

# العرف

## CUSTOM ('URF)

### I. Definition

### تعريف العرف

- Literally means to know.
- Technically: “What is common or customary among the people and to which they have habituated, whether it is a word or deed which is not contrary to the Qur’an and Sunnah”

### The different of custom with usage ('adat), and ijma'

### الفرق بينه وبين العادة والإجماع

- ‘Urf differs from usage, since usage can be from individual and a group of people.
- Usage from individual is a personal practice ('adah fardiyyah) and from a group of people is a collective practice ('adah jama'iyyah). But 'urf is only a collective practice.
- It also differs from ijma', as ijma' is specifically the making of mujtahid while 'urf is the making of community at large either mujtahid or public.

### II. Classification of 'urf

### أنواع العرف

#### 1. Verbal and Practical 'Urf

#### العرف القولي والعرف العملي

- Verbal 'urf is the meanings of the words usually intended by people when they speak those words absolutely. e.g. If a man swears that “he will not put his leg at someone's house” , he will not break the oath if he go to that house then stand outside it and just extend his leg inside it.
- Practical 'urf is the actions and dispositions to which the people are accustomed and with which they are familiar. E.g. -Sale by give and take in respect of some goods. -Amount of dowry.

## 2. General and specific ‘urf      العرف العام والعرف الخاصّ

-General ‘urf is the common custom, which is prevalent everywhere among all people in a matter, regardless of the passage of time.

E.g. Contract of manufacturing, sale by give and take.

-Specific ‘urf is prevalent in particular locality, profession and trade.

## 3) Valid and Invalid ‘Urf      العرف الصحيح والعرف الفاسد

•Valid ‘urf: The custom which does not contravene the *Shari’ah* i.e. does not prohibit what is lawful, allow what is unlawful and nullify the obligation.

•Invalid ‘urf is contrary to the *Shari’ah* i.e. allowing what is unlawful, prohibiting what is lawful.

## III. Custom as a source of Islamic law and its proof      مشروعية العرف وأدلتها

•Majority of Muslim jurists consider a valid custom as one of secondary sources of Islamic law.

•The justification of ‘urf as a source is that if the practice of the people with regard to their transaction and disposition is not considered, they will suffer hardship and difficulty and by approving what has been practiced by them, will bring them benefit and remove hardship from them.

•The removal of hardship is a type of *maslahah*.

•Therefore, there were many practices of Arab before Islam have been recognized by *Shari’ah* such as mortgage, contract of rent, imposition of paying *diyah* (compensation) on the family of murderer, consideration of equality (*kafa’ah*) in marriage contract etc.

•The *Shari’ah* only nullifies the custom which is not procured benefit to the people such as infanticide, gambling, usury, preventing a woman from inheritance etc.

•Thus custom has a close relation with *maslahah* and its position as a source of law is the same position of *maslahah*.

#### IV. Conditions of ‘urf

#### شروط العرف

- It should be continuous.
- The custom that will refer to in any transaction should exist at the time of concluding such transaction.
- The parties should not agree on anything which runs counter to the custom. If the parties clearly make an agreement against the custom, their agreement will be considered and not the customary practice.
- It should not contravene a text of the Qur’an and Sunnah.

#### V. Effect of changing of custom on law

#### أثر تغيّر العرف على الأحكام

- The law which is relied on custom will certainly change with the changing of custom.
- Therefore we found that the jurists of the same school of law have different legal opinion regarding any issue where its ruling is based on custom.

E.g.

1) Recommendation of witness.

- According to Imam Abu Hanifah, a witness, before he/she can be called in, is no need to be recommended in a case other than *hudud* and *qisas* punishment. But later his disciples Muhammad and Abu Yusof assert that all witness in any case need to be recommended.

2) Sale of bees and silkworm.

- Abu Hanifah views that it is not permissible to sell bees and silkworm since they are not considered as property. However, later on his disciple Muhammad allows such transaction as the people at that time were trading with such flies.