

`Urf (Custom)

The original unmodified lecture by Shah Abdul Hannan can be accessed from: http://www.wponline.org/vil/Books/SH_Usul/urf_and_istishab.htm

Modifications based on Prof. Hashim Kamali's book "Principles of Islamic Jurisprudence"

`Urf is defined in Usul as "recurring practices which are acceptable to people of sound nature. `Urf and its derivative Ma`ruf both occur in the Quran, mostly in the sense of "good" (as opposed to "bad or evil") adherence to Allah's injunctions (for example, 3:110¹ and 7:199²). However, `Urf has been used in the sense of custom also in some places in the Quran (Ref. 2:233 with regard to maintenance of children). The Shari`ah, therefore, has in principle approved custom in determination of rules regarding halal and haram. Fuqaha' also adopted `Urf in the determination of the Ahkam (rulings) of the Shari`ah. The rules of Fiqh which are based on juristic opinion (ra'y) or Ijtihad have often been formulated in the light of prevailing custom (an example of the application of custom includes the determination of a woman's dower and maintenance). **It is therefore permissible to depart from them if the custom on which they were founded changes in the course of time.**

A rule propounded by some Fuqaha' is that "what is proven by `Urf is alike that proven by Shariah". However, this rule is applicable in the case of `Urf of the Muslim nations and when **the `Urf is not in conflict with the rules, essence and spirit of the Shari`ah.** `Urf of non-Muslim societies must be very carefully examined.

Customs which were prevalent in Arabia in the lifetime of the Prophet (saw) and which were not overruled by the Prophet (saw) are treated to have received his tacit approval and considered as a part of Sunnah taqririyyah (tacitly approved Sunnah). An example of this is payment of Diat (compensation for murder – blood money) to the family of murdered by `Aqilah (male kinsmen of the murderer - female relations have no obligatory liability in this regard, they can, however pay, if they want), where payment of Diat has been agreed upon.

The following are the conditions of `Urf:

a. It must be common and recurrent.

¹ "You are the best of Peoples, evolved for mankind, enjoining what is right (ma`ruf), forbidding what is wrong, and believing in Allah. If only the People of the Book had Faith, it were best for them: among them are some who have Faith, but most of them are perverted transgressors."

² "Hold to forgiveness; command what is right ('o'mur bel `urf); but turn away from the ignorant."

b. `Urf must be in practice at the time of transaction, i.e. past `Urf is no basis.

c. Custom or `Urf must not violate the nass (text) or clear stipulation of the Quran and the Sunnah. So if drinking wine, gambling, or Infanticide are accepted by custom, this does not mean that they are valid. In fact, these habits and practices should be abolished as Allah (swt) decreed their prohibition.

d. Custom must not contravene the terms of a valid agreement (valid according to Shariah). So in the absence of clear stipulations, the maxim is that "al-ma`rouf `urfan kal mashrout shartan" = "what is accepted by custom is tantamount to a stipulated agreement." However, if a contractual stipulation, for example, overrules `Urf, it is the contract that should be followed. For instance, if the custom of a certain country that men pay half the dower after consummating marriage, and if the concerned parties agree that a man will pay the entire dower in advance, then `Urf is abrogated.

There is difference between `Urf and Ijma` (unanimous consensus). `Urf is essentially a local or national practice whereas Ijma` is an agreement of `Ulama' across places and countries.

`Urf has been divided into Qawli (verbal) and Fi`li (actual). Verbal `Urf consists of agreement of people on the meaning of words. As a result the customary meaning becomes dominant meaning and literal meaning is reduced to the status of an exception. Actual `Urf is the practiced the people.

`Urf has also been classified as `Urf al Sahih (valid `Urf - valid according to the Quran and the Sunnah) and `Urf-al-Fasid (disapproved `Urf, not valid according to the Quran and the Sunnah).