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## **Islam and disability : perspectives in islamic theology and jurisprudence**

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## Chapter Eight: Revenues of Financial Aid within Society

Failing to fulfill the financial needs of people with disabilities within the family institution, it becomes the collective duty of the Muslim community at large to provide for them. Some members of the society must perform these duties; otherwise all members will be sinful.<sup>1</sup>

First a note on the most used terms in this context, namely, community and society, is in order. In the linguistic sense, “community” is defined as a group of people living together and/or united by shared interests, religion, nationality, etc.<sup>2</sup> On the other hand, “society” has two main definitions. First, it means people in general, considered with regard to the structure of laws, organizations, etc. The second, it denotes a particular broad group of people who share laws, organizations, customs, etc.<sup>3</sup> The well-known contemporary sociologist paid attention to the second rather than the first term arguing that the concept of society is one of the most important of all sociological notions. To him, “society” is a group of people who live in a particular territory, are subject to a common system of political authority and are aware of having a distinct identity from other groups around them. Some of these societies can be very small in number whereas others can be extremely large such as the Chinese society which has more than one billion individuals.<sup>4</sup>

To my knowledge, the Arabic term “*mujtama*” used today to express society or community was not used by early jurists. Classical terms which may be close to society and community are *umma* (lit. nation) and *dār* (lit. house or abode) especially in discussions on *dār al-islām* (abode of Islam) and *dār al-kufr* (abode of disbelief). One of the modern definitions given to “society” in the Islamic sense purports, “The entire Muslim Umma is one big family held together by the common bonds of belief in one Allah and His last Prophet – Peace and Blessings be upon him. It is one homogenous body and makes no distinctions with regard to color, race or nationality.”<sup>5</sup>

All definitions given above indicate clearly that we face here an elusive term whether in the Arabic or the English sense. However, broad lines are still traceable. First of all society would be something larger than the family institution. The main idea revolves about a group of people having something common like land, religion, specific interest, etc. In the juristic sense, members belonging to this group are collectively responsible for each other in the social and economic sense. As to see below, no main criterion draws a distinct border for this society beyond which people will not belong to it and thus be not entitled to the common rights and duties of its members. Non-Muslims sharing the same land with Muslims would belong to this society and thus can benefit from *zakāh* and public treasury to fulfill their needs. On other hand, Muslims livings in remote distances again

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<sup>1</sup> See Azmi, S. H. (1991), p. 221

<sup>2</sup> Summers, Della (1992), p. 253

<sup>3</sup> Ibid, p. 1259.

<sup>4</sup> Giddens, Anthony (1997), p. 585.

<sup>5</sup> Kazi, M.U. (1996), p. 75.

belong to this society because of sharing the same religion and thus can also benefit from the *zakāh* system. Thus having one criterion is sufficient to speak about society.

References in the Qurʾān and Ḥadīth can be taken as indications for defining the respective rights of various members of a community. For instance, the Prophet is reported to have said, “One who has surplus ride should give it to his brother who has no ride, and one who has surplus property should apportion it among those who are propertyless. The Prophet recounted so many kinds of commodities by which his Companions presumed that man has no right in his surplus wealth”.<sup>6</sup> In this chapter, the focus will be some of the financial duties imposed on Muslims and from which dependent and impoverished members of society, including those with disabilities, can benefit. References to the role of the state, whenever relevant, will also be in order.

### 8.1 Welfare Endowment (*Waqf Khayrī*)

As noted above, *waqf ahlī* (family endowment) was mainly for family members, this type of *waqf* is mainly for society at large. Broadly speaking, one of the original aims of the *waqf*, if not the main one, was of course to strengthen the Muslim society.<sup>7</sup> The institution of *waqf* in Islam has contributed a great deal and played an important role in building up society and is supposed to continue doing so as long as this institution exists.<sup>8</sup>

Basing our argument on modern terminology and dividing *waqf* into *ahlī* and *khayrī*, it is to be noted that the need for every *waqf* to have a perpetual nature (*taʿbīd*) is one of the fundamental principles of Islamic endowments. Since families were not conceived of as permanent, the founder of every *ahlī* endowment deed has to name, as ultimate beneficiary, at the end of the chain of family members, either the poor or a general charity of an equally permanent character.<sup>9</sup> At this stage in its history, what was originally a family endowment (*ahlī*) would no longer benefit specific private individuals, but the general interest of Islamic society. Furthermore, this kind of *waqf* chronologically precedes the Family Endowment. Tracing the origins of the *waqf* institution in Islam, we find that the first examples belong to what is termed as *waqf khayrī* (welfare endowments). Muslims disagree on the first incident of *waqf* in Islamic history.<sup>10</sup> The first *waqf* made in the history of Islam, according to some reports is that of ʿUmar Ibn al-Khaṭṭāb.<sup>11</sup> It is reported that the Prophet – Peace and Blessings be upon him – divided the land of Khaybar among the fighting forces.<sup>12</sup> One plot of land, known by the name ‘Thamgh’ fell to ʿUmar’s share which he set

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<sup>6</sup> Muslim, Abū al-Ḥusayn b. al-Ḥajjāj (1), p. 1354.

<sup>7</sup> Baer, Gabriel (1997), p. 291.

<sup>8</sup> Othman, Moh. Zain b. Ḥajī (1983), p. 3.

<sup>9</sup> Hoexter, M. (1995), p. 138.

<sup>10</sup> Kubaysī, Muḥammad ʿUbayd al- (1397/1977), vol. 1, p. 33.

<sup>11</sup> Othman, Moh. Zain b. Ḥajī (1983), p. 9.

<sup>12</sup> ʿAbd al-Qādir, ʿAlī, “Land Property and Land Tenure in Islam”, in *I.Q.*, London, 1959, Vol. 5, p. 7. See also, Watt, W. Montgomery (1956), pp. 208-220.

apart for charitable purposes.<sup>13</sup> ‘Umar gave this land as *ṣadaqa* for the poor, (needy) relatives, slave’s wanderers, guests and for the cause of Allah (*fi sabīl Allāh*).<sup>14</sup> According to some others, the *waqf* of the seven *ḥawā’it* by the Prophet –Peace and Blessings be upon him –, was the first *waqf* made in Islam.<sup>15</sup> The mentioned gardens were at Medina. Formerly, they were the property of Banū al-Najjār.<sup>16</sup> A third opinion stated that the first *waqf* in Islam was that the ‘mosque of Qibā’”, which the Prophet – Peace and Blessings be upon him – built on his arrival at Medina after the *hijrā* and before the entering Medina.<sup>17</sup>

Whatever might have been the case, applying the modern terminology, all of the previous incidents of *waqf* belong mainly to the Charitable Endowment. It is to be noted that the *waqf* of ‘Umar identified relatives as one of the beneficiaries as well.

This practice later gave rise to a social institution known as *Waqf* (Religious and charitable trusts and endowments), which was a service analogous to that known in modern times as social security. This term is understood to mean that those who are unable to earn their livelihood by reason of old age, sickness or disability are given an allowance to maintain themselves at moderate level until such time as they are able to support themselves by their own earnings through lawful means.<sup>18</sup>

Actually *waqf* is an institution very characteristic of Islamic law, which has experienced considerable development in all Muslim countries and has played a very important role in the society. Until recent times, the income from *waqf* defrayed a certain amount of public expenses such as that incurred on the relief of the poor, education, the upkeep of *madrāsas*, aqueducts and fountains, etc.<sup>19</sup>

As for its relevance for the people with disabilities in particular, Yūsuf al-Qaraḏāwī comments by saying that early Muslims used to allocate a considerable number of *awqāf* (charitable endowments) for the benefit of the people having disabilities such as blindness, lameness, etc.<sup>20</sup> Actually, the Islamic *awqāf* that people with disabilities could benefit from were of two categories. First, those of medical nature; there was considerable number of *awqāf*, which was dedicated for setting up hospitals and providing medical care

<sup>13</sup> Yāqūt, *Mu‘jam al-buldān*, Beirut, 1956, Vol. 2, pp. 409 & 410; Yahya Ben Adam, *Kitāb al-kharāj*, (Taxation in Islam) edited and translated by A. Ben Shamesh, Vol. 1, pp. 35-39; Nu‘mānī, ‘Allāma Shiblī, *‘Umar the Great*, Translated by Zafar ‘Alī Khān, Lahore, 1961, Vol. 1, pp. 70-72, quoted by Othman, Moh. Zain b. Haji (1983), p. 9.

<sup>14</sup> Kubaysī, Muḥammad ‘Ubayd al- (1397/1977), vol. 1, p. 100. For the full account of the story, see ‘Asqalānī, Ibn Ḥajar al-, *Fath al-bārī sharḥ ṣaḥīḥ al-Buḥkārī*, 1<sup>st</sup> ed., Al-Maṭba‘a al-Khayriyya, 1319 A.H., pp. 259 & 260; Nawawī, Yahyā b. Sharaf al- (1392/1972), vol. 1, pp. 85 & 86; Bayhaqī, Abū Bakr Aḥmad b. al-Ḥusayn al- (1414/1994), Vol. 6, pp. 158 & 159; Dāraqutnī, ‘Alī b. ‘Umar al- (1310/1892), vol. 2, p. 503, Ibn Ḥanbal, Aḥmad (I), vol. 7, 146.

<sup>15</sup> Othman, Moh. Zain b. Haji (1983), p. 9.

<sup>16</sup> Khaṣṣāf, al- (1904), pp. 2-4.

<sup>17</sup> Zarqā’, M. al- (1947), vol. 2, p. 7; ‘Ānī, M. S. al- (1965), p. 4, quoted by Othman, Moh. Zain b. Haji (1983), p. 9.

<sup>18</sup> Othman, Moh. Zain b. Haji (1983), p. 3.

<sup>19</sup> Ibid, p. 4.

<sup>20</sup> Qaraḏāwī, Yūsuf al- (2001).

for the sick.<sup>21</sup> The endowment of the hospital with *waqf* constituted a sign of more complete integration with Muslim culture and civilization and it was also a guarantee of the hospital's longevity.<sup>22</sup> As late as 16<sup>th</sup> century Muslim hospitals were still being endowed, a fine one having been established in Delhi. Hence it may be concluded that from the standpoint of financial administration, the organization of the hospital as specialized institution was completed with Cairo hospital of Aḥmad Ibn Ṭūlūn. So far as is known, the Ṭūlūnid hospital, established in 259/872-261/874<sup>23</sup> is the first Islamic Hospital endowed with *waqf* revenues.<sup>24</sup> The other four earliest hospitals with *waqf* in the chronological order of their foundation are (1) The Hospital of Badr Ghulām (d. 902) an administrator and army commander of the Caliph Mu'ṭaḍid (892-902) in Baghdad, (2) the Baghkami Hospital of Baghdad built by Amīr 'Abdul Ḥassan Baghkan at Turkf (d. 940) commander of the Caliph Muktafī (902-908), (3) the Ikhshid Hospital of Cairo built by the Turkish Kāfūr al-Ikhshid in 957 and (4) the hospital built by Mu'izz al-Dawla Ibn Buwayh in Baghdad in or a round the year 967 A.D.<sup>25</sup> Shaykh Muṣṭafā al-Sibā'ī (d. 1384/1967), states that there were also *awqāf* for psychology in its primitive sense. In Tripoli, Lebanon, there was *waqf* for employing two persons to pass by the sick in the hospitals and speak in a low voice that the patient could hear. One of them says "I see this person much better than yesterday." The other says, "And I see his face and eyes much brighter than yesterday." They say so to make the patient think that he/she is really getting better.<sup>26</sup> The second category of *awqāf* dedicated for the people with disabilities were of social nature. For instance there were *awqāf* to hire guides for the people with blindness.<sup>27</sup>

Keeping an eye on future, Shaykh al-Qaraḍāwī says, "This kind of Islamic *waqf*, i.e., welfare endowment should be retrieved and reactivated, as it is one of the important forms of taking care of people with disabilities." By retrieving this kind of Islamic *waqf*, Qaraḍāwī adds, we can save computers, spare parts and other tools that the people with disabilities could need.<sup>28</sup>

### 8.1.1 The Administration of *Waqf*

To understand the active role of the state in the administration of *waqf*, an elaboration of the two key-terms *ḥuqūq Allāh* and *ḥuqūq al-'ibād* is a must.<sup>29</sup> Islamic law distinguishes between two main spheres of claims or rights, those of man, known as *ḥuqūq al-'ibād* or *ḥuqūq al-ādamiyyīn* and those of God, termed as *ḥuqūq Allāh*. While the first category covers claims of private individuals in their

<sup>21</sup> Qarār'a, Jamīl 'Ubayd al- (1420/1999), p. 303 & 304.

<sup>22</sup> Nowsheravi, A.R. (1983), p. 57.

<sup>23</sup> Dunlop, M. et al (2003), vol. I, p. 1224.

<sup>24</sup> Nowsheravi, A.R. (1983), p. 57.

<sup>25</sup> Ibid.

<sup>26</sup> Sibā'ī, Muṣṭafā al- (1381/1962), p. 334.

<sup>27</sup> Sibā'ī, Muṣṭafā al- (1955), 1955, p. 48; Qarār'a, Jamīl 'Ubayd al- (1420/1999), p. 304 & 305

<sup>28</sup> Qaraḍāwī, Yūsuf al- (2001).

<sup>29</sup> Hoexter, M. (1995), p. 133.

dealings with each other, *ḥuqūq Allāh* stand for the rights of the Islamic community and their claims upon the individual.<sup>30</sup>

The claims of Allah or *ḥuqūq Allāh* have two main features. First, from the formative period of the Ḥanafī law onwards, the trusteeship of the claims of Allah has been vested in the hands of the Islamic political authorities. Unfortunately the Ḥanafī jurists themselves did not give a complete list of these claims (*ḥuqūq*). The traditional interpretation identifies the *ḥuqūq Allāh* with the general interest of the Islamic community. The more detailed list was given by Pazadawī (d. 482/1089).<sup>31</sup> According to him, the claims of Allah, which are to be vested with political authorities, include the acts of worship (*ʿibādāt*), punishment of crimes (*ḥudūd* and *jazāʾ*), religious expiation (*kaffāra*), alms offered at *ʿīd al-fitr*, taxes such as *ʿushr*, *kharāj*, a fifth of the booty (*ghanīmā*) and the produce of mines.<sup>32</sup> Even this detailed list was not exhaustive.<sup>33</sup> It did not differ in essence from the traditional interpretation given by other jurists. It could be thus concluded that whatever is not the claim of a specific individual but that of the Islamic community comes within the province of the claims of God.<sup>34</sup>

Secondly, as early as the classical jurists recognized the need to concede a measure of discretion to the political authorities, in order to enable them to carry out their task as guardians of the *ḥuqūq Allāh*. This recognition was embodied in the in the principles of *siyāsa* – extra-sharʿī authority granted to the ruler to take political and administrative considerations into account in his pursuance for the interests of the Islamic community, which was then incorporated into the Sharīʿa and termed as *siyāsa sharʿiyya*. In his endeavor to protect the public interest (*al-maṣlaḥa al-ʿamma*), the ruler was granted “an overriding personal discretion to determine, according to time and circumstances, how the purposes of God for the Islamic community might be effected.”<sup>35</sup> The only reservation attached to the rulers’ *siyāsa* competence is that his actions must not be in blatant contradiction to substantive principles of the Sharīʿa.<sup>36</sup>

As a result of these two features of the claims of Allah, wherever public interest, sometimes referred to as public law, was at stake, the Sharīʿa provided general outline of what ought to guide the activities of the political authorities. Within this very general framework, room was left for variations according to time, local conditions and other considerations of *raison d’état*. What ensued was a dual system of law and jurisdiction, whereby, broadly speaking *ḥuqūq al-ʿibād* were usually subject to Sharīʿa law and dealt with by the *Qāḍī*, who was also part of the state.<sup>37</sup> As far as *waqf* is concerned, a close look at this Islamic institution

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<sup>30</sup> The full meaning of *ḥuqūq* in this context is “legal rights and responding obligations,” see Johansen, Baber (1981), p. 283, n. 11.

<sup>31</sup> See Ibn Abī al-Wafāʾ (1), vol. 1, p., 372.

<sup>32</sup> Ibn al-Humām (1316/1898), vol. 4, p. 130.

<sup>33</sup> Johansen, Baber (1981), p. 300.

<sup>34</sup> Hoexter, M. (1995), pp. 133 & 134.

<sup>35</sup> Coulson, N.J. (1964), pp. 129 & 130.

<sup>36</sup> Ibid., pp. 129 & 172. See also Coulson, N.J. (1957), vol. 6, p. 51.

<sup>37</sup> Hoexter, M. (1995), pp. 142 & 143.

would reveal that we are dealing with a complex institution, combining the claims of men and those of Allah.<sup>38</sup>

Actually several elements of the *waqf* can be placed in the realm of *ḥuqūq Allāh*. First all jurists agree that the act of endowment is considered as *ṣadaqa* or an act of charity recommended by Sharīʿa, which entitles the founder of the endowment to reward in the hereafter.<sup>39</sup> The *waqf* was essentially a voluntary charity (*ṣadaqāt al-taṭawwuʿ*) not an obligatory charity (*ṣadaqāt al-farḍ*). Although it did not, as such, constitute a claim on the believer, once the endowment was found, the *waqf* came under the broad definition of *ṣadaqāt*, which was one of the subject matters specifically listed by the Ḥanafī jurists as part of the claims of Allah. A particular appropriate definition, which conveys this idea, is that of Kāsānī (d. 587/1189): *al-waqf ṣadaqa jāriya fī sabīl Allāh taʿālā*. In English this reads, *waqf* is a continuous or eternal charity for the sake of Allah.<sup>40</sup>

Second, one of the specific characteristics distinguishing the *waqf* from other forms of charity, was the distinction it made between the right to the endowed property (*al-ʿayn*) and the right to enjoy its proceeds or the income thereof (*al-manfāʿa*). By the very act of endowment, the property became inalienable. According to the Ḥanafī *madhhab*, the founder relinquishes his right to the property, which henceforth became *ḥaqq Allāh*.<sup>41</sup>

Third, while the right to the property became *ḥaqq Allāh* from the moment of endowment, the law offered several possibilities as far as the right to *manfāʿa* was concerned.<sup>42</sup> In fact the *waqf* law allows the founder of an endowment almost a complete freedom to determine its beneficiaries. If he designated a general charity of his choice as immediate beneficiary of his endowment, the *waqf* would be referred to as *waqf khayrī* or charitable endowment. Many founders of *khayrī* endowments selected, as beneficiaries, religious institutions such as central mosques, or welfare institutions like hospitals, soup-kitchens to the poor in general.<sup>43</sup> All these institutions evidently served the general interest of the Islamic community, and as their *manfāʿa* clearly came under *ḥuqūq Allāh*. In case of Family endowment, the founder designates members of his family as beneficiaries. In this case, since the rightful beneficiaries of the endowment (*mustaḥiqqūn*) were private individuals, the *manfāʿa* would be within the realm of *ḥuqūq al-ʿibād*. But as stated earlier, every Family Endowment is to turn out to be a Charitable Endowment, then once *waqf* has reached its ultimate *khayrī* stage, its *manfāʿa* becomes *ḥaqq Allāh*.

We may thus conclude that the *waqf* entered the province of *ḥuqūq Allāh* not only because its inclusion in the broad definition of the concept of *ṣadaqa*. By the very act of endowment, a property became *ḥaqq Allāh*, the *manfāʿa*

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<sup>38</sup> Ibid., p. 136.

<sup>39</sup> Kubaysī, Muḥammad ʿUbayd al- (1397/1977), vol. 1, pp. 134 & 135; Anderson, J.N.D. (1951), pp. 292-299.

<sup>40</sup> Kāsānī, Abū Bakr Masʿūd b. Aḥmad al (1406/1986), vol. 4, p. 221.

<sup>41</sup> In Arabic, it reads *al-ʿayn ḥaqq Allāh taʿālā maʿa al-khulūṣ*. See Kāsānī, Abū Bakr Masʿūd b. Aḥmad al (1406/1986), vol. 4, p. 221; Hoexter, M. (1995), p. 137.

<sup>42</sup> Hoexter, M. (1995), p. 137.

<sup>43</sup> Ibid.

joining the realm of *ḥuqūq Allāh* when its beneficiaries were of *khayrī* nature. As stated earlier, when it comes to be *ḥaqq Allāh*, then it is within the realm of the duties of the political authority. Hence, the right and the duty of the political authorities, in their capacity as representatives of the claims of Allah, to control Charitable Endowments, was never questioned, although the extent to which they did so in practice, as well as the methods they employed, varied according to time and place. In most cases, political authorities created some bodies to deal with all these endowments. These bodies were occasionally headed by the *Qāḍīs*. They all acted on behalf of the ruler, with whom the authority rested, and he could delegate it as he saw fit. Furthermore, *Qāḍīs* were sometimes called upon to assist in various aspects of the management of foundations for public purposes.<sup>44</sup> This could explain the absence of detailed legal theorization of the state's role in the administration of *waqf*. It is something subject to *siyāsa sharʿiyya*, which could change according to time and changeable circumstances not to strict sharʿī rules. Now we try to detail the role of the *Qāḍī*, one of the main figures entrusted by the state to participate in the administration of *waqf* institution with special reference to the issue of *ḥuqūq Allāh* and *ḥuqūq al-ʿibād*.

### 8.1.2 The Role of the *Qāḍī* in the Administration of *Waqf*

The Islamic endowment is always conceived of as one unit subject to one legal system, that is, the *waqf* law, as expressed in the jurists' manuals. Therefore, the figure of *Qāḍī* always appears when political authorities think of a reliable person to take care of the *waqf* institutions. In this regard, Māwardī's reference in his *Al-Aḥkām al-sultāniyya* and Ibn Khaldūn in his *Muqaddima* to the subject are particularly interesting.

Here we start with al-Māwardī's discussion of the topic. Control over the *awqāf* was listed in *Kitāb al-aḥkām al-sultāniyya* as one of the ten areas, which came under the authority of the *mazālim* (the Court of complaints vested with extra-*sharʿī* competence, especially created to implement the ruler's *siyāsa* authority in his task of protecting the general interest of the Islamic community or *ḥuqūq Allāh*).<sup>45</sup> Al-Māwardī divided *awqāf* into two kinds, namely, general or *ʿām* (those for the benefit of the general public) and specific or *khāṣ* (those whose beneficiaries are specific individuals). Māwardī distinguishes between the nature of the authority the person in charge of the *mazālim* is granted in dealing with each of the two types of endowments. While exercising his supervision over *al-wuqūf al-ʿamma*, the *walī al-mazālim* was to examine them and make sure their proceeds were spent for the purpose and line with the conditions set forth by their founders. In his endeavors, he was allowed to make use of extra-*sharʿī* measures such as initiating an investigation without receiving a complaint having been lodged by a specific person and relying on three of written evidences not confirmed by approved witnesses. In case of *al-awqāf al-khāṣa*, however, he did not enjoy such wide authority. Since these were endowed for

<sup>44</sup> Ibid., p. 151.

<sup>45</sup> Ibid., p. 139.



the benefit of specific individuals, the *walī al-maẓālim* could only deal with them when a dispute was referred to him by an interested party. Moreover, while considering the case, he had to stick to the *sharīʿ* rules governing the *Qāḍī* jurisdiction, and could not have recourse to written evidence unless confirmed by approved witnesses.<sup>46</sup> Al-Māwardī states also that the *Qāḍī*, while dealing with endowments, has to make sure that the property (*al-ʿayn*) was preserved and its proceeds flourished, its income collected and spent for the purpose determined by the founder. Moreover, he was to respect an existing legitimate administrator (i.e., one appointed by the founder), but if no such administrator existed, the *Qāḍī* himself was called upon to take charge of the administration of the endowment.<sup>47</sup>

Māwardī obviously viewed endowments, which were to benefit the entire community (*khayrī* or *ʿām*) as falling within the sphere of public interest or *ḥuqūq Allāh*. Therefore, as in the case of penal, financial and administrative law, the political authorities were free to have recourse to *siyāsa* measures and jurisdiction in order to protect the endowments. While in their *ahlī* stage, however, endowments belonged in the reserve of the Shariʿa law. Even when issues, concerning them were dealt with by the *walī al-maẓālim*, they were subject to the same law as that applied in the *Qāḍī*'s court. The *Qāḍī*'s competence was, however, not restricted to the aspects of the specific (*khāṣṣ*) endowment or matters falling within the claims of men. While adjudicating a *waqf* case, whether *ahlī* or *khayrī*, he was actually called upon to take into consideration all the relevant aspects, whether they belonged to the realm of claims of men or God. It is clear now that the combination of both claims in the *waqf* institution is thus perfectly reflected in the theory as put forth by al-Māwardī.

Ibn Khaldūn, on the other hand tried to trace the gradual evolution of the *Qāḍī*'s office in this regard. Originally, Ibn Khaldūn point out, the *Qāḍī*'s sole duty was to settle disputes between individuals (*al-faṣl bayna al-khuṣūm*). Gradually, however, because of the preoccupation of the rulers with matters of high politics, the *Qāḍī*'s duties came to include not only setting disputes between individuals, but also handling a number of general claims of the Islamic community (*istifāʾ baʿḍ al-ḥuqūq al-ʿāmma lil muslimīn*), that is matters within the province of *ḥuqūq Allāh*. Ibn Khaldūn listed the Islamic *awqāf* among such matters, together with care for the property of various disabled persons, inheritances, marrying orphans, care for the public roads, buildings, etc. these duties, he pointed out, became auxiliaries to the *Qāḍī*'s original terms of office.<sup>48</sup> This was formally expressed by the stipulation that the inclusion of the *waqf* among the duties of the *Qāḍī* had to be specifically mentioned in his appointment letter<sup>49</sup>

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<sup>46</sup> Māwardī, Ibn Ḥabīb al- (1327/1909), p. 79; Amerdoz, H.F. (1911), pp. 640 & 641.

<sup>47</sup> Māwardī, Ibn Ḥabīb al- (1327/1909), p. 58

<sup>48</sup> Ibn Khaldūn (1984), pp. 221-223.

<sup>49</sup> See Tyan, E. (1960), p. 377, quoted by Hoexter, M. (1995), p. 142.

Of course in the beginning, the *Qāḍī's* principal concern in *waqf* affairs, which must have occupied a considerable portion of his time, was with issues like disputes between beneficiaries or between them and the administrator, claims against the validity of deeds of endowment (*waqfiyyāt*), claims of individuals to be included among the beneficiaries of an endowment, disputes as to the portion of income an individual was entitled to, etc. however, on some occasions, the *Qāḍī's* considerations went beyond the rights of specific individuals and touch upon the general interests of the endowment, that is, *ḥuqūq Allāh* aspects.<sup>50</sup>

Instances where expenditures, maintenance or restoration of an endowed asset became necessary were liable to cause conflict between the claims of Allah and of men. The law was unequivocal in this respect: care for the property itself had the first claim on any income collected from the asset, whether or not the founder included this among his stipulations, end even if it meant that the beneficiaries, whether relatives of the founder or the servants of a mosque, were deprived of income for the duration of the restoration works. The *Qāḍī* was to see to the proper execution of this rule. If the administrator of the endowment did not carry it out, the *Qāḍī* was supposed to dismiss him, appoint someone else instead or act on his own accord.<sup>51</sup> The same concern underlay the *Qāḍī's* intervention in special cases such as long-term leases or exchanges of endowed property. Since the existence of the endowment could be endangered, they normally necessitated the *Qāḍī's* prior approval. Unless a particular administrator was empowered by the founder to act on his own, he had to place a demand for such an operation with the *Qāḍī* and persuade the court that the special conditions laid down by the law for the approval of the operation existed in the particular case. His claims were checked by the *Qāḍī*, usually with the help of experts in the building professions. The contract, whether a long-term lease or an exchange, was concluded between the parties in court, not before a careful examination of its terms, carried out in order to ensure that the deal was equitable and did not in anyway cause harm to the *waqf*.<sup>52</sup> The same considerations also dictated the *Qāḍī's* intervention in the appointment of private administrators. Thus, in the absence of an administrator named by the founder of the endowment, the *Qāḍī* was charged with the appointment of an administrator of his choice. He was also empowered to dismiss any administrator who failed to carry out his duties.<sup>53</sup> The general interest of the endowment, that is, *ḥaqq Allāh*, also prevailed over the founder's stipulations. Thus, in all the circumstances mentioned previously, the *Qāḍī* was authorized to act in contradiction to the founder's stipulations or to disregard them altogether.<sup>54</sup>

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<sup>50</sup> Hoexter, M. (1995), p. 143.

<sup>51</sup> Kasānī, Abū Bakr Mas'ūd b. Aḥmad al (1406/1986), vol. 4, p. 221.

<sup>52</sup> For the details of such procedures, see Hoexter, M. (1984), pp. 243-259, quoted by Hoexter, M. (1995), p. 144.

<sup>53</sup> Hoexter, M. (1995), p. 144.

<sup>54</sup> Ibid.

Besides, his concern with the claims of individuals, the *Qāḍī's* office sometimes had to touch upon the claims of Allah. This part of *Qāḍī's* duties belongs to the sphere of “auxiliary” functions according to Ibn Khaldūn’s classification.<sup>55</sup> When *ahlī* endowment reached their *khayrī* stage, and in the case of the *khayrī awqāf*, the intricate interplay of claims of Allah and those of men came to an end. Since both the *‘ayn* and the *manfā‘a* became *ḥaqq Allāh*, the general interest of the Islamic community reigned supreme in these cases. Thus al-Māwardī concluded that these endowments belonged in the sphere of the political authorities, represented by the *mazālim* court, which, as in the case of financial matters, was allowed extra-*shar‘ī* or *siyāsa* measures in their handling.<sup>56</sup> In recent Islamic history the number of *Waqf* properties had become so significant that the Ottoman Empire and many of Modern Muslim states, following its lead, established a Ministry of *Awqāf* (pl. of *waqf*) to supervise them.<sup>57</sup>

To conclude, it is clear that the role of the state, whether carried out by the *Qāḍī*, the Ministry of *Awqāf* or any other body, is central to preserve the proceeds of the *waqf* property and protect the interests of the beneficiaries of this *waqf* especially those with *khayrī* nature. This can work as a guarantee for beneficiaries with disabilities in particular against eventual injustice practiced against them because of their dependence. However, the role of the state is highly limited concerning the issue of naming or specifying the beneficiaries of a certain *waqf*. This is almost the prerogative of the founder or the *wāqif*. In sum, the state has to protect the interests of beneficiaries of a *waqf* who have disabilities but cannot include them as beneficiaries when they are originally included by the *wāqif*.

## 8.2 Zakāh

*Zakāh* was defined by jurists as that portion of a man’s wealth, which is designated for the poor.<sup>58</sup> In the early days of Islam in Mecca, no limit or restriction was placed on the amount to be dominated, for that decision was left to the individual Muslim’s conscience and generosity. In the second year of *hijra*, according to the widely known authorities, both the type and quantity of *zakāh* revenues were determined, and detailed illustrations were provided.<sup>59</sup>

*Zakāh* was mainly for the society rather than the immediate family. The Jurists, with the exception of the Mālikīs, agreed that it is not permissible to give *zakāh* to one’s father, grandfather, mother or grandmother because payers of *zakāh* are obligated to take care of all such people anyway. When such people become

<sup>55</sup> Ibn Khaldūn (1984), p. 222.

<sup>56</sup> Hoexter, M. (1995), p. 145.

<sup>57</sup> Siddiqui, M. N. (1987/1988), pp. 149-150. For detailed discussions on the institution of *waqf* in Islam, see Othman, Moh. Zain b. Hajī (1984), pp. 55-60; ‘Ashūb, ‘Abd al-Jalīl ‘Abd al-Rahmān (1915); Khallāf, ‘Abd al-Wahhāb (1361/1942); Ṭarabulsī, B.I. (1902); Ra’y, Hilāl al- (1355/1936); Anderson, J. N. D. (1951), p. 293; Ahmad, Ziauddin (1987), pp. 123-142; Shawkānī, Muḥammad b. ‘Alī b. Muḥammad al- (1405/1985), vol. 3, pp. 311-335.

<sup>58</sup> Sābiq, al-Sayyid (1), vol. 2, p. 1.

<sup>59</sup> Ibid, p. 2.

poor, they may draw upon the payer's largesse because it is their right. Thus if he pays *zakāh* to them, he benefits himself by avoiding the obligation of supporting them.<sup>60</sup> In this sense, *zakāh* is mainly directed to those poor members of society who have no family or have families but they cannot provide for them. This category of people include generally the most unfortunate people, "Those with the most serious financial problems are single and widowed women; and many of them are among those with most serious social and welfare problems; those without families. Community services tend primarily to reach those without, or with comparatively few, family sources".<sup>61</sup>

Although *zakāh* took the form of financial duty, it has also many other dimensions. First of all it was seen as a form of *'ibāda* (act of worship) in Islam which constitutes one of the five pillars (*arkān*) of Islam. It is associated with prayer (*ṣalāh*) in eighty-two Qur'anic verses.<sup>62</sup> It had also social and moral aims. Shāh Walī Allāh (1110-1176/1698-1762) explains this in a mystic language by saying, "Know that when a need presents itself to the poor person, and he entreats God about it either verbally or through his conditions, his entreaty knocks at the door of the Divine Generosity. Sometimes the best interest will be fulfilled by inspiring the heart of a pure person to furnish the remedy of his want. Thus when the inspiration descends and he is provoked (to respond), he is given success, God is pleased with him, and blessings flow to him from above and below, and from his right side and his left, and God's mercy is upon him."<sup>63</sup>

In this way, *zakāh* is in harmony with the spirit of Islam, which abhors forcing a person to good deeds by external coercion. On the contrary, the Muslim should spend out of his own belief and self-satisfaction. The Qur'an criticized those people who spend without self-content, "The only reasons why their contributions are not accepted are: that they reject Allah and His Messenger; that they come to prayer without earnestness; and that they offer contributions unwillingly" (Qur'an 9:54).<sup>64</sup>

*Zakāh* is also not considered as a favor (*minna*) that the wealthy bestow upon the poor; rather, it is a due (*ḥaqq*) that Allah has entrusted into the hands of the rich to give the poor and distribute among the deserving.<sup>65</sup> Allah has described this right as a known right (*ḥaqq ma'lūm*). Allah says: "And those in whose wealth is a recognized right", "For the (needy) who asks and him who is prevented (for some reason from asking)" (Qur'an 70:24-25).<sup>66</sup>

Modern Muslim jurists tried to integrate the *zakāh* institution into the social solidarity system. Yūsuf al-Qaraḍāwī says in this regard:

"Some of the central goals of *zakāh* have a social dimension. One of these goals is supporting the helpless and dependent people like the poor and the destitute (*masākīn*).

60 Ibid., vol. 3, p. 75.

61 Townsend, Peter & Dorothy Wedderburn, *The Aged and the Welfare State*, G. Bell & Sons Ltd., York House, Portugal Street, London, W.C.2., 1965, p. 15.

62 Sābiq, al-Sayyid (1), vol. 2, p. 1.

63 Walī Allāh, Shāh (1996), p. 221.

64 Bahiyy, Muḥammad al- (1971), p. 363.

65 Qaraḍāwī, Yūsuf al- (1422/2001), p. 154.

66 Sibā'ī, Muṣṭafā al- (1955), p. 48; Qaraḍāwī, Yūsuf al- (1422/2001), pp. 226 & 227.

Such support has its effect on those people as individuals and on the whole society at large as well. Actually the limits between individual and society are interrelated concepts. [...] Hence, there is no wonder that giving assistance to the needy is considered as a social goal because this assistance creates a more united and cohesive society. *zakāh* in this sense is part of the social solidarity system in Islam but it is not the whole system because the system of social solidarity in Islam is very broad. *Zakāh* comprises both of “social insurance” and “social security”. In social insurance, the individual pays regularly an insurance premium so as to benefit from it when he/she becomes disabled. In *zakāh*, the individual who pays *zakāh* one year may become poor in the second year so he turns out to be a recipient of *zakāh*. When viewed from this aspect, *zakāh* is social insurance. On the other hand, from a social security perspective, the poor receives financial support directly from the state although they did not pay any premiums. In *zakāh*, it may happen that an individual would benefit from *zakāh* revenues although he has never paid anything for that purpose. In this sense, *zakāh* is social security. But *zakāh* is closer to the concept of security (*ḍamān*) than insurance (*ta'mīn*). This is because the individual benefits from *zakāh* not according to what he has paid but according to what he needs whether his/her needs are great or small until he/she reaches the level of sufficiency (*ḥadd al-kifāya*). Imam al-Shāfi'ī and the scholars who agreed with him stated that *zakāh* should allow the poor to achieve *ḥadd al-kifāya* not only for a month or a year but also for the whole life. Imam al-Zuhrī wrote to the Caliph 'Umar b. 'Abd al-'Azīz about the recipients of *zakāh*, people suffering from incurable diseases, the disabled poor and the destitute who receives no financial support (neither salaries nor pensions). Based on what has been stated above, Yūsuf al-Qaraḍāwī concluded that *zakāh* constituted the first organized legislation in the field of social security which does not depend on the individual voluntary charities but on systematic and regular aids (which the poor receive directly) from the government.”<sup>67</sup>

### 8.2.1 People with Disabilities and *Zakāh*

Helping people with disabilities within the *zakāh* system is a high priority. It has been stated, explicitly, by more than one jurist that the people with disabilities, as long as they are poor, must be included in the recipients of *zakāh*. Muṣṭafā Ibn Ḥamza, one of the contemporary Moroccan scholars, Oujda University, says in this regard, that Muslim scholars disagreed on defining the *faqīr* and *miskīn* among the recipients of *zakāh*. Despite this disagreement, Muslim scholars did agree that people with disability who cannot earn their living by their own are the first category to benefit from *zakāh*.<sup>68</sup> Strikingly enough, some of the Qur'anic interpreters limited the purport of *al-faqīr* (the poor) to people of infirmity against *al-miskīn* (the needy) to be the able-bodied needy. A saying of this meaning has been reported by al-Ṭabarī in his *Jāmi' al-bayān* ascribed to Qatādah.<sup>69</sup> The same opinion is expressed by 'Abdullāh b. 'Amr b. al-'Āṣ. Al-Ṭabarī reports that Zuhayr al-'Āmirī met 'Abdullāh b. 'Amr b. al-'Āṣ and asked him about *zakāh* saying, “Whose money is it?” 'Abdullāh replied, “It is the money of those people with lameness, blindness, the one-eyed, and all other dependent people.” Then

<sup>67</sup> Qaraḍāwī, Yūsuf al- (1414/1994), 934-936.

<sup>68</sup> Ibn Ḥamza, Muṣṭafā, *Ḥuqūq al-mu'awwaqīn fī al-islām*, Morocco, 1414/1993, p. 51.

<sup>69</sup> Ṭabarī, Muḥammad b. Jarīr al- (1405/1984), vol. 10, p. 110.

Zuhayr said, “Collectors of *zakāh* and those fighting for the sake of Allah have also a right in it!” ‘Abdullāh said, “For those fighting for the sake of Allah, it has been made lawful for them. As for the collectors of *zakāh*, it is allowed to them to take only in accordance with their work. *Ṣadaqa* is not lawful for the rich nor for the able bodied.”<sup>70</sup>

In this connection, it is proper to refer to a document prepared by some jurists, who at the behest of ‘Umar Ibn ‘Abd a-‘Azīz, elaborately specified the religious precepts concerning the eight *zakāh* beneficiaries. We will select only those parts relating to our topic. The document runs as follows:

“The following are the places of *ṣadaqa* and these are eight in number. ... One half of the share of the poor (*al-fuqarā’*) goes to those who fought for the first time in a battle for the God’s cause. Then, as the auxiliary troops, they will be allotted to a fixed emolument, which they will receive as the first *‘atā’*, but afterwards, no more *ṣadaqa* is allowed to them. The remaining half is given to the poor who have not been able to fight because of disability or chronic disease (*zamāna*).”<sup>71</sup>

“One half of the share of the destitute (*al-masākīn*) goes to those stricken with diseases preventing them from doing any job and from moving around the earth. The other half is for those who beg for their food, and for the Muslims in prison who have nobody to care for them.”<sup>72</sup>

Among modern scholars, Professor Muḥammad al-Bahiyy, the former director of Al-Azhar University, says in his comment on the first category of the recipients of *zakāh*, namely, the poor (*al-Fuqarā’*) that people of advanced age and those suffering from incurable diseases should be included in this category.<sup>73</sup> Yūsuf al-Qaradāwī<sup>74</sup> and ‘Abdullāh b. Bāz<sup>75</sup> stated also that the people with disabilities are to be included in the beneficiaries of *zakāh* as long as they are poor.

### 8.2.2 The Administration of *Zakāh*

Although *zakāh* in principle is an obligation on the individual not on the state, this does not mean that the state had no role to play. On the contrary, it has more than one role in this regard. Here we focus on two of them, namely enforcing the payment of *zakāh* upon those for whom payment is obligatory and then collecting this money and distributing it among the due beneficiaries.

As for the first role, it is the ruler’s duty to take *zakāh* from the defaulter by force and rebuke him, provided he does not collect more than the stipulated amount. However, in the views of Aḥmad and al-Shāfi‘ī (in his earlier opinion) the ruler could take half of the defaulter’s money, in addition to the calculated amount

<sup>70</sup> Ibid., p. 111.

<sup>71</sup> Ibn Salām, Abū ‘Ubayd al-Qāsim (1388/1968), p. 764.

<sup>72</sup> Ibid.

<sup>73</sup> Bahiyy, Muḥammad al- (1971), p. 371.

<sup>74</sup> Qaradāwī, Yūsuf al- (2001).

<sup>75</sup> Ibn Bāz, ‘Abd Allāh (1413/1992), p. 17.

of *zakāh*, as a punishment.<sup>76</sup> If some people refrain from paying *zakāh* knowing that it is due when in reality they can afford to pay, they should be fought by the ruler [state] until they yield and pay. This has been stated by a multitude of Muslim jurists. Here we give some chronologically arranged examples of those scholars. Al-Shāfi‘ī (d. 205/820),<sup>77</sup> al-Qurṭubī (d. 671/1272),<sup>78</sup> al-Jaṣṣāṣ (d. 370/981),<sup>79</sup> Ibn Ḥazm (d. 456/1064),<sup>80</sup> Ibn Qudāma (d. 620/1223),<sup>81</sup> ‘Alī b. Muḥammad al-Āmidī (d. 631/1233),<sup>82</sup> Muḥammad Ibn Mufliḥ al-Maqdisī (d. 763/1361), and he related consensus among Muslim jurists in this regard,<sup>83</sup> and the Mālikī scholar Muḥammad Ibn ‘Abd al-Bāqī al-Zurqānī (d. 1122/1710).<sup>84</sup> Most of these scholars quoted the following ḥadīth in support of their opinion. Abū Hurayra is reported to have said: “When Allah’s Messenger, upon him be peace, died and Abū Bakr succeeded him as Caliph, some Arabs apostatized, causing Abū Bakr to declare war upon them. ‘Umar said to him: Why must you fight these men? Especially when there is a ruling of the Prophet, upon him be peace: I have been ordered to fight men until they say that none has the right to be worshipped but Allah, and whoever said this has saved his life and property from me except when a right is due in them and his account will be with Allah. Abū Bakr replied: By Allah! I will fight those people who differentiate between *ṣalāh* (Ritual Prayer) and *zakāh* because *zakāh* is due on property. By Allah! If they withheld even a young she-goat (*‘anāq*) that they used to pay at the time of the Allah’s Messenger, upon him be peace, I would fight them. Then ‘Umar said: By Allah! It was He who gave Abū Bakr the true knowledge to fight, and later I came to know that he was right.”<sup>85</sup> Among modern scholars, Prof. Muḥammad al-Bahiyy, the former director of Al-Azhar University, comments on this incident saying that the war launched by Abū Bakr, despite he was known for his kind-hearted treatment and mild-temper, against the *zakāh* refrainers (*māni‘ī al-zakāh*) was not just a war against some people described as apostates. In fact, the main reason behind this war was to protect the future of the Islamic community. The cohesion of the Muslim community would collapse, if the value of *zakāh* was belittled or marginalized in the hearts of the Muslim majority.<sup>86</sup>

So the Islamic state should fight, if necessary, to ensure the rights of the poor people living in the Muslim community. This is how the state should in order to protect the financial rights of the poor in general. It is self-evident to expect how the state would react if the poor, the needy and the dependent people especially

<sup>76</sup> Sābiq, al-Sayyid (1), vol. 2, p. 8; Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1400/1979), vol. 2, p. 400. See also Mirdāwī, ‘Alī b. Sulaymān al- (1), vol. 3, p. 189; Shirāzī, Ibrāhīm b. ‘Alī b. Yūsuf al- (1), vol. 1, p. 169; Kasānī, Abū Bakr Mas‘ūd b. Aḥmad al (1406/1986), vol. 2, p. 35.

<sup>77</sup> Shāfi‘ī, Muḥammad b. Idrīs al- (1393/1972), vol. 1, p. 255.

<sup>78</sup> Qurṭubī, Abū ‘Abd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 7, p. 133.

<sup>79</sup> Jaṣṣāṣ, Aḥmad b. ‘Alī al-Rāzī al- (1405/1984), p. 193.

<sup>80</sup> Ibn Ḥazm, Abū Muḥammad ‘Alī (1347-1352/1928-1933), vol. 11, p. 378.

<sup>81</sup> Ibn Qudāma, Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Maqdisī (1405/1985), vol. 2, p. 229.

<sup>82</sup> Āmidī, ‘Alī b. Muḥammad al- (1404 /1983), vol. 1, p., 338.

<sup>83</sup> Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1418/1997), vol. 6, p. 153.

<sup>84</sup> Zurqānī, Muḥammad b. ‘Abd al-Bāqī b. Yūsuf al- (1411/1990), vol. 2, p. 171.

<sup>85</sup> Abū Dawūd (1), vol. 1, p. 346.

<sup>86</sup> Bahiyy, Muḥammad al- (1971), pp. 393 & 394.

those with disabilities, were neglected and the rich refrain from giving them their share of *zakāh*.

As for the second role to be played by the state in the administration of *zakāh*, Yūsuf al-Qaraḏāwī says in this regard, “When Muslims established their state (that is in Medina) the definite amounts of *zakāh* were fixed and the state couriers were sent to collect *zakāh* and distribute its revenues among the lawful beneficiaries (*maṣārif sharʿiyya*). The Qurʾān called these state couriers (*al-ʿāmilīna ʿalayhā*) or the *zakāh* officials. The Qurʾān has also allocated a certain share of *zakāh* for such officials to safeguard that *zakāh* will be duly collected and distributed.”<sup>87</sup>

What should be added at this juncture is that the state has a wide scope of choice. There are eight categories of the recipients of *zakāh*. It is not a must, according to some jurists, to portion out the revenues of *zakāh* equally among all these categories.<sup>88</sup> The abiding principle determining the exact amount to be given in any particular case is that the aim of *zakāh* is to rehabilitate the beneficiary and not merely to maintain his/her existence within the confines of poverty. Accordingly, the nature and extent of *zakāh* assistance must always, and necessarily, depend on both the prevailing cost of living and on the special circumstances and requirements of each individual beneficiary.<sup>89</sup> Some Jurists, like Ibrahīm al-Nakhʿī, said that it is permissible to place the whole amount of *zakāh* into one category if that is necessitated by the current conditions.<sup>90</sup> It appears to be most reasonable, as has been related from Mālik, that the matter should be left to the judgment of the authority. Whichever category or categories of the prescribed beneficiaries is/are actually in need and greater in number should be given preference in allotting to them, if the authority considers it justifiable, the required amount from the *zakāh* funds.<sup>91</sup> It is also not desirable that all persons, irrespective of their needs, should receive *zakāh* equally. The authority has full capacity to allot, say, only one *dīnār* to a poor person knowing business techniques, because this one *dīnār* may suffice him to attain the state of *ghinā* (self sufficiency). But another poor man may require a big amount of one thousand *dīnārs* for achieving self sufficiency in matters of food and clothing etc, he should then be given such amount,<sup>92</sup> In fact the authority should be under no restriction to utilize the *zakāh* revenues may be envisaged essential and of greater benefit under the different heads of *zakāh* expenditure, as far as this would not contradict the clear instructions of the Qurʾān and the Sunna. For instance, it is not necessary that *zakāh* should always be assigned to persons. <sup>93</sup> The input may also be employed, on the emergency of needs and to acquire greater benefit for the deserving beneficiaries, in public institutions taking care of the poor and dependent classes of society.

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<sup>87</sup> Qaraḏāwī, Yūsuf al- (1422/2001), p. 154. See also, Kasānī, Abū Bakr Masʿūd b. Aḥmad al (1406/1986), vol. 2, p. 35.

<sup>88</sup> See Mirdāwī, ʿAlī b. Sulaymān al- (1), vol. 3, p. 185.

<sup>89</sup> Zayas, Farishta G. de (1379/1960), p. 350.

<sup>90</sup> Sābiq, al-Sayyid (1), vol. 2, p. 70.

<sup>91</sup> Ibn Salām, Abū ʿUbayd al-Qāsim (1388/1968), p. 763.

<sup>92</sup> Ahmad, Ziauddin (1981), p. 38.

<sup>93</sup> Ibid.



As far as people with disabilities are concerned, we say that the state represented by the ministry of social affairs or other departments should consider the case of the poor people having disabilities. It is by no means sufficient to allocate a meager pension with which those people can hardly contrive to meet the necessities of life. In this regard, it is highly recommended to correct one of the common misconceptions concerning the objectives of *zakāh*. It is perhaps a common belief that *zakāh* is designed just to meet the basic needs of Muslims in distress. But a careful consideration of its heads of expenditure as prescribed in the Qur'ān, as well as the policy of its distribution, as could be seen in the Sunna of the Prophet – Peace and Blessing be upon him – prove that *zakāh* is actually for the fulfillment of the Muslim's right to live comfortably in society.<sup>94</sup> We do not come across any sayings of the Prophet or of his Companions prescribing any limit to the amount payable to a single individual.<sup>95</sup> However, in view of what can be deduced from a number of Traditions and precedents, it can most emphatically be said that *zakāh* is not a mere assistance of alms. It should be given in such a manner to secure economic sufficiency (*ghina*) for its beneficiaries. Abū Talhā, a Companion once sought of the Prophet to counsel him about a fertile orchard, which was fabulously increasing his wealth. Abū Talhā did not want to retain and proposed to donate it away. On being asked by the Prophet to distribute it among the poor persons of his kin, he gave it to Ubayy b. Ka'b and Ḥassān b. Thābit.<sup>96</sup> The donation of the said orchard was, of course, not part of the compulsory *zakāh* incumbent upon Abū Talhā; he rather voluntarily disowned in favor of two persons. But it is agreed upon that all *ṣadaqāt*, whether compulsory or voluntary, are meant for the needy. So when there is no limit fixed for an individual in paying to him out of the voluntary *ṣadaqāt* there also should be no limit of amount in making payments to an individual out of the funds of the compulsory *zakāh*.<sup>97</sup>

ʿUmar Ibn al-Khaṭṭāb is reported to have once ordered for no less than three camels to be given on an able bodied man who brought the tale of his misery to the notice of the Caliph.<sup>98</sup> It is obvious that in making such a precious item of *zakāh* available to one man only, ʿUmar's intention was nothing but to make himself sufficient in the means of livelihood. His policy was, whenever you pay them, make them self sufficient.<sup>99</sup> He is also reported to have given clear instructions to his *zakāh* administrators to pay the needy abundantly, even if they were a hundred camels.<sup>100</sup>

According to Abū ʿUbayd, many Successors (*Tābiʿūn*) also expressed a similar view and recommended to give abundantly rather than scantily.<sup>101</sup> It is therefore

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<sup>94</sup> Ibid., p. 23.

<sup>95</sup> Ibid.

<sup>96</sup> Qurṭubī, Abū ʿAbd Allāh Muḥammad b. Aḥmad al- (1372/1952), vol. 4, p. 132.

<sup>97</sup> Ibn Salām, Abū ʿUbayd al-Qāsim (1388/1968), p. 743, quoted also by Ahmad, Ziauddin (1981), p. 36.

<sup>98</sup> Ibn Salām, Abū ʿUbayd al-Qāsim (1388/1968), p. 747.

<sup>99</sup> Ibid., p. 748.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid., p. 749.

desirable that when a person is selected a beneficiary of *zakāh*, attempts should be taken to pay him sufficiently so as to enable him to meet his own needs and those of his family.

Abū ‘Ubayd’s following statement at the conclusion of his discussion on the related Traditions and Precedents probably pinpoints the real objective underlying the distribution of *zakāh*.

“All these Precedents indicate that no fixed amount has been prescribed for the Muslims as how much of *zakāh* they should pay to a needy person. It has also been suggested that they should not pay, despite the fact that the receiver is in debt, in excess of that amount. The payment would rather be in reflection of affection and grace, provided that it is based on the sound judgment of the distributor and that he does not show any favoritism. In illustration, it may be said that a man of immense wealth finding that members of a Muslim family in the state of want and destitution – they have no house to give them shelter or to cover their destitution – buys for them, with the *zakāh* of his wealth, a house to provide them shelter from the severity of the winter and from the hotspell of the summer. Or finding that they are bare of clothes and have no proper dress to wear, provides (with the *zakāh* money) to them such clothes as will cover their hinder parts at the time of prayers and will protect them from the severity of hot and cold spell. These objectives and the similar ones cannot be achieved without providing big amounts. It might be rather that a person is not willing to pay voluntary *ṣadaqāt* towards the expenditure of such needs, but he does this willingly out of the *zakāh* of his wealth. Will he not then be relieved of his *farḍ* (Liability)? Certainly he will. Moreover in such case, he will be regarded, if God willing, a beneficent.”<sup>102</sup>

### 8.2.3 Are there Other Claims on Wealth besides *Zakāh*?

One may say that suppose that the amount of *zakāh* collected could foreseeably be insufficient to put an end to the *zakāh* of people with disabilities. In other words, the government has given them their due share of *zakāh* but they did not reach *ḥadd al-kifāya*. What is the role of the Islamic state in such case? The question of imposing money other than *zakāh* upon the wealth of the rich was first raised by a number of the Companions of the Prophet such as ‘Alī b. Abī Ṭālib, ‘Abdullāh b. ‘Umar and the most enthusiastic Abū Dharr al-Ghifārī – May Allah be pleased with them all – during the Caliphate of ‘Uthmān b. ‘Affān – May Allah be pleased with him. They all see that there are other claims on wealth besides *zakāh* so long as the poor did not reach the level of *ghinā* or self-sufficiency. They, however, disagreed on the amount to be paid after the *zakāh*. Abū Dharr, the main protagonist of this drama promoted for his idea publicly in Syria. Abū Dharr’s call was met with a substantial interest especially on the side of the poor to the extent that Mu‘āwiya b. Abī Sufyān, the ruler of Syria at this time, felt anxiety. He wrote to the Caliph ‘Uthmān and asked him to order Abū Dharr to leave for Medina and the Caliph did.<sup>103</sup> The attempt of Abū Dharr was later enhanced and codified by Ibn Ḥazm. In his *Al-Muḥallā*,

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<sup>102</sup> Ibid., p. 750.

<sup>103</sup> Labbān, Ibrāhīm al- (1383/1964), pp. 247 & 248.

he states that the rich of each locality are to take care of the financial needs of the poor of such place. The *Sultān* or the ruler forces them (the rich) to do so if *zakāh*-collected money was not sufficient (to meet the financial needs of the poor).<sup>104</sup> Ibn Ḥazm then quotes a number of Qur'anic verses, Prophetic Traditions and sayings from the Companions and the Successors.<sup>105</sup>

In modern time, Shaykh Sayyid Sābiq responds to the aforementioned question by saying, "If the amount of *zakāh* is not enough to alleviate the conditions of the poor and the needy, then the rich can be subjected to further taxation. How much should be taken is not specified. Its quantity will be determined by the needs of the poor. The scholars agree that should a need arise, even when *zakāh* has been paid, the Muslim community is bound to contribute toward the alleviation of the problem".<sup>106</sup> It should also be known that the rulings applied there (in *zakāh*) are to be applied typically here. Imam Muḥammad 'Abduh's comments are: "The giving of property in excess of the due *zakāh* is considered one of the basic elements of piety (*birt*) and is enjoined like the prescribed *zakāh*."<sup>107</sup> Some of the contemporary scholars call this extra money the Islamic income-tax.<sup>108</sup>

Now there are two points to comment on. First, after mentioning the proponents of this viewpoint, we understand that the main target of *zakāh* is to achieve the *ghinā* of the poor. In other words, all the basic needs of the poor are to be fulfilled, if not by *zakāh* alone, then by other financial claims imposed by the state upon the rich, which some of modern scholars termed as the Islamic income-tax. Secondly, the specific case of each recipient is to be considered. Hence the case of the poor people having disabilities is to be considered from the perspective of these two points. Thereupon, when the state distributes the shares of *zakāh* revenues among the beneficiaries, it should be put into consideration that the basic needs of people with disabilities are different from the non-disabled. For instance, expenses of the health care should be counted. In other words, it is most likely that the expenses of the basic needs of a person with disability would cost more. Thereupon they should be given more even if this would necessitate imposing extra taxes on the rich or giving them a share bigger than the share of the other recipients of *zakāh*.

#### 8.2.4 The Status of Non-Muslims

Here we can divide Muslim jurists into the opponents who opined that non-Muslims cannot be given from *zakāh* and the proponents who said that non-Muslims may benefit from the revenues of *zakāh*.

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<sup>104</sup> Ibn Ḥazm, Abū Muḥammad 'Alī (1347-1352/1928-1933), vol. 6, p. 156.

<sup>105</sup> Ibid, vol. 6, pp. 156-159.

<sup>106</sup> Sābiq, al-Sayyid (1), vol. 2, pp. 91 and 92.

<sup>107</sup> Ibid, vol. 2, p. 92.

<sup>108</sup> See for instance the opinion of Shaykh Ibrāhīm al-Labbān, the former dean of Dār al-'Ulūm Faculty, Cairo University and the member of the Islamic Researches Complex, Labbān, Ibrāhīm al- (1383/1964).

The opponents maintained that *zakāh* was exclusively designed for the benefit of Muslims.<sup>109</sup> They based their theory of ineligibility of the non-Muslims for *zakāh* on the tradition, “Take it (*zakāh*) from the rich amongst you and give it to the poor amongst you.” According to them, here the phrase “amongst you” referred to the Muslims only. Abū ‘Ubayda emphatically determined the exclusive right of the Muslims over the revenues of *zakāh*.<sup>110</sup>

The proponents, on other hand, opined that it is permissible to give the non-Muslim poor from *zakāh*. This means that the poor people with disabilities would benefit from *zakāh* even if they were non-Muslims.<sup>111</sup> To them, the position taken by the jurists in not allowing the non-Muslim citizens to be benefited with the *zakāh* funds seemed to be unnecessarily rigid. Their opinion that the saying of the Prophet, “Take it from the rich amongst you and give it to the poor amongst you” was directed to mean that the *zakāh*, as it was to be levied upon the Muslims only, was also to be utilized exclusively in their benefit, did not work as such at least in case of people whose hearts were to be reconciled, because no jurist, except al-Shāfi‘ī, was reported against the payment of *zakāh* to a non-Muslim under this class of beneficiaries.<sup>112</sup>

In this respect there was a clear mandate from ‘Umar that *zakāh* funds should be made available to help the non-Muslim destitutes who, are, according to him covered by the saying of Allah, “Alms are for the poor and the needy [...]” (Qur’ān 9:60) ‘Umar expressed this opinion when he happened to find an extremely old man of the Jewish community begging from door to door. The Caliph first gave him something from his own house and then sent him to the officer who was in-charge of the Public Treasury (*Bayt al-Māl*) for a bigger amount. ‘Umar is reported to have instructed the officer-in-charge of the Treasury, “Look into the affairs of this man and other persons like him. By God, we would not be doing justice to him if we take away his satisfaction (by Imposing *Jizya*) and then cause him to suffer in his old age. (God says): “*Ṣadaqāt* are only for the poor and the needy.” The *fuqarā’* are among the Muslims, and this man falls under the category of *masākīn*.<sup>113</sup>

At any rate, a modern state cannot ignore the socio-economic principles in tax measures. It has now become primary function of the governments to regulate the distribution of wealth, and taxation is a conscious method, *zakāh*, being the most effective one, to level the social inequalities brought about by the market mechanism and certainly by private property.<sup>114</sup> Equity and consistency in taxation demand that all citizens, irrespective of religion and sect, must equally contribute to the fisc as well as to any welfare program undertaken by the state.

<sup>109</sup> Ahmad, Ziauddin (1981), p. 40.

<sup>110</sup> Ibn Salām, Abū ‘Ubayd al-Qāsīm (1388/1968), p. 803. See also Ibn Mufliḥ, Ibrāhīm b. Muḥammad (1400/1979), vol. 2, p. 433.

<sup>111</sup> Qaradāwī, Yūsuf al- (1420/2000), vol. 1, p. 293.

<sup>112</sup> Ibn al-Humām (1316/1898), vol. 7, pp. 285-262; Ahmad, Ziauddin (1981), p. 41.

<sup>113</sup> Ibn al-Qayyim (1381/1961), vol. 1, p. 38; Abū Yūsuf (1382/1926-36), p. 126.

<sup>114</sup> Ahmad, Ziauddin (1981), p. 42.

Hence, even if in the case of adopting the opinion of the majority, this would not mean that the non-Muslims with disabilities would be left without any financial support. Social justice as prescribed by Islam was not merely confined to Muslims only. These are meant for all mankind. The Prophet, Muḥammad has been adjoined as the *Raḥmatullāhī li al-‘Ālamīn*, which means: “We sent thee not, but as mercy for all creatures” (Qur’ān 21:107). This has already been demonstrated in the plural society of Medina founded by him. Montgomery Watt in his book, *The Majesty that was Islam* (1974), has given eloquent illustrations to the above truth.<sup>115</sup> Accordingly, non-Muslims having disabilities, when suffering poverty, must be maintained by the state. The sources of such financial support for are numberless, like *jizya* (an annual tax levied upon non-Muslims living in the Islamic state in lieu of *zakāh* and other obligations of Muslims), *kharāj* (a tax levied on the produce of the landed property own by non-Muslims), the spoils of war [...] etc. They should receive what is called nowadays the state-disability pension. In the early days of Islam especially, at the time of the rightly guided Caliphs, *Bayt al-Māl* or the Public Treasury was not only the possession of the Muslims but also that of the non-Muslims living in Muslim lands. Indigent and dependent non-Muslims and Muslims were obligated to be cared for from the resources of the *Bayt al-Māl*.<sup>116</sup> The above-mentioned incident of ‘Umar, the second Caliph with the Jewish person adds credit to this fact. On another occasion, when ‘Umar traveled to Damascus he passed through the land of some Christians who suffered from leprosy, so he commanded that they be granted from the *ṣadaqa* funds and that they be supplied with food.<sup>117</sup>

In sum, the modern Islamic governments while imposing *zakāh* on Muslims should not overlook the welfare needs of the non-Muslims and their liability to the achievement of this objective. Similarly, the purpose of imposing any financial obligation must not be oblivious of maintaining a proper economic equilibrium between both the individuals and the groups of citizens. The non-Muslims therefore must also contribute in the name of their own social welfare and in the name of justice in taxation.<sup>118</sup>

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<sup>115</sup> Noor, Abdun (2000), p. 446.

<sup>116</sup> Azmi, S. H. (1991), vol. 35, p. 222.

<sup>117</sup> Ibid.

<sup>118</sup> Ahmad, Ziauddin (1981), p. 43.