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Islam and disability : perspectives in islamic theology and jurisprudence

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Chapter Five: Employability of People with Disabilities

As mentioned in the introduction, the two chapters entitled “*ijāra*” and “*ji‘āla*” contain key-information concerning juristic discussions on employability of people with disabilities.

Ijāra derived from the *ajr* (remuneration) means linguistically a contract to hire. In the juristic sense, it is the contract by which one person makes over to someone else the enjoyment, by personal right, of a thing or of an activity, in return for payment.¹ In case of hiring persons for specific services, this type of contract would involve two main parties, viz., the one hired (*ajir*), in the modern sense is employee, and the one hiring (*musta‘jir*) which is now equivalent to employer. The first party (employee) provides a specific service for the second (employer) against a specific remuneration usually called *ujra* or *ajr*, now known as wage, salary, stipend, etc.²

Ji‘āla, sometimes also read as *ja‘āla* and *ju‘āla*, comes very close to the notion of *ijāra*. Linguistically it is a name for the matter given to a person against doing a specific work or service. The same notion is also covered by other relevant terms such as *ju‘l* and *ja‘īla*. In the juristic sense, it means fixing a specific wage, pay or stipend (*‘iwaq*) for a specific or non-specific work or service.³ Thus the employee, the period of work or the amount of remuneration can remain unidentified in such type of contract. In the case of an unidentified employee, the first party (employer) would designate a specific *ajr* (stipend) against specific service without specifying someone in person to do this service. *Ji‘āla* in this case becomes a sort of open competition and the person who does the service as required by the employer will be entitled to the remuneration designated in advance.⁴ Discussions on the second party, namely, the employee and on the service or work, in juristic texts named “*manfa‘a*” (lit. benefit), to be done in these two types of contracts are directly relevant for this topic and thus become the main focus here. The main question would be, are people with disabilities in principle employable according to these two main contracts?

People with mental or physical disabilities are seen as employable in principle in the case of *ji‘āla* contracts. Some jurists limited this unconditional employability to the case when the employee is not designated in advance.⁵

As for *ijāra*, jurists stipulated for the validity of this contract that the two involved parties, i.e., employer and employee should be of sound mind (*‘āqil*)

¹ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (1409/1989), vol. 15, p. 56; Ibn ‘Abd al-Salām, al-‘Izz (1), vol. 2, p. 81; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 5, pp. 250 & 251; Murtaḍā, Aḥmad b. Yaḥyā al- (1), vol. 5, p. 28; Tyan, E. (2003), vol. III, p. 1107.

² ‘Abdarī, Muḥammad b. Yūsuf al- (1), vol. 7, p. 493; Tyan, E. (2003), vol. III, p. 1107.

³ Anṣārī, Abū Yaḥyā Zakariyya al- (3), vol. 3, pp. 344 & 345; Buhutī, Maṣūūr b. Yūnus al- (1402/1982), vol. 4, p. 202; Ṣāwī, Abū al-‘Abbās Aḥmad al- (1), vol. 4, pp. 79 & 80; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 15, p. 208.

⁴ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 15, p. 208.

⁵ Khaṭīb, Muḥammad b. Aḥmad Shīrbīnī al- (1415/1994), vol. 3, pp. 619 & 620.

and capable of discernment (*mumayyiz*).⁶ People with disabilities which do not affect these two conditions were thus in principle employable.

Concerning the *manfaʿa* (benefit, work or service) whose achievement would make the employee entitled to remuneration, jurists stipulated that the employee should be able to do it. Hence, it is not acceptable for instance to employ the blind as guard, the dumb as translator or a person with amputated hands as a tailor and so forth.⁷ Thus people with disabilities are not employable for jobs whose tasks cannot be duly achieved because of the disability. The main rationale here is guaranteeing the quality of work and not discriminating people with disabilities. The same ruling is, for instance, applicable on able-bodied people who miss the skills to reach the required quality.⁸

The aforementioned two principles are endorsed by all schools of law with one main exception. An opinion within the Shāfiʿī School contends that financial transactions of a blind person, including sale, purchase and *ijāra*, are not valid. The sole argument advanced for this opinion is that in case of sale and purchase, the blind cannot see the product and thus can be deceived. By way of analogy, employing a blind person is also prohibited. Despite the good intention of protecting the rights of the blind as expressed by the advocates of this opinion, it has been rejected by the majority of jurists.⁹ First of all no evidence from the Qurʾān or the Sunna supports such opinion.¹⁰ Second, forbidding people with blindness to sell, buy or work causes a real harm in their daily life which exceeds the harm of any eventual deception during such dealings. Third, the eventual deception can be avoided in many other ways such as a precise description of the product in the case of selling and the type of work and expected remuneration in the case of employment.¹¹ Fourth, people with analogous sorts of physical disabilities such as dumbness are allowed to conclude such transactions by means of writing or gesture.¹²

This agreed-upon broad principle of being able to achieve the required tasks remained to be checked in specific jobs which attracted the attention of Muslim jurists. The jobs to be discussed below are those associated with high prestige especially in religious milieus. The list would be limited to the positions of muezzin (one who makes call or *adhān* for prayer), *imām* (one who leads the ritual prayer), judge and the chief leader of the state.

5.1 Muezzin

The muezzin (in Arabic, *muʾadhhdhin* and sometimes called also *munādi*) is the person designated to proclaim the advent of prayer-time by chanting a special

⁶ Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 169; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 258; Tyan, E. (2003), vol. III, p. 1107.

⁷ See Khaṭīb, Muḥammad b. Aḥmad Shīrīnī al- (1415/1994), vol. 3, pp. 619 & 620; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, p. 260.

⁸ Abū Ghudda, ʿAbd al-Sattār (1411/1991), p. 325.

⁹ Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 366.

¹⁰ Ibn Ḥazm, Abū Muḥammad ʿAlī (2), vol. 7, p. 554.

¹¹ See for instance, Nawawī, Yahyā b. Sharaf al- (1), vol. 9, p. 366.

¹² Ḥamawī, Aḥmad b. Muḥammad al- (1405/1985), vol. 3, p. 454.

religious formula called *adhān*. The holder of this office enjoyed always religious, social and sometimes even political prestige in the Muslim community.¹³

Some jurists objected to paying the muezzin considering calling for prayer as a devotional practice which should be done for the sake of God not for the sake of money. Other jurists permitted this practice out of the need to have qualified people for this office.¹⁴ Historical reports indicate that muezzin became a paid job during the reign of ‘Utmān b. ‘Affān (r. 644-656). Later on, the muezzins were known to receive sometimes large amounts of money as was the case during the reign of Aḥmad b. Ṭūlūn (835-884). Muezzins received also their share in the endowments, often by special provisions in the documents establishing the foundations.¹⁵

Among the qualifications required to hold this office, jurists mentioned the possessing of a sound mind (*‘āqil*). Prayer-call (*adhān*) proclaimed by insane and drunk people is invalid according to the majority of jurists because they are unaware of what they say and thus do not have the intention (*niyya*) to proclaim *adhān*. Because intention is not a must according to the Ḥanafīs, they considered the prayer-call made by an insane person as just reprehensible (*makrūh*).¹⁶ Keeping in view the main task of the muezzin and the aforementioned principle of being able to achieve the required tasks associated with the job, one would easily conclude that a person with dumbness cannot be employed as muezzin. Other disabilities such as lameness and amputated limbs were not mentioned by jurists as barriers for holding this office.

Blindness was the most discussable disability concerning the office of muezzin. According to all jurists, the main objective of prayer-call (*adhān*) is informing people that prayer-time is due.¹⁷ This objective has two main sides, namely informing people (*i‘lām al-nās*) and knowing prayer-times (*mawāqīt al-ṣalāt*). The first side was in favour of the blind whereas the second was not. Here we start with discussions on the second side because they started earlier.

Concerning the second side, i.e., knowing prayer-times was dependent on noticing the day-night circle and, to guarantee the exactness in this regard, some jurists elaborated that the muezzin should be proficient in the lunar mansions or stations of the moon (*manāzil al-qamar*).¹⁸ In the case of blindness, the muezzin cannot fulfil this qualification. As a corollary, the blind muezzin may announce the prayer-call before or after the exact prayer-time. This means that an important element of the main objective of prayer-call cannot be guaranteed.

¹³ Pedersen, J. et al (2003), vol. VI, pp. 675-677.

¹⁴ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 291 & 292.

¹⁵ Pedersen, J. et al (2003), vol. VI, p. 677.

¹⁶ Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, p. 107; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 364 & 367.

¹⁷ Sarakhsī, Muḥammad b. Aḥmad b. Abī Sahl al- (3), vol. 1, p. 36; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 1, p. 242; Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, pp. 80 & 81; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 357.

¹⁸ See for instance, Shayzarī, ‘Abd al-Raḥmān b. Naṣr al- (1401/1981), pp. 111 & 112; Qurashī, Muḥammad b. Muḥammad al- (1), p. 177.

This deficiency caused by blindness, made the issue of employing a blind person for the office of muezzin a point of disagreement. A minority of jurists including the Shāfi'īs and the Ḥanbalīs disfavoured the blind for this office. They argue that they cannot know the time at which prayer-call should be proclaimed.¹⁹ On the other hand, the majority of jurists permitted employing a blind person for this office as long as he would be informed by another sighted person about the exact time of prayer.²⁰

As for the first side, namely, informing people, jurists stated that the muezzin should do his best to make his sound heard by as many people as possible. Different prophetic traditions signify the virtues of raising one's voice during the prayer-call. For instance, the sins of the muezzin will be forgiven, he will be rewarded for everyone who responded to the prayer-call and came to perform prayer and everything which heard the prayer-call will testify for the muezzin on the Day of Resurrection.²¹ For an ideal realisation of this aim, it was always recommended to proclaim *adhān* from a high place so that the sound will be in the earshot of a large number of people.²² During the lifetime of the Prophet, *adhān* was proclaimed from the top of the highest house nearby the mosque. After raising its height by helping tools for this specific purpose, *adhān* was proclaimed from the roof of the mosque itself.²³ Later on, *adhān* was proclaimed from a high place, generally a turret of a mosque called "minaret" (in Arabic *manāra* or *mi'dhana*). According to some jurists, this new system was introduced during the reign of Mu'āwiya b. Abī Sufyān (r. 41/661-60/680).²⁴ Mounting the minaret, however, made the muezzin in a position to peep the privacy of the neighbouring houses, a practice which is extremely forbidden in Islam.²⁵ To overcome this problem, jurists came up with a number of precautionary measures. For instance, a number of the Mālikī jurists stipulated a sufficient distance between the minaret and the houses nearby the mosque, otherwise the muezzin will not be allowed to mount it. "Enough distance" means that the one looking from the minaret cannot differentiate between the male and female figures in the nearby houses.²⁶ Jurists focused also on specific characteristics in the muezzin himself that will help him lower his

¹⁹ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 1, pp. 248 & 249.

²⁰ Zayn al-Dīn, 'Abd al-Raḥīm b. al-Ḥusayn al-'Irāqī (1), vol. 2, p. 211.

²¹ For a full account of these traditions, see Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1413/1993), vol. 2, pp. 53 & 54

²² Kasānī, Abū Bakr Mas'ūd b. Aḥmad al (1406/1986), vol. 1, p. 149; Balkhī, Nizām al-Dīn al- (1411/1991), vol. 1, p. 55; Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, p. 114; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 366.

²³ Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. 1, p. 439; Nawawī, Yaḥyā b. Sharaf al- (1), vol. 3, p. 114.

²⁴ See Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 1, p. 272; Ibn 'Ābidīn, Muḥammad Amīn b. 'Umar (1412/1992), vol. 1, p. 387.

²⁵ See Ibn Daqīq al-'Īd (1), vol. 2, pp. 243 & 244; Ṣan'ānī, Muḥammad b. Ismā'īl al-Kaḥlānī al- (1), vol. 2, pp. 380 & 381.

²⁶ Ibn al-Ḥājj, Muḥammad b. Muḥammad al-'Abdarī (1), vol. 1, p. 250; Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. 1, p. 440.

gaze and thus not peep the privacy of others. Righteousness, being married and advanced in years, i.e., aged were the most often mentioned ones in this regard.²⁷ Besides all this, other jurists said that the muezzin should also promise that he will not peep the neighbours nor allow others to mount the minaret.²⁸ It seems that all these measures did not end the peeping-problem. For instance, the Shāfi'ī jurist, Ibn Ḥajar al-Haytamī related the story of the muezzin who, despite his well-known righteousness, peeped a Christian lady from the minaret and fell in extreme love with her to the extent that he converted to Christianity in order to marry her. On the day of marriage, Ibn Ḥajar added, the ex-muezzin dropped from the roof of his house and fell dead and thus losing his religion and his beloved lady.²⁹

The most practical solution for this problem remained to employ blind people and thus they were preferred to the sighted for this specific office.³⁰ This holds true to the extent blindness was sometimes named, in practice, as one of the qualifications that the muezzin should possess.³¹ Documents of some *waqf*-records added also credit to this fact. The large *waqf* foundation instituted in 1774 in the Mamluk Egypt which funded a large mosque and educational centre serves as a clear example in this regard. Among the daily and annual disbursements allocated for the mosque personnel, a stipend was reserved for five *blind* men as muezzins.³² The popularity of employing blind men only for this office made many sighted people feign blindness in order to become muezzins of wealthy mosques.³³

It is worth mentioning here that introducing the office of *al-muwaqqit*, a professional astronomer whose primary responsibility was the regulation of the times of prayer should have played an important role in this regard. That is because knowing prayer-times did not fall under the tasks of the muezzin anymore and thus blindness is not a barrier anymore as well. The exact date of introducing the office of *al-muwaqqit* is not known but any how it was well-known by the 7th/13th century.³⁴

5.2 Prayer-Leader (*Imām*)

One of the main meanings of this term is one appointed to lead ritual prayers. As a sign of the importance of this position, the chief political leader or the Caliph was the one holding this position from the earliest days of Islam. If not the Caliph himself, appointed *imāms* should always be chosen from among

²⁷ Ḥattāb, Abū 'Abd Allāh al- (1412/1992), vol. 1, p. 440.

²⁸ Qurashī, Muḥammad b. Muḥammad al- (1), pp. 176 & 177.

²⁹ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (1994), vol. 1, p. 147.

³⁰ See Gordon-Cumming, Constance Frederica (2006), p. 106; Clouston, W.A. (2003), p. 33; Dobbins, Frank S. (2003), p. 753; Pedersen, J. et al (2003), vol. VI, p. 676; Hearn, Lafcadio (2004), p. 70.

³¹ Liffe, John (1987), p. 43.

³² Creelius, Daniel (1991), p. 66.

³³ Ripley, George (1858), p. 11.

³⁴ Wensinck, A.J. & D.A. King (2003), vol. VII, p. 29.

those learned in religious matters beginning with the best in knowing the Qur'ān and, failing him, the eldest should officiate.³⁵

The juristic controversy on paying the muezzin goes also for the office of *imām* because it is religious service and thus belongs to the category of devotional practices.³⁶ In practice, appointed *imāms* were paid out from the public treasury (*bayt al-māl*).³⁷

Like in the case of the muezzin, people with mental disability were not deemed eligible for holding this office.³⁸ People with other disabilities can hold this office as long as their disabilities do not prevent them performing any of the essential parts of prayer. For instance, according to the majority of jurists, the blind can be employed as *imām* arguing that blindness, the same as losing the sense of smelling, does not affect the performance of prayer.³⁹ The Shāfi'is state that the blind would be more eligible for this office than the sighted person because blindness helps to be more concentrated during the prayer.⁴⁰ The Ḥanafis disfavoured employing the blind as *imām* because of his being unaware of impurities, unless he was more qualified than the sighted person in Qur'ān and religious sciences.⁴¹ During the lifetime of the Prophet, two persons were known to hold this position, namely 'Abdullāh b. Umm Maktūm and 'Itbān b. Mālik.⁴²

People with speech disabilities such as the lisper and the dump, with hearing disabilities such as the deaf, physical disabilities such as those with amputated arms or legs and also people afflicted with epilepsy were generally considered as unemployable for this job. To the jurists, these disabilities are believed to affect negatively the ideal performance of prayer.⁴³ The reprehensibility of employing people with such disabilities as *imāms* is based on two main conditions. First, he is *imām* for people who do not suffer the same disability. Second, there are other qualified people who do not suffer these disabilities. In case one of the absence of these two conditions, people with the aforementioned disabilities would be allowed to be prayer-leaders with no reprehensibility.⁴⁴ Thus, in centres for people with disabilities, a disabled person can be appointed lead his centre-mates in ritual prayers. On February 21, 1983, a question was posed to Dār al-Iftā' in Egypt if a man with amputated legs can lead the ritual prayer. The late Muftī of Egypt, 'Abd al-Laṭīf Ḥamza issued his fatwa that this would

³⁵ Ibid, vol. VI, pp. 674 & 675.

³⁶ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 1, pp. 291 & 292.

³⁷ Pedersen, J. et al (2003), vol. VI, p. 674.

³⁸ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 6, p. 19.

³⁹ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 13; Ibn al-Murtaḍā, Aḥmad b. Yaḥyā (1), vol. 2, p. 310.

⁴⁰ Shāfi'ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, pp. 191 & 192.

⁴¹ Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (1), vol. 1, pp. 369 & 370.

⁴² Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 13.

⁴³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 6, p. 212.

⁴⁴ Ibid, vol. 6, p. 212. & vol. 29, p. 249.

be reprehensible (*makrūh*). He based his fatwa on earlier Ḥanafī and Mālikī authorities who held the same opinion.⁴⁵

The Zāhirī (literalist) jurist, Ibn Ḥazm (d. 456/1064)⁴⁶ had a different opinion which deserves to be recorded. Basing his argument on the Qur'anic verse, **“Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you”** (Qur'ān 49:13), he says that people's defects that count in being employable for this office are those which afflict their religion rather than bodies or lineages. Thus, Ibn Ḥazm adds, physical disabilities can never be a decisive factor in selecting people to hold the office of *imām*.⁴⁷ In practice, also people with deafness held the position of *imām* such as 'Alī Ibn 'Irāq (1501-1556) who was appointed as *imām* and preacher of the Mosque of the Prophet Muḥammad in the holy city of Madina, where he died.⁴⁸

5.3 Judge (*Qādī*)

The judge, known in legal texts as *qādī*, was broadly speaking a representative of the authority invested with the power of jurisdiction (*qaḍā'*). The judge was seen as a direct or indirect delegate (*nā'ib*) of the head of the state, the Caliph. The religious nature of this office has led to the acquisition of administrative functions of the same nature, such as the administration of mosques and endowments.⁴⁹ Islamic history knew also the office of *qādī al-quḍāt*, lit. the judge of the judges (chief judge). Besides being a judge, the holder of this office was entrusted with the judicial administration; the nomination, control and dismissal of other judges.⁵⁰ In the Ottoman Empire, the authority of the judge was extended to include besides the usual legal matters, confidential posts to which judges were appointed by the government, which expected them to report from time to time on the activities of high ranking officials, the general situation and the mood of the population. They had to see that craftsmen were attached to the army before it set off to war, that roads were safe, and that goods needed for domestic consumption were not exported. They also had to supervise the public affairs of the cities, the suitability of buildings, the guilds, the quality of goods and their prices. They were also responsible for seeing that foodstuffs were sold at officially fixed prices. Judges were important also as public notaries; their function was to issue different kinds of certificates and documents concerning sales, contracts, loans and the occasional manumission of slaves, to attest private and public documents, and to supervise the accounts of the endowment incomes and endorse them with an authentication clause.⁵¹

⁴⁵ The fatwa is available on <http://www.al-eman.com/Ask/ask3.asp?id=11672>

⁴⁶ On him, see Arnaldez, R. (1) (2003), vol. III, pp. 790-799.

⁴⁷ Ibn Ḥazm, Abū Muḥammad 'Alī (2), vol. 3, p. 127.

⁴⁸ Scalenghe, Sara (2004-2005), p. 15.

⁴⁹ Tyan, E. & Gy. Káldy Nagy (2003), vol. IV, p. 373.

⁵⁰ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, p. 303; Tyan, E. & Gy. Káldy Nagy (2003), vol. IV, p. 374.

⁵¹ Tyan, E. & Gy. Káldy Nagy (2003), vol. IV, p. 375.

The decrees of the judge were generally binding and without appeal apart from exceptional cases.⁵²

Employing the qualified person as a judge against a specific stipend is permissible according to the majority of jurists. They base their argument on practical cases of people holding this office at the time of the Prophet Muḥammad. Other jurists state that it is reprehensible (*makrūh*) because this office falls under the category of pious acts.⁵³ To guarantee the competence of the appointed judge, jurists counted along list of qualifications which an employable person should possess.⁵⁴ Here the focus will be on those conditions with relevance to disabilities.

Jurists are in agreement that people with mental disabilities are not eligible for such position because the tasks entrusted to the judge require a shrewd and intelligent person.⁵⁵ Other disabilities were points of disagreement among jurists. For instance, the majority of jurists stated that people with deafness, blindness and dumbness cannot be employed as judges and if a judge gets afflicted with any of these disabilities he should be immediately dismissed.⁵⁶ According to the Mālikī jurists, if a blind, dumb or deaf person was appointed as a judge, his decrees would be valid and binding as long as they are rightly concluded. They also agreed that if the appointed judge was afflicted with all of the aforementioned three disabilities then his decrees were not valid anyhow. However, they disagreed if he was afflicted with just one of these disabilities.⁵⁷ Other jurists, including a number of the Shāfi'īs, Ḥanbalīs, Shī'īs and Ibādīs contend that the judge can be blind. They base their opinion on the fact that the blind Companion Ibn Umm Maktūm was the delegate of the Prophet many times and this would imply that he could also have practised judgeship. Additionally, the Prophet Shua'yb was blind and judgeship is one of the main tasks of Prophets.⁵⁸ Also the well-known Shāfi'ī jurist, Abū al-Abbās b. Surayj (d. 306/918)⁵⁹ opines that a dumb person (*akhras*) may be employed as a judge as long as he can express himself by means of understandable signs.⁶⁰

If a person gets afflicted with a light form of one of these three disabilities such as nyctalopia (night blindness), one-eyedness, stammering or hearing-difficulties then he would remain eligible for the office of judgeship. Their main argument was that such light disabilities did not drastically affect the

⁵² Ibid, vol. IV, p. 373.

⁵³ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 10, pp. 90 & 91.

⁵⁴ For the full list of these conditions, see Māwardī, Ibn Ḥabīb al- (2), pp. 82 & 83; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 291-293.

⁵⁵ Māwardī, Ibn Ḥabīb al- (2), p. 82.

⁵⁶ Atfīsh, Muhammad b. Yūsuf (1405/1985), vol. 13, p. 23; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 291-293.

⁵⁷ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 291-293.

⁵⁸ Ḥillī, Ja'far b. al-Ḥasan al- (1408/1987), vol. 4, p. 60; Qudāt, Muṣṭafa al- (1406/1985), pp. 229-232; Kīlānī, Sarī Zayd al- (1), p. 396.

⁵⁹ On him, Schacht, J. (2003), see vol. III, pp. 949 & 950.

⁶⁰ See 'Abd Allāh, Laylā Muḥammad (1418/1997), p. 292.

functionality of the judge. As for the case of a light speech-disability, they recalled the case of Prophet Moses who was known to be lisper.⁶¹

To be employed as a judge, jurists also stipulated the soundness of organs whose functionality is necessary for the tasks entrusted to a judge. However, they did not specify these organs.⁶² According to the Shāfi‘ī jurist Ibn Ḥabīb al-Māwardī (d. 450/1058),⁶³ a person whose limbs are contracted, whose hand is amputated or who has a protracted disease (*zamāna*) can be employed as judge.⁶⁴

In modern studies, two main opinions can be traced. The first advocates the majority of early jurists and states that people with hearing, seeing and speaking disabilities are not qualified to hold this office.⁶⁵ The second opinion sees no harm in appointing a blind person as a judge as long as he is qualified.⁶⁶

In practice, people with disabilities did manage to hold the office of a judge and sometimes of chief judge throughout Islamic history proving their eligibility for such position. Ṣalāḥ al-Dīn al-Ṣafadī (d.1297-1363)⁶⁷ mentioned a number of well-known judges who were blind.⁶⁸ It was also possible for men with hearing disabilities to receive high-level juridical appointments such as Muḥammad b. Dawūd known as Riyāḍī al-Uṭrūsh al-Rūmī who was appointed in 1617 as the chief judge.⁶⁹ Well-known names of blind judges in modern times would include the two Saudi judges ‘Abdullāh b. Ḥumayd (d. 1402/1985) and ‘Abd al-‘Azīz b. Bāz (d. 1999).⁷⁰

5.4 Head of State (Caliph)

The highest authority in Islamic state was entrusted to the one called *imām* (lit. leader), *khalīfa* (Caliph) or *amīr al-mu‘minīn* (the emir of the believers).⁷¹ The office itself was called *imāma* or *khilāfa*. Jurists gave it the title *al-imāma al-kubrā* or *al-‘uzmā* (grand leadership) whereas *al-imāma al-ṣuḡhrā* (minor leadership) was designated for leadership in prayer.⁷² Jurists summed up tasks entrusted to the Caliph as “guarding issues pertaining to religion and administering the worldly affairs (*ḥirāsāt al-dīn wa siyāsāt al-dunyā*).”⁷³

⁶¹ Khaṭīb, Muḥammad b. Aḥmad Shirbīnī al- (1415/1994), vol. 6, pp. 262 & 263; Quḍāt, Muṣṭafa al- (1406/1985), p. 228; Kīlānī, Sarī Zayd al- (1), p. 396; ‘Abd Allāh, Laylā Muḥammad (1418/1997), p. 290.

⁶² Anṣārī, Abū Yahyā Zakariyya al- (3), vol. 5, p. 218.

⁶³ On him, see Brockelmann, Carl (1) (2003), vol. IV, p. 969.

⁶⁴ Māwardī, Ibn Ḥabīb al- (2), p. 84; Kīlānī, Sarī Zayd al- (1), p. 400.

⁶⁵ Kīlānī, Sarī Zayd al- (1), p. 397-399; ‘Abd Allāh, Laylā Muḥammad (1418/1997), p. 291.

⁶⁶ Quḍāt, Muṣṭafa al- (1406/1985), pp. 230 & 231.

⁶⁷ On him, see Rosenthal, F. (2003), vol. VIII, pp. 758-760.

⁶⁸ See Ṣafadī, Ṣalāḥ al-Dīn Khalīl b. Aybak al- (1997), pp. 156, 226; Quḍāt, Muṣṭafa al- (1406/1985), pp. 229 & 230.

⁶⁹ Scalenghe, Sara (2004-2005), p. 15.

⁷⁰ Quḍāt, Muṣṭafa al- (1406/1985), pp. 230 & 231.

⁷¹ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 6, pp. 217 & 218.

⁷² See for instance, Shāfi‘ī, Muḥammad b. Idrīs al- (1410/1990), vol. 1, p. 188; Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 5; Kāsānī, Abū Bakr Mas‘ūd b. Aḥmad al (1406/1986), vol. 1, p. 224.

⁷³ Māwardī, Ibn Ḥabīb al- (2), p. 5. For more detailed description of these tasks, see pp. 18 & 19.

Keeping in mind that it was the highest position one could hold in the state, qualifications stipulated by jurists were the strictest and most detailed compared with all other aforementioned jobs. Pertaining to disability, besides insanity, jurists contend that hearing, seeing and speaking disabilities are defects that affect the person's eligibility for this office.⁷⁴ According to some jurists, if the Caliph himself got afflicted with a hearing or speaking disability he can still remain in his office as long as he can express himself through understandable signs or writing. However, the majority of jurists argue that the Caliph should be dismissed in such cases.⁷⁵ As for seeing disability, if someone is not blind but just suffers nyctalopia (night blindness) or weakness in eyesight, he can still hold this office as long as he recognises people once he sees them.⁷⁶ The same applies to losing an eye or suffering a light form of speaking disability such as stammering because this does not have a negative affect on executing the tasks entrusted to the Caliph.⁷⁷

That amputated hands or legs are also barriers for a person's eligibility to be a Caliph is advocated by the great majority of jurists. However, a number of jurists say that if the Caliph lost one of his limbs, being a hand or leg, he should not be dismissed on this basis. They argue that such a disability would prevent him from some tasks but not all of them.⁷⁸

Ibn Ḥazm, the Zāhiri jurist, remains unique in this respect by saying, "There is no harm that the *Imām* has a physical defect such as blindness or deafness. The same holds true for the one whose nose, two hands or two legs are cut off." According to Ibn Ḥazm, preventing such a person from holding this office is not advocated by any evidence from Qur'ān, Sunna or consensus.⁷⁹

As for modern studies which tackled this point, I could trace only two opinions. The first advocates the opinion stating that any type of the aforementioned disabilities would prevent from being employed as a Caliph or head of the state.⁸⁰ The second opinion favours, in the case of being afflicted with dumbness during the Caliphate, that the Muslim community would study the case and then decides if the dismissal of that Caliph would be for the public interest. Otherwise, the Caliph should remain in office.⁸¹

5.5 Concluding Assessment

Discussions mentioned above show that early jurists were practising *ijtihād* (personal reasoning)⁸² with the main aim of safeguarding the common interest of Muslim community. In an absence of scriptural evidences from Qur'ān,

⁷⁴ Juwaynī, Abū al-Ma'ālī al- (1422/2002), p. 47; Māwardī, Ibn Ḥabīb al- (2), p. 6.

⁷⁵ Māwardī, Ibn Ḥabīb al- (2), pp. 20 & 21; Kīlānī, Sarī Zayd al- (1), pp. 383-385.

⁷⁶ Māwardī, Ibn Ḥabīb al- (2), pp. 20 & 21; Anṣārī, Abū Yaḥyā Zakariyya al- (2), vol. 4, p. 109.

⁷⁷ Māwardī, Ibn Ḥabīb al- (2), p. 21; 'Abd Allāh, Laylā Muḥammad (1418/1997), p. 277.

⁷⁸ Haytamī, Shihāb al-Dīn Aḥmad b. Muḥammad b. Ḥajar al- (2), vol. 9, p. 75; Kīlānī, Sarī Zayd al- (1), p. 387 & 388.

⁷⁹ Ibn Ḥazm, Abū Muḥammad 'Alī (1), vol. 4, p. 129.

⁸⁰ Kīlānī, Sarī Zayd al- (1), p. 379, 380, 385-387, 388 & 389.

⁸¹ 'Abd Allāh, Laylā Muḥammad (1418/1997), p. 278.

⁸² On this term, see Kamali, Muhammad Hashim (2003), pp. 468-499.

Sunna or practical incidents during the lifetime of the Prophet, jurists made use of one main rational argument. They argued that people with disabilities are not employable for specific jobs because these disabilities would not allow them executing tasks entrusted to them properly.

The case of employing blind people as muezzins serves as a clear example in this regard. First, blind people were not preferred because they cannot follow the day-night circulation. Later on, with the introduction of the minarets, blind people were preferred because their blindness gives a guarantee that they will not peep other people's privacies from the height of the minaret. In the light of available computer programs which inform everyone the exact time of each prayer, the skill of following the day-night circulation is not necessary anymore for the muezzin. On the other hand, the availability of mechanical amplifications such as loudspeakers, blindness is not a privilege anymore because the muezzin does not have to mount the minaret anymore in order to proclaim the prayer-call.

The same rule holds true for the office of judge as well. Jurists who objected to a blind judge did not find harm in appointing an illiterate person. This is because blindness was seen as hindrance whereas the writing skills were not a must to be a qualified judge because acquiring knowledge was based on orality.⁸³

This is all of course based on arguments which remain relative, elastic and open to different interpretations. That is why we find almost in every case disagreement whether a specific disability would affect one's eligibility for the job. Paradoxically enough, the minority of jurists who object to this vision could find scriptural references in the Qur'an, Sunna and also practical examples which advocate their opinion. The main protagonist of this group, Ibn Ḥazm, made it clear that the opinion advocated by the majority is not based on any clear or authentic evidence.

At any rate, this situation indicates clearly that there is an area for practising *ijtihād*. Unfortunately, this *ijtihād* is still waiting for new qualified jurists. Besides the few studies which tackled this issue whose authors incline most of the time to the early authoritative juristic opinions, noted jurists of modern time are still almost voiceless in this regard. At the hand of new technological facilities made available for people with disabilities which create new contexts and work opportunities, modern jurists are expected to restudy and revise earlier opinions and practise a fresh *ijtihād* in this new field. The position of the Caliph or head of the state is more fortunate in this regard. Due to the religious and political importance attached to this office, a growing number of studies have been done by modern well-known jurists. However, the case of people with disabilities still remains beyond their main focus.⁸⁴

⁸³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 33, pp. 292 & 293.

⁸⁴ See for instance, Najjār, 'Abd al-Majīd al- (1428/2007), pp. 295-330.

