

The Chapters and Titles in Fiqh

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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), IQAA'AT(pronouncements) 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, Haj 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- 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 'KITBUN

NIKAH', 'KITABU TTAHARAH' and so on.

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

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 be reinstated

Second Chapter - KITABUS 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- KITABUZ ZAKAH

In this chapter, various types of wealth tax are discussed, especially the one whicll 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 - KITABUL 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 whicl1 ICHUMS 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 - KITABUS 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 - KITABUL 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 - KITABUL HAJ

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 - KITABUL UMRAH

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

The acts of Umrah are performed in the following order:

1.Ihram 2.Tawaf 3.Two Rakaats of Tawaf 4.Sae'e (between SAFA and MARWAH) 5.Taqseer In Haj, 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 Haj

- h) Two Rakaats for Tawaf
- i) Sae' for Haj
- j) Tawaf-un-Nisa
- k) Two Rakaats for Tawaf-un-Nisa
- l) Staying at night in MINA m) Rami of all JAMARATS in MINA

Ninth Chapter - KITABUL JIHAD

This chapter deals with the holy wars which is 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 DHIMMIS 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 and 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.

UQOOD (Contracts)

.Muhaqqiq Hilli has divided this into fifteen chapters

Chapter One- KITABU TTIJARAH

It 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

.Deals with buying or selling a mortgage

Chapter Three - KITAB AL-MUFLIS

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

It is an interdiction where an owner of 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

It means 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

It means 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

It is 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 MUDHARIBA, or make some practical gestures

Chapter Nine - KITAB AL-MUZARI'AH OR MUSAQAT

This is a type of MUDHARIBA, 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, MUZARIAH 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 is just like AMANAT, where a person deposits his property in trust with another person, making him responsible for its protection and security. This chapter deals with the .responsibilities of the trustee, particularly in the circumstances of loss or damage

Chapter Eleven - KITAB AL-ARIYAH

To borrow something from a person, with an intention of benefiting from it. The difference between this and WADEE'AH is that in WADEE'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 are lending a car to someone for his use, lending clothes for wearing etc

Chapter Twelve - KITAB AL-IJARAH

To hire, or give 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

To appoint someone 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 deals with endowments and charities. WAQF means to exclude ones 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

It is another type of 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

Deals with the 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 ones 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

Deals with 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 relates 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 upto 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 Haj, 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

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

IQAAAT (Unilateral Pronouncement)

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

Chapter One- KITAB AL-TALAQ

Dissolution of marriage - It is either Absolute (Bain) or Revocable (Raje'e). 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 pre-Islamic 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 snull fast for two consecutive months. And if that is not possible also, then he .should feed sixty poor

Chapter Four - KITAB AL-EELA'

It is 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. are also discussed. Husband stands before Hakime Sharia 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

It discusses about 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 Quran 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 forebearers however high, and descendants however low, the female slave will automatically be free

Chapter Eight - IRITAB AL-IQRAR

It deals with 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

It means offering 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. It 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.

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 AND 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 who 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 AND 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

It 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

Means 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

The Chapters and Titles in Fiqh

It 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 that 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

It 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

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-HUOOD & TA'ZEERAT

Deals with punishment and retribution. These are of two types: HUOOD and TAZEERAT. HUOOD are fixed punitive measures prescribed for specified offences, like sodomy, false accusation of fornication, drinking alcohol etc., stealing, belligerency and so on. TAZEERAT 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

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

Chapter Twelve - KITAB AL-DIYAT

It 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