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### Validity of Customs and Practices In Shariah♦

Various customs, rituals, traditions and practices prevalent among people of a certain region or period play a very important role in their day today life. Technically they form a category in the Islamic Jurisprudence called as '*Urf*'. Some of them would be found very close to the Shariah whereas some others would be considered as contrary to it. And, there might be some others, which the Shariah neither endorses nor it denies to. Therefore, a categorical understanding regarding these customs and practices is required in every age to make it clear what relation they hold vis-à-vis the Islamic Law. Theologians assembled in the Eight Fiqh Seminar of the IFA have discussed on the relevant issues and reached to the following conclusions.

The reality of custom and its various forms are as under:

- 4.1 Literally '*Urf*' means a commonly known matter. In the terminology of Shariah by '*Urf*' are meant such sayings and acts, which are prevalent in a given society and people act in accordance thereof.
- 4.2 *Aadat*, in lexicon, means the occurrence of something. Terminologically it covers such things, which, without any rational relationship, occur so repeatedly that observance of the same becomes as common as of something natural.
- 4.3 There are no substantial difference between '*Urf*' and '*Aadat*'. Both are the same in their intent and import, though different in their applications.
- 4.4 The difference between '*Urf*' and *Ijma* (Consensus) is that '*Urf*' emerges out of the conduct of people in general whereas *Ijma* (Consensus) is unanimity of opinion of *Mujtahideen* (Interpreters) on a given issue.
- 4.5 '*Urf*' is of two kinds: spoken '*Urf*' and '*Urf*' by deeds. When some word or combination of some words begin to have a particular meaning among a people and, when spoken, every one starts taking them to mean the same without necessarily any rational or logical connection, it is termed as a spoken Custom ('*Urf-e-Qauli*'). The way in which a people normally and usually act is '*Urf-e-'Amali*' (Practice).
- 4.6 Shariah acknowledges the '*Urf-e-Qauli*' and '*Urf-e-'Amali*', both. If something gains currency among majority of Muslim population of the world it would be '*Urf-e-'Aam*' (Common Custom). If it becomes prevalent in a particular city,

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province or township or limitedly among a particular group of persons, it will be '*Urf-e-Khas* i.e. Particular Custom.

- 4.7 Every such '*Urf* or Custom which runs contrary to any specific injunction of Shariah, or its spirit or any accepted objective of Shariah, will be invalid, e.g. giving of *Jahez* (dowry) at the time of marriage as has become customary, or demanding money and other valuable items from the bride's people by the bride- groom, depriving girls from inheritance, utilizing the usufruct of the property taken in mortgage, etc.

**In Shariah, there are following four conditions for and '*Urf* being acceptable.**

- 4.8 It should be either total or shared by a large number of people, i.e. either entire person in a given society be its adherent or an overwhelming majority of them.
- 4.9 It should already have been in existence prior to the occurrence of a particular incident and be in vogue at the time of its occurrence.
- 4.10 There should be no specific understanding between the parties to a deal running contrary to the '*Urf*.
- 4.11 Acting according to the '*Urf* should not entail contravention of any clear injunction of the Shariah or violation of a clear principle laid down by Shariah.

**The distinction between Shariah and Custom could be understood from the following statements:**

- 4.12 If a commonly in vogue '*Urf* is at variance with a general *Nus* (Plural *Nusus* i.e. Injunctions of Shariah) in such a manner that acting according to '*Urf* may not entail the giving up of the a categorical injunction (*Nus*) altogether but only particularizes the general *Nus*, in that case it is permissible to particularize the *Nus* in its application for the purpose of acting according to the '*Urf*.
- 4.13 In case a commonly in vogue Custom is in conflict with the *Nus* so much so that acting on '*Urf* entails the giving up of the *Nus* altogether, then the '*Urf* will not be acceptable and shall not be acted upon.
- 4.14 Those *Nusus* in respect of which it is conclusively established that those are based on some '*Urf*, the injunctions flowing from such a *Nus* may be altered with the change in the '*Urf*. However, it is emphasized that to decide whether a *Nus* is based on '*Urf* is an extremely delicate job warranting extreme caution. Renowned and celebrated Islamic scholars who are quite God-fearing and cautious in their approach can only give an authentic finding in the matter collectively.
- 4.15 If a Common Custom ('*Urf-e-'Aam*) is in conflict with something based on *Qiyas* (analogy), '*Urf* will take precedence and *Qiyas* will not be acted upon against '*Urf*.

- 4.16 In case where a Particular Custom '*Urf-e-Khas* is in vogue in a very limited area, then *Qiyas* (analogy) cannot be given up because of such and '*Urf*.
- 4.17 If and '*Urf -e-Khas* is prevalent in a very large area, then it would be acceptable to give up *Qiyas* against it.
- 4.18 If any '*Urf* is in conflict with the fundamental objectives of Shariah, then such an '*Urf* will have no value and will be ignored.

**Change in Custom changes injunctions, as shown here:**

- 4.19 Those issues of *Zahir Riwayat*, which stand proved on the strength of clear *Nusus* (Qur'an and *Sunnah*), will not be given up because of any '*Urf*. However, the issues emanating from the same can be given up against an '*Urf*.
- 4.20 If an opinion expressed in one school of Fiqh (Islamic Jurisprudence) be contrary to an '*Urf* while there is another opinion in any other school of Fiqh which is in consonance with the general conditions governing the validity of an '*Urf*, adopting that other opinion will not tantamount to (going out of the parameters of Shariah), rather acting on the '*Urf* is recommended.
- 4.21 Those verdicts, which are based not on *Nusus* (Categorical Sources that is the Qur'an and *Sunnah*) but only on '*Urf* and practice, will be modified in consonance with newly emerged '*Urf* in case the '*Urf* changes.