



THE ROLE OF CUSTOM IN THE IMPLEMENTATION OF JURISPRUDENTIAL RULINGS IN THE HANAFI SCHOOL OF THOUGHT

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ABSTRACT

This article discusses the concept of custom, its essence, and its various types. It also analyzes the conditions under which custom is utilized in the Hanafi school and the evidence provided by scholars on this matter.

Custom has served as a legal source in various forms and dimensions from the time of divine revelation to the establishment of fiqh. The primary objective of Islamic legal rules is to improve human conditions, ensure justice, and ease difficulties. Ignoring established customs that rational individuals deem reasonable can lead to significant hardships, contradicting the spirit of Islamic law. Since the complete eradication of customs from society would cause severe distress, those that do not contradict the fundamental principles of Islamic jurisprudence should be considered in issuing legal rulings. Therefore, the legal status and boundaries of custom must be clearly defined. Additionally, jurists issuing fatwas must have a thorough understanding of the customs and traditions of the society in which they serve or reside.

The fundamental sources of Islamic law are the Qur'an, Sunnah, consensus (ijma), and analogy (qiyas). In addition to these primary sources, secondary sources, such as customs, are also recognized. Islam did not entirely abolish all pre-Islamic customs and traditions; instead, it prohibited those that were in direct contradiction to religious teachings, corrected those that contained inconsistencies, and accepted those that were not objectionable. Since divine revelation is intended for humans, disregarding socially established customs could lead to significant difficulties. Therefore, customs that align with religious principles have been recognized as legal sources, while those contradicting them have been dismissed. Islamic jurists have accepted custom as a legal source in areas where religion has remained silent (i.e., in matters not explicitly addressed in the Qur'an and Sunnah). From the time of revelation through the codification of fiqh and beyond, custom has played a crucial role in shaping legal rulings. Hence, its legal status and limits must be clearly defined.

Linguistically, The Arabic word *urf*, derived from the root a-r-f, conveys meanings such as "kindness, generosity, continuity, and benevolence." The concept of *urf* was first defined terminologically by Abul Barakat an-Nasafi (died 710/1310) in his work *Al-Mustasfa*, where he described it as "that which settles in the hearts through the guidance of reason and is



accepted by virtuous conduct." However, this does not imply that definitions of custom and tradition did not exist before Nasafi's time. For instance, Jassas (died 370/980), who lived four centuries before Nasafi, defined the term ma'ruf (derived from urf) as "something good done with reason, not deemed objectionable by people of sound intellect." Similarly, the definitions provided in Ibn Nujaym's work *Al-Ashbah* and Ibn Abidin's treatise *Nashr al-Urf*, as well as those attributed to Siraj al-Hindi (died 793/1390) and Jurjani (died 816/1413) in his work *At-Ta'rifat*, largely correspond to Nasafi's definition. Subsequent definitions of customs and traditions have primarily been based on the framework established by Nasafi. The Arabic word 'adat, derived from the root a-v-d, means "to return, to repeat, to become a habit." Jurjani defines custom as "something that people maintain rationally and repeat frequently." Ibn Abidin describes it as "a habitual practice that settles into the heart and mind without hesitation, eventually becoming a common truth." This distinction reveals that 'urf and 'adat differ: 'urf is initially based on reason and will, whereas 'adat is rooted in repetition and continuity. A custom may be either good or bad, making 'adat a broader concept than 'urf.

Islamic scholars have emphasized several conditions that custom must meet to be a valid legal basis:

1. It must not contradict religious evidence. Jurists have stipulated that for a custom to be valid, it must not conflict with the Qur'an and Sunnah. For instance, practices such as consuming alcohol, gambling, adultery, and usury, even if widespread, cannot be deemed permissible since they contradict fundamental Islamic teachings.

2. It must not contradict explicit agreements or statements. If an issue is governed by an established custom but the involved parties have explicitly agreed otherwise, then custom is not applied. For example, if an employee is hired for a fixed salary to work from noon to evening, the employer cannot extend the working hours based on local customs, as the contractual agreement takes precedence over the custom.

Customs are classified as either general ('urf 'amm) or specific ('urf khass). Both types must align with religious evidence and jurisprudential texts. If a custom conforms to both, no further discussion is necessary. However, if it contradicts religious sources or established jurisprudential rulings, then a different evaluation is required. Ibn Abidin differentiates between customs that contradict religious evidence entirely and those that conflict with it only partially. If a custom is entirely opposed to Qur'anic and Sunnah-based rulings (*min kulli wajh*), it is unequivocally rejected. For example, the widespread practice of usury or the consumption of alcohol does not legitimize these actions in Islamic law. Thus, even if such practices become customary among people, they hold no legal value from the perspective of Islamic jurisprudence. Examining the historical reliance on custom in Hanafi fiqh, one can observe periods of prominence and decline. In this regard, it is stated that in the early stages of the school, custom held a central role in legal practice. However, with the codification and systematization of legal rulings, its theoretical significance diminished, making it a secondary source. Most scholars of legal theory (*usul al-fiqh*) and jurists recognize custom as an indirect source in the formulation of Islamic legal principles. That is, custom is only considered when it aligns with other legal evidence such as consensus (*ijma*), juristic preference (*istihsan*), and public interest (*istislah*). In this sense, custom itself is not an independent source of legal rulings but serves as a complementary tool, similar to analogy (*qiyas*)."



The historical role of custom in Hanafi jurisprudence has seen fluctuations. In the early period of the school, custom played a central role in legal practice. However, as laws became codified and systematized, their significance diminished in theoretical discourse. Most jurists consider custom as an indirect legal source, meaning that it is only considered when it aligns with other religious principles such as consensus (ijma), juristic preference (istihsan), and public interest (istislah). In this sense, custom itself is not an independent legal proof but serves as a supporting element, similar to analogy (qiyas).

Conclusion

Custom, one of the significant sources of Islamic jurisprudence, has functioned as a legal reference from the time of divine revelation to the structured development of fiqh. Customs that do not contradict fundamental Islamic principles should be considered in issuing legal rulings, as disregarding them could create unnecessary hardships. Consequently, both the founders of the Hanafi school and later jurists have acknowledged custom as a consultative source in decision-making. However, most legal theorists and jurists view custom as a secondary rather than a primary source in forming religious rulings.

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