Recent Interpretations of the Laws of Zakāt with Regard to People with Disabilities: A Comparison with Classical Fiqh

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Abstract

Zakāt is considered the earliest social solidarity system that does not depend on voluntary charity but on orderly periodic government support. In this article I trace interpretations of the zakāt laws on people with disabilities in the past and the present in respect of two main questions: is a disabled person subject to zakāt taxation? and does a disabled person qualify as a beneficiary of funds collected through the zakāt taxation? The main conclusions are that if and when the economic situation of people with disabilities is similar to that of the healthy, they are subject to taxation. People with disabilities become beneficiaries of zakāt funds only when they are “poor,” “needy,” and unable to support themselves, but never only because of the disability.

Keywords

zakāt, people with disabilities, niṣāb, social solidarity

Zakāt is considered the earliest social solidarity system that does not depend on voluntary charity but on orderly periodic government support. It aims at providing the minimal necessities for each individual...
and his or her dependents: food, clothing, shelter and other needs (Al-Qaraḍāwī 1984, 105). The entry in The Oxford Encyclopedia of the Modern Islamic World defines zakāt as “a wealth tax imposed on Muslims of sufficient means” (See also Kuran 2003). Actually, it is a progressive property tax levied only from those who own the minimum or more than the minimum level (niṣāb) fixed by Islamic law for each type of property (cattle, metals, land, produce, etc.). In this respect, the zakāt system recalls the modern welfare state’s outlook on collecting taxes.

Beyond the material aid extended to those in need, from a psychological point of view poor people’s awareness that the wealthy share (at least a part) of their wealth with them strengthens inter-societal bonds; feelings of hatred and envy may give way to mutual empathy (Al-ʿUthaymīn (d. 2001) 2007a, 382–383).

The laws of zakāt have two sides: one refers to taxpayers with more than adequate economic resources, who therefore are required to remit to the state treasury (bayt al-māl) some of their wealth. The legal literature is explicit about the various types of property and sources of income, and the corresponding percentages of zakāt taxation that should be levied from them. Since my focus here is on general attitudes to the disabled as reflected in the zakāt laws, I do not dwell on the taxable categories and their individual rates.

The other side of these laws concerns those who qualify under one of the Qurʾan’s eight categories of beneficiaries of zakāt funding (collected by the state treasury) to receive financial aid.

Here I trace recent interpretations of the zakāt laws on people with disabilities in respect of two main questions:

a. Is a disabled1 person subject to zakāt taxation?

b. Does a disabled person qualify as a beneficiary of funds collected through the zakāt taxation?

Is a person with disability required to pay zakāt?

According to the Shari’a, a person is liable for zakāt under the following conditions: he or she must be a Muslim, must be a free man or woman, must own goods in excess of niṣāb (the minimum designated by law),2

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1. On the various terms existing in the legal literature that describe people with some physical or mental disorders, see Rispler-Chaim 2007, 1–5. In this article I write “people with disabilities” or “a disabled person.”

2. Niṣāb is the minimal value of each type of property, “the baseline” for taxation under the laws of zakāt. Below niṣāb there is no taxation. Having more than the
must not be an itinerant, and must have possessed the goods subject to taxation for more than one year (Al-ʿUthaymīn 2007a, 387). There is no mention in the Qurʾan, or in the general description of zakāt law in the Shariʿa, as to whether the prospective zakāt payer should be healthy or not, physically or mentally. This leaves much room for uncertainty about the obligation of people with disabilities to pay it. The dilemmas arise from the fact that people with disabilities are often judged by healthy members of society—sadly, I dare say, of any society, East or West—to depend on others and to be poor people who cannot support themselves or their families without external assistance.

So is it even appropriate to ask whether people with disabilities should pay zakāt like the healthy?

The question has certainly arisen among Muslim jurists, and various answers have been given. In general, Muslim jurists are divided on the issue into two main groups: those who think that the owner of property pays zakāt (this was the opinion of Mālik, the early Shāfiʿīs, Aḥmad b. Ḥanbal and the Zāhirīs), and those who maintain that the goods themselves are subject to taxation (this was the opinion of the Ḥanafīs, the later Shāfiʿīs and other Ḥanbalīs). From Qurʾan 9,103 (“Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow…”5) it was inferred that the goods alone (ʿayn al-māl) are subject to taxation, not the owners themselves (dhimmat ṣāḥibihi) (Al-Ḥadīthī 2005, 63–65). Consequently, goods of disabled owners are to be taxed just like goods of healthy owners; hence, healthy and sick owners of wealth should not be differentiated in respect of paying the tax.

3. “Possessing the niṣāb effectively meant that someone has a surplus, a specific amount of wealth in excess of what is needed to support and protect life and so could pay zakāt and therefore not be considered poor” (Singer 2008, 160).

4. According to the United Nations Declaration on the Rights of Disabled Persons, proclaimed by the Geneva Assembly’s Resolution 3447 of December 9, 1975, the term “disabled person” means “any person unable to ensure by himself or herself, wholly or partly, the necessities of normal individual and/ or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities.” Quoted in Rispler-Chaim 2007, 1. One of the now greatly disliked terms for people with disabilities is handicapped, because it refers to the reality that existed in the Middle Ages and still continues in many parts of the world today, where people with disabilities live cap-in-hand, begging on the street (Rispler-Chaim 2007, 1).

5. The translation of Qurʾanic verses follows Pickthal (1953).
Accordingly, the wealth owned by a majnūn6 is equated to the wealth of an orphan child: in both cases the guardian (waliyy) is responsible to pay zakāt taxes out of the money owned by the majnūn (and by the orphan child, or the minor). This permission is based on al-Tawba 103, as mentioned.7 In other words, the Qur’an authorizes guardians to take money from the funds of legally incompetent people (ghayr mukallafīn) to pay the zakāt taxes owed on their wealth. So not the person, but his or her assets are charged. Being irrelevant in this case, the owner’s state of health or disability is not considered. The same position was expressed by Jād al-Ḥaqq, the former Sheikh al-Azhar (d. 1996), who ordered the guardian of a person who was interdicted (mahjūr ‘alayhi)8 due to a mental illness to pay the zakāt taxes from that person’s investment bank account; however, he permitted taxation only on the capital, not on the interest accumulated on it. The interest was judged “illegitimate,” and therefore not considered subject to taxation (Jād al-Ḥaqq, v.3: 114–115).

Also, a fatwa of the Chief mufti of Saudi Arabia, Āl Al-Shaykh (following the Ḥanbalī school of law), and published in 2004, permitted zakāt to be levied on funds owned by people hospitalized in a mental-neurological hospital in the Saudi city of Tā’if; this was the decision even though some of the ill people there were unconscious, had lost touch with reality, had lost control of their bodily discharges, and suffered from physical disabilities related to old age. The mufti’s only stipulation there was that the funds exceed the minimum level (niṣāb) (Āl al-Shaykh). Once again, the mental condition (or the physical condition resulting from it) of the owner of the capital was no impediment to taxing the funds. Ibn Qudāma

6. According to Dols, who the majnūn is has several explanations; he explains that the word is a general title encompassing other mental deficiencies or disorders, such as the safīh (fool), the ma’tūh (idiot), the dhū ḡafla (imbecile), etc. All these disabled persons suffer from mental incapacities, which necessitate a certain level of interdiction (ḥajr) or supervision by a guardian (waliyy), or the state, of their deeds, especially when the interests of others may be harmed (Dols 1992, 439-441). The jurists frequently debate the level of interdiction, and the transactions desired by the mentally disabled person that call/do not call for interdiction, and the comparison to the minor, even a discerning one (mumayyīz). The guardian is expected to act like a parent (Dols 1992, 442).

7. “Wujūb al-zakāt fī amwāl al-majānīn” (zakāt is mandatory on the wealth of the insane) and “tarjīḥ wujūb al-zakāt fī māl al-majānīn” (the affirmation that zakāt is mandatory on the wealth of the insane). In Al-Lu’lu’ al-Thamīn, v.1: 131–133.

8. On the problematics of interdiction (ḥajr) and its possible violation of the interdicted person’s human rights, see Arabi 2000.

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(d.1223), the Ḥanbalī jurist, differentiated the duty of zakāt—a monetary duty—from other duties such as prayer and ḥajj, which have bodily dimensions to them. He explained that the minor and majnūn must pay zakāt since the hadith “rufiʿa al-qalam,” meaning that “liability is lifted from the insane until he is cured, the sleeping man until he awakes, and the child until he reaches puberty,” and which often relieves the majnūn and the minor of responsibility, refers to the bodily duties only (ʿibādāt badaniyya). Hence a majnūn, like a minor, must pay zakāt taxes,9 and the guardian is the responsible person charged with paying the tax out of the wealth of the child (ṣabiyy) or the majnūn.10 ‘Āisha, the prophet’s wife, is reported to have paid zakāt for two orphans whose guardian she was.11 These precedents are often brought up in contemporary discussions supporting the defrayment of zakāt out of a disabled person’s property.

By contrast, Abū Ḥanīfa (d. 767) was against taxing the wealth of a minor or a mentally disabled person, on the grounds of the above prophetic saying (rufiʿa al-qalam ‘an thalātha...). He apparently did not differentiate between the owner and the owned goods. If Abū Ḥanīfa’s school of law is predominant in the Islamic world today (at least 50% of Muslims are said to follow it), we may expect the Ḥanafī attitude to prevail too, meaning that neither the owner nor the goods of the mentally disabled are to be taxed.

But as early as the 15th century the Shiʿī jurist al-Ḥillī (d. 1422) opposed equating the child to the insane person because the child eventually matures while the insane person does not always recover. This led to his conclusion that children should be exempt from paying the tax (they would eventually pay it later as adults, as majors) but the majānīn (insane) are not exempt since they may never recover. In the end, however, al-Ḥillī recommends that to be on the safe side both the child and the insane


person should be exempt from the obligation to pay zakāt taxes.\textsuperscript{12}

Also, one of the purposes associated with paying zakāt taxes is said to be “to cleanse both the donor’s wealth and himself”; it must be paid out of pure niyya (intention), whereby it will ease the payer’s conscience (Kuran 2003, 283). Obviously, niyya is not present in the mentally disabled person, who therefore will not benefit from this process of “cleansing.” The duty on the part of the mentally ill patient thus falls into abeyance; by this reasoning that person should be exempt from paying zakāt.

It is worth noting that the only disabilities considered by both groups of jurists—those who would oblige the competent property owner to pay the tax and those who would impose the tax on the property—are mental illnesses. It apparently does not matter if the property owner is blind, lame, or handicapped in any other physical way. These disabled people are supposedly expected to pay zakāt. Since no special instruction is applied to them, it may be concluded that the physically disabled too must fulfill this duty.

This accords with other religious commandments, which in principle apply to all believers, healthy and unhealthy alike. True, alleviations are provided for the disabled (of all types), but religious duties are not wholly lifted from the disabled. The ḥajj is something of an exception, since a Muslim has to perform it only if and when he or she has istiṭā’a (ability—a complex legal term contingent on various physical, mental, economic, social, and other ingredients based on Qur’an 3,97). A Muslim is wholly exempt from performing the ḥajj if he or she lacks istiṭā’a, until istiṭā’a is regained (This is an interesting topic, but it is beyond the scope of the present study).\textsuperscript{13} No total exemption is provided by the law from religious duties other than the ḥajj. The majority of people with disabilities (especially physical ones) are not exempt from paying zakāt taxes if all the owners’ conditions, as listed above, are met. Those who maintain that the goods themselves bear the duty of payment certainly widen the sources for taxation, hence the revenues from zakāt taxation for the Islamic state.

**Does a disabled person qualify as a beneficiary of zakāt funding?**

The Qur’anic verse that speaks of eight groups of people who may be receivers (beneficiaries) of zakāt is al-Tawba 60:

\begin{itemize}
\item 12. Al-Ḥillī (d. 1422), (1983), v.1, 297.
\item 13. For more on the ḥajj and istiṭā’a see Rispler-Chaim 2007, 34–35.
\end{itemize}

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The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarers, a duty imposed by Allah...

As stated by Amy Singer (2008),

The Qur’anic definition of zakāt recipients left the categories broad, to be interpreted depending on available resources, on who was doing the interpreting, and on the immediate constellation of social and political power... The changing interpretations are proofs of shifts in attitudes to charitable giving and to various groups of people in society.

(Singer 2008, 172)

The two closest categories that may refer to people with disabilities are those of the poor and the needy (fuqarā’ wamasākīn= poor and needy). So how are we to interpret these two close groups? 14

With regard to the “poor,” Ingrid Mattson explains the difficulty in defining who they are. Relying on early jurists such as Malik b. Anas (d. 795), al-Shafi‘i (d.820), Abū ‘Ubayd (d.838), and Aḥmad b. Ḥanbal (d.855) (contrary to the Ḥanafis), she claims that in early Islamic jurisprudence there was a relative concept of need (ḥāja) in the definition of poverty, and this relativity was socially based. This means that each person in need could expect to receive support from the zakāt funds in an amount that would elevate him or her to the category of “wealth” just above what is considered “poverty” for people of his or her social status. Obviously “poverty” and “wealth” if judged by social status vary from person to person, hence so do the amounts needed to overcome “poverty” and reach “wealth”; yet, she adds, a maximal level was also set, above which getting support from zakāt funds was not permitted (Mattson 2003, 38–40).

When describing the Ottoman hospitals as charitable institutions, Miri Shefer claims that although they provided treatment free, and therefore presumably would care mainly for the poor, while the wealthy would be treated privately in their homes, the reality was quite different. She

14. Many commentators, contemporary and medieval, have tried to answer this question; most of them have been unable to come up with a definitive distinction between the two, and they repeat similar ideas. See among the medieval commentators Ibn Kathīr (d. 1373), V.2, 124. Al-Qurṭubī (d. 1272), (1967), v.8, 171–173; Al-Khaḍājī (d. 1659), (1997), v.4, 585–586.; Al-Ḥasanī. (d. 1809), (2005), v. 3, 88; Among contemporary commentators are ʿAbd al-ʿAzīz (2000), v.3, 1496–1497; Ibn ʿĀshūr (d. 1973), (2007), v.10, 1497; Ḥawwā (1985), v. 4, 238.
suggests that the “poor” and the “needy” in the Ottoman hospitals were not those financially destitute, but those “deserving help and sympathy due to their merits, social status, and specific circumstances.” A comparison she draws between the identities of hospital patients and those of “customers” of soup kitchens in the Ottoman state indicates that religious scholars, Sufis, poor people and those retired from the Ottoman military or from palace services were found in both groups (Shefer 2009, 117–120). Thus the terms “poor” and “needy” are understood by Shefer beyond their usual economic sense. This Ottoman attitude is somewhat exceptional among legal texts, most of which relate to the poor and the needy in financial terms.

According to the legal sources, both classical and contemporary, distinguishing between the two categories of the poor (faqīr pl. fuqarāʾ) and the needy (miskīn pl. masākīn) is quite complex. Al-Qaraḍāwī, for example, suggests that miskīn is a poor beggar, while the faqīr is a poor man who does not beg. In any event a faqīr, according to al-Qaraḍāwī, is worse off than a miskīn (Al-Qaraḍāwī 1984, 87). A contrary opinion, based on Qur’an al-Balad 15–16, (“An orphan near of kin, Or some poor wretch in misery...”) holds that a miskīn is a person who is thrown to the ground on account of his or her destitution; according to Ḥanafīs and Mālikīs, a miskīn is worse off than a faqīr.

An interesting interpretation of the term masākīn (needy) is made by the Shafīʿī jurist al-Shirāzī (d.1083) and the Ḥanafī Indian scholar al-Tahānawī (d.1745). This interpretation associates masākīn with the Arabic root sa-ka-na and the verbal noun sukūn (immobility), contrary to ḥaraka (mobility); thus the masākīn are those who because of a handicap cannot move about; they may be paralyzed (Al-Shirāzī 1992, v.1, 562; Al-Tahānawī 1998, v.2, 421). If accepted, this interpretation may help to place the handicapped within the second Qur’anic category of beneficiaries mentioned in al-Tawba 60—the masākīn, who deserve state support through the zakāt mechanism.

According to the Jordanian scholar Muḥammad ʿUthmān Shabīr, those who cannot work because of a physical handicap, such as the elderly sick, the chronically ill (marīḍ muzmin), and the blind, and who have no one to support them economically, may be classified with the “poor and the needy.” They should receive zakāt alms to allow them to

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15. Born in Khan Yunis 1949, he holds a Ph.D. from al-Azhar, the School of Shari’a and law (1980). He has taught at several universities in Jordan, Kuwait, and Saudi Arabia, and is currently a professor at the University of Qatar.
live in a manner that is “enough for them” (*qadr kifāyatihi*) (Shabīr 1998, v.1, 350–357). Shabīr speaks of an “appropriate” (unspecified and probably subjective) standard of living, and makes no distinction between the poor and the needy.

Regardless of who exactly “the poor” are, they are also described as follows: “the poor were chronically undernourished, ill-clothed, and poorly housed, they remained more vulnerable to hardship and disease than the non-poor...” (Singer 2008, 173). This description establishes the link between socio-economic conditions and physical or mental incapacities.

Al-ʿĀnī lists among those who have small incomes several types of people, including people with disabilities (*ājaza, aṣḥāb al-ʿāhāt*). He stipulates that they are eligible to receive only enough zakāt funds to elevate them from “needy” (*mīn al-ḥāja*) to “not needy” (*ilā al-ghinā*). Al-ʿĀnī classifies the poor and the needy into several categories: those who can earn a living by themselves, those who cannot earn a living by themselves, and those temporarily out of work. Among the latter he includes those who suffer from a curable disease.

Generally then, the stipulations for being supported by zakāt funds are that the person is classifiable among those unable to work, or their income is not sufficient for food, and they do not have children or another provider who is legally bound to support them (Al-ʿĀnī 1999, 159–164).

Yaacov Lev suggests that the *fuqarāʾ* in the Middle Ages could also include a group of *mastūrūn wamastūrāt* (covered, hidden, women and men). He explains this appellation as people who were isolated from society, or mystics, or people who were veiled while accepting the zakāt so as not to reveal their identity out of shame (Lev 2005, 10). Obviously to receive support from the zakāt funds was not something to boast about. To make one’s own living by work was of course preferable. However, it occurs to me that their isolation (and possibly their covering themselves) could perhaps derive also from leprosy or other contagious diseases and physical distortions, which hindered them from mingling with healthy society, or from engaging in a wage-earning profession or craft. I suggest this possible explanation for *mastūrūn wamastūrāt* despite the overall sympathetic attitude to the leper shown in Islamic societies, as depicted by Michael Dols (Dols 1983, v. 58/4, 891–916); my position is

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16. Dr. al-ʿĀnī is from Kuliyyat al-Sharīʿa at the University of Qatar.
supported by the research of Boaz Shoshan (Shoshan 2003, v.35/2, 329–340), Miri Shefer (Shefer 2000, 191–204), and others, who quote historians such as al-Maqrīzī, Ibn Iyās, and Ibn al-Furāt’s reports of banning and removing invalids and lepers from Cairo to other towns and places of confinement.

With regard to who the poor and the needy in reality are, we find several matters that contemporary muftis have to decide, linked to the dilemma of who is viewed today as a disabled person eligible for zakāt funds.

Sheikh Hasan Ayyūb suggests that poverty and richness be measured after the individual has satisfied his or her basic needs: what exceeds the basic needs is to be assessed, although this varies from one society to another. In Kuwait today, he explains, a refrigerator and a car are basic needs that one cannot do without. A strong healthy man who can work and earn a living, but is lazy, does not deserve support from the zakāt, while a working person whose income is not sufficient to maintain his family does. Thus, despite the ongoing debate among jurists today over the possible differences between faqīr and miskīn, both terms refer to those who have only enough to cover their basic necessities.

The Saudi mufti Sheikh Muḥammad b. Ṣāliḥ al-ʿUthaymīn, for example, was asked about a man completely paralyzed as a result of a car accident who was living on donations; he wished to receive a sum of money from the zakāt funds to enter into a partnership with another man in a grocery store, or another business, so that he would have a constant source of income: was this permissible?

The sheikh ruled that it was not, claiming that zakāt is distributed only once a year; if the person is still needy he can get it once again the following year, and so on. The purpose of zakāt is not to give a person capital that yields profit for many years; this is much more than the annual zakāt allowance. The request was denied.

On the other hand, when asked if patients suffering from kidney failure may receive zakāt funds to treat their medical problem, the same Saudi mufti al-ʿUthaymīn’s answer was affirmative; medical problems that cannot be treated, because the sick person and his or her family are destitute, do constitute a “need” (ḥāja) that justifies receiving support from the zakāt funds (Al-ʿUthaymīn 2006, 204–205).

17. Ayyūb, 385–386. Ayyūb is one of the Al-Azhar scholars who held several positions in Egypt. Later he moved to Kuwait and then taught at a university and a seminary for preachers (duʿāt) in Saudi Arabia.

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According to the Ḥanafīs, even if a father is classified as “rich” (ghaniy), but he does not support his chronically ill or blind child (or for that matter his unmarried daughter), these children qualify to receive support from the zakāt (Ayyūb 2005, 391). We learn from the above that zakāt funds may also be used to allay destitution caused by family members who neglect to fulfill their Islamic moral obligation to care for first of kin.

Another fatwa, issued by the Saudi Ibn Jabarīn, states that if the disabled person cannot earn a living and cannot work, and has no father, brother, or close relative (from his ‘ašaba19) to support him (yunfiq ‘alayhi) among those who in the future will inherit from him, then he belongs to the group of masākīn and fuqarā’, and may receive support from the zakāt funds. However, if he has assets and money that he has received as an inheritance or a gift, and the like, and if his father or one of his heirs is rich, they must support the disabled person, and the latter does not qualify as a zakāt recipient. (This contradicts the Ḥanafī attitude mentioned above.) Also, if the disabled person has a profession or a special talent for handcrafts, or writing, or sewing, or threading beads, etc., which he or she may perform while seated, he or she cannot receive money from zakāt funding; it is better to make one’s own living and not to depend on other people. In this regard, it is emphasized that “the best and most tasty food is that earned by oneself.” The advice and encouragement here for people with disabilities is to fully apply their talents, and strive to earn their sustenance by being diligent and productive (Ibn Jabarīn 1997, v.1: 23–24).

The contemporary Palestinian mufti Ḥusām al-Dīn ‘Afāna justifies support from the zakāt funds for one who cannot work because of weakness such as young age, mental deficiency (‘atah), old age, disability (‘āha) and sickness (marad); or for one who can work but has not found a legitimate occupation suitable “for someone like him/her” (yalīq bimithlihi); or for one who has found work but does not earn enough from it to sustain himself/herself and his/her family.19

The Saudi Committee for Scientific Research and Iftā’-al-Lajna al-Dā’ima permitted allotting zakāt support even to a majnūn who has

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18. Agnate relatives. In pre-islamic times the term designated the order of succession to one’s inheritance. El 2 “mīrāth.”

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small children and whose wife does not pray (Al-Lu’lu’ al-Thamīn, v.1, 129). We have no way of knowing why the wife “does not pray”—be it out of ignorance, forgetfulness, or deliberate repudiation of the duty to pray or of Islam entirely. The point seems to be that her misconduct is not held against her family in respect of allotting the majnūn’s family zakāt support.

Thus, contemporary jurists repeatedly advocate working for one’s living, even when disabled, and resorting to state support from zakāt funds only when one is unable to work, or when the income from work is insufficient. One is encouraged not to rely on zakāt funding to solve all one’s economic problems. State help is given more readily to those who first have made an effort to help themselves.

**For what other purposes (than the eight Qur’anic categories) can zakāt funds be dispensed today?**

When none of the eight categories of zakāt recipients designated by the Qur’an matches a need of the Islamic community for funding, sometimes the eight categories, or any one of them, are expanded to cover an exceptional need.

For example, in Riyadh in Saudi Arabia a non-profit organization which serves as a center for disabled children ranging in age from birth to 12 years, and which survives solely on donations and voluntary charity, was issued a fatwa permitting it to receive zakāt funding to treat, feed, clothe, shelter, and educate these disabled children free of charge, on the assumption that most of them were also poor (fuqarā’).20 Here the handicapped children’s need for the rehabilitation center placed them under “the poor” category, to justify money being sent to it. The purpose of this NGO was certainly worthy, but its title needed some adjustment. This was achieved by the addition of the statement: “Most of the children served by this center are also poor.” This way the NGO, previously supported by independent donors only, would also be supported by state-collected

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20. *Al-Lajna al-Da’ima lilbihuth al-‘ilmiyya wal-iftā’* (The permanent Committee for Scientific Research and Iftā’), v.1:46-47. The Lajna is a branch of the *Hay‘at Kibār al-‘Ulamā’* (Institute of Greatest Scholars) which was established by Royal Decree 1/137 on 8/7/1391H in Saudi Arabia. The Lajna’s duties are to research and prepare the results of the research for discussion among members of the *Hay‘a*. Members of the Lajna are selected from among the members of the Hay‘a. The last to be appointed head of the Lajna was ‘Abd al-‘Azīz b. ‘Abd Allah Āl al-Shaykh in 1415H. See [http://www.binbaz.org.sa/mat/21313](http://www.binbaz.org.sa/mat/21313).

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zakāt. Amy Singer’s prediction about the relationship between state zakāt and voluntary NGOs in Islamic societies deserves mention here: both will probably continue to co-exist, and neither will entirely replace the other.21 The Saudi example above is in a way a merger of the two.

In 2007 an interesting interpretation of the second Qur’anic category of “the needy” (masākīn) was offered by Abul Fadl Mohsin Ebrahim, a scholar and university professor from South Africa.22 He suggested expanding the category also to cover HIV-positive patients who are prescribed the ART drug;23 due to its high cost, which might drain the family resources, Ebrahim suggests that these patients be helped from the zakāt funds, which would give them access to the medication, let them maintain a reasonable quality of life, and allow them to perform God’s commandments while they lived. Society at large would benefit from their health improvement, he concludes (Ebrahim 2007).

Once again, the association with “the poor” facilitated the inclusion of AIDS patients among the zakāt beneficiaries.

The attitude to AIDS victims expressed by Abul Fadl Mohsin Ebrahim is in line with other tolerant recommendations by contemporary jurists.

21. Singer (2008, 206–216), speaks of the development of the modern welfare state, which is supposed to replace private charitable organizations, but she doubts that it has done so in reality. “The emergence of the welfare state and its addition to the mixed economy of charity did not alter the fact that Islamic societies are essentially welfare society...the spiritual importance of zakāt and ṣadaqa remained undiminished” (2008, 215). Lev (2005, 160) sees Islamic society as a “charitable society,” but not necessarily as a “welfare society.”

22. Prof. Ebrahim completed his studies at the Aleemiyah Institute in Islamic Studies in Karachi, Pakistan. He earned a Bachelor of Theology degree at Al-Azhar University in Cairo, and obtained the M.A. and Ph.D. degrees from Temple University in the US. Though not officially a mufti as far as I know, his works combine the academic as well as the religious training he had. (See the back-cover of his book An Introduction to Islamic Medical Jurisprudence (2008).

23. Antiretroviral therapy (ART): Treatment that suppresses or stops a retrovirus. One retrovirus is the human immunodeficiency virus (HIV) that causes AIDS. www.euro.who.int/document/mediacentre/fs0603e.pdf. “ART costs remain an important barrier to treatment, although progress has been made to lower them. While the initial price for an antiretroviral three-drug regimen was about US$10,000 per patient per year, high-quality drug regimens can now be obtained for as little as US$300 a year.” For poor people in the Third World the treatment is nevertheless expensive, especially considering that it has to be given to the patient for many years in order to be effective. The indicated costs range between $2,000 and $16,000 in a large number of countries in Europe.
concerning them. While in the early 1990s most fatwās on AIDS patients were critical of their lifestyle (specifically homosexuals), blaming them for contracting the disease, and warning the public against promiscuous behavior, with the start of the twenty-first century we witness a change. Jurists nowadays provide objective reports of the ways in which AIDS is contracted, and encourage the public not to excommunicate or isolate AIDS patients, nor to defame them. Instead, they should be offered medical treatment. The growing availability of medical treatment (such as ART) seems to have given AIDS patients more hope of longer survival, and reduce jurists’ fears with respect to AIDS too, hence contributing to more tolerant statements on their part.

On May 21, 2009 the famous contemporary mufti Yūsuf al-Qaraḍāwī, a resident of Qatar, allowed a non-profit organization for people with special needs in that state (al-Jamiyya al-Qaṭariyya liDhawī al-Iḥtiyājāt al-Khāṣṣa) to take money from the zakāt funds for the benefit of its clients. The money was to be used to buy special technical equipment and other aids, to provide professional training for people with special needs, and to help their families. He regarded extending these services as fard kifāya, a collective duty which this Qatari organization performed for society at large. Al-Qaraḍāwī emphasized that the organization should verify that only people with special needs obtain support from zakāt funds, in keeping with the prophetic saying “la taḥiqq al-ṣadaqa lighaniyy” (it is not legitimate to give alms to a rich person). From this we may deduce that the zakāt distribution allowed by al-Qaraḍāwī is also intended for people in the categories of “the poor and the needy.”


25. EI2 “fard kifāya—the fulfilment of which by a sufficient number of individuals excuses the other individuals from fulfilling it, such as funeral prayer, holy war, etc.”

26. Al-Qaraḍāwī’s site: http://www.qaradawi.net/site/topics/printArticle.asp?cu_no=2&item_no=6999&versio. The quoted hadith appears more often as “la tahill al-ṣadaqa lighaniyy illā likhamsa: lighāzin fi sabīl Allah, aw li āmilin ‘alayhā, aw lighārimin, aw li ṭaruj ‘alā al-miskīn faaḥdā al-miskīnu lighaniyy.” (zakāt is not permitted to be allotted to a rich man, except for five types: a soldier participating in jihad, a tax collector, or a debtor, or a man who bought the zakāt funds with his money, or to a man who has a miserable neighbor, and that neighbor received zakāt funds and gave it as a gift to the rich man). See, e.g., Ibn Anas 1983, 215-216. Also Abū Dā’ud, Internet version at www.al-Islam.com.
The Chief Mufti of Egypt (Muftī al-Diyār al-Miṣriyya) since 2003, ‘Alī Jum’a, permitted zakāt funds to be given to people suffering from kidney failure and chronic blood diseases who could not afford to buy blood for the transfusion that was essential to treat their diseases whenever the state did not cover the cost (Jum’a, April 2, 2009, 9). Professor Muḥammad al-Bahiyy, the former director of al-Azhar University, recommended including among the fuqarā‘ people of advanced age and those ill with incurable diseases (Quoted in Ghaly 2010, 160). Similarly, the Saudi mufti al-ʿUthaymīn permitted the grant of zakāt funds to patients suffering from kidney failure and other diseases, because “the purpose of zakāt is to satisfy [human] need (dāfʿ al-ḥāja)” (Al-ʿUthaymīn 2007b, 579).

This expansion of the existing categories of zakāt to suit newly arising needs in the Islamic community is quite common nowadays, although it is not entirely new, and existed as early as medieval Islam. According to the Palestinian mufti ‘Afāna, it is permissible to support students (talabat al-ʿilm)—probably students of religious subjects, although this is not specified—with zakāt funds; this comes under the category of “sabil Allah” (being a sort of jihad, and a farḍ kifāya), or of “the poor.” Likewise, it is permitted to furnish zakāt funds to those who have lost their houses and farms in floods and other natural disasters: this is justified under the category of debtors: “al-ghārimīn.” Also a wife may give her due share of zakāt to her sick husband to buy medications, provided he can be classified as “poor” or “needy”; however, if the husband can afford the cost of treatment, he is prohibited from taking the zakāt money as suggested by the wife.28

Conclusion

We may conclude at this point that according to most jurists, classical and modern, the disabled, if and when their economic situation is similar to that of the healthy, are subject to taxation. Jurists who maintain that the wealth itself is to be taxed, not its owner, render the property owned by disabled people another source of state revenue. In this regard, people with disabilities are treated as equal to the healthy.

People with disabilities become beneficiaries of zakāt funds only when they are “poor,” “needy,” and unable to support themselves, but never only because of the disability. There is no doubt that advances in medi-


cal science and its new technologies that ease the integration of people with disabilities into society and its workforce have enabled more people with disabilities to earn a living and join the zakāt-paying group.

Finally, pragmatism always guides contemporary jurists in their decisions; when the precise categories of “the poor” and “the needy” are completely absent from a given Islamic society or community, contemporary muftis choose to redirect the funding to newly arising needs, whether medical, economic, educational, etc., and some of them are disability-related. The justification is often provided under the general principle of takāful ījtimaʿī (social solidarity), which can host a wide range of social needs, and appears in practice to operate like the legal principle of maslaḥa (the public’s well-being or the public’s good interest), at least according to what Opwis names “the modernists’ [in contrast to the conservatives’] interpretation.” This rather “free” interpretation of maslaḥa, resulting in the addition of groups of people who may receive state zakāt funding, may act in favor of people with disabilities when they really are unable to support themselves, but also against them, if and when this causes them to prefer unemployment and economic stagnation.

Yet despite Muslim jurists’ debates on who is liable to zakāt, collection of this tax seems unable to substitute secular taxes in the modern state, and will probably continue to be a supplementary, voluntary addition to any given Islamic community’s resources. Attempts have been made to enforce zakāt by law at various times in at least six countries: Saudi Arabia, Libya, Yemen, Malaysia, Pakistan and Sudan. These attempts

29. Care given to people with disabilities and training them for employment and to lead meaningful and participating lives are considered among the requirements of social solidarity. See Dr. Miṣbāḥ Ḥammād “Ḥuqūq al-muʿāwāqin ʿdāʿrat al-ḍaw wamawḍIFI iḥtimām al-mujtamaʿFI” in al-Liwāʾ al-Islāmī August 12, 2004, 9. Likewise, allowing the disabled and those genetically sick to marry is viewed by the muftīʿ Alī Jumʿa as “ful-fillment of several maṣāliḥ” (public interests). See his “Zawāj al-muʿāqin wal-marḍā wirāthiyan in al-Liwāʾ al-Islāmī April 2, 2009, 9.

30. Opwis describes the common attitude [to maslaḥa] of jurists since the 19th century as meant to “demonstrate that Islamic law is capable of functioning in a modern state and of expanding and adapting according to circumstances.” Opwis 220-223.

31. Layish 1987, 281, explains that in Saudi Arabia in 1950 all Muslims were required by law to pay zakāt as both income and property taxes; in 1951 it was moderated so that citizens were required to pay only half of the zakāt tax to the treasury; they were to distribute the other half to the needy at their own discretion. In 1963 the rule was reversed again, so that the whole amount of zakāt be paid to the treasury, which would remit it to the social insurance department, hence to the beneficiaries, “according to criteria prescribed by law.”
failed for a variety of reasons: lack of penalties for those who evade payment (Saudi Arabia, Libya), lax enforcement (Malaysia), problems in collecting the zakāt (Pakistan), and the preference of Muslims everywhere to pay to intermediary agencies instead of the state.

A. Zysow concludes his article in the EI2 thus: “For while virtually all Muslims are aware that there is an obligation of zakāt, accurate information about its implementation is far rarer and compliance is still very limited.”

Already in the 1950s and 1960s Sheikh al-Azhar Maḥmūd Shaltūt ruled that zakāt and state taxes (darāʾib) are two separate things; while the zakāt rates are fixed in the Sharīʿa, state taxes may be raised or lowered according to the need determined by the head of state. Zakāt is a tax imposed by Allah, while other taxes are decided by the head of state. The goals are different too: while zakāt can be allotted to eight categories only, state taxes may be directed to found schools and learning institutions, hospitals, new roads, factories, and more. Shaltūt believed that zakāt was to be collected locally in the village or town, and to be distributed within that same village or town. He did not assign all-encompassing national applicability to the religious laws of zakāt. But the Islamic revival about two decades after his death refused to concede, and envisioned the enforcement of zakāt as state law; yet it failed for the most part, as explained above.

All Arab and Islamic countries today have in their respective constitutions laws concerning people with disabilities, and policies on getting them into the labor market. They consider the types of occupational training to offer them, devise ways to deal with wages insufficient to sustain their families, determine the course to adopt with a disabled person who can work but refuses to do so, take affirmative action requiring government ministries and agencies to hire a quota of disabled persons, and so on. In a few instances a general reference to the Islamic or the Qur’anic spirit of care for the disadvantaged is made, but no more than that; the term zakāt is absent from all the laws surveyed, as far as I could see.

This brings us back to the conclusion mentioned above concerning the supplementary, voluntary nature of zakāt today in many Islamic communities. Nevertheless, as shown by contemporary muftis, the functions of even this “voluntary tax” may be rephrased and reframed, and thus make a difference in the lives of its newly named beneficiaries. This is the principal innovation in contemporary fatwās as against classical fiqh: through the application of [new] ijtihād the medieval fiqh classifications are challenged and expanded, and new groups of tax payers and receivers are able to arise.

References


Ebrahim, Abul Fadl Mohsin. 2007. “HIV/AIDS: Scientific, ethical and Islamic di-

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dimensions.” In *Federation of Islamic Medical Associations Year Book*. Amman: Federation of Islamic Medical Associations.


EI 2. “farḍ kifāya”; “mīrāth”; “niṣāb”; “Zakāt”.


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The Laws of Zakāt with Regard to People with Disabilities


Internet sites

1) www.amanjordan.org
2) www.euro.who.int/document/mediacentre/fs0603e.pdf