CHAPTER 7

Legal Maxim of Custom: “Custom is Authoritative” (al-ʿĀda Muḥakkama)*

Customs or societal norms are recognized in Islamic Law as an authority upon which judgments can be based. All major books on Islamic jurisprudence recognize ʿāda (manners, habits, indigenous traditions) and ʿurf (customs) as sources of Islamic Law.¹ The recourse to custom dates back to the time of Prophet Muḥammad, followed by the era of his Companions (aṣḥāb) and Followers (tābiʿūn, after his demise). Many cases were reported in which rulings were based on popular customs.² Mālik Ibn Anas (d. 179/795) considered the customs of the people of Medina (ʿamal ahl il-madina) as a source of Islamic Law whenever there was dispute in making law.³ Moreover, al-Shāfiʿī had no option but to change the points of view he held in Iraq because of the different customs and circumstances he encountered when in Egypt.⁴ It is undeniable that all civilized legal systems in our modern era consider the authoritative-ness of custom (ʿāda and ʿurf) as also recognized in Islamic jurisprudence.⁵

The Arabic word ʿāda is derived from the triliteral Arabic root (ʿayn-wāw-dāl) and etymologically linked to the verb meaning ‘to return’. The word denotes the customs, manners, and habits to which people constantly return time and again.⁶ ʿĀda is defined as practices that have become deeply rooted in a culture through their recurrence, that have been accepted by people of sound nature,⁷

---

1 Ibn al-Qayyim al-Jawziyya, at-Ṭuruq al-Ḥukmiyya, 101; al-Nadawi, 301; and al-Atāsī and al-Atāsī, 1:78.
2 See al-ʿAynī, 12:16.
4 Abū Zahra, 128; Khallaf, ‘Ilm Uṣūl al-Fiqh, 90; and Kamali, Principles, 361.
6 al-ʿAṣfahānī, 302.
or that are recurrent but based on neither rhyme nor reason. The noun ‘urf is said to be synonymous with ‘āda, both in definition and concept, and derived from the triliteral root (‘ayn-rāʾ-ḥā’) for the verb ‘arafa, which means ‘to know’. It is technically defined as “what is established in life from reason and acceptable by sound natural disposition”. M. al-Zarqā’, in his effort to distinguish between ‘āda and ‘urf, describes ‘urf as “the behavior of a group of people in their saying and doings”. From this, ‘urf can be viewed as narrower in scope than ‘āda, because it refers to only the customs of a group while ‘āda also refers to the customs of particular individuals. In other words, all ‘urf is ‘āda, but not all ‘āda is ‘urf.

As expressed above, the use of the terms ‘āda and ‘urf is controversial although one can say categorically that they are often interchangeable. Ibn ‘Ābidīn (d. 1252/1836) remarks that a habit is derived from frequency and recurrence because it is practiced frequently and in succession. It has become well known and entrenched in the hearts and minds of individuals who accept it without any logical connection or factual evidence as a customary fact. ‘Āda and ‘urf imply the same meaning despite their conceptual distinctions. It is also important to state that for ‘urf to be accepted and applied in Islam, it must be of sound nature, because Islam cannot accommodate all customs contradicts the divine texts and deviates from the spirit of the law.

Attributing the force of law to custom is inevitable in Islamic Law owing to its nature of universal applicability, as the norms of ethnic groups and social sub-groups differ considerably. Moreover, because custom is intuitively rooted in people’s lives and utterances, the need to consider popular customs is inevitable. Thus, a judge must have recourse to the customs of people before giving a conclusive verdict in any case of litigation.

---

8 Aḥmad Fahmī Abū Sanna, al-‘Urf wa-l-‘Āda fī Ra’y al-Fuqahā’ (n.p., 1992), 8; and al-Jurjānī, 149.
9 al-Burnu, al-Wajīz, 276.
10 al-Fayruzabadi, 3:179; and Ibn Manẓūr, 9:239.
11 al-Jurjānī, 154.
14 al-Burnu, al-Wajīz, 276.
15 Ibn ‘Ābidīn, Ḥāshiyat Ibn ‘Ābidīn, 2:114.
16 Ibid.