



Mulla Asghar Memorial Series

FIQH AND FUQAHA

An Introduction to Fiqh
Containing Forty Four Life Sketches
of the Great Past Masters

Mulla Asgharali M. M. Jaffer

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Containing Forty Four Life Sketches
of the Great Past Masters

By
MULLA ASGHARALI M M JAFFER



*Special Commemorative Edition
To mark the 25th Anniversary of
The World Federation of Khoja Shia Ithna-Asheri
Muslim Communities
Sep 15 2002*

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First published in 1991

The World Federation of KSI Muslim Communities

Islamic Centre, Stanmore, Middlesex, United Kingdom. HA7 4 JB

ISBN 1-898449-44-9

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*Jab tak mai' jiu', kihdmate qaum karta rahu' mai',
Maut aa'e to ya rab, esi khidmat me maru' mai'.*

Marhum Mulla Asghar has left an unforgettable mark on the entire Shii Community in this era. A multifaceted person of this caliber, with such an impact, only emerges but once in a lifetime. As a brilliant communicator, he eloquently presented the teachings of Ahlul Bait (A.S.) to the masses at large.

Acclaimed by his contemporary scholars, his deep insight into the subjects of *Fiqh*, theology, philosophy, theosophy as well as contemporary issues was legendary. As an educator par excellence, his ability to inform and educate his students on Islamic concepts was truly enlightening. Through his thought provoking writings and inspiring speeches countless minds have been set thinking, and many lives have been changed. His impact on our society is nothing short of phenomenal and one that has been instrumental in shifting paradigms.

I hope that this Commemorative series of books, marking the 25th Anniversary of the World Federation, will continue to radiate the teachings of Ahlul Bait (A.S.) to the world at large through the words of this great scholar. By supporting the *Mulla Asghar Memorial Fund*, which, amongst other educational projects, has made this series of publications possible, you will help ensure that his passion for disseminating the teachings of Ahlul Bait (A.S.) continues after him. Together, we can give reality to the many dreams he had and help the World Federation continue on the path of service that he blazed under his charismatic leadership. I ask you remember Marhum Mulla Saheb with a Sura e Fateha.

Hasnain Walji
President, The World Federation of KSI Muslim Communities
September 15 2002



PREFACE

DIVERSITY IN THE TOPICS OF FIQH

If we study the subjects of *Fiqh* in detail, we find that every one of them is peculiar and singular in itself. There may seem to be some similarity at first glance, but a deeper study reveals a different aspect contained. It meets with the requirements of all walks of human life.

Some of the laws relate to the natural urge in human beings to adore and worship. It guides us to worship none but Allah, in the prescribed form, seeking His pleasure. Then there are laws, which prompt us to serve, be helpful and useful to human society, at the same time affirming our obedience to Allah. These are *Zakat*, *Khums*, our social and political duties, *Jihad*, *Amr bil Ma'roof* and *Nahy anil Munkar*, training in martial arts etc.

Other laws enunciate man's duties towards oneself like refraining from suicide or harming oneself or even avoiding celibacy. Certain laws deal with human life in relation to nature surrounding him like food, drinks, hunting, slaughtering, dresses, use of utensils and so on. Then there are laws of judiciary, requital and compensation. As for personal life, *Fiqh* guides us in matters of *Nikah*, *Talaq*, *Dhihar*, and *Lian*. In matters of economy and earning one's bread, there are rules governing business, partnership, silent partnerships, bankruptcy etc. *Fiqh* also deals with such versatile acts like *Hajj* which apart from being an act of worship, is an opportunity of unity, collaboration and an international conference.

In spite of this diversity, *Fiqh* has one single aim. To lead human beings to happiness on earth, conjoining it with salvation in the

hereafter. Therefore, *Fiqh* is considered as one, composite science of *Islam* and is taught as such in the *Hawzas*. The basis of *Fiqh* is the Holy Qur'an, the sound Traditions, Consensus and Reason. A *Faqih* looks at the diverse component of *Fiqh* as parts interwoven into one fabric, with a single aim to guide mankind in respect of its duties and responsibilities towards Allah.

CHAPTER 1

FIQH

This system commonly known as *Ilm-ul-Fiqh*, is extensive, covering a very wide range; and its history dates back to the earliest Islamic era. It has been taught with great detail and ramifications in every era, producing several jurist consults of repute during every century. Among the jurists, known as *Faqih* (pl. *Fuqaha*) some were genius. A number of volumes have appeared to elucidate the Islamic jurisprudence; some of them are masterly treatment of the laws on every walk of human life.

Most of the problems confronting human society are dealt with by various laws, like, the civil laws, the family laws, the penal code, the management laws, and so on. *Fiqh* deals with all of them under various chapters, and in different names. Moreover, it deals with such laws which are not covered by the modern day laws, like the ones related to the acts of worship. Because of a very wide range of subjects covered by *Fiqh*, it actually includes numerous faculties which are normally learnt separately today.

THE TERM *FIQH* IN THE QUR'AN & HADITH

The word *Fiqh* and its derivation *Tafaquh* has been extensively used in the Qur'an and *Hadith*, and in almost all cases it denotes in depth study and profound understanding.

The Qur'an says:

"If a group of people from every tribe stayed behind to study (and ponder on) the religion, (they would be able) to warn and admonish their people when they return to them so that they are cautious." (Al-Tawbah: V.122)

And the Prophet (s.a.w.) is reported to have said:

"Whoever commits forty Hadith for the sake of my Ummah shall be resurrected by Allah as a learned Faqih."

It is not known whether the term *Faqih* was applied to the learned companions of the Prophet (s.a.w.). However, we certainly know that the generation which followed the companions, known as *Tabèeen*, used this appellation for a number of scholars among them. There were for example, seven great jurists among them who are known as *Fuqaha Sab'ah* i.e. the seven *fuqaha*. The year 94 A.H. was known as *Sanatul Fuqaha* (the year of the *Fuqaha*) because in that year, together with our fourth Imam, Ali b. Hussain (a.s.), great jurists like Saeed b. Musayyab, Urwah b. Zubair, Saeed b. Jubayr and others died. Thereafter, great Islamic scholars, particularly the jurists were commonly classified as *Fuqaha*.

Our Imams (peace be upon them) have used the term *Faqih* quite often. Some of their companions were recommended to study religion thoroughly and become *Faqih*, and when they attained that degree of knowledge, they were called *Fuqaha*. We know of quite a few students of our Imams (a.s.) who were known as *Shiah Fuqaha* by their contemporaries.

THE TERM *FIQH* AS ELUCIDATED BY ISLAMIC SCHOLARS

In the Qur'an and *Hadith*, *Fiqh* denotes profound understanding and knowledge of Islamic fundamentals and laws, and is not confined to any particular branch of religious sciences. But with the passage of time, the word becomes synonymous with the knowledge of Islamic laws and jurisprudence.

The Ulema have divided Islamic teachings into three groups:

PRINCIPLES OF FAITH: These are the fundamentals which are related to one's faith, like the belief of God, the resurrection and the Day of Judgement, the Prophethood, the divine revelation, the Angels, the Imamat.

MORAL BEHAVIOUR AND ETHICS: These are aimed at improving human behaviour and cultivating spiritual aspects of our existence. They deal with *Taqwa*, Justice, Generosity, Bravery, Patience, Submission to the Will of Allah, and so on.

PRACTICAL LAWS: These deal with the rules and regulations laid down for certain acts, and also provide guidelines for the way these acts be performed.

The *Fuqaha* of Islam have restricted the use of the word *Fiqh* to the third category, perhaps because it has been a matter of popular concern, and that the believer sought such guidance more often. This is why men of proficiency in this branch of Islamic knowledge only came to be known as *Fuqaha*.

HUKM TAKLIFI & HUKM WADH'EE

It is important that we are acquainted with some of the terminologies used by *Fuqaha* in relation to Islamic laws. The divine laws are divided by them in two groups: *Taklifi* and *Wadh'ee*.

Taklifi laws are *Wajib*, *Haram*, *Mustahab*, *Makrooh* and *Mubah*. These are five aspects of Islamic laws which a Muslim has to keep in mind while discharging his obligations.

In Islam, every human act will fall in one of these five categories. There are acts which are *Wajib*, which must be performed as an obligation, like the daily prayers, as opposed to those which are *Haram* and forbidden, like speaking lies, being unjust, intoxication, and so on. Then there are acts which are optional. They are recommended acts which are rewarded, but if not performed, no sin is committed. The example is optional prayers (*Nafilah*) which either precede or follow the daily prayers. On the other hand, there are certain unworthy acts, i.e. *Makrooh*, which a Muslim is advised to avoid, but no sin is committed if he engages in them, like talking about worldly affairs in the Mosque which is supposed to be a place of worship. Besides, there are acts which are *Mubah*, meaning permissible acts, doing or not doing of them does not entail any reward or punishment.

Thus, we see that *Taklifi* laws are based on 'do's' and 'don'ts', enjoining, forbidding, or generally permitting a Muslim.

Wadh'ee laws are an amalgam of temporal and divine laws, partly governed by natural or moral duties, like matrimony, proprietorship, contracts and so on.

TA'ABBUDI & TAWASSULI

The obligatory (*Wajib*) acts are of two types: *Ta'abbudi* and *Tawassuli*.

Those *Wajib* acts which must be performed with a vivid and clear intention (*Niyyat*) of earning the pleasure and proximity of Allah (*Qurbat*) are *Ta'abbudi*. Such a *Niyyat* is a prerequisite, in absence of which the act would be considered invalid. The examples are all acts of worships, like the daily prayers, fasting etc.

But there are other obligations which do not necessarily require the intention of *Qurbat* for their validity, like obedience to the parents, fulfilling promises and pledges, honouring the contracts, performing incumbent social responsibilities and so on.

AYNI & KIFAI

Wajib acts have been further classified as *Ayni* and *Kifai*.

Wajib-e-Ayni are those obligatory acts with which every individual Muslim is charged, like the daily prayers and fasting during the month of Ramadhan. But *Wajib-e-Kifai* remains a collective obligation on the general Muslim populace, until it is performed by one or few among them, thus relieving the rest of the obligation.

Like the social obligations of qualifying as a doctor, becoming a soldier, a judge, a farmer or a businessman, and in this form of obligation is included the rituals of *Ghusl-e-Mayyit*, kafaan and burial etc.

TA'YINI & TAKHYIRI

This is yet another classification of *Wajib* acts. *Wajib-e-Ta'yini* relates to those particular acts which have been specifically identified as obligatory, like the daily prayers, fasting, Hajj,

Khums, Zakat, Amr bil Ma'roof, Jihad etc. But *Wajib-e-Takhyiri* offers choice and alternatives, like in the case of kaffara for a person who has deliberately left out a fast in the month of Ramadhan. He will either free a slave, or feed sixty deserving poor, or keep sixty fasts.

NAFSI & MUQADDAMI

In this classification, *Nafsi Wajib* acts are those which are obligatory by themselves, and are not a prelude to another obligation. For example, it is *Wajib* to rescue a person who is on the verge of being burnt, drowned or harmed to death.

Muqaddami obligation, besides being *Wajib* itself, is actually a mean to performing another *Wajib* act. For example, it is *Wajib* to rescue a person who has fallen into a well, but preparing for the rescue by way of procuring a rope or any other implement is a *Muqaddami Wajib*. Similarly, *Hajj* is a *Nafsi Wajib*, but attending to its prerequisites like getting a passport, buying the tickets, and other necessary preparations will be termed *Muqaddami*. In the case of the daily prayers, for example, *Wudhu* and *Ghusl* at the time of the prayers would be called *Muqaddami*.

CHAPTER 2

FORTY GREAT FUQAHA

To understand any system thoroughly, it is imperative to get acquainted with its scholars, particularly those who have made significant contribution to its development. And in the course of that study, one comes across their important works which over a period have become the sources of reference.

Ilm-ul-Fiqh was meticulously recorded to form a valuable literature during the last eleven centuries, which still exists, and has been constantly studied in the Islamic seminaries. Eminent scholars were able to train numerous students who in turn trained their students in this branch of Islamic knowledge. This tutor-pupil chain has remained unbroken till today.

No doubt, other sciences like Philosophy, Logic, Mathematics and Medicine are much older and volumes written on those topics date much earlier. Yet they cannot be compared to *Fiqh* which has been a growing science with a continuous line of tutor-pupil relationship. Of course, we make this assertion keeping the Islamic colleges in view. It has been a fortunate practice of Muslim scholars that they always identified great scholars according to the generation to which they belonged. This was first done in respect of Ulama of *Hadith*, to be followed later for the Ulama of other branches of Islamic learnings. Special books were written to categorise the generations, like *Tabaqatul Fuqaha* by Abu Ishaq Shirazi, *Tabaqatul Atibba* by Ibn Abi Usayaba, *Tabaqatul Nnahwiyyin* and *Tabaqatul Ssufiyya* by Abu Abd al-Rahman Silmi.

However, as far as the generation of *Fuqaha* is concerned, the works which exist are those written by Sunni scholars. We do not know of any Shia work on the subject, with the result that we have to rely on various biographical sketches and other books of *Ijazat* wherein

tutors have certified the abilities of their pupils and allowed them to transmit the Traditions further to their students.

In the following paragraphs, we wish to acquaint ourselves with some of the most outstanding *Fuqaha* of Shia sect, together with their notable contributions. In so doing, we hope to identify them in accordance with the generations to which each belonged.

SHIA FUQAHA

For two obvious reasons, we have to begin the history of Shia *Fuqaha* from the era of *Ghaybat-e-Sughra*, i.e. minor occultation (260 AH - 329 AH). First, the era preceding *Ghaybat-e-Sughra* is an era during which the holy Imams were present, and although there were many men of knowledge and accomplishments who were trained by the Imams themselves, people always tried their best to refer to the Imams rather than to the Ulama. Even the Ulama travelled far and wide to reach the Imams, so as to solve the problems they faced. Thus, in the era when Imams were present and accessible, other scholars were eclipsed. Secondly, the literature we have at our disposal on *Fiqh* commences from the era of *Ghaybat-e-Sughra*. We cannot trace, or rather are unable to trace, any literature compiled on the subject in the earlier era.

However, many great *Fuqaha* lived in the period of our holy Imams, and they are well known for their distinction and excellence when compared to their contemporaries from other schools of thought. Ibn al-Nadeem in his famous *Al-Fihrist* has a complete chapter on the *Fuqaha* of Shia, and mentions their works on *Fiqh* or *Hadith* with deep reverence. For example, for Husain b. Saeed Ahwazi, he says: “*In his time, he had the widest knowledge of Fiqh, Islamic Traditions and Ethics.*” Similarly, he eulogises Ali b. Ibrahim Qummi by saying: “*He is among the great scholars and Fuqaha.*” Again, when mentioning Muhammad b. Hasan b. Ahmed b. al-Waleed Qummi, he says: “*To his credit is the great and comprehensive work on Fiqh.*”

It must be known that the works on *Fiqh* to which reference has

been made above were of a different nature. They were principally compilation of those *Hadith* which they believed to be sound and authentic and according to which they acted. So, they can safely be categorised as the books of *Hadith* bearing a stamp of the writers' considered opinions. Muhaqqiq Hilli, the maternal uncle and teacher of Allama Hilli writes:

"In view of the fact that we have a great number of Fuqaha who have copiously written on the subject, it is not possible for me to quote all of them. I have selected from those who were best known for their research and scholarship, quoting their Ijtehad, and the opinions they adopted for action. From amongst the earlier ones, I have selected Hasan b. Mahboob, Ahmed b. Abi Nasr Bezanti, Husain b. Saeed Ahwazi, Fadhl b. Shadhan Nisaburi, Yunus b. Abd al-Rahman. They lived during the presence of our Imams. From the later group, I quote Muhammad b. Babawayh Qummi (popularly known as Shaikh Sadooq) and Muhammad b. Yaqoob Kulaini. As for the people of Fatwa, I consider the verdicts of Askafi, Ibn Abi Aqeel, Shaikh Mufeed, Sayyid Murtadha Alamul Huda and Shaikh Tusi."

Evidently, Muhaqqiq Hilli, despite his high regard for the earlier Ulama and for their independent opinions, excludes them from those who he calls "*the people of Fatwa*." This is because the earlier Ulama wrote books in the form of collections of *Hadith*, indirectly indicating their opinions and verdicts by the selection of those Traditions which they considered sound. Their works never came out in the form of clear and direct fatwa.

Now we will mention the Jurist consults of the early period; those who witnessed *Ghaybat-e-Sughra*:

I. ALI B. BABAWAYH QUMMI

He died in 329 AH., and was buried in Qum. His son, the famous Shaikh Sadooq is buried in the city of Ray. What must be noted is that while the son is famous as *Muhaddith* (traditionalist), the father is a renowned *Faqih*, and a man of fatwa. Sometimes, reference is made to both of them as *Sadooqain* meaning two Sadooqs.

2. AYYASHI SAMARKANDI

This is another great jurist, who was the contemporary of Ali b. Babawayh Qummi, or perhaps a bit senior. Though he is better known for his *Tafseer*, he was a man of diverse capabilities, having made an appreciable contribution to *Fiqh*. Ibn al-Nadeem in his *al-Fihrist* says that Ayyashi's works on *Fiqh* were well known in Khurasan. Unfortunately, we have no access to any of his books on *Fiqh*. It seems they have all perished.

Ayyashi was originally a Sunni who later converted to become a Shia. He was a rich man, having inherited considerable wealth from his father. But he invested all his wealth in collecting books, copying important manuscripts and in establishing colleges for training his students.

Some chroniclers have included Shaikh Jaffer b. Qawlawayh among the *Fuqaha*, considering him to have lived during the times of Ali b. Babawayh Qummi and *Ghaybat-e-Sughra*. They have also mentioned him as a student of the well known Sa'd b. Abdullah Ashari. But this is an error, since Ibn Qawlawayh was the teacher of Shaikh Mufeed, and his death occurred in either 367 or 368 AH. As such, he cannot be counted as a contemporary of Ali b. Babawayh, nor among the Ulama of *Ghaybat-e-Sughra*. The fact is that it was his father Muhammad b. Qawlawayh who lived during *Ghaybat-e-Sughra*.

3. IBN ABI AQEEL UMMANI

Umman is on the coast of Yemen, and therefore he was also known as Yemeni. He lived during *Ghaybat-e-Kubra*, (major occultation) but the date of his death is not known.

Bahr-ul-Ulloom mentions him as the teacher of Jafar b. Qawlawayh who in turn taught Shaikh Mufeed. This makes it abundantly clear that Jafar b. Qawlawayh was not a contemporary of Ali b. Babawayh as claimed by some. Ibn Abi Aqeel is still quoted in *Fiqh* by research scholars.

4. IBN JUNAID ASKAFI

This jurist, who died in 381 AH, was also Shaikh Mufeed's tutor. He authored nearly fifty books, and his opinions as a Jurist are still considered and discussed by the *Fuqaha*. In fact, he and the above mentioned Ibn Abi Aqeel are often referred to as *alqadeemain* - the two old and senior ones.

5. SHAIKH MUFEED

His name was Muhammad b. Muhammad b. Noman. He was a theologian as well as a *Faqih*. Ibn al-Nadeem in his *al-Fihrist* calls him *Ibn al-Muallim*, and eulogizes him as a great theologian (master of *Ilmul Kalam*). Born in 334 AH., he died in 413 AH. His famous work on *Fiqh* is known as *Muqni'ah* which still exists. Shaikh Mufeed is one of the most brilliant scholars of Islam.

Abu Yala Ja'fari, the son-in-law of Shaikh Mufeed, says: "*Mufeed slept very little during the nights, devoting most of his time to prayers, studies, teaching or reciting the Holy Qur'an.*"

Shaikh Mufeed was Ibn Abi Aqeel's student.

6. SAYYID MURTADHA ALAMUL HUDA

Born in 355 AH, died in 436 AH. Allama Hilli calls him "the great teacher of Imamiyya Shia". He was a man of versatility, with a keen taste and talent for literature, theology as well as *Fiqh*. His verdicts and opinions are taken into account even today. Among his famous works on *Fiqh* are *Intisar*, and *Jamalul ilmi wal amal*. Sayyid Radhi, the compiler of *Nahjul Balaghah* was his brother, and they both studied from Shaikh Mufeed.

7. SHAIKH ABU JA'FAR TUSI

This brilliant star in the Islamic firmament, was from Khurasan. He was born in 385 AH., and at the age of 23, he moved to Baghdad to join the great centre of Islamic knowledge. He lived in Iraq all his life, and came to be known as the sole master of *Fiqh* after the death of his mentor, Sayyid Murtadha Alamul Huda. He has several books and treatises on *Fiqh*, *Usool*, *Hadith*, *Tafseer*, *Kalam* and *Rijal*.

For the first five years in Baghdad, Shaikh Tusi had the opportunity to study under the supervision of Shaikh Mufeed, gaining reputation as a student of the first rank. After Shaikh Mufeed, he sat at the feet of Sayyid Murtadha till the master died in 436 AH. The entire Shia world turned to Shaikh Tusi who stayed at the helm for the ensuing 24 years. But this was a tumultuous period during which sectarian differences in Baghdad resulted in a lot of bloodshed and destruction. Shaikh Tusi's own house and library were burnt down.

After 12 years in Baghdad, he moved to Najaf where he established the world famous Hawza Ilmiyyah. He died in 460 AH, and was buried there.

In the earlier days, Shaikh's important work on Fiqh called *al-Nihayah* was a part of syllabus in the seminaries. The other book *alMabsoot* had broken new grounds for discussion on various subjects of *Fiqh*, and great Ulama who followed, proudly set forth to give elucidatory marginal notes and commentaries on the Shaikh's opinions. Another important work in *Fiqh* is *al-Khilaf* by Shaikh Tusi. This is a comparative dissertation on sunni Shia *Fiqh*.

Besides these, there are other treatises on *Fiqh* written by Shaikh. For the last several centuries, whenever *Fuqaha* mentioned *Shaikh*, it was understood to refer to Shaikh Tusi, and if they said *Shaikh**han*, they meant Shaikh Mufeed and Shaikh Tusi.

The descendents of Shaikh Tusi were Ulama of great repute, most outstanding among them was his son Shaikh Abu Ali who was known as Mufeed the second. He wrote a detailed commentary on his father's book *al-Nihaya*. The daughters of Shaikh Tusi were also *Fuqaha*.

The grandson of Shaikh Tusi named Abdul Hasan Muhammad became *Marja* after the death of his father Abu Ali. His classes were attended by students from far and wide, and he was able to train

a good number of *Fuqaha*. Because of his piety and austere way of life, he was respected by one and all. Imad Tabari says that if it were permissible to recite *Salawat* upon anyone other than the Apostles, he would choose Abul Hasan Muhammad. He died in 540 AH.

8. QADHI ABD AL-AZIZ

Better known as Ibn al-Barraj, was a student of both Sayyid Murtadha and Shaikh Tusi. He was sent to Syria by Shaikh Tusi, where he served in Tripoli (in present day Lebanon) as a Qadhi for 20 years. Among the famous books he wrote on *Fiqh* the most noteworthy are *Muhaddhab* and *Jawahir*. He died in 481 AH.

9. SHAIKH ABU AL-SALAH HALABI OF SYRIA

He studied from Sayyid Murtadha and Shaikh Tusi. He lived for 100 years. The author of *Rayhanatul Adab* mentions that Abu al-Salah studied from Sallar b. Abdul Aziz also. If this were true then it means that Abu al-Salah has studied from three successive generations of the renowned *Fuqaha*. He died in 448 AH., which means that he was older in age than both the tutors. His famous work in *Fiqh* is *Kafi*. Shaheede-Thani calls him *Khalifatul Murtadha Fi Biladil Halabiyya*, the successor of Sayyid Murtadha Alamul Huda in Aleppo.

10. HAMZA B. ABD AL-AZIZ DAYLAMI

He was also known as Sallar Daylami; died on Saturday, 6th of Holy Ramadhan, 463 AH. He is the student of Shaikh Mufeed and Sayyid Murtadha. He came from Iran, and passed his last days in Khurasan, where he was buried. He is a contemporary of Shaikh Tusi, though Muhaqqiq Hilli has classified him among the followers of Shaikh Tusi. His famous work on *Fiqh* is *Marasim*.

11. SAYYID ABU AL-MAKARIM IBN ZEHRA

He was from Aleppo, and he died in 585 AH. In the faculty of *Hadith*, he narrates with only one link between him and Shaikh Abu Ali, the son of Shaikh Tusi, and in *Fiqh*, he had a chain of tutors ending up with Shaikh Tusi. His famous work in *Fiqh* is *Ghunya*.

The author of *Mustadrakul Wasael* says that Ibn Zehra studied *al-Nihayah* of Tusi from Ibn al-Hajib Halabi who studied it from Abdullah Zainulbadi in Najaf, and he had studied it from Shaikh Rasheed al-Deen Ali b. Zeerak Qummi and Sayyid Abu Hashim Husayni, both being students of Shaikh Abd al-Jabbar Razi, a well known student of Shaikh Tusi. Thus we see that Ibn Zehra is connected with Shaikh Tusi by four intervening generations.

In the terminology of *Fuqaha*, whenever a reference is made to *Halabiyyan*, they mean Abu al-Salah Halabi and Ibn Zehra. And if the reference is made in plural, that is, *Halabiyyun*, then Ibn al-Barraj is included.

12. IBN HAMZA TUSI

Known as Imad al-Deen Tusi of Khurasan, contributed to *Fiqh* by writing his famous *Waseelah*. However, historians have to make further research about this *Faqih* because the date of his death is unknown, and it is not established whether he belonged to the first era of Shaikh Tusi's students or to the later ones. Most probably he died in the second half of the sixth century AH.

13. IBN IDREES AL-HILLI

He is one of the greatest Ulama, known for his independent thinking. He was an Arab, and some chroniclers have mentioned him as the grandson of Shaikh Tusi from his mother's side. But this relation has been disputed by others. He was the first *Faqih* who differed with the opinions of Shaikh Tusi at the time when *Fuqaha* had upheld Tusi's verdicts as final for nearly two centuries. However, his criticism of Shaikh Tusi is at time quite harsh and abrasive, bordering on rudeness. He died in 598 AH. at the age of 55.

His famous work on *Fiqh* is *al-Sarair* which is still a book of reference. It is said that Ibn Idrees was a student of Sayyid Abu al-Makarim b. Zehra but this seems improbable, especially because of Ibn Idrees mentioning him casually as his contemporary, and as one who he had met. In certain matters of *Fiqh*, they had exchanged some letters.

14. SHAIKH ABUL QASIM JA'FAR B. HASAN B. YAHYA B. SAEED HILLI

Famous as Muhaqqiq Hilli. He must not be confused with Allama Hilli. Muhaqqiq Hilli was Allama's maternal uncle and also his tutor. He has several books on *Fiqh*, most popular among them are: *Sharae*, *Maarij*, *Motabar*, *Almukhtasar al Nafe* etc.

Muhaqqiq Hilli studied from the students of the great masters like Ibn Zehra and Ibn Idrees Hilli. Some have erroneously counted him among those who studied directly from these *Fuqaha*, forgetting that this was not possible because Muhaqqiq Hilli who died in 676 Hijra could not have attended the lessons of Ibn Idrees or Ibn Zehra who had died more than 80 years earlier. Most probably, he was trained by his grandfather and later his father.

Muhaqqiq Hilli is acknowledged as the greatest among *Fuqaha*, and whenever the term 'Muhaqqiq' is used without any qualification, then it refers to him alone. The great philosopher and mathematician, Khwaja Naseer al-Deen Tusi speaks highly of his reminiscence with Muhaqqiq who he met in Hilla, and attended his classes of *Fiqh*. Muhaqqiq's book *Sharae* is still a part of curriculum in most of the Hawzas.

15. HASAN B. YUSUF B. ALI B. MUTAHHAR HILLI

Renowned as Allama Hilli, he was truly a prodigy. He was born in 648 Hijra, and died in 726 AH. He remained under the tutelage of his maternal uncle Muhaqqiq Hilli for *Fiqh*, and then proceeded to study from other masters of his era, including Khwaja Naseer al-Deen Tusi who taught him Philosophy and Logic. Later, he sat with the Sunni Scholars to study their *Fiqh*.

His works include several memorable books and treatises on *Fiqh*, *Usool*, Theology (i.e. *Kalam*), Logic, Philosophy and *Rijal*. We know of at least hundred books written by him, some of which are still in the form of manuscripts. Each book of this great *Faqih* is enough to portray his precocity and genius. Among the noteworthy books on

Fiqh are *Irshad*, *Qawaid*, *Tahreer*, *Tadhkiratul Fuqaha* and *Tabssiratul Mutallimeen*, the last being studied by the students of Hawza till today. Later *Fuqaha* wrote extensive commentaries on Allama's works.

16. FAKHR-AL-MUHAQQIQEEN

This is the title given to Allama Hilli's son. His first name was Muhammad. Born in 682 AH., he studied under his father Allama Hilli who was so impressed by the son's brilliance that he called him Fakhr-al-Muhaqqiqeen. In his preface to *Qawaid*, Allama writes his son's name showering much praise on him, and at the end of the book prays that his son would attend to his incomplete works. His famous book on *Fiqh* is *Aydhah Al-Fawaid* which he wrote to elucidate some difficult parts of his father's *Qawaid*. The opinions and deductions by this great *Faqih* are still taken into account by the *Fuqaha*. He died in 771 A.H.

17. MUHAMMAD B. MAKKI

He was also known as Shaheed-e-Awwal; He hailed from Jabal Amil in South Lebanon, where Shias have lived for many centuries. He was born in 734 A.H., and pursued his studies under the care of great *Fuqaha* of his time, among them the illustrious Fakhr-al-Muhaqqiqeen.

The most renowned and popular work on *Fiqh* by Shaheed is *al-Luma'h* which was written by him during his short term in the prison which ended with his execution. He was martyred as a result of a *fatwa* issued by a Maliki *faqih*, supported by Shafei, in the year 786 A.H.

It is a strange coincidence that two centuries later, a *Faqih* who wrote a commentary on *al-Luma'h* (i.e. *Sharh-e-Luma'h*) was also executed and martyred. He came to be known as Shaheed-e-Thani.

Other works by Shaheed-e-Awwal on *Fiqh* are *Duroos*, *Dhikra*, *Bayan*, *Alfiyyah*, all of them are of highest order, and have received great attention from the later day *Fuqaha*.

Three great *Fuqaha*, namely, Muhaqqiq Hilli, Allama Hilli, and Shaheed-e-Awwal who lived during the 7th and the 8th centuries have left the principle textbooks on *Fiqh*, which were then elucidated by the jurists who followed. The only other text worthy of mention was by Shaikh Murtadha Ansari who died nearly 150 years ago.

The most distinctive feature of the family of Shaheed-e-Awwal is that practically every member of the household was a *Faqih*. His wife Ummu Ali and his daughter Ummu Hasan were both *Fuqaha* of the first order. Ladies were instructed to refer to them for any problems of *Fiqh*; in fact, the daughter of shaheed was known as *Shaikhah* or *Sittul Mashaikh* (*Sayyidatul Mashaikh*) among the women. Shaheed had three sons, all of them *Fuqaha*.

18. FADHIL MIQDAD

He was from Hilla, and studied from Shaheed-e-Awwal. He died in 826 A.H., therefore is known to be among the *Fuqaha* of the ninth century Hijra. The most important book on *Fiqh* written by him is *Kanzul Irfan*, in which he has compiled all those verses of the Holy Qur'an which form the basis of *Fiqh*, and had deduced from them several rules of Islamic jurisprudence. Of course, there exist several books by Shia as well as Sunni scholars written in the same vein but *Kanzul Irfan* stands out prominently as one of the best, if not the best.

19. ABUL ABBAS AHMAD B. FAHD HILLI ASADI

Popularly known as *Jamal Al-Salikeen*, was born in 757 AH. and died in 841 AH. He is among the students of Shaheed-e-Awwal and Fakhr-al-Muhaqqiqeen. He also studied *Hadith* and *Fiqh* from Fadhil Miqdad Ali b. al-Khazin and Shaikh Bahauddin Ali b. Abdulkarim. Though he was better known for his works on ethics, morals and mysticism, like *Uddatu al-Daee*, his works in *Fiqh* include valuable book called *al-Muhddhab al-Bare* and commentaries on the works by Allama Hilli and Shaheed.

20. SHAIKH ALI B. HILAL JAZAERI

This Scholar was a man of piety and virtue, and a master of

traditional as well as rational sciences. His tutor in *Fiqh* was Ibn Fahd Hilli, and he himself produced brilliant students like Muhaqqiq Karaki, and Ibn Abi Jamhur Ahsai. He was known as *Shaikhul Islam* in his era.

21. SHAIKH ALI B. ABD AL-AALI KARAKI

Better known as Muhaqqiq Karaki or even Muhaqqiq-e-Thani (i.e. Muhaqqiq the second), he was originally from Jabal Amel, south Lebanon. He completed his studies in Sham and Iraq, before coming to Iran during the reign of Shah Tahmasp, the first. Then an unprecedented thing happened. The Shah bestowed the title of *Shaikhul Islam* upon Muhaqqiq Karaki, granting him an instrument of total authority over the affairs of the state, and appointing himself as the Muhaqqiq's representative ruler! After Muhaqqiq Karaki, this seat was occupied by his student Shaikh Ali Minshar, the father-in-law of Shaikh Bahai, the latter occupying it after the Shaikh's death.

Upon his arrival in Iran, he established a great Hawza in Qazwain and later in Isfahan, training several students of repute, with the result that Iran once again became centre of *Fiqh* years after *Sadooqain*. He studied under the distinguished tutelage of Ali b. Hilal Jazaeri, who had studied from Ibn Fahd Hilli. And as we know Ibn Fahd was a student of the students of Shaheed-e-Awwal. This way, Muhaqqiq Karaki is linked with Shaheed through two generations.

Among his own famous works on *Fiqh* are *Jamiul Maqasid* which, in fact, is a commentary on *Qawaid* by Allama Hilli. He also wrote marginal elucidations and notes on the books of *Fiqh* by Muhaqqiq Hilli and Shaheed-e-Awwal. His son, Shaikh Abd al Aali was also a great *Faqih*. Muhaqqiq Karaki died in 940 AH.

22. SHAIKH ZAINUDDIN

Better known as Shaheed-e-Thani (the second Shaheed), he is among the greatest Shia *Fuqaha*. He was born in 911 AH. in Jabal Amel, but he must have lived in Tus for a considerable time, as he occasionally signed his name as *al-Tusi al-Shami*.

He was a widely travelled man, having visited Egypt, Syria, Hijaz, Baitul Muqaddas, Iraq and Constantinople (Istanbul). Always in pursuit of knowledge, he studied from nearly twelve Sunni Ulama of *Fiqh*. Apart from the proficiency in *Fiqh*, he was well versed in *Usool*, Philosophy, *Irfan*, Medicine and Astronomy.

He was a man of piety, known for his austere way of life. His students have recorded in his biography that Shaheed maintained his family by selling the woods cut by himself during the nights, and then sat to teach during the day. While in Balbak, he conducted classes in *Fiqh* according to five schools, i.e. Ja'fari, Hanafi, Shafei, Maliki and Hambali. His famous work is the commentary on *al-Luma'h* which had been authored by Shaheed-e-Awwal. His commentary, *Sharh-e-Luma'h* is a part of curriculum in almost every Hawza even today. He studied from Muhaqqiq Karaki before the later migrated to Iran.

Shaheed-e-Thani's son wrote the famous book on *Usool*, called *Ma'alim-ul-Usool*. Shaheed-e-Thani was martyred in 966 AH.

23. AHMAD B. MUHAMMAD ARDABILI

Popularly known as Muqaddas Ardabili, he was proverbial for his piety and austerity. He is also well known for his extensive research in Shia *Fiqh*. He lived in Najaf, during the Safavid rule in Iran.

It is said that Shah Abbas Safavi very much wanted him to come and live in Iran, but Ardabili would not relent. Because of the esteem in which he held Muqaddas Ardabili, Shah Abbas wrote him to give an order or a command which he would dutifully fulfil. Once it so happened that a fugitive Momin from Iran came to Muqaddas Ardabili in Najaf, requesting him to write to the Shah recommending a pardon or reprieve. Muqaddas wrote:

The holder of temporary rule, Abbas, is advised that although this man was initially a transgressor, he now seems to be oppressed. If you pardon him, Allah may forgive some of your lapses.

From the slave of Master of Wilayat (i.e. Imam Ali (a.s.)) Ahmad Ardabili.

In reply, Shah Abbas wrote:

*I bring to your esteemed notice that Abbas has rendered the service ordered by you feeling profoundly obliged. I hope you will not forget this devotee of yours in your good prayers.
From a dog on the threshold of Ali (a.s.) - Abbas.*

Ardabili's refusal to migrate to Iran in spite of the Shah's persistent requests, proved a blessing to the Hawza of Najaf. It grew in strength, and became as lively as the Hawza of Isfahan. The same way, the continuous presence of Shaheed-e-Thani, his son Shaikh Hasan, the author of *Ma'alim*, and his nephew Sayyid Muhammad, the author of *Madarik*, lent considerable strength and vigour to the Hawza of Sham and Jabal Amel in Lebanon. In fact, the latter two deprived themselves of visiting the shrine of Hadhrat Imam Redha (a.s.) fearing that they might be persuaded to live in Iran.

Though we do not know the exact names of Ardabili's tutors, he certainly acquired his training from the students of Shaheed-e-Thani. In return, he tutored the son of Shaheed and his nephew.

Ardabili's noteworthy contribution to *Fiqh* is his commentary on *Irshad* and his *Ayatul Ahkam*. His profound treatment of the subject is still valued by the *Fuqaha*. He died in 993 Hijra.

24. SHAIKH BAHAUDDIN AMELI

More popular as Shaikh Bahai, he is from Jabal Amel, Lebanon. Accompanied by his father Shaikh Husain b. Abd al-Samad, he travelled to Iran as a child. Later, he travelled extensively to various Islamic countries in search of great scholars from whom he acquired knowledge.

Because of his creative talent and perception, he became a master of several faculties and has books on various subjects to his credit. He was a man of literature, a poet, a philosopher, a mathematician, a *Faqih* as well as a *Mufasssir*, and had a considerable experience in ancient medicine.

He is the first *Faqih* who wrote a handbook on *Fiqh* for simple layman in Persian language. The book, *Jame Abbasi* still exists. But *Fiqh* has not been counted as his exclusive subject, because the scope of his interests was so very wide. From his tour of Egypt, Sham, Hijaz, Iraq, Palestine, Azarbayjan and Herat, the man had actually become a walking encyclopaedia. In spite of his diverse interests, he trained great *Fuqaha* like Mulla Sadra Shirazi, Majlisi the first, (i.e. the father of Majlisi the second who authored *Biharul Anwar*), Muhaqqiq Sabzwari and Fadhil Jawad. As mentioned earlier, after the death of his father-in-law, Shaikh Ali Minshar, Bahai occupied the seat of *Shaikhul Islam* in Iran. His wife was also a *Faqih*.

Shaikh Bahai was born in 953 AH. and died in 1030 AH.

25. MULLA MUHAMMAD BAQIR SABZWARI

This was a man of many sided talents. Since he remained attached to the college of Isfehan which was renowned for both *Fiqh* and Philosophy, he became a master of rational as well as traditional sciences. He has two famous works on *Fiqh*, namely, *Dhakheerah* and *Kifayah*, and is frequently mentioned by the contemporaries as well as later day *Fuqaha*. In philosophy he wrote a comprehensive commentary of Abu Ali Sina's *Shifa* on *Ilahiyyat* (i.e. Divinities or Theology).

Mulla Sabzwari, also known as Muhaqqiq Sabzwari, was taught by Shaikh Bahai and Mulla Mohamed Taqi Majlisi (the first Majlisi). He died in 1090 AH.

26. AQA HUSAIN KHWANSARI

He was also known as Muhaqqiq Khwansari, lived in the times of famous traditionists like Mulla Muhsin Faidh Kashani, and Allama Muhammad Baqir Majlisi (the second). He was married to the sister of Muhaqqiq Sabzwari. Both of them shared common propensities, and therefore turned out to be brilliant masters of rational and traditional sciences.

Muhaqqiq Khwansari wrote *Mashariq al-Shumoos* in *Fiqh*. In fact, it is a splendid elucidation of *Duroos* by Shaheed-e-Awaal. He died in 1098 AH.

27. JAMAL AL-MUHAQQIQEEN

Better known as Jamal Khwansari, he was Muhaqqiq Khwansari's son, equally proficient in rational as well as traditional sciences. His work in *Fiqh* is the famous margin of elucidatory notes on *Sharh-e-Luma'h*. He has so many students of distinction to his credit, like Sayyid Ibrahim Qazwaini and others. The famous Sayyid Mahdi Bahr-ul-Uloom is linked to him through two generations of teachers.

28. SHAIKH BAHAUDDIN ISFEHANI

Famous as *Fadhil-e-Hindi* was a *Faqih* of the first rank, whose opinions are valued even today. He wrote a commentary on Allama Hilli's *Qawaid*, the book is called *Kashf al-Litham*. He died in 1137 AH. during the days of Afghan rebellion.

29. MUHAMMAD BAQIR B. MUHAMMAD AKMAL

Popular as Waheed Behbehani, is, in fact, the saviour of *Ijtihad*, and is therefore called *Ustadul Kull*. He contributed to *Fiqh* in two ways: one, he trained a number of *Fuqaha*, each of whom became well famed *mujtahid* of Shia school. The glittering names of Ulama like Sayyid Mahdi Bahr-ul-Uloom, Shaikh Ja'far Kashiful Ghita, Mirza Shahrastani, and many others remind us of the greatness of the master. Secondly, he stood firm against the innovative onslaught of *Akhbaris*, and dealt them a death blow, from which *Akhbari* school has never recovered.

Waheed Behbehani rose at the time when Safavid empire had declined, and Isfehan had ceased to enjoy a central place. He migrated to Iraq, along with his tutor Sayyid Sadruddin Rizvi, and settled in Kerbala. Because of his piety and austere way of life, his students held him in very high esteem.

Behbehani is related to Allama Majlisi through his mother. His

grandmother Amena Begum, was a woman of erudition and *Fiqh*, married to Mulla Saleh Mezandarani, a man of profound knowledge. We have instances when Amena Begum has taken part in difficult discussions with her husband, and solving theological problems.

He was born in 1116 AH. and died in 1205 AH.

30. SAYYID MEHDI BAHR-UL-ULOOM

This is a *Faqih* who has been rightly placed in the immediate rank after our Masoomeen (a.s.), because of his piety and virtue. His contribution to *Fiqh* exists in the form of verses. Shaikh Ja'far Kashiful Ghita, himself a *Faqih* of the first order, used to wipe Bahr-ul-Uloom's slippers with the end part of his turban.

He was born in 1155 AH., and died in 1212 AH.

31. SHAIKH JA'FAR KASHIFUL GHITA

This *Faqih* was born in 1154 AH. in Najaf. He studied from Waheed Behbehani and Sayyid Mehdi Bahr-ul-Uloom. His famous work is *Kashful Ghita* from which the family derived the famous appellation, *Kashiful Ghita*. Among his outstanding students are Shaikh Muhammad Hasan, the author of encyclopaedic work called *Jawahir al Kalaam*, and Sayyid Jawad who wrote *Miftahul Karamah*. All of his four sons were *Fuqaha* of repute, and have immensely contributed to the development of *Fiqh*.

He died in 1228 AH.

32. SHAIKH MUHAMMAD HASAN

He is the author of an encyclopaedic work on *Fiqh*, *Jawahirul Kalam*. He was born in 1202 AH. He is of Arab descent. This great work has become monumental; the author spent thirty years of his prime life for its completion. The last edition printed in Iran ran into fifty volumes, each volume consisting of about 400 pages. The work is an indispensable companion of every *Faqih* worth any name, since each line in it requires profound pondering and elucidation. One could

say that Shaikh Mohammad Hasan was an ideal example of devotion and dedication. He died in 1266 AH., having commenced the extraordinary work at the age of 25.

Shaikh was a student of Shaikh Ja'far Kashiful Ghita, as well as of Sayyid Jawad, the author of *Miftahul Karamah*. In his time, he was a sole *Marja*, having established a great Hawza of his own in Najaf. He is referred to as *Sahib-e-Jawahir*.

33. SHAIKH MURTADHA ANSARI

He was a descendent of the Prophet's noble companion, Jabir b. Abdullah Ansari. He was born on 18th Dhul Hajj (the day of Idd-e-Ghadeer) 1214 AH. in Dezful. For 20 years, he studied in Iran before leaving for Iraq. After a brief stay there, he decided to return to Iran. When he met Mulla Ahmed Nuraqi, the author of *Me'raju Ssa'adah* and *Mustanad al-Shiah*, in Kashan, Shaikh decided to remain there under his tutelage. In 1252 AH. he decided to visit the holy shrines of Iraq, but this sojourn was destined to be final, for here he started his own classes which made him world famous. He became an indisputable *marja* after the death of *Sahib-e-Jawahir*.

Shaikh was a genius of extra ordinary calibre. In *Usool* and *Fiqh*, his originality and analytic mind enabled him to blaze a new path, a path which has been adopted and followed by all the subsequent *Fuqaha*. His two great works, *Rasail* and *Makasib* are an inalienable part of the curriculum in modern Hawzas. We can say that after Muhaqqiq Hilli, Allama Hilli and Shaheed-e-Awwal, the figure of Shaikh Murtadha Ansari towers highest among the Shia *Fuqaha*. He is rightly known as *Khatimul Fuqaha Wal Mujtahedeen*. He died in Najaf in 1281 AH.

34. HAJ MIRZA MUHAMMAD HASAN SHIRAZI

Popularly known as Mirza Shirazi Buzurg, he was born in Shiraz on 15th Jamad Al-Awwal 1230 AH. He did his preliminary studies in Isfahan and then migrated to Najaf to join the Hawza of *Sahib-e-Jawahir*. After the death of *Sahib-e-Jawahir*, he joined the classes

of Shaikh Murtadha Ansari, becoming one of the most brilliant and highly regarded students. After the death of Shaikh Ansari, he became the sole *Marja*, his tenure lasting for 23 years. He is famous for his Tobacco *fatwa* which led to the abrogation of the notorious British monopoly in Iran.

Unfortunately, we do not have any of his written work on *Fiqh*, but his verdicts and *Ijtehad* have been known through his great students, like, Mulla Muhammad Kadhimi Khurasani, Sayyid Muhammad Kadhimi Tabatabai, Haji Redha Hamdani, and Mirza Muhammad Taqi Shirazi. He died in 1312 AH.

35. AKHUND MULLA MUHAMMAD KADHIMI KHURASANI

He was born in Tus in 1255 AH., in a family not known for any contribution to *Fiqh*. At the age of 22, he came to Tehran for a brief study in Philosophy and then travelled to Najaf where he had an opportunity of joining the lessons of Shaikh Ansari for two years. Thereafter, he studied under the tutelage of Mirza Shirazi Bururg.

When his master, Mirza Shirazi left for Samarra, Akhund Khurasani decided to stay behind in Najaf. Here he started his own Hawza. Because of his effective style of teaching he attracted many students. It is reported that at one given time, he taught nearly 1200 students, out of whom nearly 200 were of the rank of *ijtehad*.

Great *Fuqaha* of our time, like Sayyid Abul Hasan Isfahani, Haji Shaikh Muhammad Hasan Isfahani, Haji Sayyid Husain Burujardi, Sayyid Husain Qummi, Aqa Zia-ud-Deen Iraqi were all his students. The Hawza of Akhund is distinguished for its extensive and analytic treatment of *Usool-al-Fiqh*. His great work *Kifayah* is studied even today with utmost care. It is a work which has necessitated writing elucidatory footnotes and commentaries. Many Ulama of repute have attended to this need, and nearly 120 commentaries exist to explain what Akhund had to say.

Akhund Khurasani gave a *fatwa* in favour of Mashrutiyyat which

was adopted in the state constitution of Iran. Akhund died in 1329 AH.

36. MIRZA HUSAIN NAEENI

He was born on 17th Dhul Qadah 1276 AH. in Naeen. He was a student of Mirza Shirazi Buzurg and Sayyid Muhammad Fisharaki Isfahani. In his major contribution to *Usool-ul-Fiqh*, he differed in many matters with Akhund Khurasani, disputing the latter's conclusions. Many students were trained by him in *Fiqh*. He is also famous for his political treatise called *Tanzeehul Ummah*. He died in Najaf in 1355 AH.

37. AYATULLAH SAYYID ABUL HASAN ISFEHANI

He was born in 1277 AH in one of the villages on the outskirts of Isfahan. He was a *Faqih* of the first rank, and a sole *Marja* after the death of his contemporary, Mirza Husain Naeeni. The tenure of his *Marjaiyyah* is particularly known for its commendable administration. After his preliminary training in Isfahan he travelled to Najaf and gradually joined the lessons of Akhund Khurasani, who soon recognised the talents of his disciple.

His famous *Amaliyya* in *Fiqh* is *Waseelatun-Najat*, which due to its comprehensive nature, has been elucidated by many *Fuqaha* including Ayatullah Khomeini. Among his famous students were Ayatullah Sayyid Mohsin Al-Hakim, Ayatullah Sayyid Meelani, Ayatullah Mirza Hashim Amuli and others. He died in Najaf on 9th Dhul Hijjah in 1365 AH.

38. AYATULLAH SAYYID HUSAIN BURUJARDI

He was born in Burujard in 1292 AH. He was a student of masters like Akhund Khurasani and Aqa Zia Iraqi. *Fiqh* was his special interest, and in order to master it fully, he studied *Fiqh* of all the Islamic schools of thought. While citing the Traditions of Masoomeen (a.s.) to support any of his deductions, Sayyid Husain Burujardi is known to have brought so many new aspects to light. He also had a keen insight in the science of *Rijal*. Shaheed Mutahhari

and Ayatullah Shaikh Husain Muntadhar are among his numerous worthy students.

He died in Qum on 13th Shawaal 1381 AH at the ripe age of 90.

39. AYATULLAH SAYYID MUHSIN AL-HAKIM

He was born in 1306 AH in a family renowned for its scholarship. He studied under the tutelage of great *Fuqaha*, like Ayatullah Sayyid Muhammad Kadhim Yazdi, Ayatullah Mirza Husain Naeeni, Ayatullah Zia Iraqi and others.

He became a sole *Marja* after the death of Ayatullah Sayyid Husain Burujardi, with whom his family tree shared a common lineage finally reaching Ameerul Mumineen Imam Ali b. Abu Talib (a.s.). The Hawza of Najaf grew immensely under his *Marjaiyyah*, boasting nearly an unprecedented figure of 8000 students. He also instituted several changes in the curriculum of the Hawzas, which have had far reaching effects. His famous work in *Fiqh* is *Mustamsak* which is acknowledged as the most exhaustive and enlightening commentary on the first part of *al-Urwatul Wuthqa*. The style and skill of his reasoning established him among the *Fuqaha* of the first rank. He is also well known for his clear *fatwa* against Communism, declaring it an ideology of *kufir* and atheism.

He died on 27th Rabi-ul-Awwal 1390 AH in Najaf and was buried in the great and modern library he had established.

40. AYATULLAH SAYYID ABUL QASIM AL-KHU'I

This great scholar of our time was born in Khu'i, on 15th Rajab, 1317 AH. He came to Najaf at the age of 13 with his father Sayyid Ali Akbar Al-Khu'i. After completing his preliminary studies at the age of 20, he joined the final classes under great tutors like Shaikh al-Shariah Isfehni, Shaikh Muhammad Husain Isfehni, Shaikh Zia Iraqi and Mirza Husain al-Naeeni.

Ayatullah Al-Khu'i's main contribution was to *Usool al-Fiqh*, but

he was also a great *Faqih*, in a sense that his classes on *Fiqh* were attended by some of the most prominent scholars of his time. After the death of Ayatullah Sayyid Muhsin Al-Hakim in 1971 AD he became a sole *Marja*. His tenure of *Marjaiyyah* was tumultuous, and it lasted for nearly 22 years. He died on 8th Safar 1413 AH. (i.e. 8th August 1992). It is said that the number of great *Fuqaha* trained by him during the five decades of constant teaching exceeds one thousand.

SUMMARY

We have briefly introduced 40 great lives from the world of *Fiqh*, starting with the era of *Ghaybat-e-Sughra* till the onset of fifteenth century *Hijra*. These were the prominent jurisconsults of Shia sect whose names and works have guaranteed the life and growth of Islamic Shariah. However, it must be mentioned that there were many others whose contributions cannot be underestimated, and some of them have been referred to in this brief treatment. Following important points emerge from the above:

1. CONTINUOUS GROWTH

Fiqh has had a continuous growth right from the third century *Hijra*, and it has been taught and developed incessantly in the great Shia seminaries. If we were to take the example of Ayatullah Sayyid Abul Qasim Al-Khu'i, we can connect him upwards with his masters one generation after another, forming a glorious chain which links with the era of our Imams (a.s.). This continuity is unique in Islam and what is more noteworthy is that the continuity made Islamic guidance available to the Ummah at all times and in varying circumstances.

The reason for starting from the third century *Hijra* is not because no *Fuqaha* existed before that time. It is because the era earlier than *Ghaybat-e-Sughra* was the era of our Imams (a.s.) and in their presence *Fuqaha* obviously were eclipsed. However, we know their names and we also possess a list of their works on *Fiqh*. For example, the earliest work on record is the book on *Fiqh* written by

Ali b. Rafe' who lived during the time of Imam Ali b. Abu Talib (a.s.). Ali b. Rafe's brother Abdullah was Imam Ali's (a.s.) scribe as well as official in charge of Treasury.

2. SHIA TEACHINGS WERE NOT JUST PROMULGATED BY THE IRANIANS

It is not true to say that *Fiqh* and other Shia teachings were promulgated by the Iranians alone. Till tenth century *Hijra*, the contribution mainly sprang from non-Iranian sources. Later, during the Safavid rule in Iran, Iranian scholars became major contributors.

3. IRAN HAS NOT ALWAYS BEEN THE CENTRE OF FIQH

Iran has not always been the centre of *Fiqh*. In fact, the earliest organised Shia Centre of *Fiqh* is traced in Baghdad, followed by Najaf during the days of Shaikh Tusi. Later, it was matched by Jabal Amel (Lebanon), Hilla (Iraq) and Aleppo (Syria). Isfahan (Iran) became known as a centre of *Fiqh* during the Safavid regime, but at the same time Muqaddas Ardabili revived the Hawza of Najaf.

As far as Qum is concerned, it had a progressive Hawza during the bloom of Baghdad, centred around personalities like Ibn Babawayh, Ibn Qawlawayh and others. Then there was a period of decline, till its regeneration during the Qajar dynasty, under the supervision of Mirza Abul Qasim Qummi, the author of monumental *Qawanin*. With the growth of Hawza in Najaf, Qum again withered away till the third revival took place under Shaikh Abdulkarim al-Haeri in 1340 AH. Today, as we pen these lines, Qum is the greatest seminary of *Fiqh* and other Islamic branches of knowledge. With the onslaught of Ba'thist infidelity in Iraq, the Hawza of Najaf has disintegrated. Hopefully, this is one of the temporary phenomena which make their appearance in history. Allah knows best, and upon Him we rely.

No doubt, the growth of smaller Hawzas in Iran had been noticeable, and they were quite prolific. Mention should be made of *Fiqh* being taught at its highest level in Mashhad, Hamdan, Shiraz,

Yazd, Kashan, Tabreez, Zanjan, Qazwain, and Khwansar. But these never grew up to reach the magnitude of Hawza in Qum.

4. IMPACT OF *FUQAHA* OF JABAL AMEL HAS BEEN DECISIVE

It must be acknowledged that the impact of *Fuqaha* of Jabal Amel, like Muhaqqiq Karaki and Shaikh Bahai, has been great and decisive. The Safavids themselves, as it is known, were more inclined towards *Tasawwuf* and mysticism. Had it not been for these *Fuqaha* who decided to migrate and live in Iran, establishing the great college of Isfehan, Iran would not have been what it is today in as far as promulgation and development of *Fiqh* is concerned.

As Shakeeb Arsalan has mentioned, Shia School in Jabal Amel is centuries older than the one in Iran. Some historians have indicated that the school of Ahlul Bait (a.s.) in Jabal Amel was established by Abu Dhar Ghifari, the noble companion of our Prophet (s.a.w.). Abu Dhar lived in Sham which in those days included all or parts of Lebanon, condemning the wealth being unscrupulously amassed by Mua'wiyah and his lackeys, at the same time preaching the Shia faith.

5. CONTRIBUTION OF *FUQAHA* IN INDIA NOT TO BE IGNORED

We feel that the contribution of *Fuqaha* in India must not be ignored. In order to give a balanced view of the global development of *Fiqh*, we would like to briefly introduce some of the renowned names in Shia history of India:

A. SAYYID DILDAR ALI

Popularly known as Ghufran Ma'ab, he was the son of Sayyid Muhammad Muin bin Sayyid Abdul Hadi. It would seem that his family, like many other Sayyid families, left Nishapur (Iran) because of the Mongol invasion and settled in India. He was born in 1166 AH. He completed his early studies in India, and in 1193 AH travelled to Iraq for further studies. Among his tutors in Iraq were great *Fuqaha* like Shaikh Ja'far Kashiful Ghita, and Wahid Behbehani. Later, he went to Mashhad (Iran) for further studies.

Sayyid Dildar Ali, while in India, was of *Akhbari* persuasion, but he changed to *Usuli* school after his intensive studies in Iraq. Upon his return to Lucknow, he became a *Marja* in India, his *fatwas* being regarded as final by the Shia populace.

His magnum opus in Theology (*Ilm-ul-Kalam*) is known as *Imadul-Islam* which he wrote in Arabic, in refutation of anti-Shia arguments by Fakhr-ud-Din Razi. His detailed work in *Fiqh* is *Muntahal Afkar*. His sons were also pious, dedicated scholars and teachers.

Sayyid Dildar Ali died in the night of 19th Rajab 1235 (2nd May 1820), and was buried in Lucknow.

B. MUFTI MUHAMMAD ABBAS

He was son of Sayyid Ali Akbar Jazaeri Shushtari, was born at the end of Rabi-ul-Awwal 1224 AH. (15th May 1809). As a child, he was gifted and precocious, having composed an Urdu *Mathnavi* on Shia doctrines at the age of 12. More than 150 of his books have been published but a large number still remain in manuscript form. He never visited Arabia, yet Arab scholars were impressed by his Arabic prose and poetry.

His deep understanding of *Fiqh* prompted Sultanul Ulama, Sayyid Muhammad, son of Ghufran Ma'ab, to appoint him the *Mufti* of Lucknow. Mufti Muhammad Abbas compiled a guide book for the *Qadhis* and Mufties of *Awadh* and the principles laid down by him were followed by the judiciary.

He had six sons, one of them Mufti Sayyid Ahmad Ali (died in 1969) was also a *Faqih* of repute. He was the principle of Nazmia Arabic College, Lucknow.

Mufti Muhammad Abbas died on 25th Rajab 1306 (27th March 1889) at Lucknow.

C. SAYYID HAMID HUSAIN

He was son of Mufti Muhammad Quli, was born in Meerut, India,

on 5th Muharaam 1246 (27th June, 1830). He studied Arabic literature with Mufti Muhammad Abbas, and Sayyidul Ulama Sayyid Husain (the youngest son of Ghufraan Ma'ab) trained him in *Fiqh* and *Usool*.

Sayyid Hamid Husain acquired his knowledge of the Islamic sciences in India, and although he visited many scholars during his pilgrimage to Arabia and Iraq, his main interest lay in collecting books and manuscripts for doctrinal and historical research. Ulama of Iran and Iraq have paid glowing tributes to him in their evaluation of his copious contributions, particularly the encyclopaedic work on Imamah, called *Abaqatul Anwar*.

Ayatullah Sayyid Muhsin Amili in his *A'ayanu SShia* says: “A man of his eloquence, proficiency in Traditions, Islamic history and Theology is not to be found during his time. In fact, neither before nor after. If we said that a scholar of his status has not appeared after the era of Mufeed and Murtadha, it would not be an exaggeration...”

His work on *Fiqh* includes *Al-Dharae* which is a commentary on *Sharae*, *Zainul Wasail*, *Al-Shariah Al-Gharra*, *Al-Najm Al-Thaqib* and others.

D. SAYYID NAJMUL HASAN

He was popularly known as Najmul Millat. He was the son of Sayyid Akbar Husain of Amroha. Sayyid was born on 6th Dhul Hijja 1279 (25th May 1863). He was a favourite disciple and son-in-law of Mufti Muhammad Abbas. He studied all the higher faculties, including *Fiqh* and *Usool* in India, under the tutelage of Abul Hasan Abbu Sahib and Mufti Muhammad Abbas.

Himself a *Faqih* of the first rank, he trained several Ulama like Sayyid Sibte Hasan, Sayyid Adeel Akhtar and Hafiz Kitayat Husain. He will ever be remembered for his services to the Shias of Tibet, Burma, Africa, and countries in the West, rendered through the missionaries trained in his Madrassah Nazmiah, Lucknow. He died on 17th Safar 1351 AH (18th April 1938).

CHAPTER 3

THE CHAPTERS AND TITLES IN FIQH

As mentioned earlier, the range of topics covered by *Fiqh* is very wide. It is therefore necessary to briefly acquaint oneself with the chapters and headings of these subjects. The only subjects, which are outside the pale of *Fiqh*, are the fundamentals and the Islamic ethics.

It must be noted that the classification of the subjects under *Fiqh* was first organised by Muhaqqiq Hilli in his famous work *Sharae*, and later, *Shaheed-e-Awwal*, glossed over it. He divided the topics into four parts: *Ibadaat*, (acts of worship), *Uqood* (contracts), *Iqa'aat* (pronouncements) and *Ahkam* (the laws).

Ibadaat

All those acts which ought to be performed as prescribed in Sharia, and must be preceded by the *Niyyah* of *Qurbat* are known as *Ibadaat*. e.g. daily prayers, fasting, Hajj etc.

Ahkam

Those duties which are to be discharged according to Sharia, but do not necessarily require any *Niyyah* of *Qurbat* nor do they require any pronouncement of specific formula while performing them are called *Ahkam*. For example, the laws of inheritance, the penal code, the laws of compensation and blood money etc.

Uqood

Those contracts of Sharia which do not require the *Niyyah* of *Qurbat*, but are to be declared with the pronouncement of a formula in which one party declares the intention and another responds by acceptance, are called *Aqd* (pl. *Uqood*) for example, Marriage (*Nikah*), *Ijarah* (letting or leasing), *Bay'* (buying and selling) etc.

Iqa'aat

Iqa'aat are those pronouncements, which do not require participation of two parties. In other words, a person pronounces it unilaterally, and the act is considered valid in Sharia. For example, remission of debt (releasing a debtor from his liabilities), divorce, and releasing a slave etc.

Muhaqqiq Hilli has discussed all the four categories under forty eight Chapters. In *Ibadaat*, he has ten chapters, in *Uqood* fifteen, in *Iqa'aat* eleven and in *Ahkam* twelve. Later, these numbers have had some alterations which we shall notice in the course of our discussion.

In the early era, that is, the first and the second century Hijra, the *Fuqaha* chose one or two topics of *Fiqh* and wrote about them. They did not venture to write a comprehensive work covering the whole range. As we study their lives, we find that they have authored books on *Salat*, *Ijarah*, *Nikah* and so on. Instead of stating that they have dealt with a particular chapter in *Fiqh*, they named each separate treatise as *Kitab*. Thus, we come across *Kitabu-n-Nikah*, *Kitab-t-Taharah* and so on.

Let us now examine how Muhaqqiq Hilli divided *Ibadaat* in ten chapters.

CHAPTER 4

IBADAAT

FIRST CHAPTER: KITABU-T-TAHARAH

Taharat means cleaning from the impurities, which are of two types: *Khabath* and *Hadath*.

Those impurities which have been specified as inherently *Najis* like urine, excrement, blood, semen etc. are called *Khabath*. When our bodies or clothes come into contact with them, they have to be made clean. Then there are certain acts of *Taharat* which are ritual and are a prerequisite to the acts of worship like *Namaz* and *Tawaf*. These are *Wudhu*, *Ghusl* or *Tayammum*. They are invalidated by natural causes like sleeping, urinating or entering into a state of *Janabat*, and they have to be reinstated.

SECOND CHAPTER: KITABU-S-SALAAT

In this chapter, various prayers like the daily *Namaz*, *Namaz of Idd*, *Namaz-e-Mayyit*, *Namaz-e-Tawaf*, *Nafila* etc are outlined. Then the laws which explain the prerequisites of *Salaat*, and the acts which invalidate the prayers are elaborated. Details are given about *Namaz* in one's own home town, *Namaz* of a traveller, *Namaz* prayed alone, and the one in congregation (*Jamaah*), *Namaz* prayed on time, and those as *Qadha*.

THIRD CHAPTER: KITABU-Z-ZAKAH

In this chapter, various types of wealth tax are discussed; especially the one which is applied to Gold, Silver, Wheat, Barley, Dates, Grapes, Cattle (big and small) and Camels. Details of percentage levied, and the ways of spending *Zakat* are also explained.

FOURTH CHAPTER: KITABU-L-KHUMS

Khums means one-fifth (20%) and is also a type of wealth tax. According to Sunni *Fiqh*, this is applicable to the spoils of war only.

But in our *Fiqh*, the spoils of war are just one of the many other incomes and accruals on which *Khums* is to be paid. For example, the minerals, the treasures, the wealth which is mixed with *Haram* in a manner that it cannot be extricated, and its rightful owner cannot be traced, the wealth acquired by diving, and the net savings and profit in businesses etc.

FIFTH CHAPTER: KITABU-S-SAWM

This chapter deals with the laws governing fasting, and distinguishes obligatory fasts of the month of Ramadhan from other categories. For example, the forbidden fasts on Idd days, the *Makrooh* fast on Ashura day, and so on.

SIXTH CHAPTER: KITABU-L-I' TEKAF

Literally, it means to retire into a place. In *Fiqh*, it is a form of worship. When a person wishes to do *I'tekaf*, he has to retire into a mosque for three days or more, and fast for three days. He remains secluded, not stepping out of the mosque. This act is optional in itself, but if one commences it and continues for two days, then it is *Wajib* to complete the third day. Originally *I'tekaf* was to be observed in *Masjidul Haram* (i.e. Makkah), *Masjidul Nnabi* (i.e. Madinah), Masjid of Kufa. But it is also allowed in the central mosques of any town or city, excluding small mosques. The Prophet (s.a.w.) always observed *I'tekaf* in the last ten days of holy Ramadhan.

SEVENTH CHAPTER: KITABU-L-HAJJ

This deals with all the obligatory and optional acts, during pilgrimage to Makkah, like wearing *Ihram*, *Tawaf*, Namaz of *Tawaf*, *Wuqoof* at Arafah, Mashar, Mina etc.

EIGHTH CHAPTER: KITABU-L-UMRAH

It is a smaller or lesser Hajj, and it is obligatory for the Hajis who must perform it first before proceeding to complete the Hajj. It consists of *Ihram*, *Tawaf*, Namaz of *Tawaf*, *Sae'e*, *Taqseer*.

The acts of Umrah are performed in the following order:

a. *Ihram*

- b. *Tawaf*
- c. Two Rakaats of *Tawaf*
- d. *Sae'* (between Safa and Marwah)
- e. *Taqseer*

In Hajj, the order is as follows:

- a. *Ihram*
- b. *Wuqoof* at Arafah
- c. *Wuqoof* at Mashar
- d. *Rami* of the last Jamarah at Mina
- e. Sacrifice of animal
- f. To shave off the hair, or cutting nails etc.
- g. *Tawaf* of Hajj
- h. Two Rakaats for *Tawaf*
- i. *Sae'* for Hajj
- j. *Tawaf-un-Nisa*
- k. Two Rakaats for *Tawaf-un-Nisa*
- l. Staying at night in Mina - *Rami* of all Jamarats in Mina

NINTH CHAPTER: KITABU-L-JIHAD

This chapter deals with the holy wars which are deemed absolutely necessary for the preservation of security and welfare of a society. *Jihad* can be of two types: One initiated and another defensive. Shia *Fiqh* stipulates that in order to initiate a *Jihad*, consent must be had from the Prophet (s.a.w.) or any Masoom Imam. As for the defensive holy war, it can be waged as and when it becomes necessary. This chapter also deals with the laws pertaining to *Dhimmi*s who seek refuge under an Islamic state, and about truce and peace treaties between Islamic and non-Islamic countries.

TENTH CHAPTER: AMR-BIL-MA'ROOF & NAHY-ANIL-MUNKAR

In an Islamic society, it is the responsibility of every Muslim to enjoin good and forbid evil. Of course, there are conditions and regulations for carrying out this duty. This chapter deals with them extensively.

CHAPTER 5

UQOOD (CONTRACTS)

Muhaqqiq Hilli has divided this into fifteen chapters.

CHAPTER ONE: KITABU-T-TIJARAH

This chapter deals with purchase and sale, conditions of transactions, types of transactions like cash or credit sales, profits, usury, and so on. It also explains rules of contracts, pronounced or by conduct.

CHAPTER TWO: KITAB-AL-RAHN

This chapter deals with buying or selling a mortgage.

CHAPTER THREE: KITAB-AL-MUFLIS

This chapter deals with issues relating to bankruptcy. *Muflis* means a bankrupt, who cannot pay off his debts. The Islamic jury would immediately issue an order to restrain such a person from using his wealth till such time when a thorough assessment has been made, and possible payments to the creditors have been arranged.

CHAPTER FOUR: KITAB-AL-HIJR

This chapter deals with issues when an owner of either wealth or property is restrained from having any say in its use, like in the cases of a bankrupt, a minor, an insane person, a dying person who intends to will beyond his right of one third, a fool etc.

CHAPTER FIVE: KITAB-AL-DHAMAN

This chapter deals with issues relating to a warranty or guarantee. In Shia *Fiqh*, a guarantor becomes responsible for the debts, to the exclusion of the debtor, but the guarantor can call for reimbursement from the debtor. Muhaqqiq Hilli has included all sureties and promissory notes in this category.

CHAPTER SIX: KITAB-AL-SULH

Sulh here does not mean peace agreement or truce. It actually means

settlement, concession or compromise. For example, to settle a debt whose exact figure is not known by offering a certain sum, and so on.

CHAPTER SEVEN: *KITAB-AL-SHARIKAH*

This chapter deals with issues relating to joint ownership, like in the case of inheritance. As long as it has not been divided, it belongs jointly to all the heirs. It also means partnership. Interestingly, there are cases of unwilling partners, when wheat owned by one person gets mixed up with wheat belonging to another, and separating is impossible. Partnership in businesses, industries and agriculture are contracted by an agreement.

CHAPTER EIGHT: *KITAB-AL-MUDHARIBAH*

This chapter deals with issues relating to a partnership between capital and labour. When a man or a group of men investing their capital for a business, enter into an agreement with those who will put in their labour or will manage, they must first agree about the share of dividends, and then either pronounce a formula for *Mudharibah*, or make some practical gestures.

CHAPTER NINE: *KITAB-AL-MUZARI'AH* OR *MUSAQAT*

This chapter deals with a type of *Mudharibah*, but with a difference. Instead of an arrangement between a businessman, an industrialist and a worker, it is an agreement between a landowner and a person who will work to till the land and carry out plantation, with a clear understanding about profit sharing when the harvest is ready. *Musaqat* is an arrangement between the farmer or garden owner, and the worker who undertakes to water the garden etc. and do all such work which would help the harvest or fruition. Again, it is absolutely necessary that a prior agreement on the proportion of profit to be shared by each is reached. In *Mudharibah*, *Muzari'ah* and *Musaqat*, the profit, little or more, is proportionately shared, but the losses are borne by the capitalist alone.

CHAPTER TEN: *KITAB-AL-WADEE'AH*

This chapter deals with the responsibilities of the trustee,

particularly in the circumstances of loss or damage. This is just like *Amanat*, where a person deposits his property in trust with another person, making him responsible for its protection and security.

CHAPTER ELEVEN: *KITAB-AL-ARIYAH*

This chapter deals with issues relating to borrowing something from a person, with an intention of benefiting from it. The difference between this and *Wade'ah* is that in *Wade'ah* a person is given something to hold in trust, with no permission to use it in any way; while in *Ariyah*, a person agrees to lend his property to another person with a clear understanding that the latter will use it to derive some benefit. Simple example is lending a car to someone for his use, lending clothes for wearing etc.

CHAPTER TWELVE: *KITAB-AL-IJARAH*

This chapter deals with issues relating to hiring or giving on rent. This is done in two ways. Either one gives away his property to another for use against an agreed sum of rent, or one undertakes to complete a certain piece of work against payment. This arrangement has one common feature with ordinary purchase and sale; in both the cases, something is given in return. The difference is that in any business or sale, a commodity is exchanged with money or its value, while in *Ijarah*, the property itself is not exchanged, but its utilisation or benefit is hired or rented out.

CHAPTER THIRTEEN: *KITAB-AL-WAKALAH*

This chapter deals with issues relating to appointing someone or authorising him to enter into a contract on one's behalf or to make a certain commitment. The example is when a *wakil* is appointed for *Nikah*, *Ijarah*, Selling, Divorce, etc.

CHAPTER FOURTEEN: *KITAB-AL-WUQOOF & SADAQAT*

This chapter deals with endowments and charities. *Waqf* means to exclude one's own property from ownership and give it away for a particular use. In other words, it is an endowment settled for public use. Many laws govern this act, and *Fuqaha* debate over

whether *Waqf* requires an intention of *Qurbat* or not. Then there are laws about *Waqf Khas* (family endowments) and *Waqf Aam*.

CHAPTER FIFTEEN: *KITAB-AL-SUKNA-WAL-HABS*

This chapter deals with issues relating to endowment but with a difference. While *Waqf* is permanent, where the owner gives away his property forever, *Sukna* is a temporary arrangement. In it, a person gives away his abode or house to a deserving person for a fixed period of time. When the time expires, the property is restored to him, as its rightful owner. *Habs* means a temporary bequest for charitable purposes. In this arrangement, the property itself is not given away; only its accruals or benefits are bequeathed for a certain period, upon expiration of which the benefits revert to the owner.

CHAPTER SIXTEEN: *KITAB-AL-HIBAT*

This chapter deals with issues relating to gifts. One can only settle a thing, which he rightfully owns as a gift. They are of two types: a gift given in exchange or a gift given away without any return. Gifts given in exchange or substitute cannot be claimed back, but that which is given away without any exchange can be claimed back. But if this unconditional gift has been settled on one's own relatives, or if its original form has been changed or destroyed, then it cannot be reclaimed.

CHAPTER SEVENTEEN: *KITAB-AL-SUBQ WA-AL-RAMAYAH*

This chapter deals with issues relating to racing and shooting, a chapter which falls under subsidiary laws of *jihad*. Islam forbids wagering, betting or staking, but allows training for racing or shooting or marksmanship as a prelude to military skills.

CHAPTER EIGHTEEN: *KITAB-AL-WASIYYAH*

This chapter deals with issues relating to making of the Will, testament etc. in respect of one's estate and minor heirs. Man has a right to appoint an executor or administrator for the purpose. He can direct the appointee to look after his minor children, educate them and provide them with necessary training. Similarly, he can

direct him to use up to $\frac{1}{3}$ of his estate in the manner he, the testator, prefers.

Such directives are of three types: One is related to distribution of his money and property; another can be about performing certain duties, like *Hajj*, *Ziyarat*, *Qadha Namaz*, Fasts, etc. The last one concerns releasing from the bondage, like when he directs that a particular slave be set free upon his death.

CHAPTER NINETEEN: *KITAB-AN-NIKAH*

This chapter deals with issues relating to Marriage Contract. In this chapter, *Fuqaha* discuss several aspects, including the conditions, the types of woman or man one can marry, prohibition in marriage, temporary marriages, permanent marriages, maintenance of the wife and the children and so on.

Though Muhaqqiq Hilli had enumerated 15 chapters, we observe that there are more. Possibly, Muhaqqiq amalgamated certain chapters under one heading.

CHAPTER 6

IQA'AT (UNILATERAL PRONOUNCEMENT)

Muhaqqiq divided these into eleven Chapters. In Iqa'at pronouncing a formula is necessary, but it does not have two sides. It is done unilaterally.

CHAPTER ONE: *KITAB-AL-TALAQ*

This chapter deals with issues relating to the dissolution of marriage - it is either Absolute (*Bain*) or Revocable (*Rajéè*). The revocable *Talaq* is that in which the husband has the power of revocation during the *Iddat* period, while in the absolute, the husband has no power of revocation. This chapter discusses all the laws in this connection. It also sets down all the conditions for *Talaq* to be valid.

CHAPTER TWO: *KITAB-AL-KHULA' & MUBARAAT*

These are two other types of absolute divorce. *Khula'* is when wife has a dislike for her husband and asks him to divorce her in exchange of a sum, or all or part of her *Mahr*. In such a case, when the husband agrees to divorce, he forfeits the power of revocation, except when the wife agrees to take back the money or ransom she gave.

Mubaraat is when dislike is mutual, and in this case also the wife has to pay some ransom to the husband. However, the ransom paid in the case of *Mubaraat* should not exceed the *Mahr*. This divorce is also absolute.

CHAPTER THREE: *KITAB-AL-DHIHAR*

In the preIslamic era, when husband said to his wife “*you are on me like the back of my mother*”, it was construed as Divorce. Islam has effected an important change. It does not recognise *Dhihar* as a form of divorce, but whoever does this ought to pay *Kaffara* before he can resume conjugal relations with his wife. This *Kaffara* is freeing a slave, and if that is not possible, he shall fast for two consecutive months. And if that is not possible also, then he should feed sixty poor.

CHAPTER FOUR: *KITAB-AL-EELA'*

This chapter deals with an oath by God, wherein the husband swears that he would never have conjugal relation with his wife, or that he would not have the relation for a period exceeding four months. In such a case, when the wife complains to *Hakime Shara'*, the husband would be given a choice either to divorce her or to abrogate the oath. Naturally, if the husband abrogates the oath, he will pay the expiation (*Kaffara*). In general, Islam forbids abrogating the oaths, but in this case it recommends.

CHAPTER FIVE: *KITAB-AL-LIAN*

This chapter deals with the slander or denial of a child. The law of accusing someone without adequate proof etc. is also discussed. Husband stands before *Hakime Shara'* and pronounces *Lian*, saying four times: “*God is my witness, that I am truthful in my accusation against my wife*”. Then he says: “*May God curse me if I were not speaking the truth*”. Thereafter, the wife says four times: “*God be my witness that my husband has lied and accused me wrongly*”. Then she adds: “*Curse of God befall me if I was lying*”. When this process is complete, the marriage is irrevocably dissolved.

CHAPTER SIX: *KITAB-AL-ITQ*

This chapter deals with issues relating to freeing the slaves. Islam does not encourage slavery that is why we do not find a chapter on *al-Riqq* (enslaving); the only chapter is *al-Itq* (freeing, liberating). The chapter outlines circumstances in which the slaves are voluntarily or automatically liberated.

CHAPTER SEVEN: *KITAB-AL-TADBEER, MUKATIBAH & ISTEELAD*

This chapter deals with specific circumstances which lead to freeing the slaves. *Al-Tadbeer* is when the master makes a will stating that his slave will be free upon his death. *Mukatibah* is when a slave wishes to enter into an agreement with his master that he be freed in exchange of some consideration. The Holy Qur'an says that if the master finds the slave capable and righteous, he should accede to the wishes of the slave, and also endow him with some of his own wealth. *Isteelad*

is an automatic process. When a female slave, for example, becomes pregnant by her master, such a female slave will revert to her offspring upon her husband's (master's) death. And since she is the mother, and Islam does not allow anyone to be a slave of his or her forbearers however high, and descendants however low, the female slave will automatically be free.

CHAPTER EIGHT: *KITAB-AL-IQRAR*

This chapter deals with issues relating to admission and is connected with the judiciary. When a person makes a claim against someone and has no evidence or witness to substantiate it, the claim is not admissible. But if the debtor himself wishes to admit the debt, which is *Iqrar*, then it is deemed adequate.

CHAPTER NINE: *KITAB-AL-JIALAH*

This chapter deals with issues relating to a wage or reward. Apparently, it resembles the act of hiring a worker or a labourer for a particular piece of work against agreed amount. But in *Jialah*, the employer does not hire a particular person, he makes a public announcement stating that whoever would do a certain job for him, he would pay him a certain amount.

CHAPTER TEN: *KITAB-AL-AYMAN*

Ayman is plural of *Yameen*, which means an oath. In this chapter, the sanctity of a religious oath, taken in the name of Allah, is discussed. It describes the implication of taking an oath in the name of Allah, the types of oath, perjury and the expiation for one who breaks the oath.

CHAPTER ELEVEN: *KITAB-AL-NADHR*

Nadhr is a solemn vow, or pledge made in the name of Allah. This chapter explains the formula which one has to pronounce or at least to have it in mind before *Nadhr* is formally established, and the occasions for *Nadhr*. A *Nadhr* made for a *Mubah* (ordinarily permissible) thing, having no legitimate benefit here or hereafter, is not valid. Both oath and *Nadhr* are a covenant made with Allah and they must be honoured.

CHAPTER 7

AHKAM

Muhaqqiq Hilli has given the above name to this category, since the topics which fall under it are neither acts of worship nor contracts or unilateral pronouncements. He has divided this into 12 chapters.

CHAPTER ONE: *KITAB-AL-SAYD & AL-DHABAHA*

This chapter deals with hunting and slaughtering of those animals whose meat we are allowed to eat. *Sayd* is hunting, *Dhabh* is slaughtering. An animal that has not been hunted as prescribed in *Sharia*, or has not been slaughtered as guided by Islam, will be *Maytah*, a corpse which is *Najis*, and *Haram* to eat. This chapter also deals with the hunting of wild animals by trained hunting dogs.

CHAPTER TWO: *KITAB-AL-AT'IMAH & AL-ASHRIBAH*

This chapter deals with those things, which we are allowed to eat or drink, and those which are forbidden. A detailed treatment is given to animal food, sea food, non-animal food and so on. It also explains and categorises those animals which are *Halal* and those which are not. And even in the *Halal* animals, it tells us of those parts of the body which are *Haram* to consume. It also gives rational treatment to those acts which may be ordinarily permissible and harmless, but are harmful for a particular person in a given circumstance.

CHAPTER THREE: *KITAB-AL-GHASB*

Ghasb means an illegal possession of property, or usurpation. As is known, *Ghasb* is *Haram*, but it must also be known that it involves a liability. That means if a person usurps someone's property and if that property is damaged or destroyed while still in his illegal possession, he is liable for it, even if he did not directly damage or destroy it, but was instrumental in causing the damage or destruction.

CHAPTER FOUR: *KITAB-AL-SHUF'AH*

This chapter deals with issues relating to the right of preemption. When a partner wishes to sell his share, the remaining partner has a right of preemption for acquiring the share by buying it at the price offered by others.

CHAPTER FIVE: *KITAB IHYA-AL-MAWAT*

Mawat refers to the barren, uncultivated land. A land which has been developed, either by building upon it or by cultivation is called *Amir* in *Fiqh*. The Prophet (s.a.w.) said: “Whoever gives life to a barren, uncultivated land, that land belongs to him”. This has numerous ramifications, explained under the chapter.

CHAPTER SIX: *KITAB-AL-LUQTAH*

This refers to things which are picked up by chance, and the owner is unknown. This can apply to animals and non-animals. If a stray animal is found which is not in anyway endangered, then one should not take it into custody. But if it faces any danger, then it can be possessed with the intention to return it to its owner if found. If the owner is not found, then *Hakime Shara'* has to authorise its use. This chapter also deals with non-living objects, found in the sacred precincts of *Haram* or outside, basing the guidelines on the value of the object.

CHAPTER SEVEN: *KITAB-AL-FARAIDH*

This is an elaborate chapter dealing with the laws of inheritance. Heirs are divided in three categories:

1. Parents, children, grandchildren (when the children are not present).
2. Grandparents, brothers and sisters (and in their absence, their children).
3. Uncles, aunts (both paternal and maternal) and their children.

The above heirs are by *Nasab* (i.e. consanguinity). There are heirs who inherit by *Sabab* (i.e. affinity) like husband and wife. This chapter deals with various cases of succession in great detail. The

testator does not have the right to will for more than one-third of his or her estate, nor does he or she have any right to fix up the shares of his or her heirs. The estate devolves on the heirs according to *Shariah*.

CHAPTER EIGHT: *KITAB-AL-QADHA*

This is a chapter on judiciary, with elaborate sets of laws. There are laws governing the appointment of judges, their rights, their emoluments, and also about disqualifications. In *Fiqh*, it is stipulated that a Judge must be an acknowledged *Mujtahid*.

CHAPTER NINE: *KITAB-AL-SHAHADAH*

This is a chapter about the witnesses, who constitute the evidence to substantiate a claim. The onus of providing the evidence does not rest on the defendant. The chapter also explains how, in certain cases, the defendant may be called upon to take an oath.

CHAPTER TEN: *KITAB-AL-HUDOOD & TA'ZEERAT*

This chapter deals with issues relating to punishment and retribution. These are of two types: *Hudood* and *Ta'zeerat*. *Hudood* are fixed punitive measures prescribed for specified offences, like sodomy, false accusation of fornication, drinking alcohol etc., stealing, and belligerency and so on. *Ta'zeerat* are such retributive measures which may vary according to the decision reached by the judge who may aggravate or mitigate the sentence.

CHAPTER ELEVEN: *KITAB-AL-QISAS*

This is a chapter on requitals. An elaborate discussion is carried out about the crimes committed advertently or inadvertently, and in each case the extent of requital is prescribed. Then there are laws of recompensing for those who are murdered or are inadvertently killed.

CHAPTER TWELVE: *KITAB-AL-DIYAT*

Diyat is a form of requital, but unlike *Qisas*, it is only monetary compensation. Interestingly enough, a doctor's responsibility

towards human life, and a disciplinary action by a tutor have a place under this chapter. A doctor must be qualified enough to treat a patient. If he is not and if the patient dies during the treatment, he is liable for compensation. In any case, a qualified and efficient doctor must absolve himself of the liability beforehand. Similarly, a tutor carrying out corporal punishment must be careful not to cripple or kill the pupil. If he does, he is liable for compensation. These are dealt with in some detail.



"I don't pray for His acceptance of my amaal as much as I pray for the opportunity to serve. And the day He grants me a new opportunity to serve, I believe the previous ones have been accepted. And I hope till my last breath the opportunities are there and when the Almighty calls me back, I will be able to tell my Lord, Thank You for giving me life, Thank You for giving me life."

In spite of this diversity, Fiqh has one single aim. To lead human beings to happiness on earth, conjoining it with salvation in the hereafter. Therefore, Fiqh is considered as one, composite science of Islam and is taught as such in the Hawzas. The basis of Fiqh is the Holy Qur'an, the sound traditions, consensus and reason.

A Faqeeh looks at the diverse component of Fiqh as parts interwoven into one fabric, with a single aim to guide mankind in respect of its duties and responsibilities towards Allah.

This brief compilation serves as an Introduction to the diverse subjects of Fiqh and contains forty four Life Sketches of the great past Fuqaha.



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