby submit my deep thanks and gratitude for the Regional Office for Eastern Mediterranean, WHO especially to Dr. Muahmmad Haytham Al Khayat and Dr. Kasem Sara.

²⁵² Munazzamat al-Ṣiḥḥa al-'Ālamiyya (2001), pp. 22, 31, 84 & 346.

²⁵³ Ibid, pp. 31, 37, 193, 346 & 354.

²⁵⁴ Ibid, pp. 22, 28, 340 & 346.

²⁵⁵ Ibid, pp. 31, 193 & 346.

²⁵⁶ Abū Jayb, Sa'dī (1402/1982), p. 12; 'Abd Allāh, Muḥammad 'Abd Allāh (1422/2001), vol. 2, p. 665.

²⁵⁷ Ibn Ḥamza, Muṣṭafā (1414/1993), p. 4; 'Abd Allāh, Muḥammad 'Abd Allāh (1422/2001), pp. 665 & 666.

good (*khayr*) such as *‘awā’iq al-dahr* (Impediments of Time).²⁵⁸ In this sense the plural form of the active participle *mu‘awwiq*, i.e., *mu‘awwiqūn* was used in the Qur’ān (33:18) to denote those who drive people away from practising Jihad.²⁵⁹

As for terminology used in classical Islamic sources, Rispler-Chaim remarked:

“I could not identify any single general term that would combine all people with disabilities as a group [...] It is only in contemporary literature that we find sometimes generalized terms, such as *aṣḥab al-‘ahat* or *dhawu al-‘ahat* (“owners” or bearers of impairments, defects), *mu‘awwaqun* or *mu‘aqun* (literally those held back by difficulty and limitations on their mental or physical functions) and *‘ajaza* or *‘ajizun*, pl. of *‘ajiz* (weak person, unable to do things like the old)”²⁶⁰

According to Rispler-Chaim, the only exception was the term *marīd* (sick or ill person) which can be a general term used to denote a wide range of disabilities.²⁶¹

A trawl through early Islamic sources in general and those on Islamic jurisprudence in particular shows that the abovementioned observation is imprecise. First of all, the term *aṣḥāb al-‘ahāt* or *dhawū al-‘ahāt* is not a prerogative of contemporary literature. For instance, *dhawū al-‘ahāt* was a common term in early Arabic literature under which people with different disabilities were enlisted.²⁶² In juristic literature, *‘āha* was defined as a legal term originally used for describing the defects striking plants and animals and later on also used to denote the chronic defects and infirmities that afflict humans.²⁶³ Furthermore, when Ibn Fahd wrote in the sixteenth century his book on people with disabilities he called them *dhawū al-‘ahāt* as the title of his book indicated, *Al-Nukat al-zirāf fī al-maw‘iza bi dhawī al-‘ahāt min al-ashrāf* (Cute Anecdotes of Seeking Admonition from the Luminaries of People with Disabilities).

At any rate this was not the sole term used in classical literature in order to refer to people with disabilities in general. We give just a few examples. *‘Aḍb*²⁶⁴

²⁵⁸ For further information, see ‘Abd al-Ḥamīd, al-Sayyid Muḥammad ‘Abd al-Ḥamīd (1418/1998), pp. 7 & 8; ‘Abd Allāh, Muḥammad ‘Abd Allāh (1422/2001), pp. 665-667.

²⁵⁹ For further information on this point, see Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 14, p. 151; ‘Abd al-Ḥamīd, al-Sayyid Muḥammad (1418/1998), pp. 7-9; ‘Abd Allāh, Muḥammad ‘Abd Allāh (1422/2001), pp. 666-667.

²⁶⁰ Rispler-Chaim, Vardit (2007), p. 4.

²⁶¹ Ibid, pp. 4 & 5.

²⁶² Just to give examples of the early writers who made use of this term where people with disabilities were included, see Ibn Ḥabīb, Muḥammad (1361/1942), pp. 261-382; Ibn Qutayba Abū Muḥammad ‘Abd Allāh b. Muslim (1388/1969), pp. 578-589; Ibn Qutayba Abū Muḥammad ‘Abd Allāh b. Muslim (1406/1986), vol.4, pp. 63-68; Ibn Rusta, Abū ‘Alī Aḥmad b. ‘Umar (1419/1998), pp. 189-192; Khawārizmī, Jamāl al-Dīn Abū Bakr al- (1327/1909), pp. 296-298; Tha‘ālibī, Abū Manṣūr ‘Abd al-Malik b. Muḥammad al- (1968), pp.92-95; Ibn al-Jawzī (3), pp. 229-231.

²⁶³ See Ṣan‘ānī, Muḥammad b. Ismā‘īl al-Kaḥlānī al- (1), vol. 2, p. 64; Fayyūmī, Aḥmad b. Muḥammad b. ‘Alī al- (1), p. 439.

²⁶⁴ Exploring the denotations and connotations of such terms without giving direct English

is a verbal noun denoting *shalal* (paralysis), *khabal* (insanity) and *‘araj* (lameness). The passive participle, *al-ma‘dūb*, denoted the weak person who cannot hold fast on the riding camel.²⁶⁵ *Al-Da‘if*, (pl. *al-ḍu‘afā’*) literally means the weak. This term occurred in the Qur’ān (2:282) and was interpreted as referring to people with different sorts of mental and physical disabilities such as lunacy, dumbness, speech disorders²⁶⁶ or missing one of the limbs and thus synonymous with *mukhdaj* clarified below.²⁶⁷ *Ahl al-balā’* (people of affliction) was used, especially in sources on theological issues,²⁶⁸ to signify people with physical or mental disabilities.²⁶⁹ In this sense, this term was used in a number of Prophetic traditions such as the tradition speaking about the state of *ahl al-balā’* and *ahl al-‘āfiya* (people of wellness) on the day of Judgement.²⁷⁰

Aṣḥāb al-a‘dhār (people with excuses) was used, especially in sources on Islamic Jurisprudence, to refer to those people whose disabilities have been recognised as excuses from specific religious obligations.²⁷¹ *Muṣāb* literally means smitten. It was sometimes used independently to denote a person afflicted with sorts of mental disability.²⁷² However, it was often used with the preposition *bi* denoting smitten with or by. For instance *muṣāb bi baṣarīh* or *bi iḥḍā ‘aynayhī* means smitten with disorders in eyesight and so on.²⁷³ *Nughāsh*

equivalents is done on purpose. Despite some of these terms have English equivalents in dictionaries and lexicons [for instance chronic illness or invalidism for *zamāna*, valetudinarianism for *Qi‘ād*], none of them convey the precise meaning intended in this context. Hence adding such equivalents will create but confusion for the reader.

²⁶⁵ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 24, pp. 10 & 11.

²⁶⁶ See Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 3, pp. 121 & 122; Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 3, p. 388; ‘Abd Allāh, Muḥammad ‘Abd Allāh (1422/2001), pp. 567-569.

²⁶⁷ See Mizzī, Abū al-Ḥajjāj al- (1400/1980), vol. 10, p. 463.

²⁶⁸ See Ibn Abī al-Dunyā (1410/1989), vol. 1, p. 89; Ibn Ḥazm, Abū Muḥammad ‘Alī (1), vol. 3, p. 97; Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, p. 209

²⁶⁹ Abū Jayb, Sa‘dī (1402/1982), pp. 15 & 16.

²⁷⁰ Tirmidhī, al- (1), Ḥadīth no. 2420, vol. 4, p. 603. The ḥadīth is also narrated by Ibn Abī al-Dunya and al-Ṭabarānī see Mundhirī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417), ḥadīth no. 5159, vol. 4, p. 142; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), ḥadīth no. 6345, Vol. 3, p. 375; Ṭabarānī, Abū al-Qāsim Sulaymān b. Aḥmad al- (1405/1985), ḥadīth no. 241, vol. 1, p. 156; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), ḥadīth no. 9921, vol. 7, p. 180. See also See Ibn Abī Shayba (1409/1988), ḥadīth no. 23584, vol. 5, p. 48; Ibn Māja, Muḥammad b. Yazīd (1), ḥadīth no. 3532, vol. 2, p. 1168.

²⁷¹ See for instance, Kasānī, Abū Bakr Mas‘ūd b. Aḥmad al (1), vol. 1, p. 9 & 27; Nawawī, Yahyā b. Sharaf al- (1), vol. 3, p. 31, vol. 4, p. 347; Bukhārī, ‘Abd al-‘Azīz b. Aḥmad b. Muhammad al- (1), vol. 4, p. 253; Ibn al-Ḥājj, Muḥammad b. Muḥammad al-‘Abdarī (1), vol. 2, p. 205; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 27, p. 176. See also ‘Abd Allāh, Muḥammad ‘Abd Allāh (1422/2001), p. 567.

²⁷² See ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1406/1986), vol. 1, p. 537; Rāzī, Muḥammad b. Abī Bakr b. ‘Abd al-Qādir al- (1415/1995), vol. 1, p. 156. for using it in this meaning, See for instance, Haythamī, Abū al-Ḥasan ‘Alī b. Abī Bakr al- (1407/1986), vol. 9, pp. 2 & 389; Bukhārī, Abū ‘Abd Allāh al- (1409/1989), ḥadīth no. 887, vol. 1, p. 306; Ibn al-Mubārak, ‘Abd Allāh (1), ḥadīth no. 891, vol. 1, p. 311; Ibn Ḥazm (1404 A.H.), vol. 7, p. 479.

²⁷³ See Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 5, p. 240; Ibn Kathīr (1401/1980), vol. 1, p. 544; Mubārakafūrī, Muḥammad b. ‘Abd al-Rahmān al- (1), vol. 8, p. 442; Munāwī, ‘Abd al-Ra‘ūf al- (1356/1937), vol. 4, p. 72; Rāzī, Ibn Abī Ḥatīm al- (1371/1952), vol. 9, p. 396;

which can be pronounced also as *nughāshiyy* or *naghghāsh* means dwarf or someone who has a sort of physical or mental disability.²⁷⁴

Besides these terms denoting disabilities in general, other terms were used for physical rather than mental disabilities and vice versa. As for terms used to denote physical disabilities in particular, we can mention the following examples. *Al-fālīj* (hemiplegia) defined as a disease hitting longitudinally one of the sides of the body, and maybe both, and causing paralysis.²⁷⁵ *Khidāj*, literally denotes incompleteness and the passive participle, *mukhadj* denotes the baby whose pregnancy period was incomplete and also the person whose body is incomplete, i.e., defective by missing one of the limbs or the senses.²⁷⁶ For instance, *mukhadj al-yad* means the one without a hand.²⁷⁷ *Mūdan* and *mathdūn* have synonymous denotations.²⁷⁸ *Nāqīṣ al-khalq*, literally means one whose creation is incomplete. The term was commonly used in Islamic literature referring to people suffering physical deficiency or defectiveness.²⁷⁹ *Qi'ād* originally denoted a disease striking the camels' hips and thus tipping them to the ground. The passive participle, *muq'ad* denoted one afflicted with an illness in body so that he/she cannot walk.²⁸⁰ Terms like *a'raj* and *aksah* have synonymous denotations.²⁸¹ Finally, *zamāna* denoted a long-lived illness and comprised almost every defect such as blindness, lameness, amputated limbs and the like which hinder the person from earning his livelihood by his own work. The person afflicted with *zamāna* was called *zamin* and *zamin*.²⁸²

As for terms denoting mental disabilities in particular, Abū al-Qāsim Ibn Ḥabīb (d. 406/1015) for instance counted more than thirty terms in this regard such as *majnūn*, *aḥmaq*, *ma'tūh* (denoting especially one who is born mad), *akhraq*, etc.²⁸³

Baghdādī, Abū Bakr Aḥmad 'Alī b. Thābit al-Khaṭīb al- (1), vol. 3, p. 371; 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1412/1992), vol. 3, p. 491.

²⁷⁴ See Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 8, p. 108; Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1413/1993), vol. 3, p. 127; Ibn al-Murtaḍā, Aḥmad b. Yahyā (1), vol. 2, p. 346; Fayyūmī, Aḥmad b. Muḥammad b. 'Alī al- (1), p. 611; Buhutī, Manṣūr b. Yūnus al- (1402/1982), vol. 1, p. 422; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 24, p. 246.

²⁷⁵ Fayyūmī, Aḥmad b. Muḥammad b. 'Alī al- (1), p. 480; Munlā Khusrū, Muḥammad b. Faramūz (1), vol. 2, p. 431; Anṣārī, Abū Yahyā Zakariyya al- (2), vol. 3, p. 37; Anṣārī, Abū Yahyā Zakariyya al- (3), vol. 4, p. 15; Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 4, p. 51; 'Illaysh, Muḥammad b. Aḥmad b. Muḥammad (1), vol. 2, p. 341.

²⁷⁶ Ṭahāwī, Aḥmad b. Muḥammad b. Salāma al- (1399/1979), p. 123-125

²⁷⁷ Muṭarrizī, Nāṣir b. 'Abd al-Sayyid Abū al-Makārim al- (1), p. 135.

²⁷⁸ 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 12, p. 295.

²⁷⁹ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (2), vol. 1, p. 222; Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1), vol. 3, p. 574.

²⁸⁰ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 24, pp. 10 & 11.

²⁸¹ See Rāzī, Muḥammad b. Abī Bakr b. 'Abd al-Qādir al- (1415/1995), vol. 1, p. 238.

²⁸² Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 7, p. 152; Ibn 'Ābidīn, Muḥammad Amīn b. 'Umar (1412/1992), vol. 1, p. 555; Qalyūbī, Aḥmad Salāma al- & Aḥmad al-Burullusī 'Umayra (1415/1995), vol. 3, p. 197; Ibn Ḥamza, Muṣṭafā (1414/1993), p. 5; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 24, pp. 10 & 11.

²⁸³ For the complete list of these terms, see Ibn Ḥabīb, Abū al-Qāsim al-Ḥasan b. Muḥammad (1418/1998), pp. 43-49.

Noteworthy is that the terms denoting specific disabilities such as blindness (*ʿama*), deafness (*ṣamam*), dumbness (*kharas*) and so forth have not been discussed here because there is no difference between the Arabic terms and their English equivalents in this regard. Just one point is in order here to avoid possible confusions. References to specific sorts of disabilities such as blindness, deafness, dumbness and the like occur frequently in the Qurʾān (e.g. 2:18 & 171, 6:39, 11:24, 13:19, 17:72, 47:23) in very negative contexts. Neglecting all commentaries on the Qurʾān and depending solely on internet sites containing a directory of the Qurʾān text with web search facility, the contemporary researcher Majid Turmusani made use of such verses to claim that the Qurʾān adopted a negative attitude against people with disabilities.²⁸⁴ For such Qurʾānic verses, Rispler-Chaim consulted two Qurʾān translations and two early commentaries which suggested that the verses refer to such disabilities in the metaphorical rather than the literal sense. However, she concluded that it remained uncertain for her whether these verses referred to real disabilities or metaphorical ones.²⁸⁵ Checking the context of these verses and consulting a large number of early and modern Qurʾān commentaries would show that the Turmusani's claim was baseless and Rispler-Chaim's doubts were unnecessary. The main context of such verses was a number of stubborn people who repeatedly refused to listen to the divine message conveyed by His Prophets. Due to this misbehaviour, they were punished by being deprived of God's mercy because their eyesight, hearing and other senses did not lead them to grasp the Divine message. At the end they were like the deaf who cannot hear and the blind who cannot see and thus there was no hope anymore that their situation would get better and that they would give an ear to the prophets' admonitions. At any rate, the Qurʾānic verses did not mean that those people cannot, in the literal sense, see or hear anymore.²⁸⁶ This metaphorical usage of disabilities was also very common among the Arabs and not a Qurʾānic prerogative.²⁸⁷ Qurʾānic references to people with disabilities, in the literal sense, made such people liable to legal alleviations rather than reproach or blame (e.g. 24:61, 48:17, 80:1-11). It is to be noted that Sufi literature and some modern studies such as the study by Saʿdī Abū Jayb made the Qurʾānic distinction between disabilities in the metaphorical sense and those in the literal sense a base for their viewpoint that the *real* disability which degrades one's position is that one afflicting one's heart and soul rather than

²⁸⁴ Turmusani, Majid (2001), pp. 77 & 78.

²⁸⁵ Rispler-Chaim, Vardit (2007), pp. 8 & 9.

²⁸⁶ For examples of early Qurʾān commentaries, see Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 1, pp. 146 & 147, vol. 2, p. 83; Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 1, pp. 214 & 215, vol. 10, p. 333; Ibn Kathīr (1401/1980), vol. 1, p. 54; Bayḍawī, ʿAbd Allāh b. ʿUmar al- (1323/1905), vol. 1, pp. 194 & 195; Abū al-Suʿūd, Muḥammad b. Muḥammad al-ʿImādī (1), vol. 3, p. 132; Suyūṭī, Jalāl al-Dīn al- & Jalāl al-Dīn al-Maḥallī (1), vol. 1, p. 5; Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 2, p. 41, vol. 7, p. 147. For modern commentaries, see for instance, Ibn ʿAshūr, Muḥammad al-Ṭāhir (1997), vol. 1, pp. 313 & 314; Qāsimī, Jamāl al-Dīn al- (1424/2003), vol. 1, pp. 285 & 286.

²⁸⁷ See for instance, Ibn Manzūr, Muḥammad b. Makram (1), vol. 12, p. 53.

one's body.

The above-stated facts concerning the usage of English and Arabic terminology were the main guidelines in this study. The Arabic usage was the tool to search for the relevant discussions on people with disabilities in the classical Islamic sources. By the help of the English, such classical discussions were presented in a modern language considering the latest developments in the terminology used in this field.²⁸⁸ However the transliterated Arabic classical terms were sometimes used besides the modern English terms in cases in which doing otherwise could harm the clarity of the text.

²⁸⁸ It is to be noted that more than one contemporary Muslim scholar found no harm in using the modern terminology – as long as they are understandable and inoffensive – and also used such terminology in their writings on disability in Islam and the titles of such writings. See for instance, Abū Jayb, Sa‘dī (1402/1982), pp. 11-16; ‘Abd al-Ḥamīd, al-Sayyid Muḥammad (1418/1998), pp. 7-10; ‘Abd Allāh, Muḥammad ‘Abd Allāh (1422/2001), p. 667.

Chapter Two: Speculative Theology

2.1 Introductory remarks

The existence of disabilities and other forms of suffering raised always perennial logistical questions such as “How to understand or justify the presence of nasty and painful things in the light of the fact that God the Compassionate, the Merciful is the Supreme Power and that He has control over this universe?”¹ Providing an answer to this question has occupied the minds of people throughout human history. Some explanations were at the expense of God by denying His existence or by ascribing evil to one god and goodness to another, etc.

However, for thinkers who adopted the theistic position and believed in a revealed faith, there were strict guidelines to be followed in any resolution of the tension between the affirmation of God’s existence and the reality of the existent evil in what He created.²

In the Islamic tradition, the first one to raise the aforementioned question was the arch-father of humanity, i.e., Adam. In a Prophetic tradition, it is related that God showed Adam his offspring, and he found remarkable discrepancies among them; rich and poor, strong and weak etc. In another tradition, Adam saw among his offspring people with leprosy (*baraṣ*), elephantiasis (*judhām*), blindness and other forms of illnesses. Adam asked his Lord, “Why did you do so with my offspring?” Another form of the question was “Would not you [better] have made them equal?” God answered, “[I did so] in order to be thanked” and in another version, “so that My gift will be thanked for”.³ The simplistic presentation given in this tradition did not put an end to this complicated issue. The question posed by Adam continued to be posed in Islamic tradition.

For a good understanding of the theological discussions on this issue, a note on the image of God, His attributes and names in the Islamic tradition is indispensable.

The main entry to God’s character in Islam is His names and attributes.⁴ Studying these names and attributes has always been a central point of concern for Muslim scholars. For instance, it is a habit that a chapter in the theology manuals⁵ and ḥadīth collections is devoted to the Divine names and attributes.⁶

¹ See Maqsood, Ruqaiyyah Waris (2000), pp. 8-44; Ayoub, Mahmoud M. (1977), p. 267; Julaynid, Muhammad al-Sayyid al- (1981), p. 55. For the case of people with disabilities in particular see, Muṭawwa‘, Munīra Khālīd al- (1422-2001), in ‘Awaḍī, ‘Abd al-Raḥmān ‘Abd Allāh al- & Aḥmad Rajā’ī al-Jundī (eds.) (1422-2001), vol. 2, p. 642.

² See Pessagno, J. Meric (1984), p. 65.

³ Mawṣilī, Abū Ya‘lā al- (1404/1984), vol. 11, p. 264; Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 7, p. 315; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), vol. 4, p. 107; Ibn Kathīr (1), vol. 1, pp. 78 & 88; Sa‘īd, Nadyā Muḥammad al- (1425/2004), p. 90.

⁴ Ghazālī, Abū Ḥāmid al- (1407/1987), pp. 52 & 53.

⁵ See Gardet, L. (3) (2003), vol. I, p. 714.

⁶ See for instance, Bukhārī, Abū ‘Abd Allāh al- (1407/1987), vol. 6, p. 2691; Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), vol. 4, p. 2062; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994),

This holds true to the extent that a vast genre of literature was developed on God's attributes and names.⁷ This genre set up, according to some scholars, an independent science known as *'Ilm al-asmā' wa al-ṣifāt* (Science of [Divine] names and attributes).⁸

The central point of agreement was the perfect and spotless character of God implying that no defect or deficiency can be attributed to Him, neither to His mercy, wisdom, justice nor omnipotence. This is traced back to more than one point.

First, His names are described in the Qur'ān as *Al-Ḥusnā* indicating that these Names denote the fairest, most beautiful and perfect meanings.⁹ Secondly, there are a number of God's names whose meaning clearly and directly indicate this perfect character. The most well-known name in this regard is *Al-Quddūs* (The Holy) which indicates the absence of all blemishes, and also that neither imagination nor sight can penetrate the mystery of God.¹⁰ Finally, the Qur'ān harshly warns those who practice *ilhād* concerning these Names, "... but shun such men as use profanity in his names: for what they do, they will soon be requited" (8:180). Linguistically, *ilhād* means deviating from the right path. Used in this context, it refers to those who deny any of these Names or their connotations. In short, the perfect character of God as depicted by these names was, for Muslim scholars, a red line that should not be overstepped.¹¹

In this vein, the overarching concern, while fathoming out the issue of pain and suffering, continued to be that if adversity and suffering are to be confronted, this must proceed in acknowledgment that no human catastrophe can call into question the omnipotence and all-embracing will of God, or place in doubt His justice, mercy and solicitude for the welfare of mankind.¹² These remained red lines of which the transgression was not allowed.

vol. 10, p. 27; Nasā'ī, Abū 'Abd al-Rahmān Aḥmad b. Shu'yab al- (1411/1991), vol. 4, p. 393; Ibn Māja, Muḥammad b. Yazīd (1), vol. 2, p. 1269.

⁷ Among the well-known scholars who wrote on this topic, we mention Ibn Khuzayma (d. 311/923), Abu Ishāq al-Zajjāj (d. 311/923), Al-Dāraqtūnī (d. 385/995), Al-Bayhaqī (d. 458/1065), Abū Ḥāmid al-Ghazālī (d. 505/1111), Ibn al-Jawzī (d. 597/1200) and Fakhr al-Dīn al-Rāzī (d. 606/1209). For their books on this topic, see Ibn Khuzayma (1387/1968); Zajjāj, Abū Ishāq Ibrāhīm al- (1974); Dāraqtūnī, 'Alī b. 'Umar al- (1402/1981); Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1); Ghazālī, Abū Ḥāmid al- (1407/1987), Ibn al-Jawzī (2002); Rāzī, Fakhr al-Dīn al- (1400/1980). For a Ṣufī perspective in this regard, see Qushayrī, 'Abd al-Karīm al- (1968). For contemporary studies on the same topic, see Shanqīṭī, Muḥammad al-Amīn al- (1404/1983); 'Uthaymīn, Muḥammad b. Ṣāliḥ, al- (1412/1991); Muzaḥfar, Muḥammad Riḍā al- (1422/2001), pp. 30-35; Jamal, Ḥasan 'Izz al-Dīn al- (1405/1985); Qaradāwī, Yūsuf al- (1426/2005), pp. 13-179.

⁸ See Ibn 'Abd al-Wahhāb, Muḥammad, (1), vol. 1, p. 130.

⁹ Rāzī, Fakhr al-Dīn al- (1400/1980), p. 47. God's Names have been described as *Al-Ḥusnā* four times in the Qur'ān; 7:180, 17:110, 20:8, 59:24.

¹⁰ Gardet, L. (3) (2003), vol. I, pp. 714 & 715. see also, Rāzī, Fakhr al-Dīn al- (1400/1980), pp. 185 & 186.

¹¹ See Rāzī, Fakhr al-Dīn al- (1400/1980), pp. 47 & 48; 'Uthaymīn, Muḥammad b. Ṣāliḥ al- (1412/1991), pp. 20-22

¹² Conrad, Lawrence I. (1999), p. 229.

Two main groups transgressed these lines. The first group included those who were declared to be heretics and infidels. The main representatives of this group were Jahm b. Ṣafwān (executed 128/745),¹³ to whom the Jahmiyya¹⁴ is ascribed, the poet Abū al-‘Alā’ al-Ma‘arrī (d. 1057), the philosopher Abū ‘Īsā al-Warrāq (d. ca 247/861)¹⁵ and his pupil Ibn al-Rāwandī (died at the middle or at the end of the 4th/10th century).¹⁶ The joint thesis of this group concerning the justification of evil and pain was read by Muslim scholars as casting doubts about the perfect and spotless character of God.¹⁷

Jahm b. Ṣafwān outspokenly denied that God is merciful. To him, this denial was the way to glorify God and distinguish Him from His creatures and also to understand suffering in life. It is related that he used to gather his followers by the lepers rotating in sufferings and started to deride by saying, “The most merciful of the merciful [i.e., God] does such things!” To him these evils showed that there was no space to speak about mercy but just about might and power void of mercy or wisdom.¹⁸ Such ideas cost Jahm b. Ṣafwān many charges and ultimately his life. The Ash‘arī heresiographer ‘Abd al-Qāhir al-Baghdādī (d. 429/1037) says about him, “We condemn him as a heretic for all his errors and the Qadarites (Indeterminists) declare him a *kāfir* (non-believer) for his assertion that God is the Creator of the acts of mankind. The various divisions of our community therefore coincide in charging him with unbelief.”¹⁹ Doubts about the mercy of God were also uttered by the blind poet Abū al-‘Alā’ al-Ma‘arrī.²⁰ Deeming that slaughtering animals caused undeserved and unjust pain, he decided to stop eating meat and eggs. According to the historians, al-Ma‘arrī lived more than eighty years, forty-five of these as a vegetarian. The Ḥanbalī theologian and jurist Ibn al-Qayyim (d. 751/1350) called him, “the one whose eyes and heart are blind (*‘amā al-baṣar wa al-baṣīra*).”²¹ Contrary to Ibn al-Qayyim, the late Egyptian scholar, Aḥmad al-Sharabāṣī (1918-1980), although disagreeing with al-Ma‘arrī on this point, he opined that al-Ma‘arrī adopted this point out of his tenderness, mercy and compassion for animals.²² Like al-Ma‘arrī and for the same reasons, Abū ‘Īsā

¹³ On him, see Watt, W. Montgomery (3) (2003), vol. II, p. 388.

¹⁴ For further information on this sect, see Ibn Ḥanbal, Aḥmad (1393/1973); Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (1397/1977), p. 143; Baghdādī, Abū Manṣūr ‘Abd al-Qāhir al- (1977), pp. 199 & 200; Baghdādī, Abū Manṣūr ‘Abd al-Qāhir al- (1920), p. 14; Ibn Manda, Abū ‘Abd Allāh Muḥammad b. Ishāq b. Yaḥyā (1); Ibn Taymiyya (1392/1972); Ibn al-Qayyim (1358/1939), vol. I, p. 239; Subhan, Abdus (1937), pp. 221-227; Frank, Richard (1965), pp. 395-424; Watt, W. Montgomery (3) (2003), vol. II, p. 388; Abrahamov, Binyamin (1996), p. 73 & 74, note 42.

¹⁵ On him, see Stern, S.M. (2003), vol. I, p. 130.

¹⁶ On him, see Kraus, P. & G. Vajda (2003), vol. III, pp. 904-906.

¹⁷ Ibn al-Qayyim (1358/1939), vol. I, p. 251.

¹⁸ For an overall ideal of this sect, see Ibn al-Qayyim (1358/1939), vol. I, p. 239; Subhan, Abdus (1937), pp. 221-227; Frank, Richard (1965), pp. 395-424.

¹⁹ See Baghdādī, Abū Manṣūr ‘Abd al-Qāhir al- (1977), pp. 99-200; Baghdādī, Abū Manṣūr ‘Abd al-Qāhir al- (1920), p. 14.

²⁰ Ritter, Hellmut (1952), p. 6.

²¹ Ibn al-Qayyim (1358/1939), vol. I, p. 251.

²² Sharabāṣī, Aḥmad al- (1375/1956), vol. I, pp. 345 & 346.

al-Warrāq wrote his book *Al-Nawḥ ʿalā al-ḥayawānāt* (Lamenting the Animals) in which, according to Ibn al-Qayyim, the author disclosed his clear infidelity (*al-zandaqa al-ṣurāḥ*).²³ As for Ibn al-Rāwandī, he was accused of adopting a jeering and personal attack on God by claiming that God is vindictive, quarrelsome, weak in arithmetic etc.²⁴ Speaking about this figure, Ibn al-Jawzī said that Ibn al-Rāwandī, “added his ill manners and tasteless humor, and spoke of the Creator in a way in which it would be inappropriate to speak even of one of the common people. We have not heard of any one who spoke of the Creator with such disrespect and jeering as this cursed one.” In another place, Ibn al-Jawzī described him as “the pillar of heresy” (*muṭamid al-malāḥida wa al-zanādiqa*).²⁵

The other transgression of the red lines, discussed earlier, was made by some Sufis. Contrary to the first group who were declared heretics and infidels because of their viewpoints, criticism of God expressed by the Sufis was permitted to a certain extent and did not end up by placing those who uttered such statements beyond the boundaries of Islam. That is because they criticized the divine government but continued to submit with resignation to what God had ordained and decreed. Additionally, their claimed intimacy with God was so well-founded and secure that it could not be disturbed by occasional audacities, like in the case of reproaches and lovers’ disputes, which sometimes occur between lovers but do not disturb their friendly relations.²⁶ Besides this class of God’s friends, there were also the saintly or religious fools who benefited from ostensible lunacy as a special privilege when speaking to God more audaciously than other people. Some of them complained and criticized the activity of God. The story of the great mystic al-Shiblī (d. 334/945)²⁷ with the young madman in the lunatic asylum serves as a clear example here. The young madman begged al-Shiblī to ask God, why He was tormenting him so much, why he was keeping him in a place away from home, far from his parents, hungry and shivering with cold. When al-Shiblī was about to go, the young madman cried, “No, do not tell God anything! Otherwise He will make it worse. I shall not ask Him for anything. For nothing can impress Him. He is self-sufficient.”²⁸ The German orientalist Hellmut Ritter (d. 1971) commented on such stories by saying, “Whatever happens to them is, in their eyes, always a direct action of God or on His behalf. Always they have to deal with God directly. And this direct and intimate relation to God characterizes them as genuinely mystic, as *mystical* fools, and distinguishes them from heretics and philosophers, who have become alienated from God altogether like Ibn al-Rāwandī and Abu al-ʿAlā al-Maʿarrī.”²⁹

²³ Ibid.

²⁴ Ritter, Hellmut (1952), p. 6; Stroumsa, Sarah (1987), p. 769.

²⁵ Stroumsa, Sarah (1987), pp. 767 & 768.

²⁶ Ibid, pp. 7 & 8.

²⁷ On him, see Sobieroj, F. (2003), vol. IX, pp. 431-433.

²⁸ Ritter, Hellmut (1952), p. 4.

²⁹ Ibid, p. 9. For similar Sufi practices in the Shīʿī tradition, see Navar, Iraj & Peter J. Chelkowski (1994), pp. 111-129.

Apart from such exceptional cases, the main line in Islamic theology continued to be devoted to the belief in God's perfect and spotless character including all divine names and attributes reflecting this character. Scholars of Islam remained unanimous on the fact that the existence of pains in life cannot be a valid reason for casting doubts on the perfect character of God. As stated in the introduction, two groups of Muslim scholars, namely Sufis and philosophers approached the phenomenon of pain, evil or afflictions in general as no *real* problem. Below, we give a summing up of their viewpoints in this regard.

2.1.1.1 Sufis

The method adopted by the Sufis was highly spiritual and focused on the nature of God and the spiritual relation that creatures can develop with Him as Creator. Al-Ghazālī's starting point was that a proper knowledge of God and developing a spiritual relationship with Him, based mainly on mutual love, would eliminate any sense of being in trouble. The distinction between good and evil would be meaningless since everything coming from God was good.³⁰

From the side of God, an important sign of loving His servant was to make him an object of afflictions and difficulties (*ibtīlā*). The Prophet is reported to have said, "When God loves a servant, He will visit him with afflictions. When He loves him, with a fully-fledged love, He will preserve him." Being asked what 'preserve him means', the Prophet said "God does not leave for him family or property." One of the scholars said, "When you love God and notice that He is visiting you with afflictions, know that He wants to purify you." One of the mystic teachers advised his student by saying, "O my son, do not aspire for love as He does not give it to anybody without testing him with afflictions first."³¹

From the side of the human being, always named a servant (*'abd*), an important sign of being in love with God is to love what his Beloved (God) loves. Al-Ghazālī related the story of one of the Companions of the Prophet who, at the eve of a battle, invoked God to face in the battle a strong man to fight with and that this enemy would cut off his nose and ears and pierce his stomach. The purpose of this invocation was clarified by the Companion as follows, "When I meet you tomorrow [on the Day of Resurrection], You will ask me, O servant of God! who cut off your nose and ears? I will say, for the cause of You and Your Messenger. You will say, you have spoken the truth."³² It is clear here that disability is invoked because in the Hereafter it will prove the servant's sincere love for God.

Such mutual spiritual love strengthens the bonds between the lover (servant) and the Beloved (God). Concerning physical pains, someone experiencing such a relationship finds himself in one of two main states. *First*, being immersed in love with God would remove the sense of physical pain. When severe

³⁰ Kader, Abdel (1954), pp. 222 & 223.

³¹ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 329.

³² Ibid, vol. 4, p. 330.

afflictions befall a lover, they cannot cause him pain. In order to rationalize this argument, al-Ghazālī recalled here the example of a fighter in the battlefield who, at the time of fear and wrath, does not feel pain because his mind is fully engaged at this critical moment. The same holds true for the case of one immersed in love with his beloved to the extent that he cannot feel physical pains such as the ladies who wounded their hands with knives and remained unconscious of the pain because they were in deep love with the Prophet Joseph as mentioned in the Qur’ān (12:31).³³ The common rationale here is that when the mind is fully engaged with one thing, it cannot grasp another thing at the same time.

In the *second* state, one would feel the pain but be satisfied with it at the same time and even willing to experience it although one could detest it by nature. A mystic leader said in this respect, “He who sees the rewards of afflictions will not desire to get out of them.”³⁴

Al-Ghazālī was aware of the eccentricity of experiencing these two states while having pain and troubles. To prove the validity and practicality of this rationale, he quoted a long list of statements and stories of pious figures. Here we just mention one example which has direct relevance to the case of disability. The well-known mystic Bishr al-Ḥāfi (d. 226/840)³⁵ is related to have met, at the beginning of his religious life, a man afflicted with blindness, elephantiasis, madness and epilepsy. Bishr saw that ants were eating the man’s flesh and thus raised up his head, put it in his lap and tried to speak to him. The man recovered his consciousness and wondered, “Who is this curious man who interferes [his nose] between me and my Lord. Had he cut me into pieces, it would have done nothing but increasing my love for Him.”³⁶

While some mystics were content to pursue a pious life motivated by the love of God, others became involved in esoteric and even antinomian practices in which they hoped to experience oneness with God or to be “annihilated in His unity” as expressed in the mystic doctrine of *fanā’* (lit. passing away, effacement).³⁷ In such a state, in which the Sufi experiences the passing away of the consciousness of all things, including him/herself, and the annihilation of the imperfect attributes of the creature and their replacement by the perfect attributes of God,³⁸ the question about the wise purposes of evil in life will be

³³ Ibid, vol. 4, pp. 347 & 348.

³⁴ Ibid, vol. 4, pp. 347 & 348.

³⁵ On him, see Meier, F (2003), vol. I, pp. 1243-1246.

³⁶ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 348. For more stories with relevance to disability as well, see Ibid, pp. 348 & 349; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), vol. 4, p. 118; Aṣbahānī, Abū Nu‘aym al- (1405/1984), vol. 2, pp. 319 & 320, vol. 4, p. 68, vol. 6, p. 156; Ibn al-Jawzī (1399/1979), vol. 2, pp. 463-466, 501, vol. 4, pp. 18, 19, 60, 86, 282, 283; Ibn al-Qayyim (1), vol. I, p. 117.

³⁷ Otten, Henry J. (1985), p. 7. On the term “fanā’”, see Ibn Taymiyya (1401/1981), pp. 44-46; Kader, Abdel (1954), pp. 219-228; Dawūd, ‘Abd al-Bārī Muhammad (1417/1997); Rahman, Fazlur (2003), vol. I, pp. 950 & 951.

³⁸ See Rahman, Fazlur (2003), vol. I, p. 950.

irrelevant. That is because such an experience will leave no room for experiencing evil not to mention asking why it exists.

The *real* disability which men should deem as a *real* problem, according to this approach, is the type of disability afflicting one's heart and soul rather than one's body. One of the mystic authorities explained this point by saying "What heartbreak, one can suffer, would be greater than seeing the one with blindness in this life as a sighted person in the Hereafter, while the sighted one in this life will be blind?"³⁹ This is a reference to the Qur'anic verses (20:124 & 125) speaking about the person who suffered this *real* disability which diverted him from the right path to God in this life. As a punishment, this person, who was sighted in the worldly life, gets afflicted with blindness on the Day of Resurrection.⁴⁰ Modern Muslim scholars paid considerable attention to this type of disability. As mentioned above, the Syrian scholar Sa'ādī Abū Jayb said that the disability which impairs one's soul and thus drives the person away from God is the true (*ḥaqīqīyya*) disability. One's status and dignity in Islam are to be injured by this type of disability rather than that afflicting one's body.⁴¹

2.1.2 Philosophers

A number of Muslim philosophers shed light on the necessity of understanding the general nature of suffering or evil on the one hand and the life we are living on the other hand. To them, comprehending these two dimensions would demonstrate that actually there is no *real* problem.

In this vein, suffering is simply an inevitable concomitant of existence in this life. So, it is something that must happen rather than that could happen.

Ibn Sīnā, the main exponent of philosophers in this regard, advanced a Neoplatonic ontological analysis of the problem of evil, which aims to prove that God, the absolutely good First Cause, produces a good world.⁴² He said in this respect, "There is nothing whatsoever in the entire world, and in all its high and lower parts, which is excluded from the statement that God is the cause of its being and its origination in time, that God has knowledge of it and disposes it and that God wills it to exist [...] For if this world were not compounded of good and evil forces and of producing of both righteousness and corruption in its inhabitants, the world order would never have been fulfilled completely."⁴³

As for disabilities in particular such as the absence of an arm or sight, Ibn Sīnā classified them under the category of essential evil (*al-sharr bi al-dhāt*)⁴⁴ because they imply the lack of perfections that are fixed for the nature of human beings.⁴⁵ Some of the examples of fixed perfection given by Ibn Sīnā are

³⁹ Aṣḥabānī, Abū Nu'aym al- (1405/1984), vol. 4, p. 214.

⁴⁰ Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 16, p. 278.

⁴¹ Abū Jayb, Sa'ādī (1402/1982), pp. 17-25; Bazna, Maysaa S. & Tarek A. Hatab (2005), p. 12.

⁴² Shihadeh, Ayman (2006), p. 771.

⁴³ Otten, Henry J. (1985), pp. 8 & 9.

⁴⁴ On the reasons for translating this term in that way, see Inati, Shams C. (2000), p. 79. for a full presentation of this notion in Ibn Sīnā's philosophy, see Inati, Shams C. (2000), pp. 67-85.

⁴⁵ Inati, Shams C. (2000), p. 69.

organs, such as the human eye; some are capacities or powers, such as human sight; and some are the act or fulfilment of such powers, such as the act of seeing. The real perfection among these three is *the act* because, for instance, what is the human eye or its capacity to see, if it does not actually see?⁴⁶ This type of evil, according to Ibn Sīnā is evil in all respects, “As for the lack of perfection and health [of the harmed thing], it is evil not only in relation to [the harmed thing] so that it would have a presence by virtue of which it is not an evil. Rather, its very presence is nothing but an evil in it, and in the manner of being evil. Thus, blindness cannot be except in the eye; and, inasmuch as it is in the eye, it cannot but be evil, with no aspect to it by virtue of which it would be other than evil.”⁴⁷

In his bid to justify the existence of such evils, Ibn Sīnā placed himself within the aforementioned limits by assuring his firm belief in God’s absolute goodness which leads to providence (*‘ināya*) whose presence is evident.⁴⁸ Thus, the explanation should not be at the expense of the divine perfection of God. The question now is how can we understand the reality of this world including evils in the light of God’s absolute goodness?

Ibn Sīnā advanced two main arguments both of which are applicable to the case of disabilities. *First*, essential evil, to which the phenomenon of disability belongs, is privation of being. For instance, disability is privation of ability which is being and blindness is privation of seeing which is being. Because essential evil is non-being, it is uncaused. In other words, it cannot have a cause for a cause is always the cause of something. By “cause” here is meant an agent or efficient cause, not just any principle required for the production of an effect. The agent or efficient cause always produces something and not nothing. It follows that no being, including God can be a cause of essential evil.⁴⁹ However, whether considered as being or non-being, human beings still experience suffering because of the disability. This was the criticism of Fakhr al-Dīn al-Rāzī (d. 606/1210). He countered Ibn Sīnā’s ontological and cosmological theodicy with the very human experience of suffering. This is what “minds and hearts are perplexed by” and consequently any attempted theodicy ought to address. Ibn Sīnā’s theodicy merely circumvented the real problem of evil. Al-Rāzī wondered why Ibn Sīnā attempted a theodicy in the first place, given that he is not a moral realist and that he did not consider the Creator to be a voluntary agent, in which case He cannot be morally responsible for His acts. His introduction of the terms “good” and “evil” into the context of ontology is superfluous (*fuḍūl*) and inapt. Instead, al-Rāzī added, Ibn Sīnā should have left the attempt to justify evil in this world to those for whom it is a real problem, since they adhere to these two doctrines, namely the Muḥtazila.⁵⁰ However, this argument and the following one are meant rather to

⁴⁶ Ibid, p. 70.

⁴⁷ Ibid, p. 81.

⁴⁸ Ibid, p. 127.

⁴⁹ Ibid, pp. 81 & 148. See also Ghoraba, Hammouda (1956), pp. 81-83.

⁵⁰ Ayman (1) (2006), pp. 163 & 164.

minimize the problem than to solve it. By the last argument, it will get clear that Ibn Sīnā also sees no *real* problem. It is to be noted here that the mystic Muḥyī al-Dīn Ibn al-‘Arabī (d. 638/1240) advocated this argument of Ibn Sīnā in his work *Tāj al-rasā’il* (The Crown of Epistles) written in 600/1203. He said in this regard, “Existence in general is purely good and non-existence is purely evil. However, such evil that may exist is imbued with good [...] For one cannot appreciate anything without relating it to its opposite [...] The whole world then enjoys complete happiness.”⁵¹ Again this approach is rejected by the modern researcher Adīb Nāyif Diyāb (PhD Cambridge University, 1981). He criticized Ibn al-‘Arabī for following the footsteps of traditional philosophy which seems to be incompatible with the conventions of common sense and with the reality of human suffering, quite apart from the obscurity of “nonthingness” as a concept.⁵²

The *second* argument advanced by Ibn Sīnā in this regard is that there is more good than evil in the universe, “Evil only strikes individuals, and at certain times. The species are preserved. Except for one kind of evil [i.e., accidental evil], real evil does not extend to the majority of individuals.”⁵³ This is of course easily applicable to people with disabilities that represent a minority among the populations on earth. However, Ibn Sīnā’s view in this respect was not generally accepted by other philosophers. For instance, Abū Bakr al-Rāzī (d. 313/925) opined that evil is prevalent in this world, a contention which follows from his notion that pleasure is purely relief from pain.⁵⁴ Now, suppose that the evils are few, why would this life be free from these *few* evils?

Here comes the *third argument* of Ibn Sīnā, namely, that the universal order cannot be sustained without the occurrence of evil.⁵⁵ “This was not possible in a mode of existence such as this, even though it was possible in the absolute existence, since that mode of absolute existence free from evil is other than this one.”⁵⁶ By extending this notion to disability, one would say that being human necessitates that one would be prone to both ability and disability. If we want to remove disability, the human being will not be a human being anymore. In this vein, although God’s unrestricted power is not denied explicitly, it is denied implicitly. If God is the cause of everything, including this sphere, and if this sphere cannot be other than it is, it would follow that its cause has no power to make it other than it is. Everything that God does is done necessarily. It is “necessity” that seems to have the upper hand in every action in the universe, including the divine ones. God, like everything else, is an instrument in the hands of necessity. It is true that Ibn Sīnā speaks of God’s will and sometimes of God’s choice, but even God’s will runs by necessity.⁵⁷ Despite his

⁵¹ Ibn ‘Arabī, Muḥyī al-Dīn (1328/1910), p. 610, quoted by Diyāb, Adīb al-Nāyif (2000), p. 36.

⁵² Diyāb, Adīb al-Nāyif (2000), p. 37.

⁵³ Inati, Shams C. (2000), p. 133; Shihadeh, Ayman (1) (2006), p. 161. see also Ghoraba, Hammouda (1956), p. 83.

⁵⁴ Shihadeh, Ayman (1) (2006), p. 161.

⁵⁵ Inati, Shams C. (2000), p. 145.

⁵⁶ Otten, Henry J. (1985), pp. 8 & 9; Inati, Shams C. (2000), p. 147.

⁵⁷ Inati, Shams C. (2000), p. 147.

disagreement with Ibn Sīnā in the aforementioned arguments, Fakhr al-Dīn al-Rāzī inclined to concede the logicity of this specific argument in his *Al-Mabāḥith al-mashriqiyya* (Oriental Themes).⁵⁸

2.2 Anti-Theodicy Approach

The proponents of this approach laid more emphasis on the second side of God's character, especially God's self-sufficiency and omnipotence, than on the first side. To them, the main manifestation of God's perfect character was His omnipotence and limitless power.

Exposing the main articles of the Ash'arī school, Abū al-Ḥasan al-Ash'arī elaborated this theme as follows, "We assert that God has prowess (*quwwa*), as He says "Saw they not that God who create them mightier than they in prowess" (Qur'ān 41:14) [...] and that there is not good nor evil on earth, save what God wills and that things exist by God's will and that not a single person has the capacity to do anything until God causes him to act and we are not independent of God nor can we pass beyond the range of God's knowledge; and that there is no creator save God and the works of human beings are things created and decreed by God. He has says 'God has created you and what you make' (Qur'ān 37:94). Human beings have not the power to create anything but are themselves created [...] Human beings do not control for themselves what is hurtful or what is helpful, except what God wills and that we ought to commit our affairs to God and assert our complete need and dependence upon Him."⁵⁹ Abū Ḥāmid al-Ghazālī (d. 505/1111), one of the towering personalities in the Ash'arite School, reiterated this theme by affirming that God can inflict pain on man – indeed He can torment man – without hope of reward and for no reason.⁶⁰ In this sense, all sorts of disabilities and by default sufferings and evils are to be traced back to God. He is the one who created them, willed them and did them and man has no role in this regard. The question then is, why does God create and will all these evils? What is the wise purpose (*ḥikma*) behind all this? Where is the justice of God in this case?

The Ash'arites in fact condemned posing questions to God because He is the Almighty who runs His own kingship (*mulk*) as He pleases and thus is not to be questioned.⁶¹ This point is also advocated by the Zāhirī scholar Ibn Ḥazm (d. 456/1064).⁶² Furthermore, searching for the wise purposes (*ḥikam*) of God's actions is not only meaningless, but also grave disobedience to Him.⁶³

⁵⁸ Rāzī, Fakhr al-Dīn al- (1343/1924), pp. 522 & 523; Ibn al-Qayyim (1358/1939), vol. 1, p. 251.

⁵⁹ Ash'arī, Abū al-Ḥasan 'Alī b. Ismā'īl al- (1940), pp. 50 & 51.

⁶⁰ See Ormsby, Eric L. (1984), p. 237, quoting from Ghazālī, Abū Ḥāmid (1334/1916), vol. 1, p. 99. It will be noticed down that Imam al-Ghazālī himself, in the light of criticism directed to the Ash'arites that they have neglected the role of divine wisdom, he pronounced emphasis on the role of wisdom but this was something repugnant to many of his fellow Ash'arites, for whom any attempt to rationalise God's actions was suspect. See Ormsby, Eric L. (1984), p. 47. Cf. Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, 202.

⁶¹ Ash'arī, Abū al-Ḥasan 'Alī b. Ismā'īl al- (1988), vol. 1, p. 268.

⁶² Ibn Ḥazm, Abū Muḥammad 'Alī (1), vol. 3, p. 41.

⁶³ Rahman, Fazlur (2000), p. 62.

The Ash‘arites considered this contrary to the perfect and spotless character of God. Defending their contention, the Ash‘arites advanced more than one argument.⁶⁴

First, if God’s act is precipitated by a cause (*‘illa*) then that cause is originated (*hāditha*) and requires a cause, and so on *ad infinitum*. If God acted or originated on account of a cause or wise purpose, this would entail an endless chain or infinite regress (*tasalsul*) of causes, which the Ash‘arīs deem impossible.

Second, it implies need in God. They argued that one acting by virtue of a specific cause will be perfected by it, because if the occurrence of the cause were not better than its nonexistence, it would not be a cause. One who is perfected by another is imperfect in himself. This is impossible for God. It is clear that the Ash‘arīs’ concern to deny need in God is rooted in their belief that God’s acts are completely free and unbound by any necessity. A God who acts for a wise purpose must be acting out of prior lack and imperfection.

The *third argument* was directed specifically against the Mu‘tazilī account which maintained that God acts for a cause that is disjoined (*munfaṣīl*) from His essence. The Ash‘arīs countered that this cause must have some impact on God; otherwise it would not be a cause. If then it is disjoined from God, His acting for its sake implies that the cause – which is something outside of Himself – perfects Him. Conversely, if the cause is “subsisting in Him” (*qā’im bih*), the Ash‘arīs argue, “It necessarily follows that He is a substrate (*maḥall*) for originated events (*hawādith*).”

It is noteworthy in this regard to state that by denying the wise purposiveness of God’s acts, the Ash‘arites did not deny the name of God, *al-Hakīm* (All-Wise). To them, God was undoubtedly All-Wise but they had their own specific understanding of this name. Al-Ghazālī explained this name by saying, “*Al-Hakīm* is the one who has wisdom. Wisdom is equivalent to knowledge of superior things through the highest modes of knowledge [...] He is the truly wise because He knows the most sublime things by the most sublime modes of knowing.”⁶⁵ Thus God’s wisdom was, to the Ash‘arīs, knowledge and does not necessarily entail purposiveness in His acts. The same holds true for the name *al-‘Adl* (All-Just). They did not deny the name but they had their own understanding of its purport, i.e., justice which they saw as expression of God’s will, only. The prominent Ash‘arī scholar, ‘Abd al-Qāhir al-Baghdādī (d. 463/1071) defined this term as “what the doer can do (*mā li al-fā’il an yaf‘alah*)”. On the other hand, the antonym of justice, i.e., injustice is “Dispose of someone else’s property without his consent (*taṣarruf fī milk al-*

⁶⁴ The Ash‘arī arguments in this regard are sporadic throughout their sources and manuals. For one of the extensive and detailed presentation of these arguments, see Ījī, ‘Aḍud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 1, pp. 422-474. These arguments have been summed up in three main points by the Ḥanbalī scholar Ibn Taymiyya and translated by Jon Hoover. See Ibn Taymiyya (1406/1985), vol. 1, pp. 144 & 145; Hoover, Jon (2002), pp. 85 & 86.

⁶⁵ Ghazālī, Abū Hāmid al- (1992), pp. 116 & 117.

ghayr bi ghayr idhniḥ)."66 In this sense, it is inconceivable to classify any of God's acts as injustice because He runs His own kingship as He pleases and He is in no need of other's permission to act.67

Another important point in this regard, in which the Ash'arites contradicted the Mu'tazilites, was that God's acts are not subject to the human intellect and thus cannot be measured thereby. For instance, the value of justice, injustice and so forth are to be specified solely by the Lawgiver, i.e, God. Accordingly, God does not command an act *because* that act is just and good; it is His command (*amr*) which makes it just and good.68 One of the main advocates of this argument at the present times is the Syrian scholar Muḥammad Sa'īd Ramaḍān al-Būṭī (b. 1929).69

In this theological framework, the Ash'arites would not face considerable troubles in explaining the existence of disabilities, evils and sufferings. For instance, speaking about torturing infants in this life with leprosy which cuts off their hands and their feet, Abū al-Ḥasan al-Ash'arī stressed that the Mu'tazilī theology cannot explain the justice of God in such a case. However, such an act is just and wise, according to the Ash'arī theology, because God is running His own Kingship.70 Recently, this approach was advocated by G. Legenhausen stating that this way "solves the problem of evil not by limiting God, but by exalting Him above human morality."71

2.3 Pro-Theodicy Approach

To the proponents of this approach, the divine perfection of God's character is to be measured by His oneness and justice. From these two qualities, the Mu'tazila derived their name, the Partisans of Justice and Oneness (*Ahl al-'Adl wa al-Tawḥīd*). Justice in the Mu'tazilite thought is even more central, for if Oneness describes God's existence as One, justice is His very essence. It is His unique nature that distinguishes Him from everything else.72 This holds true to the extent that the Mu'tazila were also known as *al-'Adliyya* (Advocates of Justice).73 Like the Mu'tazila, the Shī'a have selected justice, out of all attributes to be a principle of their creed. They believe that justice is the basis of God's acts, both in the ordering of the universe and in the establishing of laws.74

In the Shī'ī tradition, justice included naturally the avoidance of oppression and all foolish acts. Imam Ja'far al-Ṣādiq (d. 148/765) explained God's justice by saying, "Justice in the case of God means that you should not ascribe

66 Ghazālī, Abū Ḥāmid al- (1985), vol. 1, p. 204.

67 Julaynid, Muḥammad al-Sayyid al- (1981), p. 225.

68 Ibn Ḥazm, Abū Muḥammad 'Alī (1), vol. 3, p. 21; Gardet, L. (1), (2003).

69 Būṭī, Muḥammed Sa'īd Ramaḍān al- (2001), p. 183-187. On him, see <http://www.bouti.com/ar/index.php?lang=en>

70 See Ash'arī, Abū al-Ḥasan 'Alī b. Ismā'īl al- (1940), p. 112; Julaynid, Muḥammad al-Sayyid al- (1981), p. 224.

71 Legenhausen, G. (1988), p. 266.

72 Khadduri, Majid (1984), pp. 44 & 45.

73 Ibn Taymiyya (7), vol. 17, p. 352; Muṭahharī, Murtaḍā al-(1424 A.H.), p. 35.

74 Lari, Sayyid Mujtaba Musavi (2003), p. 134.

anything to God that if you were to do it would cause you to be blamed and reproached.” Al-Shaykh al-Ṣadūq defined justice as requiring a good act with a good act and an evil act with an evil act.⁷⁵ Besides avoiding injustice and foolish acts, justice also implies benefitting others.⁷⁶ Doing service for others, appears also an important element of justice in Mu‘tazilī thought. The prominent theologian ‘Abd al-Jabbār (d. 415/1025) defined a just act as an act performed by man not necessarily for his own advantage but for the advantage of another man for whom the act is intended. Thus just acts may, generally speaking, be defined as those acts which promote the welfare of other men, and the man who performs them would be called a just man.⁷⁷

As for wisdom, it has always been seen as closely connected with justice. The modern Shi‘ī scholar, Sayyid Mujtaba Musavi Lari (b. 1314/1935), says in this regard, “When we see that God is just, it means that His all-knowing and creative essence does nothing that is contrary to wisdom and benefit.”⁷⁸ In this sense, all God’s acts are both just and wise.⁷⁹ The Mu‘tazilites unanimously declare that God does nothing without wisdom, and in all He does, He intends benefit.⁸⁰ The Mu‘tazilites affirm that God acts for wise purposes (*ḥikam*), otherwise He would be aimless and foolish. However, they also tried to uphold God’s complete lack of need by clarifying that the sole beneficiaries in purposive divine acts are His creatures. God created human beings to profit them. God does not act in self-interest because He has no need.⁸¹

The other side of God’s character, mainly revealed in His omnipotence, occupied a subsidiary role in the thought of this approach. Attributes indicating God’s omnipotence were seen by Mu‘tazilī scholars as something implied in the fact that God exists and they do not represent a separate category of attributes. Abū al-Hudhayl al-‘Allāf (d. 226/840-1)⁸² argued that the mere fact that God exists implies that He is knowledgeable and powerful. Other Mu‘tazilites like Ḍirār b. ‘Amr (d. ca. 200/915) and al-Nazzām (d. ca. 231/845),⁸³ said that God’s essence implies knowledge and power, as it is inconceivable that God is ignorant and powerless.⁸⁴ At any rate, this divine omnipotence cannot supersede or deviate from the divine justice and wisdom. Some of the Mu‘tazilites such as al-Nazzām and al-Jāhiz (d. 255/868-9)⁸⁵ denied that God has the capacity to

⁷⁵ Fyzee, Asaf A. A. (1942), p. 70.

⁷⁶ Lari, Sayyid Mujtaba Musavi (2003), pp. 134 & 135.

⁷⁷ Khadduri, Majid (1984), p. 48.

⁷⁸ Lari, Sayyid Mujtaba Musavi (2003), p.134. See also Fyzee, Asaf A. A. (1942), p. 30.

⁷⁹ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. 6, p. 48; Khadduri, Majid (1984), p. 48.

⁸⁰ Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (1), p. 251, Ormsby, Eric L. (1984), p. 244.

⁸¹ Hoover, Jon (2002), p. 83.

⁸² On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, pp. 542 & 543; Nyberg, H.S. (2003), vol. I, pp. 127-129.

⁸³ On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, pp. 541 & 542; Ess, Josef van (2003), vol. VII, p. 1057-vol. VIII, p. 1.

⁸⁴ Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (1), vol. I, p. 166 & 167; Khadduri, Majid (1984), p. 48.

⁸⁵ On him, see Pellat, Ch. (3) (2003), vol. II, pp. 385-387.

do injustice. However, ‘Abd al-Jabbār and later Mu‘tazilites pointed out that this would be inconsistent with God’s omnipotence. However, it remains inconceivable that God will ever do injustice because it is contrary to His perfection to associate His name with injustice.⁸⁶ Thus in one way or another, God’s omnipotence is allowed to work only within the realm of His justice and wisdom. For instance, divine wisdom as an essential attribute of God contradicts committing any bad act (*qabīḥ*), a premise which leads to the conclusion that such acts are impossible (*muḥāl*) to be done by a wise God. By the same token what is impossible in a specific case means that it is beyond the ability to be done (*ghayr maqdūr*). The Shī‘ī perspective reiterates the same theme by opining that the Divine Might relates to things which are only possible. Things that are rationally impossible are entirely outside the sphere of His power. It is related that someone asked ‘Alī b. Abī Ṭālib, “Is your Lord able to fit the whole world into a hen’s egg?” He answered: “God Almighty is, indeed, able to do anything, but what you ask is something impossible.” So, although God’s sacred essence is utterly free of all impotence and inability, it is meaningless and irrational to ask whether God can do something inherently impossible.⁸⁷ Daud Rahbar (b. 1927, Pakistan) is a good example of modern figures supporting this tendency. He believes that God’s justice is the dominant theme of the Qur’ān.⁸⁸ In Rahbar’s theodicy, the world exists to demonstrate the justice of God. To him, the full display of justice requires good and evil both, the former for reward and the latter for punishment.⁸⁹ When criticized for limiting God’s power by making room for human responsibility in evil, he countered, “God Himself exercises self-restraint from evil and thus limits His own power. To know Him as a moral Being in Qur’anic terms we must know Him as such, and not as a Force ‘let loose.’”⁹⁰

Finally God’s justice and wisdom are to be measured by the same scale as the one applied to human actions. This is based on the analogy to be drawn between the Present world (*al-shāhid*) and the Absent (Divine) world (*al-ghā’ib*) because of which the justice, wisdom and goodness of God’s acts can be recognized by human intellect.⁹¹

According to these doctrines, whether disability or afflictions in general occurred due to man’s action, other people’s action or due directly to God and beyond human control, there should be a specific wise purpose that can be discerned by the human intellect. The main question will thus be; what are the wise purposes of befalling people with afflictions? For a systematic presentation of answers provided to this question within this approach, a distinction will be made between persons with legal liability (*mukallaḥ*)⁹² who thus can be

⁸⁶ Khadduri, Majid (1984), p. 45.

⁸⁷ Lari, Sayyid Mujtaba Musavi (2003), pp. 124 & 125.

⁸⁸ Rahbar, Daud (1960), p. 119, quoted by Otten, Henry J. (1985), p. 9.

⁸⁹ Rahbar, Daud (1960), pp. 79, 80 & 81, quoted by Otten, Henry J. (1985), p. 10.

⁹⁰ Rahbar, Daud (1960), p. xx, quoted by Otten, Henry J. (1985), p. 10.

⁹¹ See Heemskerck, Margaretha T. (1995), p. 137.

⁹² By “*mukallaḥ*”, we refer here to those who can be punished for violating the laws. In Islamic tradition, one falls under this category by being a human with sanity (*‘aql*) who reached the age of

responsible for the evils they committed and those without legal liability (*ghayr mukallafūn*) such as children, insane people and animals.

2.3.1 Afflictions Befalling those with Legal Liability (*Mukallafūn*)

Basing the discussion here on Muʿtazilite doctrines, disabilities occurring in this life, as can be traced within the broad concept of afflictions, can be divided – on the basis of the liable agent of affliction – into three main categories, namely, a) self-inflicted, b) inflicted by humans or animals and c) inflicted by God. Each of the disabilities is to be judged as a) good (*hasan*) and just (*ʿadl*) or b) bad (*qabīh*), where bad can be further categorized 1) unjust (*ẓulm*) or 2) a useless act (*ʿabath*).

To the Muʿtazilites, inflicting pain in general is bad (*sharr*) but it is still possible to inflict harm in such a way that the act in question is judged as good. This means that doing harm can be good only by exception. ʿAbd al-Jabbār (d. 415/1025) pointed this out by stating that doing harm is an injustice unless this harm:

- Involves a profit greater than the harm,
- Averts a harm greater than the inflicted harm,
- Is deserved, or
- Is done on the assumption that it is one of the three cases as mentioned above,⁹³
- If the harm is done to someone else, the act must be done with the intention of providing a profit, and
- If the harmed person is an adult of sound mind, then he must give his consent to be harmed for this profit.⁹⁴ However, in the case of living beings that are not in the full possession of mental faculties and are put into one's care, it is deemed good if one harms them when one assuming that this will lead to a profit for them in the future or that it will avert an expected harm.⁹⁵

Thus self-inflicted disability or disability inflicted by others is good as long as such conditions are fulfilled. However, disability inflicted to avert an equal harm suffered is deemed a useless act (*ʿabath*).⁹⁶ Basing our discussion on what has been stated here, the three sorts of afflictions can be analysed as following:

majority (*bulūgh*). In this sense, animals and children and insane people fall under the category of non-*mukallafūn*. For further details on the term, legal liability (*taklīf*) and its derivatives, *mukallaf* and *ghayr mukallaf*, see Kamali, Muhammad Hashim (2003), pp. 425-450; Gimaret, D. (1) (2003), vol. X, pp. 138 & 139. For further information on the Muʿtazilite theory of *Taklīf*, see ʿUthmān, ʿAbd al-Karīm (1971).

⁹³ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 298 & 316; Heemskerck, Margaretha T. (1995), p. 135.

⁹⁴ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 345 & 396; Heemskerck, Margaretha T. (1995), p. 136.

⁹⁵ See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 362; Heemskerck, Margaretha T. (1995), p. 144.

⁹⁶ See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 314 & 331; Heemskerck, Margaretha T. (1995), p. 133.

The first type, namely, those self-inflicted afflictions, which do not involve gaining a profit or averting harm greater than the harm suffered, is deemed by the Muʿtazilites a bad act because it is a form of injustice (*ẓulm*) to oneself and thus not compensated by God or anyone else.⁹⁷ However such pain is to be compensated if it is done with the intention of averting a harm, because the person in that case does not obtain a profit that can take the place of compensation. Also self-inflicted affliction is to be recompensed in case it is done on the assumption that it will yield a profit in the future but it did not do so. In these two cases pain is to be compensated by God.⁹⁸

As for the second type in this regard, viz., afflictions inflicted by others, the main rule is that the initiative to inflict pain or cause disability determines who compensates. Thus both *mukallaf* and non-*mukallaf* must compensate for the pain they inflict on another living being even if he/she does not know that they are entitled to compensation equal to the quantity of pain.⁹⁹ However, humans cannot know precisely how much compensation they must make for pain. This means that they are unable to fulfil the obligation to compensate for pain.¹⁰⁰ Thus it is God who will mediate in executing the process of compensation. God is Omniscient and therefore knows exactly how much compensation must be given for each pain. ʿAbd al-Jabbār opined that this mediation is obligatory for God: after having enabled a wrongdoer (*ẓālim*) to wrong someone else and not having prevented him from doing so, God is obliged to pass a verdict on this wrongdoer and to administer justice between the wrongdoer and the wronged (*mazlūm*).¹⁰¹

God is going to administer justice in this case by taking the required quantity of compensation from the person who inflicted the pain and transfer it to the person who suffered the pain.¹⁰² It is to be noted that administering justice in this respect does not mean that God may take part of a wrongdoer's reward and transfer it to the person wronged by him. That is because reward can be earned only by fulfilling a difficult task.¹⁰³ Administering justice in this regard will be done by transferring the compensation from one account to another. ʿAbd al-Jabbār explained this by saying that every living being is entitled to Divine compensation for pain and harm that God made him suffer. From this

⁹⁷ See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 489, 522 & 558; Heemskerk, Margaretha T. (1995), p. 174.

⁹⁸ See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 490 & 491; Mānkḍīm, Aḥmad b. al-Ḥusayn b. Abū Hāshim al-Ḥusaynī Shashdīw (1965), p. 501 Heemskerk, Margaretha T. (1995), pp. 174, 175 & 176.

⁹⁹ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 484, 492 & 493; Heemskerk, Margaretha T. (1995), p. 167, 168 & 182.

¹⁰⁰ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 454; Heemskerk, Margaretha T. (1995), p. 182.

¹⁰¹ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 472; Heemskerk, Margaretha T. (1995), p. 183.

¹⁰² ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 472; Heemskerk, Margaretha T. (1995), p. 183.

¹⁰³ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 445; Heemskerk, Margaretha T. (1995), p. 189.

theory, it can be concluded that God is a sort of bookkeeper, who keeps the accounts of the compensation that each creature is entitled to receive from Him and transfers amounts from one account to another.¹⁰⁴ However, in the light of this theory, what would be the case of the malicious person who inflicted so much pains and harms on other living beings that he does not have enough “credit, i.e. in the Hereafter” to be transferred to all those who have been wronged by him? For this question, three main answers are provided by Mu‘tazilite theologians with a common stress on the fact that people who are wronged must be compensated anyhow:

The first: If these people who have been wronged cannot get compensation from that malicious person, God will ensure that they are compensated by Him as a donation (*tafaḍḍu*) from Him.¹⁰⁵

The second: If a wrongdoer does not have enough compensation to compensate for crimes that are committed on his orders, he must compensate only for crimes he has committed with his own hands. In that case, those who acted on his command must themselves make compensation for these acts unless they acted under constraint.¹⁰⁶

The third: It is a sort of exaggeration to think that some people even if they are tyrants could have insufficient divine compensation for all of their acts of injustice. ‘Abd al-Jabbār advocated this idea by saying that we cannot know how many sorrow, pain, misfortune and terrifying events have happened to this wrongdoer and how much compensation will be given by God for these sufferings.¹⁰⁷

The only exception concerning the obligation of compensating for the pain inflicted is made for pain that is not inflicted on one’s initiative.¹⁰⁸ Thus, if a judge wrongly decreed that someone’s hand be amputated in a *ḥadd* punishment and the executor carried this decree out, then it is the judge who must compensate the wrongly condemned person and not the executor because amputation here is done on the initiative of the judge.¹⁰⁹ Also the pain that leads to a greater profit needs not be compensated because the profit acquired

¹⁰⁴ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 530 & 482; Heemskerck, Margaretha T. (1995), p. 183.

¹⁰⁵ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 540; Heemskerck, Margaretha T. (1995), p. 184. This suggestion was rejected by ‘Abd al-Jabbār on the ground that giving the compensation as a donation to the person wronged is as if a donation is given to the wrongdoer and then transferred to the person wronged. It is, ‘Abd al-Jabbār declares, unthinkable that God would make donations to wrongdoers. For further details on this point, see ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 543 & 544.

¹⁰⁶ It is clear that this solution conflicts with the Mu‘tazilite rule that someone who commands someone else to inflict pain on a third person, must compensate for this pain himself. See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 492 & 493; Heemskerck, Margaretha T. (1995), p. 167, 182 & 185.

¹⁰⁷ For further details, see ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 449, 543 & 472; Heemskerck, Margaretha T. (1995), p. 184.

¹⁰⁸ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 492 & 493; Heemskerck, Margaretha T. (1995), p. 167.

¹⁰⁹ See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 493.

replaces the compensation.¹¹⁰ Thus, a surgeon by performing a surgery, in which he excised his patient's gangrenous hand, is not obliged to pay compensation. That is because the profit acquired; saving the patient's life by preventing the gangrene affecting other parts of the body, is greater than the harm caused by the disability inflicted.

As for the moment of providing compensation and its duration, this is to be discussed when we speak about compensation provided by God for harm and the pain He inflicted on living beings.

The purpose of setting the aforementioned conditions was to draw an analogy between the Present world (*al-shāhid*) and the Absent (Divine) world (*al-ghā'ib*) and finally to confirm that the third type of afflictions, those inflicted by God, are always good; the good that can be recognised by human intellect.¹¹¹ However, such analogy was not always exact or without problems. For instance, three prominent Mu'tazilite theologians, namely, 'Abd al-Jabbār (d. 415/1025), Mānkdim (d. 425/1034) and Ibn Mattawayh (d. ca 468/1075) put aside the aforementioned second and fourth conditions in the case of pain imposed by God. They crossed out the possibility that God's infliction of pain is good because it averts a greater harm. They pointed out that this would be in conflict with God's Omnipotence.¹¹² Also the possibility that God's infliction of pain is good because it is done *on the supposition that* that it involves a profit or averts harm is dropped. That is because Allah's Omniscience implies that supposition (*ẓann*) is impossible for Him.¹¹³

Also, by applying such an analogy between the Present world and the Absent World, the last condition placed the Mu'tazila in an awkward position. How could God's imposition of illnesses on adult people of sound mind be deemed good while they did not give Him the consent to be harmed? Mu'tazilite scholars provided three answers to this question:

The first answer was that the relation between God and humans is like the relation between the caretaker and children, madmen and animals under his custody. The caretaker is entitled to inflict pain on them without their consent if the pain would lead to a profit greater than the pain or avert harm greater than the pain, because they are put into his care and he knows what is best for them. Hence God does not have to ask for the humans' consent when He imposes pain on them. That is because it is God who created them and gave them life and is therefore in the best position to know what is good for them.¹¹⁴

This solution is rejected by other Mu'tazilite scholars. For instance, 'Abd al-Jabbār saw that this solution was in conflict with the theory that God imposes

¹¹⁰ See 'Abd al-Jabbār, al-Qādī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 490; Heemskerk, Margaretha T. (1995), p. 167.

¹¹¹ See Heemskerk, Margaretha T. (1995), p. 137.

¹¹² See 'Abd al-Jabbār, al-Qādī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 369; Mānkdim, Aḥmad b. al-Ḥusayn b. Abū Ḥāshim al-Ḥusaynī Shashdīw (1965), pp. 485 & 486; Heemskerk, Margaretha T. (1995), p. 167.

¹¹³ 'Abd al-Jabbār, al-Qādī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 369.

¹¹⁴ 'Abd al-Jabbār, al-Qādī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp.454 & 455; Heemskerk, Margaretha T. (1995), p. 137.

obligations on humans. He argued that this presupposes that they are adults and of sound mind, otherwise it would be wrong to impose obligations on them. That they are adults of sound mind implies that they should give their consent.

The second answer is based on thinking out a situation in which it is good to harm an adult of sound mind, even if he has not given his consent beforehand. Such a situation is obtained, if the compensation for the harm is so great that it is indisputable that all adults of sound mind (*mukallaḥ*), different as they are, would choose to bear this harm to obtain the compensation awarded for it, and the person who would not, must be considered as not being of sound mind.¹¹⁵

The third answer was suggested by Ibn Mattawayh who believed that those who are *mukallaḥ* have given God some kind of silent permission to inflict pain on them. His opinion is that if they know God, they also know that God will certainly compensate them for the pain He inflicts on them, and that He will make compensation so great that each of them would choose to bear the pain for it. To him, this amounts to giving permission to God to inflict pain.¹¹⁶

Apart from such nuances, Muʿtazilite scholars agree that disability – or harm in general – inflicted by God on the *mukallaḥ* is good because it is either 1) deserved punishment or 2) because it involves a profit or benefit (*maṣlaḥa*).¹¹⁷

2.3.1.1 Wise Purposes (Ḥikam)

2.3.1.1.1 Deserved Punishment

Inflicting pain as a deserved punishment is a point of disagreement among the Muʿtazilite theologians. There are two main opinions in this respect:

The first, articulated by Abū ʿAlī al-Jubbāʿī (d. 303/915),¹¹⁸ is that pain can be a divine punishment that God inflicts in advance, like the prescribed punishments (*ḥudūd*). *Ḥadd* punishments are only given to Muslims, so it is also possible that illnesses which unbelievers suffer are punishments inflicted on them instead of *ḥadd* punishments.¹¹⁹ However, he made an exception for illnesses suffered by living beings that according to his doctrine cannot have deserved punishment, such as prophets and animals. Prophets cannot have deserved punishment from God because they do not commit grave sins and animals are not legally responsible (non-*mukallaḥ*).¹²⁰ Abū ʿAlī therefore

¹¹⁵ ʿĪjī, ʿAḍud al-Dīn ʿAbd al-Raḥmān b. Aḥmad al- (1997), vol. 3, p. 290; ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p.322; Mānkdim, Aḥmad b. al-Husayn b. Abū Ḥāshim al-Ḥusaynī Shashdīw (1965), p. 492; Heemskerk, Margaretha T. (1995), pp. 137 & 138.

¹¹⁶ Heemskerk, Margaretha T. (1995), pp. 138 & 166.

¹¹⁷ See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 369 & 417; Heemskerk, Margaretha T. (1995), pp. 161, 166 & 167. Cf. Ibn al-Qayyim (1348/1929), Vol. 1, p. 324; Ghazālī, Abū Ḥāmid al- (1985), Vol. 1, p. 204.

¹¹⁸ He is Abū ʿAlī Muḥammad b. ʿAbd al-Waḥḥāb al-Jubbāʿī, on him see Ibn al-ʿImād (I), vol. 2, p. 97.

¹¹⁹ This opinion has been articulated by Abū ʿAlī al-Jubbāʿī. See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 431; Heemskerk, Margaretha T. (1995), p. 160.

¹²⁰ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XV, pp. 300-303; Heemskerk, Margaretha T. (1995), p. 160.

believed that the prophets' illnesses are a trial (*miḥna*) imposed on them by God and not a *lutf* (Divine Assistance).¹²¹ The difference between *lutf* and trial is that a *lutf* can motivate not only the person who suffers but other persons as well, whereas a trial only concerns the person who suffers.¹²²

The second was held by Abū Hāshim (d. 321/933)¹²³ and ʿAbd al-Jabbār (d. 415/1025). In this regard ʿAbd al-Jabbār was initially keen to reject the idea that illnesses and pains are deserved punishments as was believed by whom he called the adherents of the transmigration of souls (*aṣḥāb al-tanāsukh*).¹²⁴ By this, ʿAbd al-Jabbār refers to those who believed that living beings suffer in this life because of their bad acts in their previous lives. Consequently, those who had sinned less and obeyed more were given a body more beautifully formed and their sufferings were less. Those whose sins were more were given a body less beautiful in form and suffered more.¹²⁵

The two main proponents of this opinion stated that illnesses in general can not be intended as punishment. They cited two arguments in support of this contention. First, it is wrong to punish someone unless he knows what he is being punished for. Someone who is ill does not know whether his illness is a punishment, and even if he did understand that it was a punishment, he would not know which offence he was being punished for.¹²⁶ Such a person may think that an injustice is being done to him and this may prompt him to do bad acts. This makes it clear, they add, that illnesses are not a punishment from God.¹²⁷ Even the illnesses of people who are aware that they have failed to fulfil the obligations of God's *taklīf* (charge) and know that they deserve punishment are not a punishment. Inflicting illnesses on them as a punishment conflicts with the theory of God's *taklīf*. According to this theory, God threatens those who fail to fulfil the obligations with a severe punishment. This means that their

¹²¹ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 431, 104 & 105. For further details on *lutf*, see the following item.

¹²² Heemskerk, Margaretha T. (1995), p. 160.

¹²³ He is Abū Hāshim ʿAbd al-Salām ibn Abī ʿAlī al-Jubbāʾī, on him see Dhahabī, Muḥammad b. Aḥmad b. ʿUthmān al- (1413/1992), vol. 15, pp. 63 & 64.

¹²⁴ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 379 & 381; Heemskerk, Margaretha T. (1995), p. 159.

¹²⁵ The most well-known Muʿtazilī theologians who accept the doctrine of metempsychosis is Aḥmad b. Khābiṭ [according to other readings Aḥmad ibn Ḥāʾit, on the different readings of Aḥmad's father, see Baghdādī, Abū Manṣūr ʿAbd al-Qāhir al- (1920), p. 260 f.; Friedlaender, Israel (1908), 10 f.] and his followers (al-Khābiṭiyya or al-Ḥāʾiṭiyya). See Shahrastānī, Muḥammad b. ʿAbd al-Karīm al- (1416/1996), vol. 1, pp. 74-77; Shahrastānī, Muḥammad b. ʿAbd al-Karīm al- (1984), pp. 53-56; Ījī, ʿAḍud al-Dīn ʿAbd al-Rahmān b. Aḥmad al- (1997), vol. 3, pp. 666 & 667; Baghdādī, Abū Manṣūr ʿAbd al-Qāhir al- (1920), p. 93; Baghdādī, Abū Manṣūr ʿAbd al-Qāhir al- (1977), p. 255. Also among the Muʿtazilīs who advocated this doctrine are al-Faḍl al-Ḥadathī and his followers al-Ḥadathīyya, Aḥmad ibn Ayyūb ibn Yanūsh and Muḥammad ibn Aḥmad al-Qaḥṭabī, see Baghdādī, Abū Manṣūr ʿAbd al-Qāhir al- (1977), p. 255; Baghdādī, Abū Manṣūr ʿAbd al-Qāhir al- (1920), p.93. see also Ibn Yūsuf, Marʿī (1410/1989), vol. 1, p. 58.

¹²⁶ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 140, 105, 431 & 432; Heemskerk, Margaretha T. (1995), p. 160.

¹²⁷ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 415 & 416; Heemskerk, Margaretha T. (1995), p. 160.

punishment must be more than only suffering illnesses in this world. It implies that they will be punished in the Hereafter.¹²⁸ Secondly, prophets and pious people suffer from illnesses, although they cannot have deserved punishment from God. This is an indication that illnesses are not a punishment.¹²⁹

However, ‘Abd al-Jabbār – one of the proponents of the second opinion – does not deny that there is pain in this world inflicted by God, or on His command, that is meant to be a deserved punishment. However, in these cases the punished persons know why they are punished. An example of such a deserved punishment from God is a *ḥadd* punishment, although it is carried out by humans, it is considered to come from God because it is done on His command.¹³⁰

In this regard it was asked what God would do in the case of a believer whose hand had been cut off and who then apostatised, and conversely in the case of an infidel whose hand had been cut off and who then came to believe. The simplest response was that he would be compensated by God; another hand would be substituted. By other Mu‘tazilites it was held that the hand of the apostatising believer would be attached to the repentant infidel, while the infidel’s hand (which had been amputated while he still disbelieved) would be affixed to the apostate. Still others rejected this on the ground that the believer and disbeliever are not “the hand and the leg”.¹³¹

2.3.1.1.2 Divine Assistance (Luṭf)¹³²

¹²⁸ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 417 & 418; Heemskerk, Margaretha T. (1995), p. 160.

¹²⁹ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 407; Heemskerk, Margaretha T. (1995), p. 160.

¹³⁰ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 417; Heemskerk, Margaretha T. (1995), p. 161.

¹³¹ Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (I), p. 252.

¹³² It is difficult to find an adequate translation for this term. Abrahamov held that translating *luṭf* as “Divine Assistance” is preferable to “Grace”. See Abrahamov, Binyamin (1993), p. 43, note 16. But it can be objected that this translation (Divine Assistance) suggests that *luṭf* is only produced by God. However in the Mu‘tazilite theology, humans can also produce *alṭāf* (the plural of *luṭf*) by their acts such as performing the Prayer (*Ṣalāh*) in the sense that it motivates other people to be obedient as well. See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XV, p. 22. *Luṭf* therefore may be translated as “Actions that assist and motivate people to fulfilling the obligations of God’s *taklīf*” but this translation is not feasible because it is too long. Here “Divine Assistance” has been chosen in this regard due to the fact that the term *luṭf* is used in a context referring mainly to acts produced by God only. For further details on this point, see Heemskerk, Margaretha T. (1995), p. 157. On the definitions of the term *luṭf* given by Mu‘tazilī theologians, see Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (I), p. 246; Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (I), p. 246; Shahrastānī, Muḥammad ibn ‘Abd al-Karīm al- (1416/1996), vol. I, p. 79 & 94; Shahrastānī, Muḥammad b. ‘Abd al-Karīm al- (1984), pp. 56 & 57; ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. VI/1, p. 188; Heemskerk, Margaretha T. (1995), p. 156. It is to be noted also that as regards bestowing *luṭf* upon man, the necessity of this is disputed in the Mu‘tazilite School. See Ash‘arī, Abū al-Ḥasan ‘Alī b. Ismā‘īl al- (I), pp. 246 & 247; Shahrastānī, Muḥammad b. ‘Abd al-Karīm al- (1416/1996), p. 57. On the Shī‘ī doctrine on this point, see ‘Ukbarī, Muḥammad b. Muḥammad b. al-Nu‘mān al- (Known as al-Shaykh al-

As for the nature of the benefit (*maṣlaḥa*) ensuing from God's infliction of pain, opinions in the Mu'tazilī School fluctuate between *luṭf* (Divine Assistance) and *ʿiwāḍ* (Compensation). Broadly speaking, several of God's actions towards humans have a relation to God's *taklīf* (charging).¹³³ God imposes obligations on all adults of sound mind (*mukallafūn*) with the purpose of giving them the opportunity to earn a reward.¹³⁴ This means that if God's purpose is to give people the opportunity to earn a reward, He must impose on them something difficult but not so difficult that it is impossible, because it is bad (*qabīḥ*) to impose an impossible task and of course God does not perform the bad.¹³⁵ Thus God is *obliged to do* certain things and acts to enable people to fulfil that which He has imposed on them.¹³⁶ These acts are performed with the purpose of a) informing people about which obligations are imposed on them or b) motivating them to fulfil these obligations. These acts of God are deemed *altāf* (the plural of *luṭf*). For instance God's sending of prophets to the people in order to inform them about obligations imposed on them is a *luṭf*.¹³⁷

In this sense, pain from God is an important *luṭf* and a warning (*i'tibār*) as well. Abū Ḥāshim argues that God's infliction of pain would be a useless act (*ʿabath*) if it was not a warning.¹³⁸ Mankdīm added that the warning is intended either for the person in pain or for others or for both.¹³⁹ By this, Mu'tazilite scholars could mean that pains in this life warn people for a painful punishment in Hell if they fail to fulfil the obligations imposed by God.¹⁴⁰ Although there is no direct reference specifically to disability in the Mu'tazilite sources, one can still think of a relevant argument. For instance, disabilities could be deemed as warning people against those sorts of disabilities taking place in the Hereafter. For instance, the Qur'ān states that those who went astray from the Straight Path in this life will be resurrected on the Day of Resurrection having blindness, dumbness and deafness, "It is he whom Allah guides, that is on true Guidance; but he whom He leaves astray – for such wilt thou find no protector

Mufīd (1371/1951), pp. 16 & 17; Hillī, Ḥasan b. Yūsuf b. ʿAlī b. al-Muṭahhar al- (1958), pp. 50-52. On critique of this doctrine, see Ibn Ḥazm, Abū Muḥammad ʿAlī (1), vol. 3, p. 92-105.

¹³³ *Taklīf* is the verbal noun of *kallafā*. *Taklīf* is defined by the Mu'tazilite scholar Abū ʿAlī al-Jubbāʾī as "Willing an act [to be done] that involves discomfort (*kulfā*) and trouble (*mashaqqā*) to the person on whom it is imposed" or "Commanding and willing something that involves discomfort for the person who is commended to do it." See ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 293; Heemskerk, Margaretha T. (1995), p. 152.

¹³⁴ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 420; Heemskerk, Margaretha T. (1995), p. 154.

¹³⁵ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. VI/1, p. 61; Heemskerk, Margaretha T. (1995), p. 154.

¹³⁶ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XI, pp. 292 & 293; Heemskerk, Margaretha T. (1995), p. 154.

¹³⁷ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XV, p. 22 & vol. XI 292; Heemskerk, Margaretha T. (1995), pp. 154 & 156.

¹³⁸ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 390; Heemskerk, Margaretha T. (1995), p. 164.

¹³⁹ Mankdīm, Aḥmad b. al-Ḥusayn b. Abū Ḥāshim al-Ḥusaynī Shashdīw (1965), p. 14-17; Heemskerk, Margaretha T. (1995), p. 165.

¹⁴⁰ Heemskerk, Margaretha T. (1995), p. 159.

besides Him. On the Day of Judgment We shall gather, them together, prone on their faces, blind, dumb, and deaf: their abode will be Hell: every time it shows abatement, We shall increase from them the fierceness of the Fire” (Qur’ān 17:97).

2.3.1.1.3 Compensation (*‘Iwad*)¹⁴¹

As stated above the initiative to inflict pain or cause disability, whether done by a *mukallaf* or a non-*mukallaf* determines who compensates.¹⁴² As usual, by drawing an analogy between the present and the transcendent (divine) world, Mu‘tazilite theologians stated that pain inflicted by God or by His command or permission is compensated for by Him. God gives the compensation in order to ensure that His infliction of pain is not a bad act. Without such compensation God’s act would be an injustice.¹⁴³

As for the time of providing compensation, some Mu‘tazilites such as al-‘Allāf (d. between 227-235/841-849)¹⁴⁴ and Abū ‘Alī al-Jubbā’ī (d. 303/915),¹⁴⁵ stated that it must be in the Hereafter¹⁴⁶ whereas some others including ‘Abd al-Jabbār and Abū Hāsim opined that it can be provided by God in this life or in the Hereafter.¹⁴⁷ But anyhow God gives the compensation after the harm is done and not beforehand.¹⁴⁸ However there are some particular cases of pain for which compensation cannot be given in this world. For instance, those who suffer pain while dying can be compensated for this pain only after their death.¹⁴⁹ Broadly speaking, it is God who determines whether a person will be compensated in this world or in the Hereafter. Being Omniscient, God compensates each creature at the best moment for him.¹⁵⁰ However, compensation to be given by God in the Hereafter can not be remitted by the

¹⁴¹ For the Shī‘ī opinions on, see Ḥillī, Ḥasan b. Yūsuf b. ‘Alī b. al-Muṭahhar al- (1958), pp. 52 & 53; Mutahhari, Murtada (2002), pp. 80-83.

¹⁴² ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 492 & 493; Heemskerk, Margaretha T. (1995), p. 167 & 182.

¹⁴³ See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 390 & 391; Heemskerk, Margaretha T. (1995), pp. 164 & 165. In this regard ‘Abbād al-Ḍamīrī [or Ḍayma‘ī or Ḍamrī according to other readings, He is one of the Mu‘tazila who lived in the days of al-Ma‘mūn. On him see ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1406/1986), vol. 3, p. 229] stated that it is possible to inflict pain for warning (*i‘tibār*) only without giving compensation.

¹⁴⁴ He is Abū al-Hudhayl Muḥammad b. al-Hudhayl al-‘Allāf, on him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, pp. 542 & 543.

¹⁴⁵ He is Abū ‘Alī Muḥammad b. ‘Abd al-Wahhāb al-Jubbā’ī, on him see Ibn al-‘Imād (I), vol. 2, p. 97.

¹⁴⁶ Ījī, ‘Aḍud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 3, p. 289.

¹⁴⁷ See Ibid, vol. 3, p. 289; ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 494 & 520; Mānkḍīm, Aḥmad b. al-Ḥusayn b. Abū Hāshim al-Ḥusaynī Shashdīw (1965), p. 97; Heemskerk, Margaretha T. (1995), pp. 186 & 187.

¹⁴⁸ See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 520 & 521; Heemskerk, Margaretha T. (1995), p. 186.

¹⁴⁹ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 520; Heemskerk, Margaretha T. (1995), p. 186.

¹⁵⁰ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 526 & 527; Heemskerk, Margaretha T. (1995), p. 186.

person entitled to. That is because the possibility of remitting compensation is related to the possibility of claiming it and compensations to be given in the Hereafter cannot be claimed in this world.¹⁵¹

Concerning providing the compensation in the Hereafter, ‘Abd al-Jabbār stressed that God’s giving of compensation in the Hereafter should not lead to a situation where someone who has not fulfilled the obligations of the *taklif* would receive something that amounts to a reward from God.¹⁵² But this does not negate the fact that even people in Hell will receive the compensation they are entitled to. That fact that these people deserve a punishment does not nullify their right to be compensated for the pain and illnesses they suffered. That is because compensation, unlike reward, is not given with honour or respect for the recipient. Hence, there is no reason to think that people in Hell will not be compensated.¹⁵³ However, compensation given to people in Hell cannot consist of the same things that are given to people in Paradise. Rationally, giving pleasure can be equated with taking away pain. It is therefore possible that God diminishes the punishment of people in Hell in proportion to the compensation they are entitled to receive.¹⁵⁴

2.3.2. Afflictions Befalling those without Legal Liability (non-*Mukallafūn*)

Broadly speaking, the Mu‘tazilites devoted much ingenuity to the problem of the seemingly unmerited suffering, particularly that of infants and animals.¹⁵⁵ As stated above, in the Mu‘tazilite view God does nothing without purpose and in all that He does, He intends only benefit. How might this tenet be reconciled with the sufferings of the non-*mukallafūn* especially the innocent children. More than one answer was given to this question. Here opinions are to be categorised into two main groupings, namely, the *aṣḥāb al-tanāsukh* (those who believed in metempsychosis or the transmigration of souls) and the majority view maintained by the Mu‘tazila:

2.3.2.1 Adherents of Metempsychosis (*Aṣḥāb al-Tanāsukh*)

That disabilities, illnesses and misfortunes inflicting the children, insane people and animals are sorts of deserved punishment is a contention advocated by

¹⁵¹ See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 532 & 533; Heemskerk, Margaretha T. (1995), pp. 187 & 188.

¹⁵² ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 545; Heemskerk, Margaretha T. (1995), p. 189.

¹⁵³ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 524; Heemskerk, Margaretha T. (1995), pp. 191 & 192. In this respect, some Mu‘tazilites negated the possibility that people in Hellfire would receive any compensation there. That is because in Hellfire, the pleasures ensuing from receiving compensation and pains proceeding from the fire of the Hell cannot coincide together. See Ījī, ‘Aḍud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 3, pp. 288.

¹⁵⁴ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 486 & 523; Heemskerk, Margaretha T. (1995), p. 192.

¹⁵⁵ Ormsby, Eric L. (1984), p. 27.

those Mu‘tazilīs who believed in metempsychosis.¹⁵⁶ They said that one’s pains and illnesses in this life are because of one’s sins committed in a previous life.

They held that God created men healthy, sound in body and intelligent, in an adult state, and in a world other than this one in which they now live. He created in them the full knowledge of Himself and showered on them His blessings. God then placed them under an obligation to show gratitude to Him. Some of them obeyed him in all, that he had commanded and some disobeyed in all whereas the third group obeyed in some things and disobeyed in others. God allowed those who obeyed in all things to remain in Heaven where He had placed them from the beginning. Those who were disobedient in all things God cast them out of Heaven and put in a place of punishment, namely, Hell. Those who were partly obedient and partly disobedient God sent them to this world and clothed them in these gross bodies. He also subjected them to adversity, suffering, hardship and comfort, pain and pleasure. In this life, too, He gave them different forms, some having the form of men and some of animals according to the measure of their sins. Those who had sinned less and obeyed more were given a body more beautifully formed and their sufferings were less. Those whose sins were more were given a body less beautiful in form and suffered more. Henceforward these will not cease to be an animal over and over again, one form succeeding another, as long as their acts of obedience and disobedience remain.¹⁵⁷

Furthermore, the adherents of this doctrine claimed that even all species of animals are charged with the duty of observance (*taklīf*) and upon all of them ordinances and prohibitions have been imposed in accordance with their diverse forms and methods of expression.¹⁵⁸ Moreover, a messenger from God to every kind of living being even the bugs, lice and fleas will never cease to appear, while God’s charge to the living being will always continue.¹⁵⁹

¹⁵⁶ The most well-known Mu‘tazilī theologians who accepted the doctrine of metempsychosis is Aḥmad b. Khābiṭ [according to other readings Aḥmad ibn Ḥā’it, on the different readings of Aḥmad’s father, see Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1920), p. 260 ff.; Friedlaender, Israel (1908), p. 10 ff.] and his followers (al-Khābiṭiyya or al-Ḥā’iṭiyya). See Shahrastānī, Muḥammad b. ‘Abd al-Karīm al- (1416/1996), vol. 1, pp. 74-77; Shahrastānī, Muḥammad b. ‘Abd al-Karīm al- (1984), pp. 53-56; Ījī, ‘Adud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 3, pp. 666 & 667; Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1920), p. 93; Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1977), p. 255. Also among the Mu‘tazilīs who advocated this doctrine is al-Faḍl al-Ḥadathī and his followers al-Ḥadathiyya, Aḥmad ibn Ayyūb ibn Yanūsh and Muḥammad ibn Aḥmad al-Qaḥṭabī, see Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1977), p. 255; Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1920), p. 93. See also Ibn Yūsuf, Mar‘ī (1410/1989), vol. 1, p. 58.

¹⁵⁷ Shahrastānī, Muḥammad b. ‘Abd al-Karīm al- (1416/1996), vol. 1, p. 75; Shahrastānī, Muḥammad b. ‘Abd al-Karīm al- (1984), p. 54. See also Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1977), pp. 255-258; Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1920), pp. 93-98.

¹⁵⁸ Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1977), p. 256; Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1920), pp. 95 & 96. It is to be noted that such claim that animals are also *mukallafūn* is forcefully rejected in Islam. On this see Ibn Ḥazm, Abū Muḥammad ‘Alī (1), vol. 1, pp. 96-75.

¹⁵⁹ Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1977), p. 257; Baghdādī, Abū Maṣṣūr ‘Abd al-Qāhir al- (1920), pp. 96 & 97; Ibn Ḥazm, Abū Muḥammad ‘Alī (1), vol. 1, p. 69. It is to be noted that this contention advocated by *aṣḥāb al-tanāsukh* is forcefully criticised and refuted by the other Mu‘tazilī theologians. See ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol.

2.3.2.2 The Majority View

The Mu‘tazilites could not comfortably claim that children underwent pain as a means of *luṭf* for them. Nor could they claim that children’s suffering was the requisite tribulation through which reward might be won. That is because children possess no juridical status for responsibility (*taklīf*) under Islamic law. Various solutions were offered to this seemingly insoluble problem.¹⁶⁰

Some Mu‘tazilites denied that God caused any undeserved pain.¹⁶¹ Thus, they added, children only feel pain inflicted on them by humans and not pain inflicted by God.¹⁶² ‘Abd al-Jabbār refuted this opinion by pointing out that every adult knows that during his childhood he suffered pain in the same way as in his adulthood.¹⁶³ Children become ill just as adults do. From this, ‘Abd al-Jabbār concluded that children suffer from illnesses produced by God.¹⁶⁴ Others, including al-Nazzām (d. ca. 231/845),¹⁶⁵ held that children’s suffering is, indeed, God’s doing but that it occurs through “the necessary course of events.”¹⁶⁶ However, in the majority view, God inflicted pain on infants for two main purposes:

2.3.2.2.1 Divine Assistance (*Luṭf*)

Each illness is a *luṭf*. Adults of sound mind can profit from the motivation contained in illnesses and deserve a reward by fulfilling the obligations of God’s *taklīf*. Thus, after having reached maturity, children become *mukallaf* so that they can also profit from the *luṭf* contained in their illnesses. However, children who die before reaching maturity cannot do this: they cannot deserve a reward, as they never become *mukallaf*. However, such children’s suffering is not useless: adults living near to them can profit from the *luṭf* contained in their illnesses. Generally speaking pain suffered by a non-*mukallaf* can be a *luṭf* for a

XIII, pp. 379 & 381; Heemskerk, Margaretha T. (1995), p. 159. For a full account of the refutation of the doctrine of transmigration of souls, see Ibn Ḥazm, Abū Muḥammad ‘Alī (I), vol. 1, pp. 67-75 & vol. 4, p. 150.

¹⁶⁰ Ormsby, Eric L. (1984), p. 245.

¹⁶¹ Ibid; Al-Nāshī’ al-Akbar (d. 293/905), in Ess, Josef van (1971), p. 98.

¹⁶² ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, pp. 382 & 383; Heemskerk, Margaretha T. (1995), p. 162. Some of the Mu‘tazilites claimed even that children and animals do not feel any sort of pain. See Ījī, ‘Aḍud al-Dīn ‘Abd al-Raḥmān b. Aḥmad al- (1997), vol. 3, p. 290.

¹⁶³ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 382; Heemskerk, Margaretha T. (1995), p. 162.

¹⁶⁴ ‘Abd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 385; Heemskerk, Margaretha T. (1995), pp. 162.

¹⁶⁵ On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, pp. 541 & 542; Ess, Josef van (2003).

¹⁶⁶ Ormsby, Eric L. (1984), p. 245; Al-Nāshī’ al-Akbar (d. 293/905), in Ess, Josef van (1971), p. 98.

mukallaf. Illnesses and disabilities of children serve as a clear example here because they are a sort of *luṭf* for parents.¹⁶⁷

2.3.2.2.2 Compensation (*ʿIwāḍ*)

Being a *luṭf* for the *mukallafūn* around them does not fully justify the disabilities and sufferings of children who die before reaching maturity. There must be a profit for the children as well. It would be bad, Muʿtazilites argued, if God inflicted illnesses on them from which only other people can profit and not they themselves.¹⁶⁸ The profit that children can get from their illnesses is a compensation (*ʿiwaḍ*) given to them by God.

As for compensation given to children, the majority of the Muʿtazila stated that those children who have not received all their compensation in this world, it is inevitable that God will revive them, together with the *mukallafūn*, on the Day of Resurrection so that they can receive their compensation in the Hereafter.¹⁶⁹

2.4 Middle-Course Approach

The advocates of this approach pondered over the clashing arguments presented by the first two groups and contended that truth lies in a balance between these two. The pro-theodicy group was criticized because their understanding of the divine justice ultimately placed the sayings, actions and movements of Angels, human beings and jinns beyond God's power, will and creation. The anti-theodicy group was criticized for overemphasizing the divine omnipotence by which they negated the freedom of human beings to act in life according to their own will.¹⁷⁰

Combining between divine names and attributes expressing God's omnipotence and those indicating His justice and wisdom was seen as a Qur'anic phenomenon. For instance, the name indicating divine omnipotence, *Al-ʿAzīz* (the Powerful) occurs eleven times in the Qur'ān in combination with the name indicating God's mercy, *Al-Rahīm* (the Merciful).¹⁷¹ This combination occurs for instance in the context of afflicting previous nations and peoples with severe punishments for disobeying God's Messengers (Qur'ān 26:09, 86, 104, 122, 140, 159, 175 & 191). The same name, *Al-ʿAzīz*, occurs also in the Qur'ān twenty-nine times in combination with the name *Al-Ḥakīm* (the All-

¹⁶⁷ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XV, p. 22; Heemskerk, Margaretha T. (1995), pp. 161 & 162; Ashʿarī, Abū al-Ḥasan ʿAlī b. Ismāʿīl al- (I), p. 253; Ormsby, Eric L. (1984), p. 244.

¹⁶⁸ Heemskerk, Margaretha T. (1995), pp. 162.

¹⁶⁹ ʿAbd al-Jabbār, al-Qāḍī Abū al-Ḥasan (1380-1389/1960-1969), vol. XIII, p. 486; Heemskerk, Margaretha T. (1995), pp. 193 & 195. Also some Muʿtazilite theologians stated that animals can be compensated in life, on the day of Resurrection or in Paradise. See Ashʿarī, Abū al-Ḥasan ʿAlī b. Ismāʿīl al- (I), p. 254.

¹⁷⁰ Ibn al-Qayyim (1398/1977), pp. 3 & 4.

¹⁷¹ Qur'ān 26:9, 68, 104, 122, 140, 159, 175 & 191; 30:5; 32:6; 44:42.

Wise).¹⁷² A trawl through a number of these verses shows that some references are relevant to disability. For instance, the seventh instance of this combination (3:06) refers to the shaping of embryos in the wombs according to God's Will. Thus the wide range of differences among new-born babies; white, black, healthy, sick and those with disabilities is not an expression of one side of God's character. It is an indication of both His Omnipotence and His All-Wisdom. The fourteenth instance of this combination (5:38), conveys the divine order of amputating the hands as a punishment for committing the crime of robbery. The verse is concluded by these two names indicating that this order implying such punishment indicates, rather than contradicts, that God is both All-Powerful and All-Wise.¹⁷³ In this vein, when Sulaymān b. ʿAbd al-Wahhāb (1786-1818) wrote a commentary on *Kitāb al-tawhīd* written by his grandfather Muḥammad b. ʿAbd al-Wahhāb (d. 1703-1792), he gave it the title, *Taysīr al-ʿAzīz al-Ḥamīd fī sharḥ kitāb al-tawhīd* (The Facilitation of the Powerful the Worthy of Praise: A commentary on the Book of Unity).¹⁷⁴ This indicated that the phenomenon of combining names that would seem, at first contradictory, was common among the advocates of this approach.

As for the perfect and spotless character of God, advocates of this approach believed that the aforementioned two approaches portrayed ultimately an inadequate view of God. The retributive justice advocated by the Muʿtazilites and the voluntaristic divine justice promoted by the Ashʿarites were both criticized. Denying the wise purposiveness of God's acts done by the Ashʿarites and the wise purposiveness promoted by the Muʿtazilites to be measured by human standards are also both rejected.¹⁷⁵ The standpoint adopted in this third approach is epitomized in the following statement of Ibn Taymiyya, "Injustice is putting something in another than its proper place (*waḍʿ al-shayʿ fī ghayr mawḍiʿih*). Justice is putting [every] thing in its proper place. He-Glory be to Him- is a wise arbiter and just, putting things in their places. He puts everything in its place, which corresponds to it and which wise purpose and justice require. He does not differentiate between two identical things, and He does not equate two different things. He punishes only whomever deserves punishment and puts it in its place on account of the wise purpose and justice in that. As for the people of righteousness and God-fear, He does not punish them at all."¹⁷⁶

Although they uphold in principle the Muʿtazilī view that God's acts have always a wise purpose (*ḥikma*), the advocates of this approach have their own reservations in this respect. Ibn Taymiyya accused them of ending up in contradictions when they said that God acts for a wise purpose that is disjointed

¹⁷² See the Qurʾān 2:129, 209, 220, 228, 240 & 260; 3:6, 18, 62 and 126; 4:56, 158 & 165; 5:38 & 118; 8:49, 63 & 67; 9:40 & 71; 14:4; 16:60; 27:9; 29:26 & 42; 30:27; 31:9 & 27; 34:27; 35:2; 39:1; 40:8; 42:3; 45:37; 46:2; 57:1; 59:1 & 24; 60:5; 61:1; 62:1 & 3 & 64:18.

¹⁷³ See Ibn Taymiyya (1404/1983), vol. 2, p. 54.

¹⁷⁴ See Wahhāb, Sulaymān b. ʿAbd al- (1).

¹⁷⁵ For an overview of the arguments advanced against both Muʿtazilites and Ashʿarites concerning divine justice, see Hoover, Jon (2002), pp. 270-284. For wise purposiveness, see Hoover, Jon (2002), pp. 86-113.

¹⁷⁶ Ibn Taymiyya (1389/1969), p. 123. Cf. Hoover, Jon (2002), p. 282.

from Him and that benefits creatures but not Himself.¹⁷⁷ For him, it is irrational that any agent should do good to others without some judgement (*ḥukm*), profit, or praise accruing to the agent himself. Someone to whom praise and beneficence is ultimately indifferent- as in the Mu‘tazila view of God- is acting aimlessly, which, ironically in Ibn Taymiyya’s view, is precisely what the Mu‘tazila seek to avoid by attributing purpose to God’s Will.¹⁷⁸

According to the advocates of this approach, the theodicy of divine acts can be characterised by four main elements. **The first** element was the ongoing emphasis that no justification for the existence of evil and affliction should injure the perfect and spotless character of God. Contrary to the Ash‘arites who stressed on the divine power at the expense of divine justice and the Mu‘tazilites who did the opposite, this approach strove for a middle ground by maintaining balance between all Attributes of God and the emphasis on one of them should not be at the expense of the other.¹⁷⁹ They found it necessary to extract what is useful and appealing from both sides and to cast a side what they deemed harmful.¹⁸⁰

The second element was that attempts to search for the wise purposes behind the divine acts do not represent an eccentric phenomenon or an innovation in Islam. Recalling the prophetic tradition relating that Adam, having seen those with blindness, dumbness and the afflicted among his progeny, asked God, “Why did not you make all my progeny equal?”,¹⁸¹ they concluded that what is inadmissible in Islam is only to make such endeavours out of objection, casting doubts and the like.¹⁸²

The third element was the firm belief that no aspect of this world, however insignificant it may seem, is without a redeeming reason.¹⁸³ This holds true to the extent that wise purposes (*ḥikam*) of pains befalling different creatures are too many to be fully enumerated.¹⁸⁴ However, this belief should never lead to think that all wise purposes (*ḥikam*) of divine acts are traceable by the human intellect. That is because the human intellect is finite and limited whereas God’s wisdom is infinite and unlimited.¹⁸⁵ Thus, once there is a case or incidence

¹⁷⁷ Ibn Taymiyya (1406/1985), 3, p. 195; Hoover, Jon (2002), p. 109.

¹⁷⁸ Hoover, Jon (2002), p. 110.

¹⁷⁹ Ibn al-Qayyim (1398/1977), vol. 1, pp. 51 & 52; Qaraḍāwī, Yūsuf al- (1421/2000), pp. 35 & 36.

¹⁸⁰ See Ibn al-Qayyim (1398/1977), vol. 1, pp. 51 & 52; Qaraḍāwī, Yūsuf al- (1421/2000), pp. 47 & 48.

¹⁸¹ Mawṣilī, Abū Ya‘lā al- (1404/1984), vol. 11, p. 264; Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 7, p. 315; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), vol. 4, p. 107; Ibn Kathīr (1), vol. 1, pp. 78 & 88; Sa‘īd, Nadyā Muḥammad al- (1425/2004), p. 90.

¹⁸² Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, pp. 211-215; Ibn al-Qayyim (1418/1998), vol. 4, p. 1560.

¹⁸³ Ibn al-Qayyim (1398/1977), vol. 1, pp. 78, 184, 190-192 & 239; Ghazālī, Abū Ḥāmid (1334/1916), vol. 3, pp. 222 & 223; Ormsby, Eric L. (1984), p. 245.

¹⁸⁴ Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, pp. 211; Ibn al-Qayyim (1348/1929), vol. 2, p. 430.

¹⁸⁵ See Ibn al-Qayyim (1398/1977), vol. 1, p. 187.

whose wisdom cannot be fathomed out, a charge should be directed to the incapable mind of the humans not to the All-Wise God.¹⁸⁶

After mentioning the example of amputating a gangrenous hand and the possible goodness implied in it, al-Ghazālī elaborated on this point by saying, “Now, if a particular evil occurs to you without your seeing any good beneath it or you should think that it is possible that a particular good be achieved without being contained in evil, you should query whether your reasoning might not be deficient in each of these two trains of thought... So accuse you reasoning in both ways and never doubt that He is *the most merciful of the merciful* or that ‘His mercy takes precedence over His anger’”. Concluding this discussion with a mystic touch, al-Ghazālī says, “Beneath all this lies a secret whose divulgence the revelation prohibits, so be content with prayer and do not expect that it be divulged.”¹⁸⁷ The well-known mystic Muḥyī al-Dīn Ibn al-‘Arabī (d. 638/1240), in his *Al-Futūḥāt al-makkiyya* (Meccan Illuminations) shared al-Ghazālī’s viewpoint stressing that there is a wise purpose for every mode of being which, if still hidden from our vision, will appear through deeper insight in the course of time.¹⁸⁸ In this vein, ‘Azīz al-Nasafī, a thirteenth century mystic, compared the person who does not realise that the world is perfect to a blind man who enters a house and complains that everything is in his way.¹⁸⁹

In modern time, Abū al-‘Alā al-Mawdūdī (d. 1903-1978) condemned those who argue that the existence of widespread suffering is inconsistent with the image of a Wise, Merciful and All-Powerful God. In his article, *Kotah nazari* (Short Sightedness), al-Mawdūdī replied to this argument by drawing attention to two familiar cases. First, governments who take measures, which may involve some unavoidable suffering for a few, to promote the general welfare. Had they been aware of the real purpose of the government, those who suffer lodge complaint and abuse the governments would not have complained and condemned them. Another example al-Mawdūdī gives is that of a gardener. In order to maintain his garden properly and make it look more beautiful, the gardener must trim some plants, change their locations, even throw some out. Had the plants that are affected in the process had tongues, they would have certainly lodged their complaints. But if they could look at the whole garden and understand the entire planning of the gardener and his working, they would not raise an objection. Al-Mawdūdī argued that our position in this infinitely vast, immensely complex and extremely beautiful world is not at all better than a few sufferers among the masses of a country, or some plants in a garden. We are, he added, in no position to scan the entire universe and far less to comprehend its workings. If we pose the presence of evil in the world against the existence of God, our complaint will be in no way better than the complaint

¹⁸⁶ Ghazālī, Abū Ḥāmid al- (1407/1987), p. 65.

¹⁸⁷ Ghazālī, Abū Ḥāmid al- (1992), pp. 55-57.

¹⁸⁸ Diyāb, Adīb al-Nāyif (2000), p. 34

¹⁸⁹ Ridgeon, Lloyd (1998), p. 114.

of a few sufferers against the working of their government, or the complaints of some plants in the garden against the gardener.¹⁹⁰

The same line was also adopted by the Syrian scholar Sa'īd Ḥawwā (1935-1989)¹⁹¹ who accused such people not only of short-sightedness like al-Mawdūdī, but even of craziness.¹⁹² Adopting a less harsh tone, Yūsuf al-Qaraḍāwī (b. 1926) speaks about a sacred or inviolable area (*mantiqat ḥarām*) of God's predestination that should not be frequented and one of the inscrutable meanings (*asrār*) that should not be investigated. To him, fathoming out the wise purposes of pain and suffering in life is a thorny issue whose questions cannot be satisfactorily answered. What cannot be known in this regard is much more than what can be known.¹⁹³

The fourth element which characterised the middle-course approach in this regard was the priority of revelation over reason. The *ḥikma* propounded by revelation cannot be contradicted by rational arguments or thoughts.¹⁹⁴ That is because revelation is infallible whereas reason is prone to err.¹⁹⁵ By the same token the *ḥikma* proposed by the mind should not oppose any of the basic tenets of Islamic belief.¹⁹⁶

As was the case with the pro-theodicy approach, wise purposes of the existence of disabilities, within the broad framework of pain or suffering, will be divided into those related to the *mukallafūn* and those related to the non-*mukallafūn*. Contrary to the pro-theodicy approach, categorisation here is highly subjective and not always based on the strict separation between the two categories by the advocates themselves. Thus the possibility of overlap between *ḥikam* classified in these two categories should be kept in view.

2.4.1 Afflictions Befalling those with Legal Liability (*Mukallafūn*)

2.4.1.1 Disabilities: Punishment for Sins Committed?

In the introduction of her recent study on *Disability in Islamic Law*, Vardit Rispler-Chaim (University of Haifa) said in this respect, "It is never proclaimed that the disease is predestined by Allah so that the ill Muslim has an

¹⁹⁰ Ansari, M. Abdul Haq (2003), pp. 529 & 530.

¹⁹¹ On him, see Weismann, Itzhak (1997), pp. 131-154.

¹⁹² Ḥawwā, Sa'īd (1424/2004), pp. 89 & 90.

¹⁹³ Qaraḍāwī, Yūsuf al- (1421/2000), p. 82. In a personal discussion with him about that opinion, al-Qaraḍāwī told me that he did not mean that God's actions are unjustifiable. However, he added, stating that all God's actions can be justified and their wise purposes can be fathomed out could be misunderstood as conducive to endorsing the Mu'tazilī principle that God's actions are to be evaluated by the same criterion used for assessing human actions. This discussion took place in January 2003 in Dublin during the proceedings of 10th session of the European Council for Fatwa and Research.

¹⁹⁴ Ibn al-Wazīr, Muḥammad b. Ibrāhīm (1987), vol. 1, p. 210.

¹⁹⁵ Ibn al-Qayyim (1398/1977), vol. 1, p. 302.

¹⁹⁶ Ibn al-Qayyim (1973), vol. 2, p. 334 & 335. It is however believed that the straightforward reason (*'aql ṣarīḥ*) can never disagree with the authentic text of revelation (*naṣṣ ṣarīḥ*). Imam Ibn Taymiyya wrote a famous book on this topic see Ibn Taymiyya (1409/1988). See also Ibn al-Qayyim (1398/1977), vol. 1, p. 302.

opportunity to repent, or that disease is a way of punishment for certain sins. Nowhere in the Qurʾān, Sunna or fiqh is a clear causality established between Allah and the onset of a disease and/or disability in a believer.”¹⁹⁷

Such a statement might find support among a number of the Muʿtazilī scholars, as noted above, who refused a link between sins and inflicting pains. However, the statement remains blatantly contradictory to clear texts in the Qurʾān and Sunna not to mention the writings of scholars advocating the middle-course approach. The possibility of a cause-effect link between committing sins on one hand and disabilities or diseases in general on the other cannot be denied. For instance, among early scholars, Ibn Taymiyya and Ibn al-Qayyim regarded people’s sins the main cause of misfortunes, pains and diseases in this worldly life.¹⁹⁸ This is also the case among many modern scholars such as the late Egyptian scholar Aḥmad al-Sharabāshī (1918-1980),¹⁹⁹ the Syrian Muḥammad Saʿīd Ramaḍān al-Būṭī (b. 1929)²⁰⁰ and the Iraqi ʿAbd al-Karīm Zaydān.²⁰¹ More than one Qurʾānic verse were understood to support this viewpoint (e.g. 4:79 & 123, 8:53 30:41, 42:30). Take for instance, the Qurʾānic verse, “Whatever misfortune happens to you, is because of the things your hands have wrought, but for many (of them) He grants forgiveness” (42:30). Some commentators interpreted “misfortune” (*muṣība*) as illness, punishment or any other form of affliction in this life²⁰² and “What your hands have wrought” as one’s sins and misdeeds.²⁰³ Upon the revelation of this verse, the Prophet is reported to have said, “No scratch of a stick, shudder of a vein or stumble of a foot befalls a man but because of a sin, but what Allah forgives is more.”²⁰⁴ The same purport is also encountered in the Qurʾānic verse, “Whatever good [*ḥasana*], (O man!) happens to thee, is from Allah; but whatever evil [*sayyiʾa*] happens to thee, is from thy (own) soul” (4:79). *Ḥasana* (good) and *sayyiʾa* (bad) in this verse are interpreted respectively as favours, e.g., prosperity, health and wellness and misfortunes, e.g., infertility and calamity.²⁰⁵ “From thy (own) soul” here means because of your sins.²⁰⁶ It is to

¹⁹⁷ Rispler-Chaim, Vardit (2007), p. 7.

¹⁹⁸ See Ibn Taymiyyah (I), vol. 1, p. 42 and Ibn al-Qayyim (1348/1929), vol. 1, pp. 324, 327 & 37.

¹⁹⁹ Sharabāshī, Aḥmad al- (1375/1956), vol. 1, p. 264.

²⁰⁰ Būṭī, al- (2001), pp. 199-204.

²⁰¹ Zaydān, ʿAbd al-Karīm (1414/1994), p. 212.

²⁰² Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 25, p. 32; Shawkānī, Muḥammad ibn ʿAlī ibn Muḥammad al- (I), vol. 4, p. 542; Ibn Kathīr (1401/1980), vol. 4, p. 117; Alūsī, Abū al-Faḍl Maḥmūd al- (I), vol. 25, p. 41.

²⁰³ Bayḍāwī, ʿAbd Allāh b. ʿUmar al- (1416/1996), vol. 5, p. 131; Ibn Kathīr (1401/1980), vol. 1, p. 529; Shawkānī, Muḥammad ibn ʿAlī ibn Muḥammad al- (I), vol. 4, p. 538; Jawzī, ʿAbd al-Raḥmān ibn ʿAlī ibn Muḥammad al- (1404 A.H.), vol. 7, p. 288.

²⁰⁴ Ibn Kathīr (1401/1980), vol. 1, p. 529; Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 5, p. 175 See also for other narrations of the same ḥadīth, Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), ḥadīths no. 9814 & 9815, vol. 7, p. 153; Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 16, p. 31.

²⁰⁵ Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 5, p. 285; Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 5, p. 175; Ibn Taymiyya (1404/1983), vol. 2, p. 108; Ṣanʿānī, ʿAbd al-Rāziq b. Hammām al- (1410/1989), vol. 1, p. 179; Jawzī, ʿAbd al-Raḥmān ibn ʿAlī ibn Muḥammad al- (1404 A.H.), vol. 2, p. 139.

be noted that “thee” and “thy” here refers originally to the Prophet Muḥammad but the purport of the verse is applicable to every Muslim and according to some scholars to all humans.²⁰⁷ Finally, it is related that on the revelation of the Qur’anic verse “[...] Whoever works evil, will be requited accordingly” (4:123), Muslims found it too hard and conveyed their complaint to the Prophet. Asking him if it was true that the purport of the Qur’anic verse would be precisely applied, the Prophet replied in the affirmative. However, he pointed out that such requital is not inevitably to take place in the Hereafter. It could also, he added, take the form of calamities and afflictions visiting one’s body or property in this life.²⁰⁸

The purport of these verses was also vivid in the minds of early Muslims as reflected in many reports about them. For instance, the Companion ‘Imrān ibn Husayn (d. 52/672)²⁰⁹ was befallen by a physical disease. Some of his friends paid him a visit and said, “We feel sorry for what you suffer.” He said, “Do not feel sorry. This all happens because of a sin but what Allah pardons is much more”. Then he recited the previous verse (42:30).²¹⁰ Being afflicted with facial paralysis while performing the Ḥajj, the Companion Mu‘āwiya b. Abī Sufyān (d. 60/680)²¹¹ conceded that this could be because of having committed a sin.²¹² In the same vein, al-Qādī Shurayḥ (d. between 76/695-6 & 80/699-700)²¹³ was asked about an ulcer in the palm of his hand. He said that this was because of what “your hands have wrought, but for many He grants forgiveness.”²¹⁴

As for disabilities in particular, a number of these traditions were reported to take place during the lifetime of the Prophet in which disability appears as concomitant with committing grievous sins such as lying to the Prophet or disrespecting him out of arrogance and pompousness. Some of the perpetrators’ names recorded in this context include a woman called Jamra bint al-Ḥārith b. ‘Awf who was afflicted with leprosy,²¹⁵ Yazīd b. Bahrām who was

²⁰⁶ Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 5, p. 175.

²⁰⁷ Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 5, p. 285; Naḥḥās, Abū Ja‘far Aḥmad b. Muḥammad al- (1409/1988), vol. 2, p. 135; Tha‘ālibī, ‘Abd al-Raḥmān b. Muḥammad b. Makhlūf al- (1), vol. 1, p. 393; Baghawī, Abū Muḥammad al-Ḥusayn al- (1407/1987), vol. 1, p. 454.

²⁰⁸ Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 5, p. 397; Mundhirī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417/1996), vol. 4, pp. 149 & 150; Ibn Ḥibbān (1414/1993), ḥadīth no. 2910, vol. 7, p. 170, ḥadīth no. 2923, vol. 7, p. 186 & ḥadīth no. 2926, vol. 7, p. 189; Tirmidhī, Abū ‘Isā Muḥammad b. Sawra al- (1), ḥadīth no. 2991, vol. 5, p. 221, ḥadīth no. 3038, vol. 5, p. 247 & ḥadīth no. 3039, vol. 5, p. 248. For further Qur’anic verses adding credit to this argument, see (23:76, 6: 42, 5:49, 8:51, 22:10).

²⁰⁹ On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 2, pp. 508-512

²¹⁰ Suyūṭī, Jalāl al-Dīn al- (1993), vol. 7, p. 355.

²¹¹ On him, see Hinds, M. (2003), vol. VII, pp. 263-268.

²¹² Aṣḥbahānī, Abū Nu‘aym al- (1405/1984), vol. 9, p. 154; Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 3, p. 156.

²¹³ Ibn al-‘Imād (1), vol. 1, p. 86. On him, see Suyūṭī, Jalāl al-Dīn al- (1403/1982), vol. 1, p. 27; Kohlberg, E. (2003), vol. IX, pp. 508 & 509.

²¹⁴ Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 16, p. 31; Tha‘ālibī, ‘Abd al-Raḥmān b. Muḥammad b. Makhlūf al- (1), vol. 4, p. 112.

²¹⁵ Ghazālī, Abū Ḥāmid, al- (1), vol. 2, p. 387.

afflicted with paralysis and therefore later on known as *al-muq'ad* (the seated) because he could not walk any more²¹⁶ and Busr (in another reading Bishr) al-Shujā'ī whose hand was paralysed.²¹⁷ These traditions also paved the way for other stories with the same purport said to have taken a place after the death of the Prophet and related by well-known Muslim scholars such as Ibn al-Jawzī (d. 597/1200),²¹⁸ Shams al-Dīn al-Dhahabī (748/1348)²¹⁹ and Ibn Ḥajar al-ʿAsqalānī (d. 852/1449).²²⁰

Although such traditions are extremely few compared with other traditions promoting forgiveness and tolerance with people committing sins, their purport of a possible link between disabilities, diseases or misfortunes in general on one hand and committing sins on the other cannot be ignored. However, a deep-sighted survey of Islamic sources on this issue shows clearly that a generalizing understanding of the disabilities-sins link is also a mistaken one. To provide a well-balanced presentation, two one points are in order.

In the first place, the abovementioned traditions indicate that disabilities *can be* but *must not necessarily be* the result of committing sins. For instance, when Mu'āwiya b. Abī Sufyān was afflicted with facial paralysis, he mentioned three possible reasons, i.e., gaining reward, receiving punishment and finally receiving a disciplinary reproach.²²¹ According to this view, the normal course of events was that disobedient people receive more than one warning before being punished. Disabilities or misfortunes, as punishments, befall those who insist on paying no attention to such warnings and exert no efforts to return to the straight path and declare no repentance to God and continue delving into disobedience.²²²

But even as a form of punishment, disabilities must yet have their beneficiary functions. They may have a cathartic function by purging the sinner from his sins and bringing him relief from greater torment in the Hereafter. A great number of prophetic traditions stress the expiatory role of suffering and its purgative effect on the life of the faithful.²²³ To give just a few examples, one

²¹⁶ Ibn Ḥibbān (1395/1975), vol.3, p. 446; ʿAsqalānī, Aḥmad b. ʿAlī b. Ḥajar al- (1412/1992), vol. 6, p. 649.

²¹⁷ Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), ḥadīth no. 2021, vol. 3, p. 1599; Ibn Ḥibbān (1414/1993), ḥadīth no. 6512, vol. 14, p. 442; Ibn Bashkuwāl (1407/1986), vol. 1, pp. 146 & 147; ʿAsqalānī, Aḥmad b. ʿAlī b. Ḥajar al- (1412/1992), vol. 1, p. 291.

²¹⁸ Ibn al-Jawzī (3), p. 310.

²¹⁹ Dhahabī, Muḥammad b. Aḥmad b. ʿUthmān al- (1), pp. 113 & 144.

²²⁰ ʿAsqalānī, Aḥmad b. ʿAlī b. Ḥajar al- (1379/1959), vol. 2, pp. 240 & 241, vol. 5, pp. 104 & 105.

²²¹ Aṣbahānī, Abū Nuʿaym al- (1405/1984), vol. 9, p. 154; Dhahabī, Muḥammad b. Aḥmad b. ʿUthmān al- (1413/1992), vol. 3, p. 156.

²²² See for instance Ibn al-Jawzī (1987), pp. 21, 30, 31, 197-199, 203, 204, 290, 291, 310, 311, 390, 391, Ibn al-Qayyim (3), pp. 39-86, 80 & 81.

²²³ Imam al-Bukhārī (194-256 A.H.) mentioned in his *Al-Adab al-mufrad* a number of Prophetic traditions under a distinct section entitled, “*Bāb kaffārat al-marīḍ*” or “Section of the Expiation of the Sick”. See Bukhārī (1409/1989), vol. 1, p. 173. Imam Ḍiyā al-Dīn al-Maqdisī did the same in his *Kitāb al-amrāḍ wa al-kaffārāt wa al-ṭibb wa al-ruqīyāt*. See Maqdisī, Abū ʿAbd Allāh Ḍiyā al-Dīn al- (1420/1999), pp. 40 & 41.

of these traditions said, “No calamity befalls a Muslim but God expiates some of his sins even if it were a thorn being pricked with.”²²⁴ Another tradition stated, “The calamity continues to afflict the believing man and woman in body, property and progeny until he/she meets God [on the day of Resurrection] without any sins cleaving to him/her.”²²⁵ Based on the aforementioned traditions, Ibn Ḥajar al-‘Asqalānī (d. 852/1449)²²⁶ characterised misfortunes as divine medicines by which man gets cured from the diseases of fatal sins.²²⁷ In the same vein, another authority said, “Had there been no worldly afflictions, we would have come insolvent [with bad deeds outnumbering the good ones] on the Day of Resurrection.”²²⁸

Understanding disability as a punishment in this context was seen as a sign of God’s mercy and benevolence rather than of His anger and wrath. As a comment on the aforementioned Qur’anic verse (4:123), the Prophet is reported to have said, “Whatever befalls you of illness, punishment or misfortune in the worldly life is because of what your hands have wrought, but God is more tolerant than doubling the punishment [by inflicting it again] in the Hereafter. As for what God has pardoned in [the worldly] life, [one should know that] God is more bountiful than reverting [to punishing] after His pardon.”²²⁹ No matter how extreme they could be, the Qur’ān recurrently confirms (13:34, 20:127, 39:26, 41:16, 68:33) that the punishments in this life are much more lenient than those in the Hereafter. Commenting on such traditions, Zuhayr Muḥammad al-Zamīlī wondered what grace can be greater than this!²³⁰

Another sign of God’s mercy mentioned in the Tradition in this regard concerns the rewards of good deeds that the afflicted person used to do before the affliction hindered him/her from continuing to do them. In Ḥadīth collections, one finds separate chapters on the reward of the sick (*ajr al-marīḍ*). These chapters comprise a number of prophetic traditions purporting that the rewards of such deeds continue to be recorded as if the person is still doing

²²⁴ Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), Ḥadīth No. 2572, vol. 4, p. 1992.

²²⁵ Ibn Ḥanbal, Aḥmad (1), ḥadīth no. 7846, vol. 2, p. 287 and also ḥadīth no.9810, vol. 2, p. 450. See also Ibn Ḥibbān (1414/1993), ḥadīth no. 2931, vol. 7, p. 176; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), ḥadīth no. 6335, vol. 3, p. 374; Ibn Māja, Muḥammad b. Yazīd (1), ḥadīth no. 4023, vol. 2, p. 1334; Ṭayālīsī, Sulaymān b. Dāwūd Abū Dawūd al-Fārisī al-Baṣrī al- (1), ḥadīth no. 215, vol. 1, p. 29; Daylamī, Shīrawayh al- (1986), ḥadīth no. 7600, vol. 5, p., 102. See also other traditions adding credit to the same fact in Zurqānī, Muḥammad b. ‘Abd al-Bāqī b. Yūsuf al- (1411/1990), vol. 4, p. 415; Ibn Abī Shayba (1409/1988), vol. 2, p. 440 & 442; Mundhirī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417/1996), vol. 4, p. 139 & 155.

²²⁶ On him, see Abū al-Maḥāsīn, Muḥammad ibn ‘Alī ibn al-Ḥasan ibn Ḥamza al-Ḥusaynī al-Dimashqī (1), vol. 1, pp. 326-342.

²²⁷ ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 10, p. 112.

²²⁸ Ibn al-Qayyim (1407/1986), vol. 4, p. 192.

²²⁹ Ibn Ḥanbal, Aḥmad (1), ḥadīth no. 649, vol. 1, p. 85; Mawṣilī, Abū Ya‘lā al- (1404/1984), ḥadīth no. 435, vol. 1, pp. 351-353 & 453; Haythamī, Abū al-Ḥasan ‘Alī b. Abī Bakr al- (1407/1986), vol. 7, pp. 104 & 105; ḥadīth no. 1694, vol. 8, pp. 161-163.

²³⁰ Zamīlī, Zuhayr Muḥammad al- (1409/1988), p. 56.

them.²³¹ One of these traditions said, “No Muslim would be visited with an affliction in his body save God would order the Guardians [Angels] who guard him by saying, ‘Write down for My servant every day and night the equal [reward] of the good [*khayr*] he was doing as long as he is confined in My fetter [i.e., sickness].”²³² By extension to disability, we may conclude that one who used to listen to a specific portion of the Qur’ān every day and later on was hindered by deafness serves as example in this regard. The divine rewards accorded to this pious act would remain to be counted for him as if he is still doing his habit of listening to the Qur’ān every day.

In the second place, people cannot be afflicted with disabilities as a punishment for sins committed by others. This thesis is advocated by the Qur’ān that recurrently states that every one is responsible for his/her own acts and cannot be burdened by the consequences of others’ sins (e.g. 6:164, 17:15, 35:18, 39:07, 53:38). Commentaries on these Qur’anic verses show that this point is not only a point of agreement among the advocates of the middle-course approach but among Muslims scholars at large.²³³ On the Qur’anic verse (6:164), the well-known Qur’ān exegete, Abū ‘Abd Allāh al-Qurṭubī (d. 671/1272) said that the occasion of revelation was to rectify the pre-Islamic (*jāhili*) custom of punishing people for offences committed by their parents, children or their allies.²³⁴ According to Ibn al-Qayyim, one of the main tenets of Islamic belief is that no one is punished without committing a sin.²³⁵ Hence, punishing someone for someone else’s sins is injustice and it is impossible for God to be unjust (*zālim*).²³⁶ Strikingly enough, a number of noted scholars such as Ibn Ḥazm (d. 456/1064) and the Ḥanbalī theologian Mar‘ī b. Yūsuf al-Karmī (d. 1033/1624)²³⁷ ridiculed those who would maintain that children might be afflicted with disabilities so that their parents could gain more rewards from God. They said that it is impossible for God to do so because it is injustice (*jawr*) and futility (*‘abath*).²³⁸ Consequently, the belief among some Muslim parents that their disabled child is a punishment for sins committed by one or both of them is contrary to the clear text of the Qur’ān. One still wonders; where does this common belief come from?

²³¹ See for instance Dārimī, ‘Abd Allāh b. ‘Abd al-Raḥmān al- (1407/1986), Vol. 2, p. 408; Zurqānī, Muḥammad b. ‘Abd al-Bāqī b. Yūsuf al- (1411/1990), vol. 4, p. 412; Tirmidhī, Abū ‘Isā Muḥammad b. Sawra al- (1), vol. 3, p. 297; Ibn Abī Usāma, al-Ḥārith (1412/1992), vol. 1, p. 250.

²³² Maqdisī, Abū ‘Abd Allāh Ḍiyā’ al-Dīn al- (1420/1999), ḥadīth no. 26, pp. 63 & 64; Naysabūrī, al-Ḥākim Muḥammad b. ‘Abd Allāh al- (1411/1990), ḥadīth no. 1287, vol. 1, p. 499; Dārimī, ‘Abd Allāh b. ‘Abd al-Raḥmān al- (1407/1986), ḥadīth no. 2770, vol. 2, p. 407; Ibn Ḥanbal, Aḥmad (1), ḥadīth no. 6482, vol. 2, p. 159; Haythamī, Abū al-Ḥasan ‘Alī b. Abī Bakr al- (1407/1986), vol. 2, p. 303.

²³³ For just examples, see Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 8, p. 113, vol. 15, p. 54; Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 3, p. 430, vol. 7, pp. 156-158.

²³⁴ Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 7, p. 157.

²³⁵ Ibn al-Qayyim (1395/1975), vol. 1, p. 88; Ibn Taymiyya (1386/1966), vol. 1, p. 406.

²³⁶ See Ibn Yūsuf, Mar‘ī (1410/1989), vol. 1, p. 57.

²³⁷ On him, see Bell, Joseph Norment (1979), pp. 185 & 186.

²³⁸ Ibn Yūsuf, Mar‘ī (1410/1989), p. 57.

A possible source could be the references in a number of Islamic sources, although very few, to this possibility. Vardit Rispler-Chaim was right when she described the viewpoint expressed in a publication from Iran as “exception” in modern Islamic literature. The author of this book, a certain Qudsiyah Hijazi (a psychologist or sociologist, according to Rispler-Chaim), claimed causality between the parents’ misconduct and their offspring’s disability and regarded this outcome as a punishment from God.²³⁹ Ignoring the divine laws, the author elaborated, concerning proper sexual conduct leads to the birth of retarded children. To her, the parents’ genes are influenced by their emotions, thoughts, moods and actions and thus immoral behaviour is bound to affect the fetus.²⁴⁰ The viewpoint, as recorded by Rispler-Chaim, is really an “exception” in the sense that it contradicts the abovementioned quotations from the Qur’ān and the contentions of Muslim scholars. However, it is not “exception” in the sense that Qudsiyah Hijazi is the only one to hold this viewpoint. The late Egyptian scholar, Aḥmad al-Sharabāṣī (1918-1980) stated also explicitly that sinful parents can be punished by having blind children. To him, such punishment is a disciplinary warning by which parents should always avoid disobeying God because His punishment can strike the children who are most beloved to the parents.²⁴¹ Strikingly enough, the same author rejected a historical report purporting that someone was afflicted with blindness because his grandfather made a pious man angry who thus supplicated God that he and his offspring will be blind. Al-Sharabāṣī cast doubts on the authenticity of this report and commented by saying, “Then what is the guilt of the children as long as the sinner is the father himself!”²⁴² This question raised by al-Sharabāṣī remained to be posed to himself and to all those who claim that children’s disability can be a punishment for the sinful parents.

2.4.1.2 Gaining Reward (*Taḥsīl al-Thawāb*) and Elevating the Ranks (*Raf’ al-Darajāt*)

Besides expiating sins, two other closely interrelated *ḥikam* were mentioned, viz., gaining reward and upgrading one’s level of faith and enabling the person who suffered to attain lofty ranks in Paradise.²⁴³

As for gaining reward (*taḥsīl al-thawāb*), a number of prophetic traditions clearly indicated that afflictions can be a source of bountiful reward from God. For instance, the Prophet is reported to have said, “The magnitude of reward is contingent upon the magnitude of affliction.”²⁴⁴ In another tradition, the Prophet said, “Nothing befalls the believer even if it were a thorn being pricked

²³⁹ Rispler-Chaim, Vardit (2007), p. 11, quoting from Hijazi, Qudsiyah (1), p. 422.

²⁴⁰ Rispler-Chaim, Vardit (2007), p. 10, quoting from Hijazi, Qudsiyah (1), pp. 398 & 403.

²⁴¹ Sharabāṣī, Aḥmad al- (1375/1956), vol. 1, p. 265.

²⁴² Ibid, p. 237.

²⁴³ See Zaydān, ‘Abd al-Karīm (1414/1994), pp. 212 & 213. Cf. Munāwī, Muḥammad ‘Abd al-Ra’ūf al- (1410 A.H.), vol. 1, p. 246.

²⁴⁴ Mundhiṣī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417/1996), ḥadīth no. 5163, vol. 4, p. 142; Tirmidhī, Abū ‘Īsā Muḥammad b. Sawra al- (1), ḥadīth no. 2396, vol. 4, p. 601; Ibn Māja, Muḥammad b. Yazīd (1), ḥadīth no. 4031, vol. 2, p. 1338.

with but Allah records thereby [the reward of] a good deed (*ḥasana*) for him or expiates a sin for him.”²⁴⁵

As for “elevating the ranks”, disability as a form of affliction with its inherent suffering was seen as a possible instrument of attaining lofty degrees and ranks in Paradise that would have been unattainable by one’s good deeds only. A large number of prophetic traditions were also related to purport this fact and some traditionists collected these traditions in a discrete chapter entitled, *Bāb bulūgh al-darajāt bi al-ibtālā’* (Chapter on Attaining the [honourable] Ranks by Affliction)²⁴⁶ or *Dhikr anna Allāh yarfā ‘ darajāt al-mu’min bimā yuṣībuh min al-balā’* (Mentioning that Allah Elevates the Status of the Believers by the Afflictions that Befall them).²⁴⁷

In his commentary on the aforementioned Qur’anic verse (42:30), al-Bayḍāwī (d. ca 685/1286)²⁴⁸ said, “The purport of this verse is restricted to people indulged in guilt and misdeed. As for the others, misfortunes befall them for other reasons such as gaining the great reward.”²⁴⁹ Al-Suyūṭī (1445-1505)²⁵⁰ added the elevating of the ranks.²⁵¹ In the same line with al-Bayḍāwī another authority said, “Allah visits people He loves with affliction so that He will give them reward in return.”²⁵²

However, al-Qāḍī ‘Iyād (d. 544/1149)²⁵³ reported that some scholars maintained that sickness only expiates the sins, excluding the possibility of gaining reward or elevating the religious ranks because of being sick. According to al-Nawawī (d. 676/1277) such scholars reached this conclusion because of being unaware of the aforementioned prophetic traditions which explicitly indicated that sickness can be also a cause of gaining rewards and elevating the religious ranks.²⁵⁴ In a bid to compromise these two contradictory contentions, Ibn Ḥajar al-‘Asqalānī said that it is possible that sickness and pains are means of atoning sins for the sinful and means of gaining rewards and elevating religious ranks for those who have no sins. Because the overwhelming majority

²⁴⁵ Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), ḥadīth no. 2572, vol. 4, p. 1992. See also Haythamī, Abū al-Ḥasan ‘Alī b. Abī Bakr al- (1407/1986), vol. 2, p. 301; Ibn Ḥanbal, Aḥmad (1), vol. 4, p. 56; Nawawī, Abu Zakariyya Yahyā b. Sharaf al- (1392 A.H.), vol. 16, p. 128; ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 10, p. 105.

²⁴⁶ See Haythamī, Abū al-Ḥasan ‘Alī b. Abī Bakr al- (1407/1986), vol. 2, p. 292.

²⁴⁷ See Maqdisī, Abū ‘Abd Allāh Ḍiyā’ al-Dīn al- (1420/1999), pp. 42 & 43.

²⁴⁸ Robson, J. (2003), vol. I, p. 1129.

²⁴⁹ Bayḍāwī, ‘Abd Allāh b. ‘Umar al- (1416/1996), vol. 5, p. 131.

²⁵⁰ On him, see Geoffroy, E., (2003), vol., IX, pp. 913-916.

²⁵¹ Suyūṭī, Jalāl al-Dīn al- & Jalāl al-Dīn al-Maḥallī (1), p. 643.

²⁵² ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 10, p. 108. See also the same opinion expressed by imam al-Zurqānī in Zurqānī, Muḥammad b. ‘Abd al-Bāqī b. Yūsuf al- (1411/1990), vol. 4, p. 414.

²⁵³ On him see Ibn al-‘Imād (1), vol. I, p. 470.

²⁵⁴ Nawawī, Yahyā b. Sharaf al- (1392/1972), vol. 16, pp. 128 & 129. For further discussions on this point see also ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol.10, pp. 109 & 110; Zurqānī, Muḥammad b. ‘Abd al-Bāqī b. Yūsuf al- (1411/1990), vol. 4, p. 413.

of humans are erroneous, Ibn Ḥajar added, some scholars said that sickness can be conceived as a means of expiating sins only.²⁵⁵

The most well-known example of those people whose afflictions let them gain more rewards and loftier ranks in Paradise rather than expiating the sins, are the Prophets.²⁵⁶ They are sent by God to epitomize the model example of obedience and piety among humans and thus committing sins are restricted to the minimum.²⁵⁷ That is why some scholars excluded the possibility that the painful sufferings of Prophet Job (*Ayyūb*) can be interpreted as expiatory tools for sins he had committed.²⁵⁸ It is noteworthy in this regard that Muslim scholars do not agree on whether prophets can be afflicted with disabilities.²⁵⁹ Beyond their disagreements on different details, Islamic sources spoke about a number of Prophets who were visited with afflictions some of which can be classified as disabilities.²⁶⁰ For instance, in their commentary on the Qur'anic verse (12:84), a number of Muslim scholars said that the prophet Jacob (*Ya'qūb*) suffered a severe feebleness in his eyesight and according to some of them, even suffered blindness for six years after which his eyesight was miraculously restored.²⁶¹ According to some scholars, the prophet Shua'yb was also afflicted with blindness.²⁶² Ibn Ḥajar al-ʿAsqalānī related that the Prophet

²⁵⁵ ʿAsqalānī, Aḥmad b. ʿAlī b. Ḥajar al- (1379/1959), vol.10, p. 110.

²⁵⁶ Zaydān, ʿAbd al-Karīm (1414/1994), p. 213.

²⁵⁷ According to some scholars, prophets are infallible and thus exempted from committing both major and minor sins. For further details and discussions on the infallibility of prophets, see Ibn Ḥazm, Abū Muḥammad ʿAlī (1), vol.4, p. 136; Rāzī, Fakhr al-Dīn al- (1990); Ījī, ʿAḍud al-Dīn ʿAbd al-Raḥmān b. Aḥmad al- (1997), vol. 3, p. 415 & 423; Sabtī, Abū al-Ḥasan ʿAlī b. Aḥmad al-Umawī al- (1990), vol.1, pp. 32 & 138.

²⁵⁸ See Maqdisī, Abū ʿAbd Allāh ʿĪyāʾ al-Dīn al- (1420/1999), pp. 35-37; Ibn Yūsuf, Marʿī (1410/1989), vol. 1, p. 57.

²⁵⁹ See for instance, their disagreements on whether a prophet can be blind, Shawkānī, Muḥammad ibn ʿAlī ibn Muḥammad al- (1), vol. 2, p. 522; Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 12, p. 123 & 124; Šafadī, Šalāḥ al-Dīn Khalīl b. Aybak al- (1329/1911), pp. 43 & 44; Sharabāšī, Aḥmad al- (1375/1956), vol. 1, p. 193.

²⁶⁰ Kanʿān, Aḥmad Muḥammad (1420/2000), p. 81.

²⁶¹ Bayḍāwī, ʿAbd Allāh b. ʿUmar al- (1416/1996), vol. 3, p. 305; Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 9, p. 248; Muḥammad b. Muḥammad al-ʿImādī (1), vol. 4, p. 310; Baghawī, Abū Muḥammad al-Ḥusayn al- (1407/1987), vol. 2, p. 444; Shawkānī, Muḥammad ibn ʿAlī ibn Muḥammad al- (1), vol. 3, p. 48; Jawzī, ʿAbd al-Raḥmān ibn ʿAlī ibn Muḥammad al- (1404 A.H.), vol. 4, p. 270; Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 13, p. 40.

²⁶² Shawkānī, Muḥammad ibn ʿAlī ibn Muḥammad al- (1), vol. 2, p. 522; Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 12, p. 123.

It is to be noted that the possibility of having a blind Prophet is a point of disagreement. The weighty opinion among the Sunni Orthodox is that none of the Prophets was a blind. Also the Muʿtazilī scholars maintained that the blind cannot be a Prophet because blindness breaches the conditions of Judgeship and testifying. Thus blindness is more breaching for the qualifications of prophethood. Moreover the blind person usually cannot preserve himself from dirtiness.

In response it is said that testifying and judgeship necessitates distinguishing between the plaintiff and the accused whereas the Prophet does not need to identify the one who calls to belief and prophet is also infallible. As for safeguarding against dirtiness, real life proves that it is not a rule that blindness is always a barrier preventing from taking a stand from filthiness. On the contrary, some people with blindness are more cautious than the others in this regard. See Alūsī, Abū al-Faḍl Maḥmūd al-(1), vol. 12, pp. 123 & 124.

Job (*Ayyūb*) was the first to suffer smallpox.²⁶³ In their commentary on the Qur’anic verses (20:25-28), a number of Qur’ān exegetes opined that the prophet Moses had a speech-disability; lisping according to some traditions. Being commanded by God to go to the Pharaoh and convey the message of the faith to him, Moses asked God to cure this disability.²⁶⁴

2.4.1.3 A Faith-Test

Testing people’s faith to show whose faith is truthful and firm is one of the central themes in the Qur’ān (2:214, 3:141 & 154, 9:126, 21:35, 29:02, 49:03, 76:02, 89:15 & 16) and thus in Islamic sources as well.²⁶⁵ Words such as *fitna*, *miḥna*, *tamḥīṣ*, *ibtilā’* and *imtiḥān* and their derivatives are used interchangeably to convey this concept. The primary meaning of these terms revolves around “putting to the proof, a discriminatory test as gold is tested by the fire.”²⁶⁶ A sagacious statement said, “O my son! Gold and silver are to be examined by fire but the believer is to be examined by affliction.”²⁶⁷

In this vein, interpreting disabilities, as a one out of many afflictions that may befall people, as a test from God to His servants’ faith is the most obvious answer provided by early and late Muslim scholars.

The Prophet is reported to have said, “Truly God may examine you with an affliction (*balā’*) the same you may examine your gold with fire. As a result, some people will come out of it [i.e., affliction] as pure gold. These are the persons whom God has guarded against doubts (*shubuhāt*). [Others] will come out [with a result] less than this. These are the ones who had some doubts. The last will come out like black gold. These are the ones who failed the test.”²⁶⁸

According to Ibn al-Qayyim, one of the main functions of creating this life was to serve as the transient abode of *taklīf* (charging) where people are tested by going through different difficulties, ups and downs, pains and pleasures, etc. to prove to what extent they are obedient to the commandments of their Creator in different situations. On the basis of such tests, people are admitted to Paradise (the abode of pure pleasures) or Hellfire (the abode of pure pains) in the Hereafter.²⁶⁹

Anyhow, the reports cited above is not to state that one of the Prophets was blind but to say that some of them, according to authentic traditions, was inflicted with blindness and this does not cross out the possibility that their eyesight was restored thereafter as indicated in other traditions about Jacob and Shu‘ayb.

²⁶³ ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 6, p. 421.

²⁶⁴ Ṭabarī, Muḥammad b. Jarīr al-, vol. 16, p. 159; Mujāhid, Abū al-Ḥajjāb b. Jabr (1), vol. 1, p. 396; Ibn Kathīr (1), vol. 3, p. 389; Bayḍāwī, ‘Abd Allāh b. ‘Umar al- (1416/1996), vol. 4, p. 47; Munāwī, Muḥammad ‘Abd al-Ra’ūf al- (1410 A.H.), vol. 1, p. 619.

²⁶⁵ Ayoub, Mahmoud M. (1977), p. 277.

²⁶⁶ See Jurjānī, ‘Alī b. Muḥammad b. ‘Alī al- (1405/1984), p. 212; Rāzī, Muḥammad b. Abī Bakr b. ‘Abd al-Qādir al- (1415/1995) p. 257; Ibn Manzūr, Muḥammad b. Makram (1), p. 275; vol. 13, p. 317; Patton, W.M. (1879), p. 1; Hinds, M. (2003); Gardet, L. (3) (2003), vol. II, p. 930.

²⁶⁷ Munāwī, ‘Abd al-Ra’ūf al- (1356/1937), vol. 2, p. 459.

²⁶⁸ Mundhirī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417), ḥadīth no. 5169, vol. 4, p. 143.

²⁶⁹ See Būṭī, Muḥammad Sa‘īd Ramaḍān al- (2001), pp. 193-196.

Ibn al-Jawzī divided the afflicted people, on the basis of their response to affliction (*al-balāʾ*), into four main categories arranged in an ascending order. First are those who consider *al-balāʾ* an easy test compared with its ensuing reward. Secondly, there are those who see afflicting people with *al-balāʾ* as if an owner is discharging his own possession to which they have to submit without objection. Third, there are those whose are overwhelmed by the love of God to the extent that they will not even ask for lifting *al-balāʾ*. Finally, the highest group are those who savour *al-balāʾ* because it has taken place out of the Will of God.²⁷⁰

Concerning disability in particular, the magicians of the Pharaoh who believed in Moses and His Lord declaring publicly their disbelief in the Pharaoh as god are central in this respect. The Pharaoh, according to the Qurʾān (e.g. 7:124, 10:83, 20:71), tried to test the firmness of their faith by his threat to cut off their hands and feet on opposite sides. According to some Qurʾān exegetes, Pharaoh was the first in history to apply such a punishment. However, the magicians stood fast and the pharaoh's threats did not make them change their faith. These people, the exegetes added, started their day as magicians and finished it as martyrs.²⁷¹

The faith-test argument is also very common among modern Muslim scholars.²⁷² In his study on the wise purposes of creating diseases, Zuhayr Muḥammad al-Zamīlī mentioned *tamḥīs al-muʾminīn* (testing the believers) as the first possible wise purpose (*ḥikma*).²⁷³ In al-Būṭī's presentation, it was classified as the second *ḥikma*. Had life been created free from calamities and misfortunes, al-Būṭī explained, man's *taklīf* (legal liability) would be meaningless. That is because the sincere and the hypocrite in this case can claim sincerity and love for God in the absence of serious instruments to check their claimed sincerity and love. The calamities and misfortunes are the main instruments by which one's endurance for the sake of God and submission to His will can be measured.²⁷⁴ However, al-Zamīlī broadened the scope of faith-test (*ibtīlāʾ* or *tamḥīs*) to include not only those afflicted with calamities but those living with them including their direct families and societies at large as well. A sick person is a test for his own family and society to show who is going to take up his responsibility of taking care of such a dependent person and who is going to give him the helping hand. The presence of sick people in a society is a criterion by which goodness in such a society can be measured.²⁷⁵

2.4.2 Afflictions Befalling those without Legal Liability (non-*Mukallafūn*)

Searching for the *ḥikam* of disabilities and other afflictions befalling the non-*mukallafūn* such as children and animals, advocates of the middle-course

²⁷⁰ ʿAqalānī, Aḥmad b. ʿAlī b. Ḥajar al- (1379 A.H.), Vol. 10, p. 112.

²⁷¹ Ibn Kathīr (1401/1980), vol. 2, p. 239.

²⁷² Sharabāshī, Aḥmad al- (1375/1956), vol. 1, pp. 261 & 262.

²⁷³ Zamīlī, Zuhayr Muḥammad al- (1409/1988), pp. 52-70.

²⁷⁴ Būṭī, Muḥammad Saʿīd Ramaḍān al- (2001), pp. 193-196.

²⁷⁵ Zamīlī, Zuhayr Muḥammad al- (1409/1988), pp. 70-72.

approach were sometimes very timid. Some of them said that providing discursive reasoning and justifications is possible only for what befalls the *mukallafūn*. As for pain and illnesses befalling the non-*mukallafūn*, it is sufficient to state that there is an inscrutable wisdom and unknown wise purposes behind these inflictions but they cannot be discerned by the human intellect. That is because delving into this knotty issue, they added, could entail big misunderstandings, aberrations, deviations and perversities.²⁷⁶ However, such arguments did not halt other advocates of this approach to fathom out this subtle issue searching for possible wise purposes.

2.4.2.1 A Proof of God's Existence and Oneness

The existence of evils and abnormalities in life is a proof that God exists and that He alone has created this life and all creatures therein. This argument is peculiarly Maturidian and, according to some researchers, no earlier philosophers or theologians are known to have advanced such an argument.²⁷⁷

In his book, *Kitāb al-tawḥīd* (Book of Oneness), Abū Maṣū'ir al-Māturīdī (d. ca. 333/944)²⁷⁸ elaborated this argument in a chapter entitled, *Al-Dalīl 'alā anna li al-'ālam Muḥdith* (The Evidence that the Cosmos has One Who Gave It Temporal Existence). We quote here what is of particular interest to our topic:

“And the second proof that the world has one who gave it temporal existence is that, if the world existed by its own essence, no instant in it would be truer (*aḥaqq*) than any other, no state (*ḥāl*) more appropriate (*awlā*) than any other, no characteristic (*sifa*) more seemly (*alyaq*) than any other. But, since it exists with instants, states and characteristics which differ from one another, it is proven that it does not exist by its own essence. Furthermore, if it did, it would be possible that each thing would create for itself such states and characteristics as are the best and most beautiful, and, so, by doing this, it would be false to say that moral and physical evils exist. But, the fact of their existence shows that the existence of the world came about by something other than itself (*bi-ghayrih*).”²⁷⁹

Thus, what proves to al-Māturīdī that the cosmos is not self-existent is the presence of “more” and “less” degrees therein. The forms of imperfection in the universe show that the universe is not self-existent, i.e., eternal, but rather it exists temporally. In being self-existent, everything would simply be perfect in regard to points of time, states of being and qualifications of being. But, in the world as it is, al-Māturīdī noted that this is not the case.²⁸⁰ No being which had complete control of its own existence would want for itself anything other than the best in all respects. Now, if it were true that each thing were in control of its own existence, it would follow that no one would choose for painful disabilities, sufferings or evils in general to take place in life. Since they do, it

²⁷⁶ See Ibn Yūsuf, Mar'ī (1410/1989), vol. 1, pp. 57 & 58; Ibn al-Humām (1317/1899), p. 185; Madkhalī, Muḥammad Rabī' Hadī al- (1409/1988), p. 210.

²⁷⁷ Māturīdī, Abū Maṣū'ir al- (1), p. XXXV.

²⁷⁸ On him, see Madelung, Wilfred (1) (2003), vol. VI, pp. 846 & 847.

²⁷⁹ Māturīdī, Abū Maṣū'ir al- (1), p. 17; Pessagno, J. Meric (1984), pp. 72 & 73.

²⁸⁰ See Pessagno, J. Meric (1984), pp. 73 & 74.

must be that beings are not in control of their own existence. Thus the existence of evil, moral and physical, is made the explicit basis for coming to know that there is a God and that He is a Creator.²⁸¹

As for the oneness of God in particular, al-Māturīdī found an evidence for this oneness in the fact that there is no single substance whose existence can be related to one quality only such as harmfulness or benefit, evil or goodness, or blessing or trial. Rather, each thing is characterized by evil which then can be judged as good from another perspective. Created beings are neither beneficial nor harmful in every state. Thus, al-Māturīdī added, it is proven that the one who directs all that must be one because he can combine aspects of the harmful and the beneficial in the created beings, “You also see that all substances fall under the category of material and are an assemblage of mutually opposed natural elements whose real nature should lead to mutual aversion and estrangement because mutual hostility exists among them. Were it conceivable that their nature abandon their being together, that would cause the destruction of the whole. Thus, it is proven that the one who directs the union among them must be one, joining them together because of his benevolence toward the world and keeping the potential harm of each one from the other by an act of remarkable wisdom which human imagination cannot comprehend.”²⁸² In another place, he added, “Thus, in that creation of things which combine the beneficial and the harmful, there is the wondrous manifestation of His wisdom, that He combines the harmful and the beneficial in one being, as well as good and evil, in spite of the mutually contradictory natures of both, as the indication for His oneness and the testimony that His Lordship is one.”²⁸³

By extension to disability, one may reformulate al-Māturīdī’s argument as follows. Man did not create himself, otherwise he would have chosen the best and most perfect form of being which would naturally have been free from any form of physical or moral defect. Keeping in mind that this is not the case, it is proved that man is a created as a being rather than a creator. Additionally, mankind in general comprises able-bodied as well as disabled people and each human being can have some parts of his body which are working properly whereas others are not because of a disability. These seemingly contradictions which can exist simultaneously in one single being indicate there must be a higher power that can combine these contradictories in a coherent form which does not lead eventually to the destruction of this being. According to al-Māturīdī, this higher power is God who is the Creator of this world.

In his article published in 1984, Jerome Meric Pessagno said that the extent of his own research has not revealed any thinker after al-Māturīdī who picked up the thread and the style of this argument.²⁸⁴ However, statements closely related to the purport of this argument can still be traced. Al-‘Izz b. ‘Abd al-Salām (d. 660/1066) opined that knowing the glory and omnipotence of God is

²⁸¹ See Pessagno, J. Meric (1984), p. 74.

²⁸² Māturīdī, Abū Maṣūūr al- (1), p. 22; Pessagno, J. Meric (1984), pp. 74 & 75.

²⁸³ Māturīdī, Abū Maṣūūr al- (1), p. 109; Pessagno, J. Meric (1984), p. 75.

²⁸⁴ Pessagno, J. Meric (1984), pp. 72, 73, 80 & 81.

the first benefit of being visited by calamities and afflictions.²⁸⁵ The same purport is also clearly traceable in the recent writings of more than one Muslim scholar such as Aḥmad al-Sharabāṣī (1918-1980).²⁸⁶ Speaking about the wise purposes of having disabilities in life, Muḥammad Mutwallī al-Sha‘rāwī (1911-1988) said, “The second purpose is for us to recognise that no organ of our bodies acts by its own abilities but only because God has subjected it to us to act as it does. We say ‘I see with my eyes.’ So God Almighty brought into existence someone who has two eyes but cannot see so that you know that you only see by the power of God, who has given the eye the property of sight. The same applies to walking. God brings into existence people who have two feet but cannot walk, so that we will know that we only walk by the power of God.”²⁸⁷ The same point is also stressed by al-Būṭī²⁸⁸ and al-Zamīlī.²⁸⁹

2.4.2.2 Realizing God’s Threats and Promises in the World to Come

One of the general beliefs in Islam is that God created three abodes; one composed of pure goodness and pleasures and this is Paradise, the second is composed of pure evils and pains and this is Hellfire whereas the third, that of worldly life, is composed of contraries and opposites such as good and evil, pain and pleasure, illness and health and so forth.²⁹⁰

The advocates of this approach state that one of the aims of creating this worldly life is to give people an idea about pains prepared for the disobedient and infidels in the Hell and pleasures awaiting the obedient in Paradise.²⁹¹

Speaking about children in particular, Ibn al-Qayyim argued that going through pains and sufferings in this life would deepen those children’s feeling of the pleasures of Paradise in the Hereafter. He said, “Testing pleasures, joys and delights in Paradise after undergoing pains and illnesses in this life is much more pleasant and enjoyable than getting such pleasures without prior experience of pains in this life. For instance, the enjoyment of eating and drinking after extreme hunger and thirst is much greater than the enjoyment of eating and drinking without prior hunger and thirst.”²⁹²

The same argument has been reiterated by modern scholars. For instance, al-Būṭī opined that sufferings and pains in this life serve as a recurrent warning for those living in this life that it is not eternal and that there must be another sort of life which is free from such contraries of health and sickness, richness and poverty, etc.²⁹³

²⁸⁵ Qāsimī, Jamāl al-Dīn al- (1424/2003), vol. 1, p. 490.

²⁸⁶ Sharabāṣī, Aḥmad al- (1375/1956), vol. 1, p. 274.

²⁸⁷ Sha‘rawī, Muḥammad M. al- (1995), p. 59.

²⁸⁸ Būṭī, Muḥammad Sa‘īd Ramaḍān al- (2001), pp. 190-193.

²⁸⁹ Zamīlī, Zuhayr Muḥammad al- (1409/1988), pp. 83 & 84.

²⁹⁰ Ibn al-Qayyim (1348/1929), p. 326; Ibn al-Qayyim (1407/1986), vol. 1, p. 67.

²⁹¹ Ibn al-Qayyim (1348/1929), p. 326; Ibn al-Qayyim (2), vol. 1, p. 275.

²⁹² See Ibn al-Qayyim (1348/1929), pp. 364.

²⁹³ Būṭī, Muḥammad Sa‘īd Ramaḍān al- (2001), pp. 196-199. See also Zamīlī, Zuhayr Muḥammad al- (1409/1988), pp. 83 & 84.

Chapter Three: Practical Theology

As mentioned in the introduction, three moral attitudes were presented by Muslim scholars as the main pillars of an ideal human response in the case of being afflicted with disabilities or calamities in general. A note on each moral attitude, mainly focusing on information with relevance to disability, will be elaborated now.

3.1 Servitude (*‘Ubūdiyya*)

According to al-‘Izz b. ‘Abd al-Salām (d. 660/1066), realizing one’s servitude to God is one of the main benefits of being visited by calamities.¹ The main purport of servitude is conceding that man in this universe is but a poor servant (*‘abd faqīr*) who is always in need of his Lord (*rabb*). Al-Qushayrī quoted his master saying, “Just as ‘lordship’ is an eternal quality of God [may He be exalted], so is ‘servitude’ a quality of man that stays with him as long as he lives.”² The favoured example among scholars to explain this type of relationship is the ordinary man who is always raising objections against the precise works of physicians or engineers on the pretext that there is no point of doing this and omitting that, just because much of what they do is not understood by him.³ In such a case, a wise person has the right to investigate the efficiency of the physician or the engineer he wants to deal with but once he gets sure that such a person is trustworthy, it is no more wise, and sometimes even boorish, to raise every now and then senseless questions and objections for every detail. In the same vein, the servant (*‘abd*) should believe in God on the basis of a firm conviction that God is the only and real Lord that can run his affairs and take care of him in the best way. Once the *‘abd* acquires this belief, it is completely unwise to think that God has to explain to him the rationale of every delightful and sorrowful incidence taking place in life. It is sufficient to be sure that it is good (*khayr*). Hard times manifest clearly those living in the state of servitude and those who are not.⁴

According to al-Qushayrī, a mystical authority is reported to have said, “Worship is for those who strive, servitude is for those who excel in bearing hardships.” A mystic was asked, “When is servitude sound?” He replied “When a man surrenders himself completely to his Master and has patience with Him in the tribulations He imposes.”⁵ This all explains the intense fear of the many early pious figures (*salaf*) of falling into the pit of questioning God, out of doubt or objection, about what He has foreordained for them. In this regard, one of them is reported to have said, “To get my flesh gnawed by scissors, is more beloved to me than saying to something that God predestined, had he

¹ Qāsimī, *Jamāl al-Dīn al-* (1424/2003), vol. 1, p. 490.

² Qushayrī, al- (1990), p. 173.

³ Ibn al-Qayyim (2), vol. 1, p. 273.

⁴ Būṭī, Muḥammed Sa‘īd Ramaḍān al- (2001), pp. 193-196.

⁵ Qushayrī, al- (1990), p. 170.

better not predestined it!”⁶

This total submission to God’s will should be espoused with investigating and criticizing one’s affairs seeking for possible errors in relations with God. Once a calamity befalls a Muslim, the first charge should be levelled against his own-self and that he/she falls short to observe the Islamic instructions properly.⁷ Imam Abū al-Ḥasan al-Qaṭṭān⁸ (254-345/868-956) is reported to have said, “I have been visited with affliction in my eyesight as a punishment for speaking too much⁹ during the journey [of searching for knowledge].¹⁰ To avoid any further deterioration, the sinful person was always advised to start immediately serious and ongoing bids to give up such sins.¹¹ In his book *Al-Kabā’ir* (Grave Sins), Shams al-Dīn al-Dhahabī (748/1348)¹² related a story whose purport coincides with the aforementioned thesis. The story is about an unnamed influential person who made misuse of his political position and influence by subduing a poor fisherman and taking his fish illegally. Feeling the bitterness of injustice, the fisherman supplicated God by saying, “O God! This one made use of his power against my weakness and took what you provided me with out of injustice. Show me [what] Your Power [can do] with him”. Being bitten by this fish, the unjust person suffered great pain in his thumb and thus went to the doctor who diagnosed his case as gangrene. As a remedy, the doctor said, the thumb must be amputated. Although the infected thumb was amputated, the gangrene continued spreading and consequently the man’s palm, forearm and later on the whole arm was intermittently amputated. Knowing the background story of the man’s sickness, some people advised him to go to the fisherman himself and ask forgiveness, lest the gangrene would spread throughout his whole body. This person went to the oppressed fisherman kissing his foot, crying and asking for forgiveness. Having been forgiven by the fisherman, he also declared his repentance (*tawba*) to God in order not to undergo such circumstances again in his life.¹³

Fearing that servitude would be restricted to passive acts, the Ḥanbalī scholar Ibn Taymiyya stressed that making use of all possible means in life to combat afflictions in life is an essential element of paying service to God (*‘ubūdiyya*).¹⁴ This notion was further elaborated by modern scholars who stressed the importance of positive acts as an essential element of servitude. Speaking about accepting God’s predestination of illnesses and afflictions, al-

⁶ Ibid.

⁷ Ibn al-Jawzī (1399/1979), vol. 4, p. 229.

⁸ He is Abū al-Ḥasan ‘Alī b. Ibrāhīm b. Salama al-Qazwīnī al-Qaṭṭān. On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 15, pp. 463-466.

⁹ “Speaking too much” in this context could mean being over proud of one’s knowledge and hence speaking too much about one’s scholastic abilities.

¹⁰ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 15, p. 464.

¹¹ See Ibn Taymiyyah (I), vol. 2, p. 109. See also Zidān, ‘Abd al-Karīm (1414/1994), pp. 213 & 216.

¹² On him, see Bencheneb, M. & J. de Somogyi (2003), vol. II, pp. 215 & 216.

¹³ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (I), pp. 113 & 144.

¹⁴ Ibn Taymiyya (1401/1981), p. 12.

Būṭī reproached those who think that this acceptance of and surrender to God’s will would imply passivity. Adopting a passive attitude towards afflictions and ignoring means of resisting them or minimizing their repercussions is actually, according to al-Būṭī, a rebellion against God’s predestination and disrespect for the universal norms and natural laws He has enacted in life.¹⁵ According to al-Qaraḏāwī, one of the fruits of belief in God’s predestination is moving towards performing more fruitful and constructive activities in life instead of just experiencing passive regret and sorrow.¹⁶ In order to simulate people with disabilities to remain positive and to overcome their disabilities, modern scholars frequently recalled the prominent figures whose disabilities did not hinder them to participate in the development of their societies. The Moroccan scholar Muṣṭafā b. Ḥamza said, “So were the disabled Muslims peerless. They gained science, literature, wisdom and virtue and left behind them a good reputation and excellent stories.”¹⁷ The Syrian scholar Sa‘dī Abū Jayb said that the number of such prominent figures throughout Islamic history is countless.¹⁸ Recently a separate genre on those figures, depending heavily on a number of early sources in Islamic history,¹⁹ came to exist.²⁰

3.2 Patience (*Ṣabr*)

Ṣabr is usually rendered as “patience, endurance.” The significance of this concept can hardly be conveyed in a Western European language by a single word. According to the Arabic lexicographers, the root *ṣ-b-r*, of which *ṣabr* is the *nomen actionis*, means to restrain or bind.²¹ There is an expression in Arabic, “so and-so was killed *ṣabran*,” which means that he was captured and detained until he died. In the spiritual sense, patience means to stop ourselves from despairing and panicking, to stop our tongues from complaining, and to stop our hands from striking our faces and tearing our clothes at times of grief and stress.²²

Practising *ṣabr* at the time of being afflicted with disability or any other sort of calamity is seen not only as one of the noble ethics that man can practise out of showing his chivalry or manliness. It is also a religious duty that every Muslim has to observe.²³ According to Ibn al-Qayyim, as patience is *farḍ*

¹⁵ See Būṭī, Muḥammed Sa‘id Ramaḏān al- (2001), pp. 207-215.

¹⁶ Qaraḏāwī, Yūsuf al- (1421/2000), pp. 99-101

¹⁷ Ibn Ḥamza, Muṣṭafā (1414/1993), p. 54.

¹⁸ Abū Jayb, Sa‘dī (1402/1982), p. 33, note 4.

¹⁹ Ḥusayn, ‘Abd al-Razzāq (1420/1999), p. 16-29.

²⁰ See for instance, Sharabāshī, Aḥmad al- (1), vol. 2, pp. 130-265; Jamjūm, Zuhayr (1410/1990); Shakūr, Jalīl Wadī‘ (1); Suwaylīm Aḥmad (1992); Qubaysī, Muḥammad (1996); Ṣādir, Karīm (1996); Ḥusayn, ‘Abd al-Razzāq (1420/1999), esp. 169-306.

²¹ Wensinck, A.J. (2003), vol. VIII, p. 685.

²² Ibn al-Qayyim (1998), p. 7. For further information on the linguistic denotation of *ṣabr* in Arabic, see Ringer, H. (1952), pp. 75-83; Wensinck, A. J. (2003).

²³ Ibn al-Qayyim (1998), pp. 11, 16 & 19; Ibn al-Qayyim (1393/1973), pp. 112 & 113.

(obligatory) in that case,²⁴ God has provided people with ways and means of obtaining and strengthening the quality of patience, for He has never instructed them to do something without providing them with ways and means of achieving it.²⁵ Here two main means are to be quoted from Ibn al-Qayyim:

The first means is, if one does not naturally possess the characteristic of patience, to act as if you do possess it, until it eventually becomes your second nature.²⁶ The Prophet is reported to say, “Whoever tries to be patient, God will help him to be patient.”²⁷ **The second** means is to seek the help of God. To possess the characteristic of patience especially “patience for the sake of God” which is one of the highest grades of *ṣabr*, one has to seek the help of God. The Qur’ān says, “And do thou be patient, for thy patience is but from God[...].” (16: 127).²⁸ Thus man should realise that he has no patience himself and no power to acquire patience. Rather he knows that, “there is no power and no strength except by (the help of) God.”²⁹ It would be felicitous to quote here Ibn al-Qayyim’s advice of how to maintain patience at times of trial and adversity. According to him patience during difficult times may be achieved by:

1. Thinking of the good reward that lies ahead. The more one believes in the rewards that are waiting for him, the easier it becomes to have patience. If it were not for the anticipation of the rewards, no goals or objectives pertaining to this life or the Hereafter would have been achieved. Human nature loves instant gratification, but reason and maturity make one think of the long-term outcome, which helps to strengthen patience in enduring whatever one faces, whether there is no choice or otherwise;
2. Expecting and hoping for a time of ease. This hope in itself offers a measure of immediate relief;
3. Thinking of God’s countless blessings. When one realizes that one cannot enumerate the blessings of God, it becomes easier for a person to exercise patience in facing the current adversity, because the present troubles are like a raindrop compared to the vast ocean of God’s blessings and favours;
4. Thinking of previous blessings of God. This will remind one of God’s care, and strengthen his hopes and expectations for a time of ease to come.³⁰

Practising patience in general has been elaborated and extolled in myriads of Qur’anic verses³¹ and Prophetic traditions.³² Great and matchless rewards are dedicated to those who endure patiently when befallen by specific sorts of

²⁴ Manbijī, Muḥammad b. Muḥammad al- (1347/1929), pp. 116-118; On the ruling of *ṣabr* on different occasions, see Qaraḍāwī, Yūsuf al- (1410/1989), pp. 29-32.

²⁵ Ibn al-Qayyim (1998), p. 26; Ibn Taymiyyah (1), Vol. 8, p. 191.

²⁶ Ibn al-Qayyim (1998), p. 10.

²⁷ Bukhārī (1407/1987), Ḥadīth No. 1400, vol. 2, p. 534 & ḥadīth no. 6105, vol. 5, p. 2375; Ibn Ḥibbān (1414/1993), Ḥadīth No. 3400, vol. 8, p. 193; Aṣbahānī, Abū Nu‘aym al- (1996), Ḥadīth No. 2347, vol. 3, p. 117.

²⁸ Ibn al-Qayyim (1998), pp. 21 & 22.

²⁹ Ibid, pp. 58 & 59.

³⁰ Ibid, p. 18.

³¹ Aḥmad b. Ḥanbal stated that *ṣabr* has been mentioned in the Qur’ān in ninety places. See Ibn al-Qayyim (1998), pp. 39-42. Cf. Qaraḍāwī, Yūsuf al- (1410/1989), pp. 7 & 8.

³² Ibn al-Qayyim (1), vol. 1, pp. 44-47.

illnesses that could be counted as disabilities such as epilepsy and blindness.

As for epilepsy, there is the famous story of the epileptic woman who asked the Prophet for his supplication (*du'ā'*) for her healing; he replied to her that, if she refrained from her request and exercised *ṣabr*, paradise would be her portion.³³

As for the virtues and rewards of enduring patiently the affliction of blindness, compilers of prophetic traditions dedicated specific sections to that topic.³⁴ To mention one of the most famous texts in this respect: “If I test My servant (*‘abdī*) by depriving him of his two precious ones [meaning his eyes or eyesight] and he faces that with patient perseverance, I shall compensate him with Paradise.”³⁵

It is to be pointed out in this regard that the laudable *ṣabr* in Islam was seen as the patience practised on time and not after it is too late.³⁶ At any rate, every person has to exercise patience in order to face difficulties, whether he does so willingly or unwillingly. The noble person, Ibn al-Qayyim elaborated, exercises patience willingly, because he realizes the benefits of patience and he knows that he will be rewarded for his patience and will be criticized if he panics. He is aware that if he does not have patience, panicking and impatience will not help him to regain missed opportunities, and will not take away things he dislikes. Whatever is decreed by God cannot be prevented from happening, and whatever is decreed not to happen cannot be made to happen. So an attitude of impatience and panic actually causes harm. A wise man said: “A man with wisdom does, as soon as adversity appears, that which a foolish man does after a month (i.e. he resorts to patience).”³⁷ On the other hand, the ignoble man exercises patience only when he realizes that he has no choice. After wasting a lot of time and energy in panicking and struggling, he realizes that his impatience will not help him. Then he exercises patience in the same way a person who has been tied up to be whipped exercises patience.³⁸ Patience of such people is as useless as the patience of those people screaming and crying out in Hellfire, “[...] To us it makes no difference (now) whether we rage, or bear (these torments) with patience: for ourselves there is no way of escape.” (Qur’ān 14:21)³⁹

Within the context of practising patience at times of afflictions and

³³ Bukhārī (1407/1987), ḥadīth no. 5328, vol. 5, p. 2140; Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (I), ḥadīth no. 2576, vol. 4, p. 1994.

³⁴ See for example Bukhārī (1407/1987), vol. 5, p. 2140, *Bāb faḍl man dhahaba baṣaruh* (section on the merit of one who lost his eyesight); Ibn Abī Usāma, al-Ḥārith (1412/1992), vol. 1, p. 351, *Bāb fī man ibtulīya bi baṣarīh* (Section on one who has been afflicted with [losing] his eyesight. See also Mundhirī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417/1996), vol. 4, p. 139.

³⁵ Bukhārī (1407/1987), ḥadīth no. 5329, vol. 5, p. 2140; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), ḥadīth no. 6344, vol. 3, p. 375; Mundhirī, Abū Muḥammad ‘Abd al-‘Azīm b. ‘Abd al-Qawī al- (1417/1996), ḥadīth no. 5228, vol. 4, p. 154.

³⁶ Qaradāwī, Yūsuf al- (1410/1989), p. 34.

³⁷ Ibn al-Qayyim (1998), p. 24.

³⁸ Ibid, p. 24.

³⁹ Ibid.

adversities and rewards attached, Ibn al-Qayyim spoke about two main misunderstandings that should be pointed out and corrected:

The first misunderstanding is that there is no contradiction between being patient on one hand and crying out and complaining to God on the other.⁴⁰ This is not going to diminish the reward of patience. Complaining to God at times of afflictions has been demonstrated by several of the Prophets. Jacob (*Ya‘qūb*) said “*ṣabrun jamīl*,” which means “patience is most fitting for me”, then he said, “I only complain of my distraction and anguish to God.” (Qur’ān 12:86). The Qur’ān says also about Job (*Ayyūb*), “And (remember) Ayyūb (Job), when he cried to his Lord, “Truly distress has seized me [...]” (21:83). Ibn al-Qayyim said that even the Prophet Muḥammad, the epitome of patience, prayed to his Lord: “O God, I complain to You of my weakness and helplessness.”⁴¹ However, complaining to people, either directly, through words, or indirectly, through the way we look and behave, is contradictory to patience.⁴²

The second misunderstanding is that time of wellness and ease is better than that of illness and adversity. This does not contradict the prophetic tradition that “no-one has ever been given a better gift than patience,” because this refers to the case after a trial has befallen a person. But ease is still better.⁴³ The real spirit of Islam is to ask God to provide you with wellness (*al-‘āfiya*) in this world and the Hereafter. In concrete incidents the Prophet guided people to this spirit of Islam. It was related that he paid a visit to a man who was so sick that he looked like a nestling bird. The Prophet asked him, “What was your supplication [to God]? Did not you ask your lord for wellness (*al-‘āfiyah*)?” The man said, I used to say, “O God, what you are going to punish me with in the Hereafter, make it happen rapidly in this world.” The Prophet said, “Glory to God! You cannot stand it. Would not you say ‘O God! Give us good in this world and good in the Hereafter.’”⁴⁴ According to some narrations of this ḥadīth, after having performed this *du‘ā’*, it took only a few days for the man to be restored to health.⁴⁵

We conclude the discussions on patience, by citing the story of ‘Urwa Ibn

⁴⁰ Ibid, pp. 8 & 23.

⁴¹ Ṭabarī, Muḥammad b. Jarīr al- (1407/1986), vol. 1, p. 554; Ibn Hishām (1411/1990), vol. 2, p. 268; Baghdādī, Abū Bakr Aḥmad ‘Alī b. Thābit al-Khaṭīb al- (1403/1982), vol. 2, p. 275.

⁴² Ibn al-Qayyim (1998), p. 8.

⁴³ Ibid.

⁴⁴ Tirmidhī, al- (1), Ḥadīth No. 3487, vol. 5, p. 521.

⁴⁵ Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), ḥadīth no. 2688; Mubārakafūrī, Muḥammad b. ‘Abd al-Raḥmān al- (1), vol. 9, p. 323; Munāwī, ‘Abd al-Ra’ūf al- (1356/1937), vol. 2, p. 151; Ibn Ḥibbān (1414/1993), ḥadīth no. 941; Ibn Ḥanbal, Aḥmad (1), ḥadīth no. 12068; Nasā’ī, Abū ‘Abd al-Raḥmān Aḥmad b. Shu‘yab al- (1406/1985), ḥadīth no. 1055; Ibn Abī Shayba (1409/1988), ḥadīth no. 29340; Mawṣilī, Abū Ya‘lā al- (1404/1984), ḥadīth no. 3511, 3759, 3802, 3837& 4010; Kissī, Abū Muḥammad ‘Abd b. Naṣr b. Ḥumayd al- (1408/1988), ḥadīth no. 1398; Ḥanafī, Abū Al-Maḥāsīn Yūsuf b. Mūsā al- (1), vol. 2, p. 305; Ibn al-Mubārak, ‘Abd Allāh (1), ḥadīth no. 973; Ḥusaynī, Ibrāhīm b. Muḥammad al- (1401/1980), ḥadīth no. 394. See also Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 2, p. 300; Ibn Kathīr (1401), vol. 1, p. 245.

al-Zubayr (d. ca. 93/711),⁴⁶ always regarded as one of the most moving stories in the context of showing patience in the case of calamities. It has been chosen here because it has also something to do with disability in particular.

‘Urwa Ibn al-Zubayr got gangrene in his leg, and the doctors suggested that the leg should be amputated, lest the gangrene would spread to the rest of his body and kill him. ‘Urwa agreed and the doctors asked him whether he would drink intoxicants to ease the pain. He said, “God is testing me to see the extent of my patience. How could I go against His commands?”⁴⁷ The doctors began to amputate his leg, using a saw. When the saw reached the bone, ‘Urwa fainted, and when he came around, sweat was pouring down his face, and he was repeating, “There is no god but Allah. Allah is the Greatest.” When the operation was over, he picked up his leg and kissed it, then said, “I swear by the One Who mounted me on you, I never used you to walk to any place of wrong action or to any place where God would not like me to be.” Then he gave instructions that the leg should be washed, perfumed, wrapped in a cloth and buried in the Muslim graveyard. When people went to offer him their condolences, the only reply he made was to quote from the Qur’ān, “[...] truly we have suffered much fatigue at our journey” (18: 62) Later on, one of his friends came to visit him and said, “may your enemies’ lathers perish!” and asked him, “show me the affliction for which I have come to console you.” ‘Urwa uncovered his stump, and his friend said, “By God, we were not preparing you to wrestle! God has saved most of you: your sanity, your tongue, your eyesight, your two hands, and one of your two legs.” ‘Urwa told him, “Nobody has consoled me as you have.”

3.3. Gratitude (*Shukr*)

Shukr denotes a state of feeling gratefulness because of a benefaction or favour (*ni‘ma*) and showing the effect of having that *ni‘ma* (blessing).⁴⁸ Thus originally *shukr* is shown for blessings and that is why its opposite is called *kufr* (ingratitude).⁴⁹ Consequently, practising *shukr* at times of enjoying luxuries should be done by everybody. However, giving *shukr* in the case of calamity is something to be practised by those of real piety and real understanding (*fiqh*) and is thus of a higher status to be aspired. A well-known conversation between two Muslim scholars known for their piety and deep sincerity could add more elaboration on this point:

Shaqīq al-Balkhī (d. 194/809)⁵⁰, came from Khurāsān to pay a visit to Ibrāhīm b. Adham (d. 162/778)⁵¹ in Iraq. On seeing Ibrāhīm b. Adham, Shaqīq al-Balkhī asked him about the current state of his poor fellows. In a bid to praise his fellows, Ibrāhīm b. Adham replied, “When God sends them

⁴⁶ On him see, Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol., 4, pp. 421-437.

⁴⁷ Ibn al-Qayyim (1998), pp. 48 & 49; Qaraḍāwī, Yūsuf al- (1416/1996), p. 189.

⁴⁸ See Aṣḥāhānī, Rāghib al- (1), vol. 1, p. 256

⁴⁹ Ibid.

⁵⁰ On him see, Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol., 9, pp. 313-316.

⁵¹ On him see, Ibid, vol., 7, pp. 387-396.

something they eat it and are grateful, if not, they endure patiently and refrain from begging.” Whereupon Shaqīq replied, “This is how I left our dogs in Balkh.”⁵² Thereupon Ibrāhīm b. Adham asked him about the state of poor people in Khurāsān. Shaqīq answered, “When they have anything they prefer others to themselves [i.e., then give it away]. If not, they occupy themselves with giving thanks.” On hearing this answer, Ibrāhīm b. Adham kissed Shaqīq’s head and said, “You are right, master!”⁵³ This story clearly shows the higher rank of those who offer thanks at times of adversity or calamity.

Although practising gratitude in the case of afflictions is described as a wild bird that one can hardly catch and fetter, Ibn al-Qayyim confirmed that it can still be made possible by two main means.

Firstly, remembering the other untold blessings provided by God that one is rolling in. This principle is experienced in the following story retold by the Companion Salmān al-Fārisī (d. ca. 36/656),⁵⁴ “There was a man who was given many of the luxuries of this world, and then they were taken away from him. But he continued to praise and thank God until everything had been taken from him, even his bed. He then still praised and thanked God. Another man, who had also been given many of the luxuries of this world, asked him, ‘What are you praising and thanking God for?’ The man said, ‘I am praising and thanking Him for blessings which, if others asked me to give them in return for all that they have, I would never give them up.’ ‘What can they be?’ asked the second man. ‘Can’t you see?’ asked the first man. ‘I have my eyesight, my tongue, my hands, my feet [...]’⁵⁵ Muslim scholars also state that man should firmly believe that one’s deeds cannot pay for even one of the blessings of God, because even the smallest of God’s blessings and favours far outweigh the deeds of man.⁵⁶

The second means to help man practise gratitude during afflictions is to keep in mind that blessings always assume the guise of afflictions. In this sense, one of the scholars defined gratitude as follows, “To imagine the rose from the thorn and to imagine the non-visible part to be the whole.”⁵⁷ Those who knew this fact and instilled it into the depth of their hearts did not see much difference between those times when they enjoyed luxuries and other times when these luxuries were kept away from them. That is why Sufyān al-Thawrī (97-126/715-743)⁵⁸ said, “He does not understand religion properly who does not count affliction as a blessing and ease as a disaster.”⁵⁹

⁵² A city in Khurasan at the time. On this city, see Ḥamawī, Abū ‘Abd Allāh Yaḳūt b. ‘Abd Allāh al- (1), vol. 1, pp. 479 & 480.

⁵³ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 215. Cf. Schimmel, Annemarie (1975), p. 125 quoting from Ṣanā‘ī, ‘Abd al-Majdūd (1950), p. 495.

⁵⁴ He is one of the Companions of the Prophet of Islam. On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 1, pp. 505-557.

⁵⁵ Ibn al-Qayyim (1998), p. 67.

⁵⁶ Ibid, pp. 67 & 68.

⁵⁷ Schimmel, Annemarie (1975), p. 126.

⁵⁸ On him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol.7, pp. 229-279.

⁵⁹ Ibn al-Qayyim (1998), p. 68.

Attaining such a grade of *shukr* was seen as closely connected with two other highly praised Islamic moral principles, that is, *riḍā*⁶⁰ and love for God. *Shukr* is related to *riḍā*, which is not a patient bearing of all the vicissitudes of life but happiness in the bitterness of the affliction. The well-known mystic, Dhunnūn (d. 859)⁶¹ said, “*Riḍā* is the joy of the heart in the bitterness of the divine decree.”⁶² However *riḍā* itself, as stated by ‘Alī b. ‘Uthmān al-Hujwīrī (d. ca. 1071), is the result of love inasmuch as being content with what is done by the beloved.⁶³ In their love for God, people practise two main types of love, namely, purposive love (*ḥubb gharāḍī*) and pure love (*ḥubb ḥaqīqī*).⁶⁴ As for the first type, people love God for the divine beneficence and favours that people can not even fully count. Ibn al-Qayyim elaborated on this type of love by saying, “How then such a one [God] would not be loved, and how should man not blush to direct a particle of his love to an object other than Him? Who is more worthy of praise and love than He? This unmerited kindness of which man is the recipient is visible to all and it is the gate through which one must pass to enter into a relationship of love with God.”⁶⁵ However, to love God as a benefactor is only a first step on the way and never a destination. That is because love for beneficence alone is inherently inadequate since it comes to an end when the benefactor ceases to bestow his favour.⁶⁶ By extension, those who love God only because He provided them with good health will cease to love Him once they fall sick or get afflicted with disabilities.

Hence this purposive love should be seen only as a gate to the pure love. Based on what he has known from the goodness of the Creator, the lover may infer what he does not know. “God calls men to Himself through this gate. So that when they enter it, they are called through the other – the Gate of Names and Attributes through which pass only the elite.”⁶⁷ There is no doubt that love for God as Perfect and Beautiful is a higher stage than love in response to His kindness.⁶⁸ Furthermore, God alone may be rightly loved as an end in Himself. All other objects of love, therefore, must be loved only for the sake of God.⁶⁹

Those who practise this type of love – pure love – are also those who give thanks and show gratitude even at times of afflictions because they believe that

⁶⁰ Usually rendered in English as acquiescence, contentment or approval but in the general sense the significance of this conception can hardly be conveyed completely or precisely in English by a single word. See Watt, W. Montgomery (1979), pp. 17 & 18.

⁶¹ His name is Thawbān b. Ibrāhīm and it is said that it is Fayḍ b. Aḥmad or Fayḍ b. Ibrāhīm, on him see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 1, pp. 532-536.

⁶² Ṭūsī, Abū Naṣr al-Sarrāj, al- (1380/1960), p. 80; Schimmel, Annemarie (1975), p. 126.

⁶³ Hujwīrī, ‘Alī b. ‘Uthmān al- (1911-1959), p. 180; Schimmel, Annemarie (1975), p. 126

⁶⁴ For further elaborations on these two types of love see, Ibn al-Qayyim (1375/1956), pp. 18-52 esp. pp. 45-47, 51 & 52; Ghazālī, Abū Ḥāmid, al- (1356/1937-1357-1938), vol. XIV, p., 51; Bell, Joseph Norment (1979), pp. 148 & 149.

⁶⁵ Ibn al-Qayyim (1358/1939), pp. 410 & 411; Bell, Joseph Norment (1979), p. 120.

⁶⁶ Ibn al-Qayyim (1358/1939), pp. 415; Bell, Joseph Norment (1979), p. 120.

⁶⁷ Ibn al-Qayyim (1358/1939), pp. 412; Bell, Joseph Norment (1979), p. 120.

⁶⁸ Ibn al-Qayyim (4), vol. 2, pp. 89-91; Muḥāsibī, al-Ḥārith b. Asad al- (1), pp. 94 & 95; Bell, Joseph Norment (1979), p. 120.

⁶⁹ Ibn Taymiyya, (1346/1927), pp. 77 & 78; Bell, Joseph Norment (1979), p. 84.

whatever comes from the lover is something to be loved. The well-known Companion, Sa'd b. Abī Waqqāṣ (d. 55/675) was famous for his accepted supplication to God (*al-du'ā' al-mustajāb*) and people used to ask him to pray for them. Being blind, people deemed it strange that he did not pray God to give him back his eyesight. Asked about this seemingly eccentric behaviour, he smiled and said, "The divine predestination is more beloved to me than my eyesight."⁷⁰

⁷⁰ Ibn al-Qayyim, (1393/1973), vol. 2, p. 227.

Chapter Four: Human Dignity of People with Disabilities

4.1 Theoretical Considerations: Influence of Physiognomy?

The main Arabic term which conveys the purport of physiognomy is *firāsa*¹ and, in a lesser degree, *tawassum* which was often used as a synonym of *firāsa*.² Tracing the term *firāsa* in Arabic literature reveals four main meanings each of which can be seen as a distinct category or type of *firāsa*. That *firāsa* was not of a unilateral meaning is clearly stated in modern studies but a clear division and exposition of these four meanings is still missing. Keeping in view that such systematic division is crucial to the argumentation below; an explanatory presentation of these four meanings will be given first.

The first meaning of *firāsa* that can be encountered in the earliest Arabic lexicons centers on one's sharp-mindedness and astuteness used to disclose mysterious issues.³ The active participle (*fāris*) and the comparative adjective (*afras*) would also denote one's adeptness, proficiency and expertise in a specific aspect of life. The expression, *ana afraṣ bi al-rijāl* means "I am more knowledgeable and more experienced about men."⁴ A particularly renowned practitioner of this type of *firāsa* was the judge Iyās b. Mu'āwiya (appointed in 99/717).⁵ He was proverbial for his perspicacity and his ability to extract precise hints of information unnoticed by others and his shrewdness are often praised.⁶ This is almost the broadest meaning of *firāsa* which made this term usable for indicating other meanings as well.

The second meaning of *firāsa* was *qiyāfa*, read sometimes as *qāfa*. *Qiyāfa* was of two types, namely *qiyāfat al-athar* and *qiyāfat al-bashar*. *Qiyāfat al-athar* was to track birds, animals and humans through minute scrutiny of the traces that they leave behind, most obviously foot-prints. *Qiyāfat al-bashar* was to establish the paternity or maternity of a child by careful observation and comparison of the bodily characteristics of it and its alleged parent.⁷ This second type brings *qiyāfa* very close to the fourth meaning of *firāsa* below.⁸ The two terms *qiyāfa* and *firāsa* were usually used as synonyms.⁹ *Qiyāfa* was presented in Arabic literature as a typically Arabic achievement and as

¹ Porter, Martin (2005), p. 61; Hoyland, Robert (2005), p. 361.

² See for instance, Ibn Sayyidih (1316-1321/1898-1903), p. 26; Ibn al-'Arabī (1), vol. 3, p. 107; Qurtubī, Abū 'Abd Allāh Muhammad b. Ahmad al- (1372/1952), vol. 10, p. 42; Ansārī, Abū Ṭālib al- (1332/1914), p. 46.

³ See Farāhidī, al-Khalīl b. Aḥmad al- (1980-1985), vol. 7, p. 245; Ibn Durayd (1987-1988), vol. 2, p. 717; Ibn Sayyidih (1316-1321/1898-1903), p. 26; Rāzī, Muḥammad b. Abī Bakr b. 'Abd al-Qādir al- (1415/1995), p. 208; see Ibn Qutayba Abū Muḥammad 'Abd Allāh b. Muslim (1406/1986), vol. 1, p. 107, vol. 2, p. 237 & 240.

⁴ Ibn Manzūr, Muḥammad b. Makram (1), vol. 6, p. 160; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 32, p. 77.

⁵ Hoyland, Robert (2005), p. 373.

⁶ Pellat, Ch. (2) (2003), vol. IV, p. 291.

⁷ See Fahd, T. (2003), "Qiyāfa"; Hoyland, Robert (2005), p. 362 & 363.

⁸ Hoyland, Robert (2005), p. 362 & 363.

⁹ See for instance, Jāḥiẓ, Abū 'Uthmān 'Amr b. Baḥr al- (1356-64/1938-45), vol. 1, p. 123, quoted by Hoyland, Robert (2005), p. 363.

something to be inherited rather than to be learnt and that is why no books were written on this topic.¹⁰

The third meaning is the illuminative or mystic one. The core of this type of *firāsa* is detaching oneself from the worldly desires by means of seclusion (*khalwa*), austerity (*riyāḍa*) waking up at night and abandoning eating. A regular practice of such rituals would produce a sort of visionary experiences or unveilings (*mukāshafāt*) by which the practitioner could predict, foresee and tell unseen objects and unknown future events.¹¹ Islamic mysticism played a central role in developing this meaning and in one way or another Islamizing it to become eventually a typical Islamic type of *firāsa*. Such type centers on the pious qualities of the practitioner of *firāsa*. It enables him to receive a light from Allah by which he can penetrate a person's hidden depths such as his conscience, innermost thoughts and his past and future.¹² A more detailed definition states, "Firāsa is that which God plants in the hearts of his friends (*awliyā'ih*) so that they may know the internal states of people by a sort of miracle and divination (*bi naw' min al-karāmāt wa iṣābat al-zann wa al-ḥads*) for the heart has an eye just as sight does, and whoever has a sound heart-eye and is supported by God's light may gain confirmation of the true essences of things and understanding of the upper world while he remains in the lower world. He perceives what no eye has seen, no ear has heard, and what has never occurred to the heart of any human."¹³ This type of *firāsa* was seen as a talent possessed only by few people, namely the most pure of heart.¹⁴ This also meant that any figure renowned for his/her piety or devotion must have been in the possession of *firāsa*, a fact immediately patent from Islamic religious literature.¹⁵ This type was given the name *al-firāsa al-īmāniyya* (intuitive knowledge produced by belief)¹⁶ or *al-firāsa al-ilāhiyya* (intuitive knowledge produced by God)¹⁷ and sometimes in the Sufi literature *al-mukāshafa* (unveiling)¹⁸

This meaning was a product of a religious dimension added to this term by Islam. This sense has gradually been integrated in the denotations of *firāsa* and its main synonym *tawassum*, the same like many other Arabic words which got new dimension by Islam such as *ṣalāh*, *zakāh*, *ḥajj* and so forth.

¹⁰ Khalīfa, Ḥājī (1412-1992), vol. 2, p. 346.

¹¹ Harawī, 'Abd Allāh Al-Anṣārī al- (1408/1988), Rāzī, Fakhr al-Dīn al- (1939), pp. 6 & 7; Ibn al-Qayyim (1393/1973), vol. 1, p. 130, vol. 2, p. 486 & 487; Anṣārī, Abū Ṭālib al- (1332/1914), p. 3; *Sharḥ al-'Aqīda al-Taḥāwīyya* (1391/1971), vol. 1, p. 563.

¹² Hoyland, Robert (2005), p. 368.

¹³ Munāwī, 'Abd al-Ra'ūf al- (1356/1937), vol. 2, pp. 414 & 415, quoted by Hoyland, Robert (2005), p. 386 & 387.

¹⁴ Hoyland, Robert (2005), p. 368.

¹⁵ Ibid, p. 387.

¹⁶ Ghumrī, Zayn al-'Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 1b. Ghumrī, Zayn al-'Ābidīn Muḥammad b. Muḥammad al- (d. 970/1562), fol. 1b.

¹⁷ Hoyland, Robert (2005), p. 368.

¹⁸ Ghumrī, Zayn al-'Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 2b & 3a. Ghumrī, Zayn al-'Ābidīn Muḥammad b. Muḥammad al- (d. 970/1562), fol. 2a. For the technical meaning of this term especially in Sufi literature, see Gardet, L. (4) (2003), vol. IV, pp. 696-698.

They key-citation in this context was “Beware the *firāsa* of the believer for he sees with the light of God”. This adage was classified as a Prophetic tradition by the scholars of Ḥadīth but it does not appear in written form until the time when the great collections of the sayings of the Prophet were being put together in the third/ninth century. It seems to be first noted, very cursorily, by the famous compiler al-Bukhārī (d. 256/870), in his *Al-Tārīkh al-kabīr* and then by his younger contemporary and fellow compiler al-Tirmidhī (d. 279/892), who appends a few brief thoughts of his own:

The Messenger of God said: “Beware the *firāsa* of the believer, for he sees with the light of God”, and then he recited (the Qur’anic verse): “In that are signs for the discerning”. Abū ‘Īsā: “This tradition is rare; we only know of it in this context. It is transmitted on the authority of a number of knowledgeable people regarding the exegesis of this verse “In that are signs for the discerning”: (“the discerning” means) those who practise *firāsa*.”¹⁹

However, though not written down until the mid-ninth century, it is evident from Tirmidhī’s comment about its explication by “knowledgeable people” (*ahl al-‘ilm*) that the saying was already known in his day.²⁰ This meaning was later integrated as one of the main denotations of the term *firāsa*. For instance, the adage “Beware the *firāsa* of the believer” is also found in the Arabic lexical entries on *firāsa* and *tawassum*.²¹ Additionally, this meaning is included in literally hundreds of legal and theological works, particularly those with Sūfī leanings.²² Actually, within the Sufi milieu, this type of *firāsa* received the most systematic trials of defining it, elaborating the conditions to gain it and also dividing it into different sorts.²³

The fourth meaning is almost identical with the Greek concept of physiognomy. Etymologically, it is derived from three Greek words, viz., *physis* (nature), *nomos* (law) and *gnomon* (judge or interpreter).²⁴ This term conveys the examining of the relationship between physical attributes and personality traits. *Firāsa* in this sense is a tool by which one can determine what the inspection of a person’s corporal features might tell us about his or her innate character.²⁵ This type was known as *al-firāsa al-ṭabī‘iyya* (natural physiognomy),²⁶ *al-firāsa al-insāniyya* (human physiognomy),²⁷ or *al-firāsa al-*

¹⁹ Tirmidhī, Abū ‘Īsā Muḥammad b. Sawra al- (1), ḥadīth no. 3127, vol. 5, p. 298; Hoyland, Robert (2005), pp. 364 & 365.

²⁰ Hoyland, Robert (2005), pp. 364 & 365.

²¹ See for instance, Ibn Sayyidīh (1316-1321/1898-1903), p. 26; Rāzī, Muḥammad b. Abī Bakr b. ‘Abd al-Qādir al- (1415/1995), p. 208.

²² Hoyland, Robert (2005), p. 365.

²³ Qushayrī, Abū al-Qāsim al- (1), pp. 322-330; Harawī, ‘Abd Allāh Al-Anṣārī al- (1408/1988), vol. 1, pp. 80 & 81; Ibn al-Qayyim (1395/1975), vol. 1, pp. 238-240; Ibn al-Qayyim (1) (1395/1975), vol. 1, p. 48; Ibn al-Qayyim (3), vol. 1, p. 126; Ibn al-Qayyim (1412/1992), vol. 1, pp. 101 & 102; Ibn al-Qayyim (1393/1973), vol. 1, pp. 482-495.

²⁴ A., Oommen & Oommen T. (2003), p. 189, quoting from Percival, Melissa. (1999).

²⁵ Hoyland, Robert (2005), p. 361.

²⁶ Hoyland, Robert (2005), p. 368.

²⁷ Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 1b; Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (d. 970/1562), fol. 1b.

ḥikmiyya (judicious physiognomy).²⁸ Unlike Islamic type of *firāsa*, this type is more readily available to all, since it consists simply of an enumeration of the particular characteristics that are associated with specific bodily features.²⁹

The statement mentioned in the article of the *Encyclopaedia of Islam* on *firāsa* commenting on this particular meaning, “*Firāsa* is an Islamic science”³⁰ cannot be taken without reservations. It can be accepted only in the sense that it developed to be Islamic at later stages as to be shown below. The only researcher who opines, although with doubts expressed by himself, that physiognomy originated as an Arabic and Islamic science is ‘Abd al-Karīm ‘Adiyy (1917-1985). This is despite the fact that he concedes that *firāsa* in early Arabic lexicons never appears in the Greek sense.³¹ He goes even further to believe that Greek physiognomy got possibly later affected by this Arabic science and not vice versa. ‘Adiyy bases his opinion on what has been related about al-Shāfi‘ī’s adeptness in this science. At the end he presents his arguments in the form of a question that still needs confirmation on negation.³² The issue of al-Shāfi‘ī is to be discussed below in detail and I believe it answers ‘Adiyy’s question clearly in the negative.

At any rate, it is clear that this meaning of *firāsa* is neither originally Arabic nor Islamic. Early Arabic lexicons do not give any reference to this sense as one of the meanings of *firāsa*.³³ This does not necessarily mean that the idea of a possible link between one’s physical appearance and personality traits could have been common among the Arabs before hearing or reading about this type of physiognomy. But the majority of specialists in this field are of the opinion that this type of *firāsa* could have a definable and distinct existence only after and thanks to the translation of the Greek treatises on this science.³⁴ However, possible Indian and Persian influences should not be ignored. cursory references to the Indian and Persian *firāsa* was made by Ibn Qutayba (213/828-276/871)³⁵ and in the treatise, attributed to al-Jāhīz (d. 255/868-9), which handles among other topics *firāsa* according to the Persians. The treatise also quotes Jawbar al-Hindī (the Indian) as the author of a work on *firāsa*.³⁶ It seems, however, that this initial Indian and Persian influence faded away quickly when the Greek sources were translated.

²⁸ Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 2a & 41a. Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (d. 970/1562), fol. 1b & 8b.

²⁹ Hoyland, Robert (2005), p. 368.

³⁰ Fahd, T. (1) (2003), vol. II, p. 916.

³¹ ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue 2, pp. 181-183

³² ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue, 1, p. 355.

³³ For Arabic lexicons, see Farāhīdī, al-Khalīl b. Aḥmad al- (1980-1985), vol. 7, p. 245; Ibn Durayd (1987-1988), vol. 2, p. 717; Ibn Sayyidīh (1316-1321/1898-1903), p. 26; Rāzī, Muḥammad b. Abī Bakr b. ‘Abd al-Qādir al- (1415/1995), p. 208.

³⁴ See Mourad, Youssef (1939), p. 1; Ghersetti, Antonella (1996), p. 121; Ghersetti, Antonella (1999), p. iii.; Hoyland, Robert (2005), pp. 361 & 362.

³⁵ Ibn Qutayba Abū Muḥammad ‘Abd Allāh b. Muslim (1406/1986), vol. 1, p. 326.

³⁶ K. Inostrantsev (1907-8), p. 120.

Three main Greek sources were of crucial importance in this regard, namely two books attributed to Aristotle and one book attributed to Polemon:³⁷

The two books attributed to Aristotle; *Sirr al-asrār* (secret of secrets)³⁸ and *Kitāb Aristāṭalīs fī al-firāsa* (The Book of Aristotle on Physiognomy).³⁹

The first book purports to be the advice given by the famous Greek philosopher to the equally famous general Alexander the Great while the latter was on campaign in Iran.⁴⁰ This book raised a huge number of scholarly questions the most important of which center on the origin of the book being Arabic or Greek and the date at which this book was written or translated. Many theories have been presented in a bid to answer these questions and to my mind none of them gives decisive answers to all these questions.⁴¹ Just two points would concern us in this respect. First the book contains a section on physiognomy whose categories, style, and vocabulary employed, if not so much the statements themselves, owe much to Polemon⁴² and thus the Greek origins of this specific part is unquestionable. The second point, which still remains equivocal, is the date in which the Arabic versions of this book appeared. The earliest date suggested was during the Umayyad reign (between 41/661-132/750)⁴³ whereas the latest was up to the 7th/13th century, not before 1220.⁴⁴ A proposed date for the text of the section on physiognomy in particular was 330/941.⁴⁵ To sum up, in the absence of definite proof, a wide range of dating possibilities remains open.⁴⁶

The second book was translated by the well-known physician, philosopher, author and translator Ḥunayn b. Ishāq (192/808-260/873)⁴⁷ around the middle of the 3rd/9th century.⁴⁸

³⁷ On him, see Stegemann, Willy (1952), col. 1345; Sezgin, Fuat (1970), vol. III, pp. 352 & 353; Witkam, J.J. (1980), pp. 44 & 45. There are many variations for this name. In English it is mostly Polemon (see Hoyland, Robert (2005), p. 361ff.; Fahd, T. (1) (2003), vol. II, pp. 916 & 917) but sometimes also Polemo (see for instance Rosenthal, F. (1965), pp. 37, 43 & 126). In Arabic, there are at least four variations, viz., *Aflimūn* (see Rosenthal, F. (1965), pp. 37, 43 & 126; Hoyland, Robert (2005), p. 361, note 3), *Iflimūn*, *Fulaymūn* (Witkam, J. J. (1980), p. 45) & *Flimūn* (Fahd, T. (1) (2003), vol. II, p. 916).

³⁸ It was edited by ‘Abd al-Raḥmān Badawī, Badawī, ‘Abd al-Raḥmān (1954), pp. 67-171. The text was also translated into English by a certain Ismail Ali, an Egyptian scholar who had worked on it as a student at the University of London under the supervision of A. S. Fulton, see Steele, Robert (1920), pp. 176-266; Manzalaoui, Mahmoud (1974), p. 141.

³⁹ It was edited and translated to the Italian language by Antonella Ghersetti, Ghersetti, Antonella (1999), pp. 3-50.

⁴⁰ Hoyland, Robert (2005), pp. 368.

⁴¹ See Steele, Robert (1920), pp. ix-lxiii; Badawī, ‘Abd al-Raḥmān (1954), pp. 32-75; Manzalaoui, Mahmoud (1974), pp. 141-257; Koningsveld, P.S. van (1998), pp. 347-349.

⁴² Hoyland, Robert (2005), pp. 368 & 69. It is to be noted that this chapter is sometimes omitted and at other times found separately on its own, see Manzalaoui, Mahmoud (1974), p. 142, 155 & 156.

⁴³ Mahmoud (1974), pp. 163 & 164; Gutas, Dimitri (1998), pp. 23 & 24.

⁴⁴ See Steele, Robert (1920), p. xv.

⁴⁵ Manzalaoui, Mahmoud (1974), p. 157.

⁴⁶ For an overall idea of this question and the proposed answers, see Steele, Robert (1920), pp. xv & xvi; Badawī, ‘Abd al-Raḥmān (1954), pp. 36-45; Manzalaoui, Mahmoud (1974), pp. 157-166.

⁴⁷ On him, see Strohmaier, G. (2003), vol. III, pp. 578-581.

Polemon's book *Kitāb al-firāsa* seems to have been the most influential of all of these books.⁴⁹ The translator of this book and the exact date of translation are unknown.⁵⁰ The well-known historian al-Ya'qūbī (who died in the early 4th/10th century but apparently not before 292/905)⁵¹ notes that Polemon, "the master of physiognomy" (*aflīmūn ṣāhib al-firāsa*), wrote a book in which he explained what physiognomy can tell you of innate disposition, repute, and character, and he gave proofs of that."⁵² But it seems that al-Jāhīz (d. 255/868-9) was the earliest Arabic writer to quote Polemon, in his book *Al-Hayawān*.⁵³ However al-Jāhīz's quotations were on the physiognomy of the dove (*firāsat al-ḥamām*) none of which can be found in the extant Arabic version of Polemon's physiognomy.⁵⁴ Accordingly, it seems that Polemon's book began to circulate around the 3rd/9th century.⁵⁵ By time, Polemon's book was widely used and epitomised and was subsequently extremely influential on the development of *firāsa* in the Greek sense.⁵⁶

Gradually Greek physiognomy in general could find its way as one of the main meanings of *firāsa* in the Arabic and Islamic culture. One of the main reasons in this regard is that contrary to the Islamic *firāsa* which was exclusively for the pious people, Greek physiognomy was learnable and teachable for almost every one.⁵⁷ Its practical benefits embraced the common people and political elite as well as in different social and economic aspects of life. This science helped common people to choose people of good character to be their intimate friends and spouses without falling into traps.⁵⁸ As for the political elite, physiognomy was an important tool for a king or ruler to make a veracious choice for his retinue.⁵⁹ As for its economic benefits, this type of

⁴⁸ Sa'īdī, Lutfi M. (1934), p. 435 ; Gherseti, Antonella (1999), pp. xvii-xxvii.

⁴⁹ A main witness of this book is the Leiden manuscript Or. 198 (I). It was edited in the nineteenth century by G. Hoffmann in Foerster, R. (1893), vol. I, pp. 98-294. The manuscript has been recently reedited by Robert Hoyland, see Hoyland, Robert (2007), pp. 329-342.

⁵⁰ See Stegemann, Willy (1952), col.; Witkam, J.J. (1980), p. 44

⁵¹ On him, see Zaman, Muhammad Qasim (2003), pp. 257 & 258

⁵² Ya'qūbī, Aḥmad b. Ya'qūb al- (1883), vol. 1, p. 135, quoted by Hoyland, Robert (2005), p. 361, note 3. See also Rāzī, Fakhr al-Dīn al- (1939), p. 28.

⁵³ Jāhīz, Abū 'Uthmān 'Amr b. Baḥr al- (1356-64/1938-45), vol. 3, p. 146, 269-275 & 284.

⁵⁴ Polemon was later on also quoted by other well-known scholars such as Ibn al-Nadīm (d. 377/987), Ibn Hazm (d. 413/1022), Ibn al-Qifṭī (d. 646/1248) and Ibn Abī Uṣaybi'a (d. 668/1270), see Witkam, J.J. (1980), p. 45.

⁵⁵ See Hoyland, Robert (2005), p. 361.

⁵⁶ See Mourad, Youssef (1939), pp. 384-86; Witkam, J.J. (1980), p. 45; Hoyland, Robert (2005), p. 361; Gherseti, Antonella & Swain Simon (2007), pp. 309 & 310.

⁵⁷ Rāzī, Fakhr al-Dīn al- (1939), pp. 6 & 7; Ansārī, Abū Ṭālib al- (1332/1914), pp. 3 & 4.

⁵⁸ Qanwajī, Ṣiddīq b. Ḥasan al- (1978), vol. 2, p. 396. For an example on women, see Ansārī, Abū Ṭālib al- (1332/1914), p. 18.

⁵⁹ Qanwajī, Ṣiddīq b. Ḥasan al- (1978), vol. 2, p. 396. This was clearly the aim of the chapter on physiognomy in *Sīr al-Asrār* which purports to be the advice given by the famous Greek philosopher, Aristotle, to Alexander the Great, see Badawī, 'Abd al-Raḥmān (1954), pp. 117-124; Hoyland, Robert (2005), p. 368.

physiognomy acted also as an important guide when one wanted to buy slaves⁶⁰ or animals, especially horses.⁶¹

At the literary level, after the cursory quotations of al-Jāhīz, we obtain many hints of the widespread interest in Greek physiognomy. This is clear from the numerous quotations of Polemon's treatise or imitations thereof, both direct and indirect, which started circulating in Islamic literature at the latest around the 5th/11th century as is clear from the works of al-Zamakhsharī (4261/1075-538/1114)⁶² and Ibn Ḥamdūn (495/1102-562/1166).⁶³

At the scholarly level, Greek physiognomy appeared on the list of recognized Islamic sciences almost simultaneously. During the 5th/11th century, the first scientific treatise on Greek physiognomy came from the pen of the litterateur Abū Ḥayyān al-Tawḥīdī (d. 414/1023), recording the academic discussions he had with the great scholar Miskawayh (d. 421/1030).⁶⁴ At about the same time, Ibn Sīnā (d. 428/1037) put this type of physiognomy on the list of the Islamic sciences and made it one of the secondary divisions of physics after medicine and astrology.⁶⁵

All these developments paved the way for another step at the lexicographical level. Gradually, and at the latest around the 6th/12th century, Greek physiognomy was presented in the Arabic lexicons as one of the main meanings of *fīrāsa* as is clear from the works of Majd al-Dīn Ibn al-Athīr (544/1149-606/1210)⁶⁶ and Ibn Manẓūr (630/1233-711/1312-13).⁶⁷

The popularity of Greek physiognomy went beyond this by becoming the main meaning of *fīrāsa*. In other words, once *fīrāsa* is mentioned in the absolute form, it would first convey the Greek sense of physiognomy rather than the other three possible meanings. This is clear from a long list of Arabic books written on this science and bearing the word *fīrāsa* in the title without adding *ḥikmīyya* (judicious), *ṭabīʿīyya* (natural) or any other term to avoid what would be a possible misunderstanding or confusion with the other meanings of *fīrāsa*.⁶⁸

⁶⁰ Rāzī, Fakhr al-Dīn al- (1939), pp. 83 & 84; Qanwajī, Šiddīq b. Ḥasan al- (1978), vol. 2, p. 396; Anṣārī, Abū Ṭālib al- (1332/1914), p. 17.

⁶¹ Records of manuscripts written on this science provide us with a title dedicated for this specific issue, viz., *Darj al-siyāsa fī ʿilm al-fīrāsa wa ma yadull ʿala al-khayl min malaḥa wa qabāḥa*, see Bābānī, Ismāʿīl Bashā al- (1364-1945), vol. 1, p. 463.

⁶² Zamakhsharī, al- (1976), vol. 1, p. 866.

⁶³ Ibn Ḥamdūn (1996), vol. 8, p. 32. For more examples and quotations in this regard, see Hoyland, Robert (2005), p. 367-370.

⁶⁴ Tawḥīdī, Abū Ḥayyān al- & Ibn Miskawayh (1370/1951), pp. 166-172; Hoyland, Robert (2005), p. 391 & 392.

⁶⁵ See Ibn Sīnā (1406/1986), p. 88; Mourad, Youssef (1939), p. 23; ʿAdīyy, ʿAbd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 712 & 713; Hoyland, Robert (2005), p. 391, note 84; Ghersetti, Antonella (2007), p. 285.

⁶⁶ Ibn al-Athīr, Majd al-Dīn (1963), vol. 3, p. 428.

⁶⁷ Ibn Manẓūr, Muḥammad b. Makram (I), vol. 6, p. 160.

⁶⁸ To mention the most well-known, see Rāzī, Fakhr al-Dīn al- (1939); Anṣārī, Abū Ṭālib al- (1332/1914); Ibn al-Akfānī (d. 749/1348); Zaydān, Jurjī (1423/2003); Witkam, J. J. (1980), p. 45.

Among the aforementioned four meanings of *firāsa*, the mystic and Greek ones were the main meanings to receive further theorization and elaboration. Although mystic *firāsa* never became a systematized science with clear and detailed premises and conclusions such as the case with Greek physiognomy, Islamic mystic literature could present at least a theory in this regard. These two developed systems of *firāsa* had contradictory standpoints concerning people with disabilities.

The main concern of the mystic *firāsa* was the practitioner of *firāsa* rather than the targeted person whom the practitioner wants to read his/her invisible character. The main component of this *firāsa* is to gain the light of God which enlightens, opens up and thus discloses the hidden sides of people's characters as the aforementioned adage states, "Beware the *firāsa* of the believer for he sees with the light of God". To obtain this light, one must dedicate him/herself to the worship and service of God and fulfill a number of conditions:

"Whoever turns his gaze from forbidden things, restrains himself from desires, and suffuses his inner self with constant vigilance and his outer self with adherence to God's law, and accustoms himself to eating only what is permitted, *firāsa* will not fail him."⁶⁹

Sufi literature shows obviously that physical build and outward appearance play no role whatsoever whether as a prerequisite to gain this divine light or as a determining factor in judging people's characters. People with different disabilities including blindness, lameness, hemiplegia, paralysis, leprosy, etc. were repeatedly presented in Sufi literature as people with good character and pure hearts which allowed to obtain the ranks of *awliyā'* (Friends of God) and thus deserve high esteem and appreciation.⁷⁰

Unlike the mystic *firāsa*, the main focus of Greek physiognomy was the person whose character we want to understand and the physical build of that person was crucial in the physiognomic process. This focus made Greek physiognomy, especially as represented by the aforementioned three Greek works, produce a very negative image about people with disabilities, abnormalities or deformities.⁷¹ The general principle to be deduced from these works purports that any malformation in one's body indicates a similar one in one's character.⁷² The introductory passages of the chapter on physiognomy in the *Sīr al-asrār* are the most obvious in this regard. The author says, "know that the womb is for the embryo like the pot for the food, therefore the whiteness or blueness or extreme redness [of the face] indicates imperfect coction, and if any physical

⁶⁹ Aṣbahānī, Abū Nu'aym al- (1405/1984), vol. 10, p. 237, quoted by Hoyland, Robert (2005), p. 387.

⁷⁰ To mention just examples, see Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 348, 349; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), vol. 4, p. 118; Aṣbahānī, Abū Nu'aym al- (1405/1984), vol. 2, p. 319, vol. 4, pp. 68, 214 & vol. 6, pp. 156, 286; Ibn al-Jawzī (1399/1979), vol. 2, pp. 193-199, 463-466, 501, 502, vol. 4, pp. 9, 18, 19, 60, 86, 272, 282, 283, 383, 401, 402; Ibn al-Qayyim (1), vol. 1, p. 117.

⁷¹ For the other positive side in Greek literature on people with disabilities, see Garland, Robert (1995), pp. 89, 96-104.

⁷² See Ghersetti, Antonella (1999), p. 29.

imperfection (*naqs fī al-khalq*) is added to them, then it is a clear proof of the nature being imperfect as well. Therefore beware of such people, blue, very red or reckless thin-haired, for they must be shameless, perfidious and sensuous [...] and beware of one of a defective make or having some physical imperfection.”⁷³ In his physiognomic work translated by Ḥunayn b. Iṣḥāq, Aristotle depicts the brave man as one with an almost flawless and well-proportioned body whereas the coward is the one with an ill-proportioned and to some extent malformed body.⁷⁴ The same line is continued in the work of Polemon.⁷⁵ This negative image found its way in Arabic literature which made use or were influenced by such works. For instance, Rāghib al-Iṣfahānī (d. 1108) records this statement, “The blind is obstinate (*mukābīr*), the one-eyed is frequently unjust (*ẓalūm*) and the squint-eyed is regularly arrogant”⁷⁶ Another good example is a passage which crops up in a number of well-known literary works:

“Largeness of the forehead indicates doltishness, breadth of it to poverty of intellect, smallness of it to gracefulness of movement, and roundness of it to anger. If the eyebrows are joined straight across, it indicates effeminacy and slackness. If they are driven downwards to the edge of the nose, it indicates grace and intelligence; and if they are driven towards the temples, it indicates derision and mockery. If the inner corner of the eye is small, it indicates a wicked inner nature and bad character traits. If the eyebrow falls down to the eye, it indicates envy. The medium-sized eye is an indication of acumen, fine character, and valour; the projecting eye of a confused intellect; the hollow eye of sharpness; the eye that stares much of impertinence and stupidity; and the eye that looks long of levity and inconstancy. Hair on the ear indicates a good listener, and a big erect ear indicates stupidity and folly.”⁷⁷

The ascending popularity of the Greek physiognomy did not remain within the boundaries of common people and literary sources. Two main factors pushed the Greek physiognomy into the realms of Islamic jurisprudence.

First, penetrating many aspects of life in the Muslim community, as mentioned above, one would believe in an eventual meeting-point between this science and Muslim jurists who are supposed to deal with the common life of people and their daily dealings.

Second, some of the physiognomic statements had religious and legal implications. For instance, Rāghib al-Iṣfahānī (d. 1108) quotes Aristotle saying, “The testimony of the humpbacked and the short people should not be accepted even if [their credibility was] recommended because of their maliciousness. He was asked why? He said ‘because their heads are close to

⁷³ Badawī, ‘Abd al-Raḥmān (1954), p. 118. The English translation is based on Steele, Robert (1920), pp. 219 & 200. However, I made slight changes which, to my mind, made the English text closer to the Arabic origin.

⁷⁴ Gheretti, Antonella (1999), pp. 20 & 21. For similar Aristotelian quotations, see Garland, Robert (1995), p. 90.

⁷⁵ See Hoyland, Robert (2007), pp. 444-454.

⁷⁶ Iṣfahānī, Rāghib al- (1420/1999), vol. 2, p. 314.

⁷⁷ Nuwayrī, Shihāb al-Dīn al- (1342/1923), vol. 3, p. 149; Hoyland, Robert (2005), p. 367

their hearts.”⁷⁸ Another statement ascribed to al-Shāfi‘ī states “the little and short palm combined with long and thin fingers indicate theft and treachery.”⁷⁹ Such statements have direct relevance to issues discussed extensively in Islamic Jurisprudence.

This meeting-point will be traced in two main legal schools, namely, the Shāfi‘ī and the Ḥanbalī Schools. It is just the available information that has imposed this choice. Outside these two schools, pertinent information is scanty and within the Ḥanafī School it is almost absent. Moreover, such information does not make it clear what type of *firāsa* is meant in such discussions. However, a note in passing will be given at the end to clarify the standpoint of other schools in the light of available information.

4.1.1 The Shāfi‘ī School

A number of sources written by scholars belonging to the Shāfi‘ī school, including those of Fakhr al-Dīn al-Rāzī (d. 606/1209)⁸⁰, Shams al-Dīn al-Dimashqī (d. 727/1327), Ibn al-Durayhim al-Mawṣilī (d. 762/1360)⁸¹ Zayn al-‘Ābidīn al-Ghumrī (d.970/1562),⁸² played a significant role in diffusing the idea that the founder of their legal school, al-Shāfi‘ī, was an important authority in this science⁸³ and quoted a number of statements claiming to come from al-Shāfi‘ī himself.⁸⁴ These physiognomic statements bear the same negative attitude adopted by the aforementioned Greek literature against people with disabilities and they are the topic of the following analysis.

4.1.1.1 Muḥammad b. Idrīs al-Shāfi‘ī’s Controversial Statements

Muḥammad b. Idrīs al-Shāfi‘ī (d. 205/820) was considered as one of the seven main authorities of the science of physiognomy in the Greek sense.⁸⁵ This is clear from two main sorts of sources, viz., a) those on the life and especially the virtues (*manāqib*) of al-Shāfi‘ī and b) those on physiognomy.

As for sources enumerating the virtues of al-Shāfi‘ī, the available *manāqib* books on al-Shāfi‘ī have been consulted; those dedicated to al-Shāfi‘ī alone⁸⁶ as well as those discussing the *manāqib* of other scholars.⁸⁷ These sources ascribe

⁷⁸ Iṣfahānī, Rāghib al- (1420/1999), vol. 2, p. 311.

⁷⁹ Ansārī, Abū Ṭālib al- (1332/1914), p. 34; Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 41.

⁸⁰ Rāzī, Fakhr al-Dīn al- (1939).

⁸¹ Khalīfa, Ḥājjī (1412-1992), vol. 2, p. 997.

⁸² Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562); Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (d. 970/1562).

⁸³ Ansārī, Abū Ṭālib al- (1332/1914), p. 2.

⁸⁴ Hoyland, Robert (2005), p. 367.

⁸⁵ For discussions on the other six authorities and their names, see Ansārī, Abū Ṭālib al- (1332/1914), p. 2; Mourad, Youssef (1939), pp. 31-75; ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 714-721; Ghersetti, Antonella (1996), p. 121.

⁸⁶ This category includes *Ādāb al-Shāfi‘ī wa manāqibih* by Ibn Abī Ḥātim al-Rāzī (d. 327 A.H.), *Manāqib al-Shāfi‘ī* by Fakhr al-Dīn al-Rāzī (606 A.H.), *Manāqib al-Shāfi‘ī* by Ibn Kathīr (774 A.H.) & *Tawālī al-ta’sīs li ma’ālī Muḥammad b. Idrīs* by Ibn Ḥajar al-‘Asqalānī (852 A.H.).

⁸⁷ See for instance the biographical notes on al-Shāfi‘ī in Aṣbahānī, Abū Nu‘aym al- (1405/1984),

statements to al-Shāfi‘ī which fall under the category of *firāsa* in the Greek sense. However, these sources include also other statements which fall under the category *firāsa* in the first three meanings mentioned above.

Robert Hoyland (University of St. Andrews) examined the sources of the second category and found for instance that the comprehensive work on *firāsa* by Shams al-Dīn al-Dimashqī (d. 727/1327), contains sixty-four physiognomical sayings attributed to al-Shāfi‘ī. Just a few of the sayings ascribed to al-Shāfi‘ī by al-Dimashqī are reported also by other sources of the same category such as the work of Ibn Zakariyya al-Rāzī (two sayings); Ibn ‘Arabī (six sayings) and Fakhr al-Dīn al-Rāzī (eight sayings).⁸⁸

‘Abd al-Karīm ‘Adiyy made two more comparisons. First, between the statements mentioned in the *manāqib* works and the physiognomic sources and concluded that similarities are there but still few. Second, between the statements ascribed to al-Shāfi‘ī by Shams al-Dīn al-Dimashqī and those ascribed to the Greek authorities in this science. ‘Adiyy found that out of the sixty-four statements ascribed to al-Shāfi‘ī, forty-five are solely Shāfi‘ian, one common statement with Polemon and two with Aristotle.⁸⁹

As stated earlier, people with disabilities in the contemporary sense were included in a broader category in early Arabic and Islamic literature, i.e., among those with any form of physical deformity or abnormality.⁹⁰ Hence, we will notice that the statements, in the abovementioned sources, mainly tarnishing the image of people with disabilities, come as part of the materials concerning all those belonging to that broad category. For instance, a number of statements ascribed to al-Shāfi‘ī purport “the little and short palm combined with long and thin fingers indicate theft and treachery⁹¹ or indicate bad ethics and beguilement”,⁹² “the face with protruding cheeks combined with thick lips indicates fondness of corruption and perversity”,⁹³ “the thick lips indicate foolishness and brusqueness”⁹⁴ and “the forehead that protrudes in its middle indicates precipitancy and silliness.”⁹⁵

A large number of these statements deal with physical disabilities as known in our present time. They convey a general message, namely that one should be on guard when dealing with those people. These statements are not of the same degree of rejection or insinuation. Some of them are mainly warning (mentioned below as “mild” statements) whereas others go further by declaring

vol. 9, pp. 63-161; Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1419/1998), vol. 14, pp. 304-342; Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, pp. 5-99; Ibn Kathīr (1), vol. 10, pp. 251-254; Ibn al-‘Imād (1), vol. 1, pp. 9-12.

⁸⁸ See Hoyland, Robert (2005), p. 367.

⁸⁹ ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue 1, pp. 353 & 354.

⁹⁰ Ghaly, Mohammad M.I. (2005-2006), p. 10, note 9.

⁹¹ Ansārī, Abū Ṭālib al- (1332/1914), p. 34; Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 41.

⁹² Ghumrī, Zayn al-‘Ābidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 41.

⁹³ Ibid, fol. 36.

⁹⁴ Ibid, fol. 34.

⁹⁵ Ansārī, Abū Ṭālib al- (1332/1914), p. 26.

that these people concerned are malicious and even devilish (mentioned below as “harsh” statements). As we shall see, the purport of these statements implies adopting a negative and sometimes even a discriminatory standpoint against people with disabilities.

a) Mild statements:

1. “Beware of the lame, the cross-eyed, the one-eyed and everyone with physical defect (*biḥī ‘āha aw nāqīṣ al-khalq*). They are extremely difficult to deal with.”⁹⁶
2. “If you see a beardless person then beware him. I have never seen anything good from a [person with] blue [eyes] (*azraq*).”⁹⁷
3. It is related that Al-Shāfi‘ī once sent a man to buy him perfume. Coming back, al-Shāfi‘ī asked him, “Did you buy [it] from a beardless person (*kawsaj*) who is fair and ruddy in complexion (*ashqar*)?” Replying in the affirmative, Al-Shāfi‘ī asked him to return it and he did so.⁹⁸ Other versions of this story add al-Shāfi‘ī’s justification for refusal by saying, “I have never seen something good from a person who is fair and ruddy in complexion (*ashqar*).”⁹⁹

b) Harsh statements

1. “Beware of the one-eyed, the lame, the cross-eyed, the fair and ruddy in complexion (*ashqar*), the beardless (*kawsaj*) and everyone with physical defect (*nāqīṣ al-khalq*). He is a person with cunning and difficult to deal with.”¹⁰⁰
2. “Beware of the one-eyed, the cross-eyed, the lame, the hump-backed, the fair and ruddy in complexion (*ashqar*), the beardless (*kawsaj*) and everyone with a physical defect (*nāqīṣ al-khalq*). Beware of such a person because he is a man with cunning and difficult to deal with. On another occasion, he said, ‘They are people full of malice’.”¹⁰¹
3. “Beware of everyone with a physical defect because he is a devil. Ḥarmala asked ‘who are those?’ He [al-Shāfi‘ī] replied, ‘the lame, the cross-eyed, the paralyzed and the like.’”¹⁰²
4. It is also maintained that al-Shāfi‘ī composed poetic verses advising people to take their guard against nine sorts of people, namely the cross-eyed, the hunchbacked, the one-eyed, the beardless, a person with a long nose, a man who is fair and ruddy in complexion, a sunk-

⁹⁶ Rāzī, Fakhr al-Dīn al- (1413/1993), p. 291.

⁹⁷ Subkī, Abū Naṣr ‘Abd al-Wahhāb b. ‘Alī b. ‘Abd al-Kāfi al- (1992), vol. 2, p. 129.

⁹⁸ Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, p. 133.

⁹⁹ Rāzī, Ibn Abī Ḥātim al- (1372/1953), p. 131. Refusing to buy something from people with disabilities has been mentioned in more than one place with slight differences, see Rāzī, Ibn Abī Ḥātim al- (1372/1953), p. 131; Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, p. 39; Aṣbahānī, Abū Nu‘aym al- (1405/1984), vol. 9, pp. 140 & 141; Sakhāwī, Muḥammad b. ‘Abd al-Raḥmān al- (1399/1979), p. 136; Ibn Fahd (d. 954/1547), folios 5b & 6a.

¹⁰⁰ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, p. 40.

¹⁰¹ Rāzī, Ibn Abī Ḥātim al- (1372/1953), pp. 131 & 132; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, p. 132; Aṣbahānī, Abū Nu‘aym al- (1405/1984), vol. 9, p. 144.

¹⁰² Ibn al-Qayyim (2), vol. 2, p. 222.

eyed person, a person with bulging forehead and finally a person with blue eyes.¹⁰³

These statements also found their way to other sources than the ones quoted above. In the literary circles, we find for instance that Muḥammad Diyāb al-Itlīdī (d. after 1100/1689) concludes his historical book *Iʿlām al-nās*¹⁰⁴ with the aforementioned poetic verses with just slight changes in the types of physical defects mentioned¹⁰⁵ and presenting the composer of the verses as anonymous.¹⁰⁶ The poetic verses appear also at the cover of a manuscript of this work completed in 1238/1822, a fact which would suggest that these verses got the position of a sage-advice.¹⁰⁷

However, these statements seem to have become much more widespread among the common people than in the literary circles and sometimes were even elevated to the rank of Prophetic traditions. One example, which touches people with a physical feature depicted in Arabic literature as one of the defects (*ʿāhāt*), is the negative statement on a person who is fair and ruddy in complexion (*ashqar*) and with blue eyes “*azraq*”. The statement appears as a Prophetic tradition in the ḥadīth collection, *Firdaws al-akhbār* (Paradise of Traditions), by Abū Shujāʿ al-Daylamī (d. 558/1115).¹⁰⁸ Another statement, which touches people with disabilities and those with physical defects in general, purports, “Beware those with physical defects (*ittaḥū dhawī al-ʿāhāt*)”. This statement became to be known among the public as a Prophetic tradition and thus appeared regularly in the compilations belonging to the genre of *al-ahādīth al-mushtahara* (lit. “well-known Prophetic Traditions”). In such writings, scholars of ḥadīth collected those well-circulated traditions among the Muslim masses in order to examine their authenticity according to the norms of ḥadīth criticism.¹⁰⁹ These scholars questioned the authenticity of these statements and inclined to qualify them as non-prophetic statements.¹¹⁰ In a bid to fathom out the origin of such statements, they refer to al-Shāfiʿī as an eventual source and quote some of the statements mentioned above. These

¹⁰³ See Ibn Fahd (d. 954/1547), folio 6b.

¹⁰⁴ This book retells the tales and anecdotes of the Khalifs in Islamic history with special focus on those in the Abbasid period. A part of the book was translated into English by Godfrey Clerk, see Clerk, Godfrey (1873).

¹⁰⁵ The lame instead of the one-eyed, the yellow person (*aṣfar*) instead of one who is fair and ruddy in complexion (*ashqar*) and one with sunk temples (*ghāʾir al-ṣudghayn*) in place of sunk eyes (*ghāʾir al-ʿaynayn*), see Itlīdī, al-Muḥammad Diyāb al- (1998), p. 137.

¹⁰⁶ Itlīdī, Muḥammad Diyāb al- (1998), p. 137.

¹⁰⁷ See Itlīdī, Muḥammad Diyāb al- (d. after 1100/1688), cover.

¹⁰⁸ Daylamī, Shīrawayh al- (1407/1987), vol. 1, p. 473.

¹⁰⁹ See for instance, Sakhāwī Muḥammad b. ʿAbd al-Raḥmān al- (1399/1979), p. 18; Qārī, ʿAlī b. Sulṭān b. Muḥammad al-Harawī al- (1404/1983), p. 46; ʿAjlūnī, Muḥammad b. Ismāʿīl al- (1405/1984), vol. 1, pp. 40 & 41; Shaybānī, Muḥammad b. ʿUmar al-Daybaʿ al- (1324/1906), pp. 6 & 7; Darwīsh, Muḥammad b. al-Sayyid (1), p. 17.

¹¹⁰ Sakhāwī, Muḥammad b. ʿAbd al-Raḥmān al- (1399/1979), p. 18; Shaybānī, Muḥammad b. ʿUmar al-Daybaʿ al- (1324/1906), pp. 6, 7 & 61; Qārī, ʿAlī b. Sulṭān b. Muḥammad al-Harawī al- (1404/1983), p. 46; ʿAjlūnī, Muḥammad b. Ismāʿīl al- (1405/1984), vol. 1, pp. 40 & 41; Fattānī, Muḥammad Ṭāhir al- (1343/1924), p. 195; ʿĀmirī, Aḥmad b. ʿAbd al-Karīm al-Ghizzī al- (1413/1992), vol. 1, p. 38; Darwīsh, Muḥammad b. al-Sayyid (1), pp. 17 & 76.

scholars, however, did not question the authenticity of the ascription of the statements to al-Shāfi‘ī.¹¹¹ In the light of the information available, a critical study of this ascription is due.

To my knowledge, only three contemporary persons studied, although incidentally, the aforementioned statements. Youssef Mourad (d. 1902-1966)¹¹² and ‘Abd al-Karīm ‘Adiyy (1917-1985), did not raise doubts about their authenticity.¹¹³ The only one who raised prudently doubts about the statements’ authenticity is Robert Hoyland (University of St. Andrews). After speaking about these statements mentioned in the sources of *firāsa*, he said, “...without knowing anything about their transmission, it is difficult to say anything secure about their provenance.”¹¹⁴ In this regard, Hoyland is speaking about one type of sources, namely those written on *firāsa* and it is true that the statements are mentioned there without chains of transmission. However, as shown above, sources speaking about the *manāqib* of al-Shāfi‘ī mentioned similar statements with almost the same purport and sometimes even harder. Chains of transmitters narrating these statements are usually mentioned. The main question to be tackled here is whether these statements are really said by al-Shāfi‘ī or are unauthentic and just ascribed to him for specific ends, and if so, what are these ends? For a balanced analysis of this highly complicated issue, factors advocating the authenticity of the statements as well as those opposing their authenticity will be both presented.

4.1.1.2 Materials that Seem to Advocate the Authenticity

The statements mentioned above were quoted in the context of commending al-Shāfi‘ī rather than defaming him. Thus one would not think of deliberate fabrication to tarnish the image of al-Shāfi‘ī. The earliest written source in which these statements appear is the book of the traditionist Ibn Abī Ḥātim al-Rāzī (d. 327/ 938) on al-Shāfi‘ī’s virtues (*Ādāb al-Shāfi‘ī wa manāqibuh*).¹¹⁵ Ibn Abī Ḥātim placed the statements ascribed to al-Shāfi‘ī in a chapter entitled, “A chapter on what has been mentioned about al-Shāfi‘ī’s *firāsa* and intelligence (*fitna*), may Allah have mercy with him!”¹¹⁶ As mentioned before, the Shāfi‘ī scholar Fakhr al-Dīn al-Rāzī (d. 606/1209) in his book about the virtues (*manāqib*) of al-Shāfi‘ī mentioned the abovementioned second harsh statement, and then commented, “Know that what he said is based on solid grounds in the science of physiognomy (*‘ilm al-firāsa*).” He then went on explaining the nature and logic of this science.¹¹⁷ Another example comes from the Ḥanbalī scholar

¹¹¹ See for instance, Sakhāwī, Muḥammad b. ‘Abd al-Raḥmān al- (1399/1979), pp. 18, 136 & 137; ‘Ajlūnī, Muḥammad b. Ismā‘īl al- (1405/1984), vol. 1, pp. 40 & 41; Fattānī, Muḥammad Ṭāhir al- (1343/1924), pp. 195 & 196.

¹¹² On him, see ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 707, 708 & 722-724.

¹¹³ Mourad, Youssef (1939), p. 61; ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue 1, pp. 343-355.

¹¹⁴ Hoyland, Robert (2005), p. 367.

¹¹⁵ Rāzī, Ibn Abī Ḥātim al- (1372/1953), pp. 129-132.

¹¹⁶ Rāzī, Ibn Abī Ḥātim al- (1372/1953), p. 129.

¹¹⁷ Rāzī, Fakhr al-Dīn al- (1413/1993), p. 291.

Ibn al-Qayyim (d. 751/1350) who, in the context of refuting what he considered defamatory information about al-Shāfi‘ī, he quoted most of the aforementioned statements. He said that such statements indicate al-Shāfi‘ī’s knowledge of *firāsa* and “this is what befits his solemnity and high position.”¹¹⁸ Identical views were also adopted by almost all those who wrote on the virtues of al-Shāfi‘ī and those who wrote on *firāsa*. This produced by time such a great popularity for these statements that they were taken by default as statements of al-Shāfi‘ī. For instance, when Jurjī Zaydān (1278/1861-1332/1914) wrote in the beginning of the twentieth century on the science of modern physiognomy, he mentioned al-Shāfi‘ī as one of the main early authorities in this science.¹¹⁹ The same is the case also with ‘Abd al-Karīm ‘Adiyy.¹²⁰

A trawl throughout the above mentioned two categories of sources, especially through those on his virtues, gives one the impression of al-Shāfi‘ī as an encyclopedic scholarly figure who masters almost every science including physiognomy and not only Islamic jurisprudence.¹²¹ This is true especially when we see that al-Shāfi‘ī was also known as expert in the fields covered by the other three meanings of *firāsa* mentioned above.

The multitude of narrations regarding al-Shāfi‘ī’s intelligence and quick-wittedness depict an image of a legendary person. In the *manāqib* works, we find a separate chapter dedicated to this side of al-Shāfi‘ī’s character. Many statements recorded in this chapter state that al-Shāfi‘ī’s mind was matchless.¹²² Under the heading *al-firāsa*, we find also statements ascribed to al-Shāfi‘ī which indicate his astuteness. Once, while al-Shāfi‘ī was issuing fatwa’s in the mosque of Baghdad, a man came in and asked him, “What do you say about a person who castrated a turkey?” On the basis of the question, Al-Shāfi‘ī could immediately identify the questioner and knew that he was the well-known man of letters al-Jāhīz, although, according to the anecdote, al-Shāfi‘ī never saw al-Jāhīz before. In another anecdote, the shrewdness of al-Shāfi‘ī was more visible and more complicated. While sitting in the Holy Mosque with his disciple al-Rabī‘ b. Sulaymān, a man came in and started wandering among the sleeping people. On seeing the man and observing his movements, Al-Shāfi‘ī could conclude that he was looking for a black slave with a defect in one of his eyes! Ultimately, al-Shāfi‘ī’s guess came to be true and was confirmed by the man himself.¹²³

As for *qiyāfa*, it was no unfamiliar science for al-Shāfi‘ī either. As a jurist, he is an advocate of the validity of this science. Different to Abū Ḥanīfa, al-Shāfi‘ī opined that *qiyāfa* can produce legitimate and valid evidence for establishing

¹¹⁸ Ibn al-Qayyim (2), vol. 2, p. 223.

¹¹⁹ Zaydān, Jurjī (1423/2003), p. 5.

¹²⁰ ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue 1, pp. 343-355.

¹²¹ See for instance, Rāzī, Fakhr al-Dīn al- (1413/1993), p. 323.

¹²² See for instance, Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, p. 185-219.

¹²³ Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, p. 135.

one's lineage.¹²⁴ Additionally, reports ascribe a treatise on this science (*Al-Tanqīh fī 'ilm al-qiyāfā*) to al-Shāfi'ī.¹²⁵

Al-Shāfi'ī's adeptness concerning the mystic *firāsa* was also clearly demonstrated by the anecdotes related about him under the heading *firāsa*. While al-Shāfi'ī was on his deathbed, four of his disciples came in. Scrutinizing the four persons for a while, he said to the first, "you will die in your iron fetters"; to the second he said, "you will have failings after failings in Egypt and one day you will be the best [jurist] of your time practicing *qiyās* (analogy)", to the third, "you will return back to the [juristic] School of your ancestor [the Mālikī School]", to the fourth, "you will be the most beneficial for me in publicising my books". All what he said took place accordingly in reality.¹²⁶

Naturally no observer of a later period would dare to think at least of an equal expertise in the fourth meaning of *firāsa* (Greek physiognomy) in anyone else but al-Shāfi'ī. This possibility was enhanced by the claim that al-Shāfi'ī knew Greek medicine and philosophy in their original language.¹²⁷ What would have prevented him from mastering Greek physiognomy as well?!

4.1.1.3 Materials that Seem to Oppose the Authenticity

Initially speaking, the fact that the statements are mentioned by pro-Shāfi'ian sources does not mean that these statements are authentic by default. As for sources on *firāsa*, it is known that whole books, not to mention just statements, were falsely attributed to people who did not write them.¹²⁸ Furthermore, none of the statements attributed to al-Shāfi'ī in these sources is accompanied by a chain of transmitters.¹²⁹

The other sources are those on the virtues (*manāqib*) of al-Shāfi'ī. For a better understanding of this issue, we would say something about this genre in Islamic literature. The plural substantive, *al-manāqib* (sing. *manqaba*) features in titles of a quite considerable number of biographical works of a laudatory nature, which have eventually become part of a corpse of hagiographical literature. Works belonging to the *manāqib* genre give prominence to the merits, virtues and remarkable deeds of the individual concerned.¹³⁰ A great number of books belonging to this category were dedicated to the founders of the juristic schools (*madhāhib*). The main target of such works is to present the *manāqib*, the qualities (*shamā'il*) and the virtues (*faḍā'il*) of the founders of these schools so that the disciples can take them as a model and imitate their ideas.¹³¹ Al-Shāfi'ī alone benefited more than thirteen collections on his

¹²⁴ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 5, p. 23 & vol. 8, p. 426ff; Hilālī, Sa'd al-Dīn al- (1421/2001), p. 197 ff.

¹²⁵ Khalīfa, Ḥājī (1412-1992), vol. 1, p. 500 & vol. 2, p. 1367; Brockelmann, Carl (1937-42), S.I, p. 305.

¹²⁶ Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, p. 136.

¹²⁷ Rāzī, Fakhr al-Dīn al- (1413/1993), pp. 73 & 74; Abū Zahra, Muḥammad (1948), pp. 46 & 47.

¹²⁸ Ghersetti, Antonella (1999), pp. xiv & vi.

¹²⁹ See Hoyland, Robert (2005), p. 367.

¹³⁰ Pellat, Ch. (1) (2003), vol. VI, p. 349.

¹³¹ See Pellat, Ch. (1) (2003), vol. VI, p. 352; Tawfiq, Aḥmad al- (1988), p. 82.

manāqib.¹³² Such books have already been criticized for including unauthentic information. The main example was the claim that al-Shāfi'ī was expert in astrology, Greek medicine and Greek language. This claim was refuted by Ibn al-Qayyim (d. 751/1350)¹³³ and refused also by the late Egyptian scholar Muḥammad Abū Zahra (d. 1974).¹³⁴

As stated above, *firāsa* in the fourth sense (the relationship between immutable physical attributes and inherent personality traits) owed to Greek origins and was never developed into an independent science before the translation of the Greek sources.¹³⁵ Thus one would think that the adeptness of al-Shāfi'ī in this respect should be based on these sources, something that would clarify the similarity in approach and also in wording between the statements ascribed to him and those ascribed to the Greek authorities in this science such as Aristotle and Polemon. The question then, is, did al-Shāfi'ī have access to the main Greek sources translated into Arabic in this science?

As mentioned earlier, three main sources were of central importance, two attributed to Aristotle, and one to Polemon. The dating of the book entitled, *Sirr al-asrār*, falsely attributed to Aristotle as discussed above, is too controversial to give us precise information about its translation or dissemination. As for the second book, namely, *Kitāb Aristāṭalīs fī al-firāsa* (the book of Aristotle on physiognomy), was translated by Hunayn b. Ishāq (192/808-260/873) who was twelve years old when al-Shāfi'ī died. Whatever the truth of the matter, it seems to have come too late for al-Shāfi'ī (d. 205/820) as the earliest date attributed to it lies in the 3rd/9th century.

The third book which was the most influential one in this field was that of Polemon entitled, *Kitāb al-firāsa*. As stated above, neither the translator nor the date of translation is precisely known.¹³⁶ The only possible indication in this respect is that the literary author al-Jāḥiẓ (d. 255/868-9) cites a certain Polemon, 'the master of physiognomy' (*Aflīmūn ṣāḥib al-firāsa*) on matters relating to pigeons. It is usually assumed on this basis that Polemon's treatise must have been translated before the mid-ninth century.¹³⁷ However, this supposition is not above criticism. First of all, al-Jāḥiẓ's quotations from Polemon on pigeons have a zoological rather than a physiognomical character and this does not accord with any of the known versions of Polemon's *Physiognomy*. Besides the possibility that al-Jāḥiẓ would have used a recension of the work of Polemon which has not been preserved, it could also indicate that that work was not yet available and that al-Jāḥiẓ depended on oral

¹³² See Pellat, Ch. (1) (2003), vol. VI, p. 353.

¹³³ See Ibn al-Qayyim (2), vol. 2, pp. 219-221.

¹³⁴ See Abū Zahra, Muḥammad (1948), pp. 46-48.

¹³⁵ Hoyland, Robert (2005), p. 362.

¹³⁶ See Stegemann, Willy (1952), col.; Witkam, J.J. (1980), p. 44

¹³⁷ Fahd, T. (1966), p. 385; Hoyland, Robert (1) (2007), pp. 235 & 236. For a detailed study of passages written by al-Jāḥiẓ with relevance to *firāsa*, see 'Adiyy, 'Abd al-Karīm (1982-1983), vol. 58, issue 3, pp. 570-631. However, one should keep in mind that the author is unaware of the different categories of *firāsa* and thus mix them together.

anecdotes about the tradition of the Greek sages (*ḥukamā*).¹³⁸ This possibility seems to be enhanced by the fact that when al-Jāḥiẓ wrote an independent treatise on the topic of physiognomy, if we assume that it is not pseudonymous attribution,¹³⁹ and spoke about the Greek side of this science, he made use of a source attributed to Hippocrates and translated by Ḥunayn b. Iṣḥāq (d. 260/873) but made no mention of Polemon's *Physiognomy*.¹⁴⁰ The fact that Ibn Qutayba (d. 276/871) did not make any reference to Greek sources when speaking about *firāsa* although making reference to an Indian source¹⁴¹ also raises doubts about the spread of Greek physiognomy at this time including that of Polemon. Thus the possibility that al-Shāfi'ī could have made use of any of these three Greek works is highly improbable.

But suppose that there would be a little possibility whatsoever, in the light of the aforementioned information, the translated Greek sources would have been available in the capital of the Islamic state, viz., Baghdad or any of the nearby cities such as Basra for instance where also al-Jāḥiẓ lived. The only explicit reference to al-Shāfi'ī's acquaintance with physiognomy in the Greek sense speaks about a trip he made to Yemen in search of books on *firāsa* where he copied and collected them.¹⁴² The question now is, why Yemen and not Baghdad, which would be more logical, and what kind of books on *firāsa* were there? Why were they not mentioned by others? This story might, however, be interpreted as a counterpart of the numerous stories relating the quest by the Abbasid Caliph, al-Ma'mūn, and others for Greek books among the Christians in Byzantium. It seems that the story of al-Shāfi'ī's quest for books in Yemen underlines that he was *not* looking for *Greek* books or was using books of *Greek* origin but for *Arabic and Islamic* materials.¹⁴³

On the other hand, writings coming from the hand of al-Shāfi'ī himself do not contain any reference to his adeptness in Greek physiognomy or to the depreciatory statements quoted earlier. On the contrary, al-Shāfi'ī's writings indicate a completely different standpoint towards people with disabilities.

To start with an easy task, we find that the poetic verses attributed to al-Shāfi'ī have no trace in the known collection of poems (*dīwān*) attributed to al-Shāfi'ī or any of the available sources that record passages of al-Shāfi'ī's poetry.¹⁴⁴ Hence, that al-Shāfi'ī composed poetry against people with disabilities is by no means a historical fact.

¹³⁸ Gherseti, Antonella & Swain Simon (2007), p. 309 & note 2.

¹³⁹ More than one researcher are inclined that it is apocryphal, see Brockelmann, Carl (1937-42), vol. I, p. 152; Mourad, Youssef (1939), p. 36; 'Adiyy, 'Abd al-Karīm (1982-1983), vol. 58, issue, 3, pp. 618 & 619; Gherseti, Antonella (1996), p. 126.

¹⁴⁰ K. Inostrantsev (1907-8), p. 136.

¹⁴¹ Ibn Qutayba Abū Muḥammad 'Abd Allāh b. Muslim (1406/1986), vol. 1, p. 326.

¹⁴² Rāzī, Ibn Abī Ḥatīm al- (1372/1953), p. 35; Aṣbahānī, Abū Nu'aym al- (1405/1984), vol. 9, p. 78 & 144; Ibn al-Qayyim (2), vol. 2, pp. 221 & 222; 'Ajlūnī, Muḥammad b. Ismā'īl al- (1405/1984), vol. 1, pp. 322 & 323; Sakhāwī, Muḥammad b. 'Abd al-Raḥmān al- (1399/1979), vol. 136 & 137.

¹⁴³ For an overview of other legends in this regard, see Koningsveld, P.S. van (1998).

¹⁴⁴ See Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, pp. 60-113; Bāsālāma, Ḥusayn b. 'Abd Allāh (1326/1908); 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1301/1883), pp. 72-75;

Checking the monumental work of al-Shāfi'ī *Al-Umm*¹⁴⁵ would be highly expressive of al-Shāfi'ī's standpoint in this respect.¹⁴⁶ First of all the term *firāsa*, its derivatives or the synonym *tawassum* and its derivatives do not appear in the text at all. On the contrary, the term *qātā* (another formula for *qiyāfa*) appears sixty-four times in the context of using it as valid evidence to prove one's lineage.¹⁴⁷

Examining all terms used in the aforementioned statements, along with their derivatives, shows that initially none of the depreciatory statements appear in the text. This is despite the fact that such terms have been extensively used throughout the book. For instance, *aḥwal* (squint-eyed) appears 12 times,¹⁴⁸ *a'raj* (lame) 86 times¹⁴⁹ and *a'war* (a person with one eye) 17 times.¹⁵⁰ Moreover, the contexts in which these terms were used give a positive rather than a negative image. For instance, words like *al-aḥwal* (12 times)¹⁵¹ *al-a'raj* (65 times)¹⁵² and *al-a'war* (2 times)¹⁵³ are used as the epithet of a narrator of a Prophetic tradition, a traditionist or religious scholar who are all authorities that have been used in the book.¹⁵⁴ This indicates that people with such disabilities

Shāfi'ī, Muḥammad b. Idrīs al- (1988).

¹⁴⁵ Some researchers cast doubts on the authenticity of this book and regard it as one of the writing of al-Shāfi'ī's disciple, al-Buwayṭī (d. 231/486), see Mubārak, Zakī (1934); Chaumont, E. (1) (2003), vol. IX, p. 186. However, the arguments mentioned by this group were refuted by others and the authenticity of the book was well-established, see Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), pp. 33-42.

¹⁴⁶ The content of this work is expressive of the opinions adopted by al-Shāfi'ī during his last years in Egypt besides numerous other texts, some of which according to J. Schacht dating from the 'Iraqī period. Additionally, many other works compiled by al-Shāfi'ī are also included in *Al-Umm*, see Schacht, J. (1950), p. 330; Chaumont, E. (2003), vol. IX, p. 184.

¹⁴⁷ See Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 5, pp. 18, 23, 32, 249, 250, 256, vol. 6, pp. 36, 213, 265-268, vol. 7, pp. 138, 187, 242, vol. 8, pp. 64, 213, 237, 324, 329, 330, 334, 426 & 436.

¹⁴⁸ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 2, pp. 196, 237, vol. 4, pp. 104, 114, 117, vol. 5, p. 186, vol. 6, p. 194, vol. 7, pp. 1, 167 & 177, vol. 8, p. 276 & 639.

¹⁴⁹ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, pp. 19, 26, 31, 38, 39, 65, 68, 91, 109, 128, 131, 133, 142, 152, 162, 172, 179, 180, 187, 188, 189, 217, 233, 240, vol. 2, 47, 65, 169, 170, 209, 220, 221, 229, 233, 283, vol. 3, p. 94, vol. 4, pp. 50, 147, 150, 171, 173, vol. 5, pp. 41, 109, 153, 161, 174, vol. 6, pp. 34, 77, 86, vol. 7, pp. 25, 74, 175, 202, 204, 212, 221, 232, 244, vol. 8, pp. 112, 180, 169, 205, 352, 376, 608, 611, 615, 628, 629, 650, 656, 665.

¹⁵⁰ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 2, pp. 189, 221, 227, vol. 3, p. 254, vol. 7, pp. 14, 153, vol. 5, pp. 67, 108, 221, 300, vol. 6, pp. 70, 132, vol. 7, pp. 259, 332, 333 & vol. 8, pp. 168, 292, 352.

¹⁵¹ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 2, pp. 196, 237, vol. 4, pp. 104, 114, 117, vol. 5, p. 186, vol. 6, p. 194, vol. 7, pp. 1, 167, 177, vol. 8, pp. 276, 639.

¹⁵² Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, pp. 19, 26, 31, 38, 39, 65, 68, 91, 109, 128, 131, 133, 142, 152, 162, 172, 179, 180, 187, 188, 189, 217, 233, 240, vol. 2, 47, 65, 169, 170, 209, 229, 233, vol. 3, p. 94, vol. 4, pp. 50, 147, 150, vol. 5, pp. 41, 109, 153, 161, 174, vol. 6, pp. 34, vol. 7, pp. 25, 175, 202, 204, 212, 221, 232, 244, vol. 8, pp. 112, 180, 205, 608, 611, 615, 628, 629, 650, 656, 665.

¹⁵³ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 2, p. 189 & vol. 7, p. 14.

¹⁵⁴ It is to be noted that it is a well-known phenomenon in Islamic history that some scholars were known for their disabilities and the disability of each was the epithet he was known for. For more examples in this respect, see Abū Jayb, Sa'īdī (1402/1982), pp. 32 & 33.

were seen by al-Shāfi‘ī as trustworthy authorities rather than as people whose evil character should be avoided.

Now, one question remains in the context of our sources. What about the book on *firāsa* that is said to have been written by al-Shāfi‘ī himself?¹⁵⁵ First of all, earlier authorities, such as Ibn al-Nadīm, do not mention this book among the works written by al-Shāfi‘ī¹⁵⁶ and so modern scholars tend to be skeptical.¹⁵⁷ Furthermore, the scientific bibliographer Ḥājji Khalifa (d. 1067/1657) in whose time a clear distinction was made between *qiyāfa* and *firāsa* as becomes clear from his *Kashf al-zunūn*, spoke about a book on *qiyāfa* rather than on *firāsa*.¹⁵⁸ Keeping in mind that *qiyāfa* was never developed into a systematic science and was thus never the topic of discrete books,¹⁵⁹ one would think of a juristic treatise in which al-Shāfi‘ī presents and defends his opinion that *qiyāfa* can be a valid evidence. This is especially the case when we know that al-Shāfi‘ī, as a jurist, was an advocate of the legitimacy of *qiyāfa* for establishing one’s lineage different to Abū Ḥanīfa for instance.¹⁶⁰ At the end, checking the manuscript of this work available in Mūsil (Iraq) can clarify a lot of these ambiguities.¹⁶¹ Besides the sources written by or about al-Shāfi‘ī, many aspects of his life as a person and his career as a jurist and scholar stand against the possibility that he adopted such a negative attitude towards people with disabilities.

We find among the circles of al-Shāfi‘ī’s teacher and students a number of figures who had disabilities. The most indicative example among al-Shāfi‘ī’s teachers is Yaḥyā b. Sa‘īd al-Qaṭṭān¹⁶² who was squint-eyed.¹⁶³ Al-Shāfi‘ī learnt Ḥadīth from Yaḥyā although he was younger than al-Shāfi‘ī.¹⁶⁴ Besides this, we have Ḥammād b. Zayd al-Baṣrī who was blind¹⁶⁵ and Ḥusayn al-Althagh who, as his nickname indicates, a lisper (*althagh*).¹⁶⁶ Among the students, no example would be better than al-Rabī‘ b. Sulaymān al-Azdī who was lame,¹⁶⁷ while

¹⁵⁵ Ibn al-Qayyim (2), vol. 2, p. 489.

¹⁵⁶ Ibn al-Nadīm (1398/1978), vol. 1, pp. 295 & 296.

¹⁵⁷ Brockelmann, Carl (1937-42), S. I, p. 305; Mourad, Youssef (1939), pp. 57-61; Hoyland, Robert (2005), pp. 366 & 367, n. 18. Compare ‘Adiyy, ‘Abd al-Karīm (1982-1983), vol. 58, issue 1, pp. 352-355.

¹⁵⁸ Khalifa, Ḥājji (1412-1992), vol. 1, p. 500 & vol. 2, p. 1367.

¹⁵⁹ Khalifa, Ḥājji (1412-1992), vol. 2, p. 346.

¹⁶⁰ Shāfi‘ī, Muḥammad b. Idrīs al- (1410/1990), vol. 5, p. 23 & vol. 8, p. 426ff; Hilālī, Sa‘d al-Dīn al- (1421/2001), p. 197 ff.

¹⁶¹ Brockelmann, Carl (1937-42), S. I, p. 305. Youssef Mourad opines that this manuscript is available in *Maktbat al-madrasa al-islāmiyya* (Library of the Islamic School) in *al-Jāmi‘ al-kabīr* (The Grand Mosque). It is highly possible, Mourad adds, that it is not written by al-Shāfi‘ī and that some of his disciples collected his sayings, see Mourad, Youssef (1939), pp. 57 & 58. Mourad was unable to get a photocopy of the manuscript and under the current circumstances in Iraq, it seems unimaginable to have an access to the manuscript.

¹⁶² On him, see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 9, pp. 175-191.

¹⁶³ Ibid, (1413/1992), vol. 9, p. 180.

¹⁶⁴ Aṣbahānī, Abū Nu‘aym al- (1405/1984), vol. 9, p. 78.

¹⁶⁵ On him, see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 7, pp. 456-466

¹⁶⁶ Bāsalāma, Ḥusayn b. ‘Abd Allāh (1326/1908), p. 28.

¹⁶⁷ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 12, pp. 591 & 592.

according to some reports his father was lame as well.¹⁶⁸ Al-Rabīʿ was Egyptian and thus came in contact with al-Shāfiʿī during the last period of his life. In fact, we find also that al-Shāfiʿī was mixing with those people in his daily life as well. For instance, it is reported that he had a female and a male slave who were both fair and ruddy in complexion (*ashqar*),¹⁶⁹ an attribute which is abhorred in the aforementioned statements. Additionally, the word *al-duʿafāʾ* (lit. weak people) according to the language used by al-Shāfiʿī himself would also include those with disabilities such as the lame.¹⁷⁰ It is reported that al-Shāfiʿī was very friendly with this category of people, viz., the weak (*al-duʿafāʾ*) and he used to give them charity every day.¹⁷¹

4.1.1.4 Origin of these Statements

It is almost clear now that these statements were ascribed to al-Shāfiʿī out of love and glorification rather than enmity or malice. The process of ascribing them to al-Shāfiʿī started within Shāfiʿī circles in the context of *firāsa*. The ascription appeared in written form for the first time in the 4th/10th century through the work of Ibn Abī Ḥātim al-Rāzī (d. 327/938) on al-Shāfiʿī's virtues (*Adāb al-Shāfiʿī wa manāqibuh*).¹⁷² As illustrated above, Greek physiognomy was gaining an ascending reputation among the public as well as the scholarly elite. Thus depicting al-Shāfiʿī as a specialist in this science would be in favor of his scholarly image at this time. Two main factors made al-Shāfiʿī a good candidate to be specialist in Greek physiognomy. First, his fame for being a good practitioner of *firāsa* (*mutafarris*) in the other three meanings of *firāsa*, viz., sharp mindedness, *qiyāfa* and the mystic *firāsa*. Second, they are in line with related stories painting al-Shāfiʿī as an encyclopedic figure mastering Greek medicine and philosophy in their own language.¹⁷³

It is clear that the statements ascribed to al-Shāfiʿī were double-sided. At one side, they indicate his adeptness in physiognomy but at the other side they convey adopting a negative attitude towards people with physical defects. The double-sided character of these statements divided the Shāfiʿī scholars into two main groups. The first group welcomed the science of physiognomy and made use of such statements to depict al-Shāfiʿī as an important authority in this science.

The other group felt the negative side of these statements. In a bid to wipe away or at least minimize the severity of these statements, a number of Shāfiʿī scholars added their own comments and clarifications but available information shows that they were very scarce.

The earliest explanation comes from the author of the earliest written source in this respect, Ibn Abī Ḥātim al-Rāzī (d. 327/ 938). Commenting on the

¹⁶⁸ Subkī, Abū Naṣr ʿAbd al-Wahhāb b. ʿAlī b. ʿAbd al-Kāfi al- (1992), vol. 2, p. 131.

¹⁶⁹ Shāfiʿī, Muḥammad b. Idrīs al- (1410/1990), vol. 6, p. 197.

¹⁷⁰ Ibid, vol. 4, p. 171; Shāfiʿī, Muḥammad b. Idrīs al- (1412/1991), vol. 2, pp. 23 & 24.

¹⁷¹ ʿAsqalānī, Aḥmad b. ʿAlī b. Ḥajar al- (1301/1883), p. 68.

¹⁷² Rāzī, Ibn Abī Ḥātim al- (1372/1953), pp. 129-132.

¹⁷³ Rāzī, Fakhr al-Dīn al- (1413/1993), pp. 73 & 74; Abū Zahra, Muḥammad (1948), pp. 46 & 47; Khadduri, Majid (1961), p. 17.

pseudo-Shāfi‘ī statement “Beware of the one-eyed, the cross-eyed, the lame, the hump-backed, the fair and ruddy in complexion (*ashqar*), the beardless (*kawsaj*) and everyone with a physical defect (*nāqīṣ al-khalq*). Beware of such person because he is a man with cunning and difficult to deal with. On another occasion, he said, “They are people full of malice.”¹⁷⁴ Ibn Abī Ḥātim says, “This holds true for people born with disabilities. There is no harm, however, to mingle with those born without disabilities and who became later afflicted with it.”¹⁷⁵ Ibn Abī Ḥātim just minimized the severity of the statement by restricting its purport, though without any clear evidence. Ibn Abī Ḥātim’s explanation again enforces the Greek influence which also made a difference between congenital disabilities and those acquired in later life through disease, accident, warfare or debauchery. Congenital disability was not interpreted as divine punishment and thus should be treated with compassion when the responsibility does not lie at the sufferer’s door. However, acquiring disabilities in later life was regarded as shameful.¹⁷⁶

After a long span of time, other scholars such as al-Sakhāwī (d. 1497) and Ibn Fahd al-Makkī (d. 1547) tried to place the statements more within the broader context of Islamic teachings.

In a bid to reach a better reading, al-Sakhāwī and those who agreed with his reading quote a well-known Prophetic tradition; “Run away from the leper as you run away from the lion!”¹⁷⁷ That is, they add, for those who fear being infected and it does not indicate any negative image about people with physical defects as common people may think.¹⁷⁸ However, one would still wonder, what has lameness or strabismus with infection?!

Ibn Fahd was more to the point by clearly refusing the idea that people with physical defects are in principle bad. On the contrary, being afflicted with such calamities is an indication of man’s firm belief. As a supporting argument, he quotes the Prophetic tradition retelling when the Prophet – peace be upon him – was asked, “O Messenger of God, who among men are visited with the greatest affliction?” The Prophet said, “The Prophets, then those with most exemplary character and so forth. A man gets visited with affliction in accordance with his faith (*dīn*). If his faith is durable, his affliction gets harder but if his faith is fragile, then his affliction is lightened accordingly. Calamity continues to afflict the servant until he walks on earth without any sin cleaving to him.”¹⁷⁹

¹⁷⁴ Rāzī, Ibn Abī Ḥātim al- (1372/1953), pp. 131 & 132; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1390/1970), vol. 2, p. 132; Aṣbahānī, Abū Nu‘aym al- (1405/1984), vol. 9, p. 144.

¹⁷⁵ Rāzī, Ibn Abī Ḥātim al- (1372/1953), p. 132; Aṣbahānī, Abū Nu‘aym al- (1405/1984), vol. 9, p. 144.

¹⁷⁶ Garland, Robert (1995), p. 2.

¹⁷⁷ Sakhāwī, Muḥammad b. ‘Abd al-Raḥmān al- (1399/1979), p. 18; Shaybānī, Muḥammad b. ‘Umar al-Dayba‘ al- (1324/1906), pp. 6 & 7.

¹⁷⁸ Sakhāwī, Muḥammad b. ‘Abd al-Raḥmān al- (1399/1979), p. 18; Ibn Fahd (d. 954/1547), folios 4b-5a.

¹⁷⁹ Ibn Fahd (d. 954/1547), folios 6b.

Ibn Fahd al-Makkī adds another historical argument. He states that God's Messengers and Prophets, who are placed in the highest ranks of humanity, are living examples in this regard. Their afflictions did not lower their status but rather elevated it. The main example presented by Ibn Fahd was Prophet Job (Ayyūb). All parts of this Prophet's body were heavily afflicted with the exception of his heart and tongue by which he could practice *dhikr* (remembrance of God).¹⁸⁰

At any rate, it is clear that the statements did not influence the juristic trend of the Shāfi'ī School. This is evidenced by three main points.

First, the Shāfi'ī School continued to include jurists with disabilities, a fact that indicates that this category of people did not meet with any contempt against them within this school. This group of Shāfi'ī jurists included for instance a long list of people with blindness,¹⁸¹ lameness,¹⁸² kyphosis¹⁸³ and hemiplegia.¹⁸⁴

Second, the juristic production of the Shāfi'ī School remained free from prejudices against people with disabilities. On the contrary, a trawl through the Shāfi'ī texts, to be elaborated below, in fact shows a rather positive attitude towards people with disabilities. Not to mention that the first attempt in the history of Islamic Jurisprudence to dedicate a specific chapter on blind people took place in the Shāfi'ī School through al-Ghazālī (d.505/1111) in a book ascribed to him entitled *Al-Rawnaq* (glamour).¹⁸⁵

Third, *firāsa* in general, let alone Greek physiognomy, did not hold any legitimacy as valid evidence within the Shāfi'ī works. We know, through the Mālikī jurist Ibn al-ʿArabī, that the well-known Shāfi'ī jurist Abū Bakr al-Shāshī (d.507/1114)¹⁸⁶ wrote a treatise against the use of *firāsa*, to conclude a legal judgment.¹⁸⁷ Priority was always given to *qiyāfa* rather than *firāsa*,¹⁸⁸ a mere continuation of what al-Shāfi'ī started in this regard.

A single passage (of about 150 words) with relevance to Greek physiognomy appears in the juristic work of the Egyptian Shāfi'ī jurist

¹⁸⁰ Ibid, folios 7a-8b.

¹⁸¹ Subkī, Abū Naṣr ʿAbd al-Wahhāb b. ʿAlī b. ʿAbd al-Kāfi al- (1992), vol. 3, p. 295-297, vol. 3, pp. 478-483, vol. 4, pp. 83, 84, vol. 7, pp. 82, 99, 301, 338, 339, vol. 8, pp. 148, 151, 152, 294, 345, 346, 354, 371, 372 & vol. 10, pp. 95 & 96; Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, pp. 35, 36, 93, 94, 103, 104, 206, 224.

¹⁸² Subkī, Abū Naṣr ʿAbd al-Wahhāb b. ʿAlī b. ʿAbd al-Kāfi al- (1992), vol. 5, 300 & 301.

¹⁸³ Ibid, vol. 7, pp. 166 & 167.

¹⁸⁴ Ibid, vol. 2, pp. 270, 271, 286, 287, 288 & vol. 3, p. 222.

¹⁸⁵ This has been stated by those who quoted him and elaborated this chapter such as al-Nawawī, see Nawawī, Yaḥyā b. Sharaf al- (1), vol. 9, p. 368 and al-Suyūṭī, see Suyūṭī, Jalāl al-Dīn al- (1403/1983), pp. 251, However, I could not trace this book whether in manuscript or in edited form.

¹⁸⁶ On him, see Subkī, Abū Naṣr ʿAbd al-Wahhāb b. ʿAlī b. ʿAbd al-Kāfi al- (1992), vol. 6, pp. 70-78; Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, pp. 290 & 291. However, I could not trace this treatise.

¹⁸⁷ Ibn al-ʿArabī (1), vol. 3, pp. 106 & 107; Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 10, pp. 44 & 45; Shātibī, Abū Ishāq al- (1), vol. 2, p. 229.

¹⁸⁸ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 10, p. 348; Khaṭīb, Muḥammad b. Aḥmad Shirbīnī al- (1415/1994), vol. 6, p. 439.

Sulaymān al-Bujayramī (d. 1221/1806). This passage comes in the chapter on marriage and within the context of the parts of body that a man is allowed to see from a woman when he decides to marry with, viz., face and hands. Giving his reader an advice of how to use these two parts in order to deduce information about the parts he cannot see, al-Bujayramī quotes masters of physiognomy and expertise with women (*ahl al-firāsa wa al-khibra bi al-nisā*). For instance, the breadth of a woman’s mouth would indicate a similar breadth in her vagina and vice versa, the thinness of the lower lip indicates a small vagina and so forth.¹⁸⁹ The passage is, however, free from any reference to people with disabilities. Passages of the same work indicate that the author adopts a positive attitude towards people with disabilities. For instance, speaking about blindness afflicting one’s eyes, al-Bujayramiyy states that blindness does not cause any harm for one’s religion. What is harmful, he adds, is blindness befalling one’s heart that moves the person away from God. The author then quoted the Qur’anic verse, “Do they not travel through the land, so that their hearts (and minds) may thus learn wisdom and their ears may thus learn to hear? Truly it is not their eyes that are blind, but their hearts which are in their breasts” (Qur’ān 22:46).¹⁹⁰

To conclude, the aforementioned depreciatory statements ascribed to al-Shāfi‘ī remained, at least within the Shāfi‘ī circle in which the statements were originated, at best personal inclinations without claiming any juridical authority. However, further discussions on these statements and on making use of *firāsa* as a valid tool in Islamic jurisprudence took place in the Ḥanbalī School. This will be the focus of the discussions to follow.

4.1.2 The Ḥanbalī School

The Ḥanbalī jurist Ibn Muflīḥ (d. 763/1361) made reference to the pseudo-Shāfi‘ī statements. He quoted the first harsh statement and also an abridged version of the alleged trip of Shāfi‘ī to Yemen when he encountered a person with physical defects whose mean behaviour corroborated his convictions about physiognomy.¹⁹¹ The context of Ibn Muflīḥ’s quotations was typically physiognomical, namely, how to choose your friend and which person to choose or avoid. This was exactly one of the main benefits attached to physiognomy.¹⁹² However, the context gives the statements an advisory rather than a juristic binding character. Ibn Muflīḥ may have been the only Ḥanbalī jurist who incorporated the pseudo-Shāfi‘ī statements into the legal texts of the School. But surely he was not the only who discussed these statements, or *firāsa* in general, outside the Ḥanbalī juristic sources. In this regard viewpoints and relevant discussions of four well-known Ḥanbalī jurists will be presented under two main headings, namely, paradoxical standpoints as adopted by Ibn al-Jawzī

¹⁸⁹ Bujayramī, Sulaymān b. Muḥammad al- (1415/1995), vol. 6, p. 439

¹⁹⁰ See Bujayramī, Sulaymān b. Muḥammad al- (1415/1995), vol. 4, p. 443.

¹⁹¹ Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1), vol. 3, p. 574.

¹⁹² Qanwajī, Šiddīq b. Ḥasan al- (1978), vol. 2, p. 396.

(d. 597/1200)¹⁹³ and Ibn al-Qayyim (d. 751/1350)¹⁹⁴ followed by what can be termed as counterpoise-trials made by Ahmad Ibn Taymiyya (d. 728/1328)¹⁹⁵ and Zayn al-Din Ibn Rajab (d. 795/1393).¹⁹⁶

4.1.2.1 Paradoxical Standpoints

To start with Ibn al-Jawzī, his standpoint in this regard is highly paradoxical and confusing. On one side he unequivocally supports the main premise of Greek physiognomy and comes up with statements having almost the same purport as those ascribed to al-Shāfi‘ī. On the other side, he stresses the triviality of outward physical appearance and attaches great importance to one’s soul.

Although Ibn al-Jawzī does not quote verbatim the pseudo-Shāfi‘ī statements,¹⁹⁷ he clearly shows his belief in the validity of their purport by saying himself, “Beware everyone with a physical defect such as the bald, the blind and the like because their souls are evil”. This statement comes in a context known to be typical of Greek physiognomy. Ibn al-Jawzī is stressing the importance of one’s lineage (*as̄l*) and outward physical appearance (*ṣūra*) as determining factors to judge one’s character. His advice is to check these two points before mixing with people as friends, husbands or wives. A strong and well-proportioned figure indicates in most cases a good character and vice versa.¹⁹⁸ Keeping in mind that such rules still could have exceptions, Ibn al-Jawzī requires testing people before mixing with them even after checking these two points.¹⁹⁹ Stressing the importance of that well-proportioned figure, Ibn al-Jawzī opines that God chooses his Friends (*Awliyā*)²⁰⁰ only from among those who have such a well-proportioned body free from physical defects.²⁰¹

On the other side, Ibn al-Jawzī’s severely criticizes those who boast the beauty of their figure (*ṣūra*) and forget that the goodness of the soul (*rūḥ*) is the determining factor. He explains, “If the soul got jewelled by etiquette (*adab*), disciplined by knowledge, knew the Creator and fulfilled the duties [imposed] by him, then it will not be harmed by a defect in the structure [in reference to physical defects]. But if it remained ignorant, then it will resemble the mud but may get even lower.”²⁰²

This paradoxical standpoint of Ibn al-Jawzī is not unique. He has been known as a scholar who adopts sometimes inconsistent and contradictory standpoints on one topic. He would even forget that he said or adopted such

¹⁹³ On him, see Laoust, H. (3) (2003), vol. III, pp. 751 & 752.

¹⁹⁴ Laoust, H. (3) (2003), vol. III, pp. 821 & 822.

¹⁹⁵ On him, see Bazzār, Abū Hafṣ ‘Umar b. ‘Alī b. Mūsā al- (1400/1979); Laoust, H. (1) (2003).

¹⁹⁶ He is known to be the last great representative of medieval Hanablism, see Laoust, H. (2003), vol. III, p. 822; Laoust, H. (2) (2003), vol. III, p. 161.

¹⁹⁷ It is possible that he did so in his laudatory biography on the virtues of al-Shāfi‘ī (*Manāqib al-Shāfi‘ī*), see Ibn al-Jawzī (2), p. 227; Laoust, H. (3) (2003), vol. III, p. 752. Unfortunately, the book is missing.

¹⁹⁸ Ibn al-Jawzī (2), p. 227.

¹⁹⁹ Ibid, p. 228.

²⁰⁰ On this term, see Radtke, B. et al (2003), vol. IX, pp. 109-124.

²⁰¹ Ibn al-Jawzī (2), p. 311.

²⁰² Ibid, pp. 308 & 309.

contradictory standpoints because he does not revise what he writes.²⁰³ This can be traced back to Ibn al-Jawzī's extreme thirst for learning and mastering every branch of knowledge.²⁰⁴ It seems that Ibn al-Jawzī could not always detach himself from these different branches of knowledge or at least come up with a coherent conclusion since such branches give contrary or inconsistent information. Thus one should not exclude this possibility regarding his discussions on *firāsa*.

The first side of his approach stands under the influence of Greek physiognomy. This influence gets clear in Ibn al-Jawzī's literary works on the intelligent (*adhkiyā'*) and the fools (*ḥamqā*) which called in clear Greek physiognomic notions.²⁰⁵ For instance, the physical type of the intelligent person (*al-rajul al-fāhim*) reflects more or less faithfully the Aristotelian concept of the proper mean, the Greek *mesotes*, an expression of ethical virtue. The physical characteristics of the man gifted with a good intelligence and a good nature refer also to the concept of measures and balance between the two extremes which is surely Aristotelian.²⁰⁶ The Aristotelian concept of a link between the physical build and the moral traits was duly elaborated and systematically set out by Galen.²⁰⁷ When Ibn al-Jawzī gives a catalogue of the signs of stupidity, he bases his arguments on Galen, "Galen says that smallness of head never fails to be a sign of bad conformation of the brain. If the neck is short, this is a sign of a weak and scarce brain. Whoever has a disproportionate physical build is one of little value both in his intentions and his intellect."²⁰⁸

For the second side of Ibn al-Jawzī's analysis, the mystic influence is indisputable. For instance, it is known that Ibn al-Jawzī was strongly influenced by the Shāfi'ī mystic Abū Nu'aym al-Iṣfahānī (d. 430/1038/9)²⁰⁹ as is clear from Ibn al-Jawzī's mystic historical work *Ṣifāt al-ṣafwa* (The Character of the Elite).²¹⁰ In this book, Ibn al-Jawzī presents a list of those he considered *ṣafwa* (elite, chosen and purified by God) although they clearly do not meet the requirement of having a well-proportioned body or beautiful physical appearance. At the contrary, they suffered different sorts of disabilities such as lameness, leprosy, blindness and the like but they could still belong to the rank of *awliyā'* as stated by Ibn al-Jawzī himself.²¹¹ To sum up, Ibn al-Jawzī's

²⁰³ Ibn al-Jawzī (3), p. 11.

²⁰⁴ Ibn al-Jawzī (2), p. 211.

²⁰⁵ Observations of physiognomic nature are also to be found in Ibn al-Jawzī's medical treatise *Luqaṭ al-manāfi' fī al-tibb* (Useful Gleanings of Medicine), see Ibn al-Jawzī (1) (1987); Brockelmann, Carl (1937-42), vol. I, p. 505, S. I 921; Ghersetti, Antonella (1996), p. 122, note 11; Ghersetti, Antonella (2007), p. 292.

²⁰⁶ Ghersetti, Antonella (1996), p. 123.

²⁰⁷ Badawī, 'Abd al-Raḥmān (1954), pp. 182-186; Ghersetti, Antonella (1996), p. 124.

²⁰⁸ Ibn al-Jawzī (1990), p. 23; Hoyland, Robert (2005), "Physiognomy in Islam", p. 371; Ghersetti, Antonella (1996), p. 126.

²⁰⁹ Laoust, H. (2) (2003), vol. III, p. 161; Laoust, H. (3) (2003), vol. III, p. 751. On , Abū Nu'aym al-Iṣfahānī, see Pedersen, J. (2003), vol. I, pp. 142 & 143.

²¹⁰ Ibn al-Jawzī (1399/1979), vol. 1, pp. 20-32.

²¹¹ See for instance, Ibn al-Jawzī (1399/1979), vol. 1, pp. 350, 501, 502, 583, 645, vol. 2, pp. 193-196, vol. 4, pp. 383, 401 & 402. In his historical work *Talqīh fuhūm ahl al-athar fī 'uyūn al-tārīkh*

acquaintance with *firāsa* in the Greek and the Islamic sense are clearly touchable. However, it seems that he could live with both senses despite their contradictory images about people with disabilities.

Ibn al-Qayyim's contribution in this respect was much more detailed than that of Ibn al-Jawzī. A trawl through Ibn al-Qayyim's available works show that he handled, in varying degrees, *firāsa* in the four senses mentioned above.

Firāsa in the aforementioned first meaning occupied the greatest part of Ibn al-Qayyim's discussions on this topic. The main body of his contribution was recorded mainly in two books, viz., *Al-Fawā'id* (Benefits)²¹² and *Al-Turuq al-ḥukmiyya fī al-siyāsa al-shar'īyya* (Means of Governing according to the Religious Policy).²¹³ Discussing *firāsa* was the main focus of the second book and occupied a substantial part of it to the extent that the book is also known as *Al-Firāsa al-marḍiyya fī al-aḥkām al-shar'īyya* (The Accepted *Firāsa* in Religious Rulings). The main target of Ibn al-Qayyim in these two books is to broaden the traditional concept of proof that can serve as the basis of a valid judgment. Basically, there are three types of proof: confession, testimony and the defendant's refusal to take an oath to affirm his denial of the plaintiff's claim.²¹⁴ Ibn al-Qayyim aspires to integrate *firāsa* as a fourth type of proof that can be used by the judge to underpin his judiciary decrees. By *firāsa* here, Ibn al-Qayyim means that the judge would use his mental and perspicacious faculties to discover, produce and interpret signs and circumstantial evidences (*al-amarāt wa al-qarā'in*) so that he can reach a sound judgment.²¹⁵ Ibn al-Qayyim opines that this *firāsa* should top the qualifications of the judges in order to practice their judiciary activities.²¹⁶ Those who neglect this *firāsa*, Ibn al-Qayyim adds, paralyze many legal norms and cause legal claims to perish.²¹⁷ At the same time, he warns against the negative repercussions of using this *firāsa* excessively.²¹⁸ The synonymous sense of *firāsa*, viz., *qiyāfa* considered as eventual legal evidence in specific cases was used by Ibn al-Qayyim as a supportive argument.²¹⁹ He mentioned more than once that this opinion of him is also shared by the Ḥanbalī jurist Abū al-Wafā' Ibn 'Aqīl (d. 513/1119). Whereas Ibn 'Aqīl does not name it *firāsa*, Ibn al-Qayyim does not see any harm in using this term.²²⁰

wa al-siyar (Fertilizing the Perceptions of the Traditionists Concerning the Fountains of History and Biographies) Ibn al-Jawzī enlisted also those luminaries (*ashrāf*) afflicted with different sorts of disabilities, see Ibn al-Jawzī, (2), pp. 229-231.

²¹² Ibn al-Qayyim (1393/1973), vol. 3, pp. 634-636.

²¹³ Ibn al-Qayyim (5), pp. 3-76.

²¹⁴ Johansen, Baber (2002), pp. 169 & 170.

²¹⁵ Ibn al-Qayyim (5), p. 3; Johansen, Baber (2002), p. 188.

²¹⁶ Ibn al-Qayyim (5), p. 3; Ibn al-Qayyim (1393/1973), vol. 3, p. 634.

²¹⁷ Ibn al-Qayyim (5), p. 33; Johansen, Baber (2002), p. 188.

²¹⁸ Ibn al-Qayyim (5), pp. 3 & 13.

²¹⁹ Ibid, pp. 3 & 10; Ibn al-Qayyim (1393/1973), vol. 3, p. 636; Johansen, Baber (2002), p. 189.

²²⁰ Ibn al-Qayyim (5), pp. 3, 12; Ibn al-Qayyim (1393/1973), vol.3, p. 634 & 636. Ibn al-Qayyim's theory did not die out but rather adopted by later scholars, see for instance, Zuḥaylī, Wahba al- (1414/1994), vol. 2, pp. 553-557; Haven, E.C. van der (2006), pp. 146-155.

Firāsa in the Islamic sense was handled by Ibn al-Qayyim in a number of his books²²¹ the most important of which is *Madārij al-sālikīn* (Grades of the Walkers) considered to be the masterpiece of Ḥanbalī mystical literature.²²² *Firāsa* was presented in this book as one of the grades that the walker has to pass by in his traveling to God.²²³ The same sense of *firāsa* was elaborated in a concise commentary on the same theme by the earlier Ḥanbalī scholar, ‘Abdullāh al-Anṣārī al-Harawī (d. 481/1089)²²⁴ in his celebrated Sūfī treatise, *Manāzil al-sā’irīn* (Stations of the Wayfarers).²²⁵ According to Ibn al-Qayyim this type of *firāsa* is the most honourable one and the most beneficial for one’s life and for the Hereafter.²²⁶ He opines also that the Companions of the Prophet stand in the first rank of the practitioners of this type of *firāsa*.²²⁷

Ibn al-Qayyim advocates the Greek sense of *firāsa* as well. He believes at least in its main premise, viz., malformation in one’s body indicates a similar one in one’s character and spirit.²²⁸ However, Ibn al-Qayyim makes two main reservations. First, this premise should not be taken as an unbroken rule and thus possible exceptions should be taken into consideration.²²⁹ Second, the negative effect of physical defects on one’s soul and character is curable and recoverable by means of education, training and habituation.²³⁰ Thus, Ibn al-Qayyim warns, one should pay attention to this point otherwise practitioners of *firāsa* can make numerous misjudgements.²³¹ Al-Shāfi‘ī was for Ibn al-Qayyim one of the main proficient practitioners of this type of *firāsa* and he says that miracles were related about him in this regard.²³² Besides being a proficient practitioner, Ibn al-Qayyim adds, al-Shāfi‘ī was also one of the main theorists who wrote books on this science.²³³ Ibn al-Qayyim was aware of the statements ascribed to al-Shāfi‘ī and he did not cast any doubt about their authenticity. He even commended their purport and considered them as evidence of al-Shāfi‘ī’s shrewdness and adeptness in this type of *firāsa*.²³⁴

Although the two reservations mentioned by Ibn al-Qayyim for making use of *firāsa* in the Greek sense would balance the would-be negative attitude against people with disabilities, Ibn al-Qayyim’s standpoint in this regard remains highly controversial.

²²¹ Ibn al-Qayyim (1395/1975), vol. 1, pp. 238-240; Ibn al-Qayyim (1) (1395/1975), vol. 1, p. 48; Ibn al-Qayyim (3), vol. 1, p. 126; Ibn al-Qayyim (1412/1992), vol. 1, pp. 101 & 102.

²²² Laoust, H. (2003), vol. III, p. 822.

²²³ Ibn al-Qayyim (1393/1973), vol. 1, pp. 482-495

²²⁴ On him, see Beaucueuil, S. de (1965); Farhadi, Ravan (1996); Beaucueuil, S. de (2003), vol. I, pp. 515 & 516.

²²⁵ Harawī, ‘Abd Allāh Al-Anṣārī al- (1408/1988), vol. 1, pp. 80 & 81.

²²⁶ Ibn al-Qayyim (1393/1973), vol. 1, p. 131.

²²⁷ Ibid, vol. 2, p. 486.

²²⁸ Ibn al-Qayyim (1395/1975), vol. 1, p. 40; Ibn al-Qayyim (1393/1973), vol. 2, pp. 487 & 488.

²²⁹ Ibn al-Qayyim (1395/1975), vol. 1, p. 40.

²³⁰ Ibid, vol. 1, p. 40; Ibn al-Qayyim (1393/1973), vol. 2, p. 488.

²³¹ Ibn al-Qayyim (1393/1973), vol. 2, p. 488.

²³² Ibn al-Qayyim (1395/1975), vol. 1, p. 40.

²³³ Ibn al-Qayyim (1393/1973), vol. 2, p. 43.

²³⁴ Ibn al-Qayyim (2), vol. 2, pp. 221-223.

First of all, he advocates two types of *firāsa*, viz., the mystic and the Greek ones, which stand at opposite poles concerning their view on physical disabilities.

Second, Ibn al-Qayyim's commend of al-Shāfi'i's adeptness in the Greek type of *firāsa* comes in the context of his long refutation and comprehensive attack on astrology, considered to be the most elaborate and comprehensive attack or the culminating point in the history of systematic religious attacks on astrology in Islam.²³⁵ In this context Ibn al-Qayyim refuted what he considered spurious information about al-Shāfi'i's knowledge of astrology as recorded in the *manāqib* works. Ibn al-Qayyim made a highly critical study on reports mentioned in these works concerning the chain of transmission (*isnād*) or the text (*matn*), concluding that such reports present unauthentic information.²³⁶ This critical approach is completely missing in his study of the statements ascribed to al-Shāfi'i concerning Greek physiognomy or his alleged adeptness in that field. At any rate, Ibn al-Qayyim's critique of astrology comes as part of his violent opposition and refusal to the occult sciences constituting part of the sciences inherited by Islam particularly from the Greeks known as the rational sciences (*al-ʿulūm al-ʿaqliyya*) or sciences of the ancients (*ʿulūm al-awāʾil*).²³⁷ A popular belief of these occult sciences was seen to endanger the religious basis of Islamic society.²³⁸ Strikingly enough, a strong link was always claimed to exist between astrology and Greek physiognomy. For instance, when physiognomy was incorporated into the list of the recognized sciences by Muslim scholars, it was put together with astrology in the same category. This was already done before Ibn al-Qayyim by Ibn Sīnā,²³⁹ al-Ghazālī²⁴⁰ and Ibn Rushd.²⁴¹ Furthermore, the two sciences share the idea that the formation of heavenly bodies influences the formation of elemental traits shaping human character.²⁴² Additionally, Arabic works on Greek physiognomy, before and also after the time of Ibn al-Qayyim show that *firāsa* was known in Greek literature as *ʿilm al-nujūm* (lit. science of the stars or astrology).²⁴³ That is why attacking

²³⁵ Michot, Yahya J. (2000), p. 152.

²³⁶ Ibn al-Qayyim (2), vol. 2, pp. 219-221.

²³⁷ Goldziher, I. (1981), p. 185; Livingston, John (1971), pp. 96, note 1 & 97; Livingston, John (1992), p. 598.

²³⁸ Livingston, John (1992), p. 598.

²³⁹ See Ibn Sīnā (1406/1986), p. 88; Mourad, Youssef (1939), p. 23; ʿAdiyy, ʿAbd al-Karīm (1982-1983), vol. 57, issue 4, 712 & 713; Hoyland, Robert (2005), p. 391, note 84; Ghersetti, Antonella (2007), p. 285.

²⁴⁰ Ghazālī, Abū Hāmid al- (3), p. 233; Ghazālī, Abū Hāmid al- (1958), p. 181; Mourad, Youssef (1939), p. 24; ʿAdiyy, ʿAbd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 713 & 725.

²⁴¹ Ibn Rushd (1965), pp. 767-769; Mourad, Youssef (1939), p. 24; ʿAdiyy, ʿAbd al-Karīm (1982-1983), vol. 57, issue, 4, pp. 713 & 725.

²⁴² Ghumrī, Zayn al-ʿĀbidīn Muḥammad b. Muḥammad al- (1) (d. 970/1562), fol. 14a-15b; Livingston, John (1992), p. 599.

²⁴³ Rāzī, Fakhr al-Dīn al- (1939), pp. 6 & 7; Ansārī, Abū Tālib al- (1332/1914), pp. 3 & 4; Michot, Yahya J. (2000), p. 147; For further comments on relations and common elements between Greek physiognomy and divinatory arts, esp. astrology, see ʿAdiyy, ʿAbd al-Karīm (1982-1983), vol. 57, pp. 710-711; Ghersetti, Antonella (2007), p. 296 & 297.

astrology and simultaneously praising physiognomy without any further explanation remains almost an unexplainable quiz.

One could think of the social dimension that can unravel this quiz or at least minimize its mysteriousness. Attacking astrology that severely, Ibn al-Qayyim was occupied in the first place with a social phenomenon that he saw as danger for people's religion. In Mamluk society, where Ibn al-Qayyim lived, astrology was almost completely distanced from the scientific field and got closer than ever to magic, divination and charlatanry. Such astrology could penetrate the different aspects of the Mamluk society and astrologers had clients not only in the streets but also sometimes in the citadels of the military class.²⁴⁴ Keeping this in mind, one would imagine that the influence of physiognomy by creating a bad image about people with disabilities was not that popular or penetrative as the bad effects of astrology in Mamluk society. In other words, people would not have made use of this type of *firāsa*, at the time of Ibn al-Qayyim, to degrade or demean people with disabilities and thus this might not have attracted his attention while dealing with this science. This would be true especially when we keep in view the two reservations he made for the applicability of this science, thus keeping the door open that people with disabilities could possess or develop a good character.

4.1.2.2 Counterpoise-Trials

Two main Ḥanbalī scholars brought a clear equilibrium in the image of people with disabilities, namely Ibn al-Qayyim's main master Aḥmad Ibn Taymiyya (d. 728/1328)²⁴⁵ and his main disciple Zayn al-Dīn Ibn Rajab (d. 795/1393).²⁴⁶

Initially, Ibn Taymiyya shared with Ibn al-Qayyim three main views with relevance to this topic. First, the aforementioned first meaning of *firāsa* developed by Ibn al-Qayyim comes originally from Ibn Taymiyya. However, Ibn Taymiyya just focuses on developing the theory of evidences and proofs and does not make use of the term *firāsa*.²⁴⁷ Second, Ibn Taymiyya conceded the validity of the mystic *firāsa* and condemned those who refuse using it as eventual evidence in case other clear and authentic evidences are absent. By the same token, Ibn Taymiyya blames those who would overuse or misuse it as evidence all the time.²⁴⁸ Finally, Ibn Taymiyya also expressed his anti-astrological standpoint as issued in a number of his fatwas.²⁴⁹

The main divergence between the master and his disciple lies in their standpoints concerning Greek physiognomy or its premise at least. Although Ibn Taymiyya does not handle Greek physiognomy as detailed as his disciple, the available cursory references indicate that he was in the first place skeptic about the validity of Greek physiognomy which he names *al-firāsa al-badaniyya*

²⁴⁴ Michot, Yahya J. (2000), p. 149.

²⁴⁵ On him, see Bazzār, Abū Hafṣ 'Umar b. 'Alī b. Mūsā al- (1400/1979); Laoust, H. (1) (2003).

²⁴⁶ He is known to be the last great representative of medieval Ḥanablism, see Laoust, H. (2003), vol. III, p. 822; Laoust, H. (2) (2003), vol. III, p. 161.

²⁴⁷ Ibn Taymiyya (8); Johansen, Baber (2002), esp. pp. 168, 181, 186, 187, 192.

²⁴⁸ Ibn Taymiyya (7), vol. 10, p. 473.

²⁴⁹ See Michot, Yahya J. (2000).

(lit. physical physiognomy) because it lacks solid scientific basis.²⁵⁰ As for the main premise of the Greek physiognomy, viz., judging people's characters on the basis of their physical form, Ibn Taymiyya was much more critical. In one place he severely attacks those who judge people and claim to know their ranks and positions by God in any way other than that revealed to the Prophet of Islam. Practicing such judgment would place the person beyond the folds of Islam. One who also claims, Ibn Taymiyya adds, to know people's ultimate destinies without supporting his claim with God's statement or a statement of his Messenger would incur God's wrath.²⁵¹ It is clear that such statements subvert the premise of physiognomy and its related sciences which judges one's character on the basis of, for instance, bodily marks and movements and lines on the hands and feet.²⁵² *Al-firāsa* which avoids such pitfalls, Ibn Taymiyya adds in an indirect reference to the mystic one, is true and acceptable.²⁵³

In another place, Ibn Taymiyya elaborates more on the Islamic criterion by which people's ranks and grades are to be measured. He says, "Texts available in the Qur'an and the Sunna judge justly. Allah favours, in the Qur'an, nobody on the basis of poverty or richness, *health or sickness*, residence or travel, the position of governor or governed, position of imam or that of a follower. On the contrary, He said 'The most honourable among you is the most pious' and thus he favours them on the basis of good deeds (*al-a'māl al-ṣāliḥa*) including belief, its pillars and branches such as Certainty (*al-yaqīn*), Spiritual Knowledge (*ma'rifa*), love for God, returning to Him, dependence on Him, hoping Him, fearing Him, thanking Him and [practising] patience for the sake of Him"²⁵⁴ Two main Qur'anic verses and one Prophetic tradition supporting this viewpoint were quoted by him.²⁵⁵ The first verse says concerning the hypocrites, "And when you see them, their figures (*ajsām*, lit. bodies) will please you" (Qur'an 63:04). The second verse states, "And how many of the generations have We destroyed before them who were better in respect of goods and outward appearance (*zi'ya*)!" (Qur'an 14:74).

The two verses show examples of people who look very well and thus their bodies are free from physical defects but this outward physical perfection did not avail them from God's wrath because they had a bad character. The Prophetic tradition reads, "Allah does not look at your figures (*suwat*) or your properties (*amwāl*) but He looks at your hearts and deeds". Thus the main criterion of favoring someone over the other is what he has in his heart and what he does rather than how his body looks like.²⁵⁶

Available works of Ibn Rajab do not provide us with any discussions on *firāsa* in whatever sense. However, some passages from his hand develop and

²⁵⁰ Ibn Taymiyya (7), vol. 7, p. 199.

²⁵¹ Ibid, vol. 5, p. 82.

²⁵² Rāzī, Fakhr al-Dīn al- (1939), pp. 10 & 11.

²⁵³ Ibn Taymiyya (7), vol. 5, p. 82.

²⁵⁴ Ibid., vol. 11, p. 125. The Italics are mine.

²⁵⁵ Ibid., vol. 15, p. 416 & vol. 22, p. 126

²⁵⁶ Ibid., vol. 22, p. 126.

elaborate the ideas of Ibn Taymiyya concerning the disconnection between one's physical appearance and character and the conviction that *taqwā* (piety) is the main criterion by which people's dignity can be measured. Commenting on the aforementioned ḥadīth by Ibn Taymiyya, Ibn Rajab says, "Thus it could happen that many of the hearts of those who have a good figure (*sūra ḥasana*), property (*māl*), prestige (*jāh*) or a governing position (*riyāsa*) in this life could be void of *taqwā*, and it could happen that the heart of someone who possesses nothing of such things be full of *taqwā* and thus more dignified by God. Actually this is what in reality happens in most cases."²⁵⁷ Ibn Rajab supported his argument by quoting four Prophetic traditions purporting that people of Paradise in the Hereafter are mainly those who are physically and socially not powerful but even weak (*du'afā'*) in this life, whereas powerful people, in the physical and social sense, are usually to end up in the Hellfire.²⁵⁸

4.1.3 Other Schools

Beyond the detailed information given in the Shāfi'ī and Ḥanbalī schools, it is generally agreed upon that the believer can make use of his own *firāsa* in his own private affairs as long as this does not lead to an illegal act (*maḥẓūr shar'ī*).²⁵⁹ The main disagreement is whether *firāsa* can be a legal proof used by the judge (*qāḍī*). The most well-known judge who made use of *firāsa*, in the first meaning, to conclude his legal judgments is Iyās b. Mu'āwiya (d. 121/739) who was appointed in 99/717 as the judge of Basra during the caliphate of 'Umar b. 'Abd al-'Azīz and thus before the establishment juristic legal schools (*madhāhib*).²⁶⁰

As for the Sunni legal schools, the Ḥanafī jurist, Burhān al-Dīn al-Ṭarābulī (d. 922/1516) as well as the two Mālikī jurists, Abū Bakr Ibn al-'Arabī (d. 543/1148) and Ibn Farḥūn (d. 799/1397) reject considering *firāsa*, the context suggests the first meaning, a valid tool to conclude a legal judgment.²⁶¹ Ibn al-'Arabī supports his argument by quoting a treatise elaborating this point written by the Shāfi'ī jurist, Abū Bakr al-Shāshī (d. 507/1114).²⁶² The same opinion is also advocated by the well-known mystic Muḥyī al-Dīn Ibn al-'Arabī (d. 638/1240) concerning the mystic *firāsa*.²⁶³ Another Mālikī jurist, al-Shātibī (d. 709/1388) states that mystic *firāsa* can be valid evidence and one can behave

²⁵⁷ Ḥanbalī, Ibn Rajab al- (1408/1987), vol. 1, pp. 333 & 334.

²⁵⁸ Ibid, vol. 1, p 334.

²⁵⁹ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 32, p. 78. For the Shī'ī Zaydī School, see Murtaḍā, Aḥmad b. Yaḥyā al- (1), vol. 2, pp. 39 & 40.

²⁶⁰ Ibn al-'Arabī (1), vol. 3, p. 107; Ibn Farḥūn, Ibrāhīm b. 'Alī b. Muḥammad al-Ya'murī (1406/1986), vol. 2, p. 235; Shātibī, Abū Ishāq al- (1), vol. 2, p. 229; Pellat, Ch. (2) (2003), vol. IV, p. 291; Hoyland, Robert (2005), pp. 372-274.

²⁶¹ Ibn Farḥūn, Ibrāhīm b. 'Alī b. Muḥammad al-Ya'murī (1406/1986), vol. 2, p. 235; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 32, pp. 78 & 79.

²⁶² Ibn al-'Arabī (1), vol. 3, pp. 106 & 107; Qurṭubī, Abū 'Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 10, pp. 44 & 45; Shātibī, Abū Ishāq al- (1), vol. 2, p. 229

²⁶³ Ibn 'Arabī, Muḥyī al-Dīn (1418/1997), p. 148. On al-Shāshī, see Subkī, Abū Naṣr 'Abd al-Wahhāb b. 'Alī b. 'Abd al-Kāfi al- (1992), vol. 6, pp. 70-78; Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, pp. 290 & 291.

accordingly provided that this will not violate any of the established Islamic regulations.²⁶⁴ A certain al-Shāmī al-Mālikī who was the chief judge of Baghdad and contemporaneous of Abū Bakr al-Shāshī (d. 507/1114) may be the most Mālikī jurist going against the standpoint advocated by Abū Bakr Ibn al-‘Arabī and the others. He made use of *firāsa* to reach his legal judgments the same as the earlier judge of Basra Iyās b. Mu‘āwiya (d. 121/739).²⁶⁵ Outside the Sunni legal schools, the Ibādī School is also against using *firāsa* as legal evidence.²⁶⁶

4.2 Dignity of People with Disabilities in Practice

4.2.1 Controversial Attempts

Al-Haytham b. ‘Adiyy (d. 821) is the first known writer on the topic of people with disabilities.²⁶⁷ As described by his biographers, Al-Haytham was an expert in people’s flaws (*mathālib*) and exploits (*manāqib*).²⁶⁸ Among his compilations is *Kitāb al-Haytham b. ‘Adiyy* where he recorded a number of luminaries categorized on the basis of their disabilities. The available version now of this compilation is the booklet always appended to the printed book of the well-known man of letters, al-Jāhiz on the same topic.²⁶⁹ Al-Jāhiz criticized al-Haytham’s approach, viz., mentioning of names or retelling the stories of people with disabilities for the sole purpose of entertainment.²⁷⁰ Writing on people with disabilities, al-Jāhiz confirms, should rather have beneficial goals, such as demonstrating the spirit of challenge inherent to those people and elaborating the lessons and admonitions to be learnt from their experiences with afflictions.²⁷¹ It seems that al-Jāhiz was not the sole critic of al-Haytham’s approach. The man was also accused by his contemporaries of having malicious intentions by tracing and revealing people’s defects and drawbacks. However, according to some historians, this accusation was groundless and was falsely leveled against him due to others’ personal grudges. At any rate, the accusation was effective in the sense that it made people hate him and impugned his lineage as well. Al-Haytham was also imprisoned by Caliph Hārūn al-Rashīd (d. 809) for a number of years because he attributed a defect to the Companion al-‘Abbās b. ‘Abd al-Muṭṭalib. But the succeeding Caliph al-Amīn (d. 813) freed

²⁶⁴ Shātibī, Abū Ishāq al- (1), vol. 2, pp. 225-232.

²⁶⁵ Ibn al-‘Arabī (1), vol. 3, p. 107; Ibn Farḥūn, Ibrāhīm b. ‘Alī b. Muḥammad al-Ya‘murī (1406/1986), vol. 2, p. 235; Shātibī, Abū Ishāq al- (1), vol. 2, p. 229.

²⁶⁶ Aṭfīsh, Muḥammad b. Yūsuf (1405/1985), vol. 14, p. 608.

²⁶⁷ There is no agreement on the year of his death. Opinions are divided between 821, 822 and 824 C.E. See Pellat, Ch. (4) (2003), vol., III p. 328. See also Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 10, pp. 103-104; Ibn al-Nadīm (1398/1978), vol. 1 pp. 145-46.

²⁶⁸ For instance, concerning the defects he wrote *Kitāb al-mathālib al-kabīr*, *Kitāb al-mathālib al-ṣaghīr* and *Kitāb mathālib rabī‘a*. As for exploits, he wrote *Kitāb tarīkh al-ashraf al-kabīr* and *Kitāb tarīkh al-ashraf al-ṣaghīr*. For a list of more than fifty books attributed to him, see Ibn al-Nadīm (1398/1978), vol. 1 p 154.

²⁶⁹ Jāhiz, Abū ‘Uthmān ‘Amr b. Baḥr al- (1407/1987), p. *ya*’.

²⁷⁰ Ibid, p. 6.

²⁷¹ Ibid, pp. 7-8. This was also the approach of Ibn al-Jawzī, see Quzayḥa, Riyād (1988), pp. 45-55.

him upon his succession.²⁷² Unfortunately, there is no available information to give us more details in this regard. For instance how did jurists react to al-Haytham's book and how did he defend his book and his opinions?

After al-Haytham b. 'Adiyy, a vast literary genre composed mainly for the sake of entertaining the reader came to exist. This was made by retelling pleasing stories and anecdotes (*nawādir*) containing wit, humor, jocularly and repartée.²⁷³ In the midst of these stories, a chapter was always dedicated to people with physical abnormalities (*dhawī al-‘āhāt*).²⁷⁴ Other books adopted the same approach but they focused on people with mental disabilities.²⁷⁵ Two main points were raised about this type of literature. First, the legal ruling of humor and jocularly in principle.²⁷⁶ Second, the legal ruling of using people's physical or mental defects as a source of entertainment and even occasionally sarcasm. These points were quite controversial and a lot of justification on the issue evolved in order to avoid legal or religious embarrassment in this respect.²⁷⁷ However, juristic criticism for this genre remained to be given in the generic sense in chapters entitled *ghība*, as to be explained below. No well-known concrete incidents about a specific book or a specific author who has been attacked are recorded after al-Haytham b. 'Adiyy.

Seven centuries after his death, a book written in 1541 on people with disabilities triggered a vigorous debate that continued until 1543. This two-year debate took place mainly between the author of the book (Ibn Fahd) who was a historian and a well-known contemporaneous jurist (Ibn Ḥajar al-Haytamī). A question was posed to the Shafi'ī scholar Ibn Ḥajar al-Haytamī about a book entitled *Al-Nukat al-zirāf fīman ibtulīya bī al-‘āhāt min al-ashrāf* (Cute Anecdotes on Luminaries Afflicted with Disabilities). Ibn Ḥajar issued his fatwa that the book must be damaged. The debate went beyond these two figures to include damaging the book and the issuing of different fatwas from different Islamic cities.

²⁷² Ibn Khallikān, Aḥmad b. Muḥammad (1968), vol. 6, p. 106; Pellat, Ch. (4) (2003), vol., III, p. 328. Pellat even said that none of his works survived. However, his aforementioned booklet on luminaries with disabilities is available.

²⁷³ See Pellat, Ch. (5) (2003), vol. VII (2003), pp. 856-58.

²⁷⁴ “*Dhawī al-‘āhāt*” is the common term used in early Arabic literature denoting what we now know as “people with disabilities”. However, it is of vital importance to recognize that the purport of this term is broader than that of “people with disabilities”. For instance, it is common to enlist the bald, those who are too short or too long, those whose pregnancy-period was abnormally long or short and so forth. See for instance the list of *dhawī al-‘āhāt* given by Ibn Qutayba, Ibn Qutayba Abū Muḥammad ‘Abd Allāh b. Muslim (1406/1986), vol. 4, pp. 53-69; Ibn Qutayba Abū Muḥammad ‘Abd Allāh b. Muslim (1388/1969), pp.578-95. For an extended list of such sources, see Sadān, Yūsuf (1983), p. 13, note 5.

²⁷⁵ For an extended list of this type of books, see Sadān, Yūsuf (1983), pp. 26-28, fn 36.

²⁷⁶ For discussions on this point, see for instance Sadān, Yūsuf (1983), pp. 56-71; Quzayḥa, Riyād (1988), pp. 36-40 and 42.

²⁷⁷ For a detailed analysis of this point, see Sadān, Yūsuf (1983), pp. 19, 25-36.

4.2.2 Main Contributors

As mentioned above, the first main figure participating in this polemic was Ibn Fahd, whose full name is Jār Allāh Muḥammad Taqīyy al-Dīn b. al-‘Izz b. al-Najm b. ‘Umar b. Taqīyy al-Dīn, Muḥammad b. Fahd al-Makkī al-Hashimī al-Shafī‘ī. He was born in July 1486 and died in the same month in 1547.

Ibn Fahd descended from an elite Meccan family known for their scholarly prestige for three centuries. He himself represented the fourth generation in an unbroken chain of traditionists (*muḥaddithūn*). The family is also known for its general refraining from assuming political or religious positions.²⁷⁸ They had their own *waqf* (endowment) in Mecca. Ibn Fahd could make use of this *waqf* after a dispute with his brother and recorded the whole story in one of his books.²⁷⁹

Ibn Fahd memorized the Qur’ān and learned *ḥadīth* from his father. He accompanied him on his knowledge-seeking trips throughout the Arabian Peninsula. Ibn Fahd’s first trip outside the peninsula was in 1507 when he traveled to Cairo to learn *ḥadīth*. His trips to Cairo were repeated whenever he traveled to Syria or to Ottoman cities such as Istanbul or Bursa.²⁸⁰ Ibn Fahd was better known as an historian and traditionalist rather than a jurist. However, his biography shows that he studied jurisprudence with more than one shaykh. For instance, he studied *Al-Minhāj*²⁸¹ with his father and later on with other two shaykhs, namely ‘Abdullah Bākathīr with whom Ibn Fahd studied *fiqh* in general and Shihāb al-Dīn al-Yusūf.²⁸²

Ibn Fahd wrote forty-nine books, mainly historical in nature besides some others on ethics and *ḥadīth*.²⁸³ Four of these books recounted the laudable deeds of the Ottoman Sultans and a fifth book extolled the Meccan sharīf, Abū Zuhayr Barakāt.²⁸⁴ Contrary to these books, Ibn Fahd expressed his criticism against the Ottomans, their policy in Mecca and their vicinity in his historical book on Mecca entitled *Nayl al-munā*. However, he kept the praising tone for the Meccan Sharīfs but still mixed with some indirect critical remarks on their policy. Strikingly enough, *Nayl al-munā* remained just a draft till the death of the author and he did not refer to it in any of his other books. The book was

²⁷⁸ Ibn Fahd (1420/2000), p. 5.

²⁷⁹ The book is *Hifẓ al-‘uhūd ‘ala ḥukm waqf dār al-fuhūd*, see Ibid, vol. 1, pp. 6, 12, and vol. 2, pp. 713-14.

²⁸⁰ Ibid, vol. 1, pp. 7-8.

²⁸¹ A very well-known juristic book in the Shafī‘ī School. It is to be noted that Ibn Ḥajar al-Haytamī wrote a commentary on this book and gave it the title *Tuḥfat al-muḥtāj li sharḥ al-minhāj* which later became one of the authoritative textbooks of the Shafī‘ī School. See Schacht, J. & C. van Arendonk (2003), vol. III, p. 779.

²⁸² ‘Aydarūsī Muḥyī al-Dīn ‘Abd al-Qādir al- (1934), pp. 241-42. For a list of the other jurists who taught Ibn Fahd, see Hīla, Muḥammad Ḥabīb al- (1994), p. 9.

²⁸³ For a full list of these works, see Hīla, Muḥammad Ḥabīb al- (1994), pp. 197-213, and Ibn Fahd (1420/2000), vol. 1, pp. 10 -13. For more biographical information on Ibn Fahd, see besides these two sources ‘Aydarūsī Muḥyī al-Dīn ‘Abd al-Qādir al- (1934), pp. 241-42; Ibn al-‘Imād (1), vol. 4, p. 301.

²⁸⁴ See Hīla, Muḥammad Ḥabīb al- (1994), pp. 198, 201-204, 207-208; Ibn Fahd (1420/2000), vol. 1, pp. 10-13.

also not known to the contemporaries of Ibn Fahd. All this would indicate that Ibn Fahd might have wanted to keep these critical remarks beyond the reach of the public during his lifetime.²⁸⁵

The second figure taking part in this polemic was Ibn Ḥajar whose full name is Abū al-‘Abbās Aḥmad b. Muḥammad b. Muḥammad b. ‘Alā’ b. Ḥajar, Shihāb al-Haytamī born in 1504 and died in 1567. Unlike Ibn Fahd, Ibn Ḥajar was specialized in Islamic Jurisprudence and well-known as a prolific writer of the Shāfi‘ī School.

He received his elementary school education in the sanctuary of al-Sayyid al-Badawī in Tanta, a province in northern Egypt. In 1518, he went to al-Azhar to continue his education and at the end of the year 1523 his teachers gave him, on their own initiative, the *ijāza* (authorization or license) to issue fatwas. He went to Mecca for the ḥajj in 1527 and then again in 1531, each time spending there a one year’s sojourn afterwards. During his first visit, he began writing after seeing the well-known mystic al-Ḥārith al-Muḥāsibī (d. 857) in an inspiring dream. In 1533, he made his third pilgrimage and settled permanently in Mecca, devoting himself to writing and teaching.

Besides the religious and spiritual benefits of being in the vicinity of the Holy Mosque, Mecca was also an attractive place of residence for Muslim scholars of the time. The province of al-Ḥijāz in general, and Mecca in particular were, economically speaking, much more privileged than the other provinces of the Ottoman Empire. The inhabitants of this province were for instance exempted from the duty of paying personal or real estate taxes. Furthermore, al-Ḥijāz used to receive an annual supply of money and grains.²⁸⁶ The Ottomans exerted evident effort in establishing and developing the institutions of religious learning, funding educational activities and paying for the scholars of the two Holy Mosques and the retirees there through the charities of *Jawālī*.²⁸⁷ This economic sphere had positive effects on the scholarly milieu by attracting a great number of well known Muslim scholars to come reside permanently in Mecca.²⁸⁸

Although Ibn Ḥajar’s reputation spread both far and wide, his authority in Mecca was not entirely undisputed and he engaged in a series of vigorous polemics with Ibn Ziyād, the Shafi‘ī mufti of Zabīd on the financial issue of sponsorship and debts. By the time of his death, Ibn Ḥajar had compiled more than forty books, most of which are juristic and theological in nature. It is reported that two of these books concerned the juristic rulings that rulers and kings are to abide by.²⁸⁹ However, Ibn Ḥajar seems to have been quite untouched by the political upheavals that occurred during his lifetime.²⁹⁰

²⁸⁵ See Hīla, Muḥammad Ḥabīb al- (1994), pp. 210-213; Ibn Fahd (1420/2000), pp. 16-19.

²⁸⁶ Sanjarī, ‘Alī b. Tāj al-Dīn al- (1998), vol. I, p. 19.

²⁸⁷ *Jawālī* is a tax imposed on the *dhimmīs* and émigrés living in the Islamic *umma*. Sanjarī, ‘Alī b. Tāj al-Dīn al- (1998), vol. I, p. 22, note, 3. For the etymology and different usages of this term, see Cahen, Cl. (2003), vol. II, p. 490.

²⁸⁸ Sanjarī, ‘Alī b. Tāj al-Dīn al- (1998), vol. I, p. 22.

²⁸⁹ Hīla, Muḥammad Ḥabīb al- (1994), pp. 226-27.

²⁹⁰ Schacht, J. & C. van Arendonk (2003), vol. III, p. 779.

The main source to be used here is the two-page fatwa published in his fatwa collection entitled *Al-Fatāwā al-fiqhiyya al-kubrā* (Grand Juridical Fatwas).²⁹¹ *Al-Zawājir ‘an iqtirāf al-kabā’ir* (Restraints Against Committing Grave Sins) where Ibn Ḥajar handles the theme of *ghība* (backbiting)²⁹² would be of benefit for comparative reasons. That is because, as indicated by the author in the introduction, *Al-Zawājir* was written after 1546, i.e. at least five years after issuing the fatwa under discussion.²⁹³

4.2.3 Encounters Preceding this Polemic

It is felicitous to examine the nature of the relationship between these two figures before this polemic of 1541 to see if personal dimensions rather than scholarly interests would have played a role in this polemic.

The possibilities of personal encounters earlier than 1533 whether during the scholarly visits of Ibn Fahd to Egypt starting from 1507 or during Ibn Ḥajar’s visits to Mecca for pilgrimage in 1527 and 1531 are not to be crossed out. However, it is certain that the two figures co-lived in Mecca at least for fourteen years starting from Ibn Ḥajar’s permanent settlement in Mecca since 1533 till his death 1567.

Broadly speaking, there is no mention that either of the two scholars assumed an official political or religious position during his lifetime. Thus a struggle for power is out of context in this respect. Although they are both recognized as religious scholars, the men belonged to different fields of knowledge; Ibn Ḥajar specialized in *fiqh* and Ibn Fahd in history – thus jealousy or envy of each other’s fame was likely kept to a minimum.

As for details, available historical records are silent on any kind of encounter or relationship between these two scholars before 1537. In that year, Ibn Fahd himself made the first reference to Ibn Ḥajar in his historical record on Mecca, *Nayl al-munā*. In this book, we come across Ibn Ḥajar, five times mentioned as a scholar participating in Meccan life, but none of which relates a story or incident between these two figures.²⁹⁴ Ibn Fahd always preceded Ibn Ḥajar’s name with honorable titles such as *Mufti of Muslims*,²⁹⁵ *al-shaykh al-mudarris* (the teacher shaykh)²⁹⁶ and the like. Unfortunately, *Nayl al-munā* stops in 1539, two years before the polemic takes place, and thus makes no reference to this incident. The editor of the book raised the question, “Where are the historical reports of the last eight years (1539-1547) until the death of Ibn Fahd? Did he

²⁹¹ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, pp. 82-83.

²⁹² Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1994), pp. 8-33.

²⁹³ For further information on this figure, see Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 1, pp. 2-5; Ibn al-‘Imād (1), vol. 4, p. 370-72; Hīla, Muḥammad Ḥabīb al- (1994), pp. 197-213; Schacht, J. & C. van Arendonk (2003), vol. III, pp. 778b-779b. For the case between him and Ibn Ziyad, see Ibn Ḥajar al-Haytamī, Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 3, pp. 2-38.

²⁹⁴ For details on these five times, see Ibn Fahd (1420/2000), vol. 2, pp. 664, 668, 717, 722, 771-72.

²⁹⁵ Ibid, vol. 2, pp. 664-69.

²⁹⁶ Ibid, vol. 2, p. 717.

write them where they remained as draft and then were lost? Did he stop writing these reports for a specific reason?” The editor concludes that available texts do not provide us with a satisfying answer.²⁹⁷

The main historical thread telling us what happened after this time is again Ibn Fahd himself in *Al-Nukat al-zirāf*. He says that although Ibn Ḥajar belongs to *dhawī al-‘ahāt*, for being squinty-eyed, he did not enlist him in the old version of the *Nukat*. However, Ibn Ḥajar did issue a fatwa against the *Nukat* by which he gave a helping hand to Ibn Fahd’s adversaries. Depending on the principle of an eye for an eye, Ibn Fahd enlisted him among the squinty-eyed in the new version thus giving a helping hand to Ibn Ḥajar’s adversaries as well. Ibn Fahd recalls in this regard the well-known Arabic aphorism, “Obscurity is a blessing but everyone rejects [it] whereas celebrity is wrath but everyone wishes [for it].”²⁹⁸

To sum up, available reports show that the two main figures taking part in this polemic were, before this incident, neither intimate friends nor vigorous enemies – thus personal issues did not play a role.

4.2.4 A Controversial Book

The story of this book started in 1541 when Ibn Fahd wrote the first version of *Al-Nukat al-zirāf*. This work triggered a series of harsh reactions, primarily led by a group of bald people whom Ibn Fahd mentioned by name in his book. Ibn Fahd and his relatives became the object of malicious attacks targeting his honour and attributing different faults and diseases to him. Ibn Fahd declared himself and his relatives innocent of any such defects and diseases.²⁹⁹

The attack campaign culminated when Ibn Ḥajar issued his fatwa declaring that this book fell under the category of the forbidden *ghība* (backbiting). “The author has to repent for what he did by having his book damaged. If he insisted not to do so, then those in charge among scholars and rulers are to reproach him for what he did with what they see fit until he repents. They are to erase these offensive pieces included in this book and even to tear it apart.”³⁰⁰ Ibn Ḥajar was aware that an objection was expected concerning using such disciplinary punishment against a prestigious scholar like Ibn Fahd. Islamic sources and Muslim scholars state that the lapses of prestigious scholars are to be forgiven. Ibn Ḥajar responded to this objection by saying, “This is true in the case of minor sins only. However, the aforementioned book encompasses a grave sin, nay, grave sins for which I ask God to grant me and the author repentance out of His favor and generosity. Amen!”³⁰¹

The aforementioned bald people took the initiative and damaged the book by washing off its text.³⁰² This happened towards the end of 1541, less than one

²⁹⁷ Ibid, vol. 1, p. 20.

²⁹⁸ Ibn Fahd (d. 954/1547), MS 3838, folio 51b.

²⁹⁹ Ibn Fahd, (950 A.H.), folios, 16a-16b.

³⁰⁰ Ibn Ḥajar al- Haytamī, Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 83.

³⁰¹ Ibid.

³⁰² Ibn Fahd, (950 A.H.), folios 15b-16a.

month after the book was written.³⁰³ In response, Ibn Fahd decided to remove this group in the new version of the *Nukat* out of inattention and disinterest.³⁰⁴ Ibn Fahd reminded his adversaries of the Day of Judgement when they would stand together in front of God and the oppressed would regain his right from the oppressor.³⁰⁵

The incident also had a social impact. About twenty days later, a great flood swept Mecca and overflowed the Holy Mosque and the copies of Qur'ān (*maṣāḥif*) therein. Ibn Fahd deemed this flood a clear admonition. His view was shared by a poet who composed a poem on this occasion expressing his sympathy with Ibn Fahd.³⁰⁶

The year 1542 was something of a decisive year for Ibn Fahd; he had to defend his book in it. One of the main defensive measures was sending letters to the credible Muslim scholars in Egypt and Syria asking their legal opinion on composing such a book. Five of these scholars answered positively by saying that there is no harm in writing such a book. Ibn Fahd also wrote a refutation of the arguments used by his adversaries against his *Nukat*, entitled *Al-Nuṣrā wa al-is'āf fī al-radd 'alā al-muntaqidīn lī mu'allafī al-nukat al-ẓirāf* (Advocacy and Succor against the Critics of my Book, the Cute Anecdotes).³⁰⁷ After getting the support he was looking for, Ibn Fahd embarked upon a new and enlarged version of the *Nukat*, entitled *Al-Nukat al-ẓirāf fīman ibtuliya bī al-'āhāt min al-ashrāf* (Cute Anecdotes on Luminaries Afflicted with Disabilities).³⁰⁸ This new version is almost double the size of the original.³⁰⁹ It was finished towards the end of 1543 and it included the whole story, so to speak.

The book is divided into an introduction, two chapters, and a conclusion. The introduction starts by elaborating on the occasion of writing the book, a word about the author's predecessors and their writings in this field as well as an overall description of the book. The main body of this introduction is dedicated to the Prophetic traditions, anecdotes and poetical verses pertaining to people with disabilities. The author started with those traditions that appeared to convey negative attitudes towards people with disabilities. After analyzing such reports and negating their negative implications, the author presented the traditions that extol people with disabilities. The story of Job was presented in detail as an exemplary model for those who show patience and thus eventually gain great rewards. The introduction was supplemented with about five folios dedicated to defending his work against those who attacked it claiming that it falls under the category of the forbidden *ghība* (backbiting). The

³⁰³ Ibid, folio, 59b.

³⁰⁴ Ibid, folio, 15b.

³⁰⁵ Ibid, folios, 15b-16b.

³⁰⁶ Ibid, folio, 16a.

³⁰⁷ Ibid, folio, 11a. Unfortunately, this book is not traceable.

³⁰⁸ An autograph of this work is preserved in the Chester Beatty library in Ireland, no. MS 3838. As stated by Arberry, no other copy appears to be recorded. I am currently in the final stages of making a critical Arabic edition of this text.

³⁰⁹ Ibid, folio, 59b.

author presented a detailed refutation for this claim, basing his arguments on a book written by the well-known mystic al-Hārith al-Muḥāsibī (d. 857)³¹⁰ entitled *Al-Ghība*. He also mentioned the question he sent to the scholars of al-Azhar in Cairo and recorded verbatim the fatwas issued by the Muftis of the four Sunni schools of law stating that there is no harm in writing such a book. He also referred to the letter he received from the Damascene scholar Aḥmad b. Ṭulūn (1475-1546).³¹¹

The first chapter reviews in detail those with disabilities in general and the well known figures among them in particular. Ibn Fahd started with a long quotation from *Mufīd al-‘ulūm wa mubīd al-humūm* (Provider of Sciences and Eliminator of Worries) by Abū Bakr al-Khawārizmī (d. 1012), which counted the Prophets and other noble figures known for being afflicted with blindness and loss of one-eye. Ibn Fahd continued by presenting discussions of Muslim scholars on the possibility that a prophet could be blind. This was succeeded by retelling the stories of those well known figures afflicted with these two disabilities, in particular the author’s contemporaries. Ibn Fahd retold also the stories reporting the Prophet healing those afflicted with different disabilities and those who got afflicted with disabilities because of disobeying or lying to the Prophet.

The second chapter is dedicated to discussing other sorts of *‘āhāt* (disabilities) especially one-eyedness, squintiness, baldness, lameness, and leprosy. The author mentioned those afflicted with these misfortunes as quoted from al-Khuwārizmī’s book, with a focus on the author’s contemporaries. The author paid special concern for baldness, emphasizing that earlier scholars did not recognize it a shame. Thus, he added, these bald people should have got irritated because he mentioned them in the first version of the *Nukat*. He concluded this chapter by mentioning narrated supplications said to protect from certain afflictions.

The conclusion focused on the rewards and blessings accrued to those afflicted with calamities. The author based his work here on Qur’anic verses, Prophetic traditions, scholars’ statements, anecdotes and poetical verses, all of which promote the beneficial aspects of suffering and adversity.

The contents of this book show that Ibn Fahd attempted to represent a balanced mixture of entertaining and admonishing elements. Besides retelling the entertaining anecdotes of people with disabilities, there are also the admonitory statements and narratives with the aim of consoling afflicted people. This explains the statement he made when defending his position that his book was meant for *al-tasliya* (entertainment) and *al-maw‘iza* (admonition).³¹² Keeping in mind that the available version is the enlarged one, we cannot be sure if this balance was also extant in the original, smaller, version.

³¹⁰ He is well known as a Muslim mystic. On him, see Arnaldez, R. (2) (2003), vol. VII, pp. 466-467.

³¹¹ On him, see, Munajjid, Ṣalāḥ al-Dīn al- (1965), pp. 79-81.

³¹² Ibn Fahd, (950 A.H.), folio 9b.

4.2.5 Identity of the 'Demagogues'

According to Ibn Fahd, the main catalyst of this tumult against him was a number of bald men being irritated because he mentioned them in his book. A careful reading of the question upon which Ibn Ḥajar issued the fatwa indicates that the questioner can in fact be one of these irritated bald people. For instance, the questioner had a clear opposing standpoint against the author and even suggested the punishment: namely, tearing up the book.³¹³

Why were those bald people upset by what Ibn Fahd wrote rather than the others he mentioned among the blind, the lame, etc? Besides the possibility of pre-existing enmity before the writing of his book, listing baldness was in a sense revealing a sensitive issue of privacy. That is because covering one's head by wearing an *'imāma* (turban) was a common practice in this time.³¹⁴ For instance, Ibn Ḥajar wrote a book on this topic, stating that wearing the *'imāma* is one of the indications signifying a scholar.³¹⁵ Ibn Fahd wrote also a book in the same vein and named the *'imāma* the crown of the Arabs.³¹⁶ One of the means of humiliating a person and specifically a scholar was forcing him to take the *'imāma* off.³¹⁷ The most probable place where Ibn Fahd could have seen the baldness of these men would have been mosque because they would have to wipe their heads with water as one of the pillars of ablution (*wudū'*).

Precisely identifying the members of this group is not possible, mainly because the old version of the *Nukat*, which included a list of these people, is unavailable. Additionally, available sources recording the history of Mecca during this period are silent in this respect.³¹⁸ However, Ibn Fahd mentioned three characteristics of these people that can help us. They lived in Mecca and held important positions there (*min akābīr baladī*)³¹⁹ but they were simultaneously the profligates of the age (*fujjār al-ʿaṣr*) and thus known for their corruption and immoral acts.³²⁰ The third characteristic was that they are *qurʿān* rather than *ṣulʿān*. According to Ibn Fahd, *qurʿān* are those who suffer baldness in the middle of the head because of an ailment whereas *ṣulʿān* are those who suffer baldness in the forefront of the head without ailment.³²¹ This

³¹³ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 82.

³¹⁴ For further details on the traditional costume worn in the Islamic lands and the position of *'imāma* there, see Stillman Y. K. et al (2003), vol. V, pp. 732-50.

³¹⁵ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (3), p. 2.

³¹⁶ *Bulugh al-arab fi ḥukm tijān al-ʿarab*; see Hīla, Muḥammad Ḥabīb al- (1994), p. 198.

³¹⁷ See Ibn Fahd (1420/2000), vol. 1, pp. 321, 489.

³¹⁸ This is the case for instance with Quṭb al-Dīn al-Nahrawālī (d. 1582) on the history of Mecca, see Nahrawālī, Quṭb al-Dīn al- (1886),. It is also the same with ʿAlī b. Taj al-Dīn al-Sanjarī (d. 1713) in his voluminous work on the history of Mecca *Manāʾih al-karam* although he made eighteen references to Ibn Ḥajar, see Sanjarī, ʿAlī b. Tāj al-Dīn al- (1998), vol. 1, pp. 68, 91, 92, 99, 100, 230, 250, 295, 382, 441, 500; vol. 2, pp. 80, 81, 196; vol. 3, pp. 313, 338, 340; and vol. 4, p. 72; and Snouck Hurgronje, C. (1888), vol. 1 pp. 104-108.

³¹⁹ Ibn Fahd, (950 A.H.), folio 42b.

³²⁰ Ibid, folio 15b.

³²¹ This is the main difference intended by Ibn Fahd. See his *Al-Nukat al-zirāf*, folio 42b. See also Ibn Manzūr, Muḥammad b. Makrām (1), vol. 8, p. 262, item *q-r-ʿ*.

specific characteristic could indicate that people of this group belong most probably to the Mālikī or the Ḥanafī juristic schools rather than the Shāfi‘ī or the Ḥanbalī. That is because the Mālikī and Ḥanafī jurists have to take their turbans off completely and wipe their whole heads directly without a barrier during ablution.³²² On the other hand, Ḥanbalīs could just wipe the turban instead of the head.³²³ The Shāfi‘īs can wipe the forepart of the head only without taking the turban off.³²⁴ Thus Ibn Fahd would be able to see the baldness in the middle of those people’s heads in case they are Mālikīs and Ḥanafīs. This is so if the earlier proposition is true, that Ibn Fahd could see their baldness during performing ablution. However, we cannot cross out the possibility that Ibn Fahd could have seen the baldness of this group in a public bath (*ḥammām*). In this case, it would be more difficult to establish their juristic affiliation.

Furthermore, Ibn Ṭulūn’s³²⁵ letter to Ibn Fahd gives an indication that those “demagogues” were known as men of letters (*udabā’*). Learning the lesson from this incident Ibn Ṭulūn decided to avoid mentioning any of the *udabā’* in his forthcoming book *Ta’jīl al-bishāra lī man ṣabar ‘alā dhahāb al-baṣar* (Accelerating the Good Omen for Those Who were Patient Upon Losing their Eyesight).³²⁶

4.2.6 The Polemic in Focus

The key question in this polemic was whether *Al-Nukat al-zirāf* falls under the category of forbidden backbiting (*ghība*) in Islam. Ibn Ḥajar was of the opinion that this was the case and Ibn Fahd insisted that his book had nothing to do with *ghība* and was just for the sake of admonishment and entertainment.

Before delving into details of this polemic, two brief notes are in order. Firstly, as indicated by the extensive use of arguments and statements attributed to Shāfi‘ī jurists, the two scholars participating in this debate belong to this school of law. Secondly, Ibn Fahd based all juristic arguments he used concerning *ghība* on a work of the same title, i.e., *Al-Ghība*³²⁷ by al-Ḥārith al-Muḥāsibī (d. 857)³²⁸ giving him preference over other Shāfi‘ī jurists who are

³²² For further details on this legal norm in the Ḥanafī School, see Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol., 1 p. 101. For the Mālikī School, See Aṣbahī, Mālik b. Anas al- (1995), p. 124; Bāji, Sulaymān b. Khalaf al- (1), vol. 1, pp. 75-76.

³²³ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 1, pp. 184-85.

³²⁴ Nawawī, Yaḥyā b. Sharaf al- (1), vol. 1, p. 438.

³²⁵ Contents of this letter are to be elaborated below.

³²⁶ Ibn Fahd, (950 A.H.), folio, 15a.

³²⁷ This book is one of the missing works of al-Muḥāsibī, see Muḥāsibī, al-Ḥārith b. Asad al- (1986), p. 39; Smith, Margaret (1935), pp. 31, 147. However, Smith suggests that the book of al-Muḥāsibī handles this concept in the mystic sense, i.e., absence from creation and the presence with God, rather than the juristic one. The extensive quotation made by Ibn Fahd here suggests that al-Muḥāsibī used the juristic sense of *ghība* (backbiting) in this book.

³²⁸ It should be noted that counting al-Muḥāsibī as one of the Shāfi‘ī jurists is highly debatable. He is rather well known as a great mystic. See Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, pp. 59 & 60.

more authoritative such as al-Ghazālī (d. 1111).³²⁹ Ibn Fahd may have done this on purpose keeping in mind that his main addressee, in this case Ibn Ḥajar, did not dare start his scholarly career as a writer until he saw al-Muḥāsibī in a dream encouraging him to do so. It seems that this story was well-known, especially to those living in Mecca and is thus mentioned by Ibn Ḥajar’s Meccan student.³³⁰ In other words, Ibn Fahd is sending an indirect message whose purport is that you, Ibn Ḥajar, run the risk of going against the convictions of your authority that gave you the first sign of launching your scholarly career.

4.2.6.1 Backbiting (*Ghība*)

Ghība, according to both Ibn Ḥajar and Ibn Fahd, is to say something, even if it is true, about someone that he or she would *dislike*.³³¹ After giving the definition, Ibn Ḥajar embarks upon refuting a possible argument, i.e., that mentioning the physical defects of the Companions of the Prophet (*al-sahāba*) in particular does not fall under the category of *ghība* thus defined. That is because the Companions were too noble to have been offended by being mentioned with such defects. In short, it is not something they would have disliked. Ibn Ḥajar deems this allegation groundless and invalid, stating that being offended with such things is innate and has nothing to do with being noble or ignoble.³³²

However, the prohibition of the above-defined *ghība* is not applicable to six exceptional cases on which Ibn Fahd and Ibn Ḥajar agree. The cases are: 1) complaining about oppression or injustice by the wronged or oppressed person; 2) seeking others’ assistance for addressing an injustice – for instance, informing the ruling authorities that a specific person is a thief in order to catch him, 3) seeking religious advice (fatwa) for instance, asking a scholar about the legal ruling of living with a spouse doing immoral things; 4) warning Muslims against bad people such as narrators fabricating traditions and ascribing them to the Prophet of Islam. In such a case, one is obliged to declare that such people are liars and untrustworthy; 5) telling about people practising immoral and dissolute deeds in public; and 6) introducing someone by using his well-known epithet which incidentally indicates a defect such as the lame (*al-a‘ra*), the deaf (*al-aṣamm*), and the bald (*al-aqra*).³³³

Ibn Ḥajar is determined that the *Nukat* does not belong to any of the exceptional cases. He refutes the sole possibility that this book could belong to the sixth case by saying, “The author did not restrict himself to such epithets

³²⁹ He is a credible jurist, especially within the Shāfi‘ī school. On him, see Watt, W. Montgomery (1) (2003), vol. II, pp. 1038-1041.

³³⁰ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 1, p. 4.

³³¹ Ibid, vol. 4, p. 82; Ibn Fahd, (950 A.H.), folio 10a.

³³² Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 82.

³³³ Ibn Fahd, (950 A.H.), folios, 13a & b; Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 82; Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1994), vol. 2, pp. 23-24.

well-known in public but went further to defects that would be known only through his book. Thus it is forbidden (*ḥarām*) by consensus.”³³⁴

After presenting these six cases, Ibn Fahd alluded that his book belongs to one of these exceptional cases without specifying exactly which one. He added that he did not intend to blemish luminaries. His aim was rather presenting an amusing admonition and entertainment. He wonders further, “How could my intention be blemishing the figures mentioned in my work although I enlisted myself among the bald, my maternal grandfather among the lame and a number of my noble masters among the blind?!”³³⁵

In response to the argument of aiming admonition, Ibn Ḥajar exclaims, “This is a void allegation. I have never known of anyone who listed this as a reasonable ground to legitimize *ghība*. This author should be informed that what he believes is not true. If he insists on his contention, he should receive a grave disciplinary punishment. Ultimately, such conviction could drag him to a difficult situation.”³³⁶ Ibn Ḥajar continued by saying that compiling such a book had nothing to do with admonition. It was rather the result of devilish temptation so that the ignorant would see it as good work. He cited the Qur’ān in this regard, “Is he, then, to whom the evil of his conduct is made alluring, so that he looks upon it as good, (equal to one who is rightly guided)?” (35:8).³³⁷

Ibn Ḥajar adds, “Even if we overlooked the truth and supposed that there is admonition, this admonition is accompanied by untold number of harms and evils. Giving assumed benefit (i.e., admonition) precedence to a definite harm would be done by none except one ignorant about Qur’ān, Sunna and consensus.”³³⁸

As for the enormity of *ghība* as a sin in Islam, it was sufficient for Ibn Fahd to concede that *ghība* is forbidden. However, he added that a number of jurists opine that *ghība* is forbidden only in case of defaming one’s religion rather than one’s honor or physical characteristics.³³⁹ This would mean that his book, according to those scholars, would fall beyond the scope of the forbidden *ghība*. In a bid to support this argument, Ibn Fahd quoted a tradition relating that the Prophet Muḥammad was asked about two groups of people. To identify them for the questioner, he made use of physical defects saying some were red beardless people and the other had black short beards.³⁴⁰ For the same reason, Ibn Fahd made reference to the dialogue between two prominent Companions, namely, ‘Umar b. al-Khaṭṭāb, who was then Caliph, and ‘Abdullāh b. ‘Abbās. The former elaborated in this dialogue his remarks on some of the prominent Companions which deter him from nominating them

³³⁴ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 82.

³³⁵ Ibn Fahd, (950 A.H.), folio, 13b.

³³⁶ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 82.

³³⁷ Ibid.

³³⁸ Ibid., vol. 4, p. 83

³³⁹ Ibn Fahd, (950 A.H.), folio 11b. For this opinion and its refutation, see Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 16, p. 337.

³⁴⁰ Ibid, 12b-14a. For this tradition, see Ibn Ḥibbān (1414/1993), Ḥadīth no. 7257, vol. 16, p. 246; Haythamī, Abū al-Ḥasan ‘Alī b. Abī Bakr al- (1407/1986), vol. 6, p. 191.

for the position of Caliph after him. These remarks reveal a number of their defects such as being over-humorous, quick-tempered, lenient and so forth. Ibn Fahd comments on this dialogue by saying, “Umar’s intention was absolutely away from defaming these figures. He just wanted to show people their characteristics so that they would choose a Caliph among them out of knowledge.”³⁴¹

For Ibn Ḥajar, *ghība* is not just a normal sin. It is rather one of the *kabā’ir*, the grave and major sins in Islam, when it targets scholars of religion and memorizers of the Qur’ān and even when it unjustifiably targets anyone else. Ibn Ḥajar is basing his argument here on al-Qurṭubī (d. 1272)³⁴² who transmitted the consensus (*ijma’*) of scholars on this point.³⁴³

In a bid to uphold his argument, Ibn Ḥajar made reference to a statement of the Companion Ibn ‘Abbās, who participated in the aforementioned dialogue, “He who hurts a jurist, in fact did hurt the Messenger of God, and one who hurts the Messenger of God, in fact did hurt God the Sublime.”³⁴⁴ It did not escape Ibn Ḥajar to refer to al-Shāfi‘ī (767-820) himself.³⁴⁵ The Prophet is reported to say that had his daughter Fāṭima stolen something, he would have cut her hand. When relating this story, al-Shāfi‘ī used the expression “a certain woman (*fulāna*)” instead of mentioning the Prophet’s daughter by name considering the negative context of the story. Commenting on this, Ibn Ḥajar says, “Had this author reflected over this noble politeness of al-Shāfi‘ī, he would have realized that the enormity of what he did will not be repaired in a lifetime.”³⁴⁶

Remarkably, five years later Ibn Ḥajar expressed a more lenient opinion concerning the enormity of *ghība* in his book, *Al-Zawājir ‘an iqtirāf al-kabā’ir*. He conceded that there are opinions ascribed to credible jurists such as al-Ghazālī categorizing *ghība* as a minor sin. Anyhow, “Even if no consensus can be demonstrated in this regard, we should at least differentiate between the different sorts, categories, and harms of each *ghība*.”³⁴⁷ Concerning the *ghība* targeting one’s physical defects, which is the case of Ibn Fahd’s book, Ibn Ḥajar does not negate the possibility of categorizing it as a minor sin (*saghīra*).³⁴⁸

Did Ibn Ḥajar adopt this more lenient opinion on the basis of revising his previous convictions and new information he came across in this regard within the five-year span between issuing the fatwa and writing the book? Was he, at

³⁴¹ Ibn Fahd, (950 A.H.), folios 11a-13b. For this dialogue, see Ibn ‘Abd al-Barr, *Abū ‘Amr Yūsuf* (1), vol. 3, p. 1120.

³⁴² He is well known for his commentary on the Qur’an, see Arnaldez, R. (3) (2003), vol., V, pp. 512-513.

³⁴³ Haytamī, *Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al-* (1403/1983), vol. 4, p. 83. On the opinion of al-Qurṭubī, see Qurṭubī, *Abū ‘Abd Allāh Muḥammad b. Aḥmad al-* (1372/1952), vol. 16, p. 337.

³⁴⁴ Haytamī, *Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al-* (1403/1983), op. cit., vol. 4, p. 83

³⁴⁵ On him, see Chaumont, E. (2003), vol. IX, pp. 181-185.

³⁴⁶ Haytamī, *Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al-* (1403/1983), vol. 4, p. 83

³⁴⁷ Haytamī, *Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al-* (1994), vol. 2, p. 19.

³⁴⁸ *Ibid.*

the time of issuing the fatwa, just under the influence of a specific sphere that pushed him to adopt that harsh opinion, compared with the other one expressed in the book? The way is open for more than one possibility. However, this gives the indication that had this incident happened in another context and at a later date, the fatwa might have been less harsh.

4.2.6.2 Predecessors

One of the main arguments forwarded by Ibn Fahd in this polemic is that he had precursors in this field and thus his book was not an innovation. It seems that this point was central in the sense that it had been mentioned by the questioner who asked Ibn Ḥajar to elaborate on this point. Ibn Fahd also used this point in his question sent to the scholars in Egypt.

Ibn Fahd was aware of four predecessors. He referred to three of them: Ibn Qutayba (828-889) in *Kitāb al-maʿārif* (Entertaining Information);³⁴⁹ Salāḥ al-Dīn al-Ṣafadī, (1297-1363) who wrote *Nakt al-himyān fī nukat al-ʿumyān*³⁵⁰ (Extracting the Precious on the Anecdotes of The Blind) and *Al-Shuʿūr bī al-ʿūr* (Feeling For The One-Eyed People)³⁵¹; and Abu ʿUthman ʿAmr b. Bahr al-Jāḥiẓ (776-868/9) who wrote *Al-ʿUrjān wa al-burṣān wa al-qurʿān* (The Lame, the Lepers and the Bald).³⁵² The fourth and to Ibn Fahd, the most important predecessor, was Abu Bakr Muhammad b. Musā al-Khawārizmī (d. 1012) who dedicated three chapters to prominent people afflicted with disabilities in his *Mufīd al-ʿulūm wa mubīd al-humūm* (Provider of Sciences and Eliminator of Worries). Ibn Fahd presented al-Khawārizmī as the Jurist of Baghdad, one of the senior ascetics (*zuhhād*) and the fourth-century³⁵³ renewer of religion (*mujaddid al-dīn*).³⁵⁴

On his side, Ibn Ḥajar did not recognize this argument as valid and forwarded two main counterarguments. The first point was about the identity of those predecessors: “Are they exemplary figures in the same rank of Ahmad b. Ḥanbal (780-855),³⁵⁵ Yahyā b. Maʿīn (775-847),³⁵⁶ Abu Zurʿa al-Rāzī (d.

³⁴⁹ Ibn Fahd, (950 A.H.), in the margin of folio 3a.

³⁵⁰ *Himyān* is an Arabized word denoting the purse tied on one’s waist where money and precious things are preserved and *nakt* denotes drawing out or extracting. See Rāzī, Muḥammad b. Abī Bakr b. ʿAbd al-Qādir al- (1415/1995), vol. 1, p. 291; Ibn Manẓūr, Muḥammad b. Makram (1), vol. 15, p. 364. Thus *Nakt al-himyān* is drawing out these precious things that is kept in the purse.

³⁵¹ Ibn Fahd, (950 A.H.), folio 3a.

³⁵² Ibid, folios 3a and 3b.

³⁵³ This is according to the Islamic calendar. According to the Gregorian calendar, it is the tenth century.

³⁵⁴ Ibn Fahd, (950 A.H.), folio 3a. It is to be noted that the notion of this honorific title is based on a Prophetic tradition stating that every century would have a renewer of religion. This title was always reserved for those with very high scholarly prestige such as al-Shāfiʿī who was recognized as the *mujaddid* of the second century. On further elaboration for the purport of this title and the responsibility of its holder, see Ābādī, Abū al-Ṭayyib Muḥammad Shams al-Ḥaqq (1415/1994), vol. 11, pp. 259-67. In this vein, Al-Khawārizmī is recognized by some scholars as the one of the renewers of religion of the fourth century; see Ābādī, Abū al-Ṭayyib Muḥammad Shams al-Ḥaqq (1415/1994), vol. 11, p. 264.

³⁵⁵ He is one of the most venerated personalities in Islamic history and the founder of the

878)³⁵⁷ and their counterparts who came after or before them? If the predecessor is any of those then you have to name him. If he is one of those worthless people whose sayings and deeds are negligible, then Allah would not care in which valley you will die away.”³⁵⁸

The second point was that Ibn Ḥajar believed that the predecessors’ context would not entail ascribing dishonour to luminaries listed as people with physical differences. However, the context of Ibn Fahd would encourage the populace misusing such information and thus degrading the honorific status of those luminaries including the Companions. Consequently, “The author of this book would bear the burdens of the sins committed in this respect until Doomsday.”³⁵⁹

Important information is still missing concerning this issue in particular. Ibn Ḥajar avoided any reference to al-Khuwārizmī, the main exemplary figure for Ibn Fahd. It seems that Ibn Fahd also was not aware of many other predecessors in this field. He made reference to only four of them and he seems to have only seen that book of al-Khuwārizmī. He missed important sources, some of which would have been strong support for his argument. To mention the most important, Ibn al-Jawzī (1126-1200)³⁶⁰ discussed the same thing in his historical work *Talqīh fuhūm ahl al-athar fī ‘uyūn al-tārikh wa al-siyar* (Fertilizing the Perceptions of the Traditionists Concerning the Fountains of History and Biographies) where he listed notable people afflicted with different disabilities.³⁶¹ The importance of Ibn al-Jawzī as a predecessor in this regard lies in being a very well known and venerated Muslim jurist. Furthermore, Ibn Ḥajar himself used Ibn al-Jawzī as a credible reference more than once in his books.³⁶²

4.2.6.3 Juristic Authorities

Ibn Ḥajar reproached Ibn Fahd for not consulting the specialized jurists before embarking upon such work. To Ibn Ḥajar, this is indicative of malice and being overcome by bigotry for untruthfulness.³⁶³ Ibn Ḥajar quotes the Qur’anic verses: “If they had only referred it to the Messenger, or to those charged with authority among them, those among them who can search out the knowledge of it would have known it” (Qur’ān 4:83).

Ḥanbalī School. On him, see Laoust, H. (3) (2003), vol. I, pp. 272-77.

³⁵⁶ An eminent traditionalist and authorities like Ahmad b. Ḥanbal is reported to be among his pupils. On him, see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 11, pp. 71-96; Leemhuis, F., (2003), vol. XI, p. 247.

³⁵⁷ He is also a very well known traditionalist. On him, see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 13, pp. 65-85; Hashimī, Sa’dī al- (1982).

³⁵⁸ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 4, p. 82.

³⁵⁹ Ibid., vol. 4, p. 83.

³⁶⁰ On him, see Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1413/1992), vol. 22, pp. 352-57.

³⁶¹ Ibn al-Jawzī (3), pp. 229-31.

³⁶² See for instance Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 2, p. 31, 84, 116, 135; and vol. 4, p. 259; Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1994), vol. 1, pp. 20, 28, 127.

³⁶³ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), op. cit., vol. 4, p. 82.

To avoid falling into the same trap, Ibn Ḥajar based the reasoning for his fatwa on damaging the book on a previous fatwa issued by al-Suyūṭī (1445-1505)³⁶⁴ concerning destroying houses used for illegal and immoral actions.³⁶⁵ Thus, fountainheads of corruption are to be devastated whether they assume the form of houses or books.

Rather than indulging in defending his juristic background, as shown above, Ibn Fahd adopted a short way and consulted the juristic authorities in Egypt. In 1542, he sent the following question to the scholars in Cairo:³⁶⁶

“What do you say – May God be pleased with you – of a student who read a book entitled *Mufīd al-‘ulūm* (Provider of Sciences) by the well-known Ḥanafī scholar Abū Bakr Muḥammad b. Mūsā al-Khawārizmī. The student saw chapters on the physical defects of noble people. The author mentioned a group of the early and late prominent figures of this nation who were known for such defects as the lame, the bald, the blind and the like. Seeing this, the student composed a book on this issue using the same justification proposed by the author of the aforementioned book, namely, promoting admonition, learning, and entertainment. Would this intention legitimize embarking upon such an act? Give us the fatwa asking that God would make Paradise your reward!”³⁶⁷

Ibn Fahd recorded verbatim the fatwas issued by four scholars, each of whom belongs to one of the four juristic schools, the Ḥanafī (Abū al-Fayḍ b. ‘Alī al-Sulamī), the Ḥanbalī (Aḥmad b. al-Najjār), the Mālikī (Nāṣir al-Laqqānī), and the Shāfi‘ī (Aḥmad al-Bulqīnī). They all responded to the question in the affirmative stating that there is no harm in compiling such a book with such intention.³⁶⁸

In the same year, Ibn Fahd received a supportive letter from his intimate friend,³⁶⁹ the well-known Damascene scholar Abū ‘Abdullāh Muḥammad b. Ṭulūn (1475-1546). Ibn Ṭulūn referred to the contention that the forbidden *ghība* is restricted to blemishing one’s religiosity. It does not include mentioning one’s physical characteristics or honour unless it is mentioned with the intention of defaming one’s character.

³⁶⁴ He is a credible authority in the Shāfi‘ī school in particular. On him, see Geoffroy, E., (2003), vol., IX, pp. 913-916.

³⁶⁵ For the full text of the fatwa and its context, see Suyūṭī, Jalāl al-Dīn al- (1995), vol. 1, pp. 152-165.

³⁶⁶ Choosing Cairo in particular could be traced back, besides the authoritativeness of al-Azhar mosque in this time, to the fact that Ibn Ḥajar is originally Egyptian and received his education there in al-Azhar since 1517. For instance al-Laqqānī, one of those who signed the fatwa supporting Ibn Fahd, is one of the main masters of Ibn Ḥajar. See Ibn Ḥajar al-Haytamī, Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 1, p. 4. Additionally each of the four scholars who responded to the question belongs to one of the four Sunni juristic schools, something that would of course lend Ibn Fahd the support he is looking for not only among the Shāfi‘īs but also among the followers of other schools.

³⁶⁷ Ibn Fahd, (950 A.H.), folio 14a.

³⁶⁸ This is of course a clear response to Ibn Ḥajar when he stated, as noted above, that he has never known of anyone who sees such intention, viz., promoting admonition, as a legitimizing factor for mentioning people’s defects.

³⁶⁹ See Ibn Ṭulūn (1962-1964), p. 14, note 16; Rāshid, Nāṣir b. Sa‘d al- (1979), vol. 1, part 2, pp. 69-90, especially 77; Hīla, Muḥammad Ḥabīb al- (1994), p. 196.

4.2.7 Concluding Remarks

The reader may have gotten the overall impression that Ibn Fahd won the debate. He rewrote the revised version of *Al-Nukat* after gaining the support of religious authorities through the fatwas of the Syrian and Egyptian scholars. The new version remained intact until the present day.

However, it seems that the incident was not without adverse consequences. The main example in this regard is Ibn Ṭulūn who expressed his support for Ibn Fahd. Ibn Ṭulūn was busy at the time of this controversy with writing a book on people with blindness entitled *Taʿjīl al-bishāra līman ṣabar ʿalā dhahāb al-baṣar* (Accelerating the Good Omen for Those Who had Patience Upon Losing Their Eyesight). Because of the fuss raised by Ibn Fahd's work and fearing that he could face the same end, Ibn Ṭulūn decided not to list any men of letters afflicted with disabilities therein.³⁷⁰

We have neither concrete nor comprehensive information on whether the influences of this incident stopped by the book of Ibn Ṭulūn or went further to create an unwilling atmosphere for those who wanted to write on this topic. Bearing in mind the fact that the state of Middle Eastern scholarship on disability is still in its infancy, future findings could tell us more in this regard.

Anyhow, this incident indicates clearly that the dignity of people with disabilities was a high priority among Muslim jurists. This holds true to the extent that harsh procedures can be taken in case they feel that this dignity has been seriously scratched.

³⁷⁰ Ibn Fahd, (950 A.H.), folio 15a.

Chapter Five: Employability of People with Disabilities

As mentioned in the introduction, the two chapters entitled “*ijāra*” and “*ji‘āla*” contain key-information concerning juristic discussions on employability of people with disabilities.

Ijāra derived from the *ajr* (remuneration) means linguistically a contract to hire. In the juristic sense, it is the contract by which one person makes over to someone else the enjoyment, by personal right, of a thing or of an activity, in return for payment.¹ In case of hiring persons for specific services, this type of contract would involve two main parties, viz., the one hired (*ajir*), in the modern sense is employee, and the one hiring (*musta‘jir*) which is now equivalent to employer. The first party (employee) provides a specific service for the second (employer) against a specific remuneration usually called *ujra* or *ajr*, now known as wage, salary, stipend, etc.²

Ji‘āla, sometimes also read as *ja‘āla* and *ju‘āla*, comes very close to the notion of *ijāra*. Linguistically it is a name for the matter given to a person against doing a specific work or service. The same notion is also covered by other relevant terms such as *ju‘l* and *ja‘īla*. In the juristic sense, it means fixing a specific wage, pay or stipend (*‘iwaq*) for a specific or non-specific work or service.³ Thus the employee, the period of work or the amount of remuneration can remain unidentified in such type of contract. In the case of an unidentified employee, the first party (employer) would designate a specific *ajr* (stipend) against specific service without specifying someone in person to do this service. *Ji‘āla* in this case becomes a sort of open competition and the person who does the service as required by the employer will be entitled to the remuneration designated in advance.⁴ Discussions on the second party, namely, the employee and on the service or work, in juristic texts named “*manfa‘a*” (lit. benefit), to be done in these two types of contracts are directly relevant for this topic and thus become the main focus here. The main question would be, are people with disabilities in principle employable according to these two main contracts?

People with mental or physical disabilities are seen as employable in principle in the case of *ji‘āla* contracts. Some jurists limited this unconditional employability to the case when the employee is not designated in advance.⁵

As for *ijāra*, jurists stipulated for the validity of this contract that the two involved parties, i.e., employer and employee should be of sound mind (*‘āqil*)

¹ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 15, p. 56; Ibn ‘Abd al-Salām, al-‘Izz (1), vol. 2, p. 81; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 5, pp. 250 & 251; Murtaḍā, Aḥmad b. Yaḥyā al- (1), vol. 5, p. 28; Tyan, E. (2003), vol. III, p. 1107.

² ‘Abdarī, Muḥammad b. Yūsuf al- (1), vol. 7, p. 493; Tyan, E. (2003), vol. III, p. 1107.

³ Anṣārī, Abū Yaḥyā Zakariyya al- (3), vol. 3, pp. 344 & 345; Buhutī, Maṣṣūr b. Yūnus al- (1402/1982), vol. 4, p. 202; Ṣāwī, Abū al-‘Abbās Aḥmad al- (1), vol. 4, pp. 79 & 80; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 15, p. 208.

⁴ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 15, p. 208.

⁵ Khaṭīb, Muḥammad b. Aḥmad Shirbīnī al- (1415/1994), vol. 3, pp. 619 & 620.

and capable of discernment (*mumayyiz*).⁶ People with disabilities which do not affect these two conditions were thus in principle employable.

Concerning the *manfaʿa* (benefit, work or service) whose achievement would make the employee entitled to remuneration, jurists stipulated that the employee should be able to do it. Hence, it is not acceptable for instance to employ the blind as guard, the dumb as translator or a person with amputated hands as a tailor and so forth.⁷ Thus people with disabilities are not employable for jobs whose tasks cannot be duly achieved because of the disability. The main rationale here is guaranteeing the quality of work and not discriminating people with disabilities. The same ruling is, for instance, applicable on able-bodied people who miss the skills to reach the required quality.⁸

The aforementioned two principles are endorsed by all schools of law with one main exception. An opinion within the Shāfiʿī School contends that financial transactions of a blind person, including sale, purchase and *ijāra*, are not valid. The sole argument advanced for this opinion is that in case of sale and purchase, the blind cannot see the product and thus can be deceived. By way of analogy, employing a blind person is also prohibited. Despite the good intention of protecting the rights of the blind as expressed by the advocates of this opinion, it has been rejected by the majority of jurists.⁹ First of all no evidence from the Qurʾān or the Sunna supports such opinion.¹⁰ Second, forbidding people with blindness to sell, buy or work causes a real harm in their daily life which exceeds the harm of any eventual deception during such dealings. Third, the eventual deception can be avoided in many other ways such as a precise description of the product in the case of selling and the type of work and expected remuneration in the case of employment.¹¹ Fourth, people with analogous sorts of physical disabilities such as dumbness are allowed to conclude such transactions by means of writing or gesture.¹²

This agreed-upon broad principle of being able to achieve the required tasks remained to be checked in specific jobs which attracted the attention of Muslim jurists. The jobs to be discussed below are those associated with high prestige especially in religious milieus. The list would be limited to the positions of muezzin (one who makes call or *adhān* for prayer), *imām* (one who leads the ritual prayer), judge and the chief leader of the state.

5.1 Muezzin

The muezzin (in Arabic, *muʿadhhdhin* and sometimes called also *munādi*) is the person designated to proclaim the advent of prayer-time by chanting a special

⁶ Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 169; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 258; Tyan, E. (2003), vol. III, p. 1107.

⁷ See Khaṭīb, Muḥammad b. Aḥmad Shīrīnī al- (1415/1994), vol. 3, pp. 619 & 620; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 260.

⁸ Abū Ghudda, ʿAbd al-Sattār (1411/1991), p. 325.

⁹ Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 366.

¹⁰ Ibn Ḥazm, Abū Muḥammad ʿAlī (2), vol. 7, p. 554.

¹¹ See for instance, Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 366.

¹² Ḥamawī, Aḥmad b. Muḥammad al- (1405/1985), vol. 3, p. 454.

religious formula called *adhān*. The holder of this office enjoyed always religious, social and sometimes even political prestige in the Muslim community.¹³

Some jurists objected to paying the muezzin considering calling for prayer as a devotional practice which should be done for the sake of God not for the sake of money. Other jurists permitted this practice out of the need to have qualified people for this office.¹⁴ Historical reports indicate that muezzin became a paid job during the reign of ‘Utmān b. ‘Affān (r. 644-656). Later on, the muezzins were known to receive sometimes large amounts of money as was the case during the reign of Aḥmad b. Ṭūlūn (835-884). Muezzins received also their share in the endowments, often by special provisions in the documents establishing the foundations.¹⁵

Among the qualifications required to hold this office, jurists mentioned the possessing of a sound mind (*‘āqil*). Prayer-call (*adhān*) proclaimed by insane and drunk people is invalid according to the majority of jurists because they are unaware of what they say and thus do not have the intention (*niyya*) to proclaim *adhān*. Because intention is not a must according to the Ḥanafīs, they considered the prayer-call made by an insane person as just reprehensible (*makrūh*).¹⁶ Keeping in view the main task of the muezzin and the aforementioned principle of being able to achieve the required tasks associated with the job, one would easily conclude that a person with dumbness cannot be employed as muezzin. Other disabilities such as lameness and amputated limbs were not mentioned by jurists as barriers for holding this office.

Blindness was the most discussable disability concerning the office of muezzin. According to all jurists, the main objective of prayer-call (*adhān*) is informing people that prayer-time is due.¹⁷ This objective has two main sides, namely informing people (*i‘lām al-nās*) and knowing prayer-times (*mawāqīt al-ṣalāt*). The first side was in favour of the blind whereas the second was not. Here we start with discussions on the second side because they started earlier.

Concerning the second side, i.e., knowing prayer-times was dependent on noticing the day-night circle and, to guarantee the exactness in this regard, some jurists elaborated that the muezzin should be proficient in the lunar mansions or stations of the moon (*manāzil al-qamar*).¹⁸ In the case of blindness, the muezzin cannot fulfil this qualification. As a corollary, the blind muezzin may announce the prayer-call before or after the exact prayer-time. This means that an important element of the main objective of prayer-call cannot be guaranteed.

¹³ Pedersen, J. et al (2003), vol. VI, pp. 675-677.

¹⁴ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 291 & 292.

¹⁵ Pedersen, J. et al (2003), vol. VI, p. 677.

¹⁶ Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, p. 107; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 364 & 367.

¹⁷ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (3), vol. 1, p. 36; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 1, p. 242; Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, pp. 80 & 81; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 357.

¹⁸ See for instance, Shayzarī, ‘Abd al-Raḥmān b. Naṣr al- (1401/1981), pp. 111 & 112; Qurashī, Muḥammad b. Muḥammad al- (1), p. 177.

This deficiency caused by blindness, made the issue of employing a blind person for the office of muezzin a point of disagreement. A minority of jurists including the Shāfi'īs and the Ḥanbalīs disfavoured the blind for this office. They argue that they cannot know the time at which prayer-call should be proclaimed.¹⁹ On the other hand, the majority of jurists permitted employing a blind person for this office as long as he would be informed by another sighted person about the exact time of prayer.²⁰

As for the first side, namely, informing people, jurists stated that the muezzin should do his best to make his sound heard by as many people as possible. Different prophetic traditions signify the virtues of raising one's voice during the prayer-call. For instance, the sins of the muezzin will be forgiven, he will be rewarded for everyone who responded to the prayer-call and came to perform prayer and everything which heard the prayer-call will testify for the muezzin on the Day of Resurrection.²¹ For an ideal realisation of this aim, it was always recommended to proclaim *adhān* from a high place so that the sound will be in the earshot of a large number of people.²² During the lifetime of the Prophet, *adhān* was proclaimed from the top of the highest house nearby the mosque. After raising its height by helping tools for this specific purpose, *adhān* was proclaimed from the roof of the mosque itself.²³ Later on, *adhān* was proclaimed from a high place, generally a turret of a mosque called "minaret" (in Arabic *manāra* or *mi'dhana*). According to some jurists, this new system was introduced during the reign of Mu'āwiya b. Abī Sufyān (r. 41/661-60/680).²⁴ Mounting the minaret, however, made the muezzin in a position to peep the privacy of the neighbouring houses, a practice which is extremely forbidden in Islam.²⁵ To overcome this problem, jurists came up with a number of precautionary measures. For instance, a number of the Mālikī jurists stipulated a sufficient distance between the minaret and the houses nearby the mosque, otherwise the muezzin will not be allowed to mount it. "Enough distance" means that the one looking from the minaret cannot differentiate between the male and female figures in the nearby houses.²⁶ Jurists focused also on specific characteristics in the muezzin himself that will help him lower his

¹⁹ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 1, pp. 248 & 249.

²⁰ Zayn al-Dīn, 'Abd al-Raḥīm b. al-Ḥusayn al-'Irāqī (1), vol. 2, p. 211.

²¹ For a full account of these traditions, see Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1413/1993), vol. 2, pp. 53 & 54

²² Kasānī, Abū Bakr Mas'ūd b. Aḥmad al (1406/1986), vol. 1, p. 149; Balkhī, Nizām al-Dīn al- (1411/1991), vol. 1, p. 55; Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, p. 114; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 366.

²³ Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. 1, p. 439; Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, p. 114.

²⁴ See Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 1, p. 272; Ibn 'Ābidīn, Muḥammad Amīn b. 'Umar (1412/1992), vol. 1, p. 387.

²⁵ See Ibn Daqīq al-'Īd (1), vol. 2, pp. 243 & 244; Ṣan'ānī, Muḥammad b. Ismā'īl al-Kaḥlānī al- (1), vol. 2, pp. 380 & 381.

²⁶ Ibn al-Ḥājj, Muḥammad b. Muḥammad al-'Abdarī (1), vol. 1, p. 250; Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. 1, p. 440.

gaze and thus not peep the privacy of others. Righteousness, being married and advanced in years, i.e., aged were the most often mentioned ones in this regard.²⁷ Besides all this, other jurists said that the muezzin should also promise that he will not peep the neighbours nor allow others to mount the minaret.²⁸ It seems that all these measures did not end the peeping-problem. For instance, the Shāfi'ī jurist, Ibn Ḥajar al-Haytamī related the story of the muezzin who, despite his well-known righteousness, peeped a Christian lady from the minaret and fell in extreme love with her to the extent that he converted to Christianity in order to marry her. On the day of marriage, Ibn Ḥajar added, the ex-muezzin dropped from the roof of his house and fell dead and thus losing his religion and his beloved lady.²⁹

The most practical solution for this problem remained to employ blind people and thus they were preferred to the sighted for this specific office.³⁰ This holds true to the extent blindness was sometimes named, in practice, as one of the qualifications that the muezzin should possess.³¹ Documents of some *waqf*-records added also credit to this fact. The large *waqf* foundation instituted in 1774 in the Mamluk Egypt which funded a large mosque and educational centre serves as a clear example in this regard. Among the daily and annual disbursements allocated for the mosque personnel, a stipend was reserved for five *blind* men as muezzins.³² The popularity of employing blind men only for this office made many sighted people feign blindness in order to become muezzins of wealthy mosques.³³

It is worth mentioning here that introducing the office of *al-muwaqqit*, a professional astronomer whose primary responsibility was the regulation of the times of prayer should have played an important role in this regard. That is because knowing prayer-times did not fall under the tasks of the muezzin anymore and thus blindness is not a barrier anymore as well. The exact date of introducing the office of *al-muwaqqit* is not known but any how it was well-known by the 7th/13th century.³⁴

5.2 Prayer-Leader (*Imām*)

One of the main meanings of this term is one appointed to lead ritual prayers. As a sign of the importance of this position, the chief political leader or the Caliph was the one holding this position from the earliest days of Islam. If not the Caliph himself, appointed *imāms* should always be chosen from among

²⁷ Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. 1, p. 440.

²⁸ Qurashī, Muḥammad b. Muḥammad al- (1), pp. 176 & 177.

²⁹ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1994), vol. 1, p. 147.

³⁰ See Gordon-Cumming, Constance Frederica (2006), p. 106; Clouston, W.A. (2003), p. 33; Dobbins, Frank S. (2003), p. 753; Pedersen, J. et al (2003), vol. VI, p. 676; Hearn, Lafcadio (2004), p. 70.

³¹ Liffe, John (1987), p. 43.

³² Creelius, Daniel (1991), p. 66.

³³ Ripley, George (1858), p. 11.

³⁴ Wensinck, A.J. & D.A. King (2003), vol. VII, p. 29.

those learned in religious matters beginning with the best in knowing the Qur'ān and, failing him, the eldest should officiate.³⁵

The juristic controversy on paying the muezzin goes also for the office of *imām* because it is religious service and thus belongs to the category of devotional practices.³⁶ In practice, appointed *imāms* were paid out from the public treasury (*bayt al-māl*).³⁷

Like in the case of the muezzin, people with mental disability were not deemed eligible for holding this office.³⁸ People with other disabilities can hold this office as long as their disabilities do not prevent them performing any of the essential parts of prayer. For instance, according to the majority of jurists, the blind can be employed as *imām* arguing that blindness, the same as losing the sense of smelling, does not affect the performance of prayer.³⁹ The Shāfi'is state that the blind would be more eligible for this office than the sighted person because blindness helps to be more concentrated during the prayer.⁴⁰ The Ḥanafis disfavoured employing the blind as *imām* because of his being unaware of impurities, unless he was more qualified than the sighted person in Qur'ān and religious sciences.⁴¹ During the lifetime of the Prophet, two persons were known to hold this position, namely 'Abdullāh b. Umm Maktūm and 'Itbān b. Mālik.⁴²

People with speech disabilities such as the lisper and the dump, with hearing disabilities such as the deaf, physical disabilities such as those with amputated arms or legs and also people afflicted with epilepsy were generally considered as unemployable for this job. To the jurists, these disabilities are believed to affect negatively the ideal performance of prayer.⁴³ The reprehensibility of employing people with such disabilities as *imāms* is based on two main conditions. First, he is *imām* for people who do not suffer the same disability. Second, there are other qualified people who do not suffer these disabilities. In case one of the absence of these two conditions, people with the aforementioned disabilities would be allowed to be prayer-leaders with no reprehensibility.⁴⁴ Thus, in centres for people with disabilities, a disabled person can be appointed lead his centre-mates in ritual prayers. On February 21, 1983, a question was posed to Dār al-Iftā' in Egypt if a man with amputated legs can lead the ritual prayer. The late Muftī of Egypt, 'Abd al-Laṭīf Ḥamza issued his fatwa that this would

³⁵ Ibid, vol. VI, pp. 674 & 675.

³⁶ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 291 & 292.

³⁷ Pedersen, J. et al (2003), vol. VI, p. 674.

³⁸ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 6, p. 19.

³⁹ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 13; Ibn al-Murtaḍā, Aḥmad b. Yaḥyā (1), vol. 2, p. 310.

⁴⁰ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, pp. 191 & 192.

⁴¹ Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 1, pp. 369 & 370.

⁴² Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 13.

⁴³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 6, p. 212.

⁴⁴ Ibid, vol. 6, p. 212. & vol. 29, p. 249.

be reprehensible (*makrūh*). He based his fatwa on earlier Ḥanafī and Mālikī authorities who held the same opinion.⁴⁵

The Zāhirī (literalist) jurist, Ibn Ḥazm (d. 456/1064)⁴⁶ had a different opinion which deserves to be recorded. Basing his argument on the Qur'anic verse, **“Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you”** (Qur'ān 49:13), he says that people's defects that count in being employable for this office are those which afflict their religion rather than bodies or lineages. Thus, Ibn Ḥazm adds, physical disabilities can never be a decisive factor in selecting people to hold the office of *imām*.⁴⁷ In practice, also people with deafness held the position of *imām* such as 'Alī Ibn 'Irāq (1501-1556) who was appointed as *imām* and preacher of the Mosque of the Prophet Muḥammad in the holy city of Madina, where he died.⁴⁸

5.3 Judge (*Qādī*)

The judge, known in legal texts as *qādī*, was broadly speaking a representative of the authority invested with the power of jurisdiction (*qaḍā'*). The judge was seen as a direct or indirect delegate (*nā'ib*) of the head of the state, the Caliph. The religious nature of this office has led to the acquisition of administrative functions of the same nature, such as the administration of mosques and endowments.⁴⁹ Islamic history knew also the office of *qādī al-quḍāt*, lit. the judge of the judges (chief judge). Besides being a judge, the holder of this office was entrusted with the judicial administration; the nomination, control and dismissal of other judges.⁵⁰ In the Ottoman Empire, the authority of the judge was extended to include besides the usual legal matters, confidential posts to which judges were appointed by the government, which expected them to report from time to time on the activities of high ranking officials, the general situation and the mood of the population. They had to see that craftsmen were attached to the army before it set off to war, that roads were safe, and that goods needed for domestic consumption were not exported. They also had to supervise the public affairs of the cities, the suitability of buildings, the guilds, the quality of goods and their prices. They were also responsible for seeing that foodstuffs were sold at officially fixed prices. Judges were important also as public notaries; their function was to issue different kinds of certificates and documents concerning sales, contracts, loans and the occasional manumission of slaves, to attest private and public documents, and to supervise the accounts of the endowment incomes and endorse them with an authentication clause.⁵¹

⁴⁵ The fatwa is available on <http://www.al-eman.com/Ask/ask3.asp?id=11672>

⁴⁶ On him, see Arnaldez, R. (1) (2003), vol. III, pp. 790-799.

⁴⁷ Ibn Ḥazm, Abū Muḥammad 'Alī (2), vol. 3, p. 127.

⁴⁸ Scalenghe, Sara (2004-2005), p. 15.

⁴⁹ Tyan, E. & Gy. Káldy Nagy (2003), vol. IV, p. 373.

⁵⁰ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, p. 303; Tyan, E. & Gy. Káldy Nagy (2003), vol. IV, p. 374.

⁵¹ Tyan, E. & Gy. Káldy Nagy (2003), vol. IV, p. 375.

The decrees of the judge were generally binding and without appeal apart from exceptional cases.⁵²

Employing the qualified person as a judge against a specific stipend is permissible according to the majority of jurists. They base their argument on practical cases of people holding this office at the time of the Prophet Muḥammad. Other jurists state that it is reprehensible (*makrūh*) because this office falls under the category of pious acts.⁵³ To guarantee the competence of the appointed judge, jurists counted along list of qualifications which an employable person should possess.⁵⁴ Here the focus will be on those conditions with relevance to disabilities.

Jurists are in agreement that people with mental disabilities are not eligible for such position because the tasks entrusted to the judge require a shrewd and intelligent person.⁵⁵ Other disabilities were points of disagreement among jurists. For instance, the majority of jurists stated that people with deafness, blindness and dumbness cannot be employed as judges and if a judge gets afflicted with any of these disabilities he should be immediately dismissed.⁵⁶ According to the Mālikī jurists, if a blind, dumb or deaf person was appointed as a judge, his decrees would be valid and binding as long as they are rightly concluded. They also agreed that if the appointed judge was afflicted with all of the aforementioned three disabilities then his decrees were not valid anyhow. However, they disagreed if he was afflicted with just one of these disabilities.⁵⁷ Other jurists, including a number of the Shāfi'īs, Ḥanbalīs, Shī'īs and Ibādīs contend that the judge can be blind. They base their opinion on the fact that the blind Companion Ibn Umm Maktūm was the delegate of the Prophet many times and this would imply that he could also have practised judgeship. Additionally, the Prophet Shua'yb was blind and judgeship is one of the main tasks of Prophets.⁵⁸ Also the well-known Shāfi'ī jurist, Abū al-Abbās b. Surayj (d. 306/918)⁵⁹ opines that a dumb person (*akhras*) may be employed as a judge as long as he can express himself by means of understandable signs.⁶⁰

If a person gets afflicted with a light form of one of these three disabilities such as nyctalopia (night blindness), one-eyedness, stammering or hearing-difficulties then he would remain eligible for the office of judgeship. Their main argument was that such light disabilities did not drastically affect the

⁵² Ibid, vol. IV, p. 373.

⁵³ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 10, pp. 90 & 91.

⁵⁴ For the full list of these conditions, see Māwardī, Ibn Ḥabīb al- (2), pp. 82 & 83; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 291-293.

⁵⁵ Māwardī, Ibn Ḥabīb al- (2), p. 82.

⁵⁶ Atfīsh, Muhammad b. Yūsuf (1405/1985), vol. 13, p. 23; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 291-293.

⁵⁷ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 291-293.

⁵⁸ Ḥillī, Ja'far b. al-Ḥasan al- (1408/1987), vol. 4, p. 60; Qudāt, Muṣṭafa al- (1406/1985), pp. 229-232; Kīlānī, Sarī Zayd al- (1), p. 396.

⁵⁹ On him, Schacht, J. (2003), see vol. III, pp. 949 & 950.

⁶⁰ See 'Abd Allāh, Laylā Muḥammad (1418/1997), p. 292.

functionality of the judge. As for the case of a light speech-disability, they recalled the case of Prophet Moses who was known to be lisper.⁶¹

To be employed as a judge, jurists also stipulated the soundness of organs whose functionality is necessary for the tasks entrusted to a judge. However, they did not specify these organs.⁶² According to the Shāfi‘ī jurist Ibn Ḥabīb al-Māwardī (d. 450/1058),⁶³ a person whose limbs are contracted, whose hand is amputated or who has a protracted disease (*zamāna*) can be employed as judge.⁶⁴

In modern studies, two main opinions can be traced. The first advocates the majority of early jurists and states that people with hearing, seeing and speaking disabilities are not qualified to hold this office.⁶⁵ The second opinion sees no harm in appointing a blind person as a judge as long as he is qualified.⁶⁶

In practice, people with disabilities did manage to hold the office of a judge and sometimes of chief judge throughout Islamic history proving their eligibility for such position. Ṣalāḥ al-Dīn al-Ṣafadī (d.1297-1363)⁶⁷ mentioned a number of well-known judges who were blind.⁶⁸ It was also possible for men with hearing disabilities to receive high-level juridical appointments such as Muḥammad b. Dawūd known as Riyāḍī al-Uṭrūsh al-Rūmī who was appointed in 1617 as the chief judge.⁶⁹ Well-known names of blind judges in modern times would include the two Saudi judges ‘Abdullāh b. Ḥumayd (d. 1402/1985) and ‘Abd al-‘Azīz b. Bāz (d. 1999).⁷⁰

5.4 Head of State (Caliph)

The highest authority in Islamic state was entrusted to the one called *imām* (lit. leader), *khalīfa* (Caliph) or *amīr al-mu‘minīn* (the emir of the believers).⁷¹ The office itself was called *imāma* or *khilāfa*. Jurists gave it the title *al-imāma al-kubrā* or *al-‘uzmā* (grand leadership) whereas *al-imāma al-ṣuḡhrā* (minor leadership) was designated for leadership in prayer.⁷² Jurists summed up tasks entrusted to the Caliph as “guarding issues pertaining to religion and administering the worldly affairs (*ḥirāsāt al-dīn wa siyāsāt al-dunyā*).”⁷³

⁶¹ Khaṭīb, Muḥammad b. Aḥmad Shirbīnī al- (1415/1994), vol. 6, pp. 262 & 263; Quḍāt, Muṣṭafa al- (1406/1985), p. 228; Kīlānī, Sarī Zayd al- (1), p. 396; ‘Abd Allāh, Laylā Muḥammad (1418/1997), p. 290.

⁶² Anṣārī, Abū Yahyā Zakariyya al- (3), vol. 5, p. 218.

⁶³ On him, see Brockelmann, Carl (1) (2003), vol. IV, p. 969.

⁶⁴ Māwardī, Ibn Ḥabīb al- (2), p. 84; Kīlānī, Sarī Zayd al- (1), p. 400.

⁶⁵ Kīlānī, Sarī Zayd al- (1), p. 397-399; ‘Abd Allāh, Laylā Muḥammad (1418/1997), p. 291.

⁶⁶ Quḍāt, Muṣṭafa al- (1406/1985), pp. 230 & 231.

⁶⁷ On him, see Rosenthal, F. (2003), vol. VIII, pp. 758-760.

⁶⁸ See Ṣafadī, Ṣalāḥ al-Dīn Khalīl b. Aybak al- (1997), pp. 156, 226; Quḍāt, Muṣṭafa al- (1406/1985), pp. 229 & 230.

⁶⁹ Scalenghe, Sara (2004-2005), p. 15.

⁷⁰ Quḍāt, Muṣṭafa al- (1406/1985), pp. 230 & 231.

⁷¹ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 6, pp. 217 & 218.

⁷² See for instance, Shāfi‘ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, p. 188; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 5; Kāsānī, Abū Bakr Mas‘ūd b. Aḥmad al (1406/1986), vol. 1, p. 224.

⁷³ Māwardī, Ibn Ḥabīb al- (2), p. 5. For more detailed description of these tasks, see pp. 18 & 19.

Keeping in mind that it was the highest position one could hold in the state, qualifications stipulated by jurists were the strictest and most detailed compared with all other aforementioned jobs. Pertaining to disability, besides insanity, jurists contend that hearing, seeing and speaking disabilities are defects that affect the person's eligibility for this office.⁷⁴ According to some jurists, if the Caliph himself got afflicted with a hearing or speaking disability he can still remain in his office as long as he can express himself through understandable signs or writing. However, the majority of jurists argue that the Caliph should be dismissed in such cases.⁷⁵ As for seeing disability, if someone is not blind but just suffers nyctalopia (night blindness) or weakness in eyesight, he can still hold this office as long as he recognises people once he sees them.⁷⁶ The same applies to losing an eye or suffering a light form of speaking disability such as stammering because this does not have a negative affect on executing the tasks entrusted to the Caliph.⁷⁷

That amputated hands or legs are also barriers for a person's eligibility to be a Caliph is advocated by the great majority of jurists. However, a number of jurists say that if the Caliph lost one of his limbs, being a hand or leg, he should not be dismissed on this basis. They argue that such a disability would prevent him from some tasks but not all of them.⁷⁸

Ibn Ḥazm, the Zāhiri jurist, remains unique in this respect by saying, "There is no harm that the *Imām* has a physical defect such as blindness or deafness. The same holds true for the one whose nose, two hands or two legs are cut off." According to Ibn Ḥazm, preventing such a person from holding this office is not advocated by any evidence from Qur'ān, Sunna or consensus.⁷⁹

As for modern studies which tackled this point, I could trace only two opinions. The first advocates the opinion stating that any type of the aforementioned disabilities would prevent from being employed as a Caliph or head of the state.⁸⁰ The second opinion favours, in the case of being afflicted with dumbness during the Caliphate, that the Muslim community would study the case and then decides if the dismissal of that Caliph would be for the public interest. Otherwise, the Caliph should remain in office.⁸¹

5.5 Concluding Assessment

Discussions mentioned above show that early jurists were practising *ijtihād* (personal reasoning)⁸² with the main aim of safeguarding the common interest of Muslim community. In an absence of scriptural evidences from Qur'ān,

⁷⁴ Juwaynī, Abū al-Ma'ālī al- (1422/2002), p. 47; Māwardī, Ibn Ḥabīb al- (2), p. 6.

⁷⁵ Māwardī, Ibn Ḥabīb al- (2), pp. 20 & 21; Kīlānī, Sarī Zayd al- (1), pp. 383-385.

⁷⁶ Māwardī, Ibn Ḥabīb al- (2), pp. 20 & 21; Anṣārī, Abū Yaḥyā Zakariyya al- (2), vol. 4, p. 109.

⁷⁷ Māwardī, Ibn Ḥabīb al- (2), p. 21; 'Abd Allāh, Laylā Muḥammad (1418/1997), p. 277.

⁷⁸ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 9, p. 75; Kīlānī, Sarī Zayd al- (1), p. 387 & 388.

⁷⁹ Ibn Ḥazm, Abū Muḥammad 'Alī (1), vol. 4, p. 129.

⁸⁰ Kīlānī, Sarī Zayd al- (1), p. 379, 380, 385-387, 388 & 389.

⁸¹ 'Abd Allāh, Laylā Muḥammad (1418/1997), p. 278.

⁸² On this term, see Kamali, Muhammad Hashim (2003), pp. 468-499.

Sunna or practical incidents during the lifetime of the Prophet, jurists made use of one main rational argument. They argued that people with disabilities are not employable for specific jobs because these disabilities would not allow them executing tasks entrusted to them properly.

The case of employing blind people as muezzins serves as a clear example in this regard. First, blind people were not preferred because they cannot follow the day-night circulation. Later on, with the introduction of the minarets, blind people were preferred because their blindness gives a guarantee that they will not peep other people's privacies from the height of the minaret. In the light of available computer programs which inform everyone the exact time of each prayer, the skill of following the day-night circulation is not necessary anymore for the muezzin. On the other hand, the availability of mechanical amplifications such as loudspeakers, blindness is not a privilege anymore because the muezzin does not have to mount the minaret anymore in order to proclaim the prayer-call.

The same rule holds true for the office of judge as well. Jurists who objected to a blind judge did not find harm in appointing an illiterate person. This is because blindness was seen as hindrance whereas the writing skills were not a must to be a qualified judge because acquiring knowledge was based on orality.⁸³

This is all of course based on arguments which remain relative, elastic and open to different interpretations. That is why we find almost in every case disagreement whether a specific disability would affect one's eligibility for the job. Paradoxically enough, the minority of jurists who object to this vision could find scriptural references in the Qur'an, Sunna and also practical examples which advocate their opinion. The main protagonist of this group, Ibn Ḥazm, made it clear that the opinion advocated by the majority is not based on any clear or authentic evidence.

At any rate, this situation indicates clearly that there is an area for practising *ijtihād*. Unfortunately, this *ijtihād* is still waiting for new qualified jurists. Besides the few studies which tackled this issue whose authors incline most of the time to the early authoritative juristic opinions, noted jurists of modern time are still almost voiceless in this regard. At the hand of new technological facilities made available for people with disabilities which create new contexts and work opportunities, modern jurists are expected to restudy and revise earlier opinions and practise a fresh *ijtihād* in this new field. The position of the Caliph or head of the state is more fortunate in this regard. Due to the religious and political importance attached to this office, a growing number of studies have been done by modern well-known jurists. However, the case of people with disabilities still remains beyond their main focus.⁸⁴

⁸³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 292 & 293.

⁸⁴ See for instance, Najjār, 'Abd al-Majīd al- (1428/2007), pp. 295-330.

Chapter Six: Medical Treatment of People with Disabilities

Trusting in the unlimited power of God, according to Ibn Taymiyya, disabilities and diseases in general can get cured without taking any medicine.¹ A vast genre in Islamic literature speaks about miraculous healing for which no medicine is required. Such healing can happen at the hand of a Prophet or a Friend of God (*walī*).² The Qurʾān speaks in more than one place (3:49, 5:110) about Jesus' miracles of healing the blind and the lepers. On their side, Muslim scholars wrote also on the miracles of the Prophet of Islam concerning healing people with different disabilities and some of them counted more than thirty cases in this regard.³ Similar stories were also attributed to the Friends of God (*awliyāʾ*)⁴ who were thought to possess the power of bestowing fertility on the barren, food on the hungry and comfort on the distressed. Some of the stories went on curing people with disabilities such as deafness.⁴ In the Shiʿī tradition, similar healing traits would be attributed to the Imams and for instance to the soil of the grave of al-Ḥusayn b. ʿAlī b. Abī Ṭālib.⁵ The main focus of Muslim jurists remains, however, on the use of medicine for the sake of curing disabilities or diseases in general. A note on terminology used in this field is indispensable for a better understanding of discussions and analyses to follow. First of all, one should be aware of terms like *tadāwī* (lit. taking up or making use of *dawāʾ* (pl. *adwiyā*); medicine) and its synonyms *taʿāluj* (making use of *ʿilāj* (pl. *ʿilājāt*); medicine, remedial medicine or therapy)⁶ and *taṭbīb* (lit. making use of *al-ṭibb*; the science of medicine).⁷ For surgical medication, one would come across terms like *al-ʿamal bi al-yadd* or *ʿamal al-yadd* (lit. work or action performed with the hand or by hand). This expression was gradually to lose ground in the course of centuries and ultimately to be replaced by *jirāḥa* (the art of healing wounds or surgery).⁸ The term *jarāʾihī* (surgeon) was often used by the jurists for the one practicing this art.⁹

It is to be noted in this regard that terms with relevance to this topic, e.g. *dawāʾ*, *ʿilāj* and *ṭibb* were used by Muslim scholars in the broadest sense of the word. First, *dawāʾ*, in the juristic use, would mean not only a simple or compound medical drug but also a Qurʾānic verse or specific religious formulae to be recited or chanted in specific situations for healing purposes.¹⁰ Second,

¹ See for instance, Ibn Taymiyya (1408/1971), vol. 3, p. 7.

² On this term, see Radtke, B. et al (2003), vol. IX, pp. 109-124.

³ Ḥalabī, Badr al-Dīn Ibn Ḥabīb al- (d. 779/1377), folios, 33b-35b; Ibn Fahd (d. 954/1547), folios, 27b-36b.

⁴ Dols, Michael W. (1992), p. 229, note 79, quoting from Schimmel, Annemarie (1975), pp. 199-213.

⁵ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), p. xxx.

⁶ Nafrāwī, Aḥmad b. Ghunaym al- (1415/1995), vol. 2, p. 388; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 115.

⁷ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 115.

⁸ Meyerhof, M. & T. Sarnelli (2003), vol. III, p. 481.

⁹ Ibn Muffliḥ, Ibrāhīm b. Muḥammad (1), vol. 2, p. 454; Shayzarī, ʿAbd al-Raḥmān b. Naṣr al- (1401/1981), p. 97.

¹⁰ Khādīmī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Ibn al-Ḥājj, Muḥammad b.

dawā' was not exclusively used for what is curing physical diseases. Spiritual diseases befalling one's soul and heart and thus weakening one's faith also need *dawā'* and the healing process called *tadāwī* is leading afterwards to *shifā'* (recovery). For instance, the Ḥanbalī jurist, Ibn al-Qayyim (d. 751/1350) wrote in the beginning of his *Al-Ṭibb al-nabawī* (Prophetic Medicine) a chapter on the hearts' diseases, as opposed to the diseases of the body, and their medicines.¹¹ The same author dedicated a whole book to the issue of medicating one's heart and the disease of disobeying God in a book entitled *Al-Jawāb al-kāfi liman sa'al 'an al-dawā al-shāfi'* (The Satisfying Answer for the One who asked about the Curing Medicine) with an abridged title *Al-Dā' wa al-dawā'* (The Ailment and the Medicine).¹² That is why the definition given for *adwiya* viz., "every substance which may affect the constitution of the human body, every drug used as remedy or a poison"¹³, although relatively broad, remains non-exhaustive. The same holds true for *'ilm al-ṭibb* (the science of medicine). Muslim jurists put it clear that this science is to be divided into two branches, viz., *al-ṭibb al-jusmānī* or *al-jismānī* (the corporeal or physical medicine) and *al-ṭibb al-ruḥānī* (the spiritual medicine).¹⁴ Below, we give a detailed overview of these two branches of medicine in the juristic discussions, the standpoints adopted in each branch and finally "treatments" developed within each branch of this science with relevance to disabilities.

6.1 Physical Medicine

Physical medicine and Islamic jurisprudence were not rivals or stood at opposite poles. First of all, the history of Islamic scholarship records a considerable number of Muslim scholars who were well versed in both fields viz., Islamic jurisprudence and physical medicine.

Among the physicians, well-known names who mastered Islamic jurisprudence as well include Ibn Sīnā (d. 428/1037),¹⁵ Fakhr al-Dīn al-Rāzī (d. 606/1209)¹⁶ Ibn Rushd (1126-1198)¹⁷ and Ibn al-Nafīs (d. 1288).¹⁸ Names like Muḥammad 'Alī al-Bār¹⁹ and Haytham al-Khayyāt²⁰ show that the

Muḥammad al-'Abdarī (1), vol. 4, pp. 121-124; Nafrāwī, Aḥmad b. Ghunaym al- (1415/1995), vol. 2, pp. 338-341; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹¹ Ibn al-Qayyim (1) (1998), pp. 3-7.

¹² Ibn al-Qayyim (3).

¹³ Meyerhof, M. & T. Sarnelli (2003), vol. III, p. 481.

¹⁴ Khādīmī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹⁵ Ibn Abī Uṣaybi'a (1), p. 438.

¹⁶ Qaradāwī, Yūsuf al- (1424/2003), pp. 58 & 59.

¹⁷ Ibn Abī Uṣaybi'a (1), p. 530 & 532. On him see, Arnaldez, R. (2003), vol. III, pp. 909-920.

¹⁸ Ibn Qādī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, p. 187; Savage-Smith, Emilie et al (2003), vol. X, p. 455. On him see, Schacht J. & M. Meyerhof (2003), vol. III, pp. 897 & 898. For a list of other physicians who were also known as noted jurists, see Ibn Abī Uṣaybi'a (1), pp. 408, 412, 462, 470, 648, 650, 683, 684, 685, 752 & 761.

¹⁹ On him, see Bar, Mohammed Ali al- (1995), pp. 1 & 2; <http://www.khayma.com/maalbar/> (accessed June 16, 2007)

²⁰ On him see, <http://www.islamonline.net/livedialogue/arabic/Guestcv.asp?hGuestID=kloM7j> (accessed June 16, 2007)

phenomenon of combining between medicine and Islamic jurisprudence did not disappear in the modern time. The earliest jurist whose name was attached to the science of medicine is Muḥammad b. Idrīs al-Shāfi‘ī (d. 205/820). Sources on his virtues (*manāqib*) used to dedicate a chapter on his knowledge in the field of Greek medicine and some of them claimed that he mastered this science in its original language.²¹ According to the Ḥanbalī jurist Ibn al-Qayyim (d. 751/1350), al-Shāfi‘ī’s knowledge about medicine was based on the Arabian rather than the Greek tradition.²² Furthermore, biographical sources on jurists of different schools of law include many references to those jurists who were well-versed in the science of medicine and some of whom were also authors in this field.²³

Additionally, early and modern jurists are unanimous on the importance of medicine as an essential science for maintaining people’s life. Learning and teaching this science was seen as a collective duty (*farḍ kifāya*).²⁴ In case of the rarity of medical professionals, learning this science became obligatory (*farḍ ‘ayn*) for those who have the capacities to learn it.²⁵ Al-Shāfi‘ī is reported to say, “Do not live in a place where you have no scholar to inform you about your religion and no physician to inform you about your body.”²⁶ The well-known scholar, Shams al-Dīn al-Dhahabī (1274-1352/3)²⁷ considered medicine to be one of the important means to bring one closer to God. He says in this regard, “After carrying out the religious rites and desisting from actions He has prohibited, the most beneficial means of getting closer to God is that which benefits man in preserving his health and in curing his illness.”²⁸ Al-Dhahabī’s contention is shared by other authors who deemed authoring works on health and medicine as an essential part of their piety and religiosity.²⁹ Similar standpoints were also adopted within the Shī‘ī Islam. Imam ‘Alī, the first Imam of the Shī‘a and the son-in-law of the Prophet Muḥammad was said to put medicine on a par with the study of Islamic law.³⁰ Modern Muslim scholars condemned that the new among a number of Muslim youngsters who saw studying religious sciences rather than the exact sciences including medicine as part of being a more practicing Muslim. The scholars insisted on the religious

²¹ Rāzī, Fakhr al-Dīn al- (1413/1993), pp. 73 & 74; Abū Zahra, Muḥammad (1948), pp. 46 & 47.

²² Ibn al-Qayyim (2), vol. 2, p. 220.

²³ For some names among the Ḥanafī jurists, see Ibn Abī al-Wafā’ (1), pp. 103 & 216. For the Shāfi‘ī jurists, see Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, pp. 50, 66, 70, 71, 78 & vol. 3, p. 7; Subkī, Abū Naṣr ‘Abd al-Wahhāb b. ‘Alī b. ‘Abd al-Kāfi al- (1992), vol. 4, p. 387 & vol. 8, p. 397. For the Ḥanbalī jurists, see Ibn Abī Ya‘lā (1), vol. 2, p. 205.

²⁴ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 12, p. 135; Makhlūf, Muḥammad Ḥasanayn (1391/1971), vol. 2, p. 38; Qaraḍāwī, Yūsuf al- (2006).

²⁵ Ibn al-Ḥājj, Muḥammad b. Muḥammad al-‘Abdarī (1), vol. 4, p. 140.

²⁶ Rāzī, Fakhr al-Dīn al- (1413/1993), p. 287.

²⁷ On him, see Bencheneb, M. & J. de Somogyi (2003), vol. II, pp. 215 & 216.

²⁸ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1976), p. 2, quoted by Rahman, Fazlur (1982), p. 79.

²⁹ Rahman, Fazlur (1982), p. 79.

³⁰ Ibid, p. 83.

merit of learning such sciences.³¹ They reiterate that conducting and developing scientific researches in the field of medicine is seen as one of the important means of achieving the first objective of Islamic Shari‘a, namely protecting people’s life.³²

Notwithstanding the high value attached to this science, the treatment of disabilities or diseases in general is not by default also encouraged. A clear distinction should be made in this respect between early and modern jurists.

Fazlur Rahman, basing himself on sporadic quotations from one single source, speaks of a Shi‘i trend maintaining that the use of medicine must be avoided as much as possible because medicines produce and can themselves be a disease. In this vein, it is strongly advised to bear pain and discomfort of the disease and have recourse to a doctor only if disease threatens to become incurable and pain unbearable.³³ However, Rahman’s assessment should not be taken for granted. First, he concedes, “Of the Shi‘a, only one work I have mentioned earlier, viz., *Tibb al-a‘imma* or “The Medicine of the Imāms is available to me.”³⁴ Second, Andrew Newman (University of Oxford) rejected to Rahman’s assessment and asserted that no see big differences between Shi‘i and Sunnī traditions in this regard. He states that folk medicine of the Arabian Bedouin, the borrowing of Galenic concepts and the over-arching principle of divine supernatural causation found favor within the Shi‘i community the same as the Sunnī.³⁵ The main difference between these two traditions could be the high value attached to the importance of the twelve Imams believed to be designated by God to govern the Muslim community and as being in direct contact with God as the Prophet himself for the purpose of guiding community.³⁶ That is why the Shi‘i genre on this topic carries the title *Tibb al-a‘imma*. Researchers counted at least thirteen works of this genre bearing this title.³⁷

As for the Sunnī jurists, making use of medicine became obligatory, according to a limited number of jurists, only when the effectiveness of medicine was certain and ignoring it would put the patient’s life in danger.³⁸ The majority including the Ḥanafīs and Mālikīs adopted a neutral position and opined that making use of medicine (*tadāwī*) was permissible (*mubāḥ*).³⁹ The rest were divided into two groups. The first group was mainly represented by the Shāfi‘īs, a number of the Ḥanbalīs including al-Qāḍī Abū Ya‘lā b. al-Farrā’ (d.

³¹ Qaradāwī, Yūsuf al-(2006)

³² Sharaf al-Dīn, ‘Alī al-Ṭāhir (2007), p. 261-263.

³³ Rahman, Fazlur (1982), p. 83; Rahman, Fazlur (1989), p. 37, quoting from Naysabūrī, ‘Abd Allāh b. Bisṭām (1965), pp. 3 & 4; Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. xxvii & xxviii.

³⁴ Rahman, Fazlur (1982), 84.

³⁵ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), p. xvi.

³⁶ Ibid, p. xiii.

³⁷ Rahman, Fazlur (1984), p. 589; Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. xiv, xv, xxxiv-xxxvii.

³⁸ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 283; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 268; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 117.

³⁹ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 117.

458/1066), Ibn ‘Aqīl (d. 513/1119) and Ibn al-Jawzī (d. 597/1200) and the Zaydī school from the Shī‘a. These all can be categorized as the pro-*tadāwī* group who opined that it was recommended (*mandūb* or *mustaḥabb*) to make use of medicine.⁴⁰ The second group, represented mainly by the majority of the Ḥanbalīs, was not anti-*tadāwī* per se but still believed that practicing *tawakkul* (dependence on God)⁴¹ was better than making use of medicine to heal the diseases.⁴²

This last group, in particular, demands a more detailed presentation because of its direct relevance to current situation. A typical complaint from workers in the health sector and especially in disability-field is that some Muslims at present reject to follow up a medication process for their family-member who has a disability or to send him/her to a rehabilitation center. Justifications advanced by these Muslims revolve always around trust in God (*tawakkul*) who is the real “Healer”.⁴³

The question now is to what extent was this group which saw an eventual contradiction between one’s trust in God and resignation to His will (*tawakkul*) on one hand and seeking medical treatment (*tadāwī*) on the other?

The group remained always a minority among early jurists. This group included the majority of the Ḥanbalīs, Ibn ‘Abd al-Barr and Ibn al-Ḥājj (d. 1336) from the Mālikīs. Although, they did not see harm in making use of medicine, they still opined that having trust in God’s power and mercy is more meritorious.⁴⁴ One can easily sense here a clear influence from Sufism.⁴⁵ For instance, a noted Sufi woman, Rābi‘a al-‘Adawiyya (d. 185/801),⁴⁶ fell sick and when asked to pray God to ease her sufferings [making use of the spiritual medicine], she refused stating that her sickness was God’s will and thus her praying would contradict His will.⁴⁷

However, this standpoint has been refuted by the majority of jurists including a number of noted jurists belonging to the Ḥanbalī School such as Ibn al-Qayyim (d. 751/1350),⁴⁸ al-Dhahabī (d. 1352-3)⁴⁹ and Maṣṣūr al-Buḥutī

⁴⁰ Ibid, vol. 11, p. 117; Murtaḍā, Aḥmad b. Yahyā al- (1), vol. 3, p. 85.

⁴¹ On this term, see Gülen, Fethullah M. (1999), pp. 67-71; Lewisohn L. (2003), vol. X, pp. 376-378.

⁴² Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 117.

⁴³ It is not yet precisely known whether we speak here about a majority or a minority group among Muslims. A Dutch project called “Samen verder in gekleurd Rotterdam (Together in the Colored Rotterdam)” is going to fathom out this phenomenon. The project started in October 2006. For further details on this point, see Ghaly, Mohammed M.I. (2007), pp. 42 & 43.

⁴⁴ Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1), vol. 2, pp. 348 & 349; Ibn al-Ḥājj, Muḥammad b. Muḥammad al-‘Abdarī (1), vol. 4, p. 115; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 14, p. 20.

⁴⁵ Khādīmī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 274; Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1), vol. 2, p. 348.

⁴⁶ On her see, Smith Margaret & Ch. Pellat (2003), vol. VIII, pp. 354-356.

⁴⁷ Rahman, Fazlur (1989), pp. 48 & 49.

⁴⁸ Ibn al-Qayyim (1) (1998), pp. 9-13.

⁴⁹ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1349/1930), pp. 40 & 41

(d. 1051/1641).⁵⁰ After citing a number of Prophetic traditions encouraging people to make use of medicine, Ibn al-Qayyim comments “These sound Prophetic traditions contain the command to carry out treatment, and this does not negate trust in God (*tawakkul*), any more than does the repelling of hunger, thirst, heat and cold by their opposites. Moreover, the reality of divine unity (*tawhīd*) is only made complete by direct use of the means which God has appointed as being essential to bring about certain effects, according to the Decree and the religious Law.” Such standpoint holds true for many other jurists some of whom were also known for their Sufi-leanings such as Abū Ḥāmid al-Ghazālī (d. 1111)⁵¹ and Abū al-‘Abbās Qaṣṭalānī (d. 923/1517)⁵² and also for Sufi scholars such as al-Ḥārith al-Muḥāsibī (d. 243/857).⁵³ Fazlur Rahman adds in this regard that most Sufis made use of both types of medicine, physical and spiritual, when they were ill and also advocated it to their followers. It is therefore, he continues, not legitimate to make from the practice of some Sufis of the ascetic type, generalizations for all Sufis.⁵⁴

A third group of jurists preferred a more nuanced approach. They divided medicines on the basis of their effectiveness into certain (*qaṭ‘ī*), doubtful (*ẓannī*) and fictitious (*mawhūm*). They placed most of the known physical medicines in the category of the doubtful. Cauterization (*kayy*) was placed among the doubtful medicines whereas no concrete examples were given for the certain medicines. To them, making use of medicines belonging to the first and the second category does not contradict *tawakkul* whereas it would be the case when using medicines of the third category. Making use of medicines whose effectiveness is certain, jurists add, is obligatory in case of having an illness endangering one’s life.⁵⁵

New developments in pharmaceutical science and strict rules applied before bringing a medicine to the market brought the controversy on the inexactness of medicine to an end and thus no trace of this discussion is encountered by hardly any of the modern jurists. This new situation was also responsible for the considerable change in the tone of modern juristic discussions. First of all, taking medicine was seen obligatory (*wājib*) without conditioning that its efficacy be certain. During its seventh session held in Jeddah in 1992, the Council of the Fiqh Academy,⁵⁶ which includes Sunni as well as Shī‘ī scholars, issued a decision no. 7/5/67 concerning medication stating that is a) obligatory

⁵⁰ Buhutī, Maṣṣūb b. Yūnus al- (1402/1982), vol. 2, p. 76.

⁵¹ See Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 283.

⁵² Qaṣṭalānī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 140. On him, see Brockelmann, Carl (2003), vol. IV, p. 736.

⁵³ Ibid, vol. 2, p. 140.

⁵⁴ Rahman, Fazlur (1989), p. 49.

⁵⁵ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 283; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, pp. 267-274.

⁵⁶ This Fiqh Academy whose founding was held in June 1983 is affiliated to the Organization of Islamic Conference. Each Muslim country nominates an expert in Islamic disciplines as its representative. While governments nominate the representatives, once nominated only the Academy can revoke their membership. The academy has currently fifty-seven members. For more information on this academy, see <http://www.fiqhacademy.org.sa/>

(*wājib*) if neglecting it may result in the person's self-destruction, loss of an organ or disability, or if the illness can spread to others as in the case of contagious diseases, b) recommended (*mustahabb*) if neglecting it may weaken the body without entailing the consequences mentioned in the first case above, c) permissible (*mubāh*) if not covered by the preceding two cases and d) undesirable (*makrūh*) if there is a risk that the action to be taken may provoke complications that are worse than the illness to be removed.⁵⁷

Hence, whether making use of medicine would be contradictory to *tawakkul* is not an issue anymore among modern jurists.⁵⁸ Some of them even condemn those who abstain from medication claiming that they prefer to practice trust in God. 'Umar Sulayman al-Ashqar (University of Jordan) describes such standpoint as one of the great drawbacks which befell the Muslim mentality.⁵⁹

In the light of the aforementioned presentation and the clear curve in juristic opinions concerning medication, one can easily read the standpoints of some Muslims refusing to make use of some or all medical facilities. These practices, in most cases if not all of them, are traces of early opinions favoring *tawakkul* over *tadāwī*. However, patients of this time or their families are unaware that such earlier discussions were advanced by a minority of jurists and after all took place in a specific context which has no relevance anymore in the present time. Explaining this issue to such patients can make a considerable change in their behavior.⁶⁰

6.1.1 Preventive Measures

According to Ibn al-Qayyim (d. 751/1350), one of the main deficiencies of physical medicines is that they are therapeutic rather than preventive. On the other hand, "divine medicine can either prevent the occurrence of these causes or work to ward off the full force of their effect."⁶¹ This could have been the case at the time of Ibn al-Qayyim but it is surely not the case anymore. One of the main targets of physical medicine now is preventing the occurrence of disease or disability to the extent that a specific branch of medicine called preventive medicine (*tibb wiqā'ī*) has been developed a long time ago.⁶²

Preventive measures whose main aim is to prevent the occurrence of disability will be presented in three chronologically-ordered levels, namely consanguineous marriage between the parents to-be, during pregnancy by aborting the disabled fetus and after birth by means of vaccination.

6.1.1.1 Consanguineous Marriage

The term generally used by Muslim jurists in this regard is *nikāh* or *zawāj* (marriage) *al-qarāba* (lit. kinship). This term can be translated as close-kin

⁵⁷ Ibn al-Khodja, Mohamed Habib (ed.) (2000), pp. 139 & 140.

⁵⁸ See Munajjid, Muḥammad Ṣāliḥ al- (2001); Ashqar, 'Umar Sulaymān al- (2003); Qaradāghī, 'Alī al- (2004); Qaradāghī, 'Alī al- (1426/2005), pp. 299-302.

⁵⁹ Ashqar, 'Umar Sulaymān al- (2003).

⁶⁰ See Ghaly, Mohammed M.I. (2007), pp. 42 & 43.

⁶¹ Ibn al-Qayyim (I) (1998), p. 137.

⁶² See for instance, Rohé, George H. (1885).

marriage, intra-familial marriage and, which is the most commonly used term, consanguineous marriage. In anthropological studies, consanguineous marriage is defined as “the marriage in which the two partners have at least one ancestor in common, with the ancestor being no more distant than a great-great grandparent.”⁶³ In clinical genetics, it is “a union between a couple related as first cousins or closer.”⁶⁴ As we shall see below, both the anthropological definition which broadened the scope of consanguineous marriage and the medical definition which narrowed it are to be found in the juristic discussions.

The prevalence of close-kin marriage exceeds 50% in many of the Muslim countries of the Middle East and Pakistan.⁶⁵ Records show that this type of marriage is also common among migrant communities including Muslim migrants in Western Europe, North America and Australia.⁶⁶ Religion exerts a major influence in this regard. However, medical researchers complain an ambiguity concerning attitudes towards this marriage within Islam.⁶⁷ In a bid to clarify this ambiguity, a survey of early and modern juristic discussions will be elaborated. Before this, a short presentation of medical standpoints is in order.

The first question to be raised here: is consanguineous marriage, medically speaking, dangerous for the health of the prospective children? As early as 1902, scientific researchers made references to such marriages and specifically cautioned against unjustified speculation into the overall health status of first cousin progeny.⁶⁸ However, the first comprehensive investigations into the effects of inbreeding in human populations commenced in the late 1940s, with the classic studies of Neel and Schull into the outcomes of cousin marriage in Hiroshima and Nagasaki, Japan.⁶⁹ Since then and hitherto, many scientific voices ensured a relationship between consanguinity and specific physical defects and behavioral and psychiatric disorders that have been diagnosed in consanguineous unions.⁷⁰ Different studies and experiments show that disabilities among the progeny of such marriages would include the loss of hearing, blindness and mental retardation.⁷¹ However, such results are still far from certain because the majority of these studies did not check potentially important non-genetic variables.⁷²

As for the Islamic perspective, we see that the Qur’ān states clearly that specific family-members are not allowed to marry with each other, “Prohibited to you (For marriage) are: Your mothers, daughters, sisters; father’s sisters,

⁶³ Givens, Benjamin P. & Charles Hirschman (1994), p. 821.

⁶⁴ Bittles, A.H. (2001), p. 89.

⁶⁵ Ibid, p. 90. For case-studies, see Hoodfar E. & A.S. Teebi (1996), pp. 212–215; Teebi A.S. & T.I. Farag (1997); Nelson J. et al (1997), pp. 142-146.

⁶⁶ Bittles, A.H. (2001), p. 93.

⁶⁷ Ibid, p. 90

⁶⁸ Garrod, A. (1902), quoted by Bittles, A.H. (2001), p. 92.

⁶⁹ See for instance, Neel, J.V. (1958) & Schull, W.J. (1958), quoted by Bittles, A.H. (2001), p. 92.

⁷⁰ Bittles, A.H. (2001), p. 89.

⁷¹ Idrissi I. al- et al (1992), pp. 9-12; Elder, M.J. & R. De Cock (1993), pp. 580-583; Rahi, J.S. et al (1995), pp. 545-550; Sundstrom, R.A. et al (1999), pp. 123-129; Rogers, N.K. et al (1999), pp. 65-70; Willems, P.J. (2000), pp. 1101-1109; Bittles, A.H. (2001), p. 93.

⁷² Bittles, A.H. (2001), p. 92.

Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in, – no prohibition if ye have not gone in; (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time” (Qur’ān 4:23).

Beyond this unlawful circle, a Muslim can in principle marry with other blood-relatives within the family. In clear reference to the permissibility of first cousin marriage, the Qur’ān says, “O Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers; and those whom thy right hand possesses out of the prisoners of war whom Allah has assigned to thee; and daughters of thy paternal uncles and aunts, and daughters of thy maternal uncles and aunts, who migrated (from Mecca) with thee” (Qur’ān 33:50).

However, Muslim jurists from the early times up to the present time are not in agreement whether consanguineous marriage is reprehensible (*makrūh*) or remains just permissible (*mubāh*). A group of jurists, including the Shāfi‘īs, Ḥanbalīs and Zaydīs, prefers that one would marry with a distant relative or a non-relative rather than with a close relative because the prospective child will be physical and mentally healthier.⁷³ As for physical health, it is related that the second Caliph ‘Umar b. al-Khaṭṭāb (r. 13/634-23/644) advised an Arab tribe known for marrying with their close relatives to marry with people from outside the tribe to avoid feebleness in their prospective offspring.⁷⁴ Concerning mental health, al-Shāfi‘ī is reported to have opined that marrying from one’s own *‘ashīra* would come up with an idiot child (*aḥmaq*).⁷⁵ One of the evidences used by this group is a tradition attributed to the Prophet saying, “Marry with the non-relatives so that [the offspring of] you do not get feeble”. However, most scholars declared this tradition as unauthentic.⁷⁶ Muḥammad ‘Uthmān Shubīr (lecturer of Islamic jurisprudence at Jordan University) is one of the modern jurists who advocate this opinion basing his argument on the medical dangers of such a marriage as stated by physicians.⁷⁷ On the other hand, the late well-known Saudi scholar Ibn Sāliḥ al-‘Uthaymīn (d. 2001)⁷⁸ is one of the modern jurists who objected to the aforementioned opinion. In a response to a question saying, “is it true that consanguineous marriage would come up with malformed or disabled children, as physicians say?” Ibn ‘Uthaymīn stated that what the questioner heard from the physician is not

⁷³ Māwardī, Ibn Ḥabīb al- (1), pp. 159 & 160 Bujayramī, Sulaymān b. Muḥammad al- (1415/1995), vol. 3, p. 363; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 7, p. 83; Murtaqā, Aḥmad b. Yaḥyā al- (1), vol. 4, p. 84; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 24, pp. 61 & 62.

⁷⁴ ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1384/1964), vol. 3, p. 146.

⁷⁵ Bujayramī, Sulaymān b. Muḥammad al- (1415/1995), vol. 3, p. 363.

⁷⁶ ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1384/1964), vol. 3, p. 146; Ṣidqī, Muḥammad Tawfiq (1333/1915), vol. 18, issue 4, pp. 303, note 1.

⁷⁷ Shubīr, Muḥammad ‘Uthmān (1) (1421/2001), vol. 1, pp. 337 & 338.

⁷⁸ On him, see <http://www.ibnothaimeen.com/all/Shaiikh.shtml>

true,⁷⁹ adding “the issue is in the hands of God besides that malformation has other reasons.” He opined also the incorrectness of jurists who disfavored consanguineous marriage. According to him, the main factor in selecting the partner is religion and ethics. Additionally, Ibn ‘Uthaymīn confirms, a lot of people who married with their cousins found nothing except goodness such as ‘Alī b. Abī Ṭālib who married with the daughter of his cousin, Fāṭima, the daughter of the Messenger of God – peace and blessings be upon him.⁸⁰

A pre-marriage medical check-up for both spouses is one of the measures suggested by modern Muslim scholars to avoid the possible contamination of genetic, hereditary or contagious diseases whether to one of the spouses or to the prospective children. To my knowledge, the Saudi Mufti, Ibn Bāz (d. 1999) was the only, or at least one of the very few, opponent of conducting such check-up. In a question saying, “I wish to marry my cousin. Some friends advised me to make a medical check-up before marriage to investigate the hereditary genetics. Would this be interference in God’s predestination (*qaḍā’ wa qadar*) and what is the religious ruling of conducting such a medical check-up?” Ibn Bāz answered, “There is no need to do such a check-up. You both should just expect the best of God as He says ‘I am as My servant thinks of Me’ as narrated by His Prophet – peace and blessings be upon him.”⁸¹ This measure remains, however, the viewpoint of the majority of the modern jurists and represents a midway solution because it will also achieve a higher degree of certainty whether the to-be contracted consanguineous marriage would cause disabilities or other health dangers for the expected progeny.⁸²

The question that remains is whether the state authorities would be allowed to impose such pre-marriage medical check-up upon the spouses and consider it one of the obligatory measures to conclude marriage. Modern jurists are divided in this respect into two groups, one advocating this measure and the other opposing it.⁸³

In case of not conducting such medical check-up while one of the spouses came to know that the other spouse is a carrier of a genetic disorder, would it be a sufficient reason to bring this marriage to an end? Fatwas recommend that

⁷⁹ The same opinion is also shared by another Saudi Mufti, Ṣāliḥ al-Fawzān, who says that the scientist’s claim of attributing congenital disorders to consanguineous marriage is false, see ‘Ulamā’ al-Hijāz wa al-Lajna al-Dā’ima li al-Buḥūth al-‘Ilmiyya wa al-Iftā’ (2004), pp. 96 & 97, quoted by Rispler-Chaim, Vardit (2007), p. 145, note 426.

⁸⁰ Shāyī’, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1418/1997), vol. 1, pp. 21 & 22. A full translation of the fatwa is available in Rispler-Chaim, Vardit (2007), p. 97. However, I have used my own translation believing that it is closer to the Arabic text. See also *Zawāj al-aqārib bayn al-ṭibb wa al-fiqh* (2006).

⁸¹ ‘Ārif, ‘Alī ‘Ārif (1421/2001), vol. 2, p. 684, note, 4.

⁸² See for instance, the resolution of the council of the Islamic Fiqh Academy, no. 82/13/08, Ibn al-Khodja, Mohamed Habib (ed.) (2000), p.183; the resolution of the European Council for Fatwa and Research no. 14/2, *Scientific Review of the European Council for Fatwa and Research*, July 2005, vol. 7, pp. 413 & 414; Shubīr, Muḥammad ‘Uthmān (I) (1421/2001), vol. 1, p. 338; *Zawāj al-aqārib bayn al-ṭibb wa al-fiqh* (2006).

⁸³ Shubīr, Muḥammad ‘Uthmān (I) (1421/2001), vol. 1, p. 336; ‘Ārif, ‘Alī ‘Ārif (1421/2001), vol. 2, pp. 794 & 795; *Al-Faḥṣ al-ṭibbī qabl al-zawāj bayn al-man’ wa al-jawāz, al-* (2006).

marriage continues as long as carrying such genetic disorder does not hinder a safe practice of sexual intercourse. As an alternative, the spouses can resort to contraceptives in order to prevent the birth of malformed children.⁸⁴ Some muftis spoke even of a possible sterilization or a temporary form of it.⁸⁵ In case the carrier of the genetic disorder intentionally deceived the other spouse, he/she would have the right to ask for ending up the marriage.⁸⁶ It is to be noted that this case is applicable to consanguineous and non-consanguineous marriages.

6.1.1.2 Abortion of the Disabled Fetus

Broadly speaking, abortion may be spontaneous (known in juristic terms as *saqt*, *ilqāʿ*, *ṭarḥ* and *imlās*⁸⁷), e.g. an unplanned occurrence due to some physiological event) or deliberate (*ijhād*), pre-meditated intervention intended to end the life of the fetus. When it is spontaneous, a miscarriage is interpreted as the will of God and no blame is attributed to any individual.⁸⁸ As for deliberate abortion, discussions of Muslim jurists elaborated frequently the rulings pertaining to this practice.

Early jurists were in agreement that abortion is forbidden after 120 days of pregnancy because it means that ensoulment (*naḥkh al-rūḥ*) already took place.⁸⁹ As for abortion before 120 days, various opinions have been expressed which can be summed up into three or four main contentions, viz., unconditionally permissible, permissible in case of having an excuse (*ʿudhr*), generally reprehensible and forbidden.⁹⁰ Each opinion mentioned above has its own advocates among modern Muslim jurists.⁹¹

Speaking about an excuse for aborting the fetus, some jurists thought of poverty of both parents which will not allow them to afford necessary milk or food for their prospective child. They also thought of medical excuses such as an illness of the mother causing her to take up a medicine eventually leading to the abortion.

Modern scientific advances produced a new case not encountered by the early jurists, namely the case of the disabled fetus. Prenatal screening and other scientific advances made it possible to identify genetic disorders in the fetus while still in the womb. Some of them can be cured in the womb. For those that are incurable, the parents can choose either to let the fetus complete its

⁸⁴ Shubīr, Muḥammad ʿUthmān (1) (1421/2001), vol. 1, pp. 338 & 339; ʿĀrif, ʿAlī ʿĀrif (1421/2001), vol. 2, pp. 786-788; *Al-Liwāʾ al-islāmī*, 8 March 1990, p. 6, quoted by Rispler-Chaim, Vardit (1999), p. 136

⁸⁵ Rispler-Chaim, Vardit (1999), p. 136.

⁸⁶ Rispler-Chaim, Vardit (2007), p. 60.

⁸⁷ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 56.

⁸⁸ Kyriakides-Yeldham, Anthony (2005), p. 2965; Rispler-Chaim, Vardit (1993), p. 7.

⁸⁹ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 57.

⁹⁰ Ibid, vol. 2, p. 58.

⁹¹ See for instance, Rispler-Chaim, Vardit (1993), pp. 7-16; ʿĀrif, ʿAlī ʿĀrif (1421/2001), vol. 2, pp. 791 & 792.

term and be born, or to abort it. Is it permissible for the parents to abort this disabled fetus as a preventive measure against getting a disabled child?

Although they may not have said something direct on this issue, one can predict the probable opinions of some jurists in specific cases. For instance, before 120 days, it would be permissible for those who said it is unconditionally permissible, reprehensible for those who opine that abortion is generally reprehensible and forbidden for those who forbid abortion in every case. The same holds true for those who contend that abortion after 120 days is forbidden in all cases. However, it is unfeasible to predict the probable opinion of those early jurists who permitted abortion in case of having an excuse. Would having a disabled fetus be a sufficient excuse to terminate pregnancy? In this case we have to resort to the modern jurists who had to encounter this new situation.

Two main factors played a central role in formulating the fatwas issued in this regard, namely, the duration of pregnancy and the seriousness of the defect or disorder that such prospective child is going to suffer. The majority keeps the two factors in view and thus permits abortion in case of extreme and incurable disorders as long as it would take place before 120 days⁹² and according to some not before forty days.⁹³ Although “severity of disorders” remains in principle vague and at best subjective and relative,⁹⁴ specific disorders are explicitly excluded from the acceptable excuses such as blindness and deafness.⁹⁵ The rationale for this generally anti-abortion attitude as provided by Muslim jurists can be summed up in the following points. First, every human being is God’s creation and no one may “play God” and decide of the termination of another human’s life. Second, happiness and the quality of life are subjective terms and no one can speak for the others’ life.⁹⁶ Maḥmūd Shaltūt said, “Who knows whether the retarded child or Down syndrome child is unhappy as he is? It is often the projection of the healthy on the life of the handicapped, but this is not necessarily true.”⁹⁷ As for blindness, deafness and the like, al-Qaraḏāwī states that many people have been living with such disabilities throughout human history and such disabilities did not hinder them from participating actively in life.⁹⁸

⁹² Qaraḏāwī, Yūsuf al- (1415/1994), vol. 2, pp. 584 & 549; Rispler-Chaim, Vardit (1993), pp. 14 & 15; Rispler-Chaim, Vardit (1999), pp. 134-136; ‘Ārif, ‘Alī ‘Ārif (1421/2001), vol. 2, p. 790; the resolution of the European Council for Fatwa and Research no. 10/4, *Scientific Review of the European Council for Fatwa and Research*, June 2003, vol. 3, p.362; Rispler-Chaim, Vardit (2007), p. 59.

⁹³ Rispler-Chaim, Vardit (1999), pp. 134 & 135, quoting from Zallūm, ‘Abd al-Qadīm (1997); Ebrahīm, Abul Fadl Mohsin (1986), p. 187.

⁹⁴ Rispler-Chaim, Vardit (1999), pp. 135 & 136.

⁹⁵ Qaraḏāwī, Yūsuf al- (1415/1994), vol. 2, p. 549.

⁹⁶ Rispler-Chaim, Vardit (2007), p. 59.

⁹⁷ Rispler-Chaim, Vardit (1999), p. 136, quoting from Shaltūt, Maḥmūd (1966), pp. 293-297.

⁹⁸ Qaraḏāwī, Yūsuf al- (1415/1994), vol. 2, p. 549

6.1.1.3 Vaccination

According to the World Health Organization (WHO), the two public health interventions that have had the greatest impact on the world's health are clean water and vaccines.⁹⁹ One of the main benefits of vaccines, especially with relevance to disability, is combating poliomyelitis.¹⁰⁰

Despite the great benefits of vaccines as a preventive medicine against many fatal diseases and disabilities, they were not without protesters usually termed as “antivaccinationists” belonging to a movement known as “antivaccinationism”. A vociferous antivaccination movement emerged as early as in the 1830s, after an initial generation had been vaccinated and the incidence of smallpox had declined markedly in the United States and Europe.¹⁰¹ Sometimes antivaccinationists were protesting what they considered the intrusion of their privacy and bodily integrity. Many working-class Britons, for example, viewed compulsory vaccination laws, passed in 1821, as a direct government assault on their communities by the ruling class.¹⁰² In addition, by the mid-eighteenth century the rise of irregular medicine and unabashed quackery encouraged antivaccinationism. In addition, antivivisectionists, who abhorred animal experimentation, sometimes joined forces with antivaccinationists.¹⁰³ While nineteenth-century fears of vaccination might have been based on anecdotal horror stories of other infections, the statistical risks of vaccine-induced infection of that era would not be medically acceptable today. Until quite recently, historical studies frequently depicted all antivaccinationists as irrational and antiscientific. Commenting on this, Alexandra Stern & Howard Markel (University of Michigan), say “This characterization was misguided. If we interpret antivaccinationists on their own terms and by applying historical context, we can see that many behaved as rational actors who were weighing the pros and cons of inoculation.”¹⁰⁴ Some of the critics were raised because of a putative link between vaccination and neurological problems. In the past decade in particular, parents and their watchdog groups have raised important questions about the purported link between a noticeable rise in autism and the preservative thimerosal (previously used in diphtheria, tetanus, pertussis, *Haemo-philus influenzae* type b, or Hib, and hepatitis B vaccines). The series of scientific studies which have demonstrated that there is no causal connection between thimerosal and autism could not always manage to eliminate the people's fears especially because such claims were sometimes sensationalized by

⁹⁹ www.who.int/gpv-dvacc/history/history.htm

¹⁰⁰ National Immunization Program, the, Centers for Disease Control and Prevention (2007), p. 101.

¹⁰¹ Kaufman, M. (1967), pp. 463-478, quoted by Stern, Alexandra Minna & Howard Markel (2005), p. 617.

¹⁰² Durbach, N. (2000), pp. 45-62, quoted by Stern, Alexandra Minna & Howard Markel (2005), p. 617.

¹⁰³ Stern, Alexandra Minna & Howard Markel (2005), p. 617.

¹⁰⁴ Ibid.

the media. Not surprisingly, the suggestion that vaccinating one's child might lead to developmental disorders has fostered unease among many parents.¹⁰⁵

At any rate, some of the protests against vaccines had also religious dimension¹⁰⁶ and this was the case with some questions directed to Muslim jurists asking for fatwas. A clear example in this regard is a fatwa issued by Yūsuf al-Qarāḏāwī on March 15, 2004 in response to the following question posed from Nigeria, "What is the Islamic point of view regarding vaccinating children against specific diseases? Scholars of Kano in northern Nigeria issued a fatwa to the effect that it is not lawful to vaccinate their children against polio. According to them, the vaccine contains chemicals and hormones that may cause women to be infertile or impure elements that should not enter the body. People of Kano abode by the fatwa and this resulted in the spread of polio among the children of the state. About 335 children have become paralyzed by polio. Moreover, travelers have carried the poliovirus to eight other Muslim countries. What is your point of view on this?"

Al-Qarāḏāwī expressed his astonishment because of the antivaccinationist attitude adopted by the scholars of Kano. He unequivocally disapproved their opinion, for the lawfulness of such vaccine in the point of view of Islam is as clear as sun light. However, he still understood the motives and good will behind their attitude, and thus beseeches God to reward them for their good will and to forgive their mistakes in that regard. Keeping in mind the importance of this issue, al-Qarāḏāwī consulted 12 noted Muslim scholars affiliated to the Council of the Islamic Fiqh Academy as members and experts. They came up with five main conclusions. First, it is a duty upon every Muslim to ward off harm as much as he can. One's body is a trust from Allah Almighty in one's hand, and thus it is not lawful for one to cause it harm. They quoted Qur'anic verses and incidents taking place during the lifetime of the Prophet in support of this point. Second, parents are responsible for providing their children as much as they can with all means of protection and immunity against harm and diseases in order to save them life-long suffering. If there is a certain vaccine that can prevent such a disease altogether, parents are to seek to give it to their children. If parents neglected their duty in that regard, they would incur upon themselves the sin of causing their children life-long ill health. Third, people in authority in every country are to enact laws and take actions, by means of which the health of people in general, and children in particular, is to be protected against diseases. This does not only include providing treatments for diseases, but also affording means of prevention against them. If people in authority order that a certain vaccine be given to children all over the country, people are to abide by this, for it is a duty upon them to obey rulers as long as this is done in the framework of following what is right. Fourth, things are primarily in a state of purity and thus permissible to make use of. Hence, one cannot refer to something as impure unless there is clear evidence of this. Likewise, one cannot give a ruling to the effect that something is unlawful

¹⁰⁵ Ibid, pp. 617 & 618.

¹⁰⁶ Ibid, p. 617.

unless there is a certain proof in that regard. As for the polio vaccine, there is no sign that it includes impure elements or causes infertility, and hence, it cannot be described as unlawful to use. Furthermore, experts in the field of vaccines affiliated to the branch of the World Health Organization (WHO) in Egypt were consulted. Their answer was that the polio vaccine is not harmful in any way, nor does it include impure elements or cause infertility. On the contrary, the experts added, it is proved by experiment to be highly effective in protecting against polio. Fifth, the polio vaccine has been used for a long time all over the world, including more than fifty Muslim countries, and has proved to be highly effective in eradicating the disease. No outstanding scholar, whether from Al-Azhar University (Egypt), Al-Qarawiyyīn University (Morocco), or in the Sacred Shrines (Saudi Arabia), has been reported to have objected to the use of such vaccine.

Insisting on their attitude regarding polio vaccine, the Muftis added, those scholars of Kano will commit two mistakes. First, they will incur upon themselves the sin of exposing children to great harm and suffering. Second, they distort the image of Islam and make it appear as if it contradicts science and medical progress. Islam is completely innocent of such distorted images. On the contrary, it calls for adopting healthy methods and seeking medical treatment when needed. Finally, a call is made to those scholars in Kano to review their attitude and recant the fatwa they have given without consulting specialists or even mediating sufficiently. Should the scholars of Kano refuse to follow the advice of their fellow scholars, then people of Kano are called to vaccinate their children against polio according to the fatwa of the majority of Muslim scholars in that regard.¹⁰⁷

6.1.2 Therapeutic Measures

Disability because of the loss of one of the limbs or parts of the body for one reason or another is theoretically still curable in two main ways; by replanting the amputated organ itself or transplanting a similar organ from another source, being a human being, an animal or an artificial material. Replanting amputated limbs such as the ear and the nose was a subject of discussion among Muslim jurists since the second/eight century.¹⁰⁸ However, organ transplantation is much more recent phenomenon and thus started to preoccupy the minds of jurists since the 1950s.¹⁰⁹ A third possible way which up to the moment remains theoretical is therapeutic cloning.

6.1.2.1 Replanting

Replanting, or according to the juristic terminology rejoining (*i'ādat waṣl*) an amputated limb is almost an ignored topic by modern researchers in the field of medical ethics in Islam. This may be related to the belief that replanting an

¹⁰⁷ For a full text of the fatwa in Arabic with a list of the names of the twelve scholars who signed it, see Qaraḍāwī, Yūsuf al- (2007). For an English translation, see Qaraḍāwī, Yūsuf al- (2006).

¹⁰⁸ Ashqar, 'Umar Sulaymān al- (1421/2001), vol. 1, p. 246.

¹⁰⁹ Rispler-Chaim, Vardit (1993), p. 28.

amputated limb to the same person would not raise any juristic problems among the jurists. However, this is not the case as we shall see below.

Historical reports indicate that simple forms of replanting specific parts of the body such as teeth and skin took place centuries ago.¹¹⁰ In modern time, with advances in microsurgical techniques, severe injuries and amputation of limbs do not necessarily have to lead to the loss of a limb. In hand surgery, reimplantation of totally or partially amputated fingers is well-established. Since the first successful reimplantations of hands in the early 1960s, reimplantation of entire limbs has become more common.¹¹¹

Relevant references to this issue in early juristic sources indicate that they were not discussing a hypothetical issue but rather a realistic matter they knew to exist in society. Such discussions indicate the feasibility of replanting three parts only, viz., ear, nose and the tooth.¹¹² A clear distinction is made by the jurists between what was amputated as a corporal punishment (*ḥadd*) or just retaliation (*qisās*) and what was amputated for other reasons such as accidents. As for the first type of amputated limbs or organs, a short note on corporal punishment and just retaliation is in order. As used in the Islamic legal sense, the word *ḥadd* (pl. *ḥudūd*), means a punishment which has been prescribed in the revealed text of the Qurʾān or the Sunna, the application of which is “the right of God” (*ḥaqq Allāh*). In the Islamic penal system, two main offences are to be punished by amputating specific limbs of the body. In case of theft, it is the hand and in case of high or armed robbery (*ḥirāba* or *qaṭʿ al-ṭarīq*), it is cutting off the hand and foot on the opposite sides (the right hand and the left foot or vice versa).¹¹³ On the other hand, just retaliation (*qisās*) is divided into two categories, *qisās* for homicide (*fī al-nafs*) and *qisās* for wounds or injuries (*fīmā dūna al-nafs*). The second category would imply the right of the victim to choose between retaliating equally the offender who cut the victim’s limb or accepting ransom-money (*diyā*) when three main conditions are fulfilled, 1) the injury must be deliberate and not accidental, 2) the part of the body on which *qisās* may be inflicted must be the same, and in the same condition as the part of the victim’s body and 3) *qisās* must be practicable to inflict. If any of these conditions cannot be met, *qisās* must be exempted as a possible punishment and the victim will be entitled to ransom or blood-money (*diyā*) only.¹¹⁴

Two main questions are to be raised in this regard. The first; would replanting the victim’s amputated organ, in case of just retaliation, be a sufficient legal ground to remit the amputation of the offender’s organ as a punishment? The second; is it permissible for the culprit to replant the amputated limb or organ in case this was done as a corporal punishment or just retaliation?

¹¹⁰ Ashqar, ʿUmar Sulaymān al- (1421/2001), pp. 247 & 248.

¹¹¹ Daigeler A., et al (2003), p. 554. For a general historical overview, see Tamai, S. (1982) pp. 549-56; Chen Z. & H. Yu (1987) pp. 15-23; Swanson, A.B. et al (1987), pp. 896-926.

¹¹² Ashqar, ʿUmar Sulaymān al- (1421/2001), p. 277.

¹¹³ For further details, see Awa, Mohamed S. el- (1982), pp. 1-12.

¹¹⁴ Ibid, pp. 73 & 74.

As for the first question, jurists advanced three different answers. The first group including the majority of the Shāfi'īs, the Mālikīs, and a number of the Ḥanbalī jurists stated that such a practice from the side of the victim does not remit the offender's punishment. Their main argument is that the main cause of the punishment is cutting off the organ of the victim and this took place at any rate. The second group, advocated by mainly a number of the Ḥanbalī jurists and recently by 'Umar Sulaymān al-Ashqar (lecturer of Islamic jurisprudence, Jordan University), opined that rejoining the victim's organ would remit the culprit's punishment, who, however, remains obliged to pay a ransom (*diyya*). The main argument here is that replanting the victim's amputated organ means that his/her state of amputation is of a temporary nature whereas the offender's amputation may remain forever and this is counter to justice. That is why they say that in case the rejoined or replanted organ of the victim would fall off again, the offender will remain entitled to just retaliation. The main proponent of the third group is the Mālikī jurist Ashhab b. 'Abd al-'Azīz (d. 204/819) contended that such practice from the side of the victim would remit his right for both just retaliation and ransom at the same time.¹¹⁵

In response to the second question, modern jurists are divided into three main groups. The first group answered in the affirmative and opined that the offender is permitted to replant the amputated organ because there is nothing in the Islamic Shari'a which indicates otherwise. The purpose of the legislator, they explain, is the amputation only, even if it is provisional, and not the continuation of this amputation. The second group says it is permissible in specific cases and prohibited in other cases. In case of a just retaliation, the culprit would be allowed to replant or rejoin the amputated organ only if the victim would allow this. In case of a corporal punishment proven by the offender's confession or proven by testimony which the offender declared his repentance (*tawba*), the offender will also be allowed to replant the amputated organ. The third group answered the aforementioned question in the negative and stated that such an offender is not allowed to replant the amputated organ in any case. The purpose of the legislator, they add, is the continuation of the amputation; otherwise other means of causing pain would have been chosen such as just injuring. This opinion is also supported by the resolution no. 136 of the Council of Supreme Scholars in the Kingdom of Saudi Arabia issued in 1407/1986 which handled the case of corporal punishment and the resolution no. 60/09/06 by the Council of the Fiqh Academy in Jeddah issued in 1990.¹¹⁶ For the advocates of this opinion, another question would rise; what if the offender managed to rejoin or replant the organ amputated as a corporal punishment or just retaliation? The majority of the early jurists including the Hanafīs, the Shāfi'īs and a group of the Ḥanbalīs, said that the offender cannot be forced to amputate it again because in this case the offender's organ will be amputated twice and this is a double punishment for one crime which is not in

¹¹⁵ *Majallat majma' al-fiqh al-islāmī* (1410/1990), vol. 6, issue 3, pp. 2182-2188; Ashqar, 'Umar Sulaymān al- (1421/2001), pp. 276-274.

¹¹⁶ Ashqar, 'Umar Sulaymān al- (1421/2001), pp. 277-279.

line with justice. This opinion is also advocated by a number of modern jurists such as ‘Umar Sulaymān al-Ashqar and the well-known Pakistani scholar Muḥammad Taqīyy al-‘Uthmānī (1943-).¹¹⁷

As for organs amputated for reasons other than corporal punishment or just retaliation, an introductory remark is indispensable in order to understand the opinions of early jurists in this regard. The starting point adopted by early jurists, with very few exceptions, was that an organ disconnected or separated from the body is regarded as part of a corpse (*mayyit*). Core question, which busied the minds of early jurists and upon which they adopted their standpoints towards replanting or rejoining the amputated organs, was whether the corpse of a human being is pure or impure? Hence, the main issue here is with relevance to purity (*tahāra*) and impurity (*najāsa*).

Three main opinions can be traced among the early jurists. The first is the unconditional permissibility of rejoining or replanting the organ cut off from a human body. This permissibility is based on the contention that this amputated organ is pure (*tāhīr*). This is the authoritative opinion within the Mālikīs, the Shāfi‘īs, the Ḥanbalīs and a number of the Ḥanafīs. The second opinion, attributed to al-Shāfi‘ī, Aḥmad b. Ḥanbal and a number of the Ḥanafī and Mālikī jurists, prohibits totally replanting the amputated organs. They base their contention on the argument that the amputated organ is dead and thus impure (*najīs*). They added that, in case such an organ is replanted, then the person considered is not allowed to pray with it. The third opinion, which is the authoritative contention among the Ḥanafīs, makes a distinction between the organs with blood therein such as hand, leg and nose and the organs with no blood therein such as teeth. They prohibited rejoining the first type of organs because of their impurity and permitted the second type because of their purity.¹¹⁸ For modern jurists, the purity/impurity controversy of amputated organs came to an end. Recent medical research proved that organs do not die immediately upon being amputated but continue living for a couple of hours thereafter, even after declaring a person dead, and that is why replanting or transplanting these organs becomes possible. Basing their contention on these medical findings, modern jurists opine that replanting such organs is permissible.¹¹⁹ It is noteworthy in this regard that a small number of early jurists already adopted the same standpoint, stating that the possibility of rejoining an amputated organ indicates that it is still alive and thus the purity/impurity issue has no relevance.¹²⁰ In its resolution no. 26 (I/4), the Council of the Fiqh Academy stipulated that the benefits accruing from this operation outweighs the harmful effects caused thereby and that its purpose is to replace a lost

¹¹⁷ *Majallat majma‘ al-fiqh al-islāmī* (1410/1990), vol. 6, issue 3, pp. 2188-2191 & 2216-2220; Ashqar, ‘Umar Sulaymān al- (1421/2001), pp. 297-299.

¹¹⁸ *Majallat majma‘ al-fiqh al-islāmī* (1410/1990), vol. 6, issue 3, pp. 2192-2197; Ashqar, ‘Umar Sulaymān al- (1421/2001), pp. 254-266.

¹¹⁹ Ashqar, ‘Umar Sulaymān al- (1421/2001), p. 265.

¹²⁰ Ibn Nujaym, *Zayn al-Dīn b. Ibrāhīm* (I), vol. I, p. 115; Ibn ‘Ābidīn, Muḥammad Amīn b. ‘Umar (1412/1992), vol. I, p. 207

organ, reshape it, restore its function, correct a defect or remove a malformation which is source of mental anguish or physical pain.¹²¹

6.1.2.2 Transplanting

Available Islamic literature does not provide us with any indication that organ transplantation took place during the lifetime of the Prophet. However, early juristic discussions have some implications used as starting points by modern jurists. Using a tooth of a dead person or of an animal in place of a broken tooth and joining fractured bones with the use of animals' bones serve as examples in this regard. Such opinions were used for instance by the late grand imam of al-Azhar, Shaykh Jād al-Haqq (1917-1996)¹²² in his fatwa no. 3372 on organ transplantation issued on 05/12/1979.¹²³ Besides these early references which escaped the attention of modern researchers,¹²⁴ modern jurists used deductive reasoning, drawing on general principles and ethical concepts applied in all fields of life.¹²⁵ With the exception of the well-known Egyptian scholar, shaykh Muḥammad Mutwallī al-Sha'rawī (1911-1988) who opted for a total prohibition and the fatwa issued in 1974 in Singapore by the highest Islamic authority of the Muslim minority which also prohibited the donation of kidneys which in 1987 was revised and declared the permissibility, a consensus among modern Muslim jurists is said to exist on the permissibility of organ transplanting from one human being to another. Moreover, some scholars spoke not only of permissibility but of a recommended act or form of charity which brings one closer to God.¹²⁶

However, this permission is not unconditional. For instance, modern jurists are unanimous on the condition that no compensation is allowed for the donated organs because the human body is viewed as a trust (*amāna*) from God rather than as one's own property. Thus no sale can legally take place if the property is not fully owned. According to some jurists, it is permitted to make a gift or contribution to the donors of the organ but some of them stipulated that the gift should not be equal to the value of the organ.¹²⁷

Quoting from Islam Ghanem (PhD in Law, London), Vardit Rispler-Chaim (Haifa University) says, "Ibn Qudāma in the 14th century allowed the sale of an organ of a living person."¹²⁸ First of all Ibn Qudāma (541/1147-620/1223) lived in the 12th and 13th rather than the 14th century.¹²⁹ Checking the

¹²¹ Ibn al-Khodja, Mohamed Habib (ed.) (2000), p. 53.

¹²² On him, see Jād al-Haqq, 'Alī Jād al-Haqq (2005), vol. 1, pp. 5 & 6.

¹²³ Ibid, pp. 242-257; Jād al-Haqq, 'Alī Jād al-Haqq (1) (1979).

¹²⁴ See for instance, Kyriakides-Yeldham, Anthony (2005), p. 221; Rispler-Chaim, Vardit (1993), p. 28.

¹²⁵ For an elaboration of these ethical concepts, see Rispler-Chaim, Vardit (1993), p. 28.

¹²⁶ Kyriakides-Yeldham, Anthony (2005) pp. 220 & 221; Wiegers, Gerard (2002), p. 218; Qaradāwī, Yūsuf al- (1415/1994), vol. 2, p. 530-533; Rispler-Chaim, Vardit (1993), pp. 28, 37 & 38.

¹²⁷ Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 534 & 535; Rispler-Chaim, Vardit (1993), pp. 38 & 39; Ibn al-Khodja, Mohamed Habib (ed.) (2000), p. 54.

¹²⁸ Rispler-Chaim, Vardit (1993), p. 39, quoting from Ghanem, Islam (1982), p. 276.

¹²⁹ See Makdisi, George (2003), "Ibn Qudāma al-Makdisi", vol. III, pp. 842 & 843.

encyclopedic *Al-Mughnī* of this Ḥanbalī jurist, I found that the context does not suggest what the two authors concluded. The context is a discussion on selling the mothers' milk which some jurists prohibited like selling the sweat of a human being while others opined that it was just reprehensible and a third group said it is permissible. Ibn Qudāma advocated the third opinion and said that “all parts of the human being can be sold because male and female slaves can be sold. The free person cannot be sold because he is not owned and the sale of the amputated organ is prohibited because it has no benefit.”¹³⁰ By “all parts of the human being”, it is clear that Ibn Qudāma does not mean an organ such as selling an eye, a hand or a kidney because this was not even feasible at that time. This is proven by his statement, “and the sale of the amputated organ is prohibited because *it has no benefit.*” Ibn Qudāma is just speaking about separable parts such as milk and sweat in order to defend his opinion.

Another condition is that the living person who decides to donate an organ must do so out of free will without being morally or socially forced and also without economic pressures.¹³¹ As for minors and the mentally disabled, some jurists opined that potential donations done by them are legitimate provided proxy consent of their guardians has been attained.¹³² Other jurists prohibited such donations even with the guardian's consent because he/she is not allowed to donate their money let alone parts of their bodies.¹³³ Additionally, it should be certain that the donation will not cause any harm to the donor or to those who are entitled to legal rights upon him/her such as a husband, wife, children and creditors.¹³⁴ Thus it is not allowed to a living person to donate organs of which a person has only one such as the heart or liver. The same holds true for external parts of the body such as the eye, the hand and the leg or the internal parts of which a person has two such as kidneys when one of them is sick or idle.¹³⁵ Some jurists expressed their reservations also concerning transplanting the testicles because it is a carrier of many genetic traits and could lead to the mixing of lineages.¹³⁶

As for the donation from a dead person, jurists legitimated it in case the dead person indicated this in his/her will, or relatives authorized it postmortem. If the deceased indicated in the will that he/she does not allow donating his organs, then no one is authorized to do this on his/her behalf.¹³⁷ If the deceased has no relatives or they are unknown, then the state is entitled to remove an organ for transplant and some jurists opined in favor of the possibility of enacting a code of law permitting the state to do so but only in

¹³⁰ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 4, p. 177.

¹³¹ Rispler-Chaim, Vardit (1993), p. 35.

¹³² Ibid, p. 36, quoting from Siddiqi, M. Zakaria (1987), p. 152.

¹³³ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 533.

¹³⁴ Ibid; Rispler-Chaim, Vardit (1993), p. 35; Ibn al-Khodja, Mohamed Habib (ed.) (2000), p. 53.

¹³⁵ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 533.

¹³⁶ Ibid, pp. 539 & 540.

¹³⁷ Kyriakides-Yeldham, Anthony (2005), p. 222; Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, pp. 535-537.

cases of necessity.¹³⁸ However, scholars do not give precise definition for necessity in this case, fact which gives the state more space to decide on an individual basis.

The religion of the donor and the beneficiary also played a role in the modern discussions. Some jurists state that although it is possible to receive a donation from non-Muslims, it is not allowed to donate to them.¹³⁹ The majority of jurists made no distinction between a Muslim and a non-Muslim in this regard and permitted reciprocal benefit between the two as long as the aforementioned conditions are met, as the Muslim donator will be rewarded anyhow for his good deed.¹⁴⁰

As for transplanting animal organs to human bodies, jurists made a difference between pure (*tāhīr*) animals whose flesh can be eaten and impure (*najīs*) animals whose flesh cannot be eaten. Organs of the first type can be transplanted because they are pure. Organs of the second type such as dogs and pigs were prohibited by some jurists because of their impurity. Yūsuf al-Qaradāwī permitted transplanting organs from impure animals such as pigs in case of necessity and when trustworthy Muslim physicians affirm its beneficence. He argues that what is forbidden is eating its flesh while transplanting has nothing to do with eating. As for its impurity, he adds, what counts is touching impure materials with the external parts of the body and not having such material inside the body. Every Muslim would pray, read the Qurʾān and circumambulate the Kaʿba while having many impurities inside his body such as blood, urine and excrement.¹⁴¹

Transplanting artificial limbs in place of the amputated organs did not face opposition from jurists. The only condition I came across was from Khālid Rashīd al-Jamīlī (lecturer of comparative Islamic jurisprudence, Baghdad University) viz., is that they should be made of pure material. Impure material would be permitted in case of necessity and when no other alternative is possible.¹⁴² Although men in Islam are not allowed to make use of gold as ornaments, it is allowed for them to use artificial limbs made of gold in case there is no other alternative. This is based on the case of the Companion, ʿArfaja b. Asʿad, who lost his nose in a military expedition. First he made use of a silver nose but because of oxidation being rotten, the Prophet allowed him to use a golden one.¹⁴³

¹³⁸ Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 537; Rispler-Chaim, Vardit (1993), p. 36.

¹³⁹ Rispler-Chaim, Vardit (1993), pp. 36 & 37.

¹⁴⁰ Qaradāwī, Yūsuf al- (1424/2003), vol. 3, pp. 666 & 667; Wieggers, Gerard (2002), pp. 220 & 221; Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 534 & 538.

¹⁴¹ Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 538 & 539.

¹⁴² Jamīlī, Khālid Rashīd al- (1410/1990), pp. 1985-1987.

¹⁴³ Ibn Ḥibbān (1414/1993), vol. 12, p. 276; Abū Dawūd, (1), vol. 2, p. 92; Ābādī, Abū al-Ṭayyib Muḥammad Shams al-Ḥaqq (1415/1994), vol. 11, pp. 197 & 198; Quḍāt, Muṣṭafa al- (1412/1992), p. 70.

6.1.2.3 Cloning

Cloning is simply defined as production of a cell or organism with the same nuclear genome as another cell or organism.¹⁴⁴ It is of two main types, namely reproductive cloning by which cloned babies are to be produced and therapeutic cloning which is used for treating diseases experienced.¹⁴⁵ The second type can be of relevance to treating, at least theoretically, people who lost organs like a hand, leg, ear, eye and the like. Till the end of the twentieth century and to my knowledge this is the case till the present time, only one human organ, namely, the skin can be grown in a laboratory to provide self-compatible skin grafts.¹⁴⁶ In his fatwa on cloning in general, Yūsuf al-Qarḍāwī tried to hypothesize this issue and stated that if such therapeutic cloning would be realized by cloning a human being or even fetus so that his organs will be used as “spare parts” for others, then it is absolutely forbidden. However, if therapeutic cloning managed to clone specific organs such as heart, liver, kidney and the like, then it is welcomed and God will reward it because it benefits people without causing any harm.¹⁴⁷

6.2 Spiritual Medicine

The main sources which theorized and elaborated this type of medicine belong to the genre of Prophetic medicine (*al-ṭibb al-nabawī*) which arose by the fourth/tenth century and started to attract particular attention in the seventh/thirteenth century. Authors of this genre were religious scholars, most of whom are Sunnī Muslims but there were also Shīʿī writers in this genre which got the title *ṭibb al-aʿimma* as indicated above.¹⁴⁸ Almost all information mentioned in these sources is also to be found in the juristic sources but dispersed in different chapters and under many headings.

Al-ṭibb al-rūḥānī (spiritual medicine) had two basic meanings. The first, sometimes also called “medicine of the heart”, was mainly interested in managing, maintaining and healing one’s spirit, soul and heart. To Muslim scholars, this type of medicine has been entrusted to the Messengers of God and there is no means of obtaining it except through their teachings.¹⁴⁹ Ibn al-Qayyim, expressing the high value attached to this medicine, says “The connection between the medicine of the Messengers and that of physicians is as tenuous as its connection with the medicine of the village healers.”¹⁵⁰ Main

¹⁴⁴ Australian Academy of Science (1999), p. 4.

¹⁴⁵ Kyriakides-Yeldham, Anthony (2005), p. 218.

¹⁴⁶ Australian Academy of Science (1999), p. 4. for one of the latest articles on the new developments in the field of cloning, see LuI, Shi-Jiang et al (2007), pp. 1-9.

¹⁴⁷ Qarḍāwī, Yūsuf al- (1424/2003), vol. 3, pp. 528 & 529.

¹⁴⁸ Savage-Smith, Emilie (1996), p. 927 & 928. For more information on this genre, see Rahman, Fazlur (1989), pp. 41-58; Dols, Michael W. (1992), pp. 243-260; Savage-Smith, Emilie (1996), pp. 927-930; Ibn al-Qayyim (I) (1998), pp. xiii-xv; Savage-Smith, Emilie et al (2003), vol. X, pp. 453 & 459.

¹⁴⁹ Ibn al-Qayyim (I) (1998), p. 5.

¹⁵⁰ Ibn al-Qayyim (I) (1998), p. 8. The translator adds an explanatory note, “Medicine of

theories developed in this science, which are meant to give a helping hand to the servant of God to come closer with his heart and soul to the Creator, were developed in the Sufi literature and thus fall beyond the scope of this chapter.¹⁵¹

The second meaning of *al-tibb al-rūḥānī* is that science of which the main interest is the physical and mental diseases which attack one's body, similar to the physical medicine, but using spiritual rather than physical means to combat and cure these diseases. Among these spiritual means, one can think of using Qur'anic verses, chanting different prayers and religious formulae and doing good deeds such as giving charity.¹⁵² *Al-tibb al-rūḥānī* in this sense is the main focus of the discussions to follow.

Standpoints adopted by Muslim jurists towards spiritual medicine underwent considerable changes from the early jurists up till the era of the modern jurists.

It is clear from early juristic discussions that opponents of spiritual medicine existed. However, they were always seen as a minority¹⁵³ which can be divided into two groups. The first group, including a number of the Sufis such as Rābi' al-Adawiyya (d. 185/801), the Successor Sa'id b. Jubayr (d. 95/714), the two Shāfi'i jurists al-Ḥalīmī and al-Khaṭṭābī, disfavours medication in general, whether physical or spiritual, because it contradicts trust in God (*tawakku*).¹⁵⁴ The second group casts doubts on the effectiveness of this type of medicine. Juristic sources do not give clear names in this regard. They were just described sometimes as heretics¹⁵⁵ or "the most ignorant, the most veiled one whose soul is so dense that he becomes the furthest from God."¹⁵⁶

The greater majority of early jurists was ardent advocate of this type of medicine and always inclined to attach a higher value to spiritual medicine than to physical medicine. The classical statement quoted by early jurists in this regard is that of the unidentifiable Ibn al-Tīn,¹⁵⁷ "Using al-Muw'awwidhāt (the last three Qur'anic chapters 112-114) and other [religious formulae] such as the

itinerants: practitioners who were not part of the local community but wandered from place to place and whose knowledge of medicine could not be guaranteed as reliable. Old women: *'ajā'iz* (sing. *'ajūz*), the traditional village healers."; Ridā, Rashīd (1315/1898-1354/1935), vol. 1, issue 46, p. 882.

¹⁵¹ For instance, Ibn al-Jawzī's *Al-Tibb al-rūḥānī* falls in this category. See Ibn al-Jawzī (1348/1929). For a medical perspective, see Rāzī, Muḥammad b. Zakariyya al- (1950).

¹⁵² Ibn al-Qayyim (1) (1998), p.109; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1413/1993), vol. 8, p. 246; Qaradāwī, Yūsuf al- (1423/2002), p. 165; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹⁵³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, pp. 27 & 28.

¹⁵⁴ Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1413/1993), vol. 8, p. 232; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 27 & vol. 23, p. 96.

¹⁵⁵ Qaṣṭalanī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 144.

¹⁵⁶ Ibn al-Qayyim (1) (1998), p. 9.

¹⁵⁷ Among the very little available information about this figure is that he is a well-known Moroccan traditionist who wrote a commentary on the ḥadīth-collection of al-Bukhārī and was affiliated to the Mālikī School of Law. He has been extensively quoted by Ibn Ḥajar in his commentary on the ḥadīth-collection of al-Bukhārī. See <http://www.islamweb.net/ver2/Fatwa/ShowFatwa.php?lang=a&Id=81056&Option=FatwaId>

Names of God, the Sublime is spiritual medicine. If they are chanted by the tongues of the pious, recovery will take place by God's permission. However, because of the scarcity of [qualified specialists in] this type, people rush into the physical medicine."¹⁵⁸ This standpoint is shared by the majority of the early jurists¹⁵⁹ including the aforementioned Ibn al-Tīn, Ibn Taymiyya,¹⁶⁰ Ibn al-Qayyim,¹⁶¹ Abū al-‘Abbās Qaṣṭalanī (d. 923/1517),¹⁶² al-Munāwī (d. 1031/1621)¹⁶³ and the Zaydī jurist al-Shawkānī (d.1760-1839).¹⁶⁴ Jurists mentioned two main conditions the fulfillment of which would guarantee the effectiveness of spiritual medicine. The first is related to the practitioner (*mu‘ālij*), namely piety and sincerity in religion. The second is related to the patient, namely his firm belief in the efficacy of such type of spiritual medicines. Experiencing an ineffective spiritual medication in some cases should be traced back to the absence of any of the aforementioned conditions.¹⁶⁵ The same tendency can also be traced in the Shī‘ī circles by attaching great value to the healing traits of Qur’anic verses and prayers.¹⁶⁶

This positive tone towards the spiritual medicine – sometimes even favoring it to the physical medicine lost, by lapse of time, the ardent advocacy among the majority of the modern Sunni jurists. In this respect, they can be divided into three main tendencies.

The first tendency just maintained the standpoint adopted by the majority of the early jurists without any considerable amendments or changes. Among the main advocates of this trend are ‘Umar Sulaymān al-Ashqar¹⁶⁷ and the Permanent Committee for Scientific Research and Issuing Fatwas in Saudi Arabia which issued a fatwa that the Qur’ān can be used as a medicine for physical diseases such as cancer.¹⁶⁸ The late Moroccan scholar, ‘Abdullāh b. al-Ṣiddīq al-Ghumārī (1328/1910-1413/1993) was also an ardent advocate of using Qur’ān as a spiritual medicine for physical diseases. He elaborated his arguments in a book entitled *Kamāl al-īmān fī al-tadāwī bi al-Qur’ān* (The Perfection of Belief in Using the Qur’ān as Medicine).¹⁶⁹ In this book, al-Siddīq

¹⁵⁸ Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1413/1993), vol. 8, p. 246; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Ṣiddīq, ‘Abd Allāh al- (1392/1972), p. 42; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹⁵⁹ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 28.

¹⁶⁰ Ibn Taymiyya (1408/1971), vol. 3, p. 7.

¹⁶¹ Ibn al-Qayyim (1) (1998), p. 109.

¹⁶² Qaṣṭalanī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 141. On him, see Brockelmann, Carl (2003), vol. IV, p. 736.

¹⁶³ Munāwī, ‘Abd al-Ra‘ūf al- (1356/1937), vol. 3, p. 515. On him, see Hamdan, A. Saleh (2003), vol. VII, p. 565.

¹⁶⁴ Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1413/1993), vol. 8, p. 233. On him, see Haykel, Bernard (2003).

¹⁶⁵ Qaṣṭalanī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 142; Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1413/1993), vol. 8, p. 233.

¹⁶⁶ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. xxx & xxxi.

¹⁶⁷ Ashqar, ‘Umar Sulaymān al- et al (1421/2001), vol. 1, pp. 14-17.

¹⁶⁸ Ibn Bāz ‘Abd Allāh (1416/1995); Ibn Bāz ‘Abd Allāh (1418/1997).

¹⁶⁹ Ṣiddīq, ‘Abd Allāh al- (1392/1972).

launched a severe attack against those “reformists” who, according to him, were actually heretics because of denying this fact about the Qur’ān. His main target in this regard was the late grand imam of Al-Azhar, Maḥmūd Shaltūt¹⁷⁰ who was one of the main representatives of the second group below.

The second tendency which stood at the opposite pole of the first group limited the effectiveness of the Qur’ān to the first meaning of spiritual medicine, i.e. purifying one’s soul and heart from sins and thus bringing them closer to the Right Path of God. The main advocates of this opinion were Rashīd Riḍā (1865-1935)¹⁷¹ and the late grand imam of al-Azhar Maḥmūd Shaltūt (1893-1963)¹⁷². Rashīd Riḍā gave two rational arguments to support this standpoint. The first is that frequent authentic experiments do not prove that the Qur’ān can be used as medicine for physical diseases. Had it been so, people and Muslims in particular would have abandoned making use of physical medicines and physicians. The second argument was that curing physical diseases was not counted by scholars as one of the miraculous elements of the Qur’ān.¹⁷³ Shaltūt stated that using the Qur’ān as a medicine for physical diseases represents a clear deviation from the proper way of glorifying it and falls under the category of heresies. He traced this phenomenon back to ignorance and disrespect for the norms of life set up by the Creator.¹⁷⁴ As for Prophetic traditions which indicated the medical use of the Qur’anic verses, supplications or religious formulae as incantations (*ruqā*) to treat physical diseases, Rashīd Riḍā had his own interpretation. He argues that *ruqya* is originally a tradition of pre-Islamic period (*Jāhiliyya*) which has been forbidden by the Prophet with few exceptions, namely, in the case of the evil eye, bites and sting of a snake and blood which will not be staunches. Besides limiting the scope of permissible incantations, Riḍā adds, the Prophet clarified that making use of incantation is inconsistent with trust in God (*tawakkul*) which is not the case with making use of physical medicine. That is because using incantation as medicine falls under the category of fictitious (*mawhūm*) means of medical treatment.¹⁷⁵ But if so, why did not the Prophet forbid incantation completely? Riḍā suggests that it could be out of being merciful with those weak people who used to get affected by such fictitious things and make benefit of it. Thus, incantation remains no more than a legal concession (*rukḥṣa*) to be used by people who believed in its effectiveness.¹⁷⁶

The third tendency is represented mainly by Yūsuf al-Qaraḍāwī and Muḥammad ‘Uthmān Shubīr (lecturer of Islamic jurisprudence in Jordan University) who tried to find a middle ground in this issue. On one hand, the validity of spiritual medicines such as the Qur’ān for treating physical diseases is

¹⁷⁰ Ibid, pp. 1 (note 1), 4 & 33.

¹⁷¹ On him, see Ende, W. (2003), vol. III, pp. 445-448.

¹⁷² On him, see Ende, W. (2003), vol. IX, pp. 260 & 261.

¹⁷³ Rashīd (1315/1898-1354/1935), vol. 7, issue 10, p. 390.

¹⁷⁴ Shaltūt, Maḥmūd (1408/1988), pp. 206-208.

¹⁷⁵ Rashīd (1315/1898-1354/1935), vol. 7, issue 10, p. 391.

¹⁷⁶ Ibid, pp. 391 & 392.

not denied. On the other hand, it is stressed that the main function of the Qurʾān is to be used for purely spiritual purposes rather than treating physical diseases. For physical diseases, besides the spiritual medicines, one should always consult the specialist physician as well.¹⁷⁷ Bashīr says that the two types of medicine should be used without over or under-estimating either of them.¹⁷⁸

6.2.1 Good Deeds & Charity

All sorts of spiritual medicines are covered by two main categories. The first category consists of performing supererogatory good deeds, exemplified by giving charity (*ṣadaqa*), with the intention of seeking medication. The second category is based upon using specific prayers and religious formulae.

As for the first category, I could trace no more than cursory references made by some jurists including the Shāfiʿī jurist al-Ḥalīmī¹⁷⁹ and the Mālikī jurist Ibn ʿAbd al-Barr.¹⁸⁰ The most elaborated exposition of this category is given by the Shāfiʿī jurist, al-Munāwī in his comment on four prophetic traditions mentioned by the other Shāfiʿī jurist al-Suyūṭī in his collection of ḥadīth entitled *Al-Jāmiʿ al-ṣaghīr*. The four traditions numerate four main benefits of giving charity, viz., curing diseases, blocking seventy doors of evil, warding off the bad death and eliminating afflictions or misfortunes (*ʿāhāt*, plural of *ʿāha*).¹⁸¹ Commenting on the first benefit, al-Munāwī states that giving charity falls under the category of spiritual medicine (*al-ṭibb al-rūḥānī*). By naming charity, al-Munāwī adds, the Prophet draws attention to other good deeds of a similar nature such as giving a helping hand to those in need or calamity. Ensuring the effectiveness of this spiritual medicine, al-Munāwī says that it has been experimented by people of success (*al-muwaffaqūn*, in reference to the pious believers) who found that spiritual medicine can do what physical medicine cannot. For instance, when a person fell sick, such people would slaughter a sheep and prepare a glamorous banquet for which they invite the needy people. In case the sick person is very dear, they would give the dearest part of their property, for instance a slave-girl, a slave-boy or a horse, as charity.¹⁸² It is also clear that disabilities are included among the diseases to be cured by this type of spiritual medicine. The fourth benefit of charity, namely, eliminating *ʿāhāt* (afflictions) alludes to this fact as well. One of the main terms used for people with disabilities in early Arabic literature is *dhawū al-ʿāhāt* (lit. people of afflictions).¹⁸³ Additionally al-Munāwī himself mentioned some

¹⁷⁷ Qaradāwī, Yūsuf al- (1) (1415/1994), p. 154; Qaradāwī, Yūsuf al- (1424/2003), vol. 3, pp. 57-60.

¹⁷⁸ Shubīr, Muḥammad ʿUthmān (1421/2001), vol. 2, pp. 460 & 461.

¹⁷⁹ Munāwī, ʿAbd al-Raʿūf al- (1356/1937), vol. 3, p. 515.

¹⁸⁰ Ibn ʿAbd al-Barr, Abū ʿAmr Yūsuf (1387/1967), vol. 23, pp. 174 & 175.

¹⁸¹ Munāwī, ʿAbd al-Raʿūf al- (1356/1937), vol. 3, p. 515, vol. 4, pp. 236 & 237.

¹⁸² Ibid, vol. 3, p. 515.

¹⁸³ See for instance, Ibn Qutayba Abū Muḥammad ʿAbd Allāh b. Muslim (1388/1969), pp. 578-589; Ibn Qutayba Abū Muḥammad ʿAbd Allāh b. Muslim (1406/1986), vol. 4, pp. 63-68; Ibn Rusta, Abū ʿAlī Aḥmad b. ʿUmar (1419/1998), pp. 189-192.

disabilities by name such as leprosy (*baras*) and elephantiasis (*judhām*).¹⁸⁴ It is worthy to mention in this regard that the authenticity of the aforementioned traditions have been a point of discussion among the scholars of ḥadīth and many of them opine that they are not authentic.¹⁸⁵

6.2.2 Prayers and Religious Formulae

All medicines which fall under this category are covered by the broad Arabic term *ta'wīdh* which means literally guaranteeing a refuge, protection or preservation. In the technical usage of jurists, it denotes those spiritual means by which protection against sickness, madness, the evil eye and the like can be guaranteed.¹⁸⁶ Under this term, three main spiritual medicines are the most frequently mentioned in Islamic jurisprudence, namely, *ruqya*, *tamīma* and *nushra*.

Ruqya (pl. *ruqā'*) denotes, in the linguistic and juristic sense, a charm or a spell uttered, or according to some opinions written, to protect against a misfortune such as fever, epilepsy and the like.¹⁸⁷ The most used English equivalent is incantation.¹⁸⁸ According to some jurists, *ruqya* applies also to the supplication (*du'ā'*) made for the sake of recovery.¹⁸⁹ *Tamīma* is linguistically an amulet hung upon the human being. It is also said that it signifies certain beads which the Arabs used to hang upon their children to repel, as they asserted, the evil eye.¹⁹⁰ Jurists define it as a paper in which verses from the Qur'ān or something else are written and hung upon the human being.¹⁹¹ *Nushra*, in the linguistic sense, is a charm or amulet by which a sick person and one possessed, or mad, is cured.¹⁹² According to the jurists, *Nushra* means writing something from the Names of God or the Qur'ān and then washing it by water so that the sick person would use this water as a drink or an ointment.¹⁹³ To sum up, the three methods are based on using the same material but in different means;

¹⁸⁴ Munāwī, 'Abd al-Ra'ūf al- (1356/1937), vol. 4, p. 236.

¹⁸⁵ See Rāzī, Ibn Abī Ḥātim al- (1405/1984), vol. 220 & 221; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), vol. 3, p. 382; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), vol. 3, pp. 29, 282 & 283; Ibn al-Jawzī (1403/ 1982), vol. 2, pp. 493 & 494; Haythamī, Abū al-Ḥasan 'Alī b. Abī Bakr al- (1407/1986), vol. 3, pp. 63, 64, 109-112; Mundhirī, Abū Muḥammad 'Abd al-'Azīm b. 'Abd al-Qawī al- (1417/1996), vol. 1, p. 301, vol. 2, pp. 7 & 11; 'Ajlūnī, Muḥammad b. Ismā'īl al- (1405/1984), vol. 1, pp. 329, 330, 432, 482, vol. 2, pp. 28 & 29.

¹⁸⁶ Lane E.W. (1968), part 5, p. 2192; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 121.

¹⁸⁷ Lane E.W. (1968), part 5, p. 1140; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 23, p. 96.

¹⁸⁸ Ibn al-Qayyim (1) (1998), p. 132ff; Suyūṭī, Jalāl al-Dīn al- (1999), pp. 53, 153 & 167 [This book is actually written by al-Dhahabī but here erroneously attributed to al-Suyūṭī, see Savage-Smith, Emilie et al (2003), vol. X, p. 459].

¹⁸⁹ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 22.

¹⁹⁰ Lane E.W. (1968), part 1, p. 316; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 14, p. 30.

¹⁹¹ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 14, p. 30.

¹⁹² Lane E.W. (1968), part part 8, p. 2795; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 23.

¹⁹³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 23.

ruqya mainly by uttering it, *tamīma* by writing it and hanging it to the neck and *nushra* by using the water by which the written material is washed.

The question to be raised now is the following: is it possible to use *ta'wīdh* as a medication for disabilities? A minority among the jurists restricts its permissibility to two cases, namely the evil eye and a sting of a snake. They base their opinion on the prophetic tradition, "There is no incantation except for the Eye or bites".¹⁹⁴ The majority opines, however, that the three main forms of *ta'wīdh* are to be used for every disease and thus disability in general would be included in this case.¹⁹⁵ A number of relevant references in this context refer to specific diseases such as skin-burn,¹⁹⁶ fever¹⁹⁷ eye diseases¹⁹⁸ and snakebite. Some disabilities are also mentioned by name such as epilepsy especially that caused by evil earthly spirits,¹⁹⁹ mental disabilities, being possessed and the like.²⁰⁰ As for the above-mentioned prophetic tradition, the majority of jurists responded that the Prophet did not intend thereby to deny the possibility of using incantation in other cases. It is just to convey that there is no incantation more fitting and beneficial than that for the evil eye and for curing the effect of bites.²⁰¹ As for the Shi'ī tradition, besides incantations believed to cure every sort of diseases,²⁰² some incantations are also meant to treat specific disabilities such as deafness,²⁰³ semi-paralysis and facial paralysis,²⁰⁴ mental disorders²⁰⁵ and insanity.²⁰⁶

Now we move to the juristic rulings. As noted above, the linguistic definition of *ta'wīdh*, in all its three forms, does not impose limitations on its content or the formulae used in this process. That is because the aforementioned forms of *ta'wīdh* originated in the pre-Islamic period (*Jāhiliyya*) leaving the drawing of the lines between lawful and unlawful practices to Islam.²⁰⁷ Basing their discussions on relevant Prophetic traditions, Muslim jurists tried to trace these lines.

First, the majority of jurists stipulated that the formulae used must be composed of the Qur'ān, or the Names or Attributes of God. Additionally,

¹⁹⁴ Ibn al-Qayyim (I) (1998), p. 132; 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 10, p. 196.

¹⁹⁵ See for instance, Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 23, p. 96 & 97.

¹⁹⁶ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 13, p. 24.

¹⁹⁷ Ibid, vol. 13, p. 21.

¹⁹⁸ Ibid, vol. 2 p. 13.

¹⁹⁹ Ibn al-Qayyim (I) (1998), pp. 46-50; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 23, p. 96.

²⁰⁰ 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 10, p. 196.

²⁰¹ Ibn al-Qayyim (I) (1998), p. 132; 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 10, p. 196.

²⁰² Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. 36, 37, 41 & 92.

²⁰³ Ibid, p. 14.

²⁰⁴ Ibid, pp. 112 & 113.

²⁰⁵ Ibid, p. 139.

²⁰⁶ Ibid, pp. 146 & 147.

²⁰⁷ For an overview of such unlawful practices, see Shubīr, Muḥammad 'Uthmān (1421/2001), vol. 2, pp. 470-475 and the standpoint of Islam, pp. 498-506.

they must be in Arabic or in other languages whose meaning was known. Some jurists restricted the permissible incantation to the last three chapters in the Qurʾān (*muʿawwidhāt*) alone. Other jurists widened the circle to include not only Words or Names of God but also everything else as long as it was understood. In this vein, the genre of *khawāṣṣ al-Qurʾān* (the prerogatives of the Qurʾān) came into existence. In this genre one finds discussions and analyses about the miraculously healing effects of certain Qurʾanic verses. This genre makes use of some prophetic traditions such as “The opening chapter of the Qurʾān is a cure for every disease” and other traditions giving practical cases in which the Prophet treated different diseases by reciting specific verses from the Qurʾān.²⁰⁸ For instance, the Qurʾanic chapter no. 36 (*Sūrat Yāsīn*) was used as a medicine for madness.²⁰⁹ Besides these prophetic traditions, such sources are mainly composed of stories of well-known pious figures experiencing Qurʾanic verses as spiritual medicines for different diseases.²¹⁰ This genre is still thriving up to the present time through a growing list of books elaborating the curative aspects of the Qurʾān.²¹¹ Some writers extended these healing practices to include formulae based on names of God, angels or prophets and prayers bearing celebrated names and poems.²¹² The most well-known poem in this regard is *Al-Burda* which was, for instance, divided by Ibn ʿAbd al-Salām al-Marrākushī, in his *Khawāṣṣ al-Burda fī burʾ al-dāʾ* (The Peculiarities of *al-Burda* concerning Healing the Disease) into several sections describing the beneficial effects residing in each.²¹³ Some verses would cure epilepsy whereas other verses were regarded as medicines for every sort of disease.²¹⁴

Second, jurists said that one should not believe that such sort of medicine cures the diseases by its own power. One should always believe that recovery takes place at any rate with God’s permission.²¹⁵ It is clear that these stipulations are made in a bid to draw a clear line between the lawful *taʿwīdh* and the magical charms with its eventual polytheistic elements prohibited by Islam.²¹⁶ The jurists cite in this context the following prophetic statement when asked about the use of incantations traced back to the pre-Islamic period,

²⁰⁸ Suyūṭī, Jalāl al-Dīn al- (1387/1967), vol. 4, pp. 137-143.

²⁰⁹ Ibid, vol. 4, p. 142. For other parts of Qurʾān used for the same medical purpose, see vol. 4, pp. 138 & 139.

²¹⁰ Zarkashī, Abū ʿAbd Allāh al- (1391/1971), vol. 1, p. 434-437; Suyūṭī, Jalāl al-Dīn al- (1387/1967), vol. 4, p. 137.

²¹¹ See for instance, Karam, Usāma al- (1990); Samāha, Riyāḍ Muḥammad (1996); ʿAbd Allāh, Muḥammad Maḥmūd (1996); Mināwī, Naṣīf ʿAwaḍ al- (2000).

²¹² Fahd, T. (2) (2003), vol. IV, p. 1134. For examples of this literature, see Ghazālī, Abū Hāmid al- (pseudo) (1970); Būnī, Abū al-ʿAbbās Aḥmad al- (1951), esp. p. 198 ff.

²¹³ Fahd, T. (2) (2003), vol. IV, p. 1134.

²¹⁴ Marrākushī, Ibn ʿAbd al-Salām al- (d. 660-1262), folios 8b & 12a; Fahd, T. (2) (2003), vol. IV, p. 1134.

²¹⁵ Shubīr, Muḥammad ʿUthmān (1421/2001), vol. 2, pp. 513 & 514.

²¹⁶ Shawkānī, Muḥammad b. ʿAlī b. Muḥammad al- (1413/1993), vol. 8, pp. 232, 233 & 245; Shubīr, Muḥammad ʿUthmān (1421/2001), vol. 2, pp. 501-503; Wizārat al-ʿAwqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 23 p. 97 & vol. 24, p. 13. For the Shīʿī tradition, see Ispahany, Batoool (trans.) & Andrew J. Newman (ed.) (1991), pp. 54-56.

“Show me your incantations. There is no harm in [using] incantations as long as they do not involve polytheism.”²¹⁷

In the light of the abovementioned discussion, two points are in order. The first is the erroneous categorization of *ruqya* as a magical practice as done for instance by the article “*Ruqyā*” in the *Encyclopaedia of Islam*. *Ruqya* is defined as a magical chant consisting in the pronunciation of magical formulae for procuring an enchantment. The writer adds, “It is one of the procedures of *siḥr* used by the Prophet himself and, because of this, permitted in exceptional cases, on condition that it brings benefit to the people and does not harm anyone.”²¹⁸ Besides mentioning the condition of being beneficial, the writer does not refer to any of the conditions set up by the majority of jurists to distinguish between the lawful *ruqya* and the unlawful *siḥr* (magic). This also holds true for the Shi‘ī scholars who conditioned that incantations should be based on Qur’anic verses only.²¹⁹

The second point is the inaccurate distinction, made for instance by the Dutch researcher Cor Hoffer (1955-),²²⁰ between Islamic therapies approved by “official Islam” and those already practiced within “popular Islam”. According to Hoffer, “official Islam” restricts permissible Islamic therapies to those made with the help of Qur’anic texts. However, Hoffer adds, these restrictions are frequently ignored in “popular Islam”.²²¹ Although the division itself of Islam into “official” and “popular” remains highly debatable, certainly it is not valid for the case the researcher is studying. The aforementioned discussions show that Muslim jurists, who are supposed to represent the “official Islam” according to Hoffer, are not a single block. Although some jurists restricted the scope of permissible incantations to specific chapters of the Qur’ān, the majority of them broadened this scope to include Names and Attributes of God as well. A third group allowed everything even if it is non-Arabic as long as it was understood, including poems such as *Al-Burda*. The other point raised by Hoffer is that according to the “official Islam” practitioners of Islamic healing were not allowed to ask money for their activities.²²² In the light of the detailed discussion on this point below, the reader will easily find that such sweeping statement is an inaccurate generalization.

6.2.3 Spiritual Medicine as a Profession

Early discussions took place among Muslim jurists about the possibility of earning money on the basis of curing people with *ta‘wīdh*. The majority of jurists stated that it is permissible to do so whereas a minority of them

²¹⁷ ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 10, p. 195; Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1413/1993), vol. 8, p. 245; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 23 p. 97.

²¹⁸ Fahd, T. (3) (2003), vol. VIII, pp. 600 & 601.

²¹⁹ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. 54-56.

²²⁰ On him, see <http://www.corhoffer.nl/>

²²¹ Hoffer, Cor (1992), pp. 40 & 41. The same ideas are again repeated in Hoffer, Cor (2000).

²²² Ibid, p. 41.

disfavored such practice and labeled it as *makrūh* (reprehensible).²²³ The majority based their contention on the following incidence which took place during the lifetime of the Prophet. “A group of the Companions of the Prophet – Peace and Blessings be upon him – set out on a journey and stopped at a certain tribe of the Bedouins. They asked for hospitality. But the Bedouins refused to receive them as guests. The chief of that tribe was stung and his people tried all kind of remedies but nothing was of any use. One of them said: ‘if you were to approach the group which asked hospitality, may be one of them would know of a remedy.’ So they went to them and asked ‘Travelers, our chief has been stung and we have tried everything but nothing is of use. Do you have anything for it?’ One of them replied: ‘Yes, by God, I can recite incantations. But we asked hospitality of you and you did not welcome us. I shall not recite a spell until you offer a reward.’ So they settled with them for a portion of their flock. Then the man at once spat upon the person who was stung and recite the chapter ‘Praise be to God, Lord of the Worlds ...’ It was as if the man had been unfettered and he began to walk about as if there was nothing with beforehand. The tribe paid the reward they had agreed with the group and one of these said: ‘Share it not.’ The one who had recited the spell said: ‘Do not do this until we go back to the Messenger of God – Peace and Blessings be upon him – and tell him what took place and we can see what he commands us.’ So they went to the Messenger of God – Peace and Blessings be upon him – and told him the whole story. He asked: ‘What led you to think that it was an incantation? You have done right; divide it up and give me a share with you.’²²⁴ However, it seems that this story does not represent a habit among the Companions of the Prophet who would earn their livelihood by providing incantations. No single Companion was known to have such practice as a profession. This was also the case in later generations who would incidentally provide their help by means of spiritual medicines but without practicing it as their profession and may be also without earning money at all from such practices.²²⁵ Emilie Savage-Smith tries to explain this phenomenon by saying, “The reason for this, of course, may well be that our written sources are for the most part skewed toward the Greek-based system and omit details of other practices.”²²⁶ However, the fact that none of the main authors in the Prophetic Medicine genre, a large part of which is devoted to spiritual medicine, was known to be a professional practitioner of spiritual medicine makes the aforementioned supposition unlikely.

A drastic change in this situation took place in the modern age. Professional practitioners of spiritual medicine started to be a well-known phenomenon among Muslims. Those professional practitioners were known as Qur’ān healers (*mu‘ālījūn bi al-Qur’ān*). They claim their ability to treat people suffering insanity, epilepsy and almost every physical disease by using the

²²³ *Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt* (1), vol. 13, p. 34 & vol. 23, p. 98.

²²⁴ Ibn al-Qayyim (1) (1998), p. 133.

²²⁵ Savage-Smith, Emilie et al (2003), vol. X, p. 453.

²²⁶ Savage-Smith, Emilie (1996), p. 929.

Qur'ān. This phenomenon attracted a wide attention of almost all forms of mass media.²²⁷ In response to these new changes, a number of modern jurists started to be more skeptic towards spiritual medicine and especially to involving the Qur'ān in this issue. In his fatwa, as an answer to many questions about the ruling of using Qur'anic verses as incantations, the late grand imam of al-Azhar, Maḥmūd Shaltūt (1893-1963) categorized this practice as one of the new false innovations (*bidaʿ*) which struck Muslims because of ignoring the main functions for which the Qur'ān has been revealed.²²⁸ In an answer to a question describing this phenomenon as something new which was never that famous during any of the epochs of Islamic history, Yūsuf al-Qaraḍāwī (1926-) extremely condemned this contemporary phenomenon of the “Qur'ān healers” who claim to be specialists in treating almost every physical disease by the Qur'ān and therefore have their own “Qur'ān clinics”. Available information, he adds, conveys no single Companion of the Prophet who claimed to be “Qur'ān physician”. This was even not the case with the Prophet of Islam although, al-Qaraḍāwī asserts, who is “the master of spiritual physicians”. On the contrary, the Prophet always encouraged people to make use of physical medicines.²²⁹ Such phenomenon, he adds, does not belong to the right Islam (*al-islām al-ṣaḥīḥ*) in any sense. “It is no more than a heresy which people innovated at this period of time.”²³⁰

²²⁷ For an overview of this phenomenon in Egypt, see Sengers, Gerda (2003), esp. 123-161.

²²⁸ Shaltūt, Maḥmūd (1408/1988), pp. 205-212.

²²⁹ Qaraḍāwī, Yūsuf al- (1424/2003), vol. 3, p. 59.

²³⁰ Ibid, vol. 3, p. 60.

Chapter Seven: Revenues of Financial Aid within the Family

The well-known Arabic terms *usra* or *‘ā’ila* used now to mean “family” are modern terms. No direct mention of these terms can be traced in early juristic texts. Other equivalent terms such as *āl*, *ahl* and *‘iyāl* convey the same concept.¹ Initially, it is decidedly important to point out the connotation of family institution in Islam. Islam does not prescribe any specific organizational family type. Traditionally, the Muslim family structure has been, and remains in our times, closer to the extended than to the nuclear type. A Muslim family primarily includes the self, the spouse and the immediate ascendants and descendants.² Members of the Muslim family may or may not occupy a common residential unit. Residential confines may be shared by all members included, or some or all of them may be living separately and independently. In all these cases, the family ties remain intact and the family obligations towards one another must be discharged by all the members.³ Thus there is mutual responsibility between the individual and his immediate family as indicated more than once in the Qur’ān (17:23 & 24, 31:14 & 15, 33:06). This mutual responsibility is the foundation that holds family together which is considered to be its basic building block. It is based on the firm inclinations of human nature and upon the sentiments of affection and love and the requirements of interest and necessity.⁴

7.1 Maintenance (*Nafaqa*)

Nafaqa, generally translated as maintenance, signifies in the juristic sense all those things essential to the support of life, such as food, clothes, lodging, toilet requisite and excludes luxuries like the hair-dye, Kohl, lipstick and similar articles of comfort. Being entitled to the right of maintenance is established by the reasons of relationship, marriage, and property (*milk*) by which a person becomes incumbent to maintain another.⁵ Maintenance in this form is obligatory (*wājib*) according to the Qur’ān, Sunna and the consensus of the jurists.⁶ Here discussion will be restricted to maintenance established by the reason of relationship or marriage.

In most cases of *nafaqa*, the maintained person has to be *mu‘sir* and he/she is to be maintained till he/she reaches *ḥadd al-kitāya*. Understanding these two juridical terms, frequently used in discussions on *nafaqa*, is a must in the beginning.

The exact juristic definition of the term *al-mu‘sir*, translated as the needy or someone who is financially dependent, is a point of disagreement among Muslim

¹ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 4, pp. 223 & 224.

² Mahmood, Tahir (1989), p. 33; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 4, p. 223.

³ Mahmood, Tahir (1989), p. 33.

⁴ Quṭb, Sayyid (1349/1974), p. 65.

⁵ Zaylā‘ī, ‘Uthmān b. ‘Alī al- (1), vol. 3, pp. 50 & 51; Qadrī, Anwar Ahmad (1963), p. 167.

⁶ Doi, ‘Abdur Rahmān I. (1404/1984), p. 204.

jurists. Some of the Ḥanafī jurists said that *al-mu‘sir* is a person who is permitted to receive the charity (*sadaqa*) and whose money did not reach the *niṣāb* (the prescribed amount) by which he would be required to pay *zakāh*. The other Ḥanafī jurists stated that the needy person is that who is pushed for money. Such a person may even own a house. He cannot be obliged to sell the house; his son must give him sufficient money.⁷ According to the Ḥanbalī School, the needy is that person who has no extra money after meeting his and his wife’s basic needs.⁸ The Jurists of the Zāhirī School see that a needy person is the one who has no money after meeting his basic needs, in its broad meaning, and clothing.⁹ Opinions within the Zaydī School state that a needy person is one who has no income and insufficient foodstuffs for ten nights after fulfilling his basic needs such as clothes, housing, furniture, and servant. Other Zaydī jurists who represent the authoritative opinion of the Zaydī School define *al-mu‘sir* as one who has no food for lunch or dinner. This is the stronger opinion in this School. However, it is stipulated that the needy be unable to earn money due to old age, persistent illness, and the like.¹⁰ A needy person, as defined by the jurists of the Imāmiyya School is someone who has no extra money to spend on any given day and night other than the amount sufficient for his and his wife’s food.¹¹ The Jurists of the Ibādiyya School say that a needy person is someone who is destitute and has no money. If he needs money but he owns a house, then he has to sell the house to buy food unless he/she is a father or a mother.¹² In the absence of clear-cut textual evidence supporting any of the aforementioned opinions, defining *al-mu‘sir* remains a point of *ijtihād* (personal reasoning) that took place in different contexts of time and place. Practicing this reasoning in modern time should also keep in view the context where every individual live.

Broadly speaking, the term *ḥadd al-kifāya* (sufficiency level) denotes reaching the level in which all basic needs have been met. Again defining this level precisely remains a point of disagreement among jurists. One group, including the Shāfi‘īs, favors a precise definition and state that it is two *mudd* every day for the wealthy husband, one *mudd* for the poor and one and half for the middle-class husband. The second group mainly represented by the Ḥanafīs and advocated by the majority of modern jurists opines that this level is to be decided by the judge on basis of the social and economic milieus where the couples live.¹³ Hence, the flexibility of the term should be considered when calculating the items of maintenance. In case of people with disabilities, special needs should be also taken into consideration. For instance, one would think of hearing aids for people

⁷ Majlis al-A‘lā li al-Shu‘ūn al-Islāmiyya, al- (1386-1411/1966-1990), vol. 18, part 16, p. 318; Khallāf, ‘Abd al-Wahhāb (1357/1938), p. 231.

⁸ Majlis al-A‘lā li al-Shu‘ūn al-Islāmiyya, al- (1386-1411/1966-1990), vol. 18, part 16, p. 322.

⁹ Ibid.

¹⁰ Ibid., p. 324.

¹¹ Ibid., p. 324. This is the opinion adopted by the Egyptian Legal Code of personal status, Khallāf, ‘Abd al-Wahhāb (1357/1938), p. 222.

¹² Al-Majlis al-A‘lā li al-Shu‘ūn al-Islāmiyya (1400 A.H.), p. 325.

¹³ Jazīrī, ‘Abd al-Rahmān al- (1420/1999), vol. 4, pp. 454-460; Sābiq, al-Sayyid (1417/1997), vol. 2, pp. 233-235.

with hearing disabilities. The same would also apply to the blind sticks or canes for people with blindness. By the same token, if one's disability makes him in need of a wife to look after him or to a servant to help him, maintenance of this wife or servant shall be incumbent on the one who is to provide maintenance.¹⁴

On the basis of their position within the family institution people with disabilities will be studied as a) parents and grandparents, b) children, c) wives and finally, d) relatives in general.

7.1.1 Parents with Disabilities

Broadly speaking, parents with disabilities enjoy all financial rights guaranteed by Islam to parents in general. Furthermore, special consideration is to be given to their helplessness and impotence caused by the disability. For instance, al-Shāfi'ī stated that the needy parent is entitled to maintenance only when he suffers *zamāna* (enduring disease or disability) or madness. Other jurists did not stipulate this condition.¹⁵

In Islamic Jurisprudence, the general rule, which governs entitlement to of financial rights, is that every adult male should maintain himself using his own money as long as he has the means to maintain himself. Concerning females, if they are single then their maintenance is incumbent on their fathers on their husbands if they are married.¹⁶ How to prove that the father is in need or suffers poverty? The Mālikīs state that maintenance of parents will not be obligatory on a son unless their condition of need is proved by the testimony of two just male witnesses. The testimony of a just male witness along with two female witnesses or the testimony of a just male witness along with an oath will not suffice.¹⁷ The Shāfi'īs state that the word of father will be accepted without an oath if he claims to be in need.¹⁸ The Ḥanafīs state that need is presumed unless there is proof to the contrary. Therefore if the person claiming maintenance pleads indigence, his word will be accepted on the oath and the person from whom maintenance is claimed is burdened to disprove the claim of the claimant. And if the person from whom maintenance is claimed pleads indigence, his word will be accepted on oath and the claimant will be burdened with proving the former's financial capacity. If the presence of financial capacity was established in the past and incapacity is subsequently claimed, the former state will be presumed to exist until the opposite is proved.¹⁹ The Ja'farīs concur with the Ḥanafī position on this issue, because it is in accordance with the principles of the Sharī'a, except where the person claiming

¹⁴ Abyānī, Muḥammad Zayd al- (1342/1924), p. 352; Ḥillī, 'Abd al-Karīm Riḍā al- (1366/1947), p. 106, quoted by Nasir, Jamal J. (1990), p. 197.

¹⁵ See Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 171; Ābādī, Abū al-Ṭayyib Muḥammad Shams al-Ḥaqq (1415/1994), vol.9, p. 323; Ibn 'Abd al-Barr, Abū 'Amr Yūsuf (1407/1986), vol. 1, p. 299.

¹⁶ Fityān, Farīd (1986), p. 219.

¹⁷ Dasūqī, Muḥammad b. 'Arafa al- (1), vol. 2, p. 523, quoted by Bakhtiar, Laleh (1996), p. 494.

¹⁸ Jazīrī, 'Abd al-Raḥān al- (1420/1999), vol. 4, p. 485.

¹⁹ Ibid.

indigence owns known assets. If he does, his plea will be rejected and the word of the person claiming his financial capacity will be accepted.²⁰

Jurists unanimously contend that the parent entitled to maintenance must be sustained from his children's property and, according to the majority of jurists, this applies also to the needy grandparent.²¹ According to the Mālikīs, the grandson does not have to maintain his needy paternal or maternal grandparents. On the other hand the Zāhirī School states that the rich child must maintain the needy of his parents, grandparents, children, and grandchildren equally and simultaneously without giving precedence to any of them.²²

In this particular regard both male and female children are equal in the sense that are they both required to maintain their needy parent as long as they [the children] have the means to do so.²³ According to the Shāfi'īs, if the parent has a lot of male and female children, then the contribution of the son has to be the double of that of the daughter.²⁴ According to the Mālikī²⁵ and Zāhirī Schools²⁶ and also implied in the Ḥanbalī School, there is no difference between the male and female children in this regard.²⁷ Jamila Hussain, Lecturer of law, University of Technology, Sydney, shares the same opinion saying that "Children, both sons and daughters, are under an obligation to contribute to the maintenance of their parents, the father, when he is unable to maintain himself, and the mother regardless of her ability to earn money for herself".²⁸

As to be deduced from the above-quoted tradition of the female Companion with her non-Muslim mother Asmā', religious uniformity is not a condition in Islamic law for the enforcement of rules of maintenance. Hence, jurists did not stipulate, in this regard, the uniformity of religion between the parent and the child. Hence, if a parent with disability was a non-Muslim and the child was Muslim, the child remains obliged to maintain him. That is because *nafaqa* here is to preserve one's life and this has nothing to do with the unity of religion.²⁹

²⁰ Bakhtiar, Laleh (1996), pp. 494 & 495.

²¹ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 172; Mahmood, Tahir (1989), p. 38

²² Abū Zahra, Muḥammad (ed.) (1963), pp. 319 & 322.

²³ See Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 5, p. 222; Dardīr, Aḥmad al- (1), vol.2, pp. 523 & 524.

²⁴ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, p. 485.

²⁵ Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. p. 209. See also, 'Abdarī, Abu 'Abd Allāh Muḥammad b. Yūsuf (1398/1977), vol. 4, p. 209.

²⁶ Ibn Ḥazm, Abū Muḥammad 'Alī (1347-1352/1928-1933), vol. 10, p. 100.

²⁷ Abū Zahra, Muḥammad (ed.) (1963), pp. 322&23; This is also the opinion of the Ḥanafī School and adopted by the Egyptian Legal Code of personal status, cf. Khallāf, 'Abd al-Wahhāb (1357/1938), p. 222.

²⁸ Hussain, Jamila (1999), p. 82.

²⁹ 'Abd al-Ḥakīm, Ibn Muḥammad (1332/1914), p. 344. Cf. Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 186; Dasūqī, Muḥammad b. 'Arafa al- (1), vol. 2, p. 522; Dardīr, Aḥmad al- (1), vol.2, p. 522; Mahmood, Tahir (1989), p. 38.

7.1.2 Children with Disabilities

Jurists are unanimous that a child who has no property of its own is entitled to receive maintenance, in the first instance from his father. This is based on the Qur'anic statement "The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms" (Qur'ān 2:233) and the tradition of the Prophet who told a woman complaining to him of the parsimony of her husband, "Take of his property what suffices for you and your child according to fair custom."³⁰ However this right is subject to three conditions. First, the child is in need, i.e., indigent and unable to earn a living.³¹ Second, the father has the means to provide maintenance from capital.³² Finally, the child should be born free (*hur*) not a slave. The Ḥanbalīs added that the father himself should be born free too. Otherwise, he is not under obligation to maintain his child.³³ Considering their relevance to the present time, focus will be on the first two conditions.

Inability to earn a living can be a matter of age, and physical or mental condition. According to the Sunni and Shī'ī schools, a boy with no property of his own shall lose his right to maintenance on reaching the age by which he can earn a living, even before puberty (*bulūgh*) but shall retain that right if he cannot work due to an illness or disability.³⁴ In this regard, the Mālikīs state that once the child attains the age of puberty (*bulūgh*) when he is sane and able bodied, then he is no longer entitled to be maintained by his father even if he got later inflicted with madness or disability. However, the Mālikīs add, if the child attained the age of *bulūgh* when he is mad or unable to earn his living by his won, then his maintenance is to continue as if he is still a minor child.³⁵

However, according to the Sunnis, the maintenance of a student shall continue after that stage provided that the course he pursues is religiously acceptable.³⁶ The son who has reached majority shall also be entitled to maintenance by his father if the son is incapable of earning a living because of a chronic disease, a mental or physical disability and has no private means.³⁷

As for the daughter who has no property, the condition of her being in need is fulfilled by the very fact of her sex, even though she may have the ability to earn her own living not to mention if she was already with disability. The duty to maintain her shall pass to her husband once she marries.³⁸ However if she later ceases to be maintained, for example on divorce or because of disobedience to her husband, her father shall be bound once more, to maintain

³⁰ Nasir, Jamal J. (1990), p. 193.

³¹ Ibid.

³² Ibid.

³³ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, pp. 478-481.

³⁴ Nasir, Jamal J. (1990), p. 194.

³⁵ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, p. 480.

³⁶ Nasir, Jamal J. (1990), p. 194.

³⁷ Abū Zahra, Muḥammad (1369/1950), p. 415.

³⁸ Abdullah, Omar (1968), p. 630; Ḥillī, 'Abd al-Karīm Riḍā al- (1366/1947), pp. 102 & 103.

her.³⁹ The Shāfi'īs state that maintenance of the children shall include purchasing medicine, doctor's fees and the servant even if the children needed such items due to chronic disease (*zamāna*) or illness.⁴⁰

Now we move to the one responsible for this type of maintenance, namely, the father. As previously stated, the father with sufficient means or capable of earning a living shall be solely liable for the maintenance of his needy children. The Ḥanafīs state that if the father is well-off and abstained from maintaining his children, he shall be ordered to do so, under the pain of imprisonment if he refuses. If he is impoverished but can earn a living, then he shall be ordered to work. The Mālikīs state that the indigent father should never be forced to work even if he has a craft (*ṣan'a*).⁴¹ However, if he cannot earn enough for himself and his children, or if no livelihood is available, the obligation of the children's maintenance shall pass to the person next to the father.⁴² Here Shī'ī and Sunnīs jurists are not in agreement on who is the next to the father.

The Shī'īs relegate this liability to father's father, failing him, to the latter's father and so on how-high-so ever, then to the children's mother, then to her father and mother and so on. All maintenance paid like this cannot be claimed back from the father when his financial conditions improve.⁴³

According to the Sunnīs, this obligation passes to the mother if she has means, otherwise to the father's father whose duty is to provide maintenance to his son, and likewise to his guardian. In both cases, the maintenance paid shall be a debt repayable by the father when he can afford it.⁴⁴

But if the father is incapable of earning a living due to a chronic illness, paralysis or disability, he shall be released from the obligation to maintain his children as if he were dead. The children's maintenance shall then be incumbent upon the nearest relatives without being repayable debt.⁴⁵ The Shī'īs rule that the order of maintaining relatives shall be the same as in the case of the impoverished father.⁴⁶

The Sunnīs set a different order for the obligation to maintain the children whose father is dead. Relatives are either ascendants, how-high-so ever, or collaterals. They also may or may not be presumptive heirs. There are three possible contingencies: (i) that all relatives are ascendants; (ii) that some are ascendants and others are collateral; (iii) that they are all collaterals.⁴⁷

(i) In the first contingency, four cases are possible; (a) that some are and some are not presumptive heirs but they are all equal in nearness. Here it is upon the presumptive heir that maintenance shall be incumbent, e.g., the father's father rather than the mother's father; (b) the same

³⁹ Abyānī, Muḥammad Zayd al- (1342/1924), p. 349.

⁴⁰ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, p. 481.

⁴¹ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, p. 484.

⁴² Nasir, Jamal J. (1990), p. 197.

⁴³ Ḥillī, 'Abd al-Karīm Riḍā al- (1366/1947), p. 103.

⁴⁴ Abyānī, Muḥammad Zayd al- (1342/1924), p. 344, quoted by Nasir, Jamal J. (1990), p. 197.

⁴⁵ Abyānī, Muḥammad Zayd al- (1342/1924), p. 344.

⁴⁶ Ḥillī, 'Abd al-Karīm Riḍā al- (1366/1947), p. 103.

⁴⁷ Nasir, Jamal J. (1990), p. 197.

case but not equal in nearness: here maintenance shall be incumbent upon the nearest regardless of the right to inheritance, e.g., upon the mother rather than her father and upon the mother's father, who does not inherit, rather than the father's father who does: (c) and (d) that they are all presumptive heirs but vary in the degree of nearness: here maintenance for the children shall be shared in the proportion to the presumptive inheritance share.⁴⁸

- (ii) In the second contingency, two cases are possible: (a) that some are presumptive heirs and other are not: here maintenance shall be incumbent upon the ascendants regardless of the right to inheritance, e.g., a father's father shall be liable for maintenance rather than a full brother; (b) that both ascendants and collateral relatives are presumptive heirs: here they shall be liable for the maintenance of the child according to their inheritance shares, e.g., mother shall be liable to one third and a full brother for two thirds.
- (iii) In the third contingency, all the collaterals shall contribute to the maintenance in the proportion of their inheritance shares.⁴⁹

7.1.3 Marriage of People with Disabilities

Prior to speaking about the *nafaqa* of a wife with disability, it is inevitable to sketch the broad lines of juristic discussions on the marriage of people with disabilities. Broadly speaking, *nikāḥ* and *zawāj* are the most well-known terms used in early and modern legal texts in chapters having these two titles with main focus on issues pertaining to marriage. References to people with disabilities in these chapters remain sporadic most of the time. These scattered marriage-rulings collected by five main studies, four in Arabic⁵⁰ and one in English,⁵¹ form the basis of discussions below.

Based on the Qur'anic references to marriage (4:1; 7:189; 30:21; 16:72), Muslim jurists tried to deduce the main objectives of marriage. Vardit Rispler-Chaim (Haifa University) tried to compose the long list of these objectives.⁵² Two main objectives are with direct relevance to people with disabilities namely, enjoying sexual relationship (*istimtāʿ*) and enjoyable companionship (*ʿishra ṭayyiba* or *sakan* according to the Qur'anic expression). Keeping in mind that these two elements are prohibited to take place between man and woman outside the marital relationship, they become high priorities in marriage. That is why jurists unanimously paid great attention to safeguarding these two objectives and agreed in principle that any defect in any of the spouses hindering their realization can be of legal effect to the validity of marriage contract. Despite this agreement on this general principle, jurists disagreed in

⁴⁸ Ibid, p. 198.

⁴⁹ Abyānī, Muḥammad Zayd al- (1342/1924), p. 345-347.

⁵⁰ Quḍāt, Muṣṭafa al- (1406/1985), pp. 180-183; Kīlānī, Sarī Zayd al- (1), pp. 251-292; Quḍāt, Muṣṭafa al- (1412/1992), pp. 148-151; ʿAbd Allāh, Laylā Muḥammad (1418/1997), pp. 153-168.

⁵¹ Rispler-Chaim, Vardit (2007), 47-65.

⁵² Ibid, p. 47.

applying it to specific cases. Two main criteria govern subsequent discussions on this point. The first criterion is the time of being afflicted with a disability or the time of discovering that the other partner has a disability, namely before or after marriage. The second criterion is the relevance of disabilities to one of the aforementioned two objectives, viz., sexual relationship or good companionship.

7.1.3.1 Rules Pertaining to the Situation before the Contracting of Marriage

Marriage of people who suffer *junūn* (insanity/madness) occupied the minds of both early and modern jurists.

A few Ḥanbalī and Mālikī jurists regarded a marriage contract with a mentally retarded person as valid and the consent of the guardian not to be required.⁵³ Other jurists agree that the contracting parties should be of sound mind. Thus, people who are mentally retarded can marry but only with the consent of the guardian. Here jurists distinguished between males and females and also between minors and adults. One of the most detailed presentations of this issue is given by the well-known Ḥanbalī jurist, Ibn Qudāma. According to him, an insane girl who was still virgin (*bikr*), jurists agreed that her guardian, whoever the guardian was, can marry her off. In case of the non-virgin (*thayyib*), the character of the guardian was decisive. If the guardian was the father, then he could marry her off according to Abū Ḥanīfa and al-Shāfi‘ī. Other jurists opined that he was not entitled to do so because the non-virgin could not get married without her consent and it is not possible to know this because of her insanity. If the guardian was the ruler, then he was not entitled to marry her off. Another opinion contended that it was permissible only in two cases, viz., if she showed off signs of sexual desires or if physicians (*ahl al-tibb*) stated that her sickness could be healed by marriage. The insane minor boy, on the other hand could get married with the consent of his father. Al-Shāfi‘ī said that the father was not permitted to do so as long as there were no signs of a need to do so because marriage implied financial costs.

Also according to Ibn Qudāma, marriage of people with a mental disability, the views of the Shāfi‘ī, Ḥanbalī and Ja‘farī Schools was not valid without the consent of the guardian. If the insane person was adult, the father was entitled to marry him off whether he showed sexual desires or not, according to the Shāfi‘īs and Ḥanbalīs. Others did not give the father this right whereas a third group said that he is entitled to marry his insane son as long as there was a need or want (*hājā*) to do so. Ibn Qudāma opined that restricting the notion of “need” to satisfying the sensual appetite does not do justice to the term. This term would imply one’s need to protection and sharing place to live with someone. He added that marriage itself can be a sort of medication.⁵⁴

The contemporary Moroccan scholar, Muṣṭafā b. Ḥamza said in this regard, “It is by no means impossible for people with mental disabilities to marry and

⁵³ Bakhtiar, Laleh (1996), p. 424.

⁵⁴ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 7, pp. 37 & 38.

establish their own families. Islamic *fiqh* states that the father, the guardian or the judge can decide marrying off the mentally sick if he fears that he/she (a person with mental disability) could commit fornication (*zinā*) and expects (i.e., the guardian) that marriage is in favor of that person. The bridal money (*mahr*) in such case is to be paid from the money of the father or the guardian who concludes the marital contract. If the person used to have recurring insanity, then he himself should conclude his marital contract while he is sane, otherwise his guardian shall marry him off.”⁵⁵

In a fatwa from Gaza (1998) Sheikh Muḥammad Dīb Qūsa was asked whether retarded people may marry at all. He concluded that they may, only if they demonstrate attraction to members of the opposite sex. He explained that sanity (*‘aql*) is not a prerequisite for marriage. In an Egyptian fatwa, the mufti distinguished between *‘atah* (mental deficiency) and *junūn* (insanity), claiming that *‘atah* is a “quiet” insanity and *junun* is a violent extrovert insanity. He permitted the marriage of a *ma‘tūh* (one who has *‘atah*) only as long as he or she can differentiate between good and evil, and if he has his guardian’s consent to marry. *‘Atah*, contrary to *junūn*, is believed to be less hazardous to the partner. In another fatwa dated June 24, 1981, the late grand Imam of al-Azhar Jād al-Ḥaqq declared an existing marriage null and void considering that the husband had been continuously insane since 1968 – namely prior to the marriage, which was concluded in 1978. This is also grounded in Egyptian law no. 462 of 1955, which stipulated, in the Ḥanafī spirit of the law, that if both partners are not sane when the contract is made the marriage is void.⁵⁶

As for physical defects affecting sexual ability, jurists discussed this case when speaking about people having no sexual appetite (*shahwā*) because of suffering congenital impotence (*‘unna*). Keeping in view that enjoying sexual relationship is one of the main objectives of marriage; some jurists opined that marriage of those people is reprehensible (*makrūh*). Others saw that such people can still marry because sexual relationship is not the sole objective of marriage.⁵⁷ As for other disabilities which have no effect in this respect such as blindness, lameness, dumbness and the like, early jurists agree that being afflicted with any of these disabilities does not disqualify a person to marry and according to some jurists they can also fulfill the role of a guardian (*walī*) in the concluding of a marriage.⁵⁸ But should the other partner be informed before marriage about the disability? They agreed that this should happen in case of elephantiasis (*judhām*), leprosy (*baraṣ*) and other defects affecting sexual capabilities, as to be detailed below, while disagreeing on the other disabilities.⁵⁹ The majority of jurists did not stipulate telling the other partner before marriage about disabilities like blindness, paralysis and amputated organs.⁶⁰ Other jurists

⁵⁵ Ibn Ḥamza, Muṣṭafā (1414/1993), p. 31.

⁵⁶ Rispler-Chaim, Vardit (2007), p. 52.

⁵⁷ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 7, p. 5.

⁵⁸ Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 367.

⁵⁹ Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyya bi al-Kuwayt (1), vol. 29, p. 68.

⁶⁰ Kīlānī, Sarī Zayd al- (1), pp. 278 & 279, note 2; Quḍāt, Muṣṭafā al- (1406/1985), pp. 180-182.

considered concealing such disabilities as an illicit deceit by which the other partner would be entitled to end up marriage and claim financial compensation for the harms he suffered.⁶¹

Despite the main trend in the modern time calling for promoting, safeguarding and protecting rights of people with disabilities, modern voices objecting to marriage of people with disabilities are still heard. In his commentary on the Qur'anic verse on polygamy (4:2), the well-known Qur'ān exegete, Jamāl al-Dīn al-Qāsimī (d. 1332/1914) quoted an article entitled "Islam and Improving Progeny (*Al-Islām wa iṣlāḥ al-nas*)" by an anonymous author described as a sociologist and Muslim philosopher. The author's suggested eugenics was based on two procedures which both were first devised by two contemporary Western philosophers, one from Germany and the other from England. The first procedure was preventing people with disabilities, chronic diseases and a serious criminal record to marry so that their offspring, which in most cases would suffer the same problems, would come to an end. The second procedure was allowing polygamy for genius (*nawābiḡh*) people so that their offspring would increase. Al-Qāsimī comments on the article by saying, "This is a marvelous inference!"⁶²

ʿUmar Riḍā Kaḥḥāla (d. 1905-1988)⁶³ follows almost the same tendency. Referring to "physicians", he concludes that whoever suffers from a contagious disease or chronic illness, and cannot recover from it, may not marry. He even suggests that proper legislation be enacted on this subject. Kaḥḥāla enumerates the following diseases as marriage bars: gonorrhea, syphilis, pulmonary tuberculosis, alcoholism, nervous diseases, defects in the reproductive organs, a too narrow vagina, physical deformations, heart, liver, kidney diseases and cancer. In his view, "every couple should be tested prior to getting married, and of course avoid marriage if one of them suffers from any of the above diseases. In Kaḥḥāla's view, the absence of such a document renders the marriage legally invalid.⁶⁴

On the other hand, other voices today speak for the right people with disabilities to establish a family: "It is not fair to determine that those who are not perfectly healthy should not marry, because many people who suffered a chronic disease or a birth defect have married, and their marriage have turned out to be as happy as can be imagined."⁶⁵ According to the Egyptian law no. 25/1920, the wife has the right to request dissolution if her husband has an incurable disability. But only physicians are authorized to determine whether a condition is curable or not.⁶⁶ Since no time limit is stipulated in the law for the

⁶¹ Kīlānī, Sarī Zayd al- (1), pp. 280-287; Quḍāt, Muṣṭafa al- (1406/1985), pp. 183; Laylā Muḥammad ʿAbd Allāh (1418/1997), pp. 167 & 168; Rispler-Chaim, Vardit (2007), p. 55.

⁶² Qāsimī, Jamāl al-Dīn al- (1424/2003), vol. 3, pp. 24-26.

⁶³ On him, see Rispler-Chaim, Vardit (2007), p. 143.

⁶⁴ Ibid, pp. 51 & 52, quoting from Kaḥḥāla, ʿUmar Riyāḍ (1977), p. 201-203.

⁶⁵ Kaḥḥāla, ʿUmar Riyāḍ (1977), p. 201, quoted by Rispler-Chaim, Vardit (1996), p. 101.

⁶⁶ ʿAbd al-Ḥamīd, Muḥammad Muḥyī al-Dīn (1966), pp. 314 & 315.

desired cure to occur, this law tends to protect the right of the disabled man who would want to continue the marriage-bond.⁶⁷

7.1.3.2 Rules Pertaining to the Situation after the Contracting of Marriage

The main question here is whether the affliction with a disability entitles the other partner to ask for dissolving the marriage?

An introductory note is in order first. We should know that there are different financial consequences if marriage ended through the husband's claim on the basis of the wife's disability or the opposite, that is, the wife's claim on the basis of the husband's disability. Financially, the first way is in favor of the husband whereas the other is in favor of the wife.⁶⁸ As for the wife, since divorce had become a reality she could not prevent, the best financial terms could have been achieved through a *talāq sharʿī* (repudiation according to the Shariʿa), in which the husband is required to pay the wife the postponed part of the dower provided this was stipulated in the marital contract, as well as maintenance of the waiting period of a divorce.⁶⁹ Prove that the disability existed before consummating marriage is the husband's responsibility and it is preferable that a doctor's opinion supports such proof. If the husband cannot furnish sufficient proof, the guardian has to swear that he did not know of the disability, hence he was not deceitful.⁷⁰ Others claim that if the husband is deemed trustworthy, his statement is accepted as true. Another view is that if the guardian is a distant relative of the wife such as a third cousin, his word will be valid; if not, the husband's statement will count as the truth.⁷¹

Now we move back to the main question. One of the requirements for the marriage contract to be binding is that the contracting parties should be 'free from defect'. 'Defect' here refers to these physical or mental flaws in one of the parties, which makes marital life unfruitful.⁷² If one of the parties finds in the other some defect, which makes it impossible to live with, then marriage is not binding and he or she has the right to dissolve it. This right is not absolute, as there are essential disagreements among the jurists.

As for defects affecting the first objective, viz., sexual relations, jurists did not come up with a unified list. The Ḥanafīs state that such defects are legally considered when they afflict the husband only. They named three defects, viz., *jabb* (amputation, extirpation or cutting off of the penis and/or testicles), *ʿunna* (impotence, too small or too large penis and therefore unable to penetrate, or lack of erection; the state of someone who does not desire women by reason of impotence) and *khisāʿ* (castration).⁷³ The majority of jurists did not make a

⁶⁷ Rispler-Chaim, Vardit (1996), p. 101.

⁶⁸ Ibid, p. 104.

⁶⁹ Ibid, pp. 92 & 93. For further details about the difference between dissolution and divorce, see Alami, Dawoud S. al- (1), pp. 138-140.

⁷⁰ Wansharīsī, Aḥmad b. Yaḥyā al- (1981-1983), vol. 3, p. 177 & 178; Mirdāwī, ʿAlī b. Sulaymān al- (1), vol. 8, p. 203.

⁷¹ Mirdāwī, ʿAlī b. Sulaymān al- (1), vol. 8, p. 203.

⁷² Alami, Dawoud S. al- (1), p. 74.

⁷³ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 29, p. 67. Translating the

difference between man and woman concerning the legal validity of these defects. However, they disagreed again on what these defects are. To the Mālikīs, they are in case of a man *jubb*, *khisā*, *ʿunna* and *iʿtirāḍ* (lack of erection) and in case of a woman *rataq* (the meatus of the vagina is sealed by a tissue which prevents a penetration), *qarn* (a protruding tissue or bone that blocks the vagina), *ʿafal* (scrotal hernia; a piece of flesh coming forth in her vulva similarly to a man's hernia), *ifdāʿ* (the uterine tract and the urine tract are intertwined) and *bakhr* (bad odor released from the vagina).⁷⁴ To the Shāfiʿīs, they are in case of a man *ʿunna* and *jubb* and in case of a woman *rataq* and *qarn*. To the Ḥanbalīs, they are in case of man *ʿunna* and *jubb* and in case of woman *rataq*, *qarn* and *ʿafal*.⁷⁵ Modern scholars state that it should be kept in view that most of the aforementioned defects are curable nowadays since modern surgery is capable of correcting them. Thus, a chance should be first given to the partner having the defect to try medical treatment.⁷⁶

Under the category of defects affecting the good companionship which are joint between man and woman, three main disabilities are mentioned, viz., *junūn* (madness/insanity), *judhām* (elephantiasis) and *baraṣ* (leprosy).⁷⁷ According to the Jaʿfarī and Zaydī schools, blindness is annexed to the defects legally considered to by jurists to bring a marriage to an end.⁷⁸

As for *junūn*, Michael Dols and lately Rispler-Chaim meticulously noted that this term should be carefully approached and studied in Islamic sources. Dols says that *majnūn* (mad/insane) was often a social decision more than a clinical one.⁷⁹ Tracing early jurists' discussions on this point shows clearly that the medical diagnosis did not play a central role in defining who is to be considered *majnūn*. Jurists were more concerned with searching for and studying rulings with pertinence to this group of people rather than defining their disease. This overwhelming social-cultural dimension of the term *majnūn* remains up to the present time.⁸⁰

The majority of jurists including the Mālikīs, Shāfiʿīs and Ḥanbalīs allow either spouse to request dissolution of marriage when the other suffers madness. The Mālikīs include under the term *junūn* epilepsy and *waswās* (melancholia, delirium, confusion of the intellect). It depends, however, on when the *junūn* first occurred. If it was before the contract, and the other spouse was not aware of it, each has the right to request *radd* (annulment of contract), whether the revelation of the disability came before or after consummation. If it is a periodic *junūn*, with intermissions of sanity, such as epilepsy (*ṣaraʿ*), then no grounds for *radd* can be furnished. It is worth noting

terms is based on Rispler-Chaim, Vardit (2007), p. 55.

⁷⁴ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 29, p. 68. Translating the terms is based on Rispler-Chaim, Vardit (2007), p. 53.

⁷⁵ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 29, p. 68.

⁷⁶ Rispler-Chaim, Vardit (2007), p. 54.

⁷⁷ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 29, pp. 67 & 68.

⁷⁸ Kilānī, Sarī Zayd al- (1), p. 282.

⁷⁹ Dols, Michael W. (1992), p. 4, quoted by Rispler-Chaim, Vardit (2007), p. 64.

⁸⁰ See Rispler-Chaim, Vardit (2007), pp. 64 & 65.

here that epilepsy in the medieval period was viewed as a sort of insanity, unlike today, when it is treated as a neurological disorder which can be largely controlled with medications.⁸¹

The question now is, are the aforementioned defects the only defects considered by jurists or are they just examples?

In their answer, jurists can be divided into two main groups. The first group, representing the majority of Ḥanafīs, Mālikīs, Shāfi‘īs and Ḥanbalīs, restricts the defects affecting the validity of marriage to the list mentioned above. Thus, disabilities such as blindness, one-eyedness, dumbness and the like do not count in this respect.⁸² For instance, Ibn Muflīḥ al-Ḥanbalī (816-844/1413-1440) comments on the aforementioned disabilities saying, “Based on what has been mentioned, it is known that dissolution of marriage cannot happen on the basis of other defects such as ‘*awar* (blindness in one eye), ‘*amā* (full blindness), the loss of one hand, etcetera.”⁸³ However, according to the Mālikīs, both spouses are considered to possess the right to stipulate in the marriage contract that the other party is free from defects like loss of one eye (‘*awar*), lameness, paralysis, gourmandism and the like. Other jurists, including the Ḥanafīs, said that none of them was entitled to stipulate this. If the husband (who stipulated such condition) found out any of these defects before consummation, then he had the choice to accept [the defect] with the duty to pay all the bridal money agreed upon or to cancel marriage and then without any financial obligations. On the other hand, if the husband found out such defect after consummation, then the wife was entitled to *mahr al-mithl* (the dowry paid to the equal) unless the bridal money agreed upon was less than the *mahr al-mithl*.⁸⁴

The other group is mainly represented by the two Ḥanbalī jurists Ibn Taymiyya and his disciple Ibn al-Qayyim. They stated that every defect affecting seriously the aforementioned two objectives of good companionship or sexual relationship, would have the same effect of the other defects previously enlisted by jurists. Thus defects such as amputated organs, dumbness, blindness and the like would represent, according to this group, a valid legal ground to bring marriage to an end.⁸⁵

More problematic are the defects, which are believed to have existed before marriage but were concealed from the other spouse and discovered only after consummation. This circumstance calls in question the credibility of the spouse with disability, in addition to the unpleasant discovery of his/her disability.

In principle, a health problem in one partner that existed before the signing of the contract but was not reported to the other is considered a deception with regard to the *shart al-salāma* (lit. the condition of soundness). The impact of

⁸¹ Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyya bi al-Kuwayt (1), vol. 16, p. 108; Rispler-Chaim, Vardit (2007), pp. 58.

⁸² Kīlānī, Sarī Zayd al- (1), p. 278.

⁸³ Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1400/1979), vol. 7, p. 109.

⁸⁴ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (3), vol. 5, pp. 97 & 98; Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyya bi al-Kuwayt (1), vol. 31, p. 40.

⁸⁵ Kīlānī, Sarī Zayd al- (1), pp. 280-287.

such a revelation on the fate of the marriage will depend on the type of health problem, and also on the stage when it was discovered: before or after the advanced payment of dower, or before or after consummation of marriage. Even when the disability does not dramatically affect the fate of the marriage it might reflect on the value of the *mahr*, and possibly lead to a call to apply *mahr al-mithl* instead. Once again we realize that the health situation is an important factor in the estimation of the *mahr*.⁸⁶

One solution to cases where the deception (*tadlis*) was on the part of the wife and discovered by the husband before consummation was “sending her back to her parents’ home”. The marital contract is voided and the husband may take back all the gifts and money provided by him until then. Disabilities not reported prior to marriage and for which a wife may be sent back are only leprosy, elephantiasis, insanity, and a non-penetrable vagina (*qarn* and *‘afaḥ*), which means that she will never be able to bear children. But she can be sent back only if consummation has not taken place. Once consummated, the marriage cannot be annulled. Only in Shi‘ī sources do blindness and lameness of the wife constitute grounds for the nullification of marriage, but also only if there has been no consummation. If there is, no further grounds for annulment (*radd*) exist, since consummation is legally viewed as an expression of satisfaction or acceptance of the bride as she is.⁸⁷

In all cases, if the husband still feels after consummation that he was tricked into the marriage he may sue the one who introduced the woman to him (her guardian) for the amount of the *mahr* he paid her. The guardian is usually a close relative of the wife, a father or a brother, and is expected to know if she is disabled or not, and therefore may be sued as indicated. If the guardian was a distant relative, such as a cousin, who claimed that he was not aware of her disability, there was no one to sue. If the woman and her guardian shared the deception they will bear the *damān* (compensation) on a fifty-fifty basis. As early as the 15th century the Mālikī jurist, al-Wansharīsī was asked about a case in which the husband charged the wife with being a leper, and her father claimed “she only had bright spots in her body” (*luma‘at fī jasadīha*). The husband probably intended to claim that the impairment existed prior to the contract, in order to prove that he was tricked into the marriage. The burden of proof lay on him. In the absence of such proof the wife’s guardian has to testify that the impairment was not there prior to marriage, and consequently *tafriq* (dissolution by court) would not be applicable. Only if the impairment was in her sexual organs and penetration was impossible the wife should be returned to her father (*radd*).⁸⁸

Such questions were also posed to modern scholars. In 1979, a man approached Shaykh Jād al-Ḥaqq, the late Grand Imam of Al-Azhar who was the chairman of Dār al-Iftā’ al-Miṣriyya at this time, asking him to terminate his

⁸⁶ Rispler-Chaim, Vardit (2007), p. 50.

⁸⁷ Ibid., p. 51.

⁸⁸ Ibid., pp. 54 & 55.

marriage with his epileptic wife.⁸⁹ The husband pointed out that the epilepsy was discovered by him only after consummation of marriage had taken place. The husband then suspected her guardian of having concealed relevant information about his future wife's health. Hence the husband wished to terminate marriage through dissolution (*faskh*), and demanded from the guardian the recovery of the dower paid, on the basis that the condition of physical integrity (*shart al-salāma*) in the contract was breached. Naturally, the husband wished to terminate the marriage on the best terms for himself, that is through *faskh*. The Muftī had therefore to determine the most just legal way of separating the couple.

In his response, Shaykh Jād al-Ḥaqq surveys the range of existing legal opinions on an illness or a disability discovered in one of the spouses after marriage:

- According to the Zāhirīs, neither spouse has legal grounds to claim dissolution of marriage (*faskh*) whether disability appeared before or after marriage.
- Certain disabilities constitute legal grounds for dissolution of marriage (*tafriq*), a procedure recognized by all four Sunni schools of law. The Ḥanafīs limit the application of *tafriq* to the case of disabilities found in the husband, while the Mālikīs, the Shāfi'īs, Ḥanbalīs, Zaydīs and Twelver Shi'īs allow the request for dissolution from either spouse. However, within each school, the scholars are divided as to the number and nature of the disabilities which, if they exist in a spouse, justify the request of dissolution by court.
- Any physical defect, in the husband or in the wife, is a legal ground for the other spouse's resort to dissolution. If, however, the husband finds after consummation a defect in the wife of which he was not informed prior to marriage, the husband may request the dower back from his wife's guardian. This view was supported by Ibn Qayyim and Ibn Qudāma and all the Ḥanbalīs and the Shāfi'īs "in old times" (*fī al-qadīm*). However, "recent generations" (*fī al-ḥadīth*) of the Ḥanafīs and the Shāfi'ī jurists do not permit any dissolution after consummation, arguing that with such an act the husband has availed himself of his right to sexual intercourse acquired by his payment of the dower. He may not claim the dower back thereafter.

Jād al-Ḥaqq concluded that the Egyptian law no. 28/1931 which is influenced by Ḥanafī law, does not acknowledge the right to request dissolution if the husband discovered a disability in his wife only after consummation. Apparently, he sided with the "recent generations" of the Ḥanafīs and Shāfi'īs. Hence, according to Shaykh Jād al-Ḥaqq, the husband who is unhappy to continue living with the epileptic wife, may terminate the marriage through *ṭalāq* for which he needs no judicial intervention, but must provide the wife

⁸⁹ For the Arabic text of the fatwa, see Jād al-Ḥaqq, 'Alī Jād al-Ḥaqq (2005), vol. 3, pp. 246 & 247. The fatwa has been quoted and partially translated by Rispler-chaim, Rispler-Chaim, Vardit (1996), pp. 90-106.

with the financial rights of a divorcee, that is the postponed portion of the dower and the waiting-period maintenance (*nafaqat al-‘idda*).

It is to be noted that epilepsy (*ṣara*) is not specifically mentioned in the list of defects, mentioned by the Hanafis for instance, that give the spouse the right of request for dissolution. The husband in the fatwa under discussion, therefore, has no legal grounds, according to the four Sunni legal schools, for requesting the court to separate him and his wife through dissolution of the marriage. However, epilepsy was a known illness to Muslims since the Middle Ages.⁹⁰ This suggests that at least culturally epilepsy could have been considered a sort of madness and under this heading admissible in the list of wife’s disabilities entitling the husband to request the dissolution of the marriage according to many jurists, as mentioned above. Jād al-Ḥaqq did not apply this possible analogy, thereby safeguarding the wife’s financial rights.

In a recent fatwa, the mufti was asked about a defect that both the woman and her guardian were not aware of. From whom should the misled husband request reimbursement of the dower? The answer provided was that if the guardian did not know, the woman was required to compensate. However, if she did not know either, then no one was at fault and there was no one to sue.⁹¹

7.1.3.3 Wives with Disabilities

A general overview of the wife’s right to maintenance will be sketched and then financial consequences of being afflicted with disabilities will be detailed. Initially speaking, there is consensus among all Muslims that marriage is one of the causes that make maintenance obligatory. The Holy Qur’ān has explicitly mentioned the wife’s maintenance in the following verse, “The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms.” (Qur’ān 2:233) There is also a tradition which says, “The right of a woman over her husband is that he feed her, and if she acts out of ignorance, to forgive her.”⁹²

The legal schools concur that the wife’s maintenance is obligatory if the requisite conditions, to be mentioned subsequently, are fulfilled and that the maintenance of the divorcee is obligatory during the waiting period of a revocable divorce.⁹³ The schools also concur that a woman observing the waiting period following her husband’s death is not entitled to maintenance, whether she is pregnant or not, except that the Shāfi‘ī and the Mālikī Schools state that if the husband dies, she is entitled to maintenance only to the extent of housing.⁹⁴

⁹⁰ Ibid, pp. 96 & 97.

⁹¹ Rispler-Chaim, Vardit (2007), p. 55.

⁹² See Bakhtiar, Laleh (1996), pp. 475 & 476.

⁹³ Ibid., p. 476.

⁹⁴ Ibid., p. 476.

The Shāfi'is said that if the husband separates from his wife while she is pregnant and then dies, her maintenance shall not cease.⁹⁵ The Ḥanafīs observe that if she is a revocable divorcee and the husband dies during the waiting period, her waiting period of divorce shall change into awaiting period of death, and her maintenance shall cease, except where she had been asked by the court to borrow her maintenance and she had actually done so. In this case, the maintenance shall not cease.⁹⁶

There is a consensus that a woman observing the waiting period as a result of 'intercourse by mistake' is not entitled to maintenance.⁹⁷ The schools differ regarding the maintenance of a divorcee during the waiting period of an irrevocable divorce. The Ḥanafīs observe that she is entitled to maintenance even if she has been divorced three times, whether she is pregnant or not, on condition that she does not leave the house provided by the divorce (husband) for her to spend the waiting period. According to the Ḥanafīs, the rules which apply to a woman in a waiting period following the dissolution of a valid contract are the same as those which apply to a divorcee in an irrevocable divorce.⁹⁸

According to the Mālikī School, if the divorcee is not pregnant, she shall not be entitled to any maintenance except residence, and if she is pregnant she is entitled to her full maintenance. It shall not subside even if she leaves the house provided for spending the waiting period, because the maintenance is intended for the child in the womb and not for the divorcee.⁹⁹ The Shāfi'ī, Ja'farī and Ḥanbalī Schools state that if she is not pregnant she is not entitled to maintenance, and if pregnant, she is entitled to it. But the Shāfi'is add that if she leaves the house of the waiting period without any necessity, her maintenance shall cease.¹⁰⁰ The Ja'farīs do not consider the dissolution of a valid contract similar to an irrevocable divorce. They observe that a divorcee undergoing the waiting period of a dissolved contract is not entitled to any maintenance whether she is pregnant or not.¹⁰¹

Would a working wife be entitled to maintenance? Jurists give more than one answer in this respect. The Ḥanafīs are explicit that a working woman who does not stay at home is not entitled to maintenance if the husband demands her to stay at home and she does not concede to his demand.¹⁰² This view is in concurrence with what the other schools hold regarding the impermissibility of

⁹⁵ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, p. 472.

⁹⁶ Bakhtiar, Laleh (1996), p. 476.

⁹⁷ Ibid.

⁹⁸ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, pp. 470 & 471.

⁹⁹ Ibid, vol. 4, pp. 471 & 472.

¹⁰⁰ The opinions expressed by the Shafi'is and the Hanbalis are based on Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, pp. 470-472. The opinion of the Ja'farī schools is quoted from Bakhtiar, Laleh (1996), p. 477.

¹⁰¹ Bakhtiar, Laleh (1996), p. 477.

¹⁰² Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 5, p. 192; Bakhtiar, Laleh (1996), p. 486.

her leaving her home without her husband's permission.¹⁰³ The Shāfi'is and the Ḥanbalīs further state that if she leaves home with his permission for meeting her own requirements, her maintenance ceases.¹⁰⁴

But another view would differentiate between a husband who knows at the time of marriage that she is employed and her employment prevents her staying at home, and a husband who is ignorant about her employment at the time of marriage. Therefore, if he knew and remained silent and did not include a condition that she leaves her job, he has no right in this case to ask her to quit her job. If he demands and she refuses to comply, her maintenance shall not cease. That is because he concluded the contract with the knowledge that she works.¹⁰⁵ But if the husband does not know that she works at the time of marriage, he can demand that she stops working, and if she does not comply, she shall not be entitled to maintenance.¹⁰⁶

But what is the criterion of determining the amount of *nafaqa* due for a wife? The schools concur that a wife's maintenance is obligatory in all its three forms; food, clothing and housing. They also concur that maintenance will be determined in accordance with the financial status of the two if both are of equal status.¹⁰⁷ But when one of them is well-off and the other indigent, the schools differ whether maintenance should be in accordance with the husband's financial status or whether the financial status of both should be considered and a median maintenance be fixed for her.

The Ḥanbalīs state that if the couple differs in financial status, a median course will be followed.¹⁰⁸ The Shāfi'ī School along with some Ḥanafī jurists hold that maintenance will be determined in accordance with the financial status of the husband; this is regarding food and clothing. But regarding housing, it should be according to her status, not his.¹⁰⁹ Imam Mālik and Imam Abū Ḥanīfa state that *nafaqa* is to be determined according to the status of the wife.¹¹⁰ However, if a judge determines a certain sum of money, or the spouses mutually settle in lieu of maintenance, it is valid to adjust it by increasing or decreasing it in accordance with changes in prices or changes in the financial conditions of the husband.¹¹¹

7.1.3.4 Financial Consequences of Disabilities

Two important issues are intimately related to the case of wife with disability. First, the issue of maintenance during sickness and secondly the issue of the expenses of medical treatment or surgery that could help this wife healing, or at least belittling the effects of, her disability. Concerning the first issue, the

¹⁰³ Bakhtiar, Laleh (1996), p. 486.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., p. 487.

¹⁰⁶ Ibid.

¹⁰⁷ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 156.

¹⁰⁸ Ibid.

¹⁰⁹ Jazīrī, 'Abd al-Raḥmān al- (1420/1999), vol. 4, pp. 461 & 462.

¹¹⁰ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 156.

¹¹¹ Ibid.

question will be “Does the husband have to pay maintenance to his sick wife?” concerning the second issue, the question is: “Will the husband be compelled to afford the medical and surgical expenses that his wife having disabilities could she need?”

In an answer to the first question, The Ḥanbalī scholar, Ibn Taymiyya (d.728/1328), pointed out that a sick wife is unquestionably entitled to full maintenance by the husband in the opinion of the four founders of the major schools of law.¹¹² However, this answer can be taken for granted. To trace the different justice opinions in this respect, a distinction should be made between the wife whose disability does not affect her ability to discharge her household and marital duties such as the sexual fulfillment and that wife whose disability could affect the fulfillment of such rights properly. Concerning the first case, disability would be considered as non-existent and thus the wife would remain entitled to maintenance according all schools of law as stated in the fatwa of Ibn Taymiyya.

With reference to the second case, the jurists have disagreed. Main examples in this respect are defects affecting the woman’s ability to do the marital duties properly such as *al-raṭāq* or *al-qarn* (both diseases afflicting the sex organ that prevent sexual intercourse. They are birth defects in which the uvula is blocked or the side of the uvula are joined together).¹¹³ Being afflicted with such disease, wife’s right of maintenance does not cease according to the majority of jurists including the Jaʿfarī, Ḥanbalī and Ḥanafī schools, and it does not cease also according to the Mālikīs if she is suffering a serious disease or if the husband himself is similarly ill according to all schools.¹¹⁴ This opinion is mainly based on using the juristic principle of *istiḥsān* or Preference (a moral and practical consideration that overrules the formalities of law). On the basis of this principle, it is the husband’s obligation to provide for her because she is still his mate, whose companionship he enjoys even though illness may impede her performance in certain aspects, e.g., the sexual fulfillment.¹¹⁵ A variant of this doctrine maintains that the *raison d’être* of the wife’s right to maintenance is marriage as such or the husband’s trusteeship (*qawwāmiyya*) over the wife. This right remains inalienable so long as she is his wife and he is the trustee. Her physical condition is inconsequential in this regard; it neither lightens his obligation nor negates her right.¹¹⁶

However, another group of jurists argue that formally, or analogously, a husband is not responsible for the maintenance of a sick wife because she is actually unable to meet her marital responsibilities. It has been objected that, being his wife, living in his household and giving him companionship would entitle her the right of maintenance even though she may be sick and incapable

¹¹² Ibn Taymiyya (1949), p. 454.

¹¹³ Nasafī, ‘Umar b. Muḥammad al- (1311/1893), vol. 46; Ibn Rushd (2000), vol. 2, p. 590.

¹¹⁴ Bakhtiar, Laleh (1996), p. 478.

¹¹⁵ See Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (2), vol. 4, p. 198.

¹¹⁶ ‘Abd al-‘Aṭī, Hammūda (1977), p. 152. For further details see, ‘Abd Allāh, ‘Umar (1956), p. 250; Kasānī, Abū Bakr Mas‘ūd b. Aḥmad al (1406/1986), vol. 4, pp. 15.

of playing her full role. The advocates of this opinion responded by saying that if the husband is thus responsible for her maintenance because of the marriage – a contract for which she has already received her bridal money (*mahr*) – then she would be acquiring two rights, viz., *mahr* (bridal money) and *nafaqa* (maintenance) for one and the same reason, i.e., being a wife, or she would be receiving “two compensations for one and the same loss.” This is according to the argument, unlawful and unjust.¹¹⁷

In this regard, it is to be noted that the denial of maintenance of a sick wife does not mean that she will be left to exposure or starvation. If she has any property she must maintain herself of her own assets. Otherwise, the responsibility will be discharged by the nearest consanguine male who can afford it. If not, it becomes a community or state responsibility. Allah the Almighty says, “Allah commands justice, the doing of good, and liberality to kith and kin, and he forbids all shameful deeds, and injustice and rebellion: he instructs you, that ye may receive admonition” (Qur’ān 16:90), and says, “And render to the kindred their due rights, as (also) to those in want, and to the wayfarer: but squander not (your wealth) in the manner of a spendthrift” (Qur’ān 17:26).

With reference to the second question raised above, the main point was if medical care is part of maintenance or apart from it. When we refer to the canonical sources, we find that the Qur’ān makes the wife’s food and clothing obligatory. The traditions say that it is for the husband to satiate her hunger and clothe her.¹¹⁸ Yet the application of this general principle to the case of a sick wife has stimulated curious arguments, difference of opinions and legal niceties.¹¹⁹ The majority of jurists agree that the husband is not legally responsible for the cost of medicine, the physician’s fees, etc.¹²⁰ Some jurists, however, maintain that if the husband is financially comfortable and the cost of medical care is modest, he is responsible for it. Others argue that even if he is not *legally* responsible for the cost, it is still his *religious* responsibility out of compassion, courtesy, or in conformity with the social norms.¹²¹ A minority among the Ḥanafī and Shī‘ī jurists consider medical care a means to save life and preserve health. Hence, it is as essential as food, shelter and clothing; it is therefore part of the husband’s responsibility.¹²² This is the standpoint adopted by the absolute majority of contemporary jurists, some of whom are impatient with these formalistic interpretations of the law which, on one hand, enjoin the husband to furnish his wife with maids – an obvious luxury – but, on the other,

¹¹⁷ ‘Abd Allāh, ‘Umar (1956), p. 250.

¹¹⁸ Bakhtiar, Laleh (1996), p. 484.

¹¹⁹ Ibid.

¹²⁰ See for example, Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 21, p. 105, Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 159; Dardīr, Aḥmad al- (1), vol.2, p. 509.

¹²¹ Jazīrī, ‘Abd al-Raḥmān al- (1420/1999), vol. 4, p. 456; ‘Abd al‘Atī, Hammūda (1977), p. 153.

¹²² Jazīrī, ‘Abd al-Raḥmān al- (1420/1999), vol. 4, p. 456; Bakhtiar, Laleh (1996), p. 484; ‘Abd al‘Atī, Hammūda (1977), p. 153.

exempt him from the responsibility for her medical care.¹²³ These formal interpretations, they add, contain no explicit authoritative evidence.¹²⁴ Other jurists, adopt a more lenient reaction by saying that that early jurists have given detailed instances of things to be provided for as *nafaqa* during the time they were writing about it. These are to be adjusted in the light of modern necessities to suit the circumstances of the countries and their living standard.¹²⁵

It is interesting to note that this position has been adopted by the courts of Syria and North Africa because it was considered to the spirit of the law even though it emanated from a partisan and traditionally adversary group.¹²⁶ In his definition of the wife's maintenance, Jamal J. Nasir, the former Minister of Justice of Jordan, says, "Maintenance is the lawful right of the wife under a valid marriage contract on certain conditions. It is the right of the wife to be provided at the husband's expense, and at a scale suitable to his means, with food, clothing, housing, toilet necessities, medicine, doctors' and surgeon's fees, baths and also the necessary servants where the wife is of social position which does not permit her to dispense with such services, or when she is sick." So he included medical expenses in the definition of the *nafaqa* and, then, stated that all modern Arab Codes on personal status more or less repeat this general Shari'a position with some slight modification.¹²⁷

7.1.4 Relatives with Disabilities

The main Qur'anic expression used to signify "relatives" is *dhawū* or *ulū al-qurbā* (2:83, 177; 4:8, 36; 5:106; 6:152; 7:41) [translated as kindred, kith and kin, kinsfolk, relatives]. Falling within this category would make the person entitled to a number of rights and duties as well. For instance, Islam enjoins that spending on poor relatives, by blood or marriage, is obligatory upon their well-off relatives because it is a part of *ṣilat al-raḥim* (upholding family ties), which literally means joining of uterus ties. This is proved by the following verse, "The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms" (Qur'ān 2:233). This means that the maintenance on relatives by birth is obligatory. Then Allah said, "[...] an heir shall be chargeable in the same way" (Qur'ān 2:233). So it is concluded that maintaining ascendants, descendants and collaterals is mandatory as the heir may be one of these categories.¹²⁸

However, Qur'anic references to "relatives" did not identify exactly who would fall under this category and who would not. As a consequence, jurists did

¹²³ See for example, Maḥmaṣānī, Subhī, Rajab al- (1961), p. 124 & 125; Abū Zahra, Muḥammad (ed.) (1963), p. 335; 'Abd Allāh, 'Umar (1956), p. 250.

¹²⁴ 'Abd al-'Atī, Hammūda (1977), pp. 153 & 154.

¹²⁵ Doi, 'Abdur Rahmān I. (1404/1984), p. 204.

¹²⁶ 'Abd al-'Atī, Hammūda (1977), p. 153.

¹²⁷ Nasir, Jamal J. (1990), p. 102.

¹²⁸ 'Abd al-Ḥakīm, Ibn Muḥammad (1332/1914), pp. 231 & 232.

not agree on who are those family-members who belong to the category of “relatives” or *dhawū al-qurbā* as indicated by the Qur’ān.

According to the Ḥanafīs, the criterion for the responsibility of the relative to provide maintenance of another is the prohibited degree of marriage. So that if one of them is supposed a male and the other a female, marriage between them would be considered unlawful.¹²⁹ Therefore, generally this responsibility includes fathers – howsoever high – and sons – howsoever low – and also includes brothers, sisters, uncles and aunts, both paternal and maternal, because marriage between any two of them is prohibited. The nearest relative shall be liable to provide maintenance.¹³⁰ Imam Mālik and Imam al-Shāfi‘ī said that the only obligatory *nafaqa* in Islam is that of one’s parents and children.¹³¹ The Ja‘fari School has adopted the same opinion.¹³² The Ḥanbalīs state that it is obligatory that fathers, howsoever high, provide and receive maintenance. Similarly, it is obligatory that sons, howsoever low, provide and receive maintenance, irrespective of their title to inheritance. Maintenance of relatives not belonging to the two classes is also obligatory if the person liable to provide maintenance inherits from the person being maintained either by *fard* (obligatory share) or *ta‘ṣīb* (the residue share). But if being excluded from inheritance, he will not be responsible maintenance.¹³³ Thus if a person has an indigent son and a well-to-do brother, neither may be compelled to maintain him, because the son’s indigence relieves him of the responsibility, and the brother by being excluded from inheritance due to the son’s presence.¹³⁴

7.1.5 Conditions for the Obligation of Maintenance

Initially speaking, it should be noted that being on good terms between the spender (*munfiq*) and the maintained person (*munfaq ‘alayh*) is not a prerequisite to make maintenance obligatory. The main guidance in this regard is derived from the following verse: “Let not those among you who are endued with Grace and amplitude of means resolve by oath against helping their kinsmen, those in want, and those who have left their homes in Allah’s cause: let them forgive and overlook, do you not wish that Allah should forgive you? For Allah is Oft-Forgiving, Most Merciful” (Qur’ān 24:22).

Each family has a few persons who bear some personal dislikes or disputes with a few other members. The Qur’ān commands that these differences should not prevent a person from meeting his family obligations, that the rich in the family should always help the poor members of the family. For instance,

¹²⁹ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 5, p. 223. Cf. Bakhtiar, Laleh (1996), p. 490.

¹³⁰ Bakhtiar, Laleh (1996), p. 490.

¹³¹ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (2), vol. 2, p. 320.

¹³² Fityān, Farīd (1986), p. 212.

¹³³ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1408/1998), vol. 3, pp. 373 & 374.

¹³⁴ Bakhtiar, Laleh (1996), p. 490. For a detailed discussion on the significance on the term *qarāba* and who falls under this category, see Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 66-69.

when Abū Bakr swore in the heat of his anger over his maligned honor that he would exclude Miṣṭaḥ, a relative of Abū Bakr who was involved in the affair of false accusation against Abū Bakr's daughter, 'Ā'isha, from the charity he had been giving him, there was revealed the previous *ayah*.¹³⁵

Jurists mentioned six main conditions, some of which are points of agreement and others are not, after meeting them, maintenance will be obligatory. They are as following:

1. The poverty of the maintained person; he should be *mu'sir*, as defined above, because the main target of *nafaqa* is to help the needy not the rich.¹³⁶
2. Being unable to work and gain money due to advanced age, childhood or any other reasonable excuse.¹³⁷ Concerning the relatives who are able to make their living by their own, other than parents and grandparents, the Ḥanafī¹³⁸ and Shāfi'ī¹³⁹ schools state that their maintenance is not obligatory, rather they will be compelled to make a living, and one who neglects to work or is sluggish commits a crime against himself. But the Shāfi'īs say regarding a daughter that her maintenance is obligatory on the father until she gets married.¹⁴⁰ The Mālikī, Ḥanbalī and the Ja'farī schools state that if one who was earlier making his livelihood by engaging in a trade that suited his conditions and status later neglects to do so, his maintenance is not obligatory upon anyone, irrespective of whether it is the father or the mother or the son. The Mālikīs agree with the Shāfi'īs' position regarding a daughter and the reason for this is that formerly women were considered generally incapable of earning their livelihood.¹⁴¹
3. The affluence of the *muntfiq* (spender). That is because maintenance is the financial form of upholding the family ties and this form of *ṣilat al-rahim* is incumbent only on the well-to-do persons.¹⁴² The only condition here is the presence of the ability to maintain or the presence of the ability to earn. Therefore, a father who is capable to work will be ordered to maintain his child, and similarly a son with respect to his father, except where one of them is indigent and incapable of making an earning due to physical or mental disorder such paralysis, blindness, deafness, dumbness etc and did not learn a profession form which he can earn his livelihood.¹⁴³ Dr. Badrān Abū al-'Aynayn, Faculty of Law, Alexandria University, comments on this by saying, "The physical or mental disorder in itself cannot be a sign of inability to earn one's livelihood [and hence, being entitled to maintenance]. For instance, nowadays a person suffering from blindness can master a

¹³⁵ Qutb, Sayyid (1349/1974), p. 89.

¹³⁶ Majlis al-A'lā li al-Shu'ūn al-Islāmiyya, al- (1386-1411/1966-1990), pp. 317-318.

¹³⁷ 'Abd al-Ḥakīm, Ibn Muḥammad (1332/1914), p. 333.

¹³⁸ Kasānī, Abū Bakr Mas'ūd b. Aḥmad al (1406/1986), vol. 4, p. 34.

¹³⁹ Bujayramī, Sulaymān b. Muḥammad al- (I), vol. 4, p. 119.

¹⁴⁰ See Badrān, Abū al-'Aynayn Badrān (1988), p. 115; Bakhtiar, Laleh (1996), p. 492.

¹⁴¹ Bakhtiar, Laleh (1996), pp. 492 & 493.

¹⁴² Majlis al-A'lā li al-Shu'ūn al-Islāmiyya, al- (1386-1411/1966-1990), p. 318.

¹⁴³ Badrān, Abū al-'Aynayn Badrān (1988), p. 113; Bakhtiar, Laleh (1996), p. 493.

number of professions by which he can earn money. Furthermore, he can follow the way of education and get the highest educational levels. Hence the criterion is the inability to earn.”¹⁴⁴ The schools differ regarding the degree of the financial ease necessary to cause the liability for providing the maintenance to a relative. According to the Shāfi‘īs, it is the surplus over the daily expenditure of his own, his wife’s and his children’s.¹⁴⁵ The Mālikīs add to this the expenditure incurred upon servants and domestic animals.¹⁴⁶ According to the Ḥanbalī and the Ja‘farī schools, it is the surplus over the expenditure of oneself and one’s wife, as the maintenance of descendants and ascendants belong to the same category.¹⁴⁷ Ḥanafī jurists differ in defining the state of financial ease. According to some of them, it is possession of an amount of wealth which gives rise to the incidence of poor-due (*niṣāb*). According to others, it should be enough to prohibit his taking of *zakāh*. The third opinion differentiates between the farmer and the worker allowing the farmer his and his family’s expenditure for a period of one month and the worker a day’s expenditure as a deduction.¹⁴⁸

4. The unity of religion between the spender (*munfiq*) and the maintained person (*al-munfaq ‘alayh*).¹⁴⁹ That is because *nafaqa* here is obligatory on the basis of inheritance and there is no inheritance between two persons of different religions.¹⁵⁰ According to the Ḥanbalīs, their belonging to the same religion is necessary. Thus if one of them is Muslim and the other a non-Muslim, maintenance is not obligatory.¹⁵¹ The Mālikī,¹⁵² Shāfi‘ī¹⁵³ and the Ja‘farī¹⁵⁴ schools state that their belonging to the same religion is not necessary. Therefore, a Muslim can maintain a relative who is not a Muslim, as in the case when maintenance is provided by a Muslim husband to his wife belonging to the People of the Book (*ahl al-kitāb*). The Ḥanafīs observe that belonging to the same religion is not required between ascendants and descendants, but necessary between other relatives. Therefore, a Muslim will not maintain his non-Muslim brother and vice versa.¹⁵⁵
5. The unity of place between the spender and the maintained person. There is no *nafaqa* on the person who is not present (*ghā’ib*) even if he was rich.¹⁵⁶

¹⁴⁴ Badrān, Abū al-‘Aynayn Badrān (1988), p. 113.

¹⁴⁵ Khaṭīb, Muḥammad b. Aḥmad Shirbīnī al- (1), vol. 3, p. 447.

¹⁴⁶ Badrān, Abū al-‘Aynayn Badrān (1988), p. 118.

¹⁴⁷ Bakhtiar, Laleh (1996), p. 493.

¹⁴⁸ Ibid.

¹⁴⁹ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 322.

¹⁵⁰ ‘Abd al-Ḥakīm, Ibn Muḥammad (1332/1914), p. 336.

¹⁵¹ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 170.

¹⁵² Badrān, Abū al-‘Aynayn Badrān (1988), p. 123.

¹⁵³ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 8, p. 170.

¹⁵⁴ Bakhtiar, Laleh (1996), p. 494.

¹⁵⁵ Ibid.

¹⁵⁶ Fityān, Farīd (1986), p. 213.

6. The decree of the judge. Hence the mandatory *nafaqa* starts from the day of such decree.¹⁵⁷ The schools concur that the past maintenance of relatives will not be payable if the judge had not determined it; the spirit of mutual assistance and fulfillment of need being the reason behind it, it can not be made good for past time.¹⁵⁸ The schools differ where the judge determines it and orders its payment, as to whether outstanding maintenance must be paid after the judge's order or whether it is annulled by the passage of time as if he had not ordered its payment at all. The Mālikīs state that if a judge orders the payment of maintenance to a relative and then it remains unpaid, it will not be annulled.¹⁵⁹ The Ja'farī, Ḥanafī and some Shāfi'ī jurists observe that if the judge orders maintenance to be borrowed and the relative entitled to receive maintenance does so, it is obligatory to clear his debt. But if the judge does not order the borrowing of maintenance, or orders it but it is not borrowed, the maintenance will be void.¹⁶⁰ The Ḥanafīs require the payment of past maintenance after the judge's order or if it accrues for a period of less than one month; so if the judge orders payment and month passes since its becoming due, the relative will be entitled to claim the maintenance of the current month only, not of the past month.¹⁶¹

It should be noted that if a relative entitled to maintenance receives the maintenance of a day or more through litigation, gift, the poor-due or through some other manner, then maintenance due to him will be deducted to the extent of what he received through these means, even if the judge has ordered the payment of maintenance.¹⁶²

7.1.6 The Order of Relatives on whom Maintenance is Obligatory

The Ḥanafīs hold that if there is only one person responsible for maintenance, he will pay it. If two or more belonging to the same category and capacity – such as two sons or two daughters – they will share equally in providing maintenance, even if they differ in wealth, after their financial capacity has been proved.¹⁶³ But where they are of different categories of relationship or of varying capacities, there is confusion in the views of the Ḥanafī jurists in providing the order of those responsible for maintenance.¹⁶⁴

The Shāfi'īs state that if a person in need has a father and a grandfather who are both well-off, his maintenance will be provided by father solely. If he has a mother and a grandmother, the maintenance will be solely provided by the mother. If both parents are there, father will provide the maintenance. If he has

¹⁵⁷ 'Abd al-Ḥakīm, Ibn Muḥammad (1332/1914), p. 337.

¹⁵⁸ Bakhtiar, Laleh (1996), p. 495.

¹⁵⁹ Badrān, Abū al-ʿAynayn Badrān (1988), p. 128.

¹⁶⁰ Bakhtiar, Laleh (1996), p. 495.

¹⁶¹ Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (2), vol. 5, p. 204.

¹⁶² Bakhtiar, Laleh (1996), p. 495.

¹⁶³ Sarakhsi, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 5, p. 222; Badrān, Abū al-ʿAynayn Badrān (1988), pp. 130-132.

¹⁶⁴ Ibid.

a grandfather and a mother, the grandfather will provide the maintenance. If he has a paternal grandmother and a maternal grandmother, according to one opinion, both are equally responsible, according to another opinion, the paternal grandmother will be solely liable.¹⁶⁵

The Ḥanbalīs state that if a child does not have a father, his maintenance will be on his heirs; and if he has two heirs, they will contribute in proportion to the share of each in the estate. If there are three or more heirs, they will contribute in proportion to their share in the estate.¹⁶⁶ Thus if he has a mother and a grandfather, the mother will contribute one-third and the grandfather the remainder, as they inherit in the same proportion.¹⁶⁷

The Jaʿfarīs state that the child’s maintenance is obligatory on the father. If the father is dead or indigent, then maintenance will lie upon the paternal grandfather; and if the grandfather is dead or indigent, the mother will be liable for maintenance. After her, her father and mother along with the child’s paternal grandmother will share equally in the maintenance of the grandchild if they are financially capable. But if only some of them are well-off, the maintenance will lie only on those who are such. If an indigent person has a father and a son, or father and a daughter, they will contribute to his maintenance equally. Similarly, if he has many children, it will be shouldered equally by them without any distinction between sons and daughters. On the whole, the Jaʿfarīs consider the nearness of relationship as criterion while determining the order of relationship who are liable to provide maintenance on their belonging to the same class, they are compelled to contribute equally without any distinction between males and females or between ascendants and descendants, except that the father and the paternal grandfather are given priority over the mother.¹⁶⁸

7.2 Bequest (*Waṣīyya*)

Waṣīyya, literally, comes from the Arabic word *waṣṣā* which means he conveyed. In other words *waṣīyya* means a gift of property by its owner to another contingent on the giver’s death.¹⁶⁹ The law of *waṣīyya* in Islam supplements the compulsory inheritance rules. The individual is not free to determine the future of his property after his death by favoring or depriving legal heirs. Under the *ultra vires* doctrine, two restrictions exist with regard to wills, one quantitative and the other personal: no more than one third (net) of the estate [after the payment of debts] may be bequeathed, and nothing may be bequeathed to a legal heir if the other heirs do not give their consent.¹⁷⁰ The Shiʿī doctrine does not include the personal restriction.¹⁷¹ It is reported that the Prophet – Peace and Blessing be

¹⁶⁵ Shīrāzī, Ibrāhīm b. ʿAlī b. Yūsuf al- (1), vol. 2, pp. 166 & 167.

¹⁶⁶ Ibn Qudāma, Abū ʿAbd Allāh Muḥammad b. Aḥmad al-Maqḍīsī (1405/1985), vol. 8, p. 173.

¹⁶⁷ Bakhtiar, Laleh (1996), p. 496.

¹⁶⁸ Ibid., pp. 496 & 497.

¹⁶⁹ Doi, ʿAbdur Rahmān I. (1404/1984), p. 328.

¹⁷⁰ Ibn Rushd (2000), Vol. II, p. 406.

¹⁷¹ Coulson, N.J. (1971), pp. 31-34, 41 & 42, 243.

upon him – said, “No bequest to an heir.”¹⁷² Muslim scholars disagree on when the heirs agree. The majority said that it is permitted while the Zāhirīs and the Shāfi‘ī scholar al-Muzanī said it is not permitted.¹⁷³

The legal Qur’anic injunctions in respect of Bequest or Will were contained in the following two verses, “It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the God-fearing” “If anyone changes the bequest after hearing it, the guilt shall be on those who make the change. For Allah hears and knows (all things),” “But if anyone fears partiality or wrong doing on the part of the testator, and makes peace between (the parties concerned), there is no wrong in him: for Allah is Oft-Forgiving, Most Merciful” (Qur’ān 2:180-182).

In his commentary on verse 180, Imam al-Shāfi‘ī viewed that it is reported that the Prophet – Peace and Blessings be upon him – said, “No bequest for an heir”. This means that the legislation on inheritance has abrogated bequests for the parents and the wife. A great number of jurists also have held that the legislation allowing bequests for relatives was abrogated and is no longer obligatory; for whenever they are entitled to inherit, their entitlement arises by virtue of the law of inheritance; but when they are not entitled to inherit, it is not obligatory that they should inherit by a bequest. A few other authorities, however, held that the legislation concerning bequests for parents and wives has been abrogated, but that the legislation concerning relatives was confirmed for relatives who are not entitled to inherit. Therefore, it is not permissible for the testator to bequeath to persons other than relatives.¹⁷⁴ The proof of these jurists is in the words of Allah, “It is prescribed, when death approaches any of you, if he leave any goods, that he make a will to parents and next of kin, according to reasonable usage; this is due from the God-fearing.” They are of the opinion that the article *al* (prefixing the word “will”) implies comprehensiveness restricted to those mentioned and exclusion of others.¹⁷⁵ However, the majority of jurists said that it is valid for other than the close relatives, but is considered reprehensible (*makrūh*). The majority argued on the basis of the well-known tradition of ‘Imrān Ibn Ḥusayn that “a man manumitted six slaves that he had during his illness, and he had wealth besides them. The Messenger of Allah – Peace and Blessings be upon him – drew lots between them and freed two keeping the other four enslaved.” Those slaves were not relatives (of the deceased).¹⁷⁶ A Muslim is also allowed to bequeath a part of his property to another person of a different religion. The Ḥanbalī School stated

¹⁷² This Ḥadīth is transmitted by the author of *Maṣābiḥ al-Sunnah* (Lamps of the Sunnah) who categorized it as *ḥasan*. (This term literally means “good”. It is one of the categories used for the purpose of evaluating the reliability of Ḥadīth). The term *hasan* indicates that the Ḥadīth is less reliable than *ṣaḥīḥ* (sound) and more reliable than *ḍa‘īf* (weak). See Shepard, William E. (1996), p. 364.

¹⁷³ Ibn Rushd (2000), p. 406.

¹⁷⁴ Doi, ‘Abdur Rahmān I. (1404/1984), pp.328 &332.

¹⁷⁵ Ibn Rushd (2000), p. 405.

¹⁷⁶ Ibid.

that *waṣīyya* is valid even if it was from a Muslim to a non-Muslim.¹⁷⁷ Likewise, the Muslim is allowed to accept the bequest of a non-Muslim.¹⁷⁸

It is to be noted here that the execution of *waṣīyya* must be done after paying the debts and before the distribution of *mīrāth*.¹⁷⁹ When Allah talks about the specified shares of heirs, He says: “[...] The distribution in all cases is after the payment of legacies and debts” (Qur’ān 4:11).

7.2.1 The Beneficiaries

Waṣīyya is legislated mainly to provide for certain situations in which someone has a connection with the family but is not included as an heir. The *waṣīyya* legislation allows the testator (*mūṣī*) to make provision for such a person, and also gives him a scope to distribute some of the legacy by way of charity.¹⁸⁰ In this sense, we discern that the dependent members of the family such as those with disabilities still have other financial revenues even if they were not included in the list of heirs.

The beneficiary of a will may be an individual or individuals, a more or less defined group of persons, or an organization, or the proceeds of a bequest may be used for some purpose. In the event of many beneficiaries, under the Ḥanafīs, the whole bequest shall be taken by the surviving beneficiaries if one or more die before the testator, unless each beneficiary was allotted a definite part of the bequest, with each having such part of the bequest as he would have taken if all the beneficiaries had survived the testator.¹⁸¹ According to the Shī‘a, a bequest to a person who predeceased the testator shall pass to his/her heirs.¹⁸²

Jurists stipulate that the beneficiary must be identifiable, in existence at the time of the making of the will, and not belligerent nor murderer or accomplice to the murder of the testator and not an heir.¹⁸³ Apart from individuals, the beneficiary may be a juristic person of a charitable object, in which case it is not required to be in existence at the time the bequest is made.¹⁸⁴

Muslim jurists unanimously rule that no will is valid for a beneficiary who causes the death of testator. They disagreed whether such beneficiary would be denied the rights to benefit from the will even if death happened after the act of will.¹⁸⁵ Modern legislators agreed also that the murderer would not benefit from the will as long as the act of killing was for no just cause or reasonable excuse and the murderer was of sound mind and not under the age of 15.¹⁸⁶ From this we conclude by stating that beneficiary with mental disability will benefit from the will even if he/she was a murderer of the testator.

¹⁷⁷ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), p. 367.

¹⁷⁸ ‘Abd al-Ḥakīm, Ibn Muḥammad (1332/1914), p. 295.

¹⁷⁹ Fityān, Farīd (1986), p. 228.

¹⁸⁰ Quṭb, Sayyid (1349/1974), p. 67.

¹⁸¹ Nasir, Jamal J. (1990), pp. 266 & 267.

¹⁸² Ḥillī, ‘Abd al-Karīm Ridā al- (1366/1947), p. 163.

¹⁸³ Nasir, Jamal J. (1990), p. 267.

¹⁸⁴ Ibid, p. 268.

¹⁸⁵ For details about this disagreement see, Nasir, Jamal J. (1990), p. 268.

¹⁸⁶ Ibid, p. 269.

7.2.2 The Mandatory Will

This kind of will has been elaborated, became codified law and enacted in a number of Arab countries. This is a disposition created as a remedy to a growing source of complaints, namely, the position of the grandchildren whose parents die during the lifetime of their father or mother, or die, or are deemed to die with them, e.g. as a result of sinking ship, building collapse, or fire. Such grandchildren rarely inherit on the death of their grandparents, as they are often excluded from inheritance, even though their dead parents might have contributed to the growth of their grandparents' wealth. Indeed, on the death of their father they might have been supported and maintained by their grandfather who would have left them part of his property but died too soon after that, or was prevented from doing so through some temporary events.¹⁸⁷ Keeping in view that this type of will is mandatory in the case of the grandchildren who were excluded from inheritance on the basis that they are dependent and helpless, then it is more mandatory in case of grandchildren having disabilities. Obviously they are more helpless and dependent than normal children.

On these grounds, the Egyptian Act no. 71/1946 rules that if the deceased has left no will for the descendants of a child of his who died before, or is deemed to have died with him, bequeathing to such grandchildren the share of the estate that would have been devoted to on the child had been alive, there shall be a mandatory will in the amount of such share within the limits of one-third of the estate, provided that the said descendants has not given thereto, for no consideration, by another disposition, the amount due thereto. If the gift is less than the said amount, the will shall be for the balance. Such a will shall be to the benefit of the first class of the descendants of the lineal daughters or sons, how-low-so ever, with every descendant excluding the respective but any other descendant. The share of every ascendant shall be divided among the descendants thereof according to the rules of inheritance as if the ancestor(s) thorough whom they are related to the deceased had died after him.¹⁸⁸ Under Article 77, if the beneficiary who is qualified to benefit of a mandatory will has been left in will by the deceased a bequest in excess of what is due thereto, the excess shall be deemed a voluntary will. If deceased left a will for only some of those qualified for a mandatory will, the rest shall be entitled to their due. ¹⁸⁹ Under Article 78, the mandatory will shall take precedence over all voluntary wills.¹⁹⁰

The modern legislator, as pointed out in the Explanatory Note to the Egyptian Act No. 71/1946, derives the doctrine of the Mandatory Will for the non-heirs among relatives from a multitude of Followers, Jurists and the Authorities of Jurisprudence and Tradition among whom are Sa'īd b. al-

¹⁸⁷ Ibid., p. 271.

¹⁸⁸ Ibid., p. 272.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

Musayyab, al-Ḥasan al-Baṣrī, Ṭāwūs, Imam Aḥmad, Dāwūd al-Tibrī and Ibn Ḥazm.¹⁹¹ The ultimate authority is the Qur’anic ruling “It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the God-fearing” (Qur’ān 2:180). While Abū Zahra praises this doctrine asserting a just and equitable principle,¹⁹² some of other Egyptian jurists criticize it. Shaykh Sanhūrī objects that it is based on the premise that the orphan grandchildren are entitled to compensation for the lost share of their dead parent. But that the parent has not been entitled to any share if it differed in religion from the porosities, and therefore there would be no room in compensation, an opinion shared by his disciple Prof. Muḥammad S. Madkūr.¹⁹³

7.3 Family Endowment (*Waqf Ahlī*)

Waqf literally means detention (*ḥabs*), but its legal meaning is the dedication or charitable gift of property for a good purpose pious or charitable. The establishment of *awqāf* (endowments) in other words, extinguishes the right of the *wāqif* (dedicator) and transfers its ownership to Allah. The establishment of *waqf* property came into existence in order to organize and institutionalize the voluntary charity. The scriptural basis for it is the ḥadīth related by Muslim that the Prophet (Allah bless him and give him peace) said, “When a human being dies, his work comes to an end, except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him,” from which scholars understand ongoing charity as meaning an endowment (*waqf*).¹⁹⁴

Concerning the lawfulness of *Waqf*, Muslims jurists are divided into three groups. The first group, whose opinion is considered to be the most weighty, adopted the absolute permissibility (*jawāz mutlaq*) opined that it is unconditionally permissible and thus legalized *waqf* in houses, lands, slaves, clothes, etc.¹⁹⁵ To this group, belong the majority of Shāfi‘īs¹⁹⁶, the Ḥanafīs¹⁹⁷, the Zāhirīs¹⁹⁸, the Zaydīs¹⁹⁹ and the Ja‘farīs²⁰⁰. The second group, mainly represented by the two companions, ‘Abdullāh b. Mas‘ūd and ‘Alī b. Abī Ṭālib restricted *Waqf* to fighting tools and remote lands (*kurā*).²⁰¹ The third group opted for an absolute prohibition. This opinion is advocated by Shurayḥ al-Qādī, one of the reports attributed to Imam Abū Ḥanīfa and the majority of the scholars of Kūfa.²⁰²

¹⁹¹ Ibid. See also Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1973), vol. 6, p. 144; Ibn Ḥazm, Abū Muḥammad ‘Alī (3), vol. 9, p. 314.

¹⁹² Abū Zahra, Muḥammad (1369/1950), p. 189.

¹⁹³ Nasir, Jamal J. (1990), p. 272.

¹⁹⁴ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 5, p. 348.

¹⁹⁵ Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, p. 91.

¹⁹⁶ Shāfi‘ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, pp. 274 & 257.

¹⁹⁷ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (3), vol. 12, p. 27.

¹⁹⁸ Ibn Ḥazm, Abū Muḥammad ‘Alī (1347-1352/1928-1933), vol. 9, p. 157.

¹⁹⁹ Murtaḍā, Aḥmad b. Yaḥyā al- (1368/1949), vol. 4, p. 146.

²⁰⁰ Ḥillī, Ja‘far b. al-Ḥasan al- (1), vol. 1, p. 246.

²⁰¹ Ibid.

²⁰² Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (3), vol. 12, p. 29.

7.3.1 The Main Principles of *Waqf*

Seven main principles have been mentioned by jurists which should be considered to have a legally valid endowment. First, the founder (*wāqif*) must have full right of the disposal over his property; he must therefore be in full possession of his physical and mental faculties, be of age and a free man (*‘āqil, bāligh, ḥurr*). He must further have unrestricted ownership in the subject of the endowment. Endowments by non-Muslims are therefore only valid if they are intended for a purpose that is compatible with Islam (e.g. they must not be intended for Christian churches or monasteries).²⁰³ Second, the object of the endowment (*mawqūf*) must be of a permanent²⁰⁴ and yield a usufruct (*manfā‘a*), so that it is primarily real estate.²⁰⁵ Third, the purpose of the endowment must be a work pleasing to Allah (*qurbā*).²⁰⁶ Fourth, the endowment should concern a particular identified article (*‘ayn*) (it is invalid to make the mere “right to use something” an endowment, because it is not a particular article).²⁰⁷ Fifth, The article should have a lawful use.²⁰⁸ Sixth, the beneficiary should be some particular party, such as the poor around the founder (*wāqif*) himself, whether the endowment is an act of worship, like when the beneficiary is mosques, one’s relatives, or the general good. Or whether it is merely permissible, such as an endowment that benefits the wealthy, or Jewish and Christian subjects of the Islamic state. Finally, the endowment should be formally established by words that effect it such as “I make it an endowment,” or “I restrict such and such a thing to benefit So-and-so, “or I give such and such as non saleable charity.”²⁰⁹

It is important to emphasize that initially both types of *waqf* were equally considered *ṣadaqa* and were viewed together with mixed *awqāf*, as fully accepted variants of the same institution. The contesting of the religious character of *ahlī* endowments and the subsequent introduction of differentiation between them and *khayrī* endowments were indeed products of modernist terminology,²¹⁰ and were not even hinted at in tradition Islamic *fiqh* books.²¹¹ Shaykh ‘Abd al-Majīd Salīm, the late Mufti of Egypt in his fatwa from 1932, says: “We did not find in the compilations of the well-informed jurists that *waqf* was divided into *ahlī* and *khayrī*. This division, however, is a customary (*‘urfī*) division.”²¹²

Muslim societies, like other societies, have always been divided into social units according to various criteria. Most important of these social units are

²⁰³ See Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, pp. 311-348.

²⁰⁴ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 6, pp. 237 & 238.

²⁰⁵ Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (2), vol. 5, p. 204; For further details on the conditions required in *al-mawqūf*, see Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, pp. 351-392.

²⁰⁶ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1403/1983), vol. 3, p. 226.

²⁰⁷ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 6, pp. 237 & 238.

²⁰⁸ Khaṭīb, Muḥammad b. Aḥmad Shirbīnī al- (1), vol. 2, p. 377.

²⁰⁹ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 6, pp. 235 ff.

²¹⁰ Hoexter, M. (1995), p. 141.

²¹¹ Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, p. 42. Cf. Ghānim, Ibrāhīm al-Bayyūmī (1419/1998), p. 47; Kawtharī, Muḥammad, Zāhid al- (1953), p. 202.

²¹² Ghānim, Ibrāhīm al-Bayyūmī (1419/1998), p. 47.

those based on kinship or quasi-kinship. The Muslim *waqf* system had an important function in supporting and reinforcing these social units and their cohesion. There can be no doubt that a founder's primary concern for the position and welfare of his or her family and offspring is reflected in the institution of *waqf*.²¹³

Waqf Ahlī, in particular, is created for the welfare of near relatives of the dedicator (*wāqif*) and his family to ensure that they get their needs from it for all their life, and then reverts to the welfare of the poor people after their death. It can consist of both movable and immovable property.²¹⁴

Muslim Jurists said that if the dedicator made the *waqf* to the poor in general then the poor relatives should be given precedence over the non-relatives as long as they are of an equal level of poverty.²¹⁵ This juristic rule has its own application in reality in more than one incident. Here we mention one of them. In a controversy over the administration of the Sayyidnā 'Alī waqf (north of Jaffa), when the Supreme Muslim Council claimed that the *waqf* was dedicated for charitable purposes (*'alā wujūh al-birr*), the family replied, quoting the Qur'ān and the New Testament, that even if this were true, they were worthier than anybody else of receiving these gifts.²¹⁶ In fact the Prophet is quoted to have said, "The most excellent *sadaqa* [gift made with the hope of heavenly reward] is that a man bestows upon his family," which shows that Muslims clearly included such provisions in their understanding of the notion of beneficence (*birr*).²¹⁷

7.3.2 The Future of Family Endowment

Waqf ahlī has always been an approach to get closer to Allah (*qurba*) and obtain His pleasure. This was the case of the incidents of *waqf ahlī* during the lifetime of the Prophet – Peace and Blessings be upon him – and his Companions – May Allah be pleased with them all.²¹⁸ Unfortunately this behavior was not strictly followed by following generations of Muslims. *Waqf ahlī* turned out to be a means of circumventing the Islamic rules of inheritance. A number of unconscientious founders took Family Endowment as a method to attain their malicious ends of depriving some of the legal heirs.²¹⁹ Undoubtedly early jurists were aware of this risk. For instance, Imam al-Shawkānī says in this regard, "One who makes *waqf* for the sake of injuring (the shares of) his heirs, then his *waqf* is invalid (*bāṭil*)."²²⁰ However, this misuse of Family Endowment resulted in a number of calls for the annulment of this kind of *waqf*. Some of these calls succeeded in putting an end to

²¹³ Baer, Gabriel (1997), p. 265.

²¹⁴ Doi, 'Abdur Rahmān I. (1404/1984), pp. 338 & 340.

²¹⁵ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 5, p. 322.

²¹⁶ Mudīr al-Awqāf al-'Āmm to Supreme Muslim Council, 8 May 1940, and Muḥammad Sa'īd al-'Umārī to British Vice Consul, Damascus, 12 November 194, ISA, K/158/39. Quoted by Baer, Gabriel (1997), p. 265.

²¹⁷ Baer, Gabriel (1997), p. 265.

²¹⁸ Kubaysī, Muḥammad 'Ubayd al- (1397/1977), vol. 1, pp. 34 & 35.

²¹⁹ For a detailed discussion of this issue, see Layish, Aharon (1997), pp. 352-388.

²²⁰ Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1347/1928), vol. 2, p. 141.

waqf ahli whereas others did not.²²¹ Dr. al-Kubaysī commented on these calls by saying, “If this kind of *waqf* entails now a specific risk, then it is traced back to [misuse of unconscientious] people not to the system itself.²²² So what is required now is a reform not a complete abolishment.”

What we care about here is the case of the people with disabilities in the light of these circumstances. Abolishing this kind of *waqf* would harm family members with disabilities who could benefit from this kind of *awqāf*. Some jurists stated that it is not against the spirit of the Islamic Shari‘a if a father favored one of his children with *waqf* as a kind of consideration for his/her disability. For instance, Imam Aḥmad as stated by Ibn Qudāma in *Al-Mughnī*, that there is no harm if a father favored one of his children solely [with more money] in the form of *waqf* for a specific considerable reason such as need [*ḥājah*], chronic disease, blindness, [being responsible for] big families, being busy with seeking for knowledge or other similar virtues.²²³ Still we believe that this kind of *waqf*, if reactivated in a fruitful way, could be an optimum financial source in supporting the impoverished members of family who has disabilities. It could save them a regular source of income.

²²¹ For further details about the opinions of those opponents, their evidences and discussing these evidences, see Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, pp. 42-50.

²²² Ibid, p. 35.

²²³ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 5, p. 388.

Chapter Eight: Revenues of Financial Aid within Society

Failing to fulfill the financial needs of people with disabilities within the family institution, it becomes the collective duty of the Muslim community at large to provide for them. Some members of the society must perform these duties; otherwise all members will be sinful.¹

First a note on the most used terms in this context, namely, community and society, is in order. In the linguistic sense, “community” is defined as a group of people living together and/or united by shared interests, religion, nationality, etc.² On the other hand, “society” has two main definitions. First, it means people in general, considered with regard to the structure of laws, organizations, etc. The second, it denotes a particular broad group of people who share laws, organizations, customs, etc.³ The well-known contemporary sociologist paid attention to the second rather than the first term arguing that the concept of society is one of the most important of all sociological notions. To him, “society” is a group of people who live in a particular territory, are subject to a common system of political authority and are aware of having a distinct identity from other groups around them. Some of these societies can be very small in number whereas others can be extremely large such as the Chinese society which has more than one billion individuals.⁴

To my knowledge, the Arabic term “*mujtama*” used today to express society or community was not used by early jurists. Classical terms which may be close to society and community are *umma* (lit. nation) and *dār* (lit. house or abode) especially in discussions on *dār al-islām* (abode of Islam) and *dār al-kufr* (abode of disbelief). One of the modern definitions given to “society” in the Islamic sense purports, “The entire Muslim Umma is one big family held together by the common bonds of belief in one Allah and His last Prophet – Peace and Blessings be upon him. It is one homogenous body and makes no distinctions with regard to color, race or nationality.”⁵

All definitions given above indicate clearly that we face here an elusive term whether in the Arabic or the English sense. However, broad lines are still traceable. First of all society would be something larger than the family institution. The main idea revolves about a group of people having something common like land, religion, specific interest, etc. In the juristic sense, members belonging to this group are collectively responsible for each other in the social and economic sense. As to see below, no main criterion draws a distinct border for this society beyond which people will not belong to it and thus be not entitled to the common rights and duties of its members. Non-Muslims sharing the same land with Muslims would belong to this society and thus can benefit from *zakāh* and public treasury to fulfill their needs. On other hand, Muslims livings in remote distances again

¹ See Azmi, S. H. (1991), p. 221

² Summers, Della (1992), p. 253

³ Ibid, p. 1259.

⁴ Giddens, Anthony (1997), p. 585.

⁵ Kazi, M.U. (1996), p. 75.

belong to this society because of sharing the same religion and thus can also benefit from the *zakāh* system. Thus having one criterion is sufficient to speak about society.

References in the Qurʾān and Ḥadīth can be taken as indications for defining the respective rights of various members of a community. For instance, the Prophet is reported to have said, “One who has surplus ride should give it to his brother who has no ride, and one who has surplus property should apportion it among those who are propertyless. The Prophet recounted so many kinds of commodities by which his Companions presumed that man has no right in his surplus wealth”.⁶ In this chapter, the focus will be some of the financial duties imposed on Muslims and from which dependent and impoverished members of society, including those with disabilities, can benefit. References to the role of the state, whenever relevant, will also be in order.

8.1 Welfare Endowment (*Waqf Khayri*)

As noted above, *waqf ahli* (family endowment) was mainly for family members, this type of *waqf* is mainly for society at large. Broadly speaking, one of the original aims of the *waqf*, if not the main one, was of course to strengthen the Muslim society.⁷ The institution of *waqf* in Islam has contributed a great deal and played an important role in building up society and is supposed to continue doing so as long as this institution exists.⁸

Basing our argument on modern terminology and dividing *waqf* into *ahli* and *khayri*, it is to be noted that the need for every *waqf* to have a perpetual nature (*taʿbīd*) is one of the fundamental principles of Islamic endowments. Since families were not conceived of as permanent, the founder of every *ahli* endowment deed has to name, as ultimate beneficiary, at the end of the chain of family members, either the poor or a general charity of an equally permanent character.⁹ At this stage in its history, what was originally a family endowment (*ahli*) would no longer benefit specific private individuals, but the general interest of Islamic society. Furthermore, this kind of *waqf* chronologically precedes the Family Endowment. Tracing the origins of the *waqf* institution in Islam, we find that the first examples belong to what is termed as *waqf khayri* (welfare endowments). Muslims disagree on the first incident of *waqf* in Islamic history.¹⁰ The first *waqf* made in the history of Islam, according to some reports is that of ʿUmar Ibn al-Khaṭṭāb.¹¹ It is reported that the Prophet – Peace and Blessings be upon him – divided the land of Khaybar among the fighting forces.¹² One plot of land, known by the name ‘Thamgh’ fell to ʿUmar’s share which he set

⁶ Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), p. 1354.

⁷ Baer, Gabriel (1997), p. 291.

⁸ Othman, Moh. Zain b. Ḥajī (1983), p. 3.

⁹ Hoexter, M. (1995), p. 138.

¹⁰ Kubaysī, Muḥammad ʿUbayd al- (1397/1977), vol. 1, p. 33.

¹¹ Othman, Moh. Zain b. Ḥajī (1983), p. 9.

¹² ʿAbd al-Qādir, ʿAlī, “Land Property and Land Tenure in Islam”, in *I.Q.*, London, 1959, Vol. 5, p. 7. See also, Watt, W. Montgomery (1956), pp. 208-220.

apart for charitable purposes.¹³ ‘Umar gave this land as *ṣadaqa* for the poor, (needy) relatives, slave’s wanderers, guests and for the cause of Allah (*fi sabīl Allāh*).¹⁴ According to some others, the *waqf* of the seven *ḥawā’it* by the Prophet –Peace and Blessings be upon him –, was the first *waqf* made in Islam.¹⁵ The mentioned gardens were at Medina. Formerly, they were the property of Banū al-Najjār.¹⁶ A third opinion stated that the first *waqf* in Islam was that the ‘mosque of Qibā’”, which the Prophet – Peace and Blessings be upon him – built on his arrival at Medina after the *hijrā* and before the entering Medina.¹⁷

Whatever might have been the case, applying the modern terminology, all of the previous incidents of *waqf* belong mainly to the Charitable Endowment. It is to be noted that the *waqf* of ‘Umar identified relatives as one of the beneficiaries as well.

This practice later gave rise to a social institution known as *Waqf* (Religious and charitable trusts and endowments), which was a service analogous to that known in modern times as social security. This term is understood to mean that those who are unable to earn their livelihood by reason of old age, sickness or disability are given an allowance to maintain themselves at moderate level until such time as they are able to support themselves by their own earnings through lawful means.¹⁸

Actually *waqf* is an institution very characteristic of Islamic law, which has experienced considerable development in all Muslim countries and has played a very important role in the society. Until recent times, the income from *waqf* defrayed a certain amount of public expenses such as that incurred on the relief of the poor, education, the upkeep of *madrāsas*, aqueducts and fountains, etc.¹⁹

As for its relevance for the people with disabilities in particular, Yūsuf al-Qaraḏāwī comments by saying that early Muslims used to allocate a considerable number of *awqāf* (charitable endowments) for the benefit of the people having disabilities such as blindness, lameness, etc.²⁰ Actually, the Islamic *awqāf* that people with disabilities could benefit from were of two categories. First, those of medical nature; there was considerable number of *awqāf*, which was dedicated for setting up hospitals and providing medical care

¹³ Yāqūt, *Mu‘jam al-buldān*, Beirut, 1956, Vol. 2, pp. 409 & 410; Yahya Ben Adam, *Kitāb al-kharāj*, (Taxation in Islam) edited and translated by A. Ben Shamesh, Vol. 1, pp. 35-39; Nu‘mānī, ‘Allāma Shiblī, *‘Umar the Great*, Translated by Zafar ‘Alī Khān, Lahore, 1961, Vol. 1, pp. 70-72, quoted by Othman, Moh. Zain b. Haji (1983), p. 9.

¹⁴ Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, p. 100. For the full account of the story, see ‘Asqalānī, Ibn Ḥajar al-, *Fath al-bārī sharḥ ṣaḥīḥ al-Buḥkārī*, 1st ed., Al-Maṭba‘a al-Khayriyya, 1319 A.H., pp. 259 & 260; Nawawī, Yahyā b. Sharaf al- (1392/1972), vol. 1, pp. 85 & 86; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), Vol. 6, pp. 158 & 159; Dāraqutnī, ‘Alī b. ‘Umar al- (1310/1892), vol. 2, p. 503, Ibn Ḥanbal, Aḥmad (I), vol. 7, 146.

¹⁵ Othman, Moh. Zain b. Haji (1983), p. 9.

¹⁶ Khaṣṣāf, al- (1904), pp. 2-4.

¹⁷ Zarqā‘, M. al- (1947), vol. 2, p. 7; ‘Ānī, M. S. al- (1965), p. 4, quoted by Othman, Moh. Zain b. Haji (1983), p. 9.

¹⁸ Othman, Moh. Zain b. Haji (1983), p. 3.

¹⁹ Ibid, p. 4.

²⁰ Qaraḏāwī, Yūsuf al- (2001).

for the sick.²¹ The endowment of the hospital with *waqf* constituted a sign of more complete integration with Muslim culture and civilization and it was also a guarantee of the hospital's longevity.²² As late as 16th century Muslim hospitals were still being endowed, a fine one having been established in Delhi. Hence it may be concluded that from the standpoint of financial administration, the organization of the hospital as specialized institution was completed with Cairo hospital of Aḥmad Ibn Ṭūlūn. So far as is known, the Ṭūlūnid hospital, established in 259/872-261/874²³ is the first Islamic Hospital endowed with *waqf* revenues.²⁴ The other four earliest hospitals with *waqf* in the chronological order of their foundation are (1) The Hospital of Badr Ghulām (d. 902) an administrator and army commander of the Caliph Mu'ṭaḍid (892-902) in Baghdad, (2) the Baghkami Hospital of Baghdad built by Amīr 'Abdul Ḥassan Baghkan at Turkf (d. 940) commander of the Caliph Muktafī (902-908), (3) the Ikhshid Hospital of Cairo built by the Turkish Kāfūr al-Ikhshid in 957 and (4) the hospital built by Mu'izz al-Dawla Ibn Buwayh in Baghdad in or a round the year 967 A.D.²⁵ Shaykh Muṣṭafā al-Sibā'ī (d. 1384/1967), states that there were also *awqāf* for psychology in its primitive sense. In Tripoli, Lebanon, there was *waqf* for employing two persons to pass by the sick in the hospitals and speak in a low voice that the patient could hear. One of them says "I see this person much better than yesterday." The other says, "And I see his face and eyes much brighter than yesterday." They say so to make the patient think that he/she is really getting better.²⁶ The second category of *awqāf* dedicated for the people with disabilities were of social nature. For instance there were *awqāf* to hire guides for the people with blindness.²⁷

Keeping an eye on future, Shaykh al-Qaraḍāwī says, "This kind of Islamic *waqf*, i.e., welfare endowment should be retrieved and reactivated, as it is one of the important forms of taking care of people with disabilities." By retrieving this kind of Islamic *waqf*, Qaraḍāwī adds, we can save computers, spare parts and other tools that the people with disabilities could need.²⁸

8.1.1 The Administration of *Waqf*

To understand the active role of the state in the administration of *waqf*, an elaboration of the two key-terms *ḥuqūq Allāh* and *ḥuqūq al-'ibād* is a must.²⁹ Islamic law distinguishes between two main spheres of claims or rights, those of man, known as *ḥuqūq al-'ibād* or *ḥuqūq al-ādamiyyīn* and those of God, termed as *ḥuqūq Allāh*. While the first category covers claims of private individuals in their

²¹ Qarār'a, Jamīl 'Ubayd al- (1420/1999), p. 303 & 304.

²² Nowsheravi, A.R. (1983), p. 57.

²³ Dunlop, M. et al (2003), vol. I, p. 1224.

²⁴ Nowsheravi, A.R. (1983), p. 57.

²⁵ Ibid.

²⁶ Sibā'ī, Muṣṭafā al- (1381/1962), p. 334.

²⁷ Sibā'ī, Muṣṭafā al- (1955), 1955, p. 48; Qarār'a, Jamīl 'Ubayd al- (1420/1999), p. 304 & 305

²⁸ Qaraḍāwī, Yūsuf al- (2001).

²⁹ Hoexter, M. (1995), p. 133.

dealings with each other, *ḥuqūq Allāh* stand for the rights of the Islamic community and their claims upon the individual.³⁰

The claims of Allah or *ḥuqūq Allāh* have two main features. First, from the formative period of the Ḥanafī law onwards, the trusteeship of the claims of Allah has been vested in the hands of the Islamic political authorities. Unfortunately the Ḥanafī jurists themselves did not give a complete list of these claims (*ḥuqūq*). The traditional interpretation identifies the *ḥuqūq Allāh* with the general interest of the Islamic community. The more detailed list was given by Pazadawī (d. 482/1089).³¹ According to him, the claims of Allah, which are to be vested with political authorities, include the acts of worship (*ʿibādāt*), punishment of crimes (*ḥudūd* and *jazāʾ*), religious expiation (*kaffāra*), alms offered at *ʿīd al-fitr*, taxes such as *uṣhr*, *kharāj*, a fifth of the booty (*ghanīmā*) and the produce of mines.³² Even this detailed list was not exhaustive.³³ It did not differ in essence from the traditional interpretation given by other jurists. It could be thus concluded that whatever is not the claim of a specific individual but that of the Islamic community comes within the province of the claims of God.³⁴

Secondly, as early as the classical jurists recognized the need to concede a measure of discretion to the political authorities, in order to enable them to carry out their task as guardians of the *ḥuqūq Allāh*. This recognition was embodied in the in the principles of *siyāsa* – extra-sharʿī authority granted to the ruler to take political and administrative considerations into account in his pursuance for the interests of the Islamic community, which was then incorporated into the Sharīʿa and termed as *siyāsa sharʿiyya*. In his endeavor to protect the public interest (*al-maṣlaḥa al-ʿamma*), the ruler was granted “an overriding personal discretion to determine, according to time and circumstances, how the purposes of God for the Islamic community might be effected.”³⁵ The only reservation attached to the rulers’ *siyāsa* competence is that his actions must not be in blatant contradiction to substantive principles of the Sharīʿa.³⁶

As a result of these two features of the claims of Allah, wherever public interest, sometimes referred to as public law, was at stake, the Sharīʿa provided general outline of what ought to guide the activities of the political authorities. Within this very general framework, room was left for variations according to time, local conditions and other considerations of *raison d’état*. What ensued was a dual system of law and jurisdiction, whereby, broadly speaking *ḥuqūq al-ʿibād* were usually subject to Sharīʿa law and dealt with by the *Qāḍī*, who was also part of the state.³⁷ As far as *waqf* is concerned, a close look at this Islamic institution

³⁰ The full meaning of *ḥuqūq* in this context is “legal rights and responding obligations,” see Johansen, Baber (1981), p. 283, n. 11.

³¹ See Ibn Abī al-Wafāʾ (1), vol. 1, p., 372.

³² Ibn al-Humām (1316/1898), vol. 4, p. 130.

³³ Johansen, Baber (1981), p. 300.

³⁴ Hoexter, M. (1995), pp. 133 & 134.

³⁵ Coulson, N.J. (1964), pp. 129 & 130.

³⁶ Ibid., pp. 129 & 172. See also Coulson, N.J. (1957), vol. 6, p. 51.

³⁷ Hoexter, M. (1995), pp. 142 & 143.

would reveal that we are dealing with a complex institution, combining the claims of men and those of Allah.³⁸

Actually several elements of the *waqf* can be placed in the realm of *ḥuqūq Allāh*. First all jurists agree that the act of endowment is considered as *ṣadaqa* or an act of charity recommended by Sharīʿa, which entitles the founder of the endowment to reward in the hereafter.³⁹ The *waqf* was essentially a voluntary charity (*ṣadaqāt al-taṭawwuʿ*) not an obligatory charity (*ṣadaqāt al-farḍ*). Although it did not, as such, constitute a claim on the believer, once the endowment was found, the *waqf* came under the broad definition of *ṣadaqāt*, which was one of the subject matters specifically listed by the Ḥanafī jurists as part of the claims of Allah. A particular appropriate definition, which conveys this idea, is that of Kāsānī (d. 587/1189): *al-waqf ṣadaqa jāriya fī sabīl Allāh taʿālā*. In English this reads, *waqf* is a continuous or eternal charity for the sake of Allah.⁴⁰

Second, one of the specific characteristics distinguishing the *waqf* from other forms of charity, was the distinction it made between the right to the endowed property (*al-ʿayn*) and the right to enjoy its proceeds or the income thereof (*al-manfāʿa*). By the very act of endowment, the property became inalienable. According to the Ḥanafī *madhhab*, the founder relinquishes his right to the property, which henceforth became *ḥaqq Allāh*.⁴¹

Third, while the right to the property became *ḥaqq Allāh* from the moment of endowment, the law offered several possibilities as far as the right to *manfāʿa* was concerned.⁴² In fact the *waqf* law allows the founder of an endowment almost a complete freedom to determine its beneficiaries. If he designated a general charity of his choice as immediate beneficiary of his endowment, the *waqf* would be referred to as *waqf khayrī* or charitable endowment. Many founders of *khayrī* endowments selected, as beneficiaries, religious institutions such as central mosques, or welfare institutions like hospitals, soup-kitchens to the poor in general.⁴³ All these institutions evidently served the general interest of the Islamic community, and as their *manfāʿa* clearly came under *ḥuqūq Allāh*. In case of Family endowment, the founder designates members of his family as beneficiaries. In this case, since the rightful beneficiaries of the endowment (*mustaḥiqqūn*) were private individuals, the *manfāʿa* would be within the realm of *ḥuqūq al-ʿibād*. But as stated earlier, every Family Endowment is to turn out to be a Charitable Endowment, then once *waqf* has reached its ultimate *khayrī* stage, its *manfāʿa* becomes *ḥaqq Allāh*.

We may thus conclude that the *waqf* entered the province of *ḥuqūq Allāh* not only because its inclusion in the broad definition of the concept of *ṣadaqa*. By the very act of endowment, a property became *ḥaqq Allāh*, the *manfāʿa*

³⁸ Ibid., p. 136.

³⁹ Kubaysī, Muḥammad ʿUbayd al- (1397/1977), vol. 1, pp. 134 & 135; Anderson, J.N.D. (1951), pp. 292-299.

⁴⁰ Kāsānī, Abū Bakr Masʿūd b. Aḥmad al (1406/1986), vol. 4, p. 221.

⁴¹ In Arabic, it reads *al-ʿayn ḥaqq Allāh taʿālā maʿa al-khulūṣ*. See Kāsānī, Abū Bakr Masʿūd b. Aḥmad al (1406/1986), vol. 4, p. 221; Hoexter, M. (1995), p. 137.

⁴² Hoexter, M. (1995), p. 137.

⁴³ Ibid.

joining the realm of *ḥuqūq Allāh* when its beneficiaries were of *khayrī* nature. As stated earlier, when it comes to be *ḥaqq Allāh*, then it is within the realm of the duties of the political authority. Hence, the right and the duty of the political authorities, in their capacity as representatives of the claims of Allah, to control Charitable Endowments, was never questioned, although the extent to which they did so in practice, as well as the methods they employed, varied according to time and place. In most cases, political authorities created some bodies to deal with all these endowments. These bodies were occasionally headed by the *Qāḍīs*. They all acted on behalf of the ruler, with whom the authority rested, and he could delegate it as he saw fit. Furthermore, *Qāḍīs* were sometimes called upon to assist in various aspects of the management of foundations for public purposes.⁴⁴ This could explain the absence of detailed legal theorization of the state's role in the administration of *waqf*. It is something subject to *siyāsa sharʿiyya*, which could change according to time and changeable circumstances not to strict sharʿī rules. Now we try to detail the role of the *Qāḍī*, one of the main figures entrusted by the state to participate in the administration of *waqf* institution with special reference to the issue of *ḥuqūq Allāh* and *ḥuqūq al-ʿibād*.

8.1.2 The Role of the *Qāḍī* in the Administration of *Waqf*

The Islamic endowment is always conceived of as one unit subject to one legal system, that is, the *waqf* law, as expressed in the jurists' manuals. Therefore, the figure of *Qāḍī* always appears when political authorities think of a reliable person to take care of the *waqf* institutions. In this regard, Māwardī's reference in his *Al-Aḥkām al-sultāniyya* and Ibn Khaldūn in his *Muqaddima* to the subject are particularly interesting.

Here we start with al-Māwardī's discussion of the topic. Control over the *awqāf* was listed in *Kitāb al-aḥkām al-sultāniyya* as one of the ten areas, which came under the authority of the *mazālim* (the Court of complaints vested with extra-*sharʿī* competence, especially created to implement the ruler's *siyāsa* authority in his task of protecting the general interest of the Islamic community or *ḥuqūq Allāh*).⁴⁵ Al-Māwardī divided *awqāf* into two kinds, namely, general or *ʿām* (those for the benefit of the general public) and specific or *khāṣ* (those whose beneficiaries are specific individuals). Māwardī distinguishes between the nature of the authority the person in charge of the *mazālim* is granted in dealing with each of the two types of endowments. While exercising his supervision over *al-wuqūf al-ʿamma*, the *walī al-mazālim* was to examine them and make sure their proceeds were spent for the purpose and line with the conditions set forth by their founders. In his endeavors, he was allowed to make use of extra-*sharʿī* measures such as initiating an investigation without receiving a complaint having been lodged by a specific person and relying on three of written evidences not confirmed by approved witnesses. In case of *al-awqāf al-khāṣa*, however, he did not enjoy such wide authority. Since these were endowed for

⁴⁴ Ibid., p. 151.

⁴⁵ Ibid., p. 139.

the benefit of specific individuals, the *walī al-maẓālim* could only deal with them when a dispute was referred to him by an interested party. Moreover, while considering the case, he had to stick to the *sharīʿ* rules governing the *Qāḍī* jurisdiction, and could not have recourse to written evidence unless confirmed by approved witnesses.⁴⁶ Al-Māwardī states also that the *Qāḍī*, while dealing with endowments, has to make sure that the property (*al-ʿayn*) was preserved and its proceeds flourished, its income collected and spent for the purpose determined by the founder. Moreover, he was to respect an existing legitimate administrator (i.e., one appointed by the founder), but if no such administrator existed, the *Qāḍī* himself was called upon to take charge of the administration of the endowment.⁴⁷

Māwardī obviously viewed endowments, which were to benefit the entire community (*khayrī* or *ʿām*) as falling within the sphere of public interest or *ḥuqūq Allāh*. Therefore, as in the case of penal, financial and administrative law, the political authorities were free to have recourse to *siyāsa* measures and jurisdiction in order to protect the endowments. While in their *ahlī* stage, however, endowments belonged in the reserve of the Shariʿa law. Even when issues, concerning them were dealt with by the *walī al-maẓālim*, they were subject to the same law as that applied in the *Qāḍī*'s court. The *Qāḍī*'s competence was, however, not restricted to the aspects of the specific (*khāṣṣ*) endowment or matters falling within the claims of men. While adjudicating a *waqf* case, whether *ahlī* or *khayrī*, he was actually called upon to take into consideration all the relevant aspects, whether they belonged to the realm of claims of men or God. It is clear now that the combination of both claims in the *waqf* institution is thus perfectly reflected in the theory as put forth by al-Māwardī.

Ibn Khaldūn, on the other hand tried to trace the gradual evolution of the *Qāḍī*'s office in this regard. Originally, Ibn Khaldūn point out, the *Qāḍī*'s sole duty was to settle disputes between individuals (*al-faṣl bayna al-khuṣūm*). Gradually, however, because of the preoccupation of the rulers with matters of high politics, the *Qāḍī*'s duties came to include not only setting disputes between individuals, but also handling a number of general claims of the Islamic community (*istifāʾ baʿḍ al-ḥuqūq al-ʿāmma lil muslimīn*), that is matters within the province of *ḥuqūq Allāh*. Ibn Khaldūn listed the Islamic *awqāf* among such matters, together with care for the property of various disabled persons, inheritances, marrying orphans, care for the public roads, buildings, etc. these duties, he pointed out, became auxiliaries to the *Qāḍī*'s original terms of office.⁴⁸ This was formally expressed by the stipulation that the inclusion of the *waqf* among the duties of the *Qāḍī* had to be specifically mentioned in his appointment letter⁴⁹

⁴⁶ Māwardī, Ibn Ḥabīb al- (1327/1909), p. 79; Amerdoz, H.F. (1911), pp. 640 & 641.

⁴⁷ Māwardī, Ibn Ḥabīb al- (1327/1909), p. 58

⁴⁸ Ibn Khaldūn (1984), pp. 221-223.

⁴⁹ See Tyan, E. (1960), p. 377, quoted by Hoexter, M. (1995), p. 142.

Of course in the beginning, the *Qāḍī's* principal concern in *waqf* affairs, which must have occupied a considerable portion of his time, was with issues like disputes between beneficiaries or between them and the administrator, claims against the validity of deeds of endowment (*waqfiyyāt*), claims of individuals to be included among the beneficiaries of an endowment, disputes as to the portion of income an individual was entitled to, etc. however, on some occasions, the *Qāḍī's* considerations went beyond the rights of specific individuals and touch upon the general interests of the endowment, that is, *ḥuqūq Allāh* aspects.⁵⁰

Instances where expenditures, maintenance or restoration of an endowed asset became necessary were liable to cause conflict between the claims of Allah and of men. The law was unequivocal in this respect: care for the property itself had the first claim on any income collected from the asset, whether or not the founder included this among his stipulations, end even if it meant that the beneficiaries, whether relatives of the founder or the servants of a mosque, were deprived of income for the duration of the restoration works. The *Qāḍī* was to see to the proper execution of this rule. If the administrator of the endowment did not carry it out, the *Qāḍī* was supposed to dismiss him, appoint someone else instead or act on his own accord.⁵¹ The same concern underlay the *Qāḍī's* intervention in special cases such as long-term leases or exchanges of endowed property. Since the existence of the endowment could be endangered, they normally necessitated the *Qāḍī's* prior approval. Unless a particular administrator was empowered by the founder to act on his own, he had to place a demand for such an operation with the *Qāḍī* and persuade the court that the special conditions laid down by the law for the approval of the operation existed in the particular case. His claims were checked by the *Qāḍī*, usually with the help of experts in the building professions. The contract, whether a long-term lease or an exchange, was concluded between the parties in court, not before a careful examination of its terms, carried out in order to ensure that the deal was equitable and did not in anyway cause harm to the *waqf*.⁵² The same considerations also dictated the *Qāḍī's* intervention in the appointment of private administrators. Thus, in the absence of an administrator named by the founder of the endowment, the *Qāḍī* was charged with the appointment of an administrator of his choice. He was also empowered to dismiss any administrator who failed to carry out his duties.⁵³ The general interest of the endowment, that is, *ḥaqq Allāh*, also prevailed over the founder's stipulations. Thus, in all the circumstances mentioned previously, the *Qāḍī* was authorized to act in contradiction to the founder's stipulations or to disregard them altogether.⁵⁴

⁵⁰ Hoexter, M. (1995), p. 143.

⁵¹ Kasānī, Abū Bakr Mas'ūd b. Aḥmad al (1406/1986), vol. 4, p. 221.

⁵² For the details of such procedures, see Hoexter, M. (1984), pp. 243-259, quoted by Hoexter, M. (1995), p. 144.

⁵³ Hoexter, M. (1995), p. 144.

⁵⁴ Ibid.

Besides, his concern with the claims of individuals, the *Qāḍī's* office sometimes had to touch upon the claims of Allah. This part of *Qāḍī's* duties belongs to the sphere of “auxiliary” functions according to Ibn Khaldūn’s classification.⁵⁵ When *ahlī* endowment reached their *khayrī* stage, and in the case of the *khayrī awqāf*, the intricate interplay of claims of Allah and those of men came to an end. Since both the *‘ayn* and the *manfā‘a* became *ḥaqq Allāh*, the general interest of the Islamic community reigned supreme in these cases. Thus al-Māwardī concluded that these endowments belonged in the sphere of the political authorities, represented by the *mazālim* court, which, as in the case of financial matters, was allowed extra-*shar‘ī* or *siyāsa* measures in their handling.⁵⁶ In recent Islamic history the number of *Waqf* properties had become so significant that the Ottoman Empire and many of Modern Muslim states, following its lead, established a Ministry of *Awqāf* (pl. of *waqf*) to supervise them.⁵⁷

To conclude, it is clear that the role of the state, whether carried out by the *Qāḍī*, the Ministry of *Awqāf* or any other body, is central to preserve the proceeds of the *waqf* property and protect the interests of the beneficiaries of this *waqf* especially those with *khayrī* nature. This can work as a guarantee for beneficiaries with disabilities in particular against eventual injustice practiced against them because of their dependence. However, the role of the state is highly limited concerning the issue of naming or specifying the beneficiaries of a certain *waqf*. This is almost the prerogative of the founder or the *wāqif*. In sum, the state has to protect the interests of beneficiaries of a *waqf* who have disabilities but cannot include them as beneficiaries when they are originally included by the *wāqif*.

8.2 Zakāh

Zakāh was defined by jurists as that portion of a man’s wealth, which is designated for the poor.⁵⁸ In the early days of Islam in Mecca, no limit or restriction was placed on the amount to be dominated, for that decision was left to the individual Muslim’s conscience and generosity. In the second year of *hijra*, according to the widely known authorities, both the type and quantity of *zakāh* revenues were determined, and detailed illustrations were provided.⁵⁹

Zakāh was mainly for the society rather than the immediate family. The Jurists, with the exception of the Mālikīs, agreed that it is not permissible to give *zakāh* to one’s father, grandfather, mother or grandmother because payers of *zakāh* are obligated to take care of all such people anyway. When such people become

⁵⁵ Ibn Khaldūn (1984), p. 222.

⁵⁶ Hoexter, M. (1995), p. 145.

⁵⁷ Siddiqui, M. N. (1987/1988), pp. 149-150. For detailed discussions on the institution of *waqf* in Islam, see Othman, Moh. Zain b. Hajī (1984), pp. 55-60; ‘Ashūb, ‘Abd al-Jalīl ‘Abd al-Rahmān (1915); Khallāf, ‘Abd al-Wahhāb (1361/1942); Ṭarabulsī, B.I. (1902); Ra’y, Hilāl al- (1355/1936); Anderson, J. N. D. (1951), p. 293; Ahmad, Ziauddin (1987), pp. 123-142; Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1405/1985), vol. 3, pp. 311-335.

⁵⁸ Sābiq, al-Sayyid (1), vol. 2, p. 1.

⁵⁹ Ibid, p. 2.

poor, they may draw upon the payer's largesse because it is their right. Thus if he pays *zakāh* to them, he benefits himself by avoiding the obligation of supporting them.⁶⁰ In this sense, *zakāh* is mainly directed to those poor members of society who have no family or have families but they cannot provide for them. This category of people include generally the most unfortunate people, "Those with the most serious financial problems are single and widowed women; and many of them are among those with most serious social and welfare problems; those without families. Community services tend primarily to reach those without, or with comparatively few, family sources".⁶¹

Although *zakāh* took the form of financial duty, it has also many other dimensions. First of all it was seen as a form of *'ibāda* (act of worship) in Islam which constitutes one of the five pillars (*arkān*) of Islam. It is associated with prayer (*ṣalāh*) in eighty-two Qur'anic verses.⁶² It had also social and moral aims. Shāh Walī Allāh (1110-1176/1698-1762) explains this in a mystic language by saying, "Know that when a need presents itself to the poor person, and he entreats God about it either verbally or through his conditions, his entreaty knocks at the door of the Divine Generosity. Sometimes the best interest will be fulfilled by inspiring the heart of a pure person to furnish the remedy of his want. Thus when the inspiration descends and he is provoked (to respond), he is given success, God is pleased with him, and blessings flow to him from above and below, and from his right side and his left, and God's mercy is upon him."⁶³

In this way, *zakāh* is in harmony with the spirit of Islam, which abhors forcing a person to good deeds by external coercion. On the contrary, the Muslim should spend out of his own belief and self-satisfaction. The Qur'an criticized those people who spend without self-content, "The only reasons why their contributions are not accepted are: that they reject Allah and His Messenger; that they come to prayer without earnestness; and that they offer contributions unwillingly" (Qur'an 9:54).⁶⁴

Zakāh is also not considered as a favor (*minna*) that the wealthy bestow upon the poor; rather, it is a due (*ḥaqq*) that Allah has entrusted into the hands of the rich to give the poor and distribute among the deserving.⁶⁵ Allah has described this right as a known right (*ḥaqq ma'lūm*). Allah says: "And those in whose wealth is a recognized right", "For the (needy) who asks and him who is prevented (for some reason from asking)" (Qur'an 70:24-25).⁶⁶

Modern Muslim jurists tried to integrate the *zakāh* institution into the social solidarity system. Yūsuf al-Qaraḍāwī says in this regard:

"Some of the central goals of *zakāh* have a social dimension. One of these goals is supporting the helpless and dependent people like the poor and the destitute (*masākīn*).

60 Ibid., vol. 3, p. 75.

61 Townsend, Peter & Dorothy Wedderburn, *The Aged and the Welfare State*, G. Bell & Sons Ltd., York House, Portugal Street, London, W.C.2., 1965, p. 15.

62 Sābiq, al-Sayyid (1), vol. 2, p. 1.

63 Walī Allāh, Shāh (1996), p. 221.

64 Bahiyy, Muḥammad al- (1971), p. 363.

65 Qaraḍāwī, Yūsuf al- (1422/2001), p. 154.

66 Sibā'ī, Muṣṭafā al- (1955), p. 48; Qaraḍāwī, Yūsuf al- (1422/2001), pp. 226 & 227.

Such support has its effect on those people as individuals and on the whole society at large as well. Actually the limits between individual and society are interrelated concepts. [...] Hence, there is no wonder that giving assistance to the needy is considered as a social goal because this assistance creates a more united and cohesive society. *zakāh* in this sense is part of the social solidarity system in Islam but it is not the whole system because the system of social solidarity in Islam is very broad. *Zakāh* comprises both of “social insurance” and “social security”. In social insurance, the individual pays regularly an insurance premium so as to benefit from it when he/she becomes disabled. In *zakāh*, the individual who pays *zakāh* one year may become poor in the second year so he turns out to be a recipient of *zakāh*. When viewed from this aspect, *zakāh* is social insurance. On the other hand, from a social security perspective, the poor receives financial support directly from the state although they did not pay any premiums. In *zakāh*, it may happen that an individual would benefit from *zakāh* revenues although he has never paid anything for that purpose. In this sense, *zakāh* is social security. But *zakāh* is closer to the concept of security (*ḍamān*) than insurance (*ta'mīn*). This is because the individual benefits from *zakāh* not according to what he has paid but according to what he needs whether his/her needs are great or small until he/she reaches the level of sufficiency (*ḥadd al-kifāya*). Imam al-Shāfi'ī and the scholars who agreed with him stated that *zakāh* should allow the poor to achieve *ḥadd al-kifāya* not only for a month or a year but also for the whole life. Imam al-Zuhrī wrote to the Caliph 'Umar b. 'Abd al-'Azīz about the recipients of *zakāh*, people suffering from incurable diseases, the disabled poor and the destitute who receives no financial support (neither salaries nor pensions). Based on what has been stated above, Yūsuf al-Qaraḍāwī concluded that *zakāh* constituted the first organized legislation in the field of social security which does not depend on the individual voluntary charities but on systematic and regular aids (which the poor receive directly) from the government.”⁶⁷

8.2.1 People with Disabilities and *Zakāh*

Helping people with disabilities within the *zakāh* system is a high priority. It has been stated, explicitly, by more than one jurist that the people with disabilities, as long as they are poor, must be included in the recipients of *zakāh*. Muṣṭafā Ibn Ḥamza, one of the contemporary Moroccan scholars, Oujda University, says in this regard, that Muslim scholars disagreed on defining the *faqīr* and *miskīn* among the recipients of *zakāh*. Despite this disagreement, Muslim scholars did agree that people with disability who cannot earn their living by their own are the first category to benefit from *zakāh*.⁶⁸ Strikingly enough, some of the Qur'anic interpreters limited the purport of *al-faqīr* (the poor) to people of infirmity against *al-miskīn* (the needy) to be the able-bodied needy. A saying of this meaning has been reported by al-Ṭabarī in his *Jāmi' al-bayān* ascribed to Qatādah.⁶⁹ The same opinion is expressed by 'Abdullāh b. 'Amr b. al-'Āṣ. Al-Ṭabarī reports that Zuhayr al-'Āmirī met 'Abdullāh b. 'Amr b. al-'Āṣ and asked him about *zakāh* saying, “Whose money is it?” 'Abdullāh replied, “It is the money of those people with lameness, blindness, the one-eyed, and all other dependent people.” Then

⁶⁷ Qaraḍāwī, Yūsuf al- (1414/1994), 934-936.

⁶⁸ Ibn Ḥamza, Muṣṭafā, *Ḥuqūq al-mu'awwaqīn fī al-islām*, Morocco, 1414/1993, p. 51.

⁶⁹ Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 10, p. 110.

Zuhayr said, “Collectors of *zakāh* and those fighting for the sake of Allah have also a right in it!” ‘Abdullāh said, “For those fighting for the sake of Allah, it has been made lawful for them. As for the collectors of *zakāh*, it is allowed to them to take only in accordance with their work. *Ṣadaqa* is not lawful for the rich nor for the able bodied.”⁷⁰

In this connection, it is proper to refer to a document prepared by some jurists, who at the behest of ‘Umar Ibn ‘Abd a-‘Azīz, elaborately specified the religious precepts concerning the eight *zakāh* beneficiaries. We will select only those parts relating to our topic. The document runs as follows:

“The following are the places of *ṣadaqa* and these are eight in number. ... One half of the share of the poor (*al-fuqarā’*) goes to those who fought for the first time in a battle for the God’s cause. Then, as the auxiliary troops, they will be allotted to a fixed emolument, which they will receive as the first *‘atā’*, but afterwards, no more *ṣadaqa* is allowed to them. The remaining half is given to the poor who have not been able to fight because of disability or chronic disease (*zamāna*).”⁷¹

“One half of the share of the destitute (*al-masākīn*) goes to those stricken with diseases preventing them from doing any job and from moving around the earth. The other half is for those who beg for their food, and for the Muslims in prison who have nobody to care for them.”⁷²

Among modern scholars, Professor Muḥammad al-Bahiyy, the former director of Al-Azhar University, says in his comment on the first category of the recipients of *zakāh*, namely, the poor (*al-Fuqarā’*) that people of advanced age and those suffering from incurable diseases should be included in this category.⁷³ Yūsuf al-Qaradāwī⁷⁴ and ‘Abdullāh b. Bāz⁷⁵ stated also that the people with disabilities are to be included in the beneficiaries of *zakāh* as long as they are poor.

8.2.2 The Administration of *Zakāh*

Although *zakāh* in principle is an obligation on the individual not on the state, this does not mean that the state had no role to play. On the contrary, it has more than one role in this regard. Here we focus on two of them, namely enforcing the payment of *zakāh* upon those for whom payment is obligatory and then collecting this money and distributing it among the due beneficiaries.

As for the first role, it is the ruler’s duty to take *zakāh* from the defaulter by force and rebuke him, provided he does not collect more than the stipulated amount. However, in the views of Aḥmad and al-Shāfi‘ī (in his earlier opinion) the ruler could take half of the defaulter’s money, in addition to the calculated amount

⁷⁰ Ibid., p. 111.

⁷¹ Ibn Salām, Abū ‘Ubayd al-Qāsim (1388/1968), p. 764.

⁷² Ibid.

⁷³ Bahiyy, Muḥammad al- (1971), p. 371.

⁷⁴ Qaradāwī, Yūsuf al- (2001).

⁷⁵ Ibn Bāz, ‘Abd Allāh (1413/1992), p. 17.

of *zakāh*, as a punishment.⁷⁶ If some people refrain from paying *zakāh* knowing that it is due when in reality they can afford to pay, they should be fought by the ruler [state] until they yield and pay. This has been stated by a multitude of Muslim jurists. Here we give some chronologically arranged examples of those scholars. Al-Shāfi‘ī (d. 205/820),⁷⁷ al-Qurṭubī (d. 671/1272),⁷⁸ al-Jaṣṣāṣ (d. 370/981),⁷⁹ Ibn Ḥazm (d. 456/1064),⁸⁰ Ibn Qudāma (d. 620/1223),⁸¹ ‘Alī b. Muḥammad al-Āmidī (d. 631/1233),⁸² Muḥammad Ibn Mufliḥ al-Maqdisī (d. 763/1361), and he related consensus among Muslim jurists in this regard,⁸³ and the Mālikī scholar Muḥammad Ibn ‘Abd al-Bāqī al-Zurqānī (d. 1122/1710).⁸⁴ Most of these scholars quoted the following ḥadīth in support of their opinion. Abū Hurayra is reported to have said: “When Allah’s Messenger, upon him be peace, died and Abū Bakr succeeded him as Caliph, some Arabs apostatized, causing Abū Bakr to declare war upon them. ‘Umar said to him: Why must you fight these men? Especially when there is a ruling of the Prophet, upon him be peace: I have been ordered to fight men until they say that none has the right to be worshipped but Allah, and whoever said this has saved his life and property from me except when a right is due in them and his account will be with Allah. Abū Bakr replied: By Allah! I will fight those people who differentiate between *ṣalāh* (Ritual Prayer) and *zakāh* because *zakāh* is due on property. By Allah! If they withheld even a young she-goat (*‘anāq*) that they used to pay at the time of the Allah’s Messenger, upon him be peace, I would fight them. Then ‘Umar said: By Allah! It was He who gave Abū Bakr the true knowledge to fight, and later I came to know that he was right.”⁸⁵ Among modern scholars, Prof. Muḥammad al-Bahiyy, the former director of Al-Azhar University, comments on this incident saying that the war launched by Abū Bakr, despite he was known for his kind-hearted treatment and mild-temper, against the *zakāh* refrainers (*māni‘ī al-zakāh*) was not just a war against some people described as apostates. In fact, the main reason behind this war was to protect the future of the Islamic community. The cohesion of the Muslim community would collapse, if the value of *zakāh* was belittled or marginalized in the hearts of the Muslim majority.⁸⁶

So the Islamic state should fight, if necessary, to ensure the rights of the poor people living in the Muslim community. This is how the state should in order to protect the financial rights of the poor in general. It is self-evident to expect how the state would react if the poor, the needy and the dependent people especially

⁷⁶ Sābiq, al-Sayyid (1), vol. 2, p. 8; Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1400/1979), vol. 2, p. 400. See also Mirdāwī, ‘Alī b. Sulaymān al- (1), vol. 3, p. 189; Shirāzī, Ibrāhīm b. ‘Alī b. Yūsuf al- (1), vol. 1, p. 169; Kasānī, Abū Bakr Mas‘ūd b. Aḥmad al (1406/1986), vol. 2, p. 35.

⁷⁷ Shāfi‘ī, Muḥammad b. Idrīs al- (1393/1972), vol. 1, p. 255.

⁷⁸ Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 7, p. 133.

⁷⁹ Jaṣṣāṣ, Aḥmad b. ‘Alī al-Rāzī al- (1405/1984), p. 193.

⁸⁰ Ibn Ḥazm, Abū Muḥammad ‘Alī (1347-1352/1928-1933), vol. 11, p. 378.

⁸¹ Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 229.

⁸² Āmidī, ‘Alī b. Muḥammad al- (1404 /1983), vol. 1, p., 338.

⁸³ Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1418/1997), vol. 6, p. 153.

⁸⁴ Zurqānī, Muḥammad b. ‘Abd al-Bāqī b. Yūsuf al- (1411/1990), vol. 2, p. 171.

⁸⁵ Abū Dawūd (1), vol. 1, p. 346.

⁸⁶ Bahiyy, Muḥammad al- (1971), pp. 393 & 394.

those with disabilities, were neglected and the rich refrain from giving them their share of *zakāh*.

As for the second role to be played by the state in the administration of *zakāh*, Yūsuf al-Qaraḏāwī says in this regard, “When Muslims established their state (that is in Medina) the definite amounts of *zakāh* were fixed and the state couriers were sent to collect *zakāh* and distribute its revenues among the lawful beneficiaries (*maṣārif shar‘iyya*). The Qur’ān called these state couriers (*al-‘āmilīna ‘alayhā*) or the *zakāh* officials. The Qur’ān has also allocated a certain share of *zakāh* for such officials to safeguard that *zakāh* will be duly collected and distributed.”⁸⁷

What should be added at this juncture is that the state has a wide scope of choice. There are eight categories of the recipients of *zakāh*. It is not a must, according to some jurists, to portion out the revenues of *zakāh* equally among all these categories.⁸⁸ The abiding principle determining the exact amount to be given in any particular case is that the aim of *zakāh* is to rehabilitate the beneficiary and not merely to maintain his/her existence within the confines of poverty. Accordingly, the nature and extent of *zakāh* assistance must always, and necessarily, depend on both the prevailing cost of living and on the special circumstances and requirements of each individual beneficiary.⁸⁹ Some Jurists, like Ibrahīm al-Nakh‘ī, said that it is permissible to place the whole amount of *zakāh* into one category if that is necessitated by the current conditions.⁹⁰ It appears to be most reasonable, as has been related from Mālik, that the matter should be left to the judgment of the authority. Whichever category or categories of the prescribed beneficiaries is/are actually in need and greater in number should be given preference in allotting to them, if the authority considers it justifiable, the required amount from the *zakāh* funds.⁹¹ It is also not desirable that all persons, irrespective of their needs, should receive *zakāh* equally. The authority has full capacity to allot, say, only one dīnār to a poor person knowing business techniques, because this one dīnār may suffice him to attain the state of *ghinā* (self sufficiency). But another poor man may require a big amount of one thousand dīnārs for achieving self sufficiency in matters of food and clothing etc, he should then be given such amount,⁹² In fact the authority should be under no restriction to utilize the *zakāh* revenues may be envisaged essential and of greater benefit under the different heads of *zakāh* expenditure, as far as this would not contradict the clear instructions of the Qur’ān and the Sunna. For instance, it is not necessary that *zakāh* should always be assigned to persons. ⁹³ The input may also be employed, on the emergency of needs and to acquire greater benefit for the deserving beneficiaries, in public institutions taking care of the poor and dependent classes of society.

⁸⁷ Qaraḏāwī, Yūsuf al- (1422/2001), p. 154. See also, Kasānī, Abū Bakr Mas‘ūd b. Aḥmad al (1406/1986), vol. 2, p. 35.

⁸⁸ See Mirdāwī, ‘Alī b. Sulaymān al- (1), vol. 3, p. 185.

⁸⁹ Zayas, Farishta G. de (1379/1960), p. 350.

⁹⁰ Sābiq, al-Sayyid (1), vol. 2, p. 70.

⁹¹ Ibn Salām, Abū ‘Ubayd al-Qāsim (1388/1968), p. 763.

⁹² Ahmad, Ziauddin (1981), p. 38.

⁹³ Ibid.

As far as people with disabilities are concerned, we say that the state represented by the ministry of social affairs or other departments should consider the case of the poor people having disabilities. It is by no means sufficient to allocate a meager pension with which those people can hardly contrive to meet the necessities of life. In this regard, it is highly recommended to correct one of the common misconceptions concerning the objectives of *zakāh*. It is perhaps a common belief that *zakāh* is designed just to meet the basic needs of Muslims in distress. But a careful consideration of its heads of expenditure as prescribed in the Qur'ān, as well as the policy of its distribution, as could be seen in the Sunna of the Prophet – Peace and Blessing be upon him – prove that *zakāh* is actually for the fulfillment of the Muslim's right to live comfortably in society.⁹⁴ We do not come across any sayings of the Prophet or of his Companions prescribing any limit to the amount payable to a single individual.⁹⁵ However, in view of what can be deduced from a number of Traditions and precedents, it can most emphatically be said that *zakāh* is not a mere assistance of alms. It should be given in such a manner to secure economic sufficiency (*ghina*) for its beneficiaries. Abū Talhā, a Companion once sought of the Prophet to counsel him about a fertile orchard, which was fabulously increasing his wealth. Abū Talhā did not want to retain and proposed to donate it away. On being asked by the Prophet to distribute it among the poor persons of his kin, he gave it to Ubayy b. Ka'b and Ḥassān b. Thābit.⁹⁶ The donation of the said orchard was, of course, not part of the compulsory *zakāh* incumbent upon Abū Talhā; he rather voluntarily disowned in favor of two persons. But it is agreed upon that all *ṣadaqāt*, whether compulsory or voluntary, are meant for the needy. So when there is no limit fixed for an individual in paying to him out of the voluntary *ṣadaqāt* there also should be no limit of amount in making payments to an individual out of the funds of the compulsory *zakāh*.⁹⁷

ʿUmar Ibn al-Khaṭṭāb is reported to have once ordered for no less than three camels to be given on an able bodied man who brought the tale of his misery to the notice of the Caliph.⁹⁸ It is obvious that in making such a precious item of *zakāh* available to one man only, ʿUmar's intention was nothing but to make himself sufficient in the means of livelihood. His policy was, whenever you pay them, make them self sufficient.⁹⁹ He is also reported to have given clear instructions to his *zakāh* administrators to pay the needy abundantly, even if they were a hundred camels.¹⁰⁰

According to Abū ʿUbayd, many Successors (*Tābiʿūn*) also expressed a similar view and recommended to give abundantly rather than scantily.¹⁰¹ It is therefore

⁹⁴ Ibid., p. 23.

⁹⁵ Ibid.

⁹⁶ Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 4, p. 132.

⁹⁷ Ibn Salām, Abū ʿUbayd al-Qāsim (1388/1968), p. 743, quoted also by Ahmad, Ziauddin (1981), p. 36.

⁹⁸ Ibn Salām, Abū ʿUbayd al-Qāsim (1388/1968), p. 747.

⁹⁹ Ibid., p. 748.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., p. 749.

desirable that when a person is selected a beneficiary of *zakāh*, attempts should be taken to pay him sufficiently so as to enable him to meet his own needs and those of his family.

Abū ‘Ubayd’s following statement at the conclusion of his discussion on the related Traditions and Precedents probably pinpoints the real objective underlying the distribution of *zakāh*.

“All these Precedents indicate that no fixed amount has been prescribed for the Muslims as how much of *zakāh* they should pay to a needy person. It has also been suggested that they should not pay, despite the fact that the receiver is in debt, in excess of that amount. The payment would rather be in reflection of affection and grace, provided that it is based on the sound judgment of the distributor and that he does not show any favoritism. In illustration, it may be said that a man of immense wealth finding that members of a Muslim family in the state of want and destitution – they have no house to give them shelter or to cover their destitution – buys for them, with the *zakāh* of his wealth, a house to provide them shelter from the severity of the winter and from the hotspell of the summer. Or finding that they are bare of clothes and have no proper dress to wear, provides (with the *zakāh* money) to them such clothes as will cover their hinder parts at the time of prayers and will protect them from the severity of hot and cold spell. These objectives and the similar ones cannot be achieved without providing big amounts. It might be rather that a person is not willing to pay voluntary *ṣadaqāt* towards the expenditure of such needs, but he does this willingly out of the *zakāh* of his wealth. Will he not then be relieved of his *farḍ* (Liability)? Certainly he will. Moreover in such case, he will be regarded, if God willing, a beneficent.”¹⁰²

8.2.3 Are there Other Claims on Wealth besides *Zakāh*?

One may say that suppose that the amount of *zakāh* collected could foreseeably be insufficient to put an end to the *zakāh* of people with disabilities. In other words, the government has given them their due share of *zakāh* but they did not reach *ḥadd al-kifāya*. What is the role of the Islamic state in such case? The question of imposing money other than *zakāh* upon the wealth of the rich was first raised by a number of the Companions of the Prophet such as ‘Alī b. Abī Ṭālib, ‘Abdullāh b. ‘Umar and the most enthusiastic Abū Dharr al-Ghifārī – May Allah be pleased with them all – during the Caliphate of ‘Uthmān b. ‘Affān – May Allah be pleased with him. They all see that there are other claims on wealth besides *zakāh* so long as the poor did not reach the level of *ghinā* or self-sufficiency. They, however, disagreed on the amount to be paid after the *zakāh*. Abū Dharr, the main protagonist of this drama promoted for his idea publicly in Syria. Abū Dharr’s call was met with a substantial interest especially on the side of the poor to the extent that Mu‘āwiya b. Abī Sufyān, the ruler of Syria at this time, felt anxiety. He wrote to the Caliph ‘Uthmān and asked him to order Abū Dharr to leave for Medina and the Caliph did.¹⁰³ The attempt of Abū Dharr was later enhanced and codified by Ibn Ḥazm. In his *Al-Muḥallā*,

¹⁰² Ibid., p. 750.

¹⁰³ Labbān, Ibrāhīm al- (1383/1964), pp. 247 & 248.

he states that the rich of each locality are to take care of the financial needs of the poor of such place. The *Sultān* or the ruler forces them (the rich) to do so if *zakāh*-collected money was not sufficient (to meet the financial needs of the poor).¹⁰⁴ Ibn Ḥazm then quotes a number of Qur'anic verses, Prophetic Traditions and sayings from the Companions and the Successors.¹⁰⁵

In modern time, Shaykh Sayyid Sābiq responds to the aforementioned question by saying, "If the amount of *zakāh* is not enough to alleviate the conditions of the poor and the needy, then the rich can be subjected to further taxation. How much should be taken is not specified. Its quantity will be determined by the needs of the poor. The scholars agree that should a need arise, even when *zakāh* has been paid, the Muslim community is bound to contribute toward the alleviation of the problem".¹⁰⁶ It should also be known that the rulings applied there (in *zakāh*) are to be applied typically here. Imam Muḥammad 'Abduh's comments are: "The giving of property in excess of the due *zakāh* is considered one of the basic elements of piety (*birt*) and is enjoined like the prescribed *zakāh*."¹⁰⁷ Some of the contemporary scholars call this extra money the Islamic income-tax.¹⁰⁸

Now there are two points to comment on. First, after mentioning the proponents of this viewpoint, we understand that the main target of *zakāh* is to achieve the *ghinā* of the poor. In other words, all the basic needs of the poor are to be fulfilled, if not by *zakāh* alone, then by other financial claims imposed by the state upon the rich, which some of modern scholars termed as the Islamic income-tax. Secondly, the specific case of each recipient is to be considered. Hence the case of the poor people having disabilities is to be considered from the perspective of these two points. Thereupon, when the state distributes the shares of *zakāh* revenues among the beneficiaries, it should be put into consideration that the basic needs of people with disabilities are different from the non-disabled. For instance, expenses of the health care should be counted. In other words, it is most likely that the expenses of the basic needs of a person with disability would cost more. Thereupon they should be given more even if this would necessitate imposing extra taxes on the rich or giving them a share bigger than the share of the other recipients of *zakāh*.

8.2.4 The Status of Non-Muslims

Here we can divide Muslim jurists into the opponents who opined that non-Muslims cannot be given from *zakāh* and the proponents who said that non-Muslims may benefit from the revenues of *zakāh*.

¹⁰⁴ Ibn Ḥazm, Abū Muḥammad 'Alī (1347-1352/1928-1933), vol. 6, p. 156.

¹⁰⁵ Ibid, vol. 6, pp. 156-159.

¹⁰⁶ Sābiq, al-Sayyid (1), vol. 2, pp. 91 and 92.

¹⁰⁷ Ibid, vol. 2, p. 92.

¹⁰⁸ See for instance the opinion of Shaykh Ibrāhīm al-Labbān, the former dean of Dār al-'Ulūm Faculty, Cairo University and the member of the Islamic Researches Complex, Labbān, Ibrāhīm al- (1383/1964).

The opponents maintained that *zakāh* was exclusively designed for the benefit of Muslims.¹⁰⁹ They based their theory of ineligibility of the non-Muslims for *zakāh* on the tradition, “Take it (*zakāh*) from the rich amongst you and give it to the poor amongst you.” According to them, here the phrase “amongst you” referred to the Muslims only. Abū ‘Ubayda emphatically determined the exclusive right of the Muslims over the revenues of *zakāh*.¹¹⁰

The proponents, on other hand, opined that it is permissible to give the non-Muslim poor from *zakāh*. This means that the poor people with disabilities would benefit from *zakāh* even if they were non-Muslims.¹¹¹ To them, the position taken by the jurists in not allowing the non-Muslim citizens to be benefited with the *zakāh* funds seemed to be unnecessarily rigid. Their opinion that the saying of the Prophet, “Take it from the rich amongst you and give it to the poor amongst you” was directed to mean that the *zakāh*, as it was to be levied upon the Muslims only, was also to be utilized exclusively in their benefit, did not work as such at least in case of people whose hearts were to be reconciled, because no jurist, except al-Shāfi‘ī, was reported against the payment of *zakāh* to a non-Muslim under this class of beneficiaries.¹¹²

In this respect there was a clear mandate from ‘Umar that *zakāh* funds should be made available to help the non-Muslim destitutes who, are, according to him covered by the saying of Allah, “Alms are for the poor and the needy [...]” (Qur’ān 9:60) ‘Umar expressed this opinion when he happened to find an extremely old man of the Jewish community begging from door to door. The Caliph first gave him something from his own house and then sent him to the officer who was in-charge of the Public Treasury (*Bayt al-Māl*) for a bigger amount. ‘Umar is reported to have instructed the officer-in-charge of the Treasury, “Look into the affairs of this man and other persons like him. By God, we would not be doing justice to him if we take away his satisfaction (by Imposing *Jizya*) and then cause him to suffer in his old age. (God says): “*Ṣadaqāt* are only for the poor and the needy.” The *fuqarā’* are among the Muslims, and this man falls under the category of *masākīn*.¹¹³

At any rate, a modern state cannot ignore the socio-economic principles in tax measures. It has now become primary function of the governments to regulate the distribution of wealth, and taxation is a conscious method, *zakāh*, being the most effective one, to level the social inequalities brought about by the market mechanism and certainly by private property.¹¹⁴ Equity and consistency in taxation demand that all citizens, irrespective of religion and sect, must equally contribute to the fisc as well as to any welfare program undertaken by the state.

¹⁰⁹ Ahmad, Ziauddin (1981), p. 40.

¹¹⁰ Ibn Salām, Abū ‘Ubayd al-Qāsim (1388/1968), p. 803. See also Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1400/1979), vol. 2, p. 433.

¹¹¹ Qaradāwī, Yūsuf al- (1420/2000), vol. 1, p. 293.

¹¹² Ibn al-Humām (1316/1898), vol. 7, pp. 285-262; Ahmad, Ziauddin (1981), p. 41.

¹¹³ Ibn al-Qayyim (1381/1961), vol. 1, p. 38; Abū Yūsuf (1382/1926-36), p. 126.

¹¹⁴ Ahmad, Ziauddin (1981), p. 42.

Hence, even if in the case of adopting the opinion of the majority, this would not mean that the non-Muslims with disabilities would be left without any financial support. Social justice as prescribed by Islam was not merely confined to Muslims only. These are meant for all mankind. The Prophet, Muḥammad has been adjoined as the *Raḥmatullāhī li al-‘Ālamīn*, which means: “We sent thee not, but as mercy for all creatures” (Qur’ān 21:107). This has already been demonstrated in the plural society of Medina founded by him. Montgomery Watt in his book, *The Majesty that was Islam* (1974), has given eloquent illustrations to the above truth.¹¹⁵ Accordingly, non-Muslims having disabilities, when suffering poverty, must be maintained by the state. The sources of such financial support for are numberless, like *jizya* (an annual tax levied upon non-Muslims living in the Islamic state in lieu of *zakāh* and other obligations of Muslims), *kharāj* (a tax levied on the produce of the landed property own by non-Muslims), the spoils of war [...] etc. They should receive what is called nowadays the state-disability pension. In the early days of Islam especially, at the time of the rightly guided Caliphs, *Bayt al-Māl* or the Public Treasury was not only the possession of the Muslims but also that of the non-Muslims living in Muslim lands. Indigent and dependent non-Muslims and Muslims were obligated to be cared for from the resources of the *Bayt al-Māl*.¹¹⁶ The above-mentioned incident of ‘Umar, the second Caliph with the Jewish person adds credit to this fact. On another occasion, when ‘Umar traveled to Damascus he passed through the land of some Christians who suffered from leprosy, so he commanded that they be granted from the *ṣadaqa* funds and that they be supplied with food.¹¹⁷

In sum, the modern Islamic governments while imposing *zakāh* on Muslims should not overlook the welfare needs of the non-Muslims and their liability to the achievement of this objective. Similarly, the purpose of imposing any financial obligation must not be oblivious of maintaining a proper economic equilibrium between both the individuals and the groups of citizens. The non-Muslims therefore must also contribute in the name of their own social welfare and in the name of justice in taxation.¹¹⁸

¹¹⁵ Noor, Abdun (2000), p. 446.

¹¹⁶ Azmi, S. H. (1991), vol. 35, p. 222.

¹¹⁷ Ibid.

¹¹⁸ Ahmad, Ziauddin (1981), p. 43.

Conclusion

In the preceding chapters an attempt is made to explore the position of people with disabilities in Islam. The main focus was Islamic theology and Islamic jurisprudence. This attempt took the form of the following steps:

Chapter One gives overall introductory remarks about the relevance of this topic, interest within different religions especially Islam to study it, earlier studies conducted in this field, methodological approach adopted in this study and finally an outline of the English and Arabic terminology with relevance to this topic.

Chapters Two and Three are dedicated to perspectives on people with disabilities in Islamic theology. Within the broad framework of evil and pain in life, two focal points occupied the minds of Muslim theologians while discussing the existence of disabilities in this life, each of them is discussed in a separate chapter.

Chapter Two shows that theologians were interested in explaining the logic and rationale of having these disabilities, seen as a sort of pain and suffering, although the image of God in Islam speaks about an all-powerful, all-just and all-wise God. Interpretations and justifications provided to this seeming paradox by Muslim theologians shows that they varied extremely in this respect. On one side, some figures found it almost an unsolvable problem and gave statements which were seen by the majority of Muslim scholars as heretic proclamations because they detracted the spotless and perfect character of God. On the other side, a group of Sufis and philosophers did not see a *real* problem in this issue. The Sufis opined that one who knows God well and experiences loving Him will not feel any disturbance by being disabled. On the contrary, disability was seen sometimes as a sign of love from God. According to them, the *real* disability is not listening to the message of God and not following the Straight Path as shown by His messengers and prophets. Philosophers focused on the nature of life we live in and stated that this life is composed of the opposites such as richness and poverty, health and sickness, pain and pleasure, etc. Any attempt to move away one of these opposites, the other one will be meaningless. In short, this life cannot exist without evil, pain or disabilities.

Between these two sides, the majority of Muslim scholars conceded the existence of a theological problem and thus attempts should be done in order to explain and justify the existence of disabilities in life. However, the starting point of all these scholars was that God is perfect and the existence of disabilities or evil in life does not injure this divine perfection. Although they agreed on this general principle, they differed on further details into three main groups.

One group, mainly the Ash'arites, saw the perfection of God in His omnipotence. Within this framework, they opined that the only explanation for the existence of disabilities and all forms of pain and suffering in this life is God's omnipotence. They said that this universe is His own Kingship and He

runs it as He wills. Nothing and no one can stand against His will. To ask Him, why did You do so and why did not You do so is tantamount to breaching the omnipotence and the lordship of God. The human intellect, which is created by God, cannot question the Creator.

The second group, namely, the Mu‘tazilites, stated that the perfection of God is mainly represented in His unmatched justice and wisdom rather than His omnipotence. Because of His justice, He granted people freedom to act in life. As part of this freedom, people can do both good deeds and bad deeds. These bad deeds, whose responsibility lies completely on people rather than God, are the main sources of evil and pain in life. However, this group did not deny that disabilities can take place beyond the control of people such as being born with blindness. They said that God is responsible for such calamities but they are not “bad” acts because a just and wise God does not do “bad” acts. According to this group, all calamities in life, whether done by man or by God, have one or more wise purposes. Moreover, these purposes can be discerned by the human intellect. Within this framework, this group tried to fathom out a possible wise purpose for every form of pain or suffering. They eventually came up with very detailed and complicated theories about the benefits people can gain from pain and suffering.

The third group, represented by the majority of Muslim scholars, tried to find a middle ground between the first two groups. They opined that God’s omnipotence should not be stressed at the expense of His justice and wisdom or vice versa. They saw no harm in the rational attempts exerted to seek for possible wise purposes which can justify the existence of disabilities and other forms of suffering in life. However, they added, exerting such attempts does not necessarily mean that every incident of disability or every form of suffering can be rationally justified in a convincing way. People should always keep in mind that their capacities are limited while God’s wisdom is not. Within this framework, this group provided a number of wise purposes most of which were based on scriptural texts from the Qur’ān and Sunna.

Chapter Three shows that Muslim scholars did not restrict themselves to the theological attempts of answering the question, why do disabilities exist? There was also another practical and pragmatic dimension dealing with the question: how can we live with disabilities? Proposals provided by Muslim scholars in this respect were mainly psychological in nature. They tried to come up with a practical recipe that would wipe out or at least diminish the sorrow and anguish that one can suffer because of being disabled. The sporadic discussions were summed up in this chapter in three main ethical manners, namely, servitude (*‘ubūdiyya*), patience (*ṣabr*) and gratitude (*shukr*). Servitude was presented as the starting point by which the afflicted person recognizes that he/she is a servant (*‘abd*) created by a Creator who takes full care of His creatures. Practicing this type of servitude would make it easy for the afflicted person to move forward to patience and then finally to gratitude. Scholars were aware of the fact that practicing these moral attitudes at the times of afflictions is by no means easy. Hence, they evolved different instruments and came up with many

practical suggestions that would make practicing these moral attitudes within the reach of average people.

Chapters Four till Eight focus on perspectives in Islamic jurisprudence. The main target of these chapters is to get an idea about how Muslim jurists thought of people with disabilities. For instance, are they dignified people the same as other people who do not suffer disabilities? Do they have the same rights as the other people? How can these people live a dignified life, also in the financial sense, if they cannot earn their livelihood by themselves?

Chapter Four focus more on the social position of people with disabilities as epitomized in the overall principle of human dignity. One of the interesting findings of this chapter which, to my knowledge, escaped the attention of all modern researchers was the role of Greek physiognomy. The purport of this physiognomy was that a deformation in the physical appearance indicates a similar one in the spirit and character. By the third/ninth century, important Greek sources were translated into Arabic and by time became very popular and sometimes even authoritative in the Arabic and Islamic culture. The popularity of this science penetrated the juristic circles. The clearest form of this penetration was a number of statements, which are physiognomic in nature and thus very offending for people with disabilities, ascribed to the well-known jurist, Muḥammad b. Idrīs al-Shāfi‘ī (d. 205/820). After a thorough study of these statements and their spread in the juristic circles, we concluded that these statements were falsely ascribed to al-Shāfi‘ī. Although such statements found some support among a number of jurists, their purport was never a main line among jurists and it had almost no influence on the main body of Islamic jurisprudence. Thus, people with disabilities, theoretically speaking, remained to enjoy, within the juristic circles, the same degree of dignity guaranteed for human beings in general.

Besides these theoretical discussions, this chapter also provides an unprecedented study on the dignity of people with disabilities in practice. This is based on a previously unknown manuscript written in the 16th century on people with disabilities. The Meccan author, Ibn Fahd, mentioned the names of famed people, from the time of the Prophet Muḥammad till his own time, along with the disabilities they suffered. Some of the contemporaries of the author were offended because they were mentioned in the book. Consequently, a fatwa was issued that the book must be damaged because it had transgressed red lines and put the dignity of people with disabilities into discredit. The book was eventually damaged. The author did not surrender quickly and insisted that he did not have any bad intentions by writing on people with disabilities. To protect his reputation, the author contacted well-known five Muslim scholars in Egypt and Syria and pointed out the main target of his book. The scholars replied that there is no harm to write such a book. The author rewrote the book and enlarged its size and the copy written by the author himself remained intact up to this moment. The story of this book is highly informative about the social position of people with disabilities and also about the role of Muslim jurists in guarding this position. For instance, the book was damaged because of a fatwa

attacking the book and the author rewrote the same book after getting fatwas approving the book. In this sense, we can speak about a dynamic relationship between people with disabilities, their society and Muslim jurists as well.

Chapter Five fathoms out the juristic sources looking for an answer to one main question: how can this group of people earn their livelihood? This chapter elaborates first the possibility of employment, which is the first possible means of earning money. We found that juristic sources were full of detailed information about the rulings with pertinence to people with disabilities in this regard. We also checked the possibility of employing people with disabilities in the highly prestigious jobs in Islamic society. The general attitude was that this group of people can in principle be employed in every job as long their disabilities do not affect the quality of work they are required to do. Strikingly enough, disability was sometimes a privilege in the sense that people with disabilities were preferred for specific jobs to other people. The case of the blind people who were appointed as muezzins (performing call to prayer) is a clear example in this regard. Because *adhān* (call to prayer) was done from the top of a minaret and thus the muezzin could look at the neighboring houses, blind muezzins were always preferred. This holds true to the extent that some people pretended blindness so that they can get this job which was sometimes well-paid. However, this was not always the case. Disability could also be an important barrier to find a job. Thus searching for medical treatment to cure or at least to minimize the consequences of disabilities is always logical.

Chapter Six deals with treating disabilities. In this regard juristic discourses adopted a holistic rather than a one-sided approach. A disabled person can be treated by the regular medicine, in juristic literature named as “physical medicine” (*tibb jasmānī*), or by religious formulae from the Holy Scripture, i.e., Qur’ān or other texts believed to comprise healing effects. This type of medicine was named “spiritual medicine” (*tibb rūḥānī*). Although early and modern Muslim jurists approved both types of medical treatment, a general preference was given to the “spiritual medicine” by early jurists and to “physical medicine” by modern jurists. The common point among all jurists was relieving or minimizing the pain and troubles accruing from disabilities. In this regard we have checked a number of issues which fall nowadays under the category of medical ethics such as abortion, vaccination, organ transplantation and cloning. Although modern jurists tried always to search for relevant discussions among early jurists on these issues, they had most of the time to develop their own independent investigation basing themselves directly on the general principles in the Qur’an and Sunna. However, it was clear that their standpoint towards the medical researches was highly decisive in formulating their religious advices. For instance, those who do not trust what physicians say about the efficiency of vaccination would discourage people to use it, whereas the others who believe in the preciseness of medical researches criticized the anti-vaccination standpoint adopted by other scholars.

It remains, however, possible that people with disabilities might not be able to find work because of their disabilities and at the same time cannot, for one

reason or another, cure their disabilities. The question was: How can people with disabilities get money to afford their needs in this life? Reviewing the juristic source on such question, this study focused on the financial revenues available within family and society at large.

Within one's family, **Chapter Seven** shows that the system of maintenance (*nafaqa*) played a central role in this regard. Within this system, every individual who cannot work to earn his/her livelihood has the right to receive financial support from other well-to-do family members. In juristic sources, we found a highly complicated system elaborating in detail who is responsible for who and under which circumstances. Detailed information was given about people with disabilities as parents, children, wives or other relatives within this system. Another financial revenue within the family for people with disabilities was family endowment. Within this system, endowments can be dedicated to people with disabilities which can guarantee a financial support for them on a regular basis. If the family was unable to help its members living with disabilities, role of society and state should start. In this regard, two financial revenues were elaborated. In the first place, juristic discussions on welfare endowment (*waqf khayrī*) were presented.

Chapter Eight reviews juristic discussions on welfare endowment as two main financial revenues which can afford the needs of people with disabilities as members of society. Throughout Islamic history, people with disabilities were one of the main beneficiaries of welfare endowment in the form of hospitals and asylums. The second financial revenue elaborated in this chapter was *zakāh*. No early or modern jurist objected to paying money to people with disabilities as long as they were poor. Moreover, a number of the early and modern jurists opined that poor people with disabilities represent a specific category by their own who are more entitled to receive *zakāh* than other poor people who do not suffer disabilities. The purport of the modern viewpoint of using charities as a means of developing projects and programs to secure the needs of this category of people on a regular and constant basis was already expressed by early jurists such as al-Shāfi'ī (d. 205/820).

Now to put the whole dissertation in a nutshell, we emphasize a number of points which are on one hand representing the core of this study and opening up new scopes of research on the other hand.

In the first place, information checked throughout this study indicated that people with disabilities were almost never dealt with as a single group isolated from society. The general attitude to be traced in Islamic sources can be classified as "textual inclusion". In Islamic theology, people with disabilities fell within the broad category of "people with afflictions" (*ahl al-balā'*) whose common characteristic was suffering. The case of the person who lost his hand or leg was, within the theological perspective, the same as the case of that parent whose child died. In Islamic jurisprudence, people with disabilities also fell within the broad category of "people with legal excuses" (*aṣḥāb al-ʿadhān*) whose common characteristic was the inability to perform all religious duties. Even in *adab*-works, people with disabilities were presented as a part of a large

number of people mainly characterized by their “abnormality” and “strangeness”. As was the case with Ibn Fahd’s book, blind and lame people were written side by side to bald people for instance.

Based on this inclusive approach, we can easily speak about an overall positive attitude towards people with disabilities in Islamic literature. Sara Scalenghe said, “Preliminary evidence suggests that the physically and mentally disabled were not necessarily stigmatized or marginalized.”¹ Rispler-Chaim concluded her study by saying, “Against the abusive attitudes to the disabled in the Roman and Byzantine empires as well as in the dark Middle Ages in Europe, the attitudes in Islamic law were in every way enlightened and farseeing.”² However, this positive attitude as recorded in theological and juristic sources does not negate the social reality which was not always in line with what these sources plead for. This holds true of course for the current reality of people with disabilities in different parts of the Muslim world. I believe this is an interesting field of study which historians can investigate to see to what extent the text was guiding the society or vice versa. Available information now can help them measure this text-reality link. Besides the historians, I believe this study will also be of benefit for other specialists in the fields of sociology and anthropology for instance. Information given in this study will help them understand specific forms of behavior from people with disabilities or their families which would otherwise have remained unsolvable riddles.

Finally, I hope this study will also be stimulus for my colleagues, i.e., specialists in Islamic studies, to conduct more research on this category of people which continues up to this moment as an understudied, if not an unstudied, group. I believe that future research can be best directed to more specific topics such as people with disabilities during the lifetime of the Prophet and his Companions, women with disabilities, people with disabilities within a specific period of Islamic history such as the Umayyad or Abbasid dynasties, people with disabilities within a specific geographical location such as Egypt or Levant throughout the Islamic history and so forth.

¹ Scalenghe, Sara (2007), p. 209.

² Rispler-Chaim, Vardit (2007), p. 95.

Samenvatting

Deze studie is een verkenning van opvattingen over de positie van mensen met handicaps in de Islam. De aandacht ging aarbij vooral uit naar de islamitische theologie en jurisprudentie.

Hoofdstuk één is gewijd aan het belang van de bestudering van dit onderwerp binnen verschillende religies en in het bijzonder binnen de Islam, eerdere studies die op dit gebied gedaan zijn, de methodologie die in deze studie is gehanteerd en tenslotte een overzicht van de Engelse en Arabische terminologie die relevant is voor dit onderwerp.

De **hoofdstukken twee** en **drie** handelen over de perspectieven in de islamitische theologie op mensen met handicaps. Binnen het bredere kader van kwaad en pijn tijdens het aardse leven, hielden moslimtheologen zich bezig met twee kwesties in het bijzonder bij het bespreken van het voorkomen van handicaps. Elk van deze kwesties wordt in een apart hoofdstuk behandeld.

Hoofdstuk twee toont aan dat de theologen geïnteresseerd waren in het uitleggen van de logica en reden van deze handicaps. Deze werden gezien als een soort van pijn en lijden, ofschoon het beeld van God in de islam er één is van een almachtige, aller-rechtvaardigste en al-wijze God. De interpretaties en rechtvaardigingen die door moslimtheologen werden gegeven voor deze paradox toont aan dat hun meningen op dit punt nogal uiteenliepen. Enerzijds waren er personen die dit als bijna onoverkomelijk probleem beschouwden. Zij gaven hier verklaringen voor die door de meerderheid van de moslimgeleerden als getuigenis van ongelof werden gezien omdat deze het volmaakte en perfecte karakter van God aantastten. Anderzijds waren er soefis en filosofen die hierin geen groot probleem zagen. De soefis waren van mening dat degene die God goed kent en liefde voor Hem ervaart, geen ongemak zal ondervinden van een handicap. Een handicap werd vaak zelfs gezien als teken van liefde van God. Volgens hen was de werkelijke handicap het niet gehoor geven aan de boodschap van God en het niet volgen van het Rechte Pad zoals gewezen door Zijn boodschappers en profeten. De filosofen richtten zich vooral op de aard van het leven. Zij stelden dat dit leven bestaat uit tegenstellingen zoals rijkdom versus armoede, gezondheid versus ziekte, pijn versus genoeg, enzovoorts. Iedere poging tot het teniet doen van één van deze twee tegenstellingen zal de andere betekenisloos maken. In het kort, dit leven kan niet bestaan zonder kwaad, pijn of handicaps.

De meerderheid van de moslimgeleerden bevindt zich tussen deze twee groepen in. Zij erkenden dat er sprake was van een theologisch probleem en dat er derhalve pogingen moesten worden ondernomen om het bestaan van handicaps in dit leven uit te leggen en te rechtvaardigen. Echter, de perfectie van God vormde het uitgangspunt van al deze geleerden en het bestaan van handicaps of kwaad in het leven doet geen afbreuk aan deze goddelijke perfectie. Hoewel zij het allen eens waren over dit algemene principe, verschilden zij van mening over de verdere details. Hierin zijn drie hoofdgroepen te onderscheiden.

Eén groep, voornamelijk bestaande uit Ash‘arieten, vond dat de perfectie van God voornamelijk tot uiting kwam in Zijn almacht. Binnen dit kader meenden zij dat de enige uitleg voor het bestaan van handicaps en alle vormen van pijn en lijden in dit leven Gods almacht is. Zij stelden dat dit universum Zijn Koninkrijk is en dat Hij dit bestuurt zoals Hij wil. Niets en niemand kan ingaan tegen Zijn zin. Hem vragen waarom Hij iets wel of niet gedaan heeft, staat gelijk aan het schenden van de almacht van God en Zijn heerschappij. Het menselijk intellect, dat is geschapen door God, kan de Schepper niet vragen verantwoording af te leggen.

De tweede groep, namelijk de Mu‘tazilieten, stelden dat de perfectie van God overwegend vertegenwoordigd werd door Zijn ongeëvenaarde rechtvaardigheid en wijsheid, meer dan door Zijn almacht. Hij schonk de mens handelingsvrijheid in het leven vanwege Zijn rechtvaardigheid. Als onderdeel van deze vrijheid kunnen mensen zowel goede als slechte daden verrichten. Deze slechte daden, waarvoor de verantwoordelijkheid volledig bij de mensen zelf ligt en niet bij God, zijn de belangrijkste oorzaken van kwaad en pijn in het leven. Echter, deze groep ontkende niet dat handicaps zich kunnen voordoen buiten het vermogen van de mensen om, zoals bijvoorbeeld blind geboren worden. Zij betoogden dat God verantwoordelijk is voor dergelijke calamiteiten, maar dat dit niet iets “slechts” is omdat God niets “slechts” doet. Volgens deze groep heeft iedere calamiteit in dit leven, of deze nu door de mens of door God is veroorzaakt, één of meer wijze bedoelingen. Deze bedoelingen kunnen overigens door het menselijke intellect worden onderscheiden. Deze groep probeerde, binnen dit kader, voor iedere vorm van pijn of lijden een mogelijke wijze bedoeling te doorgronden. Uiteindelijk resulteerde dit in zeer gedetailleerde en gecompliceerde theorieën over de voordelen die pijn en lijden de mens kunnen opleveren.

De derde groep, die wordt vertegenwoordigd door de meerderheid van de moslimgeleerden, probeerde een middenweg te vinden tussen de eerste en tweede groep. Zij waren van mening dat Gods almacht niet zodanig moest worden benadrukt dat dit ten koste ging van Zijn rechtvaardigheid en wijsheid of omgekeerd. Zij zagen geen kwaad in de rationele pogingen die ondernomen werden om te zoeken naar wijze bedoelingen om het bestaan van handicaps en andere vormen van lijden in het leven te rechtvaardigen.

Hoofdstuk drie toont aan dat de moslimgeleerden zich niet beperkten tot theologische pogingen om de vraag waarom handicaps bestaan te beantwoorden. Er was ook een praktische en pragmatische aanpak die te maken had met de vraag: hoe kunnen we leven met handicaps? De voorstellen van moslimgeleerden in verband hiermee waren vooral van psychologische aard. Zij trachtten te komen met praktische oplossingen die het leed en de kwellingen ten gevolge van de handicap zouden wegnemen of op zijn minst verzachten. De incidentele discussies hierover worden in dit hoofdstuk behandeld in drie ethische hoofdcategorieën, namelijk dienstbaarheid (*‘ubūdiyya*), geduld (*ṣabr*) en dankbaarheid (*shukr*). Dienstbaarheid werd gepresenteerd als het uitgangspunt van waaruit de getroffen persoon erkent dat hij/zij een dienaar

(*‘abd*) is, geschapen door een Schepper die volledig zorg draagt voor Zijn schepselen. Het beoefenen van deze vorm van dienstbaarheid vergemakkelijkt het voor de getroffen persoon om van hieruit de stap te zetten naar geduld en tenslotte naar dankbaarheid. De geleerden beseften wel degelijk dat het aan de dag leggen van een dergelijke morele houding bij ernstige aandoeningen geenszins gemakkelijk is. Derhalve ontwikkelden zij verschillende instrumenten en kwamen zij met vele praktische suggesties die een dergelijke morele houding binnen het bereik van de gewone mens stelden.

De **hoofdstukken vier** tot en met **acht** concentreren zich op de visies binnen de islamitische jurisprudentie. De belangrijkste doelstelling van deze hoofdstukken is een idee te geven van de manier waarop moslimjuristen dachten over mensen met handicaps. Zijn zij bijvoorbeeld net zulke volwaardige mensen als zij die niet lijden aan handicaps? Hebben zij dezelfde rechten als anderen? Hoe kunnen deze mensen een volwaardig bestaan lijden, ook in financieel opzicht, als zij niet zelf in hun levensonderhoud kunnen voorzien?

Hoofdstuk vier richt zich op de sociale positie van mensen met handicaps zoals vervat in het algemene principe van menselijke waardigheid. Een van de belangrijke bevindingen van dit hoofdstuk, dat, tot nu toe voor zover mij bekend, aan de aandacht van alle moderne onderzoekers is ontsnapt, is de rol van de Griekse fysiognomie. Deze fysiognomie behelst dat een misvorming in de fysieke verschijning wijst op eenzelfde misvorming in de geest en het karakter. Tegen de derde/negende eeuw waren belangrijke Griekse bronnen in het Arabisch vertaald. Deze bronnen genoten in die tijd een aanzienlijke populariteit en sommigen waren zelfs bijzonder gezaghebbend geworden binnen de Arabische en Islamitische cultuur. De populariteit van deze wetenschap drong door tot de juridische kringen. Het duidelijkste voorbeeld hiervan vormen een aantal beweringen van fysiologische aard die erg kwetsend zijn voor mensen met handicaps, toegeschreven aan de welbekende jurist Muḥammad b. Idrīs al-Shāfi‘ī (d. 205/820). Op basis van een grondige bestudering van deze beweringen en de verspreiding ervan in de kringen van juristen, wordt hier geconcludeerd dat deze beweringen ten onrechte zijn toegeschreven aan al-Shāfi‘ī. Hoewel dergelijke beweringen van een aantal geleerden bijval oogstten, was de strekking ervan nooit erg dominant onder juristen. Derhalve was de invloed ervan op het belangrijkste corpus van de islamitische jurisprudentie verwaarloosbaar. Zodoende genoten mensen met handicaps, theoretisch gezien, in de kringen van juristen dezelfde mate van menselijke waardigheid als alle andere mensen.

Afgezien van deze theoretische discussies, behandelt dit hoofdstuk ook een nog niet eerder geanalyseerde studie over de waardigheid van mensen met handicaps in de praktijk. Deze is gebaseerd op een tot noch toe onbekend manuscript uit de 16^e eeuw, dat gaat over mensen met handicaps. De Mekkaanse auteur, Ibn Fahd, noemde de namen van beroemde mensen, vanaf de tijd van de Profeet Muḥammad tot zijn eigen tijd, samen met de handicaps waaraan zij leden. Sommigen van de tijdgenoten van de auteur voelden zich

gekwetst omdat zij in het boek genoemd waren. Als gevolg hiervan werd er een fatwa uitgevaardigd die stelde dat het boek vernietigd moest worden omdat het over de schreef zou zijn gaan en de waardigheid van mensen met handicaps in diskrediet zou hebben gebracht. Het boek werd uiteindelijk vernietigd. De auteur gaf zich niet snel gewonnen en hield vol dat hij geen slechte intenties had met het schrijven over mensen met handicaps. Om zijn reputatie te beschermen, nam de auteur contact op met vijf welbekende moslimgeleerden in Egypte en Syrië en zette uiteen wat het belangrijkste doel van zijn boek was. De geleerden antwoordden hierop dat er geen kwaad school in het schrijven van een dergelijk boek. De auteur herschreef het boek en breidde het uit. Het exemplaar dat door de auteur zelf is geschreven is tot op heden intact gebleven. De geschiedenis van dit boek verschaft veel informatie over de sociale positie van mensen met handicaps en ook over de rol van moslimjuristen in het beschermen van deze positie.

Hoofdstuk vijf behandelt de juridische bronnen op zoek naar een antwoord op de belangrijke vraag: hoe kan deze groep mensen voorzien in hun levensonderhoud? Dit hoofdstuk wijdt allereerst uit over de mogelijkheid tot tewerkstelling, de eerst mogelijke manier om geld te verdienen. Onze bevinding is dat de juridische bronnen vol staan met gedetailleerde informatie over de regels die van toepassing zijn op mensen met handicaps in dit opzicht. We zijn ook de mogelijkheid nagegaan om mensen met handicaps aan te stellen in zeer prestigieuze functies binnen de islamitische gemeenschap. De algemene houding was dat deze groep mensen in principe aangesteld kon worden in iedere functie, zolang hun handicaps maar niet de kwaliteit van het werk dat zij moesten verrichten, aantasten. Opvallend was dat een handicap soms zelfs een pluspunt was. Voor sommige beroepen werden mensen met handicaps verkozen boven andere mensen. Een voorbeeld hiervan is het geval van blinde mensen die aangesteld werden als muezzins (oproepers tot het gebed). Omdat de *adhān* (oproep tot het gebed) werd gedaan vanaf de top van een minaret en de muezzin zo naar binnen kon kijken bij naburige huizen, ging de voorkeur altijd uit naar blinde muezzins. Dit ging zelfs zover dat sommige mensen blindheid voorwendden om deze functie te kunnen krijgen, die soms nogal goed betaald was. Dit was echter niet altijd het geval. Een handicap kon ook een belangrijk obstakel vormen voor het vinden van een baan. Het was daarom vanzelfsprekend om op zoek te gaan naar een medische behandeling om te genezen van een handicap, of op zijn minst om de gevolgen ervan te verminderen.

Hoofdstuk zes toont aan dat de juridische verhandelingen wat betreft het behandelen van handicaps een holistische benadering verkozen boven een eenzijdige. Een gehandicapte persoon kon behandeld worden door de reguliere geneeskunde, die in de juridische literatuur “fysieke geneeskunde” (*tibb jusmānī*) wordt genoemd, of door religieuze formules ontleend aan de Heilige Schrift, d.w.z. de Koran of andere teksten waaraan genezende effecten werden toegeschreven. Dit type geneeskunde werd “spirituele geneeskunde” (*tibb rūḥānī*) genoemd. Hoewel de vroegere en moderne moslimjuristen beide typen

medische behandelingen goedkeurden, werd over het algemeen de voorkeur gegeven aan de “spirituele geneeskunde” door de vroegere juristen en aan de “fysieke geneeskunde” door hedendaagse juristen. Het gemeenschappelijke punt bij alle geleerden is het verzachten of verminderen van de pijn en de ongemakken die voortkomen uit handicaps. Ten aanzien hiervan zijn wij een aantal zaken nagegaan die vandaag de dag onder de noemer van de medische ethiek vallen, zoals abortus, vaccinatie, orgaantransplantatie en klonen. Hoewel hedendaagse juristen altijd trachten te zoeken naar discussies onder vroegere juristen over deze kwesties, moeten zij meestal hun eigen onafhankelijke betoog ontwikkelen, zich daarbij direct baserend op de algemene principes van de Koran en de Sunna. Evenwel is het duidelijk dat in het formuleren van hun religieuze adviezen hun persoonlijke houding ten opzichte van de medische onderzoeken in hoge mate doorslaggevend is. Ter illustratie, zij die niet vertrouwen op wat de artsen zeggen over de doeltreffendheid van vaccinatie zullen de mensen ontmoedigen hier gebruik van te maken en omgekeerd.

Het blijft echter mogelijk dat mensen met handicaps niet in staat zijn werk te vinden vanwege hun handicaps en dat zij tegelijkertijd niet in staat zijn, om welke reden dan ook, om te genezen van hun handicap. Hoe kunnen mensen met handicaps onder deze omstandigheden aan geld komen om in hun behoeften in dit leven te voorzien? De juridische bronnen in ogenschouw nemend met betrekking tot deze vraag, richt deze studie zich op de beschikbare financiële middelen binnen de familie en de maatschappij als geheel.

Hoofdstuk zeven toont aan dat binnen de familie het systeem van onderhoud (*nafaqa*) een centrale rol speelde in dit opzicht. Binnen dit systeem heeft ieder individu dat niet in staat is om in zijn/haar eigen levensonderhoud te voorzien het recht op financiële bijstand van andere welgestelde familieleden. In juridische bronnen hebben we een zeer gecompliceerd systeem aangetroffen dat tot in detail uitwijdt over wie verantwoordelijk is voor wie en onder welke omstandigheden. Er wordt gedetailleerde informatie gegeven over mensen met handicaps, zoals ouders, kinderen, echtgenotes of andere familieleden binnen dit systeem. Een andere inkomstenbron binnen de familie voor mensen met handicaps was een familiefonds. Binnen dit systeem konden fondsen worden toegewezen aan mensen met handicaps wat voor hen regelmatige financiële steun waarborgt. Indien de familie niet in staat was haar leden met een handicap te helpen, was het de taak van de maatschappij en de staat. Met betrekking hiertoe worden twee inkomstenbronnen behandeld. Als eerste worden de juridische discussies over de liefdadigheidsfondsen gepresenteerd.

Hoofdstuk acht beschouwt de juridische discussies over welvaartendowment (*waqf khayri*) en *zakāh* als twee belangrijke inkomstenbronnen die in de behoeftes van mensen met handicaps als leden van de maatschappij kunnen voorzien. Door de islamitische geschiedenis heen vormden mensen met handicaps de belangrijkste begunstigden van liefdadigheidsfondsen in de vorm van ziekenhuizen en inrichtingen. De tweede bron van inkomsten die in dit hoofdstuk is behandeld is *zakāh*. Geen enkele vroegere of moderne jurist heeft bezwaar aangetekend tegen *zakāh* betalen van dit geld aan mensen met

handicaps, zolang zij arm waren. Voorts meenden sommige vroegere en hedendaagse juristen dat arme mensen met handicaps een specifieke categorie vertegenwoordigen die meer recht hebben op het ontvangen van *zakāh* dan andere arme mensen die niet lijden aan handicaps. De strekking van het moderne standpunt van de inzet van liefdadigheid voor de financiering van ontwikkelingsprojecten en programma's om de behoeften van deze categorie mensen veilig te stellen op een regelmatige en constante basis, was al door vroege juristen zoals al-Shāfi'ī (d. 205/820) geuit.

Ter afronding van deze dissertatie worden in het kort nog enkele punten benadrukt die enerzijds de kern van deze studie raken en anderzijds nieuwe onderzoeksterreinen openen.

In de eerste plaats wijzen de gegevens die in deze studie zijn onderzocht erop dat mensen met handicaps bijna nooit behandeld werden als homogene groep, die afgezonderd was van de maatschappij. De algemene houding die in de islamitische bronnen wordt aangetroffen is te classificeren als “tekstuele inclusie”. In de islamitische theologie vielen mensen met handicaps in de bredere categorie van “mensen met ernstige aandoeningen” (*ahl al-balāʾ*), waarvan lijden de bindende factor vormde. Het geval van een persoon die een hand of been is verloren is, in theologisch perspectief, hetzelfde als het geval van een ouder wiens kind is gestorven. In de islamitische jurisprudentie vielen mensen met handicaps ook in de bredere categorie van “mensen met valide beletselen” (*aṣḥāb al-aʿdhār*), waarvan het onvermogen om alle religieuze plichten te vervullen de bindende factor vormde. Zelfs in de *adab*-werken werden mensen met handicaps gepresenteerd als onderdeel van een groot aantal mensen die hoofdzakelijk werden gekarakteriseerd door hun “abnormaliteit” en “merkwaardigheid”. Zoals het geval was in Ibn Fahds boek, werden bijvoorbeeld blinde, kreupele en kale mensen allen gelijkgesteld.

Gebaseerd op deze omvattende benadering kunnen we gemakkelijk spreken van een over het geheel genomen positieve houding ten opzichte van mensen met handicaps in de islamitische literatuur. Sara Scalenghe zei dat “voorlopig bewijs suggereert dat psychisch en fysiek gehandicapten niet noodzakelijkerwijs gestigmatiseerd of gemarginaliseerd werden.”¹ Rispler-Chaim concludeerde haar studie door te stellen dat “vergeleken met de beledigende houding ten opzichte van gehandicapten in het Romeinse en Byzantijnse rijk, evenals in de duistere middeleeuwen in Europa, de houding in islamitisch recht in ieder opzicht verlicht en vooruitstrevend is.”² Desalniettemin ontkent deze positieve houding, zoals opgetekend in theologische en juridische bronnen, niet dat er sprake was van een sociale realiteit, die niet altijd overeenstemde met waar deze bronnen voor pleitten. Dit geldt natuurlijk ook voor de het heden van mensen met handicaps in verschillende delen van de moslimwereld. Ik ben van mening dat dit een interessant onderzoeksgebied vormt dat historici verder kunnen onderzoeken om te zien in welke mate de tekst de maatschappij stuurde of omgekeerd. De nu beschikbare informatie kan hen helpen om deze link tussen

¹ Scalenghe, Sara (2007), p. 209.

² Rispler-Chaim, Vardit (2007), p. 95.

tekst en realiteit te bepalen. Naast de historici, denk ik dat deze studie ook specialisten op andere gebieden tot voordeel kan strekken, bijvoorbeeld in de sociologie en de antropologie. De informatie die in deze studie is verschaft, zal hun tot hulp zijn bij het begrijpen van bepaald gedrag van mensen met handicaps of hun families, dat anders een onoplosbaar raadsel zou blijven.

Tenslotte hoop ik dat deze studie ook een stimulans zal zijn voor mijn collega's, dat wil zeggen specialisten op het gebied van de Islamologie, om meer onderzoek te verrichten naar deze categorie mensen, die tot op dit moment een onderbestudeerde, zo niet onbestudeerde, groep vormt. Naar mijn mening kan toekomstig onderzoek zich het best richten op meer specifieke onderwerpen, zoals mensen met handicaps gedurende het leven van de Profeet en zijn Metgezellen, vrouwen met handicaps, en mensen met handicaps in een specifieke periode van de islamitische geschiedenis.

Ṣabīḥ

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1. Abbreviations

- **ASJ:** *Arab Studies Journal*
- **DI:** *Disability and Society*
- **EI:** *The Encyclopaedia of Islam*, CD-ROM Edition v. 1.0, Koninklijke Brill NV, Leiden, The Netherlands, 2003
- **EQ:** *Encyclopaedia of the Qur'ān*
- **HI:** *Hamdard Islamicus*
- **IC:** *Islamic Culture*
- **ILS:** *Islamic Law and Society*
- **IQ:** *Islamic Quarterly*
- **IS:** *Islamic Studies*
- **JAOS:** *Journal of the American Oriental Society*
- **JIS:** *Journal of Islamic Studies*
- **JRDH:** *Journal of Religion, Disability & Health*
- **JRH:** *Journal of Religion and Health*
- **MMLAD:** *Majallat Majma' al-Lugha al-'Arabiyya bi Dimashq*
- **MS:** *Muslim World*
- **SI:** *Studia Islamica*
- **SRECFR:** *Scientific Review of the European Council for Fatwa and Research*

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Curriculum Vitae

Mohammed M.I. Ghaly (b. 1976) is a lecturer of Islamic studies at Leiden University. He studied Islamic Studies in English at al-Azhar University in Egypt and got his bachelor with “Excellent with Honorary Degree” in 1999. In 2002, he received his Master degree in Islamic studies, *cum laude*, from Leiden University.

Scope of Research:

Mohammed Ghaly focuses mainly on the following research areas:

- **Islamic Law and Theology:** The main focus in this respect is to investigate the relationship between early and modern Islamic sources on one hand and the current social reality of Muslims on the other hand. The life of Muslim minorities in the West and especially in the Netherlands is the main focus of his courses on Islamic law and Ethics at Leiden University. In this regard, Ghaly participated also in the *niqab* (face-covering veil) committee formed by the Dutch Ministry of Justice during the period 11-30 October 2006 and wrote the chapter on “Religious Considerations on Wearing the Face-covering Veil” in the published report of that committee. Mohammed Ghaly is also interested in the field of medical ethics. He recently published a number of articles in English and Dutch on topics relevant to this field of study.
- **Training Imams in the West:** Mohammed Ghaly is interested in two main sides of this issue. First, the position, qualifications and tasks of imams as to be traced in the early and modern discussions of Muslim scholars. Second, to what extent the new context of imams living in the West would affect their classically defined position, qualifications and tasks. He has been participating in different conferences and seminars discussing this issue.