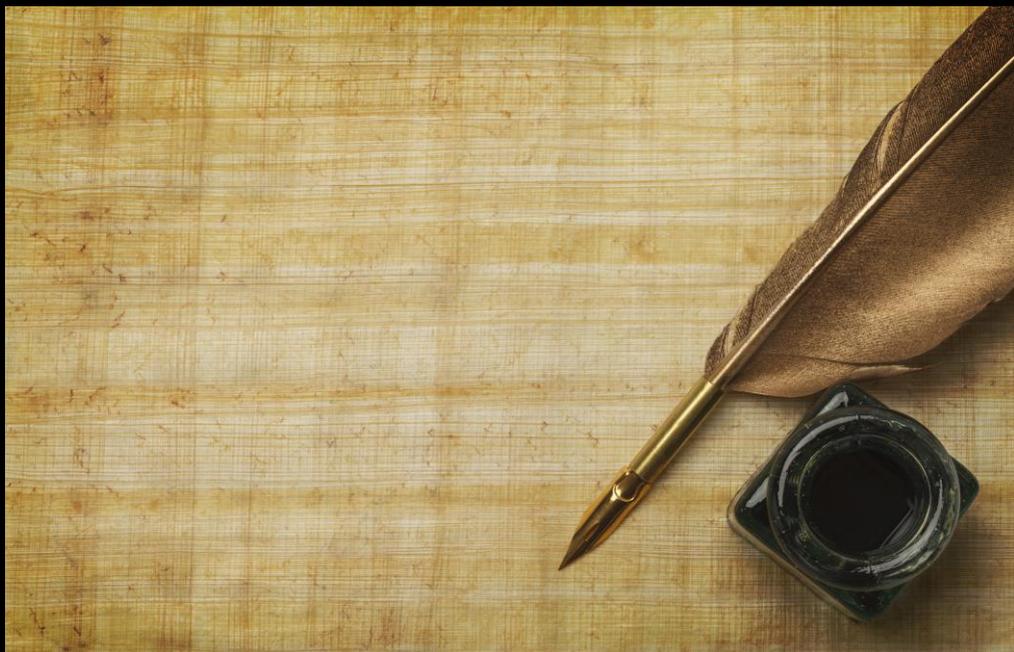


The Basic Conduct of *Iftaa*



A concise chapter on the basic conduct of issuing a Fatwa
Comprised of twenty-one rulings from Bahaar e Shari'ah that every aspiring Mufti must memorise

Author

Sadrush Shari'ah
Mawlana Amjad Ali A'zmi Al-Qadiri



Translation & Notes

Tehseen Raza Hamdani
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PROLOGUE BY THE TRANSLATOR

All praise is for Allah, the Creator of the Universe.

The small booklet before you is a translation of the chapter from the Hanafi encyclopedia – Bahaar e Shari'at, authored by the erudite scholar of Islam, Sadrush Shari'ah Mawlana Amjad Ali A'zmi – may Allah Ta'ala have mercy on him.

It entails the rulings that every Mufti of Islam is required to keep in mind. A Mufti is a jurist who practices *Iftaa*, the Islamic science of issuing a ruling of Islam [Fatwa]. These scholars are an important aspect in the lives of the Muslims, for they articulate and deduce rulings from the primary, secondary and tertiary texts of Islam. One of the vital aspects of a Mufti is 'tahqeeq' [in-depth investigation] of a certain matter. Without the ability of investigating things, a scholar can never attain the stature of being a Mufti.

May Allah Ta'ala cause this compilation to become beneficial for all the believers!

Salutations in abundance be upon His Eminence – Hadrat Muhammad Al-Mustafa {ﷺ} and his noble Family, his blessed Companions and his obedient Friends.

Dust beneath the feet of the Saints

Tehseen Raza Hamdani

Muhammadi Sunni Hanafi Qadiri

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



This is dedicated for the *Esaal e Thawaab* of:

Amin Al-Fatwa
Mufti of Damascus

***Imam Muhammad ibn Aabideen
Ash-Shaami***





بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Ruling 1: The issuance of a legal verdict [Fatwa] is in reality the function of a Mujtahid¹, for he is fully qualified to answer the question of the questioner in accordance to the Qur'an, Sunnah, *Ijmaa*² and *Qiyaas*³. The subsequent station of *Iftaa* is that of a narration [*naql*], that is, whatever statement is proven from the *Saahib e Madhab*⁴, to mention it to the questioner in reply to the question. This in reality is not the formulation of the legal verdict, rather it is simply the narrating the statement of the Mufti [Mujtahid] to the *Mustafti* [the questioner or seeker of a Fatwa], so that the latter may practice upon it [Alamghiri].

Ruling 2: It is important for a Mufti Naaqil⁵ to retrieve the statement of a Mujtahid from the Mashoor⁶, Mu'tadaawil⁷ and Mu'tabar⁸ manuscripts. It should not be retrieved from the rare manuscripts⁹ [Alamghiri].

¹ A Mujtahid is a very high ranking righteous scholar of Islam who retrieves the rulings directly from the primary sources: Qur'an and Sunnah. This is called Ijtihad, where effort is made to come to a legal verdict as close as possible to the Qur'an and Sunnah, for ambiguous questions which do not have clear evidence in the texts. This is no easy feat and the general body of scholars also do not qualify in this field. The examples of a Mujtahid are: Imam Abu Hanifa, Imam Maalik, Imam Shaafi, Imam Ahmad bin Hanbal – may Allah be pleased with them. These are the actual Muftis of Islam, known as Mufti e Haqiqi. As for those who are not in this category, they are known as Mufti e Naaqil.

² The consensus of the Companions or the righteous scholars on an issue

³ The science of deduction and reasoning using Islamic principles

⁴ Referring to the Imams of a Fiqh Madhab, such as Imam Abu Hanifa ﷺ

⁵ See footnote 1

⁶ Well-known literatures like Kitaab Al-Athar of Imam Shaybaani

⁷ Commonly used literature like Mukhtasar Al-Quduri and Kanz Ad-Daqaaiq

⁸ Authentic literature like Al-Hidaaya and many others

⁹ Ghayr-mashoor, also known as Nawaadir

Ruling 3: For a Faasiq¹⁰ to be a Mufti or not, the opinion of the majority of the latter-day scholars [*Mutaakhireen*] is that he cannot be a Mufti. The reason for this is that Fatwa is from the matters of the Deen and the statement of a Faasiq is not trustworthy in these matters [*Diyaana*]. It is impermissible to seek a Fatwa from a Faasiq. One should not place reliance on his answers because the knowledge of the Shari'ah is a spiritual radiance that is manifested upon those who practice Taqwa¹¹. The one who is involved in *Fisq*¹² and *Fujoor*¹³ is deprived from this aspect [**Durr e Mukhtaar**].

Ruling 4: If a particular person is observed of being asked religious queries by the people and he answers them and people consider him with respect, then it is permissible for a questioner to ask him for a Fatwa even though the questioner does not know him or his whereabouts. For the Muslims to express their respect for him is proof that this person is reliable¹⁴ [**Raddul Muhtaar**].

Ruling 5: It is important for a Mufti to be of a bright mind with sharp intelligence. It is not appropriate for him to be ignorant.¹⁵ This is

¹⁰ A faasiq is a person who does not uphold the obligatory and compulsory duties of Islam, which is a major sin. It is interesting to note that it refers to every type of faasiq, whether he disobeys the command openly or privately, whether this person is a faasiq in terms of actions or beliefs. Therefore, the misguided scholars are deemed to be faasiq. To seek Fatwa from them is also prohibited.

¹¹ Piety in terms of words, action and spirit

¹² Disobedience

¹³ Transgression

¹⁴ This refers to those who abide by the mainstream Islamic creed of Ahlus Sunnah Wal Jama'ah

¹⁵ This means that a Mufti must have a high intellectual capacity with common sense of his surroundings and people. He should have a bright mind that is capable of practising critical thought and brainstorming. It is unworthy of someone to be a Mufti and at the same instant he is mentally challenged, or a person of low IQ, or to be an ignorant.

because we live in a time where people attain a Fatwa by changing the reality of a situation and tweaking the circumstances with their cunning methods. Thereafter, they propagate to others that so and so Mufti has granted me the Fatwa. They assume success simply on attaining a Fatwa and due to this they overcome their opponents. Who will then see the actual chain of events and what he expressed in the question! **[Raddul Muhtaar]**.¹⁶

Ruling 6: It is compulsory for a Mufti to investigate the chain of events from the questioner. He [the Mufti] must not express different cases and its rulings in front of the questioner, for example, to say '*if this is the case then this is the ruling*' and *if that is the case then that is the ruling*'. It is often seen that whatever case suits the questioner, he adopts it and if it is required of him to present witnesses, then he easily brings witnesses in his defence. Rather, if the situation is such that it involves the arguments of two parties, then the Fatwa must only be issued when both parties are sought and the Mufti listens to the statements of each party in the presence of the other party. Then, in whichever side he finds the truth, he must issue the Fatwa in that party's favour and not to the other **[Raddul Muhtaar]**¹⁷.

Ruling 7: An answer to the question can also be issued by gestures, such as a nod with the head or movement of the hand for 'yes' and 'no'. However, a Qaadhi [Islamic Judge] cannot decide in any matter with the use of gestures **[Durr e Mukhtaar]**.

¹⁶ Due to this reason, a Mufti must be of a sharp intellect to see through the questioner and read 'in between the lines'. Investigation of true events becomes a vital core in the field of *Iftaa*, as indicated in the subsequent ruling. Due to the deplorable state of some unqualified 'Muftis' who do not know how to investigate, the Muslim Ummah faces tribulations daily.

¹⁷ This point also indicates that misassumption and heresy have no place in the field of *iftaa*. A Mufti must be open-minded and far-sighted.

Ruling 8: A Qaadhi may also issue a Fatwa in an Islamic court or out of the court, but he cannot issue a Fatwa in relation to the specific legal claim of the defendant and the plaintiff¹⁸, but in other matters he may issue Fatwa [**Durr e Mukhtaar, Raddul Muhtaar**].

Ruling 9: For a Mufti who is partially deaf, if he receives a written question, then for him to write the answer will be acceptable. However, a person who is appointed in the position of issuing verdicts, for him to be of good hearing is important because various sorts of people will come to him, such as the villagers, women and so forth. For every sort of person to present a written question is difficult and if the hearing is not good then there is a probability that the question and case is not heard entirely and a Fatwa is issued on it. This Fatwa is not worthy of acceptance [**Raddul Muhtaar**].

Ruling 10: The statement of Imam ‘Azam Abu Hanifa ؒ is superior and above everyone. Thereafter follows the statement of Imam Abu Yusuf ؒ, then Imam Muhammad ؒ, then Imam Zufar ؒ and Hasan bin Ziyaad ؒ. However, wherever the Ashaab e Fatwa and Ashaab e Tarjeeh¹⁹ have indicated the issuance of Fatwa or preference on a statement of other than Imam A’zam ؒ, then the Fatwa will be given in accordance to that preference [**Durr e Mukhtaar, Raddul Muhtaar**].

¹⁸ This refers to those cases which are especially conducted in the court. A Judge cannot issue a Fatwa in this regard without the entire investigation and dealings with both parties.

¹⁹ Ashaab e Tarjeeh is a category of Mujtahid scholars who are able to indicate preference of a statement of the Imam over another statement. That is, if in a certain issue, there are two statements narrated from the Imam, these scholars have the capability of ascertaining the preferred opinion. Examples of such personalities are Imam Quduri and Imam Marghinaani – may Allah be pleased with them.

Ruling 11: The one who is capable of issuing a Fatwa, there is no harm for him to issue a Fatwa [Alamghiri]. Rather, to issue a Fatwa is actually informing people about the Deen which itself is a necessary issue. To hide necessary knowledge is prohibited.

Ruling 12: It is compulsory upon the *Haakim e Islam* [Islamic ruler] to seek those who are able to issue Fatwa and those who are unfit in this regard. Those who are unfit, they must be stopped from this work because from such people many incorrect verdicts are issued that cause several forms of harm and turmoil, which we clearly observe nowadays [Alamghiri].

Ruling 13: From the conditions of issuing a Fatwa is to maintain the sequence of the seekers of the Fatwa. The rich and poor must not be segregated. It should not be the case that the wealthy person or the government officers are issued with the Fatwa first meanwhile the poor are kept aside waiting. Whoever comes first, he will be issued with the Fatwa first, then whoever follows will follow, irrespective of who they are in any terms [Alamghiri].

Ruling 14: It is important for a Mufti to hold an Islamic book with respect and dignity, without showing any disregard to it. A Mufti must read the question presented to him with care and much introspection. First understand the question completely then provide the answer [Alamghiri]. It transpires many times that a question contains various complexities and it is unclear until the questioner is asked about it. It is necessary to understand such questions from the questioner. Never answer such a question based on its apparent statement. It also transpires that a questioner does not clarify certain matters and this may not be due to his forgetfulness but rather in his view such clarification may not be considered important. It is compulsory upon a Mufti to clarify such matters from the questioner so that the answer may be issued in its actual crux of the matter, and

whatever the questioner has clarified regarding his question the Mufti must inform it in his answer, so that a doubt is not raised on the aspect of unfamiliarity between the question and the answer.

Ruling 15: The paper in which the question is posed should be taken by the hand and the answer to it should be given by hand. Such documents must not be thrown to the questioner because often there are the sacred names of Allah Ta'ala, Qur'anic verses and Hadith in them. Respecting them is necessary. And if these are not in the document, then the document of Fatwa itself is worthy of respect because the command of the Shari'ah is mentioned in it. The command of the Shari'ah is worthy of honour **[Alamghiri]**.

Ruling 16: At the end of the answer, one should write the phrases like **والله تعالى اعلم**, [Allah Ta'ala Knows Best] or something similar to it **[Alamghiri]**.

Ruling 17: It is necessary for a Mufti to be soft-hearted, of noble conduct and of pleasant temperament. He should speak with softness and if he errs he should take it back. He must never become upset at the times of making Ruju'²⁰. He should not assume of what people will say about him in such case. Not to do Ruju' upon issuing an incorrect Fatwa, either due to humility or pride, is prohibited [Haraam] in every case **[Alamghiri]**.

Ruling 18: A Mufti must not issue a Fatwa during the time when his composure is inappropriate. He should not issue a Fatwa during the times of anger or sadness or happiness, in which one's inner state is

²⁰ Ruju' is an act of taking back a certain Fatwa that was issued by abrogating/cancelling its ruling, either due to a mistake or due to the change in circumstances or due to new evidence that becomes apparent later on. This is done in writing or verbally, however, a written document in this instance is always recommended.

unsuitable²¹. Similarly, he must not issue a Fatwa at a time when the need arises to relieve oneself due to a call of nature. Yes, if he is certain that at such times his answer will be precise, then his Fatwa will be correct **[Alamghiri]**.

Ruling 19: It is preferable not to ask compensation from the questioner for the Fatwa. He should write the answer free of charge. However, if people out of their own consideration, have set aside a certain portion of funding for him, because he is an Islamic scholar and to remain in service to him and for him to cover his costs and fulfil his livelihood needs [with this fund], then this is fine **[Bahr ar-Raiq]**.

Ruling 20: It is permissible for a Mufti to accept gifts and special invitations **[Alamghiri]**, that is, if he is satisfied that due to the gifts and invitation his Fatwa will not be influenced in any way, and he will issue the Fatwa without any additions or amendments due to it [gifts].

Ruling 21: When Imam Abu Yusuf رحمته الله was asked for a Fatwa, he sat upright, placed the shawl over him, tied the turban and thereafter issued a Fatwa. In other words, the honour of *Iftaa* will be upheld²² **[Alamghiri]**.

²¹ That is, when these emotions will influence a Fatwa.

²² Similarly, one should be in the state of Wudhu, have firm resolve [niyyat] of disseminating knowledge and supplicate to Allah Ta'ala for steadfastness before writing any Fatwa.

Conclusion

In this day and age, the honour towards the knowledge of Deen is deplorable in the hearts of people. It is of utmost importance for the people of knowledge to focus on these matters in which the dignity of knowledge is upheld. The dignified station of knowledge and the people of knowledge must not deteriorate due to any form of meekness. From the elements that are known by experience in this regard is the factor of neediness. When the materialistic folks discover that these people [of knowledge] are dependent on us, this factor annihilates the foundation of dignity.





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The importance of issuing Fatwa is known by every scholar of Islam. However, it is also equally crucial for a Mufti to know the conduct and their rules when issuing a Fatwa. These twenty-one rulings should be memorised by every student of Deen who aspires to become a Mufti so that he may practice *Iftaa* with righteousness and steadfastness.