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Islam and disability : perspectives in islamic theology and jurisprudence

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Chapter Six: Medical Treatment of People with Disabilities

Trusting in the unlimited power of God, according to Ibn Taymiyya, disabilities and diseases in general can get cured without taking any medicine.¹ A vast genre in Islamic literature speaks about miraculous healing for which no medicine is required. Such healing can happen at the hand of a Prophet or a Friend of God (*walī*).² The Qurʾān speaks in more than one place (3:49, 5:110) about Jesus' miracles of healing the blind and the lepers. On their side, Muslim scholars wrote also on the miracles of the Prophet of Islam concerning healing people with different disabilities and some of them counted more than thirty cases in this regard.³ Similar stories were also attributed to the Friends of God (*awliyāʾ*) who were thought to possess the power of bestowing fertility on the barren, food on the hungry and comfort on the distressed. Some of the stories went on curing people with disabilities such as deafness.⁴ In the Shīʿī tradition, similar healing traits would be attributed to the Imams and for instance to the soil of the grave of al-Ḥusayn b. ʿAlī b. Abī Ṭālib.⁵ The main focus of Muslim jurists remains, however, on the use of medicine for the sake of curing disabilities or diseases in general. A note on terminology used in this field is indispensable for a better understanding of discussions and analyses to follow. First of all, one should be aware of terms like *tadāwī* (lit. taking up or making use of *dawāʾ* (pl. *adwiyā*); medicine) and its synonyms *taʿāluj* (making use of *ʿilāj* (pl. *ʿilājāt*); medicine, remedial medicine or therapy)⁶ and *taṭbīb* (lit. making use of *al-ṭibb*; the science of medicine).⁷ For surgical medication, one would come across terms like *al-ʿamal bi al-yadd* or *ʿamal al-yadd* (lit. work or action performed with the hand or by hand). This expression was gradually to lose ground in the course of centuries and ultimately to be replaced by *jirāḥa* (the art of healing wounds or surgery).⁸ The term *jarāʾihī* (surgeon) was often used by the jurists for the one practicing this art.⁹

It is to be noted in this regard that terms with relevance to this topic, e.g. *dawāʾ*, *ʿilāj* and *ṭibb* were used by Muslim scholars in the broadest sense of the word. First, *dawāʾ*, in the juristic use, would mean not only a simple or compound medical drug but also a Qurʾānic verse or specific religious formulae to be recited or chanted in specific situations for healing purposes.¹⁰ Second,

¹ See for instance, Ibn Taymiyya (1408/1971), vol. 3, p. 7.

² On this term, see Radtke, B. et al (2003), vol. IX, pp. 109-124.

³ Ḥalabī, Badr al-Dīn Ibn Ḥabīb al- (d. 779/1377), folios, 33b-35b; Ibn Fahd (d. 954/1547), folios, 27b-36b.

⁴ Dols, Michael W. (1992), p. 229, note 79, quoting from Schimmel, Annemarie (1975), pp. 199-213.

⁵ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), p. xxx.

⁶ Nafrāwī, Aḥmad b. Ghunaym al- (1415/1995), vol. 2, p. 388; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 115.

⁷ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 115.

⁸ Meyerhof, M. & T. Sarnelli (2003), vol. III, p. 481.

⁹ Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1), vol. 2, p. 454; Shayzarī, ʿAbd al-Raḥmān b. Naṣr al- (1401/1981), p. 97.

¹⁰ Khādīmī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Ibn al-Ḥājj, Muḥammad b.

dawā' was not exclusively used for what is curing physical diseases. Spiritual diseases befalling one's soul and heart and thus weakening one's faith also need *dawā'* and the healing process called *tadāwī* is leading afterwards to *shifā'* (recovery). For instance, the Ḥanbalī jurist, Ibn al-Qayyim (d. 751/1350) wrote in the beginning of his *Al-Ṭibb al-nabawī* (Prophetic Medicine) a chapter on the hearts' diseases, as opposed to the diseases of the body, and their medicines.¹¹ The same author dedicated a whole book to the issue of medicating one's heart and the disease of disobeying God in a book entitled *Al-Jawāb al-kāfi liman sa'al 'an al-dawā al-shāfi* (The Satisfying Answer for the One who asked about the Curing Medicine) with an abridged title *Al-Dā' wa al-dawā'* (The Ailment and the Medicine).¹² That is why the definition given for *adwīya* viz., "every substance which may affect the constitution of the human body, every drug used as remedy or a poison"¹³, although relatively broad, remains non-exhaustive. The same holds true for *ʿilm al-ṭibb* (the science of medicine). Muslim jurists put it clear that this science is to be divided into two branches, viz., *al-ṭibb al-jusmānī* or *al-jismānī* (the corporeal or physical medicine) and *al-ṭibb al-ruḥānī* (the spiritual medicine).¹⁴ Below, we give a detailed overview of these two branches of medicine in the juristic discussions, the standpoints adopted in each branch and finally "treatments" developed within each branch of this science with relevance to disabilities.

6.1 Physical Medicine

Physical medicine and Islamic jurisprudence were not rivals or stood at opposite poles. First of all, the history of Islamic scholarship records a considerable number of Muslim scholars who were well versed in both fields viz., Islamic jurisprudence and physical medicine.

Among the physicians, well-known names who mastered Islamic jurisprudence as well include Ibn Sīnā (d. 428/1037),¹⁵ Fakhr al-Dīn al-Rāzī (d. 606/1209)¹⁶ Ibn Rushd (1126-1198)¹⁷ and Ibn al-Nafīs (d. 1288).¹⁸ Names like Muḥammad 'Alī al-Bār¹⁹ and Haytham al-Khayyāt²⁰ show that the

Muḥammad al-ʿAbdarī (1), vol. 4, pp. 121-124; Nafrāwī, Aḥmad b. Ghunaym al- (1415/1995), vol. 2, pp. 338-341; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹¹ Ibn al-Qayyim (1) (1998), pp. 3-7.

¹² Ibn al-Qayyim (3).

¹³ Meyerhof, M. & T. Sarnelli (2003), vol. III, p. 481.

¹⁴ Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹⁵ Ibn Abī Uṣaybi'a (1), p. 438.

¹⁶ Qaradāwī, Yūsuf al- (1424/2003), pp. 58 & 59.

¹⁷ Ibn Abī Uṣaybi'a (1), p. 530 & 532. On him see, Arnaldez, R. (2003), vol. III, pp. 909-920.

¹⁸ Ibn Qādī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, p. 187; Savage-Smith, Emilie et al (2003), vol. X, p. 455. On him see, Schacht J. & M. Meyerhof (2003), vol. III, pp. 897 & 898. For a list of other physicians who were also known as noted jurists, see Ibn Abī Uṣaybi'a (1), pp. 408, 412, 462, 470, 648, 650, 683, 684, 685, 752 & 761.

¹⁹ On him, see Bar, Mohammed Ali al- (1995), pp. 1 & 2; <http://www.khayma.com/maalbar/> (accessed June 16, 2007)

²⁰ On him see, <http://www.islamonline.net/livedialogue/arabic/Guestcv.asp?hGuestID=kloM7j> (accessed June 16, 2007)

phenomenon of combining between medicine and Islamic jurisprudence did not disappear in the modern time. The earliest jurist whose name was attached to the science of medicine is Muḥammad b. Idrīs al-Shāfi‘ī (d. 205/820). Sources on his virtues (*manāqib*) used to dedicate a chapter on his knowledge in the field of Greek medicine and some of them claimed that he mastered this science in its original language.²¹ According to the Ḥanbalī jurist Ibn al-Qayyim (d. 751/1350), al-Shāfi‘ī’s knowledge about medicine was based on the Arabian rather than the Greek tradition.²² Furthermore, biographical sources on jurists of different schools of law include many references to those jurists who were well-versed in the science of medicine and some of whom were also authors in this field.²³

Additionally, early and modern jurists are unanimous on the importance of medicine as an essential science for maintaining people’s life. Learning and teaching this science was seen as a collective duty (*farḍ kifāya*).²⁴ In case of the rarity of medical professionals, learning this science became obligatory (*farḍ ‘ayn*) for those who have the capacities to learn it.²⁵ Al-Shāfi‘ī is reported to say, “Do not live in a place where you have no scholar to inform you about your religion and no physician to inform you about your body.”²⁶ The well-known scholar, Shams al-Dīn al-Dhahabī (1274-1352/3)²⁷ considered medicine to be one of the important means to bring one closer to God. He says in this regard, “After carrying out the religious rites and desisting from actions He has prohibited, the most beneficial means of getting closer to God is that which benefits man in preserving his health and in curing his illness.”²⁸ Al-Dhahabī’s contention is shared by other authors who deemed authoring works on health and medicine as an essential part of their piety and religiosity.²⁹ Similar standpoints were also adopted within the Shī‘ī Islam. Imam ‘Alī, the first Imam of the Shī‘a and the son-in-law of the Prophet Muḥammad was said to put medicine on a par with the study of Islamic law.³⁰ Modern Muslim scholars condemned that the new among a number of Muslim youngsters who saw studying religious sciences rather than the exact sciences including medicine as part of being a more practicing Muslim. The scholars insisted on the religious

²¹ Rāzī, Fakhr al-Dīn al- (1413/1993), pp. 73 & 74; Abū Zahra, Muḥammad (1948), pp. 46 & 47.

²² Ibn al-Qayyim (2), vol. 2, p. 220.

²³ For some names among the Ḥanafī jurists, see Ibn Abī al-Wafā’ (1), pp. 103 & 216. For the Shāfi‘ī jurists, see Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammad (1407/1986), vol. 2, pp. 50, 66, 70, 71, 78 & vol. 3, p. 7; Subkī, Abū Naṣr ‘Abd al-Wahhāb b. ‘Alī b. ‘Abd al-Kāfi al- (1992), vol. 4, p. 387 & vol. 8, p. 397. For the Ḥanbalī jurists, see Ibn Abī Ya‘lā (1), vol. 2, p. 205.

²⁴ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 12, p. 135; Makhlūf, Muḥammad Ḥasanayn (1391/1971), vol. 2, p. 38; Qaraḍāwī, Yūsuf al- (2006).

²⁵ Ibn al-Ḥājj, Muḥammad b. Muḥammad al-‘Abdarī (1), vol. 4, p. 140.

²⁶ Rāzī, Fakhr al-Dīn al- (1413/1993), p. 287.

²⁷ On him, see Bencheneb, M. & J. de Somogyi (2003), vol. II, pp. 215 & 216.

²⁸ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1976), p. 2, quoted by Rahman, Fazlur (1982), p. 79.

²⁹ Rahman, Fazlur (1982), p. 79.

³⁰ Ibid, p. 83.

merit of learning such sciences.³¹ They reiterate that conducting and developing scientific researches in the field of medicine is seen as one of the important means of achieving the first objective of Islamic Shari‘a, namely protecting people’s life.³²

Notwithstanding the high value attached to this science, the treatment of disabilities or diseases in general is not by default also encouraged. A clear distinction should be made in this respect between early and modern jurists.

Fazlur Rahman, basing himself on sporadic quotations from one single source, speaks of a Shi‘i trend maintaining that the use of medicine must be avoided as much as possible because medicines produce and can themselves be a disease. In this vein, it is strongly advised to bear pain and discomfort of the disease and have recourse to a doctor only if disease threatens to become incurable and pain unbearable.³³ However, Rahman’s assessment should not be taken for granted. First, he concedes, “Of the Shi‘a, only one work I have mentioned earlier, viz., *Ṭibb al-a‘imma* or “The Medicine of the Imāms is available to me.”³⁴ Second, Andrew Newman (University of Oxford) rejected to Rahman’s assessment and asserted that no see big differences between Shi‘i and Sunnī traditions in this regard. He states that folk medicine of the Arabian Bedouin, the borrowing of Galenic concepts and the over-arching principle if divine supernatural causation found favor within the Shi‘i community the same as the Sunnī.³⁵ The main sloe difference between these two traditions could be the high value attached to the importance of the twelve Imams believed to be designated by God to govern the Muslim community and as being in direct contact with God as the Prophet himself for the purpose of guiding community.³⁶ That is why the Shi‘i genre on this topic carries the title *Ṭibb al-a‘imma*. Researchers counted at least thirteen works of this genre bearing this title.³⁷

As for the Sunnī jurists, making use of medicine became obligatory, according a limited number of jurists, only when the effectiveness of medicine was certain and ignoring it would put the patient’s life in danger.³⁸ The majority including the Ḥanafīs and Mālikīs adopted a neutral position and opined that making use of medicine (*tadāwī*) was permissible (*mubāḥ*).³⁹ The rest were divided into two groups. The first group was mainly represented by the Shāfi‘īs, a number of the Ḥanbalīs including al-Qāḍī Abū Ya‘lā b. al-Farrā’ (d.

³¹ Qaradāwī, Yūsuf al-(2006)

³² Sharaf al-Dīn, ‘Alī al-Ṭāhir (2007), p. 261-263.

³³ Rahman, Fazlur (1982), p. 83; Rahman, Fazlur (1989), p. 37, quoting from Naysabūrī, ‘Abd Allāh b. Biṣṭām (1965), pp. 3 & 4; Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. xxvii & xxviii.

³⁴ Rahman, Fazlur (1982), 84.

³⁵ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), p. xvi.

³⁶ Ibid, p. xiii.

³⁷ Rahman, Fazlur (1984), p. 589; Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. xiv, xv, xxxiv-xxxvii.

³⁸ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 283; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 268; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 117.

³⁹ Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 117.

458/1066), Ibn ‘Aqīl (d. 513/1119) and Ibn al-Jawzī (d. 597/1200) and the Zaydī school from the Shī‘a. These all can be categorized as the pro-*tadāwī* group who opined that it was recommended (*mandūb* or *mustaḥabb*) to make use of medicine.⁴⁰ The second group, represented mainly by the majority of the Ḥanbalīs, was not anti-*tadāwī* per se but still believed that practicing *tawakkul* (dependence on God)⁴¹ was better than making use of medicine to heal the diseases.⁴²

This last group, in particular, demands a more detailed presentation because of its direct relevance to current situation. A typical complaint from workers in the health sector and especially in disability-field is that some Muslims at present reject to follow up a medication process for their family-member who has a disability or to send him/her to a rehabilitation center. Justifications advanced by these Muslims revolve always around trust in God (*tawakkul*) who is the real “Healer”.⁴³

The question now is to what extent was this group which saw an eventual contradiction between one’s trust in God and resignation to His will (*tawakkul*) on one hand and seeking medical treatment (*tadāwī*) on the other?

The group remained always a minority among early jurists. This group included the majority of the Ḥanbalīs, Ibn ‘Abd al-Barr and Ibn al-Ḥājj (d. 1336) from the Mālikīs. Although, they did not see harm in making use of medicine, they still opined that having trust in God’s power and mercy is more meritorious.⁴⁴ One can easily sense here a clear influence from Sufism.⁴⁵ For instance, a noted Sufi woman, Rābi‘a al-‘Adawiyya (d. 185/801),⁴⁶ fell sick and when asked to pray God to ease her sufferings [making use of the spiritual medicine], she refused stating that her sickness was God’s will and thus her praying would contradict His will.⁴⁷

However, this standpoint has been refuted by the majority of jurists including a number of noted jurists belonging to the Ḥanbalī School such as Ibn al-Qayyim (d. 751/1350),⁴⁸ al-Dhahabī (d. 1352-3)⁴⁹ and Maṣṣūr al-Buḥutī

⁴⁰ Ibid, vol. 11, p. 117; Murtaḍā, Aḥmad b. Yahyā al- (1), vol. 3, p. 85.

⁴¹ On this term, see Gülen, Fethullah M. (1999), pp. 67-71; Lewisohn L. (2003), vol. X, pp. 376-378.

⁴² Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 117.

⁴³ It is not yet precisely known whether we speak here about a majority or a minority group among Muslims. A Dutch project called “Samen verder in gekleurd Rotterdam (Together in the Colored Rotterdam)” is going to fathom out this phenomenon. The project started in October 2006. For further details on this point, see Ghaly, Mohammed M.I. (2007), pp. 42 & 43.

⁴⁴ Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1), vol. 2, pp. 348 & 349; Ibn al-Ḥājj, Muḥammad b. Muḥammad al-‘Abdarī (1), vol. 4, p. 115; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 14, p. 20.

⁴⁵ Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 274; Ibn Muflīḥ, Ibrāhīm b. Muḥammad (1), vol. 2, p. 348.

⁴⁶ On her see, Smith Margaret & Ch. Pellat (2003), vol. VIII, pp. 354-356.

⁴⁷ Rahman, Fazlur (1989), pp. 48 & 49.

⁴⁸ Ibn al-Qayyim (1) (1998), pp. 9-13.

⁴⁹ Dhahabī, Muḥammad b. Aḥmad b. ‘Uthmān al- (1349/1930), pp. 40 & 41

(d. 1051/1641).⁵⁰ After citing a number of Prophetic traditions encouraging people to make use of medicine, Ibn al-Qayyim comments “These sound Prophetic traditions contain the command to carry out treatment, and this does not negate trust in God (*tawakkul*), any more than does the repelling of hunger, thirst, heat and cold by their opposites. Moreover, the reality of divine unity (*tawḥīd*) is only made complete by direct use of the means which God has appointed as being essential to bring about certain effects, according to the Decree and the religious Law.” Such standpoint holds true for many other jurists some of whom were also known for their Sufi-leanings such as Abū Ḥāmid al-Ghazālī (d. 1111)⁵¹ and Abū al-‘Abbās Qaṣṭalānī (d. 923/1517)⁵² and also for Sufi scholars such as al-Ḥārith al-Muḥāsibī (d. 243/857).⁵³ Fazlur Rahman adds in this regard that most Sufis made use of both types of medicine, physical and spiritual, when they were ill and also advocated it to their followers. It is therefore, he continues, not legitimate to make from the practice of some Sufis of the ascetic type, generalizations for all Sufis.⁵⁴

A third group of jurists preferred a more nuanced approach. They divided medicines on the basis of their effectiveness into certain (*qatʿī*), doubtful (*ẓannī*) and fictitious (*mawḥūm*). They placed most of the known physical medicines in the category of the doubtful. Cauterization (*kayy*) was placed among the doubtful medicines whereas no concrete examples were given for the certain medicines. To them, making use of medicines belonging to the first and the second category does not contradict *tawakkul* whereas it would be the case when using medicines of the third category. Making use of medicines whose effectiveness is certain, jurists add, is obligatory in case of having an illness endangering one’s life.⁵⁵

New developments in pharmaceutical science and strict rules applied before bringing a medicine to the market brought the controversy on the inexactness of medicine to an end and thus no trace of this discussion is encountered by hardly any of the modern jurists. This new situation was also responsible for the considerable change in the tone of modern juristic discussions. First of all, taking medicine was seen obligatory (*wājib*) without conditioning that its efficacy be certain. During its seventh session held in Jeddah in 1992, the Council of the Fiqh Academy,⁵⁶ which includes Sunni as well as Shīʿī scholars, issued a decision no. 7/5/67 concerning medication stating that is a) obligatory

⁵⁰ Buhutī, Maṣṣūf b. Yūnus al- (1402/1982), vol. 2, p. 76.

⁵¹ See Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 283.

⁵² Qaṣṭalānī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 140. On him, see Brockelmann, Carl (2003), vol. IV, p. 736.

⁵³ Ibid, vol. 2, p. 140.

⁵⁴ Rahman, Fazlur (1989), p. 49.

⁵⁵ Ghazālī, Abū Ḥāmid, al- (1), vol. 4, p. 283; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, pp. 267-274.

⁵⁶ This Fiqh Academy whose founding was held in June 1983 is affiliated to the Organization of Islamic Conference. Each Muslim country nominates an expert in Islamic disciplines as its representative. While governments nominate the representatives, once nominated only the Academy can revoke their membership. The academy has currently fifty-seven members. For more information on this academy, see <http://www.fiqhacademy.org.sa/>

(*wājib*) if neglecting it may result in the person's self-destruction, loss of an organ or disability, or if the illness can spread to others as in the case of contagious diseases, b) recommended (*mustaḥabb*) if neglecting it may weaken the body without entailing the consequences mentioned in the first case above, c) permissible (*mubāḥ*) if not covered by the preceding two cases and d) undesirable (*makrūh*) if there is a risk that the action to be taken may provoke complications that are worse than the illness to be removed.⁵⁷

Hence, whether making use of medicine would be contradictory to *tawakkul* is not an issue anymore among modern jurists.⁵⁸ Some of them even condemn those who abstain from medication claiming that they prefer to practice trust in God. 'Umar Sulayman al-Ashqar (University of Jordan) describes such standpoint as one of the great drawbacks which befell the Muslim mentality.⁵⁹

In the light of the aforementioned presentation and the clear curve in juristic opinions concerning medication, one can easily read the standpoints of some Muslims refusing to make use of some or all medical facilities. These practices, in most cases if not all of them, are traces of early opinions favoring *tawakkul* over *tadāwī*. However, patients of this time or their families are unaware that such earlier discussions were advanced by a minority of jurists and after all took place in a specific context which has no relevance anymore in the present time. Explaining this issue to such patients can make a considerable change in their behavior.⁶⁰

6.1.1 Preventive Measures

According to Ibn al-Qayyim (d. 751/1350), one of the main deficiencies of physical medicines is that they are therapeutic rather than preventive. On the other hand, "divine medicine can either prevent the occurrence of these causes or work to ward off the full force of their effect."⁶¹ This could have been the case at the time of Ibn al-Qayyim but it is surely not the case anymore. One of the main targets of physical medicine now is preventing the occurrence of disease or disability to the extent that a specific branch of medicine called preventive medicine (*tibb wiqā'ī*) has been developed a long time ago.⁶²

Preventive measures whose main aim is to prevent the occurrence of disability will be presented in three chronologically-ordered levels, namely consanguineous marriage between the parents to-be, during pregnancy by aborting the disabled fetus and after birth by means of vaccination.

6.1.1.1 Consanguineous Marriage

The term generally used by Muslim jurists in this regard is *nikāḥ* or *zawāj* (marriage) *al-qarāba* (lit. kinship). This term can be translated as close-kin

⁵⁷ Ibn al-Khodja, Mohamed Habib (ed.) (2000), pp. 139 & 140.

⁵⁸ See Munajjid, Muḥammad Ṣāliḥ al- (2001); Ashqar, 'Umar Sulaymān al- (2003); Qaradāghī, 'Alī al- (2004); Qaradāghī, 'Alī al- (1426/2005), pp. 299-302.

⁵⁹ Ashqar, 'Umar Sulaymān al- (2003).

⁶⁰ See Ghaly, Mohammed M.I. (2007), pp. 42 & 43.

⁶¹ Ibn al-Qayyim (I) (1998), p. 137.

⁶² See for instance, Rohé, George H. (1885).

marriage, intra-familial marriage and, which is the most commonly used term, consanguineous marriage. In anthropological studies, consanguineous marriage is defined as “the marriage in which the two partners have at least one ancestor in common, with the ancestor being no more distant than a great-great grandparent.”⁶³ In clinical genetics, it is “a union between a couple related as first cousins or closer.”⁶⁴ As we shall see below, both the anthropological definition which broadened the scope of consanguineous marriage and the medical definition which narrowed it are to be found in the juristic discussions.

The prevalence of close-kin marriage exceeds 50% in many of the Muslim countries of the Middle East and Pakistan.⁶⁵ Records show that this type of marriage is also common among migrant communities including Muslim migrants in Western Europe, North America and Australia.⁶⁶ Religion exerts a major influence in this regard. However, medical researchers complain an ambiguity concerning attitudes towards this marriage within Islam.⁶⁷ In a bid to clarify this ambiguity, a survey of early and modern juristic discussions will be elaborated. Before this, a short presentation of medical standpoints is in order.

The first question to be raised here: is consanguineous marriage, medically speaking, dangerous for the health of the prospective children? As early as 1902, scientific researchers made references to such marriages and specifically cautioned against unjustified speculation into the overall health status of first cousin progeny.⁶⁸ However, the first comprehensive investigations into the effects of inbreeding in human populations commenced in the late 1940s, with the classic studies of Neel and Schull into the outcomes of cousin marriage in Hiroshima and Nagasaki, Japan.⁶⁹ Since then and hitherto, many scientific voices ensured a relationship between consanguinity and specific physical defects and behavioral and psychiatric disorders that have been diagnosed in consanguineous unions.⁷⁰ Different studies and experiments show that disabilities among the progeny of such marriages would include the loss of hearing, blindness and mental retardation.⁷¹ However, such results are still far from certain because the majority of these studies did not check potentially important non-genetic variables.⁷²

As for the Islamic perspective, we see that the Qur’ān states clearly that specific family-members are not allowed to marry with each other, “Prohibited to you (For marriage) are: Your mothers, daughters, sisters; father’s sisters,

⁶³ Givens, Benjamin P. & Charles Hirschman (1994), p. 821.

⁶⁴ Bittles, A.H. (2001), p. 89.

⁶⁵ Ibid, p. 90. For case-studies, see Hoodfar E. & A.S. Teebi (1996), pp. 212–215; Teebi A.S. & T.I. Farag (1997); Nelson J. et al (1997), pp. 142–146.

⁶⁶ Bittles, A.H. (2001), p. 93.

⁶⁷ Ibid, p. 90

⁶⁸ Garrod, A. (1902), quoted by Bittles, A.H. (2001), p. 92.

⁶⁹ See for instance, Neel, J.V. (1958) & Schull, W.J. (1958), quoted by Bittles, A.H. (2001), p. 92.

⁷⁰ Bittles, A.H. (2001), p. 89.

⁷¹ Idrissi I. al- et al (1992), pp. 9–12; Elder, M.J. & R. De Cock (1993), pp. 580–583; Rahi, J.S. et al (1995), pp. 545–550; Sundstrom, R.A. et al (1999), pp. 123–129; Rogers, N.K. et al (1999), pp. 65–70; Willems, P.J. (2000), pp. 1101–1109; Bittles, A.H. (2001), p. 93.

⁷² Bittles, A.H. (2001), p. 92.

Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in, – no prohibition if ye have not gone in; (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time" (Qur'ān 4:23).

Beyond this unlawful circle, a Muslim can in principle marry with other blood-relatives within the family. In clear reference to the permissibility of first cousin marriage, the Qur'ān says, "O Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers; and those whom thy right hand possesses out of the prisoners of war whom Allah has assigned to thee; and daughters of thy paternal uncles and aunts, and daughters of thy maternal uncles and aunts, who migrated (from Mecca) with thee" (Qur'ān 33:50).

However, Muslim jurists from the early times up to the present time are not in agreement whether consanguineous marriage is reprehensible (*makrūh*) or remains just permissible (*mubāh*). A group of jurists, including the Shāfi'īs, Ḥanbalīs and Zaydīs, prefers that one would marry with a distant relative or a non-relative rather than with a close relative because the prospective child will be physical and mentally healthier.⁷³ As for physical health, it is related that the second Caliph 'Umar b. al-Khaṭṭāb (r. 13/634-23/644) advised an Arab tribe known for marrying with their close relatives to marry with people from outside the tribe to avoid feebleness in their prospective offspring.⁷⁴ Concerning mental health, al-Shāfi'ī is reported to have opined that marrying from one's own *'ashīra* would come up with an idiot child (*aḥmaq*).⁷⁵ One of the evidences used by this group is a tradition attributed to the Prophet saying, "Marry with the non-relatives so that [the offspring of] you do not get feeble". However, most scholars declared this tradition as unauthentic.⁷⁶ Muḥammad 'Uthmān Shubīr (lecturer of Islamic jurisprudence at Jordan University) is one of the modern jurists who advocate this opinion basing his argument on the medical dangers of such a marriage as stated by physicians.⁷⁷ On the other hand, the late well-known Saudi scholar Ibn Sāliḥ al-'Uthaymīn (d. 2001)⁷⁸ is one of the modern jurists who objected to the aforementioned opinion. In a response to a question saying, "is it true that consanguineous marriage would come up with malformed or disabled children, as physicians say?" Ibn 'Uthaymīn stated that what the questioner heard from the physician is not

⁷³ Māwardī, Ibn Ḥabīb al- (I), pp. 159 & 160 Bujayramī, Sulaymān b. Muḥammad al- (1415/1995), vol. 3, p. 363; Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 7, p. 83; Murtaḍā, Aḥmad b. Yaḥyā al- (I), vol. 4, p. 84; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 24, pp. 61 & 62.

⁷⁴ 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1384/1964), vol. 3, p. 146.

⁷⁵ Bujayramī, Sulaymān b. Muḥammad al- (1415/1995), vol. 3, p. 363.

⁷⁶ 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1384/1964), vol. 3, p. 146; Ṣidqī, Muḥammad Tawfiq (1333/1915), vol. 18, issue 4, pp. 303, note 1.

⁷⁷ Shubīr, Muḥammad 'Uthmān (I) (1421/2001), vol. 1, pp. 337 & 338.

⁷⁸ On him, see <http://www.ibnothaimeen.com/all/ShaiKh.shtml>

true,⁷⁹ adding “the issue is in the hands of God besides that malformation has other reasons.” He opined also the incorrectness of jurists who disfavored consanguineous marriage. According to him, the main factor in selecting the partner is religion and ethics. Additionally, Ibn ‘Uthaymīn confirms, a lot of people who married with their cousins found nothing except goodness such as ‘Alī b. Abī Ṭālib who married with the daughter of his cousin, Fāṭima, the daughter of the Messenger of God – peace and blessings be upon him.⁸⁰

A pre-marriage medical check-up for both spouses is one of the measures suggested by modern Muslim scholars to avoid the possible contamination of genetic, hereditary or contagious diseases whether to one of the spouses or to the prospective children. To my knowledge, the Saudi Mufti, Ibn Bāz (d. 1999) was the only, or at least one of the very few, opponent of conducting such check-up. In a question saying, “I wish to marry my cousin. Some friends advised me to make a medical check-up before marriage to investigate the hereditary genetics. Would this be interference in God’s predestination (*qaḍā’ wa qadar*) and what is the religious ruling of conducting such a medical check-up?” Ibn Bāz answered, “There is no need to do such a check-up. You both should just expect the best of God as He says ‘I am as My servant thinks of Me’ as narrated by His Prophet – peace and blessings be upon him.”⁸¹ This measure remains, however, the viewpoint of the majority of the modern jurists and represents a midway solution because it will also achieve a higher degree of certainty whether the to-be contracted consanguineous marriage would cause disabilities or other health dangers for the expected progeny.⁸²

The question that remains is whether the state authorities would be allowed to impose such pre-marriage medical check-up upon the spouses and consider it one of the obligatory measures to conclude marriage. Modern jurists are divided in this respect into two groups, one advocating this measure and the other opposing it.⁸³

In case of not conducting such medical check-up while one of the spouses came to know that the other spouse is a carrier of a genetic disorder, would it be a sufficient reason to bring this marriage to an end? Fatwas recommend that

⁷⁹ The same opinion is also shared by another Saudi Mufti, Ṣāliḥ al-Fawzān, who says that the scientist’s claim of attributing congenital disorders to consanguineous marriage is false, see ‘Ulamā’ al-Hijāz wa al-Lajna al-Dā’ima li al-Buḥūth al-‘Ilmiyya wa al-Iftā’ (2004), pp. 96 & 97, quoted by Rispler-Chaim, Vardit (2007), p. 145, note 426.

⁸⁰ Shāyī, ‘Abd al-Ilāh b. ‘Uthmān b. ‘Abd Allāh (1418/1997), vol. 1, pp. 21 & 22. A full translation of the fatwa is available in Rispler-Chaim, Vardit (2007), p. 97. However, I have used my own translation believing that it is closer to the Arabic text. See also *Zawāj al-aqārib bayn al-tibb wa al-fiqh* (2006).

⁸¹ ‘Ārif, ‘Alī ‘Ārif (1421/2001), vol. 2, p. 684, note, 4.

⁸² See for instance, the resolution of the council of the Islamic Fiqh Academy, no. 82/13/08, Ibn al-Khodja, Mohamed Habib (ed.) (2000), p.183; the resolution of the European Council for Fatwa and Research no. 14/2, *Scientific Review of the European Council for Fatwa and Research*, July 2005, vol. 7, pp. 413 & 414; Shubīr, Muḥammad ‘Uthmān (1) (1421/2001), vol. 1, p. 338; *Zawāj al-aqārib bayn al-tibb wa al-fiqh* (2006).

⁸³ Shubīr, Muḥammad ‘Uthmān (1) (1421/2001), vol. 1, p. 336; ‘Ārif, ‘Alī ‘Ārif (1421/2001), vol. 2, pp. 794 & 795; *Al-Faḥṣ al-tibbī qabl al-zawāj bayn al-man’ wa al-jawāz, al-* (2006).

marriage continues as long as carrying such genetic disorder does not hinder a safe practice of sexual intercourse. As an alternative, the spouses can resort to contraceptives in order to prevent the birth of malformed children.⁸⁴ Some muftis spoke even of a possible sterilization or a temporary form of it.⁸⁵ In case the carrier of the genetic disorder intentionally deceived the other spouse, he/she would have the right to ask for ending up the marriage.⁸⁶ It is to be noted that this case is applicable to consanguineous and non-consanguineous marriages.

6.1.1.2 Abortion of the Disabled Fetus

Broadly speaking, abortion may be spontaneous (known in juristic terms as *saqt*, *ilqāʿ*, *ṭarḥ* and *imlās*⁸⁷), e.g. an unplanned occurrence due to some physiological event) or deliberate (*ijhād*), pre-meditated intervention intended to end the life of the fetus. When it is spontaneous, a miscarriage is interpreted as the will of God and no blame is attributed to any individual.⁸⁸ As for deliberate abortion, discussions of Muslim jurists elaborated frequently the rulings pertaining to this practice.

Early jurists were in agreement that abortion is forbidden after 120 days of pregnancy because it means that ensoulment (*naḥkh al-rūḥ*) already took place.⁸⁹ As for abortion before 120 days, various opinions have been expressed which can be summed up into three or four main contentions, viz., unconditionally permissible, permissible in case of having an excuse (*ʿudhr*), generally reprehensible and forbidden.⁹⁰ Each opinion mentioned above has its own advocates among modern Muslim jurists.⁹¹

Speaking about an excuse for aborting the fetus, some jurists thought of poverty of both parents which will not allow them to afford necessary milk or food for their prospective child. They also thought of medical excuses such as an illness of the mother causing her to take up a medicine eventually leading to the abortion.

Modern scientific advances produced a new case not encountered by the early jurists, namely the case of the disabled fetus. Prenatal screening and other scientific advances made it possible to identify genetic disorders in the fetus while still in the womb. Some of them can be cured in the womb. For those that are incurable, the parents can choose either to let the fetus complete its

⁸⁴ Shubīr, Muḥammad ʿUthmān (1) (1421/2001), vol. 1, pp. 338 & 339; ʿĀrif, ʿAlī ʿĀrif (1421/2001), vol. 2, pp. 786-788; *Al-Liwāʾ al-islāmī*, 8 March 1990, p. 6, quoted by Rispler-Chaim, Vardit (1999), p. 136

⁸⁵ Rispler-Chaim, Vardit (1999), p. 136.

⁸⁶ Rispler-Chaim, Vardit (2007), p. 60.

⁸⁷ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 56.

⁸⁸ Kyriakides-Yeldham, Anthony (2005), p. 2965; Rispler-Chaim, Vardit (1993), p. 7.

⁸⁹ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 2, p. 57.

⁹⁰ Ibid, vol. 2, p. 58.

⁹¹ See for instance, Rispler-Chaim, Vardit (1993), pp. 7-16; ʿĀrif, ʿAlī ʿĀrif (1421/2001), vol. 2, pp. 791 & 792.

term and be born, or to abort it. Is it permissible for the parents to abort this disabled fetus as a preventive measure against getting a disabled child?

Although they may not have said something direct on this issue, one can predict the probable opinions of some jurists in specific cases. For instance, before 120 days, it would be permissible for those who said it is unconditionally permissible, reprehensible for those who opine that abortion is generally reprehensible and forbidden for those who forbid abortion in every case. The same holds true for those who contend that abortion after 120 days is forbidden in all cases. However, it is unfeasible to predict the probable opinion of those early jurists who permitted abortion in case of having an excuse. Would having a disabled fetus be a sufficient excuse to terminate pregnancy? In this case we have to resort to the modern jurists who had to encounter this new situation.

Two main factors played a central role in formulating the fatwas issued in this regard, namely, the duration of pregnancy and the seriousness of the defect or disorder that such prospective child is going to suffer. The majority keeps the two factors in view and thus permits abortion in case of extreme and incurable disorders as long as it would take place before 120 days⁹² and according to some not before forty days.⁹³ Although “severity of disorders” remains in principle vague and at best subjective and relative,⁹⁴ specific disorders are explicitly excluded from the acceptable excuses such as blindness and deafness.⁹⁵ The rationale for this generally anti-abortion attitude as provided by Muslim jurists can be summed up in the following points. First, every human being is God’s creation and no one may “play God” and decide of the termination of another human’s life. Second, happiness and the quality of life are subjective terms and no one can speak for the others’ life.⁹⁶ Maḥmūd Shaltūt said, “Who knows whether the retarded child or Down syndrome child is unhappy as he is? It is often the projection of the healthy on the life of the handicapped, but this is not necessarily true.”⁹⁷ As for blindness, deafness and the like, al-Qaraḍāwī states that many people have been living with such disabilities throughout human history and such disabilities did not hinder them from participating actively in life.⁹⁸

⁹² Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, pp. 584 & 549; Rispler-Chaim, Vardit (1993), pp. 14 & 15; Rispler-Chaim, Vardit (1999), pp. 134-136; ‘Ārif, ‘Alī ‘Ārif (1421/2001), vol. 2, p. 790; the resolution of the European Council for Fatwa and Research no. 10/4, *Scientific Review of the European Council for Fatwa and Research*, June 2003, vol. 3, p.362; Rispler-Chaim, Vardit (2007), p. 59.

⁹³ Rispler-Chaim, Vardit (1999), pp. 134 & 135, quoting from Zallūm, ‘Abd al-Qaḍīm (1997); Ebrahīm, Abul Fadl Mohsin (1986), p. 187.

⁹⁴ Rispler-Chaim, Vardit (1999), pp. 135 & 136.

⁹⁵ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 549.

⁹⁶ Rispler-Chaim, Vardit (2007), p. 59.

⁹⁷ Rispler-Chaim, Vardit (1999), p. 136, quoting from Shaltūt, Maḥmūd (1966), pp. 293-297.

⁹⁸ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 549

6.1.1.3 Vaccination

According to the World Health Organization (WHO), the two public health interventions that have had the greatest impact on the world's health are clean water and vaccines.⁹⁹ One of the main benefits of vaccines, especially with relevance to disability, is combating poliomyelitis.¹⁰⁰

Despite the great benefits of vaccines as a preventive medicine against many fatal diseases and disabilities, they were not without protesters usually termed as “antivaccinationists” belonging to a movement known as “antivaccinationism”. A vociferous antivaccination movement emerged as early as in the 1830s, after an initial generation had been vaccinated and the incidence of smallpox had declined markedly in the United States and Europe.¹⁰¹ Sometimes antivaccinationists were protesting what they considered the intrusion of their privacy and bodily integrity. Many working-class Britons, for example, viewed compulsory vaccination laws, passed in 1821, as a direct government assault on their communities by the ruling class.¹⁰² In addition, by the mid-eighteenth century the rise of irregular medicine and unabashed quackery encouraged antivaccinationism. In addition, antivivisectionists, who abhorred animal experimentation, sometimes joined forces with antivaccinationists.¹⁰³ While nineteenth-century fears of vaccination might have been based on anecdotal horror stories of other infections, the statistical risks of vaccine-induced infection of that era would not be medically acceptable today. Until quite recently, historical studies frequently depicted all antivaccinationists as irrational and antiscientific. Commenting on this, Alexandra Stern & Howard Markel (University of Michigan), say “This characterization was misguided. If we interpret antivaccinationists on their own terms and by applying historical context, we can see that many behaved as rational actors who were weighing the pros and cons of inoculation.”¹⁰⁴ Some of the critics were raised because of a putative link between vaccination and neurological problems. In the past decade in particular, parents and their watchdog groups have raised important questions about the purported link between a noticeable rise in autism and the preservative thimerosal (previously used in diphtheria, tetanus, pertussis, *Haemo-philus influenzae* type b, or Hib, and hepatitis B vaccines). The series of scientific studies which have demonstrated that there is no causal connection between thimerosal and autism could not always manage to eliminate the people's fears especially because such claims were sometimes sensationalized by

⁹⁹ www.who.int/gpv-dvacc/history/history.htm

¹⁰⁰ National Immunization Program, the, Centers for Disease Control and Prevention (2007), p. 101.

¹⁰¹ Kaufman, M. (1967), pp. 463-478, quoted by Stern, Alexandra Minna & Howard Markel (2005), p. 617.

¹⁰² Durbach, N. (2000), pp. 45-62, quoted by Stern, Alexandra Minna & Howard Markel (2005), p. 617.

¹⁰³ Stern, Alexandra Minna & Howard Markel (2005), p. 617.

¹⁰⁴ Ibid.

the media. Not surprisingly, the suggestion that vaccinating one's child might lead to developmental disorders has fostered unease among many parents.¹⁰⁵

At any rate, some of the protests against vaccines had also religious dimension¹⁰⁶ and this was the case with some questions directed to Muslim jurists asking for fatwas. A clear example in this regard is a fatwa issued by Yūsuf al-Qaradāwī on March 15, 2004 in response to the following question posed from Nigeria, "What is the Islamic point of view regarding vaccinating children against specific diseases? Scholars of Kano in northern Nigeria issued a fatwa to the effect that it is not lawful to vaccinate their children against polio. According to them, the vaccine contains chemicals and hormones that may cause women to be infertile or impure elements that should not enter the body. People of Kano abode by the fatwa and this resulted in the spread of polio among the children of the state. About 335 children have become paralyzed by polio. Moreover, travelers have carried the poliovirus to eight other Muslim countries. What is your point of view on this?"

Al-Qaradāwī expressed his astonishment because of the antivaccinationist attitude adopted by the scholars of Kano. He unequivocally disapproved their opinion, for the lawfulness of such vaccine in the point of view of Islam is as clear as sun light. However, he still understood the motives and good will behind their attitude, and thus beseeches God to reward them for their good will and to forgive their mistakes in that regard. Keeping in mind the importance of this issue, al-Qaradāwī consulted 12 noted Muslim scholars affiliated to the Council of the Islamic Fiqh Academy as members and experts. They came up with five main conclusions. First, it is a duty upon every Muslim to ward off harm as much as he can. One's body is a trust from Allah Almighty in one's hand, and thus it is not lawful for one to cause it harm. They quoted Qur'anic verses and incidents taking place during the lifetime of the Prophet in support of this point. Second, parents are responsible for providing their children as much as they can with all means of protection and immunity against harm and diseases in order to save them life-long suffering. If there is a certain vaccine that can prevent such a disease altogether, parents are to seek to give it to their children. If parents neglected their duty in that regard, they would incur upon themselves the sin of causing their children life-long ill health. Third, people in authority in every country are to enact laws and take actions, by means of which the health of people in general, and children in particular, is to be protected against diseases. This does not only include providing treatments for diseases, but also affording means of prevention against them. If people in authority order that a certain vaccine be given to children all over the country, people are to abide by this, for it is a duty upon them to obey rulers as long as this is done in the framework of following what is right. Fourth, things are primarily in a state of purity and thus permissible to make use of. Hence, one cannot refer to something as impure unless there is clear evidence of this. Likewise, one cannot give a ruling to the effect that something is unlawful

¹⁰⁵ Ibid, pp. 617 & 618.

¹⁰⁶ Ibid, p. 617.

unless there is a certain proof in that regard. As for the polio vaccine, there is no sign that it includes impure elements or causes infertility, and hence, it cannot be described as unlawful to use. Furthermore, experts in the field of vaccines affiliated to the branch of the World Health Organization (WHO) in Egypt were consulted. Their answer was that the polio vaccine is not harmful in any way, nor does it include impure elements or cause infertility. On the contrary, the experts added, it is proved by experiment to be highly effective in protecting against polio. Fifth, the polio vaccine has been used for a long time all over the world, including more than fifty Muslim countries, and has proved to be highly effective in eradicating the disease. No outstanding scholar, whether from Al-Azhar University (Egypt), Al-Qarawiyyīn University (Morocco), or in the Sacred Shrines (Saudi Arabia), has been reported to have objected to the use of such vaccine.

Insisting on their attitude regarding polio vaccine, the Muftis added, those scholars of Kano will commit two mistakes. First, they will incur upon themselves the sin of exposing children to great harm and suffering. Second, they distort the image of Islam and make it appear as if it contradicts science and medical progress. Islam is completely innocent of such distorted images. On the contrary, it calls for adopting healthy methods and seeking medical treatment when needed. Finally, a call is made to those scholars in Kano to review their attitude and recant the fatwa they have given without consulting specialists or even mediating sufficiently. Should the scholars of Kano refuse to follow the advice of their fellow scholars, then people of Kano are called to vaccinate their children against polio according to the fatwa of the majority of Muslim scholars in that regard.¹⁰⁷

6.1.2 Therapeutic Measures

Disability because of the loss of one of the limbs or parts of the body for one reason or another is theoretically still curable in two main ways; by replanting the amputated organ itself or transplanting a similar organ from another source, being a human being, an animal or an artificial material. Replanting amputated limbs such as the ear and the nose was a subject of discussion among Muslim jurists since the second/eight century.¹⁰⁸ However, organ transplantation is much more recent phenomenon and thus started to preoccupy the minds of jurists since the 1950s.¹⁰⁹ A third possible way which up to the moment remains theoretical is therapeutic cloning.

6.1.2.1 Replanting

Replanting, or according to the juristic terminology rejoining (*i'ādat waṣl*) an amputated limb is almost an ignored topic by modern researchers in the field of medical ethics in Islam. This may be related to the belief that replanting an

¹⁰⁷ For a full text of the fatwa in Arabic with a list of the names of the twelve scholars who signed it, see Qarāḍāwī, Yūsuf al- (2007). For an English translation, see Qarāḍāwī, Yūsuf al- (2006).

¹⁰⁸ Ashqar, 'Umar Sulaymān al- (1421/2001), vol. 1, p. 246.

¹⁰⁹ Rispler-Chaim, Vardit (1993), p. 28.

amputated limb to the same person would not raise any juristic problems among the jurists. However, this is not the case as we shall see below.

Historical reports indicate that simple forms of replanting specific parts of the body such as teeth and skin took place centuries ago.¹¹⁰ In modern time, with advances in microsurgical techniques, severe injuries and amputation of limbs do not necessarily have to lead to the loss of a limb. In hand surgery, reimplantation of totally or partially amputated fingers is well-established. Since the first successful reimplantations of hands in the early 1960s, reimplantation of entire limbs has become more common.¹¹¹

Relevant references to this issue in early juristic sources indicate that they were not discussing a hypothetical issue but rather a realistic matter they knew to exist in society. Such discussions indicate the feasibility of replanting three parts only, viz., ear, nose and the tooth.¹¹² A clear distinction is made by the jurists between what was amputated as a corporal punishment (*ḥadd*) or just retaliation (*qisās*) and what was amputated for other reasons such as accidents. As for the first type of amputated limbs or organs, a short note on corporal punishment and just retaliation is in order. As used in the Islamic legal sense, the word *ḥadd* (pl. *ḥudūd*), means a punishment which has been prescribed in the revealed text of the Qurʾān or the Sunna, the application of which is “the right of God” (*ḥaqq Allāh*). In the Islamic penal system, two main offences are to be punished by amputating specific limbs of the body. In case of theft, it is the hand and in case of high or armed robbery (*ḥirāba* or *qaṭʿ al-ṭariq*), it is cutting off the hand and foot on the opposite sides (the right hand and the left foot or vice versa).¹¹³ On the other hand, just retaliation (*qisās*) is divided into two categories, *qisās* for homicide (*ḥī al-nafs*) and *qisās* for wounds or injuries (*ḥimā dūna al-nafs*). The second category would imply the right of the victim to choose between retaliating equally the offender who cut the victim’s limb or accepting ransom-money (*diya*) when three main conditions are fulfilled, 1) the injury must be deliberate and not accidental, 2) the part of the body on which *qisās* may be inflicted must be the same, and in the same condition as the part of the victim’s body and 3) *qisās* must be practicable to inflict. If any of these conditions cannot be met, *qisās* must be exempted as a possible punishment and the victim will be entitled to ransom or blood-money (*diya*) only.¹¹⁴

Two main questions are to be raised in this regard. The first; would replanting the victim’s amputated organ, in case of just retaliation, be a sufficient legal ground to remit the amputation of the offender’s organ as a punishment? The second; is it permissible for the culprit to replant the amputated limb or organ in case this was done as a corporal punishment or just retaliation?

¹¹⁰ Ashqar, ‘Umar Sulaymān al- (1421/2001), pp. 247 & 248.

¹¹¹ Daigeler A., et al (2003), p. 554. For a general historical overview, see Tamai, S. (1982) pp. 549-56; Chen Z. & H. Yu (1987) pp. 15-23; Swanson, A.B. et al (1987), pp. 896-926.

¹¹² Ashqar, ‘Umar Sulaymān al- (1421/2001), p. 277.

¹¹³ For further details, see Awa, Mohamed S. el- (1982), pp. 1-12.

¹¹⁴ Ibid, pp. 73 & 74.

As for the first question, jurists advanced three different answers. The first group including the majority of the Shāfi'īs, the Mālikīs, and a number of the Ḥanbalī jurists stated that such a practice from the side of the victim does not remit the offender's punishment. Their main argument is that the main cause of the punishment is cutting off the organ of the victim and this took place at any rate. The second group, advocated by mainly a number of the Ḥanbalī jurists and recently by 'Umar Sulaymān al-Ashqar (lecturer of Islamic jurisprudence, Jordan University), opined that rejoining the victim's organ would remit the culprit's punishment, who, however, remains obliged to pay a ransom (*diya*). The main argument here is that replanting the victim's amputated organ means that his/her state of amputation is of a temporary nature whereas the offender's amputation may remain forever and this is counter to justice. That is why they say that in case the rejoined or replanted organ of the victim would fall off again, the offender will remain entitled to just retaliation. The main proponent of the third group is the Mālikī jurist Ashhab b. 'Abd al-'Azīz (d. 204/819) contended that such practice from the side of the victim would remit his right for both just retaliation and ransom at the same time.¹¹⁵

In response to the second question, modern jurists are divided into three main groups. The first group answered in the affirmative and opined that the offender is permitted to replant the amputated organ because there is nothing in the Islamic Shari'a which indicates otherwise. The purpose of the legislator, they explain, is the amputation only, even if it is provisional, and not the continuation of this amputation. The second group says it is permissible in specific cases and prohibited in other cases. In case of a just retaliation, the culprit would be allowed to replant or rejoin the amputated organ only if the victim would allow this. In case of a corporal punishment proven by the offender's confession or proven by testimony which the offender declared his repentance (*tawba*), the offender will also be allowed to replant the amputated organ. The third group answered the aforementioned question in the negative and stated that such an offender is not allowed to replant the amputated organ in any case. The purpose of the legislator, they add, is the continuation of the amputation; otherwise other means of causing pain would have been chosen such as just injuring. This opinion is also supported by the resolution no. 136 of the Council of Supreme Scholars in the Kingdom of Saudi Arabia issued in 1407/1986 which handled the case of corporal punishment and the resolution no. 60/09/06 by the Council of the Fiqh Academy in Jedda issued in 1990.¹¹⁶ For the advocates of this opinion, another question would rise; what if the offender managed to rejoin or replant the organ amputated as a corporal punishment or just retaliation? The majority of the early jurists including the Hanafīs, the Shāfi'īs and a group of the Ḥanbalīs, said that the offender cannot be forced to amputate it again because in this case the offender's organ will be amputated twice and this is a double punishment for one crime which is not in

¹¹⁵ *Majallat majma' al-fiqh al-islāmī* (1410/1990), vol. 6, issue 3, pp. 2182-2188; Ashqar, 'Umar Sulaymān al- (1421/2001), pp. 276-274.

¹¹⁶ Ashqar, 'Umar Sulaymān al- (1421/2001), pp. 277-279.

line with justice. This opinion is also advocated by a number of modern jurists such as ‘Umar Sulaymān al-Ashqar and the well-known Pakistani scholar Muḥammad Taqīyy al-‘Uthmānī (1943-).¹¹⁷

As for organs amputated for reasons other than corporal punishment or just retaliation, an introductory remark is indispensable in order to understand the opinions of early jurists in this regard. The starting point adopted by early jurists, with very few exceptions, was that an organ disconnected or separated from the body is regarded as part of a corpse (*mayyit*). Core question, which busied the minds of early jurists and upon which they adopted their standpoints towards replanting or rejoining the amputated organs, was whether the corpse of a human being is pure or impure? Hence, the main issue here is with relevance to purity (*tahāra*) and impurity (*najāsa*).

Three main opinions can be traced among the early jurists. The first is the unconditional permissibility of rejoining or replanting the organ cut off from a human body. This permissibility is based on the contention that this amputated organ is pure (*tāhir*). This is the authoritative opinion within the Mālikīs, the Shāfi‘īs, the Ḥanbalīs and a number of the Ḥanafīs. The second opinion, attributed to al-Shāfi‘ī, Aḥmad b. Ḥanbal and a number of the Ḥanafī and Mālikī jurists, prohibits totally replanting the amputated organs. They base their contention on the argument that the amputated organ is dead and thus impure (*najis*). They added that, in case such an organ is replanted, then the person considered is not allowed to pray with it. The third opinion, which is the authoritative contention among the Ḥanafīs, makes a distinction between the organs with blood therein such as hand, leg and nose and the organs with no blood therein such as teeth. They prohibited rejoining the first type of organs because of their impurity and permitted the second type because of their purity.¹¹⁸ For modern jurists, the purity/impurity controversy of amputated organs came to an end. Recent medical research proved that organs do not die immediately upon being amputated but continue living for a couple of hours thereafter, even after declaring a person dead, and that is why replanting or transplanting these organs becomes possible. Basing their contention on these medical findings, modern jurists opine that replanting such organs is permissible.¹¹⁹ It is noteworthy in this regard that a small number of early jurists already adopted the same standpoint, stating that the possibility of rejoining an amputated organ indicates that it is still alive and thus the purity/impurity issue has no relevance.¹²⁰ In its resolution no. 26 (1/4), the Council of the Fiqh Academy stipulated that the benefits accruing from this operation outweighs the harmful effects caused thereby and that its purpose is to replace a lost

¹¹⁷ *Majallat majma‘ al-fiqh al-islāmī* (1410/1990), vol. 6, issue 3, pp. 2188-2191 & 2216-2220; Ashqar, ‘Umar Sulaymān al- (1421/2001), pp. 297-299.

¹¹⁸ *Majallat majma‘ al-fiqh al-islāmī* (1410/1990), vol. 6, issue 3, pp. 2192-2197; Ashqar, ‘Umar Sulaymān al- (1421/2001), pp. 254-266.

¹¹⁹ Ashqar, ‘Umar Sulaymān al- (1421/2001), p. 265.

¹²⁰ Ibn Nujaym, Zayn al-Dīn b. Ibrāhīm (I), vol. 1, p. 115; Ibn ‘Ābidīn, Muḥammad Amīn b. ‘Umar (1412/1992), vol. 1, p. 207

organ, reshape it, restore its function, correct a defect or remove a malformation which is source of mental anguish or physical pain.¹²¹

6.1.2.2 Transplanting

Available Islamic literature does not provide us with any indication that organ transplantation took place during the lifetime of the Prophet. However, early juristic discussions have some implications used as starting points by modern jurists. Using a tooth of a dead person or of an animal in place of a broken tooth and joining fractured bones with the use of animals' bones serve as examples in this regard. Such opinions were used for instance by the late grand imam of al-Azhar, Shaykh Jād al-Haqq (1917-1996)¹²² in his fatwa no. 3372 on organ transplantation issued on 05/12/1979.¹²³ Besides these early references which escaped the attention of modern researchers,¹²⁴ modern jurists used deductive reasoning, drawing on general principles and ethical concepts applied in all fields of life.¹²⁵ With the exception of the well-known Egyptian scholar, shaykh Muḥammad Mutwallī al-Sha'rawī (1911-1988) who opted for a total prohibition and the fatwa issued in 1974 in Singapore by the highest Islamic authority of the Muslim minority which also prohibited the donation of kidneys which in 1987 was revised and declared the permissibility, a consensus among modern Muslim jurists is said to exist on the permissibility of organ transplanting from one human being to another. Moreover, some scholars spoke not only of permissibility but of a recommended act or form of charity which brings one closer to God.¹²⁶

However, this permission is not unconditional. For instance, modern jurists are unanimous on the condition that no compensation is allowed for the donated organs because the human body is viewed as a trust (*amāna*) from God rather than as one's own property. Thus no sale can legally take place if the property is not fully owned. According to some jurists, it is permitted to make a gift or contribution to the donors of the organ but some of them stipulated that the gift should not be equal to the value of the organ.¹²⁷

Quoting from Islam Ghanem (PhD in Law, London), Vardit Rispler-Chaim (Haifa University) says, "Ibn Qudāma in the 14th century allowed the sale of an organ of a living person."¹²⁸ First of all Ibn Qudāma (541/1147-620/1223) lived in the 12th and 13th rather than the 14th century.¹²⁹ Checking the

¹²¹ Ibn al-Khodja, Mohamed Habib (ed.) (2000), p. 53.

¹²² On him, see Jād al-Haqq, 'Alī Jād al-Haqq (2005), vol. 1, pp. 5 & 6.

¹²³ Ibid, pp. 242-257; Jād al-Haqq, 'Alī Jād al-Haqq (1) (1979).

¹²⁴ See for instance, Kyriakides-Yeldham, Anthony (2005), p. 221; Rispler-Chaim, Vardit (1993), p. 28.

¹²⁵ For an elaboration of these ethical concepts, see Rispler-Chaim, Vardit (1993), p. 28.

¹²⁶ Kyriakides-Yeldham, Anthony (2005) pp. 220 & 221; Wiegers, Gerard (2002), p. 218; Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 530-533; Rispler-Chaim, Vardit (1993), pp. 28, 37 & 38.

¹²⁷ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, pp. 534 & 535; Rispler-Chaim, Vardit (1993), pp. 38 & 39; Ibn al-Khodja, Mohamed Habib (ed.) (2000), p. 54.

¹²⁸ Rispler-Chaim, Vardit (1993), p. 39, quoting from Ghanem, Islam (1982), p. 276.

¹²⁹ See Makdisi, George (2003), "Ibn Qudāma al-Maḥḍisī", vol. III, pp. 842 & 843.

encyclopedic *Al-Mughnī* of this Ḥanbalī jurist, I found that the context does not suggest what the two authors concluded. The context is a discussion on selling the mothers' milk which some jurists prohibited like selling the sweat of a human being while others opined that it was just reprehensible and a third group said it is permissible. Ibn Qudāma advocated the third opinion and said that "all parts of the human being can be sold because male and female slaves can be sold. The free person cannot be sold because he is not owned and the sale of the amputated organ is prohibited because it has no benefit."¹³⁰ By "all parts of the human being", it is clear that Ibn Qudāma does not mean an organ such as selling an eye, a hand or a kidney because this was not even feasible at that time. This is proven by his statement, "and the sale of the amputated organ is prohibited because *it has no benefit*." Ibn Qudāma is just speaking about separable parts such as milk and sweat in order to defend his opinion.

Another condition is that the living person who decides to donate an organ must do so out of free will without being morally or socially forced and also without economic pressures.¹³¹ As for minors and the mentally disabled, some jurists opined that potential donations done by them are legitimate provided proxy consent of their guardians has been attained.¹³² Other jurists prohibited such donations even with the guardian's consent because he/she is not allowed to donate their money let alone parts of their bodies.¹³³ Additionally, it should be certain that the donation will not cause any harm to the donor or to those who are entitled to legal rights upon him/her such as a husband, wife, children and creditors.¹³⁴ Thus it is not allowed to a living person to donate organs of which a person has only one such as the heart or liver. The same holds true for external parts of the body such as the eye, the hand and the leg or the internal parts of which a person has two such as kidneys when one of them is sick or idle.¹³⁵ Some jurists expressed their reservations also concerning transplanting the testicles because it is a carrier of many genetic traits and could lead to the mixing of lineages.¹³⁶

As for the donation from a dead person, jurists legitimated it in case the dead person indicated this in his/her will, or relatives authorized it postmortem. If the deceased indicated in the will that he/she does not allow donating his organs, then no one is authorized to do this on his/her behalf.¹³⁷ If the deceased has no relatives or they are unknown, then the state is entitled to remove an organ for transplant and some jurists opined in favor of the possibility of enacting a code of law permitting the state to do so but only in

¹³⁰ Ibn Qudāma, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 4, p. 177.

¹³¹ Rispler-Chaim, Vardit (1993), p. 35.

¹³² Ibid, p. 36, quoting from Siddiqi, M. Zakaria (1987), p. 152.

¹³³ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 533.

¹³⁴ Ibid; Rispler-Chaim, Vardit (1993), p. 35; Ibn al-Khodja, Mohamed Habib (ed.) (2000), p. 53.

¹³⁵ Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, p. 533.

¹³⁶ Ibid, pp. 539 & 540.

¹³⁷ Kyriakides-Yeldham, Anthony (2005), p. 222; Qaraḍāwī, Yūsuf al- (1415/1994), vol. 2, pp. 535-537.

cases of necessity.¹³⁸ However, scholars do not give precise definition for necessity in this case, fact which gives the state more space to decide on an individual basis.

The religion of the donor and the beneficiary also played a role in the modern discussions. Some jurists state that although it is possible to receive a donation from non-Muslims, it is not allowed to donate to them.¹³⁹ The majority of jurists made no distinction between a Muslim and a non-Muslim in this regard and permitted reciprocal benefit between the two as long as the aforementioned conditions are met, as the Muslim donator will be rewarded anyhow for his good deed.¹⁴⁰

As for transplanting animal organs to human bodies, jurists made a difference between pure (*tāhīr*) animals whose flesh can be eaten and impure (*najīs*) animals whose flesh cannot be eaten. Organs of the first type can be transplanted because they are pure. Organs of the second type such as dogs and pigs were prohibited by some jurists because of their impurity. Yūsuf al-Qaradāwī permitted transplanting organs from impure animals such as pigs in case of necessity and when trustworthy Muslim physicians affirm its beneficence. He argues that what is forbidden is eating its flesh while transplanting has nothing to do with eating. As for its impurity, he adds, what counts is touching impure materials with the external parts of the body and not having such material inside the body. Every Muslim would pray, read the Qurʾān and circumambulate the Kaʿba while having many impurities inside his body such as blood, urine and excrement.¹⁴¹

Transplanting artificial limbs in place of the amputated organs did not face opposition from jurists. The only condition I came across was from Khālīd Rashīd al-Jamīlī (lecturer of comparative Islamic jurisprudence, Baghdad University) viz., is that they should be made of pure material. Impure material would be permitted in case of necessity and when no other alternative is possible.¹⁴² Although men in Islam are not allowed to make use of gold as ornaments, it is allowed for them to use artificial limbs made of gold in case there is no other alternative. This is based on the case of the Companion, ʿArfaja b. Asʿad, who lost his nose in a military expedition. First he made use of a silver nose but because of oxidation being rotten, the Prophet allowed him to use a golden one.¹⁴³

¹³⁸ Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 537; Rispler-Chaim, Vardit (1993), p. 36.

¹³⁹ Rispler-Chaim, Vardit (1993), pp. 36 & 37.

¹⁴⁰ Qaradāwī, Yūsuf al- (1424/2003), vol. 3, pp. 666 & 667; Wieggers, Gerard (2002), pp. 220 & 221; Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 534 & 538.

¹⁴¹ Qaradāwī, Yūsuf al- (1415/1994), vol. 2, pp. 538 & 539.

¹⁴² Jamīlī, Khālīd Rashīd al- (1410/1990), pp. 1985-1987.

¹⁴³ Ibn Ḥibbān (1414/1993), vol. 12, p. 276; Abū Dawūd, (1), vol. 2, p. 92; Ābādī, Abū al-Tayyib Muḥammad Shams al-Ḥaqq (1415/1994), vol. 11, pp. 197 & 198; Quḍāt, Muṣṭafa al- (1412/1992), p. 70.

6.1.2.3 Cloning

Cloning is simply defined as production of a cell or organism with the same nuclear genome as another cell or organism.¹⁴⁴ It is of two main types, namely reproductive cloning by which cloned babies are to be produced and therapeutic cloning which is used for treating diseases experienced.¹⁴⁵ The second type can be of relevance to treating, at least theoretically, people who lost organs like a hand, leg, ear, eye and the like. Till the end of the twentieth century and to my knowledge this is the case till the present time, only one human organ, namely, the skin can be grown in a laboratory to provide self-compatible skin grafts.¹⁴⁶ In his fatwa on cloning in general, Yūsuf al-Qarḍāwī tried to hypothesize this issue and stated that if such therapeutic cloning would be realized by cloning a human being or even fetus so that his organs will be used as “spare parts” for others, then it is absolutely forbidden. However, if therapeutic cloning managed to clone specific organs such as heart, liver, kidney and the like, then it is welcomed and God will reward it because it benefits people without causing any harm.¹⁴⁷

6.2 Spiritual Medicine

The main sources which theorized and elaborated this type of medicine belong to the genre of Prophetic medicine (*al-ṭibb al-nabawī*) which arose by the fourth/tenth century and started to attract particular attention in the seventh/thirteenth century. Authors of this genre were religious scholars, most of whom are Sunnī Muslims but there were also Shīʿī writers in this genre which got the title *ṭibb al-aʿimma* as indicated above.¹⁴⁸ Almost all information mentioned in these sources is also to be found in the juristic sources but dispersed in different chapters and under many headings.

Al-ṭibb al-rūḥānī (spiritual medicine) had two basic meanings. The first, sometimes also called “medicine of the heart”, was mainly interested in managing, maintaining and healing one’s spirit, soul and heart. To Muslim scholars, this type of medicine has been entrusted to the Messengers of God and there is no means of obtaining it except through their teachings.¹⁴⁹ Ibn al-Qayyim, expressing the high value attached to this medicine, says “The connection between the medicine of the Messengers and that of physicians is as tenuous as its connection with the medicine of the village healers.”¹⁵⁰ Main

¹⁴⁴ Australian Academy of Science (1999), p. 4.

¹⁴⁵ Kyriakides-Yeldham, Anthony (2005), p. 218.

¹⁴⁶ Australian Academy of Science (1999), p. 4. for one of the latest articles on the new developments in the field of cloning, see LuI, Shi-Jiang et al (2007), pp. 1-9.

¹⁴⁷ Qarḍāwī, Yūsuf al- (1424/2003), vol. 3, pp. 528 & 529.

¹⁴⁸ Savage-Smith, Emilie (1996), p. 927 & 928. For more information on this genre, see Rahman, Fazlur (1989), pp. 41-58; Dols, Michael W. (1992), pp. 243-260; Savage-Smith, Emilie (1996), pp. 927-930; Ibn al-Qayyim (I) (1998), pp. xiii-xv; Savage-Smith, Emilie et al (2003), vol. X, pp. 453 & 459.

¹⁴⁹ Ibn al-Qayyim (I) (1998), p. 5.

¹⁵⁰ Ibn al-Qayyim (I) (1998), p. 8. The translator adds an explanatory note, “Medicine of

theories developed in this science, which are meant to give a helping hand to the servant of God to come closer with his heart and soul to the Creator, were developed in the Sufi literature and thus fall beyond the scope of this chapter.¹⁵¹

The second meaning of *al-ṭibb al-rūḥānī* is that science of which the main interest is the physical and mental diseases which attack one's body, similar to the physical medicine, but using spiritual rather than physical means to combat and cure these diseases. Among these spiritual means, one can think of using Qur'anic verses, chanting different prayers and religious formulae and doing good deeds such as giving charity.¹⁵² *Al-ṭibb al-rūḥānī* in this sense is the main focus of the discussions to follow.

Standpoints adopted by Muslim jurists towards spiritual medicine underwent considerable changes from the early jurists up till the era of the modern jurists.

It is clear from early juristic discussions that opponents of spiritual medicine existed. However, they were always seen as a minority¹⁵³ which can be divided into two groups. The first group, including a number of the Sufis such as Rābi'a al-ʿAdawiyya (d. 185/801), the Successor Sa'īd b. Jubayr (d. 95/714), the two Shāfi'ī jurists al-Ḥalīmī and al-Khaṭṭābī, disfavours medication in general, whether physical or spiritual, because it contradicts trust in God (*tawakku*).¹⁵⁴ The second group casts doubts on the effectiveness of this type of medicine. Juristic sources do not give clear names in this regard. They were just described sometimes as heretics¹⁵⁵ or "the most ignorant, the most veiled one whose soul is so dense that he becomes the furthest from God."¹⁵⁶

The greater majority of early jurists was ardent advocate of this type of medicine and always inclined to attach a higher value to spiritual medicine than to physical medicine. The classical statement quoted by early jurists in this regard is that of the unidentifiable Ibn al-Tīn,¹⁵⁷ "Using al-Muw'awwidhāt (the last three Qur'anic chapters 112-114) and other [religious formulae] such as the

itinerants: practitioners who were not part of the local community but wandered from place to place and whose knowledge of medicine could not be guaranteed as reliable. Old women: *ʿajā'iz* (sing. *ʿajūz*), the traditional village healers."; Ridā, Rashīd (1315/1898-1354/1935), vol. 1, issue 46, p. 882.

¹⁵¹ For instance, Ibn al-Jawzī's *Al-Ṭibb al-rūḥānī* falls in this category. See Ibn al-Jawzī (1348/1929). For a medical perspective, see Rāzī, Muḥammad b. Zakariyya al- (1950).

¹⁵² Ibn al-Qayyim (I) (1998), p. 109; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Shawkānī, Muḥammad b. ʿAlī b. Muḥammad al- (1413/1993), vol. 8, p. 246; Qaradāwī, Yūsuf al- (1423/2002), p. 165; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 11, p. 124.

¹⁵³ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 13, pp. 27 & 28.

¹⁵⁴ Shawkānī, Muḥammad b. ʿAlī b. Muḥammad al- (1413/1993), vol. 8, p. 232; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 13, p. 27 & vol. 23, p. 96.

¹⁵⁵ Qaṣṭalanī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 144.

¹⁵⁶ Ibn al-Qayyim (I) (1998), p. 9.

¹⁵⁷ Among the very little available information about this figure is that he is a well-known Moroccan traditionist who wrote a commentary on the ḥadīth-collection of al-Bukhārī and was affiliated to the Mālikī School of Law. He has been extensively quoted by Ibn Ḥajar in his commentary on the ḥadīth-collection of al-Bukhārī. See <http://www.islamweb.net/ver2/Fatwa/ShowFatwa.php?lang=a&Id=81056&Option=FatwaId>

Names of God, the Sublime is spiritual medicine. If they are chanted by the tongues of the pious, recovery will take place by God's permission. However, because of the scarcity of [qualified specialists in] this type, people rush into the physical medicine."¹⁵⁸ This standpoint is shared by the majority of the early jurists¹⁵⁹ including the aforementioned Ibn al-Tīn, Ibn Taymiyya,¹⁶⁰ Ibn al-Qayyim,¹⁶¹ Abū al-ʿAbbās Qaṣṭalanī (d. 923/1517),¹⁶² al-Munāwī (d. 1031/1621)¹⁶³ and the Zaydī jurist al-Shawkānī (d.1760-1839).¹⁶⁴ Jurists mentioned two main conditions the fulfillment of which would guarantee the effectiveness of spiritual medicine. The first is related to the practitioner (*muʿallij*), namely piety and sincerity in religion. The second is related to the patient, namely his firm belief in the efficacy of such type of spiritual medicines. Experiencing an ineffective spiritual medication in some cases should be traced back to the absence of any of the aforementioned conditions.¹⁶⁵ The same tendency can also be traced in the Shīʿī circles by attaching great value to the healing traits of Qurʾanic verses and prayers.¹⁶⁶

This positive tone towards the spiritual medicine – sometimes even favoring it to the physical medicine lost, by lapse of time, the ardent advocacy among the majority of the modern Sunni jurists. In this respect, they can be divided into three main tendencies.

The first tendency just maintained the standpoint adopted by the majority of the early jurists without any considerable amendments or changes. Among the main advocates of this trend are ʿUmar Sulaymān al-Ashqar¹⁶⁷ and the Permanent Committee for Scientific Research and Issuing Fatwas in Saudi Arabia which issued a fatwa that the Qurʾān can be used as a medicine for physical diseases such as cancer.¹⁶⁸ The late Moroccan scholar, ʿAbdullāh b. al-Ṣiddīq al-Ghumārī (1328/1910-1413/1993) was also an ardent advocate of using Qurʾān as a spiritual medicine for physical diseases. He elaborated his arguments in a book entitled *Kamāl al-imān fī al-tadāwī bi al-Qurʾān* (The Perfection of Belief in Using the Qurʾān as Medicine).¹⁶⁹ In this book, al-Ṣiddīq

¹⁵⁸ Shawkānī, Muḥammad b. ʿAlī b. Muḥammad al- (1413/1993), vol. 8, p. 246; Khādimī, Muḥammad b. Muṣṭafā al- (1348/1929), vol. 1, p. 272; Ṣiddīq, ʿAbd Allāh al- (1392/1972), p. 42; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 11, p. 124.

¹⁵⁹ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 28.

¹⁶⁰ Ibn Taymiyya (1408/1971), vol. 3, p. 7.

¹⁶¹ Ibn al-Qayyim (1) (1998), p. 109.

¹⁶² Qaṣṭalanī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 141. On him, see Brockelmann, Carl (2003), vol. IV, p. 736.

¹⁶³ Munāwī, ʿAbd al-Raʿūf al- (1356/1937), vol. 3, p. 515. On him, see Hamdan, A. Saleh (2003), vol. VII, p. 565.

¹⁶⁴ Shawkānī, Muḥammad b. ʿAlī b. Muḥammad al- (1413/1993), vol. 8, p. 233. On him, see Haykel, Bernard (2003).

¹⁶⁵ Qaṣṭalanī, Aḥmad b. Muḥammad al- (1326/1908), vol. 2, p. 142; Shawkānī, Muḥammad b. ʿAlī b. Muḥammad al- (1413/1993), vol. 8, p. 233.

¹⁶⁶ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. xxx & xxxi.

¹⁶⁷ Ashqar, ʿUmar Sulaymān al- et al (1421/2001), vol. 1, pp. 14-17.

¹⁶⁸ Ibn Bāz ʿAbd Allāh (1416/1995); Ibn Bāz ʿAbd Allāh (1418/1997).

¹⁶⁹ Ṣiddīq, ʿAbd Allāh al- (1392/1972).

launched a severe attack against those “reformists” who, according to him, were actually heretics because of denying this fact about the Qur’ān. His main target in this regard was the late grand imam of Al-Azhar, Maḥmūd Shaltūt¹⁷⁰ who was one of the main representatives of the second group below.

The second tendency which stood at the opposite pole of the first group limited the effectiveness of the Qur’ān to the first meaning of spiritual medicine, i.e. purifying one’s soul and heart from sins and thus bringing them closer to the Right Path of God. The main advocates of this opinion were Rashīd Riḍā (1865-1935)¹⁷¹ and the late grand imam of al-Azhar Maḥmūd Shaltūt (1893-1963)¹⁷². Rashīd Riḍā gave two rational arguments to support this standpoint. The first is that frequent authentic experiments do not prove that the Qur’ān can be used as medicine for physical diseases. Had it been so, people and Muslims in particular would have abandoned making use of physical medicines and physicians. The second argument was that curing physical diseases was not counted by scholars as one of the miraculous elements of the Qur’ān.¹⁷³ Shaltūt stated that using the Qur’ān as a medicine for physical diseases represents a clear deviation from the proper way of glorifying it and falls under the category of heresies. He traced this phenomenon back to ignorance and disrespect for the norms of life set up by the Creator.¹⁷⁴ As for Prophetic traditions which indicated the medical use of the Qur’anic verses, supplications or religious formulae as incantations (*ruqā*) to treat physical diseases, Rashīd Riḍā had his own interpretation. He argues that *ruqya* is originally a tradition of pre-Islamic period (*Jāhiliyya*) which has been forbidden by the Prophet with few exceptions, namely, in the case of the evil eye, bites and sting of a snake and blood which will not be staunches. Besides limiting the scope of permissible incantations, Riḍā adds, the Prophet clarified that making use of incantation is inconsistent with trust in God (*tawakkul*) which is not the case with making use of physical medicine. That is because using incantation as medicine falls under the category of fictitious (*mawhūm*) means of medical treatment.¹⁷⁵ But if so, why did not the Prophet forbid incantation completely? Riḍā suggests that it could be out of being merciful with those weak people who used to get affected by such fictitious things and make benefit of it. Thus, incantation remains no more than a legal concession (*rukḥṣa*) to be used by people who believed in its effectiveness.¹⁷⁶

The third tendency is represented mainly by Yūsuf al-Qarāḍāwī and Muḥammad ‘Uthmān Shubīr (lecturer of Islamic jurisprudence in Jordan University) who tried to find a middle ground in this issue. On one hand, the validity of spiritual medicines such as the Qur’ān for treating physical diseases is

¹⁷⁰ Ibid, pp. 1 (note 1), 4 & 33.

¹⁷¹ On him, see Ende, W. (2003), vol. III, pp. 445-448.

¹⁷² On him, see Ende, W. (2003), vol. IX, pp. 260 & 261.

¹⁷³ Rashīd (1315/1898-1354/1935), vol. 7, issue 10, p. 390.

¹⁷⁴ Shaltūt, Maḥmūd (1408/1988), pp. 206-208.

¹⁷⁵ Rashīd (1315/1898-1354/1935), vol. 7, issue 10, p. 391.

¹⁷⁶ Ibid, pp. 391 & 392.

not denied. On the other hand, it is stressed that the main function of the Qur'ān is to be used for purely spiritual purposes rather than treating physical diseases. For physical diseases, besides the spiritual medicines, one should always consult the specialist physician as well.¹⁷⁷ Bashīr says that the two types of medicine should be used without over or under-estimating either of them.¹⁷⁸

6.2.1 Good Deeds & Charity

All sorts of spiritual medicines are covered by two main categories. The first category consists of performing supererogatory good deeds, exemplified by giving charity (*sadaqa*), with the intention of seeking medication. The second category is based upon using specific prayers and religious formulae.

As for the first category, I could trace no more than cursory references made by some jurists including the Shāfi'ī jurist al-Ḥalīmī¹⁷⁹ and the Mālikī jurist Ibn 'Abd al-Barr.¹⁸⁰ The most elaborated exposition of this category is given by the Shāfi'ī jurist, al-Munāwī in his comment on four prophetic traditions mentioned by the other Shāfi'ī jurist al-Suyūṭī in his collection of ḥadīth entitled *Al-Jāmi' al-ṣaghīr*. The four traditions numerate four main benefits of giving charity, viz., curing diseases, blocking seventy doors of evil, warding off the bad death and eliminating afflictions or misfortunes (*'āḥāt*, plural of *'āḥa*).¹⁸¹ Commenting on the first benefit, al-Munāwī states that giving charity falls under the category of spiritual medicine (*al-ṭibb al-rūḥānī*). By naming charity, al-Munāwī adds, the Prophet draws attention to other good deeds of a similar nature such as giving a helping hand to those in need or calamity. Ensuring the effectiveness of this spiritual medicine, al-Munāwī says that it has been experimented by people of success (*al-muwaffaqūn*, in reference to the pious believers) who found that spiritual medicine can do what physical medicine cannot. For instance, when a person fell sick, such people would slaughter a sheep and prepare a glamorous banquet for which they invite the needy people. In case the sick person is very dear, they would give the dearest part of their property, for instance a slave-girl, a slave-boy or a horse, as charity.¹⁸² It is also clear that disabilities are included among the diseases to be cured by this type of spiritual medicine. The fourth benefit of charity, namely, eliminating *'āḥāt* (afflictions) alludes to this fact as well. One of the main terms used for people with disabilities in early Arabic literature is *dhawū al-'āḥāt* (lit. people of afflictions).¹⁸³ Additionally al-Munāwī himself mentioned some

¹⁷⁷ Qaraḍāwī, Yūsuf al- (I) (1415/1994), p. 154; Qaraḍāwī, Yūsuf al- (1424/2003), vol. 3, pp. 57-60.

¹⁷⁸ Shubīr, Muḥammad 'Uthmān (1421/2001), vol. 2, pp. 460 & 461.

¹⁷⁹ Munāwī, 'Abd al-Ra'ūf al- (1356/1937), vol. 3, p. 515.

¹⁸⁰ Ibn 'Abd al-Barr, Abū 'Amr Yūsuf (1387/1967), vol. 23, pp. 174 & 175.

¹⁸¹ Munāwī, 'Abd al-Ra'ūf al- (1356/1937), vol. 3, p. 515, vol. 4, pp. 236 & 237.

¹⁸² Ibid, vol. 3, p. 515.

¹⁸³ See for instance, Ibn Qutayba Abū Muḥammad 'Abd Allāh b. Muslim (1388/1969), pp. 578-589; Ibn Qutayba Abū Muḥammad 'Abd Allāh b. Muslim (1406/1986), vol. 4, pp. 63-68; Ibn Rusta, Abū 'Alī Aḥmad b. 'Umar (1419/1998), pp. 189-192.

disabilities by name such as leprosy (*baraṣ*) and elephantiasis (*judhām*).¹⁸⁴ It is worthy to mention in this regard that the authenticity of the aforementioned traditions have been a point of discussion among the scholars of ḥadīth and many of them opine that they are not authentic.¹⁸⁵

6.2.2 Prayers and Religious Formulae

All medicines which fall under this category are covered by the broad Arabic term *taʿwīdh* which means literally guaranteeing a refuge, protection or preservation. In the technical usage of jurists, it denotes those spiritual means by which protection against sickness, madness, the evil eye and the like can be guaranteed.¹⁸⁶ Under this term, three main spiritual medicines are the most frequently mentioned in Islamic jurisprudence, namely, *ruqya*, *tamīma* and *nushra*.

Ruqya (pl. *ruqāʾ*) denotes, in the linguistic and juristic sense, a charm or a spell uttered, or according to some opinions written, to protect against a misfortune such as fever, epilepsy and the like.¹⁸⁷ The most used English equivalent is incantation.¹⁸⁸ According to some jurists, *ruqya* applies also to the supplication (*duʿāʾ*) made for the sake of recovery.¹⁸⁹ *Tamīma* is linguistically an amulet hung upon the human being. It is also said that it signifies certain beads which the Arabs used to hang upon their children to repel, as they asserted, the evil eye.¹⁹⁰ Jurists define it as a paper in which verses from the Qurʾān or something else are written and hung upon the human being.¹⁹¹ *Nushra*, in the linguistic sense, is a charm or amulet by which a sick person and one possessed, or mad, is cured.¹⁹² According to the jurists, *Nushra* means writing something from the Names of God or the Qurʾān and then washing it by water so that the sick person would use this water as a drink or an ointment.¹⁹³ To sum up, the three methods are based on using the same material but in different means;

¹⁸⁴ Munāwī, ʿAbd al-Raʿūf al- (1356/1937), vol. 4, p. 236.

¹⁸⁵ See Rāzī, Ibn Abī Ḥātim al- (1405/1984), vol. 220 & 221; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), vol. 3, p. 382; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1410/1989), vol. 3, pp. 29, 282 & 283; Ibn al-Jawzī (1403/ 1982), vol. 2, pp. 493 & 494; Haythamī, Abū al-Ḥasan ʿAlī b. Abī Bakr al- (1407/1986), vol. 3, pp. 63, 64, 109-112; Mundhirī, Abū Muḥammad ʿAbd al-ʿAzīm b. ʿAbd al-Qawī al- (1417/1996), vol. 1, p. 301, vol. 2, pp. 7 & 11; ʿAjlūnī, Muḥammad b. Ismāʿīl al- (1405/1984), vol. 1, pp. 329, 330, 432, 482, vol. 2, pp. 28 & 29.

¹⁸⁶ Lane E.W. (1968), part 5, p. 2192; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 121.

¹⁸⁷ Lane E.W. (1968), part 5, p. 1140; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 23, p. 96.

¹⁸⁸ Ibn al-Qayyim (1) (1998), p. 132ff; Suyūṭī, Jalāl al-Dīn al- (1999), pp. 53, 153 & 167 [This book is actually written by al-Dhahabī but here erroneously attributed to al-Suyūṭī, see Savage-Smith, Emilie et al (2003), vol. X, p. 459].

¹⁸⁹ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 22.

¹⁹⁰ Lane E.W. (1968), part 1, p. 316; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 14, p. 30.

¹⁹¹ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 14, p. 30.

¹⁹² Lane E.W. (1968), part part 8, p. 2795; Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 23.

¹⁹³ Wizārat al-Awqāf wa al-Shuʿūn al-Islāmiyya bi al-Kuwayt (1), vol. 13, p. 23.

ruqya mainly by uttering it, *tamīma* by writing it and hanging it to the neck and *nushra* by using the water by which the written material is washed.

The question to be raised now is the following: is it possible to use *ta'wīdh* as a medication for disabilities? A minority among the jurists restricts its permissibility to two cases, namely the evil eye and a sting of a snake. They base their opinion on the prophetic tradition, "There is no incantation except for the Eye or bites".¹⁹⁴ The majority opines, however, that the three main forms of *ta'wīdh* are to be used for every disease and thus disability in general would be included in this case.¹⁹⁵ A number of relevant references in this context refer to specific diseases such as skin-burn,¹⁹⁶ fever¹⁹⁷ eye diseases¹⁹⁸ and snakebite. Some disabilities are also mentioned by name such as epilepsy especially that caused by evil earthly spirits,¹⁹⁹ mental disabilities, being possessed and the like.²⁰⁰ As for the above-mentioned prophetic tradition, the majority of jurists responded that the Prophet did not intend thereby to deny the possibility of using incantation in other cases. It is just to convey that there is no incantation more fitting and beneficial than that for the evil eye and for curing the effect of bites.²⁰¹ As for the Shī'ī tradition, besides incantations believed to cure every sort of diseases,²⁰² some incantations are also meant to treat specific disabilities such as deafness,²⁰³ semi-paralysis and facial paralysis,²⁰⁴ mental disorders²⁰⁵ and insanity.²⁰⁶

Now we move to the juristic rulings. As noted above, the linguistic definition of *ta'wīdh*, in all its three forms, does not impose limitations on its content or the formulae used in this process. That is because the aforementioned forms of *ta'wīdh* originated in the pre-Islamic period (*Jāhiliyya*) leaving the drawing of the lines between lawful and unlawful practices to Islam.²⁰⁷ Basing their discussions on relevant Prophetic traditions, Muslim jurists tried to trace these lines.

First, the majority of jurists stipulated that the formulae used must be composed of the Qur'ān, or the Names or Attributes of God. Additionally,

¹⁹⁴ Ibn al-Qayyim (I) (1998), p. 132; 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 10, p. 196.

¹⁹⁵ See for instance, Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 23, p. 96 & 97.

¹⁹⁶ Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 13, p. 24.

¹⁹⁷ Ibid, vol. 13, p. 21.

¹⁹⁸ Ibid, vol. 2 p. 13.

¹⁹⁹ Ibn al-Qayyim (I) (1998), pp. 46-50; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (I), vol. 23, p. 96.

²⁰⁰ 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 10, p. 196.

²⁰¹ Ibn al-Qayyim (I) (1998), p. 132; 'Asqalānī, Aḥmad b. 'Alī b. Ḥajar al- (1379/1959), vol. 10, p. 196.

²⁰² Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. 36, 37, 41 & 92.

²⁰³ Ibid, p. 14.

²⁰⁴ Ibid, pp. 112 & 113.

²⁰⁵ Ibid, p. 139.

²⁰⁶ Ibid, pp. 146 & 147.

²⁰⁷ For an overview of such unlawful practices, see Shubīr, Muḥammad 'Uthmān (1421/2001), vol. 2, pp. 470-475 and the standpoint of Islam, pp. 498-506.

they must be in Arabic or in other languages whose meaning was known. Some jurists restricted the permissible incantation to the last three chapters in the Qur'ān (*mu'awwidhāt*) alone. Other jurists widened the circle to include not only Words or Names of God but also everything else as long as it was understood. In this vein, the genre of *khawāṣṣ al-Qur'ān* (the prerogatives of the Qur'ān) came into existence. In this genre one finds discussions and analyses about the miraculously healing effects of certain Qur'anic verses. This genre makes use of some prophetic traditions such as "The opening chapter of the Qur'ān is a cure for every disease" and other traditions giving practical cases in which the Prophet treated different diseases by reciting specific verses from the Qur'ān.²⁰⁸ For instance, the Qur'anic chapter no. 36 (*Sūrat Yāsīn*) was used as a medicine for madness.²⁰⁹ Besides these prophetic traditions, such sources are mainly composed of stories of well-known pious figures experiencing Qur'anic verses as spiritual medicines for different diseases.²¹⁰ This genre is still thriving up to the present time through a growing list of books elaborating the curative aspects of the Qur'ān.²¹¹ Some writers extended these healing practices to include formulae based on names of God, angels or prophets and prayers bearing celebrated names and poems.²¹² The most well-known poem in this regard is *Al-Burda* which was, for instance, divided by Ibn 'Abd al-Salām al-Marrākushī, in his *Khawāṣṣ al-Burda fī bur' al-dā'* (The Peculiarities of *al-Burda* concerning Healing the Disease) into several sections describing the beneficial effects residing in each.²¹³ Some verses would cure epilepsy whereas other verses were regarded as medicines for every sort of disease.²¹⁴

Second, jurists said that one should not believe that such sort of medicine cures the diseases by its own power. One should always believe that recovery takes place at any rate with God's permission.²¹⁵ It is clear that these stipulations are made in a bid to draw a clear line between the lawful *ta'wīdh* and the magical charms with its eventual polytheistic elements prohibited by Islam.²¹⁶ The jurists cite in this context the following prophetic statement when asked about the use of incantations traced back to the pre-Islamic period,

²⁰⁸ Suyūṭī, Jalāl al-Dīn al- (1387/1967), vol. 4, pp. 137-143.

²⁰⁹ Ibid, vol. 4, p. 142. For other parts of Qur'ān used for the same medical purpose, see vol. 4, pp. 138 & 139.

²¹⁰ Zarkashī, Abū 'Abd Allāh al- (1391/1971), vol. 1, p. 434-437; Suyūṭī, Jalāl al-Dīn al- (1387/1967), vol. 4, p. 137.

²¹¹ See for instance, Karam, Usāma al- (1990); Samāha, Riyāḍ Muḥammad (1996); 'Abd Allāh, Muḥammad Maḥmūd (1996); Mināwī, Naṣīf 'Awaḍ al- (2000).

²¹² Fahd, T. (2) (2003), vol. IV, p. 1134. For examples of this literature, see Ghazālī, Abū Ḥāmid al- (pseudo) (1970); Būnī, Abū al-'Abbās Aḥmad al- (1951), esp. p. 198 ff.

²¹³ Fahd, T. (2) (2003), vol. IV, p. 1134.

²¹⁴ Marrākushī, Ibn 'Abd al-Salām al- (d. 660-1262), folios 8b & 12a; Fahd, T. (2) (2003), vol. IV, p. 1134.

²¹⁵ Shubīr, Muḥammad 'Uthmān (1421/2001), vol. 2, pp. 513 & 514.

²¹⁶ Shawkānī, Muḥammad b. 'Alī b. Muḥammad al- (1413/1993), vol. 8, pp. 232, 233 & 245; Shubīr, Muḥammad 'Uthmān (1421/2001), vol. 2, pp. 501-503; Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya bi al-Kuwayt (1), vol. 23 p. 97 & vol. 24, p. 13. For the Shī'ī tradition, see Ispahany, Batoool (trans.) & Andrew J. Newman (ed.) (1991), pp. 54-56.

“Show me your incantations. There is no harm in [using] incantations as long as they do not involve polytheism.”²¹⁷

In the light of the abovementioned discussion, two points are in order. The first is the erroneous categorization of *ruqya* as a magical practice as done for instance by the article “*Ruqyā*” in the *Encyclopaedia of Islam*. *Ruqya* is defined as a magical chant consisting in the pronunciation of magical formulae for procuring an enchantment. The writer adds, “It is one of the procedures of *sihr* used by the Prophet himself and, because of this, permitted in exceptional cases, on condition that it brings benefit to the people and does not harm anyone.”²¹⁸ Besides mentioning the condition of being beneficial, the writer does not refer to any of the conditions set up by the majority of jurists to distinguish between the lawful *ruqya* and the unlawful *sihr* (magic). This also holds true for the Shi‘ī scholars who conditioned that incantations should be based on Qur’anic verses only.²¹⁹

The second point is the inaccurate distinction, made for instance by the Dutch researcher Cor Hoffer (1955-),²²⁰ between Islamic therapies approved by “official Islam” and those already practiced within “popular Islam”. According to Hoffer, “official Islam” restricts permissible Islamic therapies to those made with the help of Qur’anic texts. However, Hoffer adds, these restrictions are frequently ignored in “popular Islam”.²²¹ Although the division itself of Islam into “official” and “popular” remains highly debatable, certainly it is not valid for the case the researcher is studying. The aforementioned discussions show that Muslim jurists, who are supposed to represent the “official Islam” according to Hoffer, are not a single block. Although some jurists restricted the scope of permissible incantations to specific chapters of the Qur’ān, the majority of them broadened this scope to include Names and Attributes of God as well. A third group allowed everything even if it is non-Arabic as long as it was understood, including poems such as *Al-Burda*. The other point raised by Hoffer is that according to the “official Islam” practitioners of Islamic healing were not allowed to ask money for their activities.²²² In the light of the detailed discussion on this point below, the reader will easily find that such sweeping statement is an inaccurate generalization.

6.2.3 Spiritual Medicine as a Profession

Early discussions took place among Muslim jurists about the possibility of earning money on the basis of curing people with *ta‘wīdh*. The majority of jurists stated that it is permissible to do so whereas a minority of them

²¹⁷ ‘Asqalānī, Aḥmad b. ‘Alī b. Ḥajar al- (1379/1959), vol. 10, p. 195; Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1413/1993), vol. 8, p. 245; Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt (1), vol. 23 p. 97.

²¹⁸ Fahd, T. (3) (2003), vol. VIII, pp. 600 & 601.

²¹⁹ Ispahany, Batool (trans.) & Andrew J. Newman (ed.) (1991), pp. 54-56.

²²⁰ On him, see <http://www.corhoffer.nl/>

²²¹ Hoffer, Cor (1992), pp. 40 & 41. The same ideas are again repeated in Hoffer, Cor (2000).

²²² Ibid, p. 41.

disfavored such practice and labeled it as *makrūh* (reprehensible).²²³ The majority based their contention on the following incidence which took place during the lifetime of the Prophet. “A group of the Companions of the Prophet – Peace and Blessings be upon him – set out on a journey and stopped at a certain tribe of the Bedouins. They asked for hospitality. But the Bedouins refused to receive them as guests. The chief of that tribe was stung and his people tried all kind of remedies but nothing was of any use. One of them said: ‘if you were to approach the group which asked hospitality, may be one of them would know of a remedy.’ So they went to them and asked ‘Travelers, our chief has been stung and we have tried everything but nothing is of use. Do you have anything for it?’ One of them replied: ‘Yes, by God, I can recite incantations. But we asked hospitality of you and you did not welcome us. I shall not recite a spell until you offer a reward.’ So they settled with them for a portion of their flock. Then the man at once spat upon the person who was stung and recite the chapter ‘Praise be to God, Lord of the Worlds ...’ It was as if the man had been unfettered and he began to walk about as if there was nothing with beforehand. The tribe paid the reward they had agreed with the group and one of these said: ‘Share it not.’ The one who had recited the spell said: ‘Do not do this until we go back to the Messenger of God – Peace and Blessings be upon him – and tell him what took place and we can see what he commands us.’ So they went to the Messenger of God – Peace and Blessings be upon him – and told him the whole story. He asked: ‘What led you to think that it was an incantation? You have done right; divide it up and give me a share with you.’²²⁴ However, it seems that this story does not represent a habit among the Companions of the Prophet who would earn their livelihood by providing incantations. No single Companion was known to have such practice as a profession. This was also the case in later generations who would incidentally provide their help by means of spiritual medicines but without practicing it as their profession and may be also without earning money at all from such practices.²²⁵ Emilie Savage-Smith tries to explain this phenomenon by saying, “The reason for this, of course, may well be that our written sources are for the most part skewed toward the Greek-based system and omit details of other practices.”²²⁶ However, the fact that none of the main authors in the Prophetic Medicine genre, a large part of which is devoted to spiritual medicine, was known to be a professional practitioner of spiritual medicine makes the aforementioned supposition unlikely.

A drastic change in this situation took place in the modern age. Professional practitioners of spiritual medicine started to be a well-known phenomenon among Muslims. Those professional practitioners were known as Qur’ān healers (*mu‘ālījūn bi al-Qur’ān*). They claim their ability to treat people suffering insanity, epilepsy and almost every physical disease by using the

²²³ *Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya bi al-Kuwayt* (1), vol. 13, p. 34 & vol. 23, p. 98.

²²⁴ *Ibn al-Qayyim* (1) (1998), p. 133.

²²⁵ Savage-Smith, Emilie et al (2003), vol. X, p. 453.

²²⁶ Savage-Smith, Emilie (1996), p. 929.

Qur'ān. This phenomenon attracted a wide attention of almost all forms of mass media.²²⁷ In response to these new changes, a number of modern jurists started to be more skeptic towards spiritual medicine and especially to involving the Qur'ān in this issue. In his fatwa, as an answer to many questions about the ruling of using Qur'anic verses as incantations, the late grand imam of al-Azhar, Maḥmūd Shaltūt (1893-1963) categorized this practice as one of the new false innovations (*bida'*) which struck Muslims because of ignoring the main functions for which the Qur'ān has been revealed.²²⁸ In an answer to a question describing this phenomenon as something new which was never that famous during any of the epochs of Islamic history, Yūsuf al-Qaraḍāwī (1926-) extremely condemned this contemporary phenomenon of the “Qur'ān healers” who claim to be specialists in treating almost every physical disease by the Qur'ān and therefore have their own “Qur'ān clinics”. Available information, he adds, conveys no single Companion of the Prophet who claimed to be “Qur'ān physician”. This was even not the case with the Prophet of Islam although, al-Qaraḍāwī asserts, who is “the master of spiritual physicians”. On the contrary, the Prophet always encouraged people to make use of physical medicines.²²⁹ Such phenomenon, he adds, does not belong to the right Islam (*al-islām al-ṣaḥīḥ*) in any sense. “It is no more than a heresy which people innovated at this period of time.”²³⁰

²²⁷ For an overview of this phenomenon in Egypt, see Sengers, Gerda (2003), esp. 123-161.

²²⁸ Shaltūt, Maḥmūd (1408/1988), pp. 205-212.

²²⁹ Qaraḍāwī, Yūsuf al- (1424/2003), vol. 3, p. 59.

²³⁰ Ibid, vol. 3, p. 60.