

## SUMMARY

A large variety of disabilities are mentioned in Islamic legal literature. The disabilities which are relevant to each legal subject are listed, in addition to suggested ways for how that particular disabled person can participate in a given field of human activity addressed by the law. But the disabilities are always mentioned as a matter of fact, as part of the reality that people are meant to live in, as a result of the divine wisdom and planning with which Allah manages the creation. No emotional attitude, such as remorse, anger, despair, or disappointment, accompanies any of the discussions of disabilities within the legal literature.

The mood that prevails over the law with regard to disabled persons is that they are an integral part of society, they are never social outcasts. But since they are people with special needs, the law addresses them in addition to its addressing the healthy. The difference between healthy and disabled persons is that people with disabilities are granted by the law some alleviations in the religious duties in consideration of their particular difficulties. Once the difficulty, mental or physical, is overcome, the law grants no further alleviations. Whether the disability has vanished or not, is often a conscientious matter, or a matter between man and God, and no state authority has been granted license by law to interfere with it. The responsibility to shift from a disabled mode of conduct to a healthy mode of conduct remains the individual's. If, on the other hand, with old age and the course of illness the difficulty becomes chronic, more alleviations apply, under the Qur'anic principle stating that the religion aims at ease (*yusr*), not at hardship (*usr*) for the believer, and that saving a human's life is always first priority.

The general attitude to the disabled in Islamic law has been marked by tolerance, acceptance, accommodation, and forgiveness regarding the fulfillment of the religious duties, or not fulfilling them, as well as in matters of criminal justice. This overall positive attitude may derive from the "no-fault" attitude in Islamic scriptures to bearers of impairments or diseases.<sup>615</sup> Since the ill are not perceived as punished people who "invited" the punishment upon themselves by sins they may have committed, the disability is viewed rather as a trial from Allah, which the religiously hence spiritually strong will be able to withstand. The disabled are looked upon as people in a stage of

testing, but never as condemned or sinful. Sometimes added to this attitude is the understanding or the consolation that if one is disabled in one way, he or she may have been rewarded by God with extra talents and abilities in other ways.

I have not studied in this book the state of the disabled throughout Islamic history, as this would be beyond its scope. Therefore, it is possible that the legal attitudes I have depicted so far do not provide an accurate picture of the social attitudes to the disabled at all points in time and at all geographic locations. Indeed there is often a gap between the law, which to some extent draws an ideal, and reality. Regarding disability in Judaism, for example, Marx speaks of “the discrepancy between expectation and reality in society’s treatment of the disabled”, between compassion for the disabled on one hand and their rejection on the other. He explains that in neglecting the disabled, the “able-bodied” are driven by denial, guilt, and fear, and that the ongoing suffering of the disabled helps the able-bodied cope with their own fears of sin and punishment.<sup>616</sup>

I argue that even if reality is not perfect this does not detract from the importance and value of the law itself. On the other hand, one should not ignore the fact that the law develops in a particular society, absorbs from its culture and ideology, and thus necessarily mirrors, at least partially, some of its outlook and traits. In this respect, I argue that Islamic law does provide an insight into the basic perceptions of people with disabilities in those societies that follow the Islamic path.

The study of the history of disabilities and how the disabled were treated in the various historic periods under Islamic rule deserves perhaps a book by itself. One example showing that the law may differ from the social reality is the case of the *majnun*. Against Dols’s critique of Islamic society’s overall positive treatment of the mentally disabled, one characterized with tolerance and humanism, Shoshan,<sup>617</sup> Shefer,<sup>618</sup> and others relate that in the late Middle Ages madmen were often confined in small cells or even domestic cages, sometimes chained and whipped. Based on medieval Arab historians such as al-Maqrizi, Ibn Iyas, and Ibn Furat, we learn that in 1265–66, for example, the Mamluk sultan in Egypt decreed that “all invalids (*ashab al-’ahat*) in Cairo be assembled and transferred to al-Fayyum”. In 1392 the Sultan decreed that no leper or invalid could stay in Cairo, and those who disobeyed must be punished.<sup>619</sup> Therefore, Shoshan argues that the social attitudes to the disabled in Islamic societies were not always colored by tolerance and acceptance, but sometimes tainted by exclusion and cruelty.

A more balanced account is given by al-Issa, who claims that those restrained in the hospitals were those patients who posed a danger to themselves or to others. The non-violent mentally ill were treated by family members in their homes. Society at large, he continues, was reluctant to send away the ill to hospitals, even though the hospitals themselves were located in the center of the cities, frequented by visitors and relatives, and not secluded on the outskirts of town.<sup>620</sup>

Both attitudes to the mentally ill, the tolerant and the less tolerant, developed in Islamic societies where Islamic law was known and applied. The explanation for the differences between tolerance and intolerance in practice should perhaps be sought in the political and social atmosphere that prevailed at a particular time or place. But this, as noted, I will leave for historians to pursue.

As far as human rights are concerned, Islamic law in its many references to disabled persons has taken care of several issues that fall today within “human

rights". In marriage, it has been shown that the right of an individual to marry is not influenced by his or her disability. Likewise, there are only a few disabilities that justify the termination of marriage. These usually involve situations in which one of the spouses bears a contagious disease, hazardous to the other spouse or to their offspring, or health conditions that impede the consummation of marriage, hence defeat the main purpose of marriage. Termination of marriage on the basis of a contagious disease defends one's right to live and maintain good health. The termination of marriage justified by a continuous failure to consummate it safeguards one's right to enjoyment and to having children.

With regards to the *khuntha* (hermaphrodite), the law has guaranteed his/her rights to live, to marry, to participate in communal and religious life, and to properly own and inherit property. In recent years the legitimization of sex-change operations has also promoted the *khuntha's* right to happiness and perhaps to receive medical care.

As for religious duties, people with disabilities have been granted the right to participate in public services, fulfilling the duty to the extent that their individual condition allows. Alleviations sometime require that other members of the community assist the person with disability, in such ways as carrying them during the hajj rites, helping them find the proper direction of prayer if they are blind, and so on. A sense of equality of all members of the Islamic community and solidarity, which is prescribed by the law, permeates the discussions of the jurists on the disabled and their participation in the performance of religious duties.

Although physical punishments do not qualify in the modern person's mind as benevolent actions towards humans, the attitudes of Muslim jurists to Muslim criminals who must be physically punished are paradoxically attentive to the criminals' human rights. The punishment must not be executed before full justice has been administered; that is, the crime has been proven beyond doubt, it is verified that the criminal was aware of his or her deeds, and was not minor, nor insane, at the time of crime. This may be linked to the modern perception that every human has the right to a just trial, and that all are equal before the law. If the punishment is not capital punishment, and the enforcement of the punishment calls for amputations, the law urges preservation of the dignity of the criminal, ensuring his or her life expectancy after punishment, leaving the criminal at least one working limb of each sort, a leg and an arm, and encouraging his or her speedy return to normalcy (indeed as a disabled person) within the family and the community.

The laws concerning people with disabilities demonstrate a very advanced social outlook, to judge from the considerations the Muslim jurists express and the argumentation they utilize. This outlook, which draws on the Qur'an and the Sunna, is furthermore emphasized in the legal compilations from the beginning of the 9th century onward. This progressive outlook of Muslim jurists towards the disabled coincides with that demonstrated also by the laws on the socio-economic duty of charity (*zakat* or *sadaqa*) and their aim to care for the economically weak members of society; it also agrees with the ideology behind the Islamic laws that define the tolerant treatment of religious minorities within the Islamic state (especially the *jizya* – poll tax). Against the abusive attitudes to the disabled in the Roman and Byzantine empires, as well as during the dark Middle Ages in Europe, the attitudes in Islamic law were in every way enlightened and farseeing.

## APPENDIX: CONTEMPORARY FATWAS ON PEOPLE WITH DISABILITIES

*Ibn 'Uthaymin,<sup>621</sup> "The error of those who claim that children born to consanguineous marriages are disabled"*

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i'). Riyad: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 21-2.*

This opinion that I have heard from a physician is not true. It is not an axiom that consanguineous marriages produce deformed children; as in other types of marriage, the issue is in the hands of Allah; besides, deformation can be due to other reasons.

Some scholars prefer (*istahabba*) men to marry non-relatives, since this is healthier for the prospective child, but the opposite is true.

The main issue is religion and morality. The prophet PBUH<sup>622</sup> said: "A woman should be married for her qualities: her property, her blood-lineage, her beauty and her religion. If you are lucky to find a religious woman then you are victorious". He PBUH also said: "If you meet someone whose religion and morals satisfy you, then marry him/her; if you do not do so there will be chaos and great destruction on earth".

There are many men who married the daughters of their paternal uncles and prospered, for example, 'Ali b. Abi Talib, ABSH,<sup>623</sup> who married Fatima, the daughter of the messenger of Allah PBUH, the daughter of his paternal uncle, and they gave birth to the two leaders of the youth of paradise, al-Hasan and al-Husayn ABSH. The prophet PBUH said about al-Hasan: "This son of mine will be a leader, and Allah will reconcile with him between two groups of Muslims".

The bottom line is that if your paternal cousin is of good religion and personality, you [the woman] should marry him, and do not worry regarding these things which are spread by ignorance; the issue is in Allah's hand, may He be exalted, and He brings success.

*Ibn Jibrin,*<sup>624</sup> “*The error of those who hide their disabled children from others*”

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i'). Riyad: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 36–7.*

Question: Some fathers or mothers, when they have a disabled child, tend to hide him or her from people. They do not attend social events, and they keep the child at home; they try to conceal from people the fact that they have a disabled child. What is your opinion?

Answer: This is a mistake. The child is a creation of Allah and His ruling, and they have no choice. Allah, the Exalted, has wisdom in His creation and planning, and they must submit to the ruling and fate; they will be rewarded for their patience. They should take the child out in public so that healthy people see him or her and consequently praise their Lord for the grace of perfect creation. Allah, the Exalted, differentiated among creatures by completeness and incompleteness, so they may thank Allah for His duties and grace; there is no harm in taking him or her [the disabled child out] or in other people seeing him or her.

An exception is if they have difficulty carrying and moving the child around: then it is legitimate to leave him or her [at home] to ease things [for the child's family].

*Ibn Jibrin,* “*The decision on surgery to sterilize people who suffer severe genetic diseases*”

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i'). Riyad: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 39–40.*

Question: What is the decision concerning surgery to sterilize people inflicted with severe genetic diseases, which are certain to be transferred from one generation to the next, in the knowledge that the surgery will not interfere with their daily routine or [adversely] influence their bodies or minds?

Answer: These genetic diseases should be examined; if the disease is severe to an extent that it disables them to perform duties for this world or for the hereafter, or if it afflicts the body with a harsh disease that causes weakness to the body and pain to the nerves or the bones, or damage to the senses such as the sense of smell, taste, or vision, and it is difficult to treat the disease or it is untreatable, and it also risks transfer to friends and family, and it is certain that the disease will be carried to the offspring: in such cases it is permissible to sterilize those people in order to stop their procreation so that society is not burdened with offspring that carry those serious diseases, that render them unable to work, and that damage their bodies or minds so that they become a millstone on society. This should be done despite the belief that Allah's predestination prevails, that the sterilization may not succeed, since there are many sterilized people who produced children. The prophet PBUH permitted *coitus interruptus* ('*azl*), and said: “do not abstain, because any soul that is created, Allah is its creator”. Allah, the Exalted, knows the number of people who eventually will be born, and who will be born until the Day of Judgment. However, this surgery must not interfere with their daily activities or damage their bodies or minds.

*The Permanent Committee for Scientific Research and Legal Consultation (Ifta')* "It is permissible to use the zakat funds for the care of the disabled?"

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shayi'). Riyadh: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 46–7.*

Question: we wish to inform you that the association of caring for the disabled children in Riyadh is the first project that was established by the charitable association for disabled children in Riyadh. It is a private non-profit organization that has an independent testing policy, relying for its income on donations and charitable gifts from citizens, companies, and organizations.

This association treats, supervises, and trains disabled children from birth and until they are 12. It distributes to them, free of charge, the necessary food, drink, accommodation, and clothing for as long as they remain at the building, which belongs to the association, knowing that most of the children come from poor and low income families that are entitled to charity (*sadaqa*). Therefore our question is as follows: Is it legal for the association to withdraw from the *zakat* funds and spend it on cures, treatment and training this group of disabled and poor children who need care and attention? Please be kind to read and answer, and may Allah reward you.

Answer: There is no objection to extract from *zakat* funds for whatever concerns the poor and disabled.

May Allah grant success, and may He pray for our prophet Muhammad, his family and companions, and grant him peace.

*Sheikh Muhammad Khatir*,<sup>625</sup> "The law concerning the paralyzed man (ashall) leading prayer" (serving as imam)

*In Fatawa Islamiyya min Dar al-Ifta' al-Misriyya 1981, v. 5:1715–16.*

Prayer following an imam who is paralyzed in one leg is valid by law, but a healthy imam is preferable according to the Shari'a.

Question: Mr. 'Abd al-Radi Muhammad Hasan sent request no. 368 in 1970: Mr. Mahmud 'Ali leads the Friday prayer but he suffers from a handicap, namely he is paralyzed in one of his legs and is unable to walk without leaning on his cane. Due to this paralysis he is uncomfortable in his kneeling and prostration, unlike a healthy imam, and praying while seated he is uncomfortable also; moreover, he sits bent over due to the paralysis in his hip; when standing in prayer he stands on the tips of the toes of his healthy leg. Now there are other people in town who can perform the prayer properly and according to the Shar'i guidelines, including the sender of this question. The sender asks, what is the Shar'i rule concerning such an imam leading the prayer, and is the prayer led by him legally valid or not?

Answer: The Hanafi law concerning leading a prayer instructs that the hunchback can lead the standing person as well as the sitting person. This appears in *al-Dhakhira*<sup>626</sup> and *al-Khaniya*; in *al-Nazm* it says that if the standing of the imam can be differentiated from his kneeling, it is permitted by most jurists. And if not – this according to both of them,<sup>627</sup> and this was the position of the scholars contrary to

Muhammad [al-Shaybani], may Allah have mercy on him. This appears in *al-Kifaya*.<sup>628</sup> If there is a distortion in the imam's foot and he stands on part of it, his leading the prayer is permissible, but another imam is preferable. This appears in *al-Tabyin*. Please refer to the first volume of *al-Fatawa al-Hindiyya*,<sup>629</sup> p. 85. From all that is stated, praying following an imam as described in the question is permissible by law. However, another imam who has a healthy body, who suffers no disability, and who can perform the prayer to perfection, is preferable by law. From here you can learn the answer to the question asked above. And Allah the Blessed and Exalted knows best.

*The Permanent Committee for Scientific Research and Legal Consultation (Ifta')*, "The purification and prayer of a person who cannot move"

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i). Riyadh: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 55-6.*

Question: I am bedridden and cannot move, so how can I perform ablution for prayer, and how shall I pray?

Answer: Praise be to God, and Prayer and Peace upon His messenger, his family and companions,

Now to the point:

First, as for purification, a Muslim must cleanse himself/herself with water, and if unable to use water because of a sickness or another reason, he/she should cleanse himself/herself with clean sand. If he/she is unable to do even that, the duty to purify is waived, and the Muslim may pray as much as his/her condition allows. Allah the Exalted said: "So keep your duty to Allah as best ye can." (Qur'an 64,16). He, may His memory be exalted, also said: "and hath not laid upon you in religion any hardship" (Qur'an 22, 78). As for discharges such as urine and excrement, it is sufficient to use a stone or hardened mud or clear handkerchiefs, to wipe the place of discharge three or more times until the place is cleaned.

Second, with regard to the prayer, the sick has to pray standing, and if unable, then sitting, and if unable, then on his/her side, based on a hadith by 'Imran b. Husayn,<sup>630</sup> that the prophet PBUH said: "Pray standing, and if unable, then sitting, and if unable, then on the side", and on the Qur'anic verse, "Keep your duty to Allah as best ye can" (64,16).

May Allah grant success, and pray for the prophet Muhammad, his family and companions, and grant them peace. Success is with Allah.

*Jad al-Haqq 'Ali Jad al-Haqq*,<sup>631</sup> "The fast of a cardiac patient" (11 February 1979)

*In Fatawa Islamiyya min Dar al-Ifta' al-Misriyya 1982, v. 8:2781-4*

1. The cardiac patient or any other patient must seek the opinion of doctors about whether the fast will harm him or her, or if he or she will endure the fast with no harm.

2. The patient who can be cured must repeat the days which he or she did not fast. But if his or her disease is incurable and there is no hope for his or her recovery, he or she should feed one poor person for any missed day of the fast.

Question: Should a cardiac patient fast?

Answer: The fast of the month of Ramadan is among the foundations of Islam. Allah the Exalted said in *Surat al-Baqara* (The chapter of the Cow): “O ye who believe! Fasting is prescribed for you, even as it was prescribed for those before you, that ye may ward off (evil); (Fast) a certain number of days; and (for) him who is sick among you, or on a journey, (the same) number of other days”. (Qur’an 2, 183, 184, 185).

And the Messenger of Allah PBUH said: Islam is based on five: the testimony that there is no God but Allah and that Muhammad is the messenger of Allah, prayer, giving alms, the fast of Ramadan, and the *hajj* (pilgrimage to Mecca). Muslims have no doubt about the obligation of the fast of the month of Ramadan for every Muslim who is mature, sane, and capable of fasting. The trustworthy and sound traditions and reports have related the advantages of the fast, that it is important and carries great reward. It is reported by the hadith that the Prophet PBUH reported from his Lord: “Allah the Exalted says: ‘Every action of a human being is for that human being, except for the fast- which I am rewarded with’ ”. Allah preferred the fast to the rest of the religious duties in two aspects:

- a. The fast prohibits the pleasures and desires of the soul, unlike the rest of the duties.
- b. The fast is a secret between the Muslim individual and his or her Lord, and no one except Allah is aware of it, therefore He required the fast for Himself. As for other duties, these are performed overtly, and hypocrisy and pretence may permeate them.

The purpose of duties in Islam is to train the Muslim and improve his or her behavior in the religious and temporal life. With Allah’s commandments and prohibitions came His mercy for His servants. If a mishap has prevented a Muslim from performing any of the religious duties, or he/she has been forced to do a forbidden act, the prohibition becomes permitted due to necessity. Allah, may He be exalted, said: “But he who is driven by necessity neither craving nor transgressing, it is no sin for him.”

(Qur’an 2, 173)

And with regard to the fast of Ramadan, Allah says, after issuing the duty to fast: “And whosoever of you is present, let him fast the month.”

(Qur’an 2, 185), and He attached to it the permission to break the fast for people in certain extenuating circumstances. He said: “And (for) him who is sick among you, or on a journey, (the same) number of other days. Allah desireth for you ease; He desireth not hardship for you” (Qur’an 2, 185). Likewise He permitted the use of sand for purification before prayer (*tayammum*) for those who might be harmed by the use of water.

The sick in Ramadan may belong to one of two categories:

- a. He or she must not fast at all if he or she cannot endure the fast, or if there is a good chance that the fast will cause him or her death or severe harm.
- b. He or she can fast but with some harm and with great difficulty. A patient like this may break the fast, and he or she may opt for that, according to the

rulings of Hanafi, Shafi'i, and Maliki jurists. According to Ahmad b. Hanbal, such a person is obliged to stop the fast, and the fast with regard to him or her is reprehensible (*makruh*). This is if the Muslim is indeed sick. However, for a well Muslim (*tabi'i*), if he or she only suspects that a severe disease may be caused, the Maliki jurists ruled that whosoever suspects that the fast of Ramadan will cause him or her harm, or even death, must break the fast like a sick person.

The Hanbali jurists said that it is legal for such a person to break the fast as if he or she were a sick person, and it is reprehensible that he or she fast. The Hanafi jurists ruled that if a person is convinced that the fast might cause him or her to become sick, it is permitted for him or her to break the fast. The Shafi'i jurists claimed that if the person is normally healthy, and he or she fears that with the fast he/she will become sick, he or she may not break the fast, as long as he or she has not started the fast and realized beyond doubt that it indeed harms him or her.

It becomes clear from all the above that the sick person is granted permission to break the fast during Ramadan due to the above-mentioned criteria; likewise a healthy person who fears that fasting might cause him or her harm, as detailed in the rulings of the jurists of each respective school of law.

Yet what is the disease that compels one to break the fast, or renders it permissible? It is obvious that the holy Qur'anic text that permitted the sick to break the fast during the month of Ramadan, spoke of "sickness" as a general term, and therefore the jurists needed to debate its definition. Most of them claimed that this sickness must be painful, harmful, and such that the fasting person fears the worsening of the disease, or that the disease can delay recovery. Without doubt, the disease that permits the breaking of the fast does not include light sicknesses that do not entail hardship during fasting. Therefore, a group of jurists concluded that the fast may be broken only by one forced by the exigencies of the disease to do so. When the stress is still bearable, and no harm or damage [to the fasting person] is involved, the person must not break the fast.

From here we can deduce that the criteria of disease that allows or obligates one to break the fast, as explained above, are individual criteria. This means that only the person himself or herself should assess to what extent they may or must break the fast; each person himself or herself must consult a devoted Muslim physician, and follow his or her advice on whether he or she must break the fast, or that the fast presents no harm for him or her.

We learn from this that the cardiac patient, or any other patient, must consult doctors on whether the fast is harmful for him or her, or he or she can endure the fast without harm.

A Muslim must know that Allah who ordered to fast also granted permission to break the fast when one was ill. If the Muslim broke the fast but his or her disease is curable, they should repeat the missed days. However, if his or her disease is chronic and incurable, he or she should feed one poor person (*miskin*) for every missed day of fast. Among the reasons that permit women to break the fast are pregnancy and breast-feeding. According to the Hanafi law, if a pregnant or a breast-feeding woman fears that the fast be harmful, she may break the fast, whether the fear concerns the

woman and the [nursing] child and the fetus, or only one of them. A pregnant and nursing mother must repeat the missing days, whenever they can, without ransom (*fidya*) or extension of the number of days; there is no difference with regard to the breast-feeding woman if she is the biological mother or a hired wet-nurse. Likewise, it does not matter whether she was appointed to be a wet-nurse or not. This is because the mother is bound to nurse according to the religion, and the wet-nurse is bound to nurse by the [hiring] contract.

In Maliki law, the pregnant and breast-feeding woman, whether the latter is hired or is the baby's biological mother, may break the fast if they fear that their lives are at risk, or if the child or the pregnancy are at risk due to the fast. They must make up the missed days of the fast. The pregnant woman, contrary to the breast-feeding woman, does not owe a ransom (*fidya*). But if both fear death or severe injury to themselves or the child, they must break the fast. The breast-feeding woman may break the fast if appointed to this task.

The Hanbali jurists permitted the pregnant and the breast-feeding woman to break the fast if they fear harm to themselves, the child, and the fetus, or if they only worry for themselves. In both cases all they have to do is make up the missed days. However, if the worry concerning the fast is about the child, they may break the fast, but they have to make up the missed days and pay a ransom (*fidya*).

The Shafi'i jurists required pregnant and breast-feeding women to break the fast of Ramadan if they expected the fast to cause unbearable harm to themselves and to the child, or only to themselves. In these two cases they must only make up the missed days; but if they worry only for the child they have to make up the missing days of fast and pay a ransom.

Moreover, Allah made worship of Him easy, and Praise to Him, He said: "So keep your duty to Allah as best you can." (Qur'an 64, 16), and Allah questions every Muslim on the truthfulness of the worship and trusts that a Muslim has kept or destroyed, and Allah knows the intentions that one pays for. Therefore, every Muslim should fear Allah and fulfill the duties that Allah had imposed upon him or her, and he or she should not invent nonexistent excuses in order to be freed from performing a religious duty. Allah says the truth and He guides to the right path, and He brings success to truth and goodness.

*Ibn Jibrin, "The rule concerning the seclusion of a woman with a blind man"*

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i). Riyad: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 79-80.*

Question: Is it permissible for a woman to uncover her face or to look at a blind man, or to be in seclusion with him?

Answer: There is no harm in her uncovering her face in front of a blind man, because he does not see her, and no temptation is therefore to be feared from his glance. However, she must not look at him, because the woman's glancing at men is totally forbidden, regardless if they are seeing or blind. The best condition is if the woman does not look at men, nor is she seen by them. Because of Allah's saying, "And tell

the believing women to lower their gaze” (Qur’an 24, 31); lowering the gaze means that she does not stare at men, even though they are blind, and she may not be in seclusion with a blind man if he is aware of her.

*Ibn Jibrin, “The use of dogs to guide the blind”*

*In Al-Lu’lu’ al-Thamin min Fatawa al-Mu’awwaqin (answered by a group of scholars, and prepared by ‘Abd Allah al-Shayi’). Riyad: Dar al-Sumay’i lilNashr wal-Tiba’a 1997, v. 1: 86–7.*

Question: What is the rule about a blind man who uses a dog or another person to guide him while moving about?

Answer: It is not permissible to use a dog in guiding the blind, although its advantage has been proven. The dog is a beast that does not comprehend what we tell it, although it may understand some things by signaling. It was prohibited to purchase dogs except for hunting and guarding the sheep, and that whoever purchased dogs for another purpose, [the reward for] his good deeds is reduced each day by one *qirat* (carat).<sup>632</sup>

Therefore, it is illegitimate to use the dog as a guide; it might lead the blind to the dump or to place of carcasses and dirt. As for other beasts, such as the sheep, the donkey, and the camel, it is impossible to be guided by them, because if a person walks behind them he might fall into a pit, or stumble on a heap or a rock, etc. He has to hire a person to lead him, if he does not have a son or a relative who will undertake to guide him to where he needs to be, or he has to go, such as mosques, houses, and God knows best.

*Ibn Jibrin, “The suitable way for the blind man to get information about the description of the woman he is engaged to.*

*In Al-Lu’lu’ al-Thamin min Fatawa al-Mu’awwaqin (answered by a group of scholars, and prepared by ‘Abd Allah al-Shayi’). Riyad: Dar al-Sumay’i lilNashr wal-Tiba’a 1997, v. 1: 100–01.*

Question: Honorable Sheikh, a blind man wishes to get married, and he wants to know the description of the woman (fiancée) as regards her beauty and physical appearance. Is it legitimate for him to touch the woman’s body, such as hand, leg, etc.? What is the best way to obtain a description of the prospective wife?

Answer: It is not permissible to touch, since the woman is still foreign [in terms of blood relations] and touching and feeling is reserved for the woman who is one’s permitted [legitimate] wife or a woman of such a blood relation that would never allow that man to marry her (*maharim*). And since touching often arouses desire, and precedes intercourse, unlike gazing, it is sometimes not enough to touch in order to learn of beauty and adornment; the woman might use ointments and soften her face, hands and legs with creams that would soften what originally is rough skin. The proper way for him is to hear her voice, and thus learn of her age and suitability, and she should speak normally, without fawning; he should send one of his women to see her

and check her suitability, and this should suffice to decide whether he likes her in marriage or not. And Allah grants success.

*Ibn Jibrin, "Should a woman cover herself in front of a retarded man?"*

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (Answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i). Riyad: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v.1: 123-4.*

Question: Should women cover themselves in front of a mature retarded man?

Answer: If the retardation is severe, so that the man does not comprehend or understand or perceive ideas, and he lacks the desire that makes him stare [at women], touch, and so on, and he has no interest in women, but he is rather like a child or less, there is no need to cover up in his presence, and he belongs to those defined by Allah the Exalted: "or male attendants who lack vigor" (Qur'an 24,31).

However, if he comprehends some of the above, and has attraction to women, and it shows from his sayings that he feels desire, then he should not be allowed to enter the women's domain, and they should cover themselves from him, based on the story of that effeminate man who told the brother of Umm Salama,<sup>633</sup> "if you conquer al-Ta'if, I will lead you to the daughter of Ghilan who has four 'tires' of fat in the front of her body, and eight in the back". The prophet, PBUH said: "I see that this man knows these things – he must not enter unto you [your rooms]". This was reported by al-Bukhari and others, and Allah knows best.

*Ibn Jibrin, "It is illegitimate to use music in educational programs"*

*In Al-Lu'lu' al-Thamin min Fatawa al-Mu'awwaqin (answered by a group of scholars, and prepared by 'Abd Allah al-Shay'i). Riyad: Dar al-Sumay'i lilNashr wal-Tiba'a 1997, v. 1: 33.*

Question: Is it permissible to use musical instruments in the educational programs designed for the disabled?

Answer: It is impossible. Music and other means of entertainment are forbidden by the Shari'a, and it is not permissible to use them in the programs; Allah did not permit a cure for the *umma* through something that He prohibited. There must exist an alternative that brings tranquility to them in the educational programs, such as reading and reciting the Qur'an, and so on.

*Dr. Ahmad al-Sharabasi,<sup>634</sup> "The law concerning a khuntha (hermaphrodite) who became a woman"*

In: *Yas'alunaka fi al-Din wal-Hayat*. Beirut: Dar al-Jil 1977, v.5:98.

Question: What is the position of Islam regarding the *khuntha* who through surgery became a woman?

The *khuntha*, as argued by the jurist al-Nawawi<sup>635</sup> in his book *Tahdhib al-Asma' wal-Lughat* is of two types. The first is a person who was born with the vagina of a female and the penis of a male; the second is a person born without either of the two

organs mentioned above, but who has an opening for the discharge of urine and other materials that is not like either of the two above organs.

There are special rules concerning the *khuntha* in the extensive Islamic legal books. If indeed there is a *khuntha* who after surgery became a woman, she has to be treated as a woman concerning all the legal issues, since she has become one of the women.

And Allah, the Blessed and Exalted, knows best.

*Dr. Ahmad al-Sharabasi, "The blind man and jihad"*

In *Yas' alunaka fi al-Din wal-Hayat*. Beirut: Dar al-Jil 1977, v. 5:321-4.

#### *The Hanafi School*

Jihad is not mandatory for the blind man, because of his disability. Allah, the Blessed and Exalted, said: "No blame is there upon the blind" (Qur'an 24,61). This verse was revealed on the subject of people with extenuating conditions.

#### *The Maliki School*

The blind man is exempt of jihad.

#### *The Shafi'i School*

It is mentioned in *al-Majmu'*<sup>636</sup>: The blind man does not belong to the warriors, but he does to the pilgrims. In *al-Ashbah wal-Naza'ir*<sup>637</sup> it is said that no jihad is obligatory for the blind man.

#### *The Hanbali School*

It is mentioned in *al-Mughni'*<sup>638</sup>: One of the prerequisites for the duty of jihad to be valid is being healthy from all ills, including not suffering from blindness, based on Qur'an 24,61 "No blame is there upon the blind". It is well known that blindness is a handicap which hinders the jihad.

In the book *al-Siyasa al-Shar'iyya* Ibn Taymiya<sup>639</sup> says: The legitimate war is jihad; its purpose is to spread the religion of Allah to all, so that Allah's word is the highest. Therefore, whoever prevents this from happening has to be fought by the consensus of Muslims. However, whoever does not fight or oppose Muslims, such as women and children, and monks, old people, blind and chronically ill people (handicapped), etc., according to all scholars of law must not be killed, unless he or she fights [against Muslims] in word or deed. A few scholars allow the killing of all [including handicapped] just because they qualify as kafirs [heretics] except women and children, who become owned by Muslims; but the first view is the correct one.

In *al-Mughni*: The blind man must not be killed in jihad because he is not considered a combatant, but it is legitimate to kill him if he fights, or if he helps [the enemies] with his advice during the war.

#### *The Zahiri School*

Ibn Hazm<sup>640</sup> in his book *al-Muhalla* said: It is legal to kill the blind who is *mushrik* [idol worshipper] during war, but it is also legal to spare his life, because Allah the Blessed and Exalted, said: “Slay the idolaters wherever ye find them, and take them (captive) and besiege them, and prepare for them each ambush. But if they repent and establish worship and pay the poor-due, then leave their way free” (Qur’an 9,5). Allah, the Great and Mighty, included every idolater in the command to fight them, unless he adopted Islam. Ibn Hazm brought the proofs of those who oppose this view, as well as the criticism of their position.

#### *The Zaydi School*

Al-Shawkani<sup>641</sup>, in *Nayl al-Awtar*, mentioned those whom the messenger of Allah PBUH recommended not to kill in war, such as the old, women, and children. After surveying the traditions that refer to this, he said: This generalization of the text – on those who do not help and do not harm – refers to whoever is paralyzed, or blind, or of this sort, who are not expected to help or harm in the future.

#### *The Imami Ja‘fari School*

It is mentioned in *al-Rawda al-Bahiyya*<sup>642</sup>: “It is stipulated that the one who must join jihad is able to see. It is not an obligation for the blind man, even though he might have found a guide and a riding beast; this is true for a jihad against idolaters who are invoked to adopt Islam. However, in jihad against heretics who are stronger than the Muslims, and the Muslims are afraid they might conquer their lands and rob them of their property, and so on – as unlikely as it is to happen, everyone who has ability must defend, whether male or female, healthy or blind, the sick and the slave, and others.

The book *al-Mukhtasar al-Nafi*<sup>643</sup> lists among the stipulations rendering [joining] the jihad mandatory that one is not blind.

*The Permanent Committee for Scientific Research and Legal Consultation (Ifta’), “A deaf and mute woman who does not understand – is she legally liable (mukallafa)?”*

*In Al-Lu‘lu’ al-Thamin min Fatawa al-Mu‘awwaqin (answered by a group of scholars, and prepared by ‘Abd Allah al-Shayfi’). Riyadh: Dar al-Sumay‘i lilNashr wal-Tiba‘a 1997, v. 1: 115–16.*

Question: I have a wife who is deaf and cannot hear, and mute and cannot speak. She understands what people say to her only by signs, but only in selected issues. She

prays, but sometimes she adds to it and sometimes she omits from it, because she does not understand from what we teach her how to pray and how to fast. She fasts because she sees other people fast. However, if Ramadan ends and she has to make up [for missed days of fast] she refuses to fast the days that she missed, because she does not see anybody else fast. We do not manage to teach her, because she does not understand this. Please instruct us as to how should she perform the religious duties, and whether she is responsible for all the religious duties like a sane person, since she does not understand what is said.

Answer: When it is time for prayer, let her pray along with another woman whom she can imitate. As for the fast, she may also fast with other women who have to make up for missed fasting days (*qada'*). If no woman in the house owes *qada'*, then one of the men or the women of the family, out of those who fast Mondays and Thursdays, can volunteer and be her model. This will be an act of good will, and Allah prescribed good will in his verse "and do good. Lo! Allah loveth the beneficent"(Qur'an 2, 195).

If it is impossible to find someone to fast with her, it is recommended that someone prepare for her the meal that starts the fast and the meal that breaks the fast, and give her the impression that this person is fasting with her, even if he or she does not intend to; but that person should not eat or drink in her presence during day hours; he or she should hide the fact that they are eating or drinking, so that she is not misled to eat and drink during the day.

Success lies with Allah, and may He pray for our prophet Muhammad, his family, and companions, and bring them peace.

*'Abd al-Hamid Kishk,<sup>644</sup> "A person who suffers from excessive unintentional urine discharge, especially during winter, is his or her wudu' (rite of purification) violated? Does he or she have to purify his or her clothes each time urine is discharged in the above manner?"*

In *Fatawa al-Sheikh Kishk, Humum al-Muslim al-Yawmiyya*. Cairo: al-Mukhtar al-Islami 1988, v. 1/3: 111-13.

Urine discharge, even one drop, is violating the *wudu'*, based on a hadith related by Abu Hurayra<sup>645</sup> who said, the messenger of Allah PBUH said: "Allah will not accept the prayer of anyone who discharges excrement until he purifies himself".

However, if the discharge is continuous and he cannot stop it (which is known as urine incontinence *salas al-bawl*), this is a reason to relax [the rule], since necessities render the prohibited permissible, and the condition calls for relief.

The rule concerning those who suffer similar difficulties, such as diarrhea, uncontrolled flatulence, and continuous bleeding from the nose or from a wound, is the same as that of the *mustahada* (a woman who menstruates a little or much longer than the normal, or who menstruates much longer than the normal after birthing a baby (*nifas*), or who bleeds more than her normal menstruation or *nifas*, and much longer than the maximum in both, or if she is pregnant or in menopause).

The Hanafis ruled that such a woman should purify herself prior to the time of each religious duty, not prior to every voluntary duty or devotional act. She should say the obligatory and voluntary prayers at the proper time as much as she can, and when

[blood] is discharged, her *wudu'* is violated, according to Abu Hanifa and Muhammad [al-Shaybani], and she should resume her *wudu'* in readiness for another time of prayer. Likewise, one who suffers urine incontinence or similar problems it is stipulated that for the relaxation of the rule to apply, the condition has to persist throughout all the times of prayer without a break at the time the *wudu'* and the prayer should occupy. A short break is like non-existence [of the condition]. And the stipulation for its persistence and continuation afterwards is that it exists at least once out of the full duration of the times of prayer. It is considered "broken" only if it ceases for the entire duration.

As for a garment that is contaminated on account of the condition, it is said that it should not be washed, as the smallest of defilements is forgiven. The volume of liquid defilement is estimated as the quantity held in one cupped hand, or analogously more. Since the condition is not considered violating *wudu'*, and is not considered impure by law, some say that whatever exceeds the measurement which is forgiven, should be washed, if he or she reaches the ablution without the problem recurring again and again. If it does, he or she does not have to repeat purifying himself or herself as long as the problem persists. This was the [opinion] chosen by the leading Hanafi scholars, and it was confirmed in *al-Bada'i'*.<sup>646</sup>

Ibn Qudama stated in *al-Mughni*: "the *mustahada* should wash her vagina and place a wrap on it and perform *wudu'* toward the time of each prayer and say the prayers that she wants; likewise, one who suffers urine incontinence, discharge of sperm, and bad odor, or a bleeding wound or a constant bleeding from the nose —; these people may combine two prayers [under one *wudu'*], and perform the duties that they have missed and the voluntary acts after the end of the designated time [for the performance of these duties]. Purification is linked to the set time if it is a mandatory purification, so that if one performed *wudu'*, then had a discharge from one's body, the *wudu'* is violated. If one performed *wudu'* after the proper time assigned to a religious duty has started, it is acceptable; the discharge is not considered, and any new discharge that cannot be prevented does not affect the *wudu'*. If the time for the religious duty has passed, the *wudu'* is canceled".

The Shafi'is maintain (as in *al-Majmu'*, and *Sharh al-Minhaj*<sup>647</sup>) that the rule in establishing a relaxation is continuity and persistence [of the condition], and it is mandatory for [establishing a state of] *istihada* (unusual, untimely bleeding). The rule then is that impurity has to be washed and the place should be bound with a sort of bandage after the washing (*ghusl*); the *wudu'* should be performed prior to each religious duty after the bandaging — at the time of prayer and not beforehand since this is a mandatory ablution and it is restricted to the right timing, similarly to *tayammum* and starting prayer after *wudu'*, unless there is a special circumstance related to the prayer, such as awaiting the gathering of a quorum for prayer in a group (*jama'a*); the obligatory prayer will be performed under this *wudu'*, as well as the preceding and following voluntary prayers. No other obligatory prayer can be performed unless a [new] *wudu'* is performed. The *wudu'* and the prayer are not violated if an accident (discharge) occurs during either of them.

According to the Malikis, as mentioned in *Sharh al-Khalil*,<sup>648</sup> there are two methods:

- A. The disability does not completely violate the *wudu'*, and the prayer is not violated either, but it is recommended that whoever suffers from this disability

perform *wudu* before each prayer, unless he or she may be harmed by the cold.

- B. This opinion belongs to Ibn Rushd,<sup>649</sup> and it states that neither the *wudu* nor the prayer are violated if the person has maintained purity for at least half of the duration of prayer. It is recommended that one perform *wudu* if one stays pure for half the time or more, not if one stays [pure] all along. *wudu* is violated if one stays pure less than half the duration of prayer, and one has to perform *wudu* prior to each prayer.

According to the Zahiris and Ibn Hazm (as mentioned in his law compilation *al-Muhalla*), whoever suffers from urine incontinence, whom Ibn Hazm calls “*al-mustankah*”, i.e., one taken over, flooded, must, after washing the place as thoroughly as possible, with no harm or difficulty, perform *wudu* prior to each prayer, obligatory or voluntary; this person should perform a *wudu* for the duty, then another *wudu* for the voluntary prayer; then he or she is not responsible for whatever exits his or her body afterwards during prayer, or in the time between the *wudu* and the prayer. It is mandatory that the *wudu* take place as close as possible to the prayer itself.

To sum up, all the jurists drew an analogy between people with disabilities and the *mustahada*, since in her case there is a defined ruling in the holy texts. The Hanafis and Hanbalis concluded that she is ordered to perform a *wudu* toward the time of each prayer.

The Shafi‘is ruled that she is obligated to perform *wudu* prior to every religious duty, and the Malikis did not require of her to perform *wudu* at all, in either case. They reached in their ruling concerning people with disabilities as we have explained, by analogy (*qiyas*).

From all this it emerges that merely the copious discharge of urine, as presented in the question, is not considered a disability that justifies the above-mentioned relaxation of the rules. For this to be applied, the discharge has to be continuous and recurrent, as explained by the schools of law. The most considerate toward people with disabilities are perhaps the Hanafi and Hanbali ways. The ignorant person should follow it, although he or she might be a follower of another school of law. And Allah knows best.

*Muhammad b. Salih al-Uthaymin, “Is it legitimate for a person who suffers from urine incontinence to perform some of the religious duties, such as prayer, reading the Qur’an, and circumambulation of the Ka’ba (tawaf), under one wudu?”*

In Muhammad b. Salih al-Uthaymin, *Durus waFatawa fi al-Haram al-Makki*. Riyad: Maktabat Uli al-Nuha, Beirut: Dar Khidr 1990, p. 111.

Question: May a person who suffers from urine incontinence perform some of the religious duties, such as prayer, reading the Qur’an, and circumambulation, under one *wudu*?

Answer: It is recognized among the jurists that whoever suffers urine incontinence should perform the *wudu* for the prayer after the time for this prayer has started. If

he or she performs *wudu*’ once the time for the prayer has come, he or she remains pure until the time for this prayer has elapsed. After that, if he or she wants to accomplish another religious duty that must be performed in purity, there is nothing for it but another ablution.

Thus, if he or she has performed *wudu*’ for the evening prayer, after the *adhan* (call) for the evening prayer was heard, then the time for the night prayer comes, the man must go out and perform [another] ablution if anything has been discharged from his body. However, if nothing was discharged from his body during that period of time, there is no need to repeat the *wudu*’. If he or she was able to perform *wudu*’ in readiness for the dawn prayer after the call for that prayer was sounded, he or she remains pure until sunrise. If one performs *tawaf* (circumambulation) before sunrise, one’s *tawaf* is valid. But if one performs *tawaf* after sunrise, one must repeat the *wudu*’.

*Dr. Husam al-Din ‘Afana,*<sup>650</sup> “It is prohibited to abort a handicapped fetus”

In Husam al-Din ‘Afana, *Yasalunaka*. Amman: Maktabat Dundis 2000, v. 1: 184–5.

Question from a woman: She is five months pregnant, and the physician has concluded that the fetus will be born handicapped.

Is it permissible for her to abort this fetus?

Answer: Scholars have concluded that abortion is not permissible after four months of pregnancy, that is, after 120 nights, since soul has been blown into the fetus, based on a tradition by ‘Abd Allah b. Mas‘ud.<sup>651</sup> He said: The Messenger of Allah PBUH, who is trustworthy and truth-teller, said: “Each of you is created in his mother’s womb as a drop of semen (*nutfa*) for forty days, then he becomes a blood-clot (*‘alaqa*) for the same duration, then he becomes a piece of flesh the size of a bite (*mudgha*) for the same duration. Then the angel is sent to it and blows the soul into it, and he is ordered to utter four words. Then [the angel] registers his sustenance, his life-span, his profession, and whether he will be happy or suffering”. This [tradition] was related by al-Bukhari and Muslim.

Among the jurists there are those who prohibit abortion even before the end of the four months. This is the law, if Allah so desires, and a Muslim woman may not abort her child unless it had been established beyond doubt that the mother’s life is at risk, and the judgment as to the existence of such risk must come from a trustworthy and expert physician.

If the physician states that the fetus will be born handicapped, this does not permit abortion. That woman has to persevere, and she will be rewarded.

If she initiated an abortion, it is considered a crime and the payment of a *ghurra* is mandatory; this is the blood money for the fetus, because it is the murder of a protected soul; according to some jurists she must also pay the expiation (*kaffara*) normally due for an unintentional killing.

It is recommended that the physicians fear Allah regarding Muslim women, and that they should not be quick to perform abortions for them, unless it is a life-threatening situation for the mother. Performing abortions might open the door to corruption too wide, and inflict heavy damage on Islamic society.

*Dr. Husam al-Din 'Afana, "The rule concerning abortion of a deformed fetus"*

In Husam al-Din 'Afana, *Yasalunaka*. Amman: Maktabat Dundis 2000, v. 4: 424-7.

A questioner: His wife is pregnant and the doctors have concluded that the fetus is deformed and advised her to abort it. What is the rule on this matter?

Answer: First we have to define what in general is the position on abortion, before we turn to speak about the abortion of a deformed fetus.

The jurists are unanimous on the prohibition to abort after 120 days of pregnancy. Many jurists hold that the soul is blown into the fetus after that period has passed, based on a trustworthy tradition by 'Abd Allah b. Mas'ud, ABPH, who said: The Messenger of Allah, PBUH, who is trustworthy and a truth-teller, said: "Each of you is created in his mother's womb for forty days, then he becomes a blood-clot ('*alaqa*) for the same duration, then he becomes a piece of flesh the size of a bite (*mudgha*) for the same duration. Then Allah sends the angel and he orders four issues: his sustenance, his life span, his profession, and whether he will be happy or suffering. Then he blows the soul into it".

There is only one exception to this rule, and that is if a committee of reliable and specialist doctors testifies that the continuation of the pregnancy poses certain danger to the mother's life; then it is permitted to abort the fetus.

A report of the International Islamic Fiqh Council (IFC) (al-Majma' al-Fiqhi al-Islami), which belongs to the Islamic World League (Rabitat al-'Alam al-Islami) in blessed Mecca, states:

If the pregnancy has passed 120 days, it is illegal to abort it, even though a medical diagnosis shows that the fetus is physically deformed, unless a medical committee of experts issues a report that the fetus's remaining in the womb is hazardous to the mother's life; then it is permissible to abort it, regardless of whether it is deformed or not, in order to prevent the severer of the two problems. (The decisions of al-Majma' al-Fiqhi al-Islami, p. 123).

On abortion earlier than 120 days of pregnancy the jurists are divided; most maintain that it is prohibited to abort just because pregnancy is there, unless there exists a Shar'i justification. This position is held by the Malikis and the Shafi'i scholar al-Ghazali. It is the way chosen by Sheikh al-Islam Ibn Taymiya, as well as the opinion of some of the Hanafis, the Hanbalis, and the Zahiris.

This position was also adopted by many of the contemporary scholars such as Sheikhs Mahmud Shaltut,<sup>652</sup> al-Qaradawi,<sup>653</sup> al-Zuhayli,<sup>654</sup> and others. This is also my view, with which I am comfortable.

As for the abortion of a deformed fetus, it is mandatory to prove beyond doubt that the fetus is deformed. The available tests today do not always allow a sure diagnosis and confirmation of handicaps in the first weeks of pregnancy. However, after 16 weeks of pregnancy, most of the fatal disorders in the fetus can be diagnosed, and then it is possible to decisively detect disorders in the heart, the brain and other organs.

Fetal disorders can be identified by a gynecologist or a radiologist who uses ultrasound, etc. Fetal disorders can be classified into three groups:

1. Disorders that do not affect the life of the fetus.
2. Disorders with which the fetus can live after birth. Some of these disorders can be corrected after birth, such as disorders of the stomach and the intestines.

Some disorders deteriorate in severity in the period after birth, such as hydrocephaly (*istisqa' al-ra's*),<sup>655</sup> which may be mild or severe, as the child may be born alive, but die within days or months afterwards. Also the child who is born mentally deranged or who suffers partial paralysis: such children can go on living, like a child born with one kidney who survives on the other one.

3. There are disorders that leave no hope for fetal life after birth, and the newborn is destined to die right at birth or shortly afterwards. (See the book *Qadaya Tibbiya Mu'asira fi Daw' al-Shari'a al-Islamiyya*, pp. 274–80.)<sup>656</sup>

It is worth knowing that sometimes the damage of abortion might be much worse than any expected damage from the continuation of pregnancy, as doctors claim; and early medical intervention can be risky in certain cases. If we compare and weigh up the likelihood of possible problems that will result from the termination of pregnancy between weeks 16 and 24, whether by regular medications or by abortion, against problems that might arise for mothers who continue pregnancy till natural birth, we find that the expected problems for the mother are much greater in cases of early intervention than of natural births. See the book *Qadaya Tibbiya Mu'asira fi Daw' al-Shari'a al-Islamiyya*, p. 275.

If this is clear, jurists have allowed abortion of the fetus that is severely deformed before 120 days of pregnancy. Among the decisions of al-Majma' al-Fiqhi al-Islami we find this:

Before 120 days of pregnancy have passed, if it is concluded by a report of a special trustworthy medical committee, and based on advanced tests conducted with laboratory equipment, that the fetus is severely handicapped, unable to be cured, and if left in the womb to develop until its birth at term, its life will be miserable and painful to itself and its family, then it is permissible to abort it, based on both parents' request. When the Council so decides, it encourages doctors and parents to fear Allah and be cautious in this issue (The decisions of al-Majma' al-Fiqhi al-Islami, p. 123).

Finally we must warn that some women rush to abort the fetus based on only one doctor's evaluation that the fetus is handicapped. This is a dangerous issue, and the opinion of one doctor alone is not acceptable, because there is always the chance that the doctor has erred. A committee combined of at least three trustworthy honest specialists should decide before an abortion is executed.

Finally, I call upon the doctors' union, and other health organizations, to form an expanded committee of specialists in gynecology and obstetrics, and other specialists concerned with this problem, to lay the foundations and the general rules for cases considered severe disorders in the fetus that would render its life hopeless; this is needed so that the issue will not be guided by guesswork on the part of several doctors, something that could result in harm and corruption.

*Dr. Husam al-Din 'Afana, "A wife's request for a divorce because of her husband's sterility"*

In Husam al-Din 'Afana, *Yasalunaka*. Amman: Maktabat Dundis 2000, v. 2: 386–7.

Question from a woman: The doctors are certain that her husband is sterile and will beget no children. They have been married for years and she has a strong desire to bear children. Is it legitimate for her to ask to be divorced by her husband?

Answer: A woman may ask her husband to divorce her if it is obvious and certain that he is sterile and cannot beget children. If the husband refuses to divorce her, the wife may appeal to the qadi for a ruling on the dissolution of the marriage. This is the most prevalent juridical opinion on the problem, since sterility is one of the disabilities which prevents a purpose of marriage from being fully accomplished; the wife has the right to have children, and she has a strong desire to become a mother. Therefore, ‘Umar b. al-Khattab, ABPH, said to a castrated man who married: “Did you inform her that you are sterile?” He said he had not. ‘Umar said: “Go and inform her, and let her choose”. It was reported by ‘Abd al-Razzaq in *al-Musannaf*,<sup>657</sup> and the people [mentioned in its chain of transmission] are trustworthy (*thiqat*).

‘Umar, ABPH, left the choice to the wife; thus, if she has accepted her husband’s sterility, it is up to her, while as if she has not accepted it she may ask him to be divorced.

Despite all the above, a woman should not hasten to request a divorce from her husband who cannot produce children, and the husband should strive to seek treatment, especially in our day, when the science of medicine has advanced so far, especially in treating infertility.

The best reaction by this wife would have been to resign herself to whatever Allah has granted her, and be satisfied with her sterile husband, because Allah has a reason for it. Allah, the Exalted, says: “Unto Allah belongeth the sovereignty of the heavens and the earth. He createth what He will. He bestoweth female (offspring) upon whom He will, and bestoweth male (offspring) upon whom He will. Or He mingleth them, males and females, and He maketh barren whom He will, Lo! He is Knower, Powerful” (Qur’an 42, 49–50). But if she does not accept this, then, as I said before, she has the right to ask to be divorced.

*‘Abd al-Halim Mahmud*,<sup>658</sup> “About a man who wishes to divorce his wife because of his illness”

In *Fatawa al-Imam ‘Abd al-Halim Mahmud*. Cairo: Dar al-Ma‘rifa 1985, v. 2: 138

Illness of a husband is not a compelling reason for him to divorce his wife. The wife of the ill man, with whom she may have children, may calm her conscience and feel good about the sacrifice. And sacrifice is a pleasure, when a woman resolves to dedicate her life to raising her children and comforting her husband who did not harm her when he was healthy and who acknowledges her good care of him when he is sick.

Divorce in such a case does not therefore arise as a religious duty, but as the wife’s desire and the husband’s conscientious attitude to her.

If the wife wishes to pursue [marital] life, the husband should praise Allah and praise his wife for her generous behavior. However, if she wishes to be divorced he should release her understandingly and forgive her, finding comfort in Allah’s verdict, and his patience will be rewarded.

Allah does not waste the reward of those who persevere. Allah is with the persevering.

*Dr. Husam al-Din 'Afana, "A lame fiancé who is religiously devout"*

In Husam al-Din 'Afana, *Yasalunaka*. Amman: Maktabat Dundis 2000, v. 1: 143–4.

Question from a woman: She is a young woman of marriageable age. A religious young man who is also lame has asked her to marry him. Her family has refused, even though she likes this man. What is the Shar'ī rule about such cases?

Answer: Islam grants the woman the right to choose her husband. She can accept or reject a prospective fiancé, and her family should not fulfill this role instead of her. Islam grants the right to apply reason in the choice of either spouse. For example, the selection of a suitable husband will not depend on money, fame, or appearance alone, but on the quality of being God-fearing and obeying commandments – namely, the man is pious. It is mentioned in the hadith, related by Abu Hurayra, may Allah be pleased with him, that he said: The Messenger of Allah PBUH said: "If a man proposes to a woman, and you like his religious attitude and morals, let him marry her. If you refrain from doing so, there will accrue chaos and great corruption on earth". This was related by al-Tirmidhi,<sup>659</sup> and it is a sound (*hasan*) tradition.

In another tradition, attributed to Abu al-Hatim al-Muzani, he said: The Messenger of Allah said: "If a man proposes to a woman, and you like his religious attitude and morals, let him marry her, and if you refrain from doing so, there will accrue chaos and great corruption on earth". They said: "Oh Messenger of Allah! And if there is something in him?" He said three times: "If a man proposes to a woman, and you like his religious attitude and morals, let him marry her". This was related by al-Tirmidhi, and it is a sound tradition as reported by Sheikh al-Albani.<sup>660</sup>

So the idea is that if there is a defect in the man in other aspects, such as physical appearance, family reputation, lineage, etc., and this lame fellow, if he is religiously devout, as the woman questioner claims, her family must not reject him, especially since she likes him.

Their objection to this fiancé is out of obstinacy and paternalism, and their view of things is incorrect. There are many lame, blind, and people with disabilities, and if these and people like them do not marry, it will bring a disaster upon society.

It is well known that many people approach marriage as a pure material issue, and they impose on their daughter's fiancé certain material conditions, for example, that he should possess wealth, or a high position, or be of an aristocratic family, and they pay no attention to elementary issues such as religiosity and morals. He may indeed be poor, but still better than a rich man. It is mentioned in the Hadith, on the authority of Sahl b. Sa'ad, who said: A man passed by the messenger of Allah, PBUH, and said: What do you think of this? They said: It is worthwhile that if he proposes he will be married, if he speaks well of someone it will be accepted, and if he speaks he will be listened to. He said: then he was silent. Then passed by one of the poor Muslims, and he said: What do you think of him? They said: It is worthwhile that if he proposes he will not be married, if he speaks well of someone it will not be accepted, and if he speaks he will not be listened to. The messenger of Allah PBUH then said: "This one is better than the land being full of that one". This was related by al-Bukhari.

Our words do not call one to ignore the material aspects, but the foundation must be religion and morals, and then other aspects could be considered.

*Prof. Rif'at Fawzi*<sup>661</sup>, "Breaking up an engagement because of the sterility of the fiancé"

IslamOnline, January 28, 2001

<http://www.islam-online.net/fatwa/arabic/FatwaDisplay.asp?hFatwaID=25598>

Question: I was engaged to a young man for a few months. As the date of completing the contract and the wedding approached, he confided to me that he was suffering from a venereal disease, because of which he was unable to produce children; he begged me to proceed with the wedding because this gave him hope in life, and he might be cured of his disease. Should I stay by his side, proceed with the wedding and be satisfied with whatever life gives me, or what should I do? Please inform me, and whether I am considered a sinner if I cancel this engagement.

Answer: Allah, the Exalted, says: "And Allah hath given you wives of your own kind, and hath given you, from your wives, sons and grandsons, and hath made provision of good things for you" (Qur'an 16, 72).

Allah is gracious to His servants by rendering their marriage productive of children and grandchildren as they progress in age and these children mature.

This is the way of life that Allah made people accustomed to, and the living are made to feel the need for procreation and children. Allah, may He be exalted, said: "O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women" (Qur'an 4,1).

The Shari'a rules that the engagement be without a contract and without a commitment of one of the two sides to the other, so that each of them may examine his/her interests and search for aspects that will help in maintaining a happy and fruitful family life.

I do not think that realizing the marriage in the light of the existence of this disease will lead to its endurance and happiness; rather, many problems may result from this.

Jurists have dealt with situations like the above on the basis of legal texts, and concluded that the marriage of one who carries such a disease is reprehensible, since it harms the other partner and deprives him or her of a gift that Allah would normally grant a spouse, that is, the gift of producing children, which men and women have an equally strong desire to obtain. Islamic law says: "No harm and no harming" (*la darar wala dirar*), which means that we should not act in a way that would cause harm to ourselves or to others.

Based on this, I advise the woman who asked the question to cancel the engagement so that she does not start a marriage that contains seeds of dispute and many problems. May Allah grant her a husband who will produce children with her, and she will be able to accomplish the natural purpose of marriage which is the blessing of sons or daughters.

May Allah cure this sick man, and he will find a righteous wife with whom he will live normal life, and He will grant him also the power of producing children. We appeal to Allah for his and for her sake. And success is with Allah.

*'Ujayl al-Nashmi,*<sup>662</sup> "A wife who abstains from her husband because of his bad odor"

IslamOnline, March 21, 2001

<http://www.islam-online.net/fatwa/arabic/FatwaDisplay.asp?hFatwaID=30192>

Question: Is a wife who abstains from [sexual relations with] her husband because of his bad odor considered a sinner, an evildoer, or a rebellious wife according to Islamic law?

Answer: Praise to Allah, and greetings to the Messenger of Allah.

If what the wife reports is true, she may abstain if the smell is unbearable to her. She is not considered a sinner or an evildoer then. The jurists concluded that if the wife avoids sexual intercourse [with her husband] because of a strong bad odor, and she is thereby harmed in a way that normally would not be bearable, she is not considered rebellious. The duty of the husband is to treat himself for any disease that may befall him, or he should take care of his hygiene, if the cause of the bad odor is neglect on his part. As much as the husband wants his wife to be clean and pretty, the wife expects the same from her husband.

The jurists stated that the wife must remove whatever makes her ugly or repulsive, and Bakka the daughter of 'Uqba related that she had asked 'A'isha, ABPH, about plucking the eyebrows (*hifaf*), and she said: "If you have a husband, and you can pluck your eyes (*tantazi 'i muqlatayki*) and make them more beautiful than they are, then do it" (Muslim 8, 326).

The same is true for the husband regarding his wife, based on a tradition by Ibn 'Abbas ABPH and his father: I like to adorn myself for the woman – the wife – as much as I like her to adorn herself for me, because Allah the Exalted said: "And they (women) have rights similar to those (of men) over them in kindness" (Qur'an 2, 228).

*Dr. Ahmad Muhammad Kan'an,*<sup>663</sup> "Impotence, amputation of the penis, and sexual frigidity"

IslamOnline, May 15, 2001

<http://www.islam-online.net/fatwa/arabic/FatwaDisplay.asp?hFatwaID=36918>

Question: What is the difference between *'unna* (impotence), *jabb* (being amputated of the penis), and *burud jinsi* (sexual frigidity), and what are the laws concerning them?

Answer: Praise to Allah, and greetings to the Messenger of Allah.

There is no doubt that Islam has shown concern for relations between spouses and guaranteed the continuation of their relations by lawful methods and moral and material restraints. Intercourse between spouses, to satisfy the sexual needs of both, is one of the foundations of the success of marital life. Impotence, amputation of the penis, and sexual frigidity are obstacles to marital life, so we find that Islamic law did not ignore these things.

Dr. Ahmad Kan'an says: *'Unna* (asynodia) is the man's inability to penetrate a woman, and often the reason is psychological, such as shame or revulsion, but the reasons might also be pathological; note that castration rarely causes *'unna*, and that castrated men can often penetrate.

As for *jabb*, which is the amputation of the penis, it is not termed impotence, because the organ of penetration is completely absent, or because whatever is left of it does not suffice for penetration.

If the cause of *'unna* is psychological: the man might be impotent with one woman but not with another. If the *'unna* is pathological, it does not change with various women.

A husband's *'unna* grants the wife the right to request the dissolution of marriage, although some jurists say that the husband is granted one year's deferment if there is not an obvious reason for impotence. If there is an obvious [medical] cause that the man cannot be cured of, such as paralysis and similar conditions, there is no deferment and the wife may have the choice [to remain or be divorced]. But if the husband has penetrated his wife, even if only once, but then he was inflicted with impotence, most jurists maintained that the wife does not have the right to choose, because the wife by that act of intercourse has been given what is her due from the purposes of marriage. Others ruled that the husband be granted a year's deferment, because he might be cured.

The existence of *'Unna* is established either by the husband's confessing that he is unable to penetrate, or by proofs, for example, the wife has remained virgin and an expert physician or midwife testifies to that; it can also be proved by a medical examination. *'Unna* can also be proved by a claim of the wife against her husband, and by asking him consequently to take an oath; if he declines to take an oath his disability is proved. Most jurists do not release the wife from the observation of *'idda* (waiting period), as the impotent's wife has to observe the *'idda* required by Islamic law. The husband may not return his wife during the *'idda* or afterwards. But Shafi'i jurists maintain that she need not observe the *'idda* as long as her husband has not penetrated her.

As for the parallel situation to impotence in men, namely sexual frigidity in women: the latter is not considered a handicap and it is not grounds for the husband to request cancellation (dissolution) of marriage, since it does not prevent the husband from fulfilling the purposes of marriage, nor does it deprive him of enjoying sexual intercourse. And Allah knows best.

*Jad al-Haqq 'Ali Jad al-Haqq, "The impact of impotence ('unna) on the marital contract" (July 26 1981)*

In *Fatawa Islamiyya min Dar al-Ifta' al-Misriyya* 1982, v.8:3010–13.

1. *'Unna* is a disability that permits the wife to request dissolution of marriage between herself and her husband.
2. The wife's admission that her husband had intercourse with her prevents her from ever suing him for being impotent.
3. If the husband has penetrated his wife in the vagina even once only, the dissolution of their marriage is not permitted, regardless of the type of disease that might have afflicted him and prevented him from accomplishing penetration.
4. The wife is entitled to the rights of a married woman by virtue of one act of sexual intercourse, or more. This is a religious, not a legal entitlement. The husband is a sinner if he stubbornly avoids intercourse with her despite the fact that he is sexually capable.

5. Spouses must obey the laws of Allah, may He be praised, by amicable cohabitation; and if cohabitation is impossible, and there is no legal basis for the dissolution of the marriage, it is proper for both that the wife ransom herself [to exit the marriage].

Question: a request no. 46, year 1981, was presented by lawyer M.A.Q. He asks for a Shar‘i ruling on a woman who married a man 17 years her senior. During that marriage she gave birth to a boy and a girl. Since the birth of the girl, 16 years before, her husband never had sexual relations with her, explaining that he had a heart problem. The man was examined by many physicians, who found no physiological disorder preventing him from having sexual relations. Due to her sexual dissatisfaction the wife became very sick, so she asked her husband to divorce her, but he refused. The question is does she have the right to request to be divorced on these grounds?

Answer: The jurists of Islamic law have concluded that the husband’s being free of disabilities is a basic stipulation for maintaining the marriage, as far as the wife is concerned. This means that if the wife learns that the husband has a disability she has the right to place a claim with the court and ask for dissolution of the marriage. The jurists, though divided over the determination of these disabilities, unanimously concluded that *‘unna* is a condition that permits the wife to sue for the dissolution of her marriage. *‘Unna* or *‘anna – i’tirad* (impotence), from the Arabic root *‘n-n* – is in the passive form of the verb. Lexically, *‘innin* is someone who is unable to penetrate; in legal terms, his penis is unable to enter his wife’s vagina. Most jurists maintain that if the wife has admitted that she has had intercourse with her husband he cannot be considered *‘innin*. If she later claims that her husband is impotent her complaint will not be accepted, and the husband will not be assigned probation. This opinion was held by Abu Hanifa and his disciples, Malik, al-Shafi‘i, Ahmad b. Hanbal, ‘Ata’, Tawus, al-Awza‘i, al-Layth b. Sa‘ad, al-Hasan b. Yahya, Shurayh, ‘Amru b. Dinar, and Abu ‘Ubayd. The result is that if the husband managed vaginal intercourse with his wife even once, their marriage will not be dissolved no matter what disease afflicts him to prevent him from repeating intercourse with her. This was also reported as the opinion of ‘Ali b. Abi Talib, ABPH. He said: The wife should persevere if the illness is temporary, and if they have had sexual intercourse. The Hanafi jurists ruled on this point: “If he married her and consummated the marriage, but later became unable to penetrate, hence an impotent, she has no grounds for a lawsuit. Similarly, if he became insane after having one act of intercourse with her, or he became *‘innin*, their marriage will not be dissolved, because by that act she has been given what he owes her. Any additional intercourse would be considered her right by religion, not by law. He could be blamed only if he stubbornly neglected the religious norm even though he was able to penetrate. The rulings of this school of law are applied whenever the issue of dissolution due to the husband’s impotence is at issue, and generally when flaws of the genitalia are at issue. The explanatory note to law no. 25 of 1920 and to law 25 of 1929 proves this, in reference to the Article 5: “It is worth mentioning that [regarding] dissolution by divorce due to *li‘an* (sworn allegation of adultery), or *‘unna*, or the refusal of the husband to adopt Islam when his wife has already adopted it, the verdict goes according to the Hanafi school of law”. Therefore, the ruling of the ninth article of law 25 of 1929 is not applicable to the claim of impotence, as indicated by the above-mentioned explanatory note.

Since the situation is as explained, and the husband had intercourse with this wife and she gave birth to a boy and a girl who are at different educational levels, then he stopped having intercourse with her ever since she gave birth to their daughter who is at present sixteen years old, this husband cannot be considered “*innin*” (impotent), and the wife has no right to sue for legal dissolution of their marriage due to impotence. Her rights have been fulfilled by the sexual relations between them and by her giving birth, although in religious terms the husband is guilty of obstinately infringing the sexual contact with her, despite the fact that he is able to perform sexually.

Despite everything said, according to traditions related by ‘Ali b. Abi Talib, may Allah honor his face, the best advice to this wife, according to him, is to persevere and be patient, and seek cure to her situation and bodily desires in fasting, as the Prophet PBUH advised in his noble Hadith: “O young men! Whoever among you is capable of sexual intercourse let him marry, since marriage causes one’s eyes to drop [so as not to look at women he should not look at], it protects one’s genitals, and whoever cannot marry should seek the cure in fasting”. The spouses should follow Allah the Exalted’s words: “Divorce must be pronounced twice and then (a woman) must be retained in honor or released in kindness. And it is not lawful for you that ye take from women aught of that which ye have given them; except (in the case) when both fear that they may not be able to keep within the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the woman ransom herself. These are the limits (imposed by) Allah. Transgress them not” (Qur’an 2, 229) until His words: “Retain them not to their hurt so that ye transgress (the limits). The spouses must obey Allah’s commandments, may He be praised, as appear in the noble Qur’an, that is to cohabit in kindness, and if companionship is impossible and there is no Shar’i legal grounds for dissolution of the marriage, then Allah, the Blessed, encouraged in the noble Qur’an to solve the marital bond in His words: “And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the woman ransom herself.” (Qur’an 2, 229). And Allah the Exalted and Blessed knows best.

*Sayyid Sabiq,*<sup>664</sup> “*The marriage of a leper and disabilities that annul the contract*”

IslamOnline, December 23, 1999

<http://www.islam-online.net/fatwa/arabic/FatwaDisplay.asp?hFatwaID = 4127>

Question: May the leper marry, and what are the disabilities that are grounds for the annulment of the contract?

Answer: Marital life, which is based on tranquility, affection, and compassion, cannot prevail and be realized as long as there are defects and illnesses in one spouse that the other spouse detests. There are certain defects and illnesses by which the purposes of marriage are not fulfilled. This is why Islamic law allows either of the prospective spouses to choose to accept or reject the other for marriage.

Ibn Qayyim’s investigation should be considered in this matter. He said: Blindness, deafness and dumbness, and her being amputated both hands or legs, or one of them, or the fact that a man is like that, are indeed repelling conditions, and remaining silent about them is extremely deceptive and misleading, and this is against the religion.

The Commander of the Believers, ‘Umar b. al-Khattab, ABPH, said to a man who married a woman when he was infertile: Let her know that you are sterile (*‘aqim*), and let her choose. What would he have said of the disabilities of a woman who seems healthy with no defects?

He said: The analogy should be that every flaw that the other spouse detests, and that betrays the aims of marriage, such as compassion and affection, from being achieved, must be subject to [the other’s] choosing. It is more deserving than in a sale, and the terms of marriage must be fulfilled more than the terms of a sale. Allah and His messenger never obliged a deceived or a misled person to do what he was deceived or unjustly led to do.

Whoever contemplates the purposes of marriage, its origins and sources, its justice and wisdom, and all the benefits it involves, cannot overlook the validity of this statement and its suitability to the principles of the Shari‘a.

Yahya b. Sa‘id al-Ansari related on the authority of Ibn al-Musayyab, ABPH, who said: ‘Umar, ABPH, said: Any woman who suffers madness, or elephantiasis, or leprosy, and marries, and the man penetrated her and then noticed this, may receive her full dowry due to his penetrating her, and her guardian should pay back the dower [to the husband] because of the deception he let happen.

Al-Sha‘bi related, on the authority of ‘Ali, Allah will bless him, the husband of any woman who marries when she has madness, leprosy, elephantiasis, or a blocked vagina, her husband may choose to stay married or to divorce, as long as no penetration has taken place. If it has, she deserves the dower since the husband was given permission to penetrate her vagina.

Waki‘ said: On the authority of Sufyan al-Thawri, from Yahya b. Sa‘id, from Sa‘id b. al-Musayyab, from ‘Umar b. al-Khattab, ABPH, who said: “If he married her while she was a leper or blind, and penetrated her, she deserves the dower, and he should retrieve the sum from whomever deceived him”.

He said: Now this shows that ‘Umar did not mention the above-mentioned disabilities meaning only them and nothing except them. The same was the ruling of qadi al-Islam Shurayh, ABPH, who is often used as a model of knowledge, piety, and wisdom.

‘Abd al-Razzaq said: On the authority of Mu‘ammar, from Ayyub, from Ibn Sirin, ABPH, that a man sued another man in front of Shurayh, and said: This man told me: I am going to marry you to the most beautiful of people. But he brought me a blind woman. Shurayh said: If he deceived you with a disability, it is impermissible.

Consider this ruling and his statement “If he deceived you with a disability”. Does this mean that every disability that the wife has withheld from the husband leaves the latter with the option to cancel [the marriage] (*radd*)?

Al-Zuhri ABPH said: Marriage can be canceled for every incurable disease. He said: Whoever surveys the rulings of the Companions and the scholars of the past finds that they did not specify that cancellation of marriage depends on a particular disability only, except for a tradition attributed to ‘Umar: “Women should be returned (*radd*) [i.e., the marriage to them annulled] for four disabilities: madness, elephantiasis, leprosy, and diseases of the vagina”. But this tradition we know only through one chain of reporters, namely Asbagh, and Ibn Wahab relating from ‘Umar and ‘Ali, Allah be pleased with both.

This message was also reported by Ibn ‘Abbas with a sound chain of transmitters. This is if the husband opted to divorce.

However, if the husband stipulated [in the contract] that she be healthy, or that she must be pretty, and she turned out ugly, or if he stipulated that she be young, and she turned out old, or he stipulated that she be white and she turned out black, or if he expected a virgin and she was not a virgin – in all these cases he has the right to cancel the marriage. If it happened before consummation no dower is due, and if after consummation she deserves the dower. The husband can consider her guardian his debtor if the latter has deceived him.

If the woman is the deceiver she loses her dower, or she is sued for its return if she has already received it. Ahmad b. Hanbal gave this ruling in one of the two traditions attributed to him on this matter. And this is more logical and suited to Ibn Hanbal’s principles of law for when the husband had stipulations [prior to marriage].

His disciples said: If she stipulated that the husband have some characteristic, and he proved to have the opposite, she has no choice unless what is at stake is the article on freedom; if the husband turned out to be a slave she does have a choice.

As for genealogy, if this proves the opposite of what was expected, there are two options. One approach rules that there is no difference whether it was the husband or the wife who made the stipulations. The other permits the wife to choose if her stipulation was not met, since she is unable to initiate a divorce.

If the husband can annul the marriage, even though he may initiate a divorce, how much the moreso that she may annul it since she cannot initiate a divorce. If the wife may annul the marriage when the husband turns out to be of lowly occupation, she does not put his religion or honor to shame when she only avoids her full enjoyment of him.

If she stipulated that he be young, handsome, and healthy, and he turned out to be old, disabled and blind, deaf and dumb, and black – how can she stay by him and forgo annulment?

This is wholly absurd and contradictory to analogy and to the principles of the Shari‘a.

He said: How come one of the spouses may annul because of leprosy as small as a bean, but not because of chronic eczema (*jarab*), which is much more contagious than that little spot of leprosy? Similarly is the case with other incurable diseases.

Since the Prophet prohibited the vendor from hiding defects of the merchandise, and he forbade one who knew of such defects to hide them from the buyer, so much the more with defects in marriage.

The prophet PBUH said to Fatima bint Qays, when she consulted him about marrying either Mu‘awiya or Abu Jahm: “Mu‘awiya is a beggar with no money, while Abu Jahm does not put aside his cane”. He made clear by that that it is more important and necessary to disclose the fact that one is flawed.

How can the hiding and deception and forbidden trickery justify compliance with such a marriage? And how can the handicapped person be like a chain on the neck of the other spouse, who despises him or her, especially if the healthy spouse had stipulated [in the marital contract] health in the other spouse, the opposite of what he or she received in reality?

This proves beyond doubt that the ways and rulings of the Shari‘a reject it, and Allah knows best.

Abu Muhammad b. Hazm ruled that if the husband had stipulated that the wife be free of handicaps, but he finds a handicap, the marriage is considered void, as if never contracted to start with. He has no alternatives, no extenuating circumstances, no maintenance, no inheritance rights. He said: It is as if the woman introduced to him is not the one he married, as he contracted to marry a healthy not a disabled woman. If he has married the disabled woman, no marital bonds exist between them.

What happens today in the courts?

The courts today rule according to article. 9 of the law of 1920. "The wife deserves this right if the handicap is permanent and incurable, or could be cured after a long while, or if she could not cohabit with the husband without being endangered, whatever the disability may be: madness, elephantiasis, and leprosy, and whether the handicap existed with the husband before the contract, and she did not know of it or it appeared after the contract and she did not resign herself to it. If she married the man knowing of his disability, or if the disability appeared after the contract and she overtly or evidently expressed acceptance of the fact, after having learned of it, she may not ask for dissolution. Dissolution in such cases is like a terminal divorce (*talaq ba'in*), and experts have to be consulted on the type of disability, and its hazardous impact".<sup>665</sup> This is the end of the Sheikh's words.

In summary, if one of the spouses knew of the other's disabilities and consented, there is no problem with this marriage. However, if one of the spouses deceived the other, this is unbearable, and the detailed steps mentioned above then apply.

*Dr. Musa al-Basit:*<sup>666</sup> *The Rights of the Physically and Mentally Challenged in the Islamic Shari'a. Um El-Fahem: The Center for Contemporary Studies (CCS), 2000*

### *Introduction*

Blessed be Allah Who "created man of the best stature"<sup>667</sup> [Qur'an 95,4], and shaped him in the best shape, and may the head of messengers [the prophet Muhammad] be blessed with peace.

The message of Islam is the message of the man, and aims to grant him all the goodness, to care for his well being and improvement, and to try to achieve his happiness and progress.

While Islam attends to this dignified creature, it does not distance itself [from man] or discriminate. The divine criteria of justice govern the interactions of humans; these criteria are just and not injurious; they are reassuring, not frightening.

The *mu'awwaq* [disabled person] is a one who suffers from what has barred him from reaching what the healthy person may reach, something that has led in the past, and until recently, to the loss and deprivation of his rights.

It is possible that people have overlooked the fair attitude of Islam to the disabled person and to granting him his full rights. Some might claim that others have preceded Islam in this attitude. In this study I wish to clarify the subject, by explaining all the types of treatment and care that Islam has provided for the *mu'awwaq*, psychological, moral and material, how Islam from its infancy has dealt with problems of disability, and defined it. I conclude that the just Islamic outlook on the disabled

allowed Islamic society throughout its history to produce important [and famous] people from among the disabled.

*Who Is a Disabled person (mu'awwaq)?*

*Al-Mu'awwaq* is a term derived from the verb '*aqahu 'an shay'* (he held him back from something), *yu'awwiquhu 'awqan* (it delays him), used when something distances one and holds one back. '*Awq* means a troublesome issue. '*Awa'iq al-dahr* is an idiom for disturbing thoughts on life events.

Other derivatives of the verb '*aq* are '*a'iq*, and '*aqatni al-'awa'iq* (obstacles have hindered me); the singular is '*a'iq* (an obstacle).

*Al-mu'awwiq* is like *al-muthabbit* (delaying), and in the Qur'an one finds "Allah knoweth those of you who hinder" [33, 18]. *Mu'awwaq* is a passive participle form, similarly to *mu'aq*, someone who has a handicap that hinders his movement, paralyzes him, and prevents him from independently fulfilling his needs; moreover, it renders him in need of help from another person.

Some definitions of the *mu'aq* are these: "A person who suffers permanently from one or more handicaps, which reduce his ability and render him in great need of external assistance".<sup>668</sup> Or "Someone who has lost the ability to pursue his work or to perform another job, due to a physical or mental inability, regardless of whether this disability resulted from a disease, an accident, or was inborn".<sup>669</sup>

In the Islamic tradition we find another expression used for the disabled, namely *al-zamna*, meaning those with chronic diseases and permanent disabilities. A *zamin* is a decrepit man in *zamana* (a state of deterioration), i.e. disability. The plural is *zamna*, on the morphological pattern of *fa'la*. It is the prototype of disasters that people may encounter, or be inflicted with against their will. This was Ibn Manzur's assertion,<sup>670</sup> and this is a realistic and accurate definition.

*The Variety of Disabilities*

Despite progress in the fields of science and medicine that we have witnessed in the modern era, we also observe an increase in the types of existing disabilities, largely due to loss of trust in oneself, one's fellow-men, and the environment. The reasons for these disabilities are the numerous and diverse accidents. They may be road accidents and related events, accidents involving industrial machinery, falling from heights, bullet wounds, or mines exploding in war or its aftermath. Disabilities can also be inflicted through torture and abuse, which result in broken limbs. You may see a person whose leg has been amputated, or who has lost one or both of his hands to a mine, a machine, or a tool. We may see a person whose eye was put out by a gunshot, or who became paralyzed by a bullet that penetrated his spine.

On the other hand we find people who at birth or due to hereditary illnesses suffer deformations in their hands, legs, senses, and brain.

How has Islam treated people with disabilities? What are their rights in Islam? Did Islam only pity them? What was real life for people with disabilities in Islamic societies? Plato's attitude is that there is no place for people with disabilities in society, and that we have to help society get rid of them. I suspect that Plato's

attitude has been and still is applied in one form or another in the contemporary civilizations!<sup>671</sup>

Allah said, “Verily we have honored the children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created with a marked preferment” [Qur’an 17, 70].

Accordingly, Islam through its great laws has insisted on providing a good life to man, and special care for certain groups of people, by providing them with extra rights. At the same time it releases them from some duties, so that eventually an equilibrium is reached between the natural qualities and abilities of each person. This equilibrium between the rights and duties of these groups of people was not achieved through pressure imposed by organizations or unions.

Every human being in advanced societies is anguished at the sight of demonstrations by handicapped people, demanding their right to reach the level of life with respect. Where is human dignity, and where is the dignity of the disabled person?

Before I survey the rights of the disabled in Islamic law, I will mention the principles that guided Islam’s treatment and care for this group of people.

- A. The source of Islamic legislation is Allah the Creator, who knows what is helpful for man; therefore, applying Allah’s laws will ensure happiness to all parts of society, the healthy and the disabled alike.
- B. When we plant in the heart the belief in direct responsibility to Allah, and in personal accountability for any negligence or violation of the laws, then the performance of Islamic law is part of special duties aimed at winning Allah’s satisfaction; Islam considers care for the handicapped a religious duty, regarding which man may either be punished or rewarded.
- C. Allah, may He be exalted, chose important principles, which He inserted into His laws and into people’s relations. These are justice and the good deed. Justice requires equality among men, but justice alone is not enough and it does not release one from personal commitment. There is no escape from according the good deed to those for whose care justice alone is not enough. The handicapped person is sometimes unable to face the healthy and compete with them. The good deed is mandatory, and the well being of society comes with it. “Allah loveth those whose deeds are good” [Qur’an 3, 148].
- D. Islamic law rules that simply by being human, every human being deserves human rights. The freedom of man is protected. The justice of the legal system should not be violated, no matter how different the rivals are. In the epistle of Umar to Abu Musa al-Ash‘ari he said, “Do justice between the rivals”.<sup>672</sup>

The necessities of life, on which the sustenance and life of each person depend, must be provided to everyone in need. In the noble Prophetic Hadith it is said: “Feed the hungry and care for the sick, and release from bondage the sufferer”, that is, the captive.<sup>673</sup>

As much as people differ in their abilities to earn a living, Islam insisted on a unique system of social welfare that ensures sustenance and provides the basic needs for each person. The teachings of Islam have granted each person natural rights which must not be disregarded; such are the right to live, the right to freedom, the

right to education, the right to human dignity, and the right to own property. Islam considers all Muslims as one body, so if one of its organs is ailing the rest are summoned to watch over it and protect it.

One of the great qualities of Islam is that it proclaims the principle of social solidarity, raises this banner, and encourages Muslims to apply this principle in all fields of life. Allah, may He be exalted, said: “help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression”.<sup>674</sup> He obligated the wealthy to spend on the poor and on those relatives who are unable to earn a living. Social solidarity was thus achieved within the framework of the family.

He also made it mandatory for the people of every neighborhood, village, and town, to live in cooperation and solidarity. The hadith of the Prophet (PBUH) can be quoted in this regard: “Allah will remove his protection from the people of an area who allow one hungry person wander amongst them”.<sup>675</sup> This is true for both villages and towns.

The state is also responsible for satisfying the wants of its needy, its disabled, and its handicapped.

The Messenger of Allah (PBUH) would guarantee that the needs of the needy and the poor are met. Certainly, it is the duty of the state to take responsibility for providing for the needs of these disabled, the needy and decrepit people ... from the treasury.

#### *Duties and Liability of the Disabled Person*

Islam views man as owning full liability of all kinds. However, Islam, which is divine legislation, based on compassion and care for the state of man in all possible circumstances, lessens the duties expected of the disabled person. Moreover, in its mercy it frees the disabled from performing the duties in certain scenarios. It does not order a person who is mentally ill to perform duties. The Prophet says: “The [convicting] pen is passed over [the head of] three”, and among the three he lists the mentally ill, until he regains reason.<sup>676</sup>

Among disabilities there are some that require relief, and reduction and alleviation of difficulty by means of the “licenses” (*rukhas*) that Allah enacted. A glance at the texts of the Qur’an and the Sunna will elucidate this clearly. Allah, may He be exalted, said: “Allah desireth for you ease; He desireth not hardship for you”.<sup>677</sup> He also said: “and hath not laid upon you in religion any hardship”.<sup>678</sup>

The Messenger of Allah (PBUH) said: “The most desired religion to Allah is the monotheistic and lenient”.<sup>679</sup> Allah said: “No one should be charged beyond his capacity”.<sup>680</sup> He likewise said: “Allah asketh naught of any soul save that which He hath given it”.<sup>681</sup> Jurists have learned from the Qur’an and the Sunna many of the legal principles that lighten the duties incumbent on the disabled, out of compassion for them, not out of disrespect. Some of these principles are “Hardship leads to ease”; “When the issue becomes narrow, then it becomes wide”; and more.

In his commentary on the Qur’anic verse “No blame is there upon the blind nor any blame upon the lame nor any blame upon the sick”<sup>682</sup> Dr. ‘Abd al-Sattar Abu Ghuda says:<sup>683</sup> “These are three distinct forms of disability, and they are like models representing all types of disability: the handicapped are represented by blindness, the mishaps are represented by lameness, and the verse ends with sickness, which

encompasses all other disabilities. This verse refutes the blame, which entails refutation of sin or liability”.

Al-Qurtubi summarizes the verse: “Allah lifted the blame from upon the blind person with regard to duties whose performance requires seeing; similarly for the lame, with regard to duties that involve walking, and all activities that cannot be performed with lameness; and for the sick, for whatever influences the sickness, by canceling the activity at that stage and postponing it to another date, or finding an alternative; another option is to waive some of the prerequisites and principles of the worship, as is evident in the prayer of the sick. There is no blame on them in all the acts as long as the impediment so dictates.”<sup>684</sup>

There are texts that rule that [mentally] handicapped persons are saved from the cruelties of war, since their deficiency serves as immunity, regardless of the disabled person’s religious belief.

In the orders of Abu Bakr to his army commanders there is a prohibition against killing the blind, the decrepit, or a dying old man, as well as against the killing of anyone who suffers a paralyzing disease or has another impediment.<sup>685</sup>

### *The Islamic Way of Preventing Handicaps*

First, Islam strives to reduce the cases of disability, and to eliminate the causes of disability as much as possible.

If we survey the causes of disabilities we see that they are mainly three: some are inborn handicaps, some have resulted from contagious or chronic diseases, while most of them are caused by road or other accidents, or by war injuries, as we stated above. With a more accurate classification we can attribute disabilities to genetics, diseases, or criminal behavior.

In the face of all these causes Islam adopts an attitude of prevention and reduction.

As for the first two causes, genetics and health condition, Islam’s approach is to encourage the protection of one’s health and treat it preventively; it encourages seeking cure and avoiding the disease before it happens; moreover, it calls for seeking to marry outsiders [as against blood relatives] so that one’s progeny will not be weak, and to avoid the spread of inborn disabilities which often result from consanguineous marriages. This is best demonstrated by Umar’s saying: “Keep distant in order that you do not become skinny”. This means that, in order not to produce skinny children, who are weak, do not marry close relatives as such marriages produce skinny, weak bodied, and defective children.<sup>686</sup>

Since Islam prohibits the consumption of alcohol and drug addiction, which can cause fetal malformation during pregnancy, this prevents or greatly reduces the rate of inborn disabilities.

As for criminal causes of disability, any intentional criminal act has been handled best by the proactive legislation of the Islamic punitive system: an eye for an eye, and a tooth for a tooth; retaliation for injury is through *qisas*. Allah rightly stated: “And there is life for you in retaliation, O men of understanding, that ye may ward off (evil)”.<sup>687</sup> While in cases where reconciliation or forgiveness of the *qisas* was achieved, the noble Islamic law prescribes the payment of huge sums of money as *diya* [blood money] for the senses [faculties] to be paid by the one who was the cause of the disability.

In contemporary civilizations we witness continual warfare, with human parts shattered and severe disabilities caused by mines laid by combatants. These injuries are inflicted not only upon the warring sides but also on women, children, and disabled persons.

Note too the means of punishment and torture and of breaking bones in the interrogations of POWs.

Islamic law of war does not approve of such methods; it prohibits the abuse and mutilation of [enemy] bodies.

The Shari‘a forbade certain types of torture, which Arabs and other peoples commonly practiced in their pre-civilized periods.

Among the additional causes of disability are road accidents, resulting from disregard and ignorance of many people of traffic signs. How cheap has human life become! How cheap are his or her limbs, as long as the driver has paid his or her car insurance dues! Insurance coverage is mandatory, so afterwards the driver could not care less if he causes an injury, of whatever type.

Islam requires the Muslim to obey traffic rules, not only to respect them, since this protects life and property. The foundation of Islamic law is to preserve good causes and remove bad ones ... [*hifz al-masalih and dar' al-mafasid*].

Religious scholars provide examples of how Islam set severe precautions to reduce the causes of disability in society, among them the following:

The Messenger of Allah prohibited *hadhf*, which is stoning an animal or a human being with small pebbles or the like as a game or in order to hurt.

Likewise, the Messenger of Allah PBUH forbade the brandishing of a weapon in public, for fear that someone might be injured and disabled as a result (“Whosoever points a metal bar at his brother will be cursed by the angels”).<sup>688</sup>

Likewise with regard to carrying weapons such as a sword or its like in crowded places (“If anyone passes through a gathering place or a market with an arrow in his hand, he should hold his hand on its tip”) so that it does not injure anyone.<sup>689</sup>

The Prophet PBUH encouraged removing obstacles from the road and anything which disturbs the passage of people or exposes them to the danger of accidents. He called this “the minimal level of belief”, and said: “Belief includes more than 70 levels, the highest of which is the testimony that there is no God except Allah, and the lowest is the removal of obstacles from the road”.<sup>690</sup>

He issued legislation concerning public hazards and how to reduce or prevent them.

Thus, Islam insisted on removing the causes of disability and blocking the ways that lead to disability, as much as it insisted on seeking cures for disability and on eliminating its causes.

However, if these causes of disability are unavoidable, the impact of disability should be removed by whatever means Allah has provided, whether self-restraint and perseverance, or through communal care with help and encouragement to carry on normal life, in which solidarity prevails, but without charity or harm.<sup>691</sup>

#### *Moral Care of People with Disabilities*

We have already mentioned that Islam follows general principles that guide it in its unique and positive attitude to people with handicaps and disabilities; some of these principles address explicitly people with disabilities.

Let us ponder Allah's saying, "Lo! The noblest of you, in the sight of Allah, is the best in conduct".<sup>692</sup> The verse implies that the "noble" one is not only the healthy and perfect in body. The noble person may be a blind, deaf, lame, or paralyzed. This is an important message in the esteem and respect for man; none of the philosophies on which modern civilizations are based rises to Islam's level of respect for man. This is similar to the messenger of Allah's (PBUH) saying: "Allah does not examine your images and bodies, but He examines your hearts and deeds".<sup>693</sup>

In its laws and customs Islam prohibited anything that violates the dignity of man, who is dignified by being human. It also prohibited mockery, contempt, and calling people names. All these are considered by Islam grave crimes; they are forbidden, and Islam warns against them. Allah, may He be exalted, says: <sup>694</sup> "... Let not a folk deride a folk who may be better than they (are), nor let women (deride) women who may be better than they are; neither defame one another, nor insult one another by nicknames".

Islam prohibits the violation of the dignity of the disabled person or the handicapped by mockery or by attributing degrading nicknames.

Islamic society views people with disabilities with honor and appreciation, not as imperfect or despicable. Abu Hurayra related a hadith on the authority of the Messenger of Allah (PBUH): "Do not envy one another ... until he [the Prophet] said about the relationship of one Muslim with another: he must not violate his rights, and he must not desert him or despise his family origins. It is bad manners to despise one's brother". The meaning is that he must not belittle him or degrade him.<sup>695</sup>

It is sufficient to follow the divine instructions to the Prophet (PBUH), when Allah admonished him on the matter of the "blind". Allah said: "he frowned and turned away because the blind man came unto him. What could inform thee but that he might grow (in grace). Or take heed and so the reminder might avail him?"<sup>696</sup>

The verse was revealed with regard to a blind man, Ibn Umm Maktum, who came to the messenger of Allah (PBUH) and asked him to teach him from what Allah taught the messenger, but the messenger of Allah (PBUH) was preoccupied with something concerning the leaders of Quraysh, persuading them to join Islam. He disliked the request of Ibn Umm Maktum, and turned away his face, and turned his back on him. The chapter of the Qur'an was then revealed, opening with fierce reproof of the messenger thereby to teach the necessity to follow the divine lessons of how to treat the disabled person. See how the Qur'an dedicates great importance to the care of the disabled, the preservation of their rights, humanity, and dignity.

Islamic belief and ethics, on which a Muslim is raised, teach never denouncing or being denounced for something beyond one's control, such as extreme shortness, deformity, etc.

There was a man who pointed a finger at al-Ahnaf b. Qays, who was known for his perseverance and patience, with which Allah blessed him, but who had several handicaps. Al-Ahnaf reached a high status in his tribe; the person pointing at him said: "It is better for you to hear al-Mu'idi than to see him". Al-Ahnaf said: "What are you denouncing me for, my nephew?" He replied: "Ugliness and shortness". Al-Ahnaf said: "You condemn me for what is beyond my control or for something on which my opinion was not requested". Islam instructs people in a different conduct with Allah, may He be exalted; this is that when a person sees another person with a disability, he should recall the grace of Allah, may He be exalted, and consequently thank Him for the blessing of good health and say: "Praise be to Allah who kept me

healthy against all testing times, and preferred me – that is, preferred man in general, over many that He created”. Man is aware of the types of pleasure he has enjoyed only when he loses these pleasures, or some of them.

*The Spiritual and Psychological Care of People with Disabilities*

The best cure that Islam can offer for disabilities is mental treatment as inspired by the Islamic belief; it is belief in Allah and the Last Day, and belief in fate. This belief is absorbed by the heart of the believer. First, the person with a disability or a handicap believes that whatever has befallen him does not render him a sinner.

A person’s mistakes are not what made him handicapped; he is not angry, nor does he lose hope and interest in life. Rather, he believes based on the guidance of the Islamic Shari‘a – that all is for the better, and it is up to him, that if he enjoys good fortune he should thank [Allah] and this is in his favor. If he endures hardship he should persevere, and this is in his favor too.

Without doubt, disability is a misfortune, but the disabled should view it as encompassing good [as well], based on Allah’s saying: “Who say when misfortune striketh them: Lo! We are Allah’s and lo! Unto him we are returning. Such are they on who are blessings from their Lord, and mercy. Such are the rightly guided”.<sup>697</sup>

The Prophet PBUH said: “If a Muslim is afflicted with a disease or another harm, Allah will drop his bad deeds because of that, as a tree drops its leaves”.<sup>698</sup>

Do you wonder about the status of the person suffering from a handicap? The only cure available for the disabled is perseverance and carrying on his or her life. He or she will have abundant reward on the Day of Resurrection. The handicapped feels that whatever has befallen him or her is Allah’s testing to His servant’s belief.

“Allah never tests a servant unless this misfortune becomes a purifying expiation, as long as the misfortune was indeed caused by Allah, and as long as the afflicted person prays to Allah alone to remove the misfortune”.<sup>699</sup>

And remember the *hadith qudsi*: “If I test my servant via his two beloved ones, i.e., his eyes, I will compensate him for both with paradise”.<sup>700</sup>

Moreover, sometimes the handicapped or the one who lost one of his or her limbs may believe that that limb has already reached paradise, and this helps him persevere, and he finds consolation in his belief and in Allah’s reward to him.

Let us review together this story in the biography of the noble *tabi‘i* ‘Urwa b. al-Zubayr, as related by his son Hisham: “My brother Muhammad fell off the roof in the stable of al-Walid. The beasts kicked him and killed him. A man came to ‘Urwa to offer condolences, after ‘Urwa himself had had his leg amputated, and he said: ‘If you [wish to] comfort me for my leg, I have already been rewarded for it’. He said: ‘No, I come to comfort you for your son Muhammad’. ‘What has happened to him?’ The man told him. Then said ‘Urwa: ‘O Lord, you have taken a limb, and you have left limbs. You took a son but you left sons’.

Despite the disability that befell ‘Urwa, we see that people appreciated ‘Urwa. When the disability struck him, Ibrahim b. Muhammad b. Talha comforted him with the following: “I swear to Allah that you have no need of walking and no desire of running; one of your organs and one of your sons have already reached paradise, and the whole is following the part, if Allah so desires. Allah has already left of you to us

what we are in need of, which is your knowledge and your opinion, and Allah will reward you, as you deserve”.<sup>701</sup>

Admirable is the consolation through belief and imagination that Islam offers to the person with disability; it is as if Islam lets him or her drink comfort by which he or she recovers. It helps him endure the trouble, and it elevates perseverance to be of the qualities of the prophets, of the characteristics of noble men, and of the ethics of the purified. Allah selects from among His creation groups of people whom He adorns with this decoration.

Perseverance can be against harm, sorrow, disaster, or suffering from disability. The disaster might be a trial from Allah the Mighty, the Victorious, to test the true belief of His servant. It might also be a hastened punishment to someone who deserves it in this world, by which Allah will receive atonement for a crime he has performed, since there is no punishment without crime, and Allah is distant from injustice.

As much as suffering might be harsh, some people consider it a great benevolence and rejoice over it and enjoy its hardship, because they know that Allah is watching them, loves them, and therefore He is testing them, in order to hear their prayer and supplication. “And verily We shall try you till We know those of you who strive hard (for the cause of Allah) and the steadfast”<sup>702</sup>

The disabled person who perseveres becomes a perfect example that will be added to the pure and shining examples, which become patience, satisfaction, acceptance, and joy over the gifts of the lover to his beloved. Whoever is satisfied receives satisfaction; and whoever is angry receives anger.

This way of thinking influenced the edification of the following examples, until they became high peaks and outstanding monuments in Islamic history.

#### *Leading and Outstanding Persons with Disabilities*

Disability has never been an obstacle to achieving desired goals. This is so even though Islam reduces for the disabled the duties incumbent on the healthy due to the former's condition. Accordingly the disabled person is exempt from jihad, for example, based on Allah's verse: “There is no blame for the blind, nor is there blame for the lame, nor is there blame for the sick (that they go not forth to war) ... ”<sup>703</sup>

But history stresses the amazing heroism of a companion of the prophet, named ‘Amru b. al-Jumuh, who was lame, when he said to the messenger of Allah (PBUH): “O Messenger of Allah! What do you think – if I fight until I am killed for the sake of Allah, will you see me in paradise walking on my lame leg as if it is healthy?” The Prophet said yes. The companion was indeed killed in the battle of Uhud [625 CE]. The prophet PBUH walked by him and said: “I can see you walking on this leg in paradise, and it is healthy”.<sup>704</sup>

The legend of this companion, described as lame, has remained recorded in history to light the way for the disabled and the healthy alike, and to prove that disability does not stop the wheel of history. It does not end [the act of] giving, and exalted virtues can be reached by desires and wishes, which are not harmed by disability.

*Disabled Persons in High Positions*

It is not trivial that we witness in Islamic history examples supported by the Islamic environment. It reached the utmost in good treatment and care, and in the provision of the rights of people with disabilities. These examples have no equal in human history, and I do not exaggerate when I say so.

Whenever the Messenger of Allah (PBUH) saw this blind man, ‘Abd Allah b. Umm Maktum, he said: “Greetings to the one because of whom I was reproached by my Lord”. The Prophet appointed him governor of Medina throughout all his military expeditions, to be the obeyed commander, and to lead the public in prayer. He indeed appointed Ibn Umm Maktum 13 times: in al-Abwa’, Buwat, Dhi al-‘Ushayra ... and for military expeditions and other travels such as the expeditions of Uhud, Hamra’ al-Asad, Najran, Dhat al-Ruqa’<sup>705</sup>. Likewise he appointed him to lead his PBUH campaigns to the Farewell Pilgrimage and to Badr.

Al-Zubayr b. Bikar reported that Ibn Umm Maktum led the campaign of Qadisiyya,<sup>706</sup> participated on the battlefield and fell in battle while holding the flag.

May Allah bless Ibn Umm Maktum, the disabled commander, the appointed, and the fighter, who performed the role which healthy people were unable to perform.<sup>707</sup>

*Material Care of People with Disabilities*

We have already spoken of the duty of the Islamic *umma* (nation, collective), represented by the state, to provide a minimal level of sustenance for its subjects. We mentioned in general terms the guidelines that Islam has laid down for the various systems of social solidarity, which are related to worship and belief.

As for the disabled, Islam imposes the duty to assist people with disabilities and handicaps, and defines this as *fard kifaya*, namely a collective duty performed by those who have ability who hence release from responsibility the majority of the members of the community. It is therefore a mandatory duty upon the whole *umma*.

We have already mentioned the Islamic principles and texts that through Qur’anic verses and prophetic sayings urge protection and care for the disabled.

We wish to add here the Prophet’s PBUH saying: “Allah assists a servant [of God] as long as the servant assists his brother”.<sup>708</sup> Another of his sayings is: “Your smiling toward your brother is charity (*sadaqa*); your commanding good and forbidding evil is charity; guiding a man in the land of straying is charity; your sight on behalf of a person with vision impairment is charity, and removal of thorns and bones from the road is counted for you as charity”.<sup>709</sup>

Thus, Islam views services rendered to the disabled and assisting them as good deeds, which help one to get closer to the Exalted, the Almighty, and as charity, which deserves a reward.

The Prophet PBUH also said: “Those who are merciful, Allah will have mercy upon them; have compassion to those on earth and the One in heaven will be compassionate with you”.<sup>710</sup> He also said: “One is not considered a believer until one desires for one’s brother what one desires for oneself”.<sup>711</sup>

Islam prohibited torture, whether it inflicted a disability or not. The prophet PBUH said: “Allah will torture those who torture on earth”.<sup>712</sup>

Among the jurists we find those who claim that whoever sees a person on the verge of danger and does not rescue him even though he can do so, is liable for the losses and damages caused, because his passive approach and letting the damage occur render him a criminal.<sup>713</sup>

*The Cultural Aspect of Material Care of the Disabled*

Islamic societies invested special care for the disabled in houses called *al-bimaristan* (hospital) which provided shelter for the disabled and catered to their needs. These “hospitals” were scattered in all the cities of the Islamic empire, and relied on the institution of *waqf khayri* (charitable endowment) which made use of charity endowed to public causes.

[The historians] al-Maqrizi [d.1441] and Ibn al-Athir [d.1234] reported regarding these “hospitals” that were inhabited by those disabled, that they were places for treatment and living at the same time, and this was the case since they were first established by the caliph al-Walid b. ‘Abd al-Malik [705–715]. He hired physicians for the hospitals and paid their salaries, and he allotted financial aid to those sick with elephantiasis and the blind.<sup>714</sup> Al-Tabari [d.923] mentioned that al-Walid thus ensured enough sustenance for the disabled, and have forbidden them to beg. He also provided every handicapped person with an aide, and every blind person with a guide.<sup>715</sup>

Through its various fiscal apparatuses Islam strives to provide sufficient sustenance for the disabled; this has been applied all along Islamic history. The most prominent of its fiscal institutions, and which achieve this goal without begging, are the apparatuses of *zakat* and the one fifth of the spoils of war (*khums al-ghana'im*).

The jurists of Islam envision that the disabled should always have enough for living, and that he or she never falls as a burden on society. If the disabled person has a profession, which is possible today with the spread of programs to train the handicapped, as well as the progress of advanced professions which do not require physical effort, it is possible with *zakat* funding to purchase equipment for that profession, regardless of the cost; moreover, it is possible to buy property for the disabled so that they can lease them and live decently on the rental. Islam, with its noble principles, recognizes that the disabled have full spiritual and material rights. It urges training the disabled for a profession and creating opportunities for their employment so that they are guaranteed a dignified life and do not need to beg.

Islam takes care of those who are totally unable to work through the establishment of centers and associations for social, medical, and psychological care, in which all services are provided with the aim of guaranteeing a dignified tranquil life.<sup>716</sup>

Eternal Islam, which is the source of human rights, preserves human dignity, and gives humans more than they hoped for or expected. It cares first and foremost for the weak and needy, the handicapped and the disabled.<sup>717</sup>

Surveying the history of Islamic civilization, we find many outstanding and famous figures who reached high positions in Islamic societies even though they suffered from a variety of chronic disabilities and handicaps.

Their physical condition did not prevent them from becoming leaders and heads of states, scholars, and judges; if all this proves anything, it is that Islam and Islamic society cared for them until they attained their high status.

Let us read together al-Jahiz's [d.868] statement about distinguished people with disabilities who attained respectable positions in Islamic societies: "There are many lame among the notables, may Allah grant you longevity, and there are many blind among the notables". Then he said: "A few of them achieved, with the disability, what all the healthy people could not achieve. And with blindness they achieved what most of those with good sight did not achieve".<sup>718</sup> Several authors have focused on outstanding people with disabilities, have written about them, their biographies, their lives, and their innovations. Among these is al-Jahiz in his great book that he titled *The lepers, the lame, and the blind, and the cross-eyed*.

Another author is Salah al-Din al-Safadi [d.1362] in his book *Nakt al-Himyan fi Nukat al-'Umyan* (emptying the pockets for anecdotes about blind people).

About al-Safadi's book, al-Samira'i reports the story of one successful blind man, Zayn al-Din 'Ali b. Ahmad al-Amidi (d.712 H), who invented a method by which fruit stones are made into reading means for the blind, as reported by Dr. 'Abd al-Sattar Abu Ghuda.<sup>719</sup>

Al-Safadi says, in respect to the originality of al-Amidi: "In addition to his knowledge, he used to trade in books. He could pick out the desired volume, touch the book and determine the number of its pages; he would touch the page and determine how many lines it had, the type of script and its color, and he knew the prices of the books".

## NOTES

- <sup>1</sup> Leiden: E.J. Brill 1993.
- <sup>2</sup> Abou El Fadl 2001–2, 96.
- <sup>3</sup> Lagerwall et al. 1991, 217.
- <sup>4</sup> Gaff 1994, 6.
- <sup>5</sup> *Ibid.*, 67, 75.
- <sup>6</sup> Hardman 2002, 12–13.
- <sup>7</sup> Liachowitz 1988, 3; 12.
- <sup>8</sup> Brattgard 1974, 7–9.
- <sup>9</sup> Diesfeld 2001.
- <sup>10</sup> Jones 2001.
- <sup>11</sup> Wendell 1996, 11–12.
- <sup>12</sup> *Ibid.*, 14.
- <sup>13</sup> *Ibid.*, 15.
- <sup>14</sup> Barnes 1996, 43–60. Hardman (2002, 9) also noted a “humanitarian reform” in the attitude to people with disabilities, beginning with the second half of the 18th century, but that reform did not stop others from discriminating against them well into the 19th century, and beyond.
- <sup>15</sup> Butler and Parr 1999, 3.
- <sup>16</sup> *Ibid.*, 1999, 9.
- <sup>17</sup> *Ibid.*, 1999, 14.
- <sup>18</sup> *Ibid.*, 15.
- <sup>19</sup> Lane 5, 2198–200.
- <sup>20</sup> *Ibid.*, 1959–62.
- <sup>21</sup> Al-Zabidi 4, 48–53.
- <sup>22</sup> Ibn Manzur 7, 236–40.
- <sup>23</sup> Munjid 2002, 122–4; 315–24.
- <sup>24</sup> According to M. Dols 1992.
- <sup>25</sup> Garland 1995, 13–15.
- <sup>26</sup> *Ibid.*, 72.
- <sup>27</sup> Abrams 1998, 87.
- <sup>28</sup> *Ibid.*, 111.
- <sup>29</sup> Covey 1998, 31.
- <sup>30</sup> Abrams 119.
- <sup>31</sup> Covey 27.
- <sup>32</sup> A’zami 1989, 7.
- <sup>33</sup> Covey 30.
- <sup>34</sup> *Ibid.*, 31.
- <sup>35</sup> *Ibid.*, 32.
- <sup>36</sup> *Ibid.*, 33–4.
- <sup>37</sup> *Ibid.*, 34.
- <sup>38</sup> Al-Khatib et al., 1989, 35.

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- <sup>39</sup> Ibid., 36.
- <sup>40</sup> Dols 1983, 913 observed with regard to leprosy in medieval Islam that it was not perceived as a divine punishment, and therefore lepers were isolated in their special quarters to prevent the spread of the disease, but not as social outcasts or scapegoats (“separated but not stigmatized”, p. 914).
- <sup>41</sup> Rasool 2000, 8.
- <sup>42</sup> Rahman 1987, 46.
- <sup>43</sup> Rahman 20.
- <sup>44</sup> Ibid., 23.
- <sup>45</sup> Ibid., 25.
- <sup>46</sup> Marshall 1999, 82, citing Rahbar 1960, 158–9.
- <sup>47</sup> Rahbar 1960, 164–6.
- <sup>48</sup> Translation of Yusuf Ali 1946.
- <sup>49</sup> Ibn Kathir n.d., v. 1, p. 48.
- <sup>50</sup> Al-Zamakhshari 1995, v. 1, 67.
- <sup>51</sup> Ibn Kathir n.d., v. 4, 179, who in the 14th century quotes several earlier Sunni commentators, explains that man is responsible for the outcome of his conduct, and only after the bad conduct does the curse come in the form of Allah’s blinding and deafening the sinner. Causality between the resulting handicap and God’s actions is nevertheless established. The handicap may be real or metaphorical.
- <sup>52</sup> Al-Zamakhshari 1995, v. 2, 20–21.
- <sup>53</sup> Ibn Kathir n.d., v. 2, 131–2.
- <sup>54</sup> Shaltut 1960, v. 1, 396–7.
- <sup>55</sup> Al-‘Isawi 1988, 10.
- <sup>56</sup> Al-Khatib 1989, 44.
- <sup>57</sup> Ullman 1978.
- <sup>58</sup> Oyebola 1997, 12–13,16.
- <sup>59</sup> Al-Khatib 1989, 42.
- <sup>60</sup> Al-Taqwim al-Mihni 1996, 20–5.
- <sup>61</sup> Munjid 2002, 316–19.
- <sup>62</sup> In a fatwa issued by Majma‘ al-Fiqh al-Islami (no date is mentioned), but quoted in *Fatawa al-Tibb wal-Tadawi* 2004, 161–2, under the title “the law concerning those inflicted with AIDS and those who on purpose aim to transmit it”, the means to transmit the AIDS disease are listed as: any form of sexual contact, transfer of contaminated blood or blood derivatives, the use of contaminated needles, especially among drug edicts, contaminated barbers’ razors, and the transfer of the disease from mother to child during pregnancy and birth. The intended transfer of the disease in order to bring the illness upon one individual or a whole society is mentioned as an option as well.
- <sup>63</sup> Idris 1993, 84–156.
- <sup>64</sup> Rispler-Chaim 1993, 100–2; Francesca 2002.
- <sup>65</sup> In IslamOnline.net of July 11, 2004, people are encouraged not to isolate those infected with AIDS, and not to fear normal day-to-day conduct with them, such as handshake, breathing near them or eating of their foods. In another fatwa on the same site, dated November 25, 2004, it is asserted that stigmatizing AIDS patients is not an Islamic trait. Instead of blaming them for something they may not be responsible for, Muslims are urged to pray for their recovery and ask that Allah’s mercy be shed upon them.
- <sup>66</sup> Hijazi 1982.
- <sup>67</sup> Ibid., 398.
- <sup>68</sup> Ibid., 403.
- <sup>69</sup> Ibid., 422.
- <sup>70</sup> *Rukhsa* is defined as “a release after prohibition (*‘itlaq ba‘da hazr*), because of a good reason to make [life] easier (*li‘udhr taysiran*)”; or changing an order from hardship to ease due to a good reason”; or “despite the fact that the prohibited remains prohibited, the responsible person receives more choices in performing the order because of a justified reason”. *Rukhsa* is often classified into two main groups: *rukhsat tarfih* (license that creates ease or luxury) which aims to make life easier, such as breaking the fast when traveling; and *rukhsat ‘isqat* (license to drop parts of the commandment) such as the permission to cut the prayer shorter when traveling (Al-Tahanawi 1998, v. 2, 221–5). Al-‘Ajam 1998

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explains *rukhsa* as doing an action despite the fact that it is known to all that the Shari'a is against it (*ma'a ishtihar al-mani' minhu shar'an*) because it removes hardship [from the believer].

- <sup>71</sup> Covey 1998, 3.  
<sup>72</sup> Townsend 1974.  
<sup>73</sup> Stiker 1999, 10.  
<sup>74</sup> *Ibid.*, 137.  
<sup>75</sup> *Ibid.*, 46.  
<sup>76</sup> Abrams 1998, 73.  
<sup>77</sup> *Ibid.*, 105.  
<sup>78</sup> *Ibid.*, 204.  
<sup>79</sup> Garland 1995, x.  
<sup>80</sup> *Ibid.*, 2.  
<sup>81</sup> *Ibid.*, 159.  
<sup>82</sup> Goffman 1974.  
<sup>83</sup> Covey 1998, 6–8.  
<sup>84</sup> *Ibid.*, 9.  
<sup>85</sup> Fawzi 1994, 59–65.  
<sup>86</sup> Covey 1998, 10.  
<sup>87</sup> *Ibid.*, 12.  
<sup>88</sup> *Ibid.*, 14–15.  
<sup>89</sup> *Ibid.*, 15.  
<sup>90</sup> *Ibid.*, 23.  
<sup>91</sup> *Ibid.*, 24.  
<sup>92</sup> *Ibid.*, 25.  
<sup>93</sup> Marks 1999, 89–93.  
<sup>94</sup> Calderbank 2000.  
<sup>95</sup> Gaff 1994, 15.  
<sup>96</sup> Gaff 1994.  
<sup>97</sup> Moosa 2000–2001, 190.  
<sup>98</sup> Diesfeld 2001, 388.  
<sup>99</sup> The content of the UIDHR can be found, for example, in Etienne 1987, 353–62.  
<sup>100</sup> Moosa 2000–2001, 196–7.  
<sup>101</sup> *Ibid.*, 200.  
<sup>102</sup> Uthman 1982, 14; Tabaliyya 1984, 605–11.  
<sup>103</sup> Mayer 1991, xvii.  
<sup>104</sup> Tokhais 1982, 236.  
<sup>105</sup> Kahn 1999, 6.  
<sup>106</sup> *Ibid.*, 37.  
<sup>107</sup> *Ibid.*, 47.  
<sup>108</sup> Abou El Fadl 2001–2, 72.  
<sup>109</sup> Moosa 2001–2, 44.  
<sup>110</sup> *Ibid.*, 8.  
<sup>111</sup> Al-Azmeh 1988, 251.  
<sup>112</sup> Liachowitz 1988, Preface.  
<sup>113</sup> *Ibid.*, 5.  
<sup>114</sup> *Ibid.*, 2; 11.  
<sup>115</sup> *Ibid.*, 107.  
<sup>116</sup> Lagerwall et al. 1991, 1.  
<sup>117</sup> *Ibid.*, 3.  
<sup>118</sup> Oyebola 1997.  
<sup>119</sup> A'zami 1989, 241.  
<sup>120</sup> Garland 1995, 144.

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- <sup>121</sup> Marx 2002, 96.
- <sup>122</sup> Al-Ghazali 1967, 1, 170.
- <sup>123</sup> Al-Jaziri 1998, v. 1, 119.
- <sup>124</sup> *Ibid.*, 156–7.
- <sup>125</sup> *Ibid.*, 164.
- <sup>126</sup> Al-Marghinani 1997, v. 1–2, 17–18.
- <sup>127</sup> Al-Shirazi 1992, v. 1, 95.
- <sup>128</sup> *Ibid.*, 97.
- <sup>129</sup> Al-Hilli 1983, v. 1, 87.
- <sup>130</sup> Al-Ha'iri 1972, v. 1–3, 83.
- <sup>131</sup> Al-Juwayni 1994, 39.
- <sup>132</sup> Al-Ha'iri 1972, v. 1–3, 82–83.
- <sup>133</sup> Saqr in *Minbar al-Islam* April 1995, 122
- <sup>134</sup> *Ibid.*, 93
- <sup>135</sup> Al-Jaziri 1998, v. 1, 179–82.
- <sup>136</sup> Al-Ghazali 1967, v. 1, 184; 'Abd al-Rahman in *al-Nur* April 14, 1993, 9.
- <sup>137</sup> Al-Talili 1987, v. 2, 1065–68.
- <sup>138</sup> Al-Shirazi 1992 v. 1, 135.
- <sup>139</sup> Al-Juwayni 1994, 42.
- <sup>140</sup> *Ibid.*, 43.
- <sup>141</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 6, 339.
- <sup>142</sup> Al-Hilli 1983 v. 1, 130–35.
- <sup>143</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 2, 125.
- <sup>144</sup> *Ibid.*, 146.
- <sup>145</sup> *Mustahabb* is also called *mandub*, recommended. It is not mandatory but optional. Sometimes it is also called *mustahsan*, in the sense that it is desirable and considered good. In the Shari'a it refers to acts of the Prophet that he occasionally performed and at other times refrained from doing. Therefore, these acts never became a *sunna mu'akkada* (a reaffirmed mode of behavior). See al-Tahanawi 1963, v. 2, p. 7.
- <sup>146</sup> Al-Shirazi 1992, v. 1, 78.
- <sup>147</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 6, 338–9.
- <sup>148</sup> Al-Jaziri 1998, v. 1, 255.
- <sup>149</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 6, 346–7.
- <sup>150</sup> Al-Jaziri 1998, v. 1, 256.
- <sup>151</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 6, 348–9.
- <sup>152</sup> Al-Rawandi 1976, v. 1, 84.
- <sup>153</sup> *Ibid.*, 123.
- <sup>154</sup> Al-Bahbudi 1987, 48.
- <sup>155</sup> Al-Jaziri 1998, v. 1, 629–30.
- <sup>156</sup> Al-Rawandi 1976, v. 1, 121.
- <sup>157</sup> Al-Marghinani 1997, v. 1–2, 93.
- <sup>158</sup> Al-Tusi 1970, 128–9.
- <sup>159</sup> Al-Rawandi 1976, v. 1, 133.
- <sup>160</sup> Al-Shirazi 1992, v. 1, 311.
- <sup>161</sup> 'Abd al-Hamid, July 14, 2000, 18.
- <sup>162</sup> Al-Jaziri 1998, v. 1, 304.
- <sup>163</sup> Al-Juwayni 1994, 104.
- <sup>164</sup> *Ibid.*, 105.
- <sup>165</sup> Al-Qurtubi (1993, v. 1, 326–9) in his commentary to Qur'an 2,43, and based on several hadiths, asserts that although the individual's prayer in most cases is accepted and permissible (*jazat*), the public prayer is more meritorious (*afdal*).
- <sup>166</sup> Al-Jaziri 1998, v. 1, 524.
- <sup>167</sup> Al-Tusi 1970, 112.

- <sup>168</sup> Al-Marghinani 1997, v. 1–2, 69.
- <sup>169</sup> Al-Nawawi 1996, v. 2, 501.
- <sup>170</sup> Al-Jaziri 1998, v. 1, 567–70.
- <sup>171</sup> *Ibid.*, v. 1, 548.
- <sup>172</sup> *Ibid.*, 548–9.
- <sup>173</sup> *Ibid.*, 550–51.
- <sup>174</sup> Al-Juwayni 1994, 100–1.
- <sup>175</sup> Ibn Baz 1991, 296–97.
- <sup>176</sup> Al-Nawawi 1996, v. 2, 506.
- <sup>177</sup> Makhluḥ 1971, v. 1, 253–55.
- <sup>178</sup> Saqr March-April 1996, 104.
- <sup>179</sup> See for example Al-Tirmidhi 1998, v. 3, 93–4. It is attested there that the tradition is mentioned by many scholars, including Ahmad b. Hanbal, Abu Daʿwud al-Tayalisi, Ibn Majah, al-Nasaʿi, al-Bayhaqi, al-Daruqtani, and more. Multiple recordings usually indicates the soundness of the tradition. As the tradition goes, legal responsibility is waived from the sleeping person until he awakes, the child until he becomes a young man, and the mentally deficient until he becomes sane. Other versions of the same hadith add “from the boy until he is sexually mature (*yahtalim*)”.
- <sup>180</sup> Al-Lajna al-Daʿima 1988/9, v. 26, 128.
- <sup>181</sup> Ibn Baz October 12–18, 1996, 6.
- <sup>182</sup> Saqr November 1994, 119.
- <sup>183</sup> Lane 1956, 5, 2072.
- <sup>184</sup> Reza et al. 2002.
- <sup>185</sup> Lane 1956, 7, 2622.
- <sup>186</sup> Al-Jaziri 1998, v. 1, 705.
- <sup>187</sup> *Ibid.*, 704–6.
- <sup>188</sup> Al-Tahawi 1995, v. 2, 35.
- <sup>189</sup> Lane 1956, v. 7, 2697.
- <sup>190</sup> Al-Hilli 1983, v. 1, 373.
- <sup>191</sup> Ibn Rushd 1999, v. 8, 2762–3.
- <sup>192</sup> Al-Shirazi 1992, v. 2, 586.
- <sup>193</sup> Al-Hilli 1983, v. 1, 370–71.
- <sup>194</sup> Al-Jaziri 1998, v. 1, 706.
- <sup>195</sup> *Ibid.* 707.
- <sup>196</sup> *Ibid.*, 708.
- <sup>197</sup> Al-Shirazi 1992, v. 2, 589.
- <sup>198</sup> Al-Hilli 1983, v. 1, 380–81.
- <sup>199</sup> Al-Jaziri 1998, v. 1, 728–29.
- <sup>200</sup> *Ibid.*, 731.
- <sup>201</sup> *Ibid.*, 731.
- <sup>201</sup> *Ibid.*, 732.
- <sup>203</sup> Al-Tahawi 1995, v. 2, 36.
- <sup>204</sup> Al-Hilli 1983, v. 1, 367.
- <sup>205</sup> Al-Jaziri 1998, v. 1, 732.
- <sup>206</sup> Al-Jaziri, v. 1, 734.
- <sup>207</sup> *Ibid.*, 740–41.
- <sup>208</sup> Al-Bahbudi 1987, 98.
- <sup>209</sup> Al-Jaziri, 1998, v. 1, 746; Al-Bahbudi, 98.
- <sup>210</sup> Al-Rawandi 1976, v. 1, 183–4.
- <sup>211</sup> Al-Jaziri 1998, v. 1, 747.
- <sup>212</sup> Al-Hilli 1983, v. 1, 381.
- <sup>213</sup> *Ibid.*, 382.
- <sup>214</sup> Al-Tahawi 1995, v. 2, 45–47; Al-Shirazi 1992, v. 2, 625.

- <sup>215</sup> This exact wording cannot not be found in the canonical Hadith collections, but a more general phrase does exist, and based on a hadith by ‘AbdAllah b. ‘Umar it maintains that “no one will pray for another person and no one will fast for another person”. See Malik b. Anas 1983, pp. 245–6.
- <sup>216</sup> *Sa’* is a measure for grain which equaled four *mudds* in Medina. The Prophet laid down the measure of *sa’* in the year 2H/623–4 as the amount of *zakat al-fitr* (almsgiving following the fast of Ramadan) owed by each member of the family. There is no precision in this measure, but the *sa’* according to the jurists is equivalent to  $26\frac{2}{3}$  *ritls* or *ratls*. Or it can be measured with the hands held together half open with the palms upwards. (EI)
- <sup>217</sup> Al-Marghinani 1997, v. 1–2, 152–3.
- <sup>218</sup> Al-Tusi 1970, 157.
- <sup>219</sup> Al-Jaziri 1998, v. 1, 754.
- <sup>220</sup> *Ibid.*, 754.
- <sup>221</sup> *Ibid.*, 751–2.
- <sup>222</sup> *Al-Liwa’ al-Islami* January 25, 1996, 7.
- <sup>223</sup> *Al-Ahram* May 8, 1987, 14.
- <sup>224</sup> *Al-Liwa’ al-Islami* May 30 1996, 14.
- <sup>225</sup> *Ibid.*, February 8, 1996, 7.
- <sup>226</sup> *Ibid.*, January 25, 1996, 7.
- <sup>227</sup> Al-Lajna al- Da’ima 1984/5, v. 14, 128.
- <sup>228</sup> Al-Saqa 1993.
- <sup>229</sup> *Al-Ahram*, January 15, 1997, 7.
- <sup>230</sup> *Ibid.*, January 19, 1997, 7.
- <sup>231</sup> *Ibid.*, January 24, 1997, 7.
- <sup>232</sup> *Ibid.*, February 3, 1997, 7
- <sup>233</sup> Rispler-Chaim 1993, 56.
- <sup>234</sup> Makhluḥ 1971, v. 1, 307–10.
- <sup>235</sup> Al-Hilli 1983, v. 1, 413.
- <sup>236</sup> Al-Ghazali 1967, v. 1, 321.
- <sup>237</sup> Al-Jaziri 1998, v. 1, 818.
- <sup>238</sup> *Mu’assasat Da’irat Ma’arif al-Fiqh al-Islami* 1996, v. 2, 248.
- <sup>239</sup> Al-Shirazi 1992, v. 2, 673.
- <sup>240</sup> *Ibid.*, 664.
- <sup>241</sup> Al-Hilli 1983, v. 1, 415–16.
- <sup>242</sup> Al-Shirazi 1992, v. 2, 674.
- <sup>243</sup> *Mu’assasat Da’irat Ma’arif al-Fiqh al-Islami* 1996, v. 2, 260.
- <sup>244</sup> Lane 1956, 2, 554. According to EI “*ihram*” is “an act of declaring (or making) sacred or forbidden”, the opposite of *ihlal*, “an act of declaring permitted”. It became a technical term for the state of temporary consecration of someone who is performing the hajj or ‘*umra*. For the purpose of hajj one may enter the state of *ihram* during the months of Shawwal, Dhu al-Qa’da, and the beginning of Dhu al-Hijja. For the ‘*umra* it may take place at any time of the year, except the middle days of the hajj. *Ihram* is also the name for the special white garment men wear during the hajj. While in a state of *ihram* the pilgrim must refrain from arguments, hunting, sexual intercourse, cutting the hair of the head or the body and the nails. All the prohibitions end with the return to normal life following the act of cutting hair and the resumption of normal clothes.
- <sup>245</sup> Which means that he or she is hindered from completing the duty because of sickness that broke out, or because of an enemy, as the verse continues. Al-Zamakhshari 1972, v. 1, 177.
- <sup>246</sup> Al-Shirazi 1992, v. 2, 818.
- <sup>247</sup> Al-Marghinani 1997, v. 1–2, 213.
- <sup>248</sup> Al-Tusi 1970, 281.
- <sup>249</sup> Al-Zamakhshari 1995, v. 1, 238
- <sup>250</sup> Ibn Kathir n.d., v. 1, 232–3.
- <sup>251</sup> Qutb 1961, v. 1, 116.

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- 252 Al-Mirdawi 1997, v. 4, 12.  
 253 Al-Bahbudi 1987, 149.  
 254 Al-Mirdawi 1997, v. 4, 14.  
 255 Al-Jaziri, 1998, v. 1, 862.  
 256 *Ibid.*, 866.  
 257 *Ibid.*, 867; 875; 876.  
 258 *Ibid.*, 874.  
 259 Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 2, 327; Al-Jaziri 1998, v. 1, 884.  
 260 Al-Bahbudi 1987, 170.  
 261 Saqr May-June, 1994.  
 262 Al-Tayyar 1993, v. 5:2, 65–66.  
 263 Rispler-Chaim 1993, 54.  
 264 Al-Shirazi 1992, v. 1, 459; Ibn Rushd 1999, v. 8, 2787.  
 265 Al-Jaziri 1998, v. 1, 768–9.  
 266 Al-Tusi 1970, 174.  
 267 Al-Hilli 1983, v. 1, 297.  
 268 Al-Shirazi 1992, v. 1, 562. See also al-Tahanawi 1998 v. 2, 421.  
 269 Al-Rawandi 1976, v.1, 226.  
 270 Al-Bukhari, Abu al-Tayyib 1984, v. 2, 474.  
 271 Al-Tahanawi 1998, v. 3, 430.  
 272 Ibn Anas 1994, v. 5, 178–9.  
 273 Al-Bana 1977, 271.  
 274 Mahmud 1983, 21.  
 275 *Ibid.*, 17.  
 276 Al-Zamakhshari 1995, v. 2, 224.  
 277 Al-Baydawi 1996, v. 3, 118.  
 278 Fadl Allah 1998, v. 10, 408–9.  
 279 Al-Zamakhshari 1995, v. 5, 286.  
 280 Pickthall n.d.  
 281 Al-Bana 1977, 80.  
 282 Al-Mirdawi 1997, v. 4, 105.  
 283 Khadduri 1940, 33.  
 284 Al-Qummi 1991, v. 2, 84.  
 285 Al-Tusi 1970, 289.  
 286 Al-Rawandi 1976, v. 1, 235.  
 287 Fadl-Allah 1997, v. 7, 410.  
 288 *Ibid.*, 411–12.  
 289 Al-Rawandi 1976, v. 1, 235.  
 290 Ibn Anas 1994, v. 5, 184–5.  
 291 Al-Jalalayn n.d., 256.  
 292 Lane 1956, v. 3, 1253–54.  
 293 Al-Hilli 1983, v. 1, 568.  
 294 Makki 1997, 271; Haykal 1993, v. 2, 995.  
 295 Makki 1997, 272.  
 296 Lane 1956, v. 2, 646.  
 297 *Ibid.*, v. 4, 1330.  
 298 Makki, 1997, 274.  
 299 *Ibid.*, 275.  
 300 *Ibid.*, 265–6.  
 301 *Ibid.*, 269.  
 302 *Ibid.*, 274–9.  
 303 *Ibid.*, 357–8.

- <sup>304</sup> Ibn Abi 'Asim 1989, v. 2, 593–5.
- <sup>305</sup> Lane 1956, v. 1, 253.
- <sup>306</sup> Al-Hilli 1983, v. 1, 575.
- <sup>307</sup> Al-Mirdawi 1997, v. 4, 209–210.
- <sup>308</sup> Haykal 1993, v. 3, 1465.
- <sup>309</sup> Al-Mawardi 1994, v. 14, 310.
- <sup>310</sup> Abu Yusuf 1962, 122.
- <sup>311</sup> Al-Mirdawi 1997, v. 4, 213.
- <sup>312</sup> Al-Mawardi 1994, v. 14, 308.
- <sup>313</sup> *Ibid.*, 308.
- <sup>314</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 2, 220.
- <sup>315</sup> Lane 1956, v. 7, 2547.
- <sup>316</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 2, 221.
- <sup>317</sup> Al-'Umar 1996, 203–5.
- <sup>318</sup> Al-Zuhayli 1992, 419; al-'Umar 1996, 207.
- <sup>319</sup> Al-Zuhayli 1992, 417, 428.
- <sup>320</sup> *Ibid.*, 429.
- <sup>321</sup> Al-'Umar 1996, 222.
- <sup>322</sup> Al-Ghazali 1967, v. 4, 102.
- <sup>323</sup> Al-Shatibi n.d., v. 3, 396.
- <sup>324</sup> *Ihsan* literally means prevention or avoiding. In marriage *ihsan* means that the person has married and thus has prevented himself or herself from the sin of adultery (*zina*). *Ihsan* is a prerequisite for applying the punishment of stoning (*rajm*) upon adulterers. According to the Hanafis, the pre-existing conditions that establish *ihsan* are sanity (*'aql*), maturity (*bulugh*), freedom (*huriyya*), being a Muslim and a valid marriage. Both husband and wife must fulfill these conditions and their marriage must have been consummated. Abu Yusuf does not stipulate being a Muslim, so a Muslim married to a *kitabiyya* (a Jewish or Christian woman) is *muhsan* (enjoying *ihsan*) as well. The Malikis add to the above conditions that while in *ihsan* intercourse is permitted (but not during the fast or menstruation of the wife) and the wife is physically capable of participating in intercourse even when not mature. The Shafi'is mention four conditions only, *bulugh*, *'aql*, *huriyya*, and *nikah sahih* (a valid marriage). They do not consider being a Muslim a prerequisite to establish *ihsan*, based on the tradition that the Prophet Muhammad stoned to death two Jews who committed adultery (Mawsu'at Jamal 'Abd al-Nasir v. 4, 22–32).
- <sup>325</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 6, 115.
- <sup>326</sup> Bianquis 1966.
- <sup>327</sup> Rispler-Chaim 1992.
- <sup>328</sup> Badran 1970, 162.
- <sup>329</sup> Ibn Qudama 1989, v. 9, 391.
- <sup>330</sup> Al-Sarakhsi 1978, v. 5, 22–30; Al-Marghinani 1997 v. 1–2, 235–6
- <sup>331</sup> Al-Jaziri 1998, v. 4, 87.
- <sup>332</sup> Lane 1956, v. 1, 300.
- <sup>333</sup> Ibn Rushd 1995, v. 3, 961–2.
- <sup>334</sup> Dols (1983) has found that *judham* and *burs* (*baras* according to Dols) may have been different names for one and the same disease. While *judham* means “mutilation”, *baras* means “to be white or shiny”, and was used for leprosy in its early stages. (p.893). Al-Jahiz treated *baras* as an ailment that encompassed a wide variety of nonmalignant skin disorders which often caused “an alteration of the skin and a loss of pigmentation”(p.902). In the 19th century, the German consul in Damascus reported that *baras* and *judham* was the same disease, while *judham* was a term used by the more educated inhabitants. (p. 911).
- <sup>335</sup> Ibn Qudama 1989, v. 9, 395.
- <sup>336</sup> Al-Bahbudi 1987, 270
- <sup>337</sup> Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami 1996, v. 6, 159.

- <sup>338</sup> *EI* “*mahr*” by O. Spies
- <sup>339</sup> Al-Jaziri 1998, v. 4, 192–3.
- <sup>340</sup> Badran 1970, 165.
- <sup>341</sup> Al-Baji 1999, v. 5, 134–6
- <sup>342</sup> Al-Bahbudi 1987, 280.
- <sup>343</sup> *Ibid.*
- <sup>344</sup> Al-Tusi 1970, 485–6.
- <sup>345</sup> Lane 1956, v. 1, 178.
- <sup>346</sup> Al-Rawandi 1976, v. 2, 193–6. Layish (1991, 43) claims that only in the Hanafi sources are *khul'* and *mubara'a* synonymous. Other schools of law distinguish the two and explain that *mubara'a* does not involve compensation.
- <sup>347</sup> 1905–1988. Kahala was born and died in Damascus. He was a member of the Iraqi Scientific Council (Majma' al-'Ilm al-Iraqi) and also of Majma' al-Buhuth al-Islamiyya at Al-Azhar. See: al-'Alawna 1998, 142–3.
- <sup>348</sup> Kahala 1977, 1, 201–3.
- <sup>349</sup> Imam 1996, 79.
- <sup>350</sup> Sirkis 1985, 93.
- <sup>351</sup> *Jad al-Haqq* June 4, 1981.
- <sup>352</sup> *Sha'ban* 1964, 20.
- <sup>353</sup> *Al-Liwa' al-Islami* June 13, 1996, p.17.
- <sup>354</sup> Al-Nawawi 1978, v. 1–2, 233.
- <sup>355</sup> Although it is not mentioned whether the sociologist relied on any scientific survey in either claim, both claims obviously serve her purpose to encourage men to marry women with disabilities.
- <sup>356</sup> Al-Qa'imi 1996, 382–5.
- <sup>357</sup> Lane 1956, v. 1, 2092.
- <sup>358</sup> Al-Jaziri 1998, v. 4, 249.
- <sup>359</sup> Lane 1956, v. 1, 1027.
- <sup>360</sup> This could be a medieval description for what is gynecologically known as VVF (Vesico-Vaginal Fistula), that is a fistulous communication between the bladder and the vagina; this problem may involve a tiny size fistula, or the destruction of the whole base of the bladder. The symptoms are leakage of urine from the vagina, at times a dribble, at other times a constant flow. VVF is also accompanied by ammoniacal odor. It could be caused by a difficult delivery or after an operation. (Jones 1981, 362).
- <sup>361</sup> Lane 1956, v.1, 2414; Al-Jaziri 1998 v.4, 256. This could be the medieval description for what is known today in medicine as RVF (Recto-Vaginal Fistula). RVF is the most typical form of VFF (Vaginal-Fecal Fistula). The symptoms of this medical problem are the escape of gas or fecal matter from the vagina, irritation, and bad odor. RVF often results from irradiation, obstetrical trauma, and surgery. The solution is usually vaginal surgery (Jones 1981, 365).
- <sup>362</sup> On *faskh* in the sense of dissolution by court, and on the legal grounds for this procedure in Maliki law, see Layish 1991, 80.
- <sup>363</sup> Al-Wansharisi 1981 v. 3, 141–59.
- <sup>364</sup> *Ibid.*, 139.
- <sup>365</sup> Ibn Qudama 1972, v. 8, 23.
- <sup>366</sup> Al-Jaziri, 1998 v. 4, 244.
- <sup>367</sup> The Malikis maintain that whenever it is not certain that the marriage is *fasid* (invalid) or not, *talaq* (repudiation) may take place. When it is certain (*mujma'an 'alayhi*) that the marriage is invalid (*fasid*), it should be dissolved (*yufsakh*) without *talaq*. According to the Hanbalis only a qadi may exercise *faskh (wala yafsakh illa hakim)* (Al-Jaziri 1990, v. 4, 381–3).
- <sup>368</sup> Al-Jaziri, 1998 v. 4, 242.
- <sup>369</sup> *Ibid.*, 245
- <sup>370</sup> *Ibid.*, 248.
- <sup>371</sup> *Khalwa sahiha* (true seclusion) is achieved when a man and a woman meet in a place where no impediment to intercourse exists. This means that no one can watch them without their permission, and the

place has locked doors and windows. A road that is not traveled during certain hours can provide a *khalwa sahiha* as well (Al-Jaziri 1990, v. 4, 17–18).

<sup>372</sup> Al-Halabi 1989, v. 1, 288.

<sup>373</sup> Al-Jaziri, 1998 v. 4, 256; Al-Halabi 1989 v. 1, 290.

<sup>374</sup> Isma'il 1990, v. 8, 157.

<sup>375</sup> Al-Sa'adi 1995.

<sup>376</sup> Al-Mirdawi 1986, V. 8, 204.

<sup>377</sup> Al-Wansharisi 1981 v. 3, 177–8.

<sup>378</sup> Al-Jaziri, 1998 v. 4, 261.

<sup>379</sup> Al-Kasani 1960, v. 5, 2205.

<sup>380</sup> Lane 1956, v. 1, 370.

<sup>381</sup> Al-Jaziri 1998, v. 4, 249.

<sup>382</sup> Lane 1956, v. 1, 2166.

<sup>383</sup> *Ibid.*, 752.

<sup>384</sup> In a fatwa by Dr. 'Abd al-Fattah 'Abd al-Karim, a professor of philosophy and theology at Al-Azhar University (in: *al-Liwa' al-Islami* September 12, 2002, 16), he advises a woman who complains that she has remained virgin after five years of marriage due to a sexual disorder in her husband, to appeal to the court to obtain dissolution of their marriage, because obviously her husband is disabled, and she could have done it already after a year of marriage with the same situation. The wife in the fatwa expressed her reluctance to disclose “bedroom secrets” in her claim, but apparently she could tolerate the situation no longer.

<sup>385</sup> Isma'il 1990, v. 8, 156–9.

<sup>386</sup> Al-Jaziri 1998, v. 4, 241.

<sup>387</sup> Al-Jaziri 1998, v. 4, 241; Al-Marghinani 1975, v. 2, 26. Layish (1991, 23) relates that in the Kabyle Mountains of Libya the father of the bride used to compel the impotent husband to divorce his wife and thus avoid the shame of bringing the case to court and making the disability public.

<sup>388</sup> *Fatawa al-Tibb wal-Tadawi* 2004, 34–35.

<sup>389</sup> Al-Jaziri 1998 v. 4, 243–4.

<sup>390</sup> *Ibid.*, 242.

<sup>391</sup> Lane 1956, v. 1, 398.

Al-Tahanawi (1998, v. 1, 347) explains that the disease is caused by the spread of black bile (*murra sawda'*) in the body. It destroys the equilibrium of the organs, sometimes ending in their falling apart. It takes various forms, typically blisters of the skin.

<sup>392</sup> Al-Jaziri 1998, v. 4, 243.

<sup>393</sup> *Ibid.*, 245.

<sup>394</sup> *Ibid.*, 259.

<sup>395</sup> Al-Marghinani 1975, v. 2, 26

<sup>396</sup> Al-Jaziri 1998, v. 4, 246.

<sup>397</sup> Al-Marghinani 1970, v. 1, 205.

<sup>398</sup> Al-Jaziri 1998, v. 4, 250.

<sup>399</sup> Al-Tusi 1970, 486.

<sup>400</sup> Jacquart and Thomasset (1985) claim that “lepromatose leprosy, the form that we imagine, appeared under the name of elephantiasis in the Graeco-Latin world” (p. 183). They conclude that leprosy and elephantiasis were roughly the same disease in the ancient civilization, and that leprosy did not become a scourge until the fall of the Roman Empire. It emerges though that at the time of the Islamic empires the two diseases were already distinct and separable. Dols (1983, p. 893) explains that *judham* means that the body is mutilated or suffers from disfigurements, as the Arabic root *jadhama* is used for amputees as well – *ajdham*. While *burs* means “to be white or shiny”, and could describe leprosy in its early stages, it may have also referred to other skin disorders.

<sup>401</sup> Dols 1983, 895.

<sup>402</sup> Lane 1956, v. 4, 1591.

<sup>403</sup> Al-Jaziri 1998, v. 4, 249.

- <sup>404</sup> Al-Nawawi 1996, v. 2, 26.
- <sup>405</sup> Al-Jaziri 1998, v. 4, 242.
- <sup>406</sup> Ibid., 242.
- <sup>407</sup> Ibid., 243.
- <sup>408</sup> Lane 1956, v. 1, 203.
- <sup>409</sup> Ibid., v. 8, 2790.
- <sup>410</sup> Spiro 1973.
- <sup>411</sup> Al-Nawawi 1996, v. 2, 27.
- <sup>412</sup> Ibn Shas 1995, v. 2, 75.
- <sup>413</sup> Al-Jaziri 1998, 4, 262.
- <sup>414</sup> Ibn Taymiyah, 1983, 230.
- <sup>415</sup> Lane 1956, v. 4, 1462.
- <sup>416</sup> Al-Jaziri 1998, v. 4, 248; Ibn Shas 1995, v. 2, 71.
- <sup>417</sup> Rispler-Chaim 1999.
- <sup>418</sup> *Al-Liwa' al-Islami* Februariu 26, 2004, Dr. 'Ali Jum'a October 7, 2004
- <sup>419</sup> Dr. Misbah Hamad, a professor of Islamic law and depute chair of the College of Shari'a in *al-Liwa' al-Islami* October 31, 2002, 14.
- <sup>420</sup> Al-Mut'ini, February 19, 2004
- <sup>421</sup> *Fatawa al-Tibb wal-Tadawi* 2004, 208.
- <sup>422</sup> Dr. Nasr Farid Wasil (the previous mufti of Egypt) 2002, 5. The fact that the fetus has heartbeat beginning from the fourth week of pregnancy, does not indicate that the soul has been inspired into it, and therefore it does not yet have the "quality as human being" until the age of 120 days (Krawietz 2003), definitely eases the permission to abort it due to a severe disability or due to another legitimate cause. See also al-Daqr 1997, 167–75, who comes to the linkage between heartbeat and life from discussing the end of life and euthanasia.
- <sup>423</sup> *Fatawa al-Tibb wal-Tadawi* 2004, 107. Dr. 'Ali Jum'a 2003, 7. In another fatwa the abortion was permitted to take place in the sixth month of pregnancy, since the fetus was jeopardizing the mother's health. (al-Tayyib 2003, p.7). In a fatwa by Abu al-Wafa Mahmud, a member of the fatwa committee at al-Azhar, he permitted to abort a fetus of five months, based on the medical report of Muslim physicians who confirmed a severe deformation of the fetus's limbs and dysfunction of its lymphatic glands.
- <sup>424</sup> *Al-Haqiqa*, April 30, 1994, 7.
- <sup>425</sup> Saqr, August 1998, 136; Al-'Askalani, August 1, 1996, 16.
- <sup>426</sup> Rispler-Chaim 1998. Although in a fatwa by Sheikh Salih al-Fawzan he denied the linkage between consanguineous marriages and the birth of handicapped or retarded children. He claimed that scientists attribute congenital disorders to consanguineous marriages, but this is a false claim (*Fatawa al-Tibb wal-Tadawi* 2004, 96–97).
- <sup>427</sup> Dr. al-Hashimi (1995, 113–116) explains that in-vitro fertilization allows the examination of the embryo for genetic disorders while it is only eight cells in size. If it is diagnosed as sick, it will not be transplanted back into the woman's womb. In this way both abortion and the birth of a sick baby are prevented. A permission to test the zygotes and destroy them if they are found sick or "superfluous" as far as their parents' need for them, can be found also in Yasin 2000, 121.
- <sup>428</sup> Chaabouni et al. 2001.
- <sup>429</sup> Al-Tikriti 1981, 284.
- <sup>430</sup> Inhorn 1996, 56–65; Ghanim 2003, 217–19.
- <sup>431</sup> Adoption is prohibited in Islamic law, contrary to the situation in pre-Islamic Arabia. But there are means to circumvent parts of the prohibition by becoming a fostering parent or a guardian. In Egypt today the only children that may be adopted are those who were deserted at a very young age so that they do not know their name (*nasab* – lineage) and those deserted due to unusual birth circumstances, such as *walad zina*. The parents of an "adopted" child are only his or her guardians and need a court certificate to prove this. (Sonbol 1995).
- <sup>432</sup> Al-Sha'rawi n.d., 72.
- <sup>433</sup> Rispler-Chaim 1995.

- <sup>434</sup> Mahmud, April 4, 1996, 7.
- <sup>435</sup> Al-‘Uthaymin 1995, v. 2, 750–1.
- <sup>436</sup> Al-Jibrin 1995, 143.
- <sup>437</sup> Jad al-Haqq 1981.
- <sup>438</sup> ‘Abd al-Hamid 1966, 314–16.
- <sup>439</sup> Al-Tikriti 1981, 369–72.
- <sup>440</sup> There is a whole theoretical discussion in the fiqh concerning *darar*. *Darura* is derived from *darar*. Therefore, *darura* is the fear of physical destruction of bodily organs (*halak*), or the fear of death, whether it is based on knowledge (*‘ilm*) or on speculation (*zann*). No one should stand still and await death. *Darura* is a situation that may involve danger to a person’s life, or a great hardship that might lead to harming one’s life, one’s organs, honor, mental health or property (Al-Zuhayli 1997, 64). Basically, any *darar* should be removed (*al-darar yuzal*). *Darar* is related to the principle “necessities render the prohibited permitted”. Also, *al-darar la yuzal bidarar* (one harm cannot be removed by an equal harm). A personal *darar* should be tolerated for the prevention of a public *darar*, etc. (Al-‘Ajam 1998, v.1, 863–4).
- <sup>441</sup> Hamza 2001, 139–41.
- <sup>442</sup> Saqr, *Minbar al-Islam* November 1999, v. 8, 134.
- <sup>443</sup> Rizq 2001.
- <sup>444</sup> Rispler-Chaim 1993, 19–27.
- <sup>445</sup> Mayer 1980, 287–313.
- <sup>446</sup> Hamza 2001, chap. 4. There is an objection to the donation of a uterus from a living woman to another woman because it is similar to a man’s amputation of his own penis or testicles, which is forbidden. It is permissible to harvest the womb of a woman who died and transplant it in another woman, because bearing children is a natural instinct in mankind (Al-‘Askalani, May 4, 2000, 16).
- <sup>447</sup> Al-Tikriti 1981, 372–3.
- <sup>448</sup> Wasfi 1995, 156–61.
- <sup>449</sup> Dols 1992, 4.
- <sup>450</sup> Translated by Dols 1992, 434. An exception to this rule can be found in the Maliki law on blasphemy, where “madness” could not save one from the death penalty (Dols 1992, 447).
- <sup>451</sup> Dols 1992, 436.
- <sup>452</sup> *Ibid.*, 437.
- <sup>453</sup> *Ibid.*, 439.
- <sup>454</sup> *Ibid.*, 437.
- <sup>455</sup> Shoshan 2003 explains, “in the Renaissance medical discourses were also muted and secondary compared with legal apparatus”. In England, for example, it took until the 19th century for medical doctors to gain “monopolistic power” in diagnosing and treating mentally ill persons (p.333).
- <sup>456</sup> Al-Issa 1999, xv.
- <sup>457</sup> Al-Bahbudi 1987, 296.
- <sup>458</sup> Al-Jaziri 1998, v. 4, 476.
- <sup>459</sup> *Ibid.*, 481.
- <sup>460</sup> *Ibid.*, 481.
- <sup>461</sup> *Al-Mabsut* v. 6, 154, and *al-Mudawwana al-Kubra* v. 2, 391, are quoted in al-Tahawi 1995 v. 2, 432–3.
- <sup>462</sup> Al-Tahawi 1995, v. 2, 432.
- <sup>463</sup> *Ibid.*, 433.
- <sup>464</sup> Al-Jaziri 1998, v. 4, 543.
- <sup>465</sup> Al-Bahbudi, 1987, 304; Al-Jaziri 1998, v. 4, 544.
- <sup>466</sup> Al-Marghinani 1997, v. 1, 291.
- <sup>467</sup> Ibn Rushd 1995, v. 3, 1081–2; al-Tahawi 1995, v. 2, 434.
- <sup>468</sup> Ibn Rushd 1995, v. 3, 1081.
- <sup>469</sup> Al-Jaziri 1998, v. 4, 481.
- <sup>470</sup> *Ibid.*
- <sup>471</sup> Badran 1970, 323–4.
- <sup>472</sup> Al-Tahawi 1995, v. 2, 451.

- 473 Al-Jaziri 1998, v. 4, 252.
- 474 Al-Marghinani 1975, v. 2, 26.
- 475 Al-Tusi 1970, 487.
- 476 Al-Jaziri 1998, v. 4, 262.
- 477 Al-Zabidi 1969, v. 5, 242; Ibn Manzur 1955, v. 2, 145; Lane 1956, v. 2, 815; Sabiq 1972, v. 3, 454.
- 478 Saunders 1991.
- 479 Dreger (1998, 24) mentions that all along the period between 1860–1915 in France and Britain, there have been 300 accounts of human hermaphroditism published in medical and scientific literature, and they pertain to roughly 200 cases of hermaphroditism. Even if we assume that not all cases of hermaphroditism became known to medical personnel and could be reported, the number of hermaphrodites in the large populations of France and Britain was still very small.
- 480 Dreger 1998, 40.
- 481 Giladi 1992.
- 482 Ibn Qudama 1972, v. 7, 115.
- 483 Al-Marghinani 1975, v. 4, 266; Al-Sarakhsi 1978, v. 5, 104; al-Halabi 1989 v. 2, 334–36.
- 484 Ibn Qudama 1972, v. 7, 115.
- 485 Ibn Qudama 1972, v. 7, 115–18.
- 486 Al-Kasani 1960, v.1, 4831; Al-Mirdawi 1986, v. 1, 451.
- 487 Al-Jammas 1993, 109–17
- 488 Ghanim 2003, (469–473), speaks of this possible confusion, but asserts that modern medicine knows for certain the sex of the fetus, at least after four months of pregnancy, but sometimes earlier, if using amniosynthesis.
- 489 Dreger 1998, 37–40.
- 490 Dreger 1998, 37.
- 491 Lane 1956, v. 4, 1702–3.
- 492 Jad al-Haqq, Feb-March 1994.
- 493 Al-Khamina'i 1999, v. 2, 73.
- 494 Dupret (2002) analyzes all the legal stages that the Sayyid/Sally case has gone through, since the operation on January 29, 1988, until Sally established her status as a female in November 1989, and until September 1999, when the court ordered al-Azhar University to admit Sally to the Faculty of Medicine for Women. Even then this was not the end of this legal case, but the rest had to do with Sally's "immoral" conduct as a woman, not with her being originally a *khuntha*.
- 495 *Al-Liwa' al-Islami*, September 12, 2002, 16.
- 496 Translated according to Pickthall.
- 497 Al-Zuhayli 1989, v. 9, 678–9.
- 498 *Ibid.*, 680; Zaydan 1998, 10, mentions the same eight groups, but emphasizes that the Hanafis al-Kasani and Ibn 'Abidin did not count *baghy* among the *hudud*.
- 499 Al-Zuhayli 1989, v. 9, 682–3.
- 500 Zaydan 1998, 15–16.
- 501 Al-Zuhayli 1989, v. 9, 693; Al-'Abudi 1409H, 313.
- 502 Al-Husayni 1991, 93.
- 503 Al-Zuhayli 1989, v. 9, 686.
- 504 *Ibid.*, v. 9, 702
- 505 *Ibid.*, 706.
- 506 Lane 1956, v. 1, p.2747: *tamyiz* "is the age of discrimination, or a faculty in the brain whereby meanings are elicited".
- 507 Al-Zuhayli 1989, v. 9, 718; Zaydan 1998, 40.
- 508 Abu al-Khayr 1994, 39–43.
- 509 Pickthall.
- 510 Pickthall.
- 511 Based on al-Sarakhsi 2001, v. 9 160–1, Hanafis claim that the *nisab* equals 10 dirhams or 1 dinar; al-Shafi'i states a quarter of a dinar; Malik states 3 dirhams; Ibn Abi Layla states 5 dirhams; 'Ikrima states 4 dirhams; Abu Hurayra and Abu Sa'id al-Khidri state 40 dirhams; etc.

- <sup>512</sup> Al-Qaffal 1988, v. 8, 51.
- <sup>513</sup> Ibid., 73.
- <sup>514</sup> Al-Sarakhsi 2001, v. 9, 166–7.
- <sup>515</sup> Ibid., 197.
- <sup>516</sup> Al-Qaffal 1988, v. 8, 74.
- <sup>517</sup> Al-Sarakhsi 2001, v. 9, 208.
- <sup>518</sup> Ibid., 206.
- <sup>519</sup> While theft is an offence mainly against property, and is punishable by amputations of hands and legs, pending on the recurrence of the crime. Robbery (highway robbery, or “fatal theft” or *haraba*) may involve a variety of violent attacks on people: either a threat by weapons (without robbery), or/and a confrontation accompanied by inflicting injuries to the threatened persons, or/and murder of the threatened, or all the above combined; while all these forms of violence aim at the unlawful usurpation of property or money from its rightful owner, property is not always usurped. The punishments for robbery vary according to the severity of the confrontation, as mentioned above, and Qur’an 5, 33 lists among the available punishments the amputation, the crucifixions, exile or execution. Mansour 1982, 195–201.
- <sup>520</sup> Ibid., 233.
- <sup>521</sup> Al-Hanafi 1997, v. 5, 114.
- <sup>522</sup> Al-Qaffal 1988, v. 8, 86.
- <sup>523</sup> Ibn Anas 1994, v. 4, 556.
- <sup>524</sup> Al-Qaffal 1988, v. 8, 88.
- <sup>525</sup> Al-‘Abudi 1409H, 313.
- <sup>526</sup> Ibid., 317. Al-Sayyid Sabiq explains that the hand that committed the crime is considered a sick organ that needs to be cut off in order for the body to recover (ibid., 320).
- <sup>527</sup> *Mafsil* is any place of juncture of two bones of the body and limbs, a joint such as the elbow, the knee, or the knuckle. Lane 1956, v. 6, 2407.
- <sup>528</sup> *Rusgh* is the ankle. See Lane 1956, v. 3, 1080. According to al-Qaffal (1988, v. 8, 74), *rusgh* is the part between the ankle and the foot. Sometimes it is called *misht al-qadam* (metatarsus, metatarsal bones, the slender bones spread upon the foot, exclusively of the toes).
- <sup>529</sup> Al-Qaffal 1988, v. 8, 74.
- <sup>530</sup> Al-Sarakhsi 2001, v. 9, 156.
- <sup>531</sup> Bahnasi 1964, 164–5.
- <sup>532</sup> Ibid., 166–72.
- <sup>533</sup> Al-Hanafi 1997, v. 5, 104–5.
- <sup>534</sup> Al-Qaffal 1988, v. 8, 77.
- <sup>535</sup> Al-Sarakhsi 2001, v. 9, 199.
- <sup>536</sup> Al-Hanafi 1997, v. 5, 103.
- <sup>537</sup> Al-Zuhayli 1989, v. 9, 583–4.
- <sup>538</sup> Pickthall.
- <sup>539</sup> Al-Halabi 1989, v. 2, 282.
- <sup>540</sup> Zaydan 1998, 131–2.
- <sup>541</sup> Ibid., 133.
- <sup>542</sup> Ibid., 135–6.
- <sup>543</sup> Al-Hanafi, 1997, v. 9, 19.
- <sup>544</sup> Ibid., 21.
- <sup>545</sup> Translated by Pickthall.
- <sup>546</sup> Al-Hanafi 1997, v. 9, 44.
- <sup>547</sup> Pickthall.
- <sup>548</sup> Al-Halabi 1989, v. 2, 288.
- <sup>549</sup> Bahnasi 1964, 172–3.
- <sup>550</sup> Zaydan 1998, 144.
- <sup>551</sup> Ibid., 145.

- 552 Ibn Anas 1994, v. 4, 637.
- 553 *Ibid.*, v. 4, 560.
- 554 Al-Hanafi 1997, v. 9, 67.
- 555 Zaydan 1998, 145.
- 556 Al-Hanafi 1997, v. 9, 37.
- 557 *Ibid.*
- 558 Al-Halabi 1989, v. 2, 289; see also Ibn Qudama on the issue in Zaydan 1998, 164.
- 559 Ibn Anas 1994, v. 4, 638–9.
- 560 *Ibid.*, 550.
- 561 Al-Halabi 1989, v. 2, 286.
- 562 Ibn Anas 1994, v. 4, 550.
- 563 *Ibid.*, 630.
- 564 Abu al-Khayr 1994, 82–5.
- 565 The *ta'zir* pl. *ta'azir* are non-fixed punishments. The qadi can choose as *ta'zir* from a wide spectrum of possible punishments according to the case, the subject of his jurisdiction, and depending on the personality of the criminal and the public interest of the time. The qadi may demand the minimal or the maximal punishment, and according to most jurists he even can decide on the death penalty or on mutilations. However, *ta'zir* is believed to be mainly for educating the criminal, and it aims to preserve the latter's life. Al-Husayni 1991, 74; 184.
- 566 Abu al-Khayr 1994, 142–9.
- 567 Kan'an 2000, 468–9.
- 568 EI<sup>2</sup> "Diya".
- 569 *Al-Mawsu'a al-Fiqhiyya*, 1992, pp. 44–95 "Diyat".
- 570 Pickthall.
- 571 *Al-Mawsu'a al-Fiqhiyya*, "diyat", 47.
- 572 Kan'an 2000, 469.
- 573 EI<sup>2</sup> "diya".
- 574 *Hukumat 'adl* is the compensation for the pain suffered by the victim when *qisas* is impossible to enforce. *Hukumat 'adl* differs from *arsh* in that *arsh* is a portion of *diya*, and its amount is known from the legal texts, while *hukumat 'adl* has no fixed value and the qadi is free to rule on it. It does not mean that *hukumat 'adl* may not speak in terms of portions of *diya* (in percentages), but it necessitates that *hukumat 'adl* can never exceed the amount of *diya* assigned by law to any particular organ. Several Hanafis claim that *hukumat 'adl* amounts to the cost of the medical treatment and the medicines purchased by the injured party. See: Bahnasi 1964, 137–8.
- 575 Al-Hanafi 1997, v. 9, 80.
- 576 Linguistic terminology can be found in Baalbaki 1990.
- 577 Al-Hanafi 1997, v. 9, 81.
- 578 Kan'an 2000, 469. According to Ibn Rushd (n.d.) v. 2, 351, this line of reasoning is supported by Abu Hanifa, Malik, al-Shafi'i, and others.
- 579 Ibn Rushd (n.d.) v. 2, 351–2.
- 580 *Ibid.*, 352.
- 581 *Ibid.*, 352.
- 582 Kan'an 2000, 469.
- 583 EI<sup>2</sup> "Diya"; Ibn Rushd (n.d.) v. 2, 349; Al-Shawkani 1357H, v. 7, 57.
- 584 A detailed list of injuries and their respective compensations as portions of the full *diya*, see: al-Jawaziri 1994, 120–40.
- 585 EI<sup>2</sup> "Diya"; *al-Mawsu'a al-Fiqhiyya*, "diyat", 72.
- 586 *Ibid.*, 81, 86.
- 587 *Ibid.*, 88; Al-Shawkani 1357H, v. 7, 623.
- 588 Ja'far 1997, 56–60.
- 589 Ibn Anas 1994, v. 4, 638; *Al-Mawsu'a al-Fiqhiyya*, "diyat", 69.
- 590 Bahnasi 1964, 121; al-Qaffal 1988, v. 7, 558.

- <sup>591</sup> *Al-Mawsu' a al-Fiqhiyya*, “diyat”, 69.
- <sup>592</sup> Ibn Anas 1994, v. 4, 637; Bahnasi 1964, 120–2.
- <sup>593</sup> *Ibid.*, 120.
- <sup>594</sup> Ibn Anas 1994, v. 4, 639.
- <sup>595</sup> *Ibid.*, 572.
- <sup>596</sup> *Ibid.*, 572.
- <sup>597</sup> Al-Halabi 1989, v. 2, 298.
- <sup>598</sup> *Al-Mawsu' a al-Fiqhiyya*, “diyat”, 71.
- <sup>599</sup> *Ibid.*, 74; Ibn Anas 1994, v. 4, 569.
- <sup>600</sup> Al-Hanafī 1997, v. 9, 81.
- <sup>601</sup> Ibn Anas 1994, v. 4, 569.
- <sup>602</sup> Bahnasi 1964, 127.
- <sup>603</sup> *Al-Mawsu' a al-Fiqhiyya*, “diyat”, 66.
- <sup>604</sup> *Ibid.*, 81.
- <sup>605</sup> See Baalbaki 1990 on linguistic terminology.
- <sup>606</sup> *Al-Mawsu' a al-Fiqhiyya*, “diyat”, 80.
- <sup>607</sup> Ibn Anas 1994, v. 4, 638–9; al-Halabi 1989, v.2, 298.
- <sup>608</sup> *Ibid.*, 298.
- <sup>609</sup> Ibn Anas 1994, v. 4, 570; *al-Mawsu' a al-Fiqhiyya*, “diyat”, 78.
- <sup>610</sup> *Ibid.*, 78–9.
- <sup>611</sup> *Ibid.*, 78.
- <sup>612</sup> Ibn Anas 1994, v. 4, 638–9.
- <sup>613</sup> *Ibid.*, 560.
- <sup>614</sup> *Ibid.*, 563.
- <sup>615</sup> Dols (1983) has observed a similar attitude of tolerance with regard to lepers during the Islamic Middle Ages, for example, and especially if compared to the situation in Europe at the same time (p. 915).
- <sup>616</sup> Marx 2002, 244.
- <sup>617</sup> Shoshan 2003.
- <sup>618</sup> Shefer 2000.
- <sup>619</sup> Shoshan 2003.
- <sup>620</sup> Al-Issa 1999, 57.
- <sup>621</sup> Muhammad b. Salih al-Uthaymin, 1926–2001, one of the great muftis of Saudi Arabia, a disciple of Sheikh Ibn Baz. He was the director of the school of Islamic law at the Imam Muhammad b. Saud Islamic University in al-Qasim, Saudi Arabia and served as a member of the Supreme Council of Ulama in Saudi Arabia. He wrote books on Islamic law and theology, and commentaries on the Qur’an.
- <sup>622</sup> Peace be upon Him.
- <sup>623</sup> Allah be satisfied with him/her.
- <sup>624</sup> ‘Abd Allah b. Jibrin (1930–) He was a teacher of Shar‘i studies at the Imam al-Da‘wa Institute in Saudi Arabia, and a professor of theology and contemporary thought at the College of Islamic Law. He joined the Board of Research and Ifta’ in Saudi Arabia in 1986, the same year that he obtained a Ph.D degree. Through his work many fatwas are associated with him.
- <sup>625</sup> Muhammad Khatir Muhammad al-Shaykh was born in 1913 in the province of Diqhaliiyya in Egypt. He graduated from al-Azhar College of Shari’a in 1939, and received the license of a Shar‘i qadi in 1941. He remained a qadi in Cairo from 1946 until he was appointed legal inspector in the Ministry of Justice. Then he combined the religious courts and the civil courts, and he held several positions until he was appointed attorney for the general prosecution. On 31 October 1970 he was appointed Mufti al-Diyar al-Misriyya, and held that position until his retirement. On his retirement he was elected chairman of the Shar‘i Institute of Inspection at the Faysal Islamic Bank and the Islamic Investment Company.
- <sup>626</sup> *Al-Dhakhira*, a fiqh book by Shihab al-Din Ahmad b. Idris al-Qarafi (684/1285).
- <sup>627</sup> Often referring to Abu Hanifa’s two disciples Abu Yusuf and Muhammad al-Shaybani.
- <sup>628</sup> Probably *al-Kifaya fi ‘Ilm al-Riwaya* by al-Khatib al-Baghdadi (d.463).

- <sup>629</sup> A Hanafi compilation also called *al-Fatawa al-'Alamkiriyya*, authored by al-Hammam Mawlana al-Shaykh Nazam.
- <sup>630</sup> 'Imran b. Husayn b. 'Ubayd b. Khalaf, a Companion of the Prophet, who reported from him several hadiths. He and his father converted in 7H. 'Imran fought several battles at the Prophet's side, and he served as a qadi in Basra.
- <sup>631</sup> Jad al-Haqq 'Ali Jad al-Haqq 1917–1997. In 1945 he received a diploma in Shar'i law, and was appointed qadi in 1954. He was appointed *Mufti Al-Diyar Al-Misriyya* (prime mufti of Egypt) in 1978, Minister of Religious Endowments in 1983, and was Sheikh Al-Azhar from 1982 until his death. His fatwas are published in *Al-Fatawa Al-Islamiyya* volumes 8,9,10. There is also a collection of his works, *Buhuth waFatawa Islamiyya fi Qadaya Mu'asira*. 1995. Cairo: Al-Azhar al-Sharif, al-Amana al-'Amma lillajna al-'Ulya lilDa'wa al-Islamiyya.
- <sup>632</sup> A weight equal to four grains or the 24th part of a dinar.
- <sup>633</sup> One of the wives of the Prophet Muhammad, who previously was the widow of Abu Salama, the Prophet's cousin, who fell in battle. She reached the age of 84, and died in 59 H.
- <sup>634</sup> Dr. Ahmad al-Sharabasi is a professor at al-Azhar University.
- <sup>635</sup> A Shafi'i jurist, d. 772/1370.
- <sup>636</sup> A law book by Al-Nawawi.
- <sup>637</sup> A book by Jalal al-Din al-Suyuti.
- <sup>638</sup> A law book by the Hanbali jurist Ibn Qudama (d. 1223).
- <sup>639</sup> A Hanbali jurist (d. 1328).
- <sup>640</sup> Ibn Hazm, 'Ali b. Ahmad, was an Andalusian Zahiri jurist; also a poet, a philosopher, and a historian (994–1064).
- <sup>641</sup> A Yemenite jurist (d.1834). He lived in San'a and served as a qadi there; he is known for his originality.
- <sup>642</sup> *Al-Rawda al-Bahiyya fi Sharh al-Lum'a al-Dimashqiyya*, a book by Zayn al-Din al-Jab'i al-'Amili (911–965H).
- <sup>643</sup> *Al-Mukhtasar al-Nafi' fi Fiqh al-Imamiyya*, a book by the Shi'i jurist al-Muhaqqiq al-Hilli (Abu al-Qasim Najm al-Din) (d.1277/6).
- <sup>644</sup> 'Abd al-Hamid Kishk (1933–1996), born in al-Buhayra province in Egypt, was blind in one eye, and had weak vision in the other; a graduate of Alexandria Institute of Religion, he was a mufti and a teacher at al-Azhar University, wrote many books, and spread his ideas on tape-recordings as well.
- <sup>645</sup> Abu Hurayra, 'Abd al-Rahman al-Azdi, one of the most respected companions of the Prophet Muhammad, died in Medina 59/678.
- <sup>646</sup> A law compilation by the Hanafi jurist al-Kasani (587H/1191).
- <sup>647</sup> Another law book by al-Nawawi.
- <sup>648</sup> *Mawahib al-Jalil liSharh Mukhtasar al-Khalil*, by Abu 'AbdAllah Muhammad b. Muhammad b. 'Abd al-Rahman al-Maghribi, also known as al-Hattab al-Ra'ini (d. 954H).
- <sup>649</sup> A Maliki Andalusian jurist (d. 1198).
- <sup>650</sup> He is the author of the column "Yas'alunaka" (you are asked) in the Palestinian newspaper *al-Quds*, where he answers questions sent by the readers.
- <sup>651</sup> A famous companion of the Prophet, who spent a long time with the Prophet and reported many hadiths from him (d. 652).
- <sup>652</sup> Mahmud Shaltut 1893–1963  
Born to a peasant family in Egypt, he was educated at Al-Azhar. He graduated in 1918. He worked as a lawyer at the Shari'a courts and in journalism, and held several positions at Al-Azhar until he was declared Sheikh Al-Azhar in 1958 at the age of 65. During his rectorship he received visitors from all over the world. He saw importance in independent thought and is considered a reformist among the religious scholars. His Al-Fatawa collection (an edited volume of fatwas published in daily newspapers and over the radio) is widely read and often quoted. Al-Fatawa. 1974. Cairo: Dar al-Shuruq.
- <sup>653</sup> Al-Qaradawi (1926–), a famous and prolific mufti and scholar, who was influenced by the philosophy of the Muslim Brethren, and currently resides in Qatar.

- <sup>654</sup> Dr. Wahba al-Zuhayli (1932–) is a professor of Islamic law in the department of Shari‘a studies at the University of Damascus.
- <sup>655</sup> This disease is also called *al-istisqa’ al-dimaghi*, and it involves an excessive increase in the quantity of fluid in the brain (*al-sai’l al-shawki*- cerebrospinal fluid, according to Hitti 1967) that cannot be absorbed. Sometimes the fluid blocks the brain channels, and results in a large circumference of the head (55–70 cm.). Because of this accumulation of fluid, some of the brain tissues are damaged, and this leads to retardation. Only seldom, and only in mild cases, is medical treatment helpful. See Dr. ‘Abd al-Salam ‘Abd al-Ghaffar and Dr. Yusuf Mahmud al-Shaykh, *Sikulujiyyat al-Tifl Ghayr al-‘Adi wal-Tarbiyya al-Khassa*, Cairo: ‘Ayn Shams University 1966. pp. 62–63.
- <sup>656</sup> The book was published on behalf of the Jordanian Doctors Union, Amman: Dar al-Bashir, 1995.
- <sup>657</sup> ‘Abd al-Razzaq b. Hammam al-Himyari (d.827?) is the author of *al-Musannaf*, a collection of traditions.
- <sup>658</sup> Abd Al-Halim Mahmud 1910–1978. He served as Sheikh Al-Azhar between 1973 and 1978, the successor of Shaltut. He was a sincere Sufi (follower of mystical Islam), an Al-Azhar graduate, and he also gained a PhD degree in France in 1940. He taught Philosophy in the Islamic Religion Department, and also at universities in Tunisia, Libya, Iraq, and Sudan. He believed in the need to apply the Shar‘i law in all fields of life in Egypt. His fatwa collection is titled *Fatawa ‘Abd al-Halim Mahmud*, 1986. Cairo: Dar al-Ma‘arif.
- <sup>659</sup> Abu ‘Isa Muhammad al-Tirmidhi (d. 862) was a leading scholar of Hadith, and a collection of Hadith is named after him.
- <sup>660</sup> Muhammad Nasir al-Din al-Albani, one of the most outstanding scholars of the modern era. He was born in 1914 in Ashkudra, then the capital of Albania to a poor but educated family. He migrated to Damascus with his father after the king of Albania moved the country toward secularism. Al-Albani received most of his Hanafi education from his father, who also trained him to be a watch-maker like himself. He was most interested in Hadith studies, and was influenced by the writings of Rashid Rida in *al-Manar*. He adopted a Salafi attitude, influenced by the books of Ibn Taymiya and Ibn Qayyim. He confronted the leaders of the Sufi circles in Damascus over “innovations” and legends, while other scholars encouraged him to continue his *da’wa*. He traveled extensively in Syria and in Jordan, before he moved and settled there. In the 60s he was arrested by the Syrian regime several times for his religious activism. He was offered several university positions abroad, but he refused for a variety of reasons. He wrote many books, and in 1999 was granted the King Faysal prize for his efforts in the field of Hadith. Al-Albani passed away in 1999.
- <sup>661</sup> Prof. Rif ‘at Fawzi (1940–) was previously the chairperson of the Department of Islamic law in Dar al-‘Ulum (Faculty of Sciences) at the University of Cairo.
- <sup>662</sup> Prof. ‘Ujayl al-Nashmi, a Kuwaiti mufti. He is a member of Majma‘ al-Fiqh al-Islami (located in Saudi Arabia), a professor of Islamic Law, and served previously as the Dean of the Faculty of Islamic Law in Kuwait.
- <sup>663</sup> A Syrian physician and jurist.
- <sup>664</sup> Sayyid Sabiq (1915–2000). An Egyptian jurist, a graduate of al-Azhar, who joined the Muslim Brethren. He obtained a PhD from al-Azhar in 1947, then served as a professor at the University of Umm al-Qura in Mecca. He is considered the first to simplify the fiqh in a way that gave it great exposure.
- <sup>665</sup> The law is quoted in Dr. Ahmad al-Hajji al-Karawi, *Faskh al-Zawaj: Bahth Muqarin bayna al-Shari‘a al-Islamiyya wal-Shari‘atayn al-Masihiyya wal-Yahudiyya wal-Qawanin al-‘Arabiyya*. Beirut: al-Yamama LilTiba‘a wal-Nashr 1990, pp. 336–7.
- <sup>666</sup> I am grateful to Dr. al-Basit for granting me permission to translate a portion of his book into English. Dr. al-Basit is the rector of the Da‘wa Islamic Studies College in Um El Fahem, Israel.
- <sup>667</sup> The translation of Qur’anic verses is according to Mohammed Marmaduke Pickthall, *The Meaning of the Glorious Koran*. References are translated literally from Dr. al-Basit’s original.
- <sup>668</sup> Muhammad ‘Abd al-Mun‘im Nur, *al-Khidma al-Ijtima‘iyya al-Tibbiyya wal-Ta’hil*, 157.
- <sup>669</sup> Samu’il Wishk, *Kayfa tara Tiflaka al-Mu’awwaq*, 16.
- <sup>670</sup> Ibn Manzur, *Lisan al-‘Arab*, v. “zamin”.
- <sup>671</sup> Al-‘Amayra, Muhammad Hasan. *Usul al-Tarbiya al-Ta’rikhiyya wal-Ijtima‘iyya wal-Nafsiyya wal-Falsafiyya*. Amman: Dar al-Masira 1999, 121.

- 672 [Sunan al-Bayhaqi, 10, 15,2135].
- 673 Al-Bukhari, 4/8.
- 674 Qur'an 5,2.
- 675 Ahmad b. Hanbal, *Musnad*, 2/33. Al-Mundhiri, *al-Tarhib wal-Tarhib*, 2/582.
- 676 Ahmad, 1/166, 155, 158.
- 677 Qur'an 2, 185.
- 678 Qur'an 22, 78.
- 679 Ahmad quoted this in the *Musnad* no. 2108; Al-Bukhari commented on this in his *Sahih*, chapter on belief, no. 29.
- 680 Qur'an 2, 233.
- 681 Qur'an 65,7.
- 682 Qur'an 24, 61.
- 683 Abu Ghuda, "Ri'ayat al-Mu'awwaqin fi al-Islam". *Majallat al-Muslim al-Mu'asir*. February 1983. 34, 114 [111–120]
- 684 Al-Qurtubi, *al-Jami' liAhkam al-Qur'an*, 7, 4705.
- 685 Abu Ghuda, 114.
- 686 Ibn Manzur, *Lisan al-'Arab*. V. "d-w-a".
- 687 Qur'an 2, 179.
- 688 Muslim, 2616.
- 689 Muslim 2615.
- 690 Muslim 35.
- 691 Abu Ghuda, 34:114.
- 692 Qur'an 49,13.
- 693 Muslim 26.
- 694 Qur'an 49,11.
- 695 Muslim, 2564.
- 696 Qur'an 80, 1–4.
- 697 Qur'an 2, 156.
- 698 Muslim 2571.
- 699 Al-Mundhiri, *al-Tarhib wal-Tarhib*, Dar al-Fikr 4/280.
- 700 Al-Bayhaqi, 3/375. Beirut: Dar al-Ma'rifa.
- 701 Al-Dhahabi, *Siyar A'lam al-Nubala' Mu'assasat al-Risala* 4/334.
- 702 Qur'an 47, 31.
- 703 Qur'an 48, 17.
- 704 Ibn Hajar, Ahmad b. 'Ali, *Al-Isaba fi Tamyiz al-Sahaba*, 2/529.
- 705 All these battles are mentioned in Ibn Hisham *al-Sira al-Nabawiyya*, Beirut: al-Maktaba al-'Asriyya 1998, vols. 2 and 4.
- 706 In 635 the Muslim army won victory over the Sassanians near Qadisiyya, located west of Najaf in today's Iraq.
- 707 Ibn Hajar, 2/523.
- 708 Muslim 2699, Ahmad 2/274.
- 709 Al-Tirmidhi, 1956.
- 710 Al-Bayhaqi 9/141.
- 711 Al-Bukhari 1/10.
- 712 Muslim 2613.
- 713 Abu Ghuda, v. 34/118.
- 714 Ibn al-Athir, *al-Kamil* 4/219; al-Maqrizi, *al-Mawa'iz wal-I'tibar* 2/405.
- 715 Al-Tabari, Muhammad b. Jarir, *Ta'rikh al-Umam wal-Muluk*. Dar al-Fikr, 7/337–8.
- 716 Al-Dabu Ibrahim, *al-Daman al-Ijtima'i fi al-Islam*,
- 717 Marwan al-Qadumi, "Huquq al-mu'aq fi al-Shari'a al-Islamiyya". *Majallat Jami'at al-Qur'an*, 1998, 4/149.
- 718 Al-Jahiz, *al-Bursan wal-'Urjan wal-'Umyan wal-Hawlan*, Mu'assasat al-Risala, 7.
- 719 Abu Ghuda, 34/114.

## BIBLIOGRAPHY

- 'Abd al-Ghaffar, Dr. 'Abd al-Salam and Dr. Yusuf Mahmud al-Sheikh, *Sikulujiyyat al-Tifl Ghayr al-'Adi wal-Tarbiyya al-Khassa*, Cairo: 'Ayn Shams University, 1966.
- 'Abd al-Hamid, Muhammad, "Khutbat salat al-jum'a bil-ishara." *Al-Mithaq* (Nazareth, Israel) July 14, 2000, 18.
- 'Abd al-Hamid, Muhammad Yahya al-Din. *Al-Ahwal al-Shakhsiyya fi al-Shari'a al-Islamiyya*. Cairo: Maktabat Muhammad 'Ali Sabih waAwladuh, 1966.
- 'Abd al-Karim, Dr. 'Abd al-Fattah, *al-Liwa' al-Islami* September 12, 2002, 16.
- 'Abd al-Qadir, Muhammad Safwat "Al-marad ... yusqitu 'anka." in *Al-Nur*, May 12, 1993, 7.
- 'Abd al-Rahman, Dr. 'Amad Zanati. *Al-Ahrar*. December 13, 1996, 7.
- 'Abd al-Rahman, Isma'il. "Al-Tayammum raghma wujud al-Ma'." *Al-Nur* April 14, 1993, 9.
- Abd al-Ra'uf, Sabri'. "Tahawwul al-rajul bi'amaliyya jirahiyya ila imra'a". *Al-Liwa' al-Islami*. September 12, 2002, 16.
- Abou El Fadl, Khaled. "Constitutionalism and the Islamic Sunni legacy." *UCLA Journal of Islamic and Near Eastern Law* (2001–2), v. 1(1), 67–101.
- Abrams, Judith Z. *Judaism and Disability, Portrayals in Ancient Texts from the Tanach through the Bavli*. Washington, DC: Gallaudet University Press, 1998.
- Abu Ghuda, Dr. 'Abd al-Sattar. "Ri'ayat al-Mu'awwaqin fi al-Islam". *Majallat al-Muslim al-Mu'asir*, February 1983, no. 34, 111–20.
- Abu al-Khayr, Dr. 'Abd al-Sami' 'Abd al-Wahhab. *Al-Ta'wid 'an Darar al-Fi'l al-Shakhsi li'Adim al-Tamyiz fi al-Fiqh al-Islami wal-Qanun al-Madani, Dirasa Muqarina*. Cairo: Dar al-Nahda al-'Arabiyya 1994.
- Abu Yusuf, Ya'qub b. Ibrahim (182H/798). *Kitab al-Kharaj*. Cairo: al-Matba'a al-Salafiyya waMaktabatuha, 1962.
- Al-'Abudi, 'Abd Allah b. Hamad b. 'Abd Allah. "Al-Hikma min qat' yad al-sariq." *Majallat al-Buhuth al-Islamiyya* (Riyad) 1409H, no.25, 303–29.
- 'Afana, Husam al-Din. *Yas' alunaka*. Amman: Maktabat Dundis, 2000.
- Al-Ahrar.
- . "mata yuftir marid al-qalb." January 15, 1997, 7.
- . "Ma sabab iftar al-marid bil-shalal." January 24, 1997, 7.
- . "al-sawm yashfik min hadhihi al-amrad al-jildiyya." February 3, 1997, 7.
- Al-'Ajam, Dr. Rafiq. *Mawsu'at Mustalahat al-Fiqh 'inda al-Muslimin*. Beirut: Maktabat Lubnan Nashirun, 1998.
- Al-'Alawna, Ahmad. *Dhayl al-A'lam, Qamus Tarajim liAshhar al-Rijal wal-Nisa' min al-'Arab al-Musta'ribin wal-Mustashriqin*. Jedda: Dar al-Manara lil-Nashr wal-Tawzi', 1998.
- Ali, Abdullah Yusuf. *The Holy Qur'an*. USA: McGregor and Werner, Inc., 1946.
- Al-Ashqar, Dr. 'Umar Sulayman. *Nahwa Thaqaifa Islamiyya Asila*. Amman: Dar al-Nafai's lilNashr wal-Tawzi', 1996.

- Al-‘Askalani, ‘Aliyya.  
 ———. “Al-Talaq li’uqm al-zawj.” *Al-Liwa’ al-Islami*, August 1, 1996, 16.  
 ———. “Naql al-arham hal yu’addi li’ikhtilat al-ansab?” *Al-Liwa’ al-Islami*, May 4, 2000, 16.
- Al-A‘zami, Fu‘ad. *Al-Mu‘aqun fi al-Dawla*. UAE: Abu Dabbi, Wizarat al-‘Amal wal-Shu‘un al-Ijtima‘iyya, 1989.
- Al-Azmeh, Aziz. “Islamic legal theory and the appropriation of reality.” In *Islamic Law: Social and Historical Contexts*. Aziz al-Azmeh (ed.), London and New York: Routledge, 1988, 250–65.
- Baalbaki, Ramzi Munir. *Dictionary of Linguistic Terms, English-Arabic*. Beirut: Dar al-‘Ilm lil-Malayin, 1990.
- Badran, Abu al-‘Aynayn Badran. *Al-Zawaj wal-Talaq fi al-Fiqh al-Islami*. Alexandria: Mu‘assasat Shabab al-Jami‘iyya, 1970.
- Al-Bahbudi, Muhammad Baqir. *Sahih man la Yahduruhu al-Faqih*. Excerpts from a book by Ibn Babawayh al-Qummi (d. 381H/991). Damascus: Mu‘assasat al-Wafa’, 1987.
- Bahnasi, Ahmad Fathi. *Al-Qisas fi al-Fiqh al-Islami*. Cairo: al-Sharika al-‘Arabiyya lilTiba‘a wal-Nashr, 1964.
- Al-Baji, Abu al-Walid Sulayman b. Khalaf (d. 474H/1081). *Al-Muntaqa Sharh Muwatta’ Malik*. Beirut: Dar al-Kutub al-‘Ilmiyya, 1999.
- Al-Bana, Hasan, Sayyid Qutb and Abu al-A‘la Mawdudi. *Al-Jihad fi sabil Allah*. Cairo: Dar al-Jihad waDar al-I’tisam, 1977.
- Barnes, Colin. “Theories of disability and the origins of the oppression of disabled people in Western society.” In Len Barton (ed.), *Disability and Society: Emerging Issues and Insights*. London and New York: Addison Wesley Longman Ltd, 1996, 43–60.
- Al-Basit, Musa. *Huquq al-Mu‘awwaqin fi al-Shari‘a al-Islamiyya*. Umm al-Fakhm: Markaz al-Dirasat al-Mu‘asira, CSS 2000.
- Al-Baydawi, ‘Abd Allah b. Umar b Muhammad al-Shirazi (685H/1286). *Anwar al-Tanzil waAsrar al-Ta‘wil*. Beirut: Dar al-Fikr, 1996.
- Bianquis, Thierry. “The family in Arab Islam.” In A. Burguiere et al. (eds.), *A History of the Family*. Cambridge, MA: Harvard University Press, 1966. v. 1 601–647.
- Brattgard, Sven-Olaf. “Social and psychological aspects of the situation of the disabled.” In David M. Boswell and Janet M. Wingrove (eds.), *The Handicapped Person in the Community*. London: Tavistock Publications, 1974, 7–9.
- Al-Bukhari, Abu al-Tayyib Sadiq Hasan ‘Ali al-Husayni al-Qanwaji. *‘Awn al-Bari Lihall Adillat al-Bukhari*. Aleppo: Dar al-Rashid, 1984.
- Butler, Ruth and Hester Parr (eds.), *Mind and Body Spaces: Geographies of Illness, Impairment and Disability*. London and New York: Routledge, 1999.
- Calderbank, Rosemary. “Abuse and disabled people: vulnerability or social indifference.” *Disability and Society* 2000, v. 15 (3), 521–34.
- Chaabouni, é Habiba, et al. “Prenatal diagnosis of chromosome disorders in Tunisian population,” *Annales de Génétique*. April–June 2001, v. 44(2), 99–104.
- Covey, Herbert C. *Social Perceptions of People with Disabilities in History*. Springfield IL: Charles C. Thomas Publisher, 1998.
- Al-Daqr, Nada Muhammad Na‘im. *Mawt al-Dimagh bayna al-Tibb wal-Islam*. Damascus: Dar al-Fikr, 1997.
- Diesfeld, Kate. “Disability matters in medical law.” *Journal of Medical Ethics* 2001, 27, 388–92.
- Dols, Michael W. “The leper in medieval Islamic society.” *Speculum* 1983. v. 58 (4), 891–916  
 ———. *Majnun: The Madman in Medieval Islamic Society*. Oxford: Clarendon Press, 1992.
- Dreger, Alice Domurat. *Hermaphrodites and the medical invention of sex*. Cambridge, MA: Harvard University Press, 1998.
- Dupret, Baudouin. “Sexual morality at the Egyptian bar: female circumcision, sex change operations, and motives for suing.” *Islamic Law and Society* 2001, 9(1), 42–69.
- Et. “Diya”; “Ihram”; “Mahr”; “Sa’.”
- Etienne, Bruno. *L’Islamisme Radical*. Paris: Imprint Hachette, 1987.
- Fadl Allah, Ayatollah Sayyid Muhammad Husayn. *Min Wahy al-Qur’an*. Beirut: Dar al-Malak, 1998.

- Fatawa al-Tibb wal-Tadawi* (liulama' al-Hijaz wal-Lajna al-Da'ima lilBuhuth al-'Ilmiyya wal-Ifta'). Alexandria: Dar al-Iman, 2004.
- Fawzi, Mahmud. *Al-Shaykh al-Sha'rawi, al-Hikam al-Ilahiyya lilMarad wal-Shifa'*. Cairo: Dar al-Nashr Hathiyya, 1994.
- Francesca, Ersilia. "AIDS in Contemporary Islamic Ethical Literature". *Medicine and Law* (2002) v. 21(2) 381–94.
- Gaff, Angela. *The Human Rights of Persons with Disabilities*. Ramallah: Al-Haq, 1994.
- Garland, Robert. *The Eye of the Beholder, Deformity and Disability in the Graeco Roman World*. Ithaca, NY: Cornell University Press, 1995.
- Ghanim, 'Umar Muhammad Ibrahim. *Ahkam al-Janin fi al-Fiqh al-Islami*. Kufr Qara': Dar al-Huda, 2003.
- Al-Ghazali, Abu Hamid Muhammad b. Muhammad (d. 505H/1111) *Ihya' 'Ulum al-Din*. Beirut: Dar al-Ma'rifa, 1981; Cairo: Mu'assasat al-Halabi waShurka'ihil-Nashr wal-Tawzi', 1967.
- Giladi, Avner. *Children of Islam*. Oxford: Macmillan, 1992.
- Goffman, Erving. "Stigma and social identity." In David M. Boswell and Janet M. Wingrove (eds.) *The Handicapped Person in the Community*. London: Tavistock Publications, 1974, 79–92.
- Al-Ha'iri, Ayatollah Hasan. *Ahkam al-Shi'a*. Kuwait: Maktabat al-Imam Ja'far al-Sadiq 'alayhi al-salam, 1972.
- Al-Halabi, Ibrahim. *Multaqa al-Abhur*. Beirut: Mu'assasat al-Risala, 1989.
- Hamad, Dr. Misbah. *al-Liwa' al-Islami* October 31, 2002, 14.
- Hamza, Ahmad Hamza. *Nazrat al-Shari'a al-Islamiyya ila al-'Uqm waTuruq 'Ilajih*. MA Thesis, University of Haifa, Israel, 2001.
- Al-Hanafi, Muhammad b. Husayn al-Tawri al-Qadiri. *Takmilat al-Bahr al-Ra'iq Sharh Kanz al-Daqa'iq. By Al-Nasafi, Abu al-Barakat 'Abd Allah Hafiz al-Din* (d. 710H/1310). Beirut: Dar al-Kutub al-'Ilmiyya, 1997.
- Al-Haqiqa*. April 30, 1994, 7. "al-marad al-wirathi laysa kafiyan lifaskh al-'aqd idha tawafarat al-ulfa bayna al-zawjayn."
- Hardman Michael L., Clifford J. Drew, and M. Winston Egan. *Human Exceptionality, Society, School, and Family*. Boston MA: Allyn and Bacon, 2002.
- Al-Hashimi, Dr. Nisrin bint Muhammad. *Al-I'aqat al-Khalqiyya fi al-Atfal: asbabuha, wara'y al-Islam fi turuq al-wiqaya minha*. London: Dar al-Hikma, 1995.
- Haykal, Dr. Muhammad Khayr. *Al-Jihad wal-Qital fi al-Siyasa al-Shar'iyya*. Beirut: Dar al-Bayariq, 1993.
- Hijazi, Qudsiyah. *Islam vaAtfal 'Aqab Uftadeh*. Iran: Markaz Tahqiqat waIntisharat Huquqi Qudsi, 1982.
- Al-Hilli, Jamal al-Din Miqdad b. 'Abd Allah Al-Suyuri (d. 826H/1422). *Al-Tanqih al-Ra'i liMukhtasar al-Shara'i'*. Qom: Matba'at al-Khiyam, 1983.
- Hitti, Yusuf K., *Hitti's English-Arabic Medical Dictionary*. Beirut: The American University of Beirut, 1967.
- Al-Husayni, Sulayman Jad. *Al-'Uquba al-Badaniyya fi al-Fiqh al-Islami*. Cairo: Dar al-Shuruq, 1991.
- Ibn Abi 'Asim, al-Dahhak al-Shaybani (129H/746). *Kitab al-Jihad*. Al-Madina: Maktabat al-'Ulum wal-Hikam, 1989.
- Ibn Anas, Malik (179H/795). *Kitab al-Muwatta'*. Beirut: Dar al-Afaq al-Jadida, 1983.
- . (179H/795). *Mulhaq al-Mudawwana al-Kubra*. Beirut: Dar al-Kutub al-'Ilmiyya, 1994.
- Ibn Baz, 'Abd al-'Aziz b. 'Abd Allah. *Al-'Alam al-Islami*. 12–18 October 1996, 6; 21–27 October 1996, 6.
- Ibn Baz, 'Abd al-'Aziz b. 'Abd Allah. *Fatawa waTanbihat waNasa'ih*. Beirut: Dar al-Jil, 1991.
- Ibn Kathir, Abu al-Fida' Isma'il (774H/1373). *Tafsir al-Qur'an al-'Azim*. Cairo: Dar Ihya' al-Kutub al-'Arabiyya n.d.
- Ibn Manzur, Jamal al-Din b. Mukarram al-Ansari (d. 711H/1311). *Lisan al-Arab*. Cairo: Al-Mu'assasa al-Misriyya al-'AmmalilTa'lif wal-Nashr, n.d.; Beirut: Dar Beirut lilTiba'a wal-Nashr, 1955.
- Ibn Qudama, Muwaffaq al-Din (d. 620H/1223). *Al-Mughni wal-Sharh al-Kabir*. Beirut: Dar al-Kitab al-'Arabi, 1972.
- . *Al-Mughni*. Cairo: Hajar, 1989.
- Ibn Rushd, Abu al-Walid Muhammad b. Ahmad. (d. 595H/1198). *Bidayat al-Mujtahid waNihayat al-Muqtasid*. Beirut: Dar Ibn Hazm, 1995.

- . *Bidayat al-Mujtahid waNihayat al-Muqtasid*. Cairo: Matba'at 'Ali Sabih n.d.
- . *Muqaddimat Ibn Rushd*. Sida, Beirut: al-Maktaba al-'Asriyya, 1999.
- . Ibn Shas, Jalal al-Din b. Nijm. (d.616H/1219). *'Iqd al-Jawahir al-Thamina fi Madhhab 'Alim al-Madina*. Jedda: Dar al-Gharb al-Islami, 1995.
- Ibn Taymiyah, Ahmad b. 'Abd al-Halim (d.1328). *Fatawa al-Nisa'*. Cairo: Maktabat al-Qur'an, 1983.
- Ibrahim, Ahmad Shawqi. "Al-Shaykhukha bayna al-Tibb wal-Islam." *Al-Liwa' al-Islami* May 30, 1996, 14.
- Idris, Dr. 'Abd al-Fattah Mahmud. *Qadaya Tibbiyya min Manzur Islami*. Cairo: n.e. 1993.
- Imam, Dr. Muhammad Kamal al-Din. *Al-Zawaj wal-Talaq fi al-Fiqh al-Islami*. Beirut: al-Mu'assasa al-Jami'iyya lilDirasat wal-Nashr wal-Tab', 1996.
- Inhorn, Marcia Claire. *Infertility and Patriarchy – The Cultural Politics of Gender and Family Life in Egypt*. Philadelphia: University of Pennsylvania Press, 1996.
- Al-'Isawi, Abd al-Rahman. *Al-Islam wal-'ilaj al-nafsi al-hadiith*. Beirut: Dar al-Nahda lilTiba'a wal-Nashr, 1988.
- Isma'il, Muhammad Bakr. *Al-Fiqh al-Wadiah min al-Kitab wal-Sunna 'ala al-Madhahib al-Arba'a*. Cairo: Dar al-Manar, 1990.
- Al-Issa, Ihsan. (ed.), *Al-Junun: Mental Illness in the Islamic World*. Madison CT: International Universities Press, Inc., 1999.
- Jacquart, Danielle, and Claude Thomasset. *Sexuality and Medicine in the Middle Ages*. Presses Universitaires de France, 1985.
- Jad al-Haqq, 'Ali Jad al-Haqq.
- . "Al-Din yujiz an yatahawwala al-rajul ila imra'a wal-mar'a ila al-rajul walakin bishurut". *Al-Ahram* 1981 (23 January), 9.
- . "Zawaj al-ma'tuha." June 4, 1981. *Al-Fatawa al-Islamiyya*. Cairo: Dar al-Ifta' al-Misriyya, 1983. v. 8, 3003–6.
- . "zawaj al-majnun binafsihi batil". June 24, 1981. *Al-Fatawa al-Islamiyya*. Cairo: Dar al-Ifta' al-Misriyya 1983, v. 8, 3007–9.
- . "zakat mal al-majnun." *Al-Fatawa al-Islamiyya*. Cairo: Wizarat al-Awqaf, 1981, v. 8, 2838–40. Also appears in *Al-Fatawa al-Islamiyya fi al-Qadaya al-Iqtisadiyya*, no. 26 April 1990, 60–62.
- . "athar al-'unna fi 'aqd al-zawaj". July 26, 1981. *Al-Fatawa al-Islamiyya*. 1983, v.8, 3010–13.
- . "Jirahat tahwil al-rajul ila al-mar'a wabil'aks ja'iza bildarura." *Al-Fatawa al-Islamiyya*. Cairo: Wizarat al-Awqaf, 1983 v.1, 3501–03.
- . *Majallat al-Azhar*. February–March 1994, 1288–90.
- Ja'far, Dr. 'Ali Muhammad. *Falsafat al-'Uqubat fi al-Qanun wal-Shar' al-Islami*. Beirut: al-Mu'assasa al-Jami'iyya lilDirasat wal-Nashr wal-Tawzi', 1997.
- Al-Jahiz, Abu Uthman 'Amru b.Bahr (868). *Kitab al-Bursan wal-'Urjan wal-'Umyan wal-Hulan*. 'Abd al-Salam Muhammad Harun (ed.). Beirut: Dar al-Jil, 1990.
- Al-Jalalayn, Jalal al-Din al-Mahalli and Jalal al-Din al-Suyuti (d. 864H/1459 and 911H/1505, respectively), *Tafsir al-Imamayn al-Jalilayn*. Beirut: Dar al-Ma'rifa, n.d.
- Al-Jammas, Dr. Diya' al-Din. *Dirasat Tibbiyya Fiqhiyya Mu'asira*. Damascus: Markaz Nur al-Sha'm lilKitab, 1993.
- Al-Jawaziri, Dr. 'Ali al-Tamimi. *Al-Tibb al-Shar'i fi al-Islam*. Beirut: Dar al-Thaqalayn, 1994.
- Al-Jaziri, 'Abd al-Rahman. *Kitab al-Fiqh 'ala al-Madhahib al-Arba'a*. Cairo: Dar al-Irshad lilTiba'a wal-Nashr, 1990; Beirut: Dar al-Thaqalayn, 1998.
- Al-Jibrin, 'Abd Allah b. 'Abd al-Rahman.
- . *Fawa'id waFatawa Tahimm al-Mar'a al-Muslima*. Al-Riyad: Dar al-Sumay'i lilNashr wal-Tawzi', 1995.
- . *Fatawa al-Mar'a al-Muslima*. Al-Riyad: Maktabat al-Tabariyya, 1995.
- Johansen, Baber. "The valorization of the human body in Muslim Sunni law." Devin J. Stewart, Baber Johansen and Amy Singer (eds.), *Law and Society in Islam*. Princeton: Marcus Wiener Publishers, 1996.
- Jones, Howard W. Jr. and Georgeanna Seegar Jones. *Novak's Textbook of Gynecology*. Baltimore/London: Williams and Wilkins, 1981.
- Jones, R.B. "Impairment, disability and handicap – old fashioned concepts?" *Journal of Medical Ethics* 2001. v. 27, 377–9.

- Jum'ā, Dr. 'Alī. "Al-Tashawwuhāt al-khalqīyya aw al-i'āqa la tubarrir al-ijhād". *Al-Liwa' al-Islami* October 7, 2004, 7.
- Al-Juwayni, 'Abd Allāh b. Yusuf (d. 438H/1046). *Al-Tabsira*. Beirut: Dar al-Kutub al-'Ilmiyya, 1994.
- Kahala, Umar Rida. *Al-Zawaj*. Damascus: Mu'assasat al-Risala, 1977.
- Kahn, Paul W. *The Cultural Study of Law: Reconstructing Legal Scholarship*. Chicago and London: University of Chicago Press, 1999.
- Kan'an, Ahmad Muhammad. *Al-Mawsou'ah AtTibiyah Al-Fikhiyah*. Beirut: Dar An-Nafaes, 2000.
- Al-Kasani, 'Ala' al-Din Abu Bakr b. Mas'ud. (d. 587H/1191). *Bada'i' al-Sana'i'*. Cairo: Zakariya 'Ali Yusuf, 1960.
- Khadduri, Majid. *The Law of War and Peace in Islam*. London: Luzac & Co., 1940.
- Al-Khamina'i, Al-Sayyid 'Ali b. Jawad al-Husayni. *Ajwibat al-Istifta'at*. Beirut: al-Dar al-Islamiyya, 1999.
- Al-Khatib, Dr. Hisham Ibrahim, Al-'Abd, 'Abd al-Qadir al-'Akaila, and Dr. 'Imad Ibrahim al-Khatib. *Al-Tabib al-Muslim waAkhlāqīyyat al-Mihna*. Amman: Da'irat al-Maktabat wal-Watha'iq al-Wataniyya, 1989.
- Krawietz, Birgit. "Brain death and Islamic tradition, shifting borders of life?" In Jonathan E. Brockopp (ed.) *Islamic Ethics of Life, Abortion, War and Euthanasia*. Columbia: University of South Carolina Press, 2003, 194–213.
- Lagerwall, T., Ellamaa, A., Karu, L., Muklane, M., and Talvik, T. *Proceedings of the International Conference on Rehabilitation of Disabled Children: Present State and Future Trends*. Tallin, Estonia August 12–26, 1989. Estonia: Tartu University, 1991.
- Al-Lajna al-Da'ima lilBuhuth al-'Ilmiyya wal-Ifta'. *Majallat al-Buhuth al-Islamiyya*. Al-Riyad: Al-Ri'asa al-'Amma lilDarat al-Buhuth al-'Ilmiyya wal-Ifta' wal-Da'wa wal-Irshad.  
 ———. 1984/5. v.14, 128.  
 ———. 1988/9, v.26, 128.  
 ———. 1990. v.31, 73–74.
- Lane, Edward William. *Arabic English Lexicon*. New York: Frederick Ungar Publishing Co., 1956.
- Layish, Aharon. *Divorce in the Libyan family*. Jerusalem: The Hebrew University Magnes Press, 1991.
- Liachowitz, Claire H. *Disability as a Social Construct: Legislative Roots*. Philadelphia: University of Pennsylvania Press, 1988.
- "al-mar' al-musinna ... ma miqdār al-fidya allati tadfa'uha?" *Al-Liwa' al-Islami*. January 25, 1996, 7.
- "Iimadha yatasarraf al-shabab 'an al-zawaj min al-fatat al-mu'awwaqa?" *Al-Liwa' al-Islami*. June 13, 1996, 17.
- "la yajuz ijhād al-janin ba'da nafkh al-ruh". *Al-Liwa' al-Islami*. February 26, 2004.
- Mahmud, 'Abd al-Halim. *Kitab al-Jihad*. Cairo: Dar al-Ma'arif, 1983.
- Mahmud, Sheikh 'Abd al-Munsiḥ. "Marid bimarad muzmin ... hal 'alayhi siyam?" *Al-Liwa' al-Islami* February 8, 1996, 7.  
 ———. "uqm al-zawj hal huwa mubarrir liltalaq?" *Al-Liwa' al-Islami* April 4, 1996, 7.
- Mahmud. Abu Wafa. *al-Liwa' al-Islami* September 11, 2003.
- Makhluf, Hasanayn Muhammad. "hukm fitr al-marda bil-sukkar." In *Fatawa Shar'iyya waBuhuth Islamiyya*. Cairo: Matba'at al-Madani, 1971 v.1, 307–10.  
 ———. "hukm al-hajj 'an al-'ajiz." In *Fatawa Shar'iyya waBuhuth Islamiyya*. Cairo: Matba'at al-Madani, 1971 v.2, 11–13.  
 ———. "salat al-marid." In *Fatawa Shar'iyya waBuhuth Islamiyya*. Cairo: Matba'at al-Madani, 1971 v.1, 253–5.  
 ———. "hal kibār al-sinn yubih lisahibihi al-iftar fi Ramadan?" *Al-Ahram*. May 8, 1987, 14.
- Makki, Sheikh Hasan. *Jihad al-Umma, Bahth fiqhi istidlali yatanawal bi'umq washumulīyya mashru'iyyat waahkam jihad al-umma al-Islamiyya*. Beirut: n.e., 1997.
- Mansour, Aly Aly. "Hudud crimes." In Cherif Bassiouni (ed.), *The Islamic Criminal Justice System*. London, Rome, New York: Oceana Publications, Inc., 1982, 195–201.
- Al-Marghinani, Burhan al-Din (d. 593H/1196/7)  
*Al-Hidaya Sharh Bidayat al-Mubtadi' li'Abi al-Hasan al-Rushdani*. Cairo: Mustafa al-Babi al-Halabi, 1975; Beirut: Dar al-Arqam b. Abi al-Arqam, 1997.
- Marks, Deborah. *Disability: Controversial Debates and psychosocial perspectives*. London and New York: Routledge, 1999.

- Marshall, David. *God, Muhammad and the Unbelievers, a Qur'anic study*. Surrey, UK: Curzon Press 1999.
- Marx, Tzvi C. *Disability in Jewish Law*. London and New York: Routledge, 2002.
- Al-Mawardi, Abu al-Hasan 'Ali b. Muhammad b. Habib (450H/1058). *Al-Hawi al-Kabir*. Beirut: Dar al-Kutub al-'Ilmiyya, 1994.
- Mawsu'at Jamal 'Abd al-Nasir fi al-Fiqh al-Islami. Cairo: Al-Majlis al-A'la lil-Shu'un al-Islamiyya 1389H.
- Mayer, Ann Elizabeth. "Libyan legislation in defense of Arabo-Islamic sexual mores." *American Journal of Comparative Law* 1980, 28(2), 287–313.
- . *Islam and Human Rights, Tradition and Politics*. Boulder and San Francisco: Westview Press, 1991.
- Meron, Ya'akov. *Moslem Law in Comparative Perspective* (Hebrew). Jerusalem: The Hebrew University Magnes Press, 2001.
- Al-Mirdawi, 'Ala' al-Din Abu al-Hasan 'Ali b. Sulayman b. Ahmad (d. 885H/1480).
- . *Kitab al-Insaf*. Beirut: Dar Ihya' al-Turath al-'Arabi, 1986.
- . *Kitab al-Insaf*. Beirut: Dar al-Kutub al-'Ilmiyya, 1997.
- Moosa, Ebrahim. "The dilemma of Islamic rights schemes." *Journal of Law and Religion* 2000–2001. v.15 (1 + 2), 185–215.
- . "The poetics and politics of the law after empire: reading women's rights in the contestations of law." *UCLA Journal of Islamic and Near Eastern Law* 2001–2 v.1/1, 1–46.
- Mu'assasat Da'irat Ma'arif al-Fiqh al-Islami tibqan limadhhah ahl al-Bayt 'alayhim al-salam. *Mu'jam Fiqh al-Jawahir, Talkhis Kitab Jawahir al-Kalam fi Sharh Shara'i al-Islam*. Beirut: Al-Ghadir, 1996.
- Munjid, Manal Marwan. *Al-Ijhad fi al-Qanun al-Jina'i: Dirasa Muqarina*. n.p.: Dar al-Nahda al-'Arabiyya, 2002.
- Al-Mut'ini, Dr. 'Abd al-'Azim. "ijhad al-mushawwihin jinaya bashi'a". *al-Liwa' al-Islami* February 19, 2004, 7.
- Al-Nawawi, Abu Zakariya, Yahya b. Sharaf (d. 772H/1370). *Mikhsal al-Waridin, Sharh Riyad al-Salihin*. Beirut: Dar al-'Ilm lil-Malayan, 1978.
- . *Tashih al-Tanbih*. Beirut: Mu'assasat al-Risala, 1996.
- Oyebola, Moji. *Rehabilitating the Disabled in Nigeria*. Ibadan, Nigeria: Laytal Communications Publishers, 1997.
- Pickthall, Mohammad Marmaduke. *The Meaning of the Glorious Koran*. New York: New American Library, n.d.
- Al-Qaffal, Sayf al-Din Abu Bakr Muhammad b. Ahmad (507H/1114). *Hulyat al-'Ulama' fi Madhahib al-Fuqaha'*. Amman: Maktabat al-Risala al-Haditha, 1988.
- Al-Qa'imi, Dr. 'Ali. *Takwin al-Usra fi al-Islam*. Beirut: Dar al-Nubala', 1996.
- Al-Qummi, 'Ali b. Ibrahim. (329H/941) *Tafsir al-Qummi*. Beirut: Mu'assasat al-A'lamii lilMatbu'at, 1991.
- Al-Qurtubi, Abu 'AbdAllah Muhammad b. Ahmad al-Ansari (671H/1272). *Al-Jami' liAhkam al-Qur'an*. Beirut: Dar al-Fikr, 1993.
- Qusa, Muhammad Dib. "zawaj al-mutakhallifin 'aqliyyan." In *Fatawa Shar'iyya*. Ghazza: al-Jami'a al-Islamiyya, 1998 V. 4.
- Qutb, Sayyid. *Fi Zilal al-Qur'an*. Beirut: Dar Ihya' al-Turath al-'Arabi, 1961.
- Rahbar, Daud. *God of Justice, a Study in the Ethical Doctrine of the Qur'an*. Leiden: E.J. Brill, 1960.
- Rahman, Fazlur. *Health and Medicine in the Islamic Tradition*. New York: Crossroad Publishing Co., 1987.
- Rasool, G. Hussein. "The crescent and Islam: healing nursing and the spiritual dimension, some considerations towards an understanding of the Islamic perspective." *Journal of Advanced Nursing*, December 2000, 32(6) 1476–84.
- Al-Rawandi, Qutb al-Din Sa'id b. Hibat Allah (d.573H/1178). *Fiqh al-Qur'an*. Qom: Al-Matba'a al-'Ilmiyya, 1976.
- Reza, Mohammed Faruque, Yuji Urakami, Yukio Mano. "Evaluation of a new physical exercise taken from salat (prayer) as a short-duration and frequent physical activity in the rehabilitation of geriatric and disabled patients." *Annals of Saudi Medicine* 2002, v. 22 (3/4), 177–80.
- Rida, Muhammad Rashid. *Tafsir al-Manar*. Cairo: Dar al-Manar, 1954.

- Rispler-Chaim, Vardit. "Nushuz between medieval and contemporary Islamic law: the human rights aspect." *Arabica* 1992, v. 39, 315–27.
- . *Islamic Medical Ethics in the Twentieth Century*. Leiden: E.J. Brill, 1993.
- . "Hasan Murad Manna': Childbearing and the rights of the wife." *Islamic Law and Society* 1995, v. 2, 92–8.
- . "Genetic Engineering in contemporary Islamic thought." *Science in Context* 1998. v.11(3–4), 567–73.
- . "The right not to be born: abortion of the disadvantaged fetus in contemporary fatwas." *The Muslim World*. April 1999, 89(2), 130–43.
- Rizq, Hamdi. "Misr: Bunuk al-Hayawanat al-Manawiyya tuhaddidu bikhtilat al-ansab waharq al-wadi'a wajib ba'da wafat sahibiha." *Al-Wasat* 2001, August 1, 36–7.
- Rosen, Lawrence. "Equity and discretion in a modern Islamic legal system." *Law and Society Review*. Fall 1981, v. 15(2), 217–45.
- Al-Sa'adi, Sheikh 'Abd al-Rahman b. Nasir. In *Fatawa al-Mar'a al-Muslima* Riyad: Maktabat al-Tabariyya 1995, v.2, 721.
- Sabiq, al-Sayyid. *Fiqh al-Sunna*. Cairo: Dar al-Kitab al-Islami, 1972.
- Al-Saqa, Dr. Ahmad Hijazi. "la kaffara 'ala al-marid" *Al-Nur*. March 3, 1993, 9.
- Saqr, 'Atiyya. *Minbar al-Islam*. October 1988, 132–34.
- . "fi al-hajj 'an al-ghayr" in *Minbar al-Islam* May-June 1994, 79.
- . *Minbar al-Islam* November 1994, 119.
- . *Minbar al-Islam*. April 1995, 122.
- . *Minbar al-Islam*. May 1995, 93.
- . *Minbar al-Islam*. March–April 1996, 104, 110.
- . "dhawu al-'ahat *Minbar al-Islam*. June 1998, 137.
- . "ma hukm al-din fi ikhfah' ahad al-zawjayn limarad wirathi." *Minbar al-Islam* August 1998, 136.
- . *Minbar al-Islam* November 1999, v.8, 134.
- Al-Sarakhsi, Shams al-Din Abu Bakr (d. 490H/1097). *Al-Mabsut*. Beirut: Dar al-Ma'rifa, 1978; Beirut: Dar al-Kutub al-'Ilmiyya, 2001.
- Saunders, Paula. "Gendering the ungendered body: hermaphrodites in Islamic law." In Nikki A. Keddie and Beth Baron (eds.), *Women in Middle Eastern History*. New Haven: Yale University Press, 1991, 74–95.
- Sha'ban, Zakiiyy al-Din. *Al-Zawaj wal-Talaq fi al-Islam*. Cairo: al-Dar al-Qawmiyya lilTiba'a wal-Nashr, 1964.
- Al-Shahrazuri, Ibn al-Salah. (d. 634H/1240). *Adab al-Mufti wal-Mustafti*. Medina: Maktabat al-'Ulum wal-Hikam, 1986.
- Al-Shayi', 'Abd Allah b. 'Uthman (ed.). *Al-Lu'lu al-Thamin min Fatawa al-Mu'awwaqin*. Riyad: Dar al-Sumay'i lilNashr wal-Tawzi', 1997. (A collection of fatwas by Muhammad b. Ibrahim Al al-Shaykh. 'Abd al-'Aziz b. 'Abd Allah b. Baz. 'Abd Allah b. 'Abd al-Rahman al-Jibrin. 'Abd Allah b. Nasir al-Sa'di. Muhammad b. Salih al-'Uthaymin. Salih b. Fawzan al-Fawzan).
- Shaltut, Mahmud. *Tafsir al-Qur'an al-Karim*. Cairo: Dar al-Qalam, 1960.
- Al-Sha'rawi, Muhammad Mutawalli. *Mi'at Su'al waJawab*. Cairo: Maktabat al-Turath al-Islami n.d.
- Al-Shatibi, Ibrahim al-Lakhmi (d. 790H/1388). *Al-Muwafaqat fi Usul al-Fiqh*. Beirut: Dar al-Fikr, n.d.
- Al-Shawkani, Muhammad b. 'Ali b. Muhammad (d. 1834). *Nayl al-Awtar, Sharh Muntaqa al-Akhar min Ahadith Sayyid al-Akhyar*. Cairo: al-Matba'a al-'Uthmaniyya 1357H.
- Shefer, Miri. "Insanity and the insane in the Ottoman Empire, 15th–17th centuries." In Shulamit Volkov (ed.), *Being Different: Minorities, Aliens and Outsiders in History* (In Hebrew). Jerusalem: Zalman Shazar Center, 2000, 191–204.
- Al-Shirazi, Abu Ishaq. (d. 476H/1083). *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i*. Damascus: Dar al-Qalam, Beirut: Al-Dar al-Shamiyya, 1992.
- Shoshan, Boaz. "The state and madness in medieval Islam." *International Journal of Middle East Studies*. May 2003, v. 35(2), 329–40.
- Sirkis, 'Adil Ahmad. *Al-Zawaj fi al-Mujtama'al-Misri al-Hadith*. Cairo: Al-Hay'a al-Misriyya al-'AmmalilKutub, 1985.
- Sonbol, Amira al-Azhary. "Adoption in Islamic Society: A Historical Survey." In E. Warnock Fernea (ed.), *Children in the Muslim Middle East*. Austin: University of Texas Press, 1995.

- Spiro, Socrates. *An Arabic-English Dictionary of the Colloquial Arabic of Egypt*. Beirut: Maktabat Lubnan, 1973.
- Stiker, Henri Jacques. *A History of Disability* (William Sayers trans.) Ann Arbor: The University of Michigan Press, 1999.
- Tabaliyya, Qutb al-Din. *Al-Islam waHuquq al-Insan*. Cairo: Dar al-Fikr al-'Arabi, 1984.
- Al-Tahanawi, Muhammad 'Ali b. 'Ali b. Muhammad al-Hanafi (d. 1158H). *Kashshaf Istilahat al-Funun*. Cairo: Maktabat al-Nahda al-Misriyya, 1963; Beirut: Dar al-Kutub al-'Ilmiyya, 1998.
- Al-Tahawi, Abu Ja'far Ahmad b. Muhammad b. Salama. (d. 361H/933) *Mukhtasar Ikhtilaf al-'Ulama'*. Beirut: Dar al-Basha'ir al-Islamiyya, 1995.
- Al-Talili, al-Mukhtar b. al-Tahir. (ed.) *Fatawa Ibn Rushd*. Beirut: Dar al-Gharb al-Islami, 1987.
- Al-Taqwim al-Mihni lilMu'aqin fi al-Watan al-Arabi*. Cairo: al-Munazzama al-'Arabiyya lilTarbiya wal-Thaqafa wal-'Ulum, al-Majlis al-'Arabi lilTufula wal-Tanmiya, al-Markaz al-Misri lilTaqwim al-Mihni, 1996.
- Al-Tayyar, 'Abd Allah b. Muhammad b. Ahmad. *Majmu'Fatawa Samahat al-Shaykh 'Abd al-'Aziz b. 'Abd Allah b. Baz*. Riyadh: Dar al-Watan, 1993.
- Al-Tayyib, Ahmad. *al-Liwa' al-Islami* March 13, 2003, 7.
- Al-Tikriti, Raji Abbas. *Al-Suluk al-Mihni lilAtibba'*. Beirut: Dar al-Andalus, 1981.
- Al-Tirmidhi, Abu 'Isa Muhammad b. 'Isa. (279H/892) *Al-Jami' al-Kabir*. Beirut: Dar al-Gharb al-Islami, 1998.
- Tokhais, Ibrahim 'Abdulrahman. *Social Justice in Islamic Law*. Ph.D. dissertation, Claremont Graduate School, 1982.
- Townsend, Peter. "The disabled in society". In David M. Boswell and Janet M. Wingrove (eds.), *The Handicapped Person in the Community*. London: Tavistock Publications, 1974, 22–35.
- Al-Tusi, Muhammad b. al-Hasan b. 'Ali. (d. 460H/1067) *Al-Nihaya fi Mujarrad al-Fiqh wal-Fatawa*. Beirut: Dar al-Kitab al-'Arabi, 1970.
- Ullman, Manfred. *Islamic Medicine*. Edinburgh: Edinburgh University Press, 1978.
- Al-'Umar, Taysir Khamis. *Al-'Unf wal-Harb wal-Jihad*. Damascus: Dar al-Afaq wal-Anfus, 1996.
- Al-'Uthaymin, Muhammad al-Salih. *Fatawa al-Mar'a al-Muslima*. Riyadh: Maktabat al-Tabariyya, 1995.
- 'Uthman, Muhammad Fathi. *Huquq al-Insan bayna al-Shari'a al-Islamiyya wal-Fikr al-Qanuni al-Gharbi*. Beirut: Dar al-Shuruq, 1982.
- Al-Wansharisi, Ahmad b. Yahya. (d. 914H/1508) *Al-Mi'yar al-Mu'rab*. Beirut: Dar al-Gharb al-Islami, 1981.
- Wasfi, Dr. Al-Hajj Muhammad. *Al-Qur'an wal-Tibb*. Beirut: Dar Ibn Hazm, 1995.
- Wasil, Nasr Farid. "Ijhad al-janin al-mutakhallif 'aqliyyan" *Aqidati* July 2, 2002, 5.
- Wendell, Susan. *The Rejected Body, Feminist Philosophical Reflections on Disability*. New York, London: Routledge, 1996.
- Wizarat al-Awqaf wal-Shu'un al-Islamiyya. *Al-Mawsu'a al-Fiqhiyya*. Kuwait: Dar al-Salasil, 1992.
- Yasin, Muhammad Na'im. *Abhath Fiqhiyya fi Qadaya Tibbiyya Mu'asira*. Amman: Dar al-Nafa'is, 2000.
- Al-Zamakshari, Abu al-Qasim Mahmud b. 'Umar b. Muhammad. (d. 538H/1144). *Asas al-Balagha*. Cairo: Matba'at Dar al-Kutub, 1972.
- . *Tafsir al-Kashshaf*. Beirut: Dar al-Kutub al-'Ilmiyya, 1995.
- Zaydan, 'Abd al-Karim. *Al-Qisas wal-Diyat fi al-Shari'a al-Islamiyya*. Beirut: al-Resala Publishers, 1998.
- Al-Zubaydi, Muhammad Murtada. (d. 1205H/1791) *Taj al-'Arus*. Cairo: Matba'at al-Khayriyya, 1888; Kuwait: Matba'at al-Hukuma, 1969.
- Al-Zuhayli, Wahba. *Athar al-Harb fi al-Fiqh al-Islami*. Damascus: Dar al-Fikr 1992.
- . *Al-Fiqh al-Islami waAdillatuhu*. Damascus: Dar al-Fikr 1989.
- . *Nazariyyat al-Darar al-Shar'iyya: Muqarana ma'a al-Qanun al-Wad'i*. Beirut: Dar al-Fikr al-Mu'asir 1997.

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