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The Role of Urf in Hanafi Jurisprudential Reasoning: A Comparative Study of Fatawa Razawiyyah and Fatawa Darul Uloom Deoband

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Abstract

Custom (urf) is an accepted source of legal reasoning in Islamic law. Hanafi jurists have long used it to interpret texts, clarify vague terms, and decide questions about contracts and daily life. This study compares two major Hanafi fatwa collections from the Indian subcontinent: Fatawa Razawiyyah (Barelvi) and Fatawa Darul Uloom Deoband. It asks how each collection uses urf as evidence. It also looks at the conditions each sets for accepting a custom, such as generality, consistency, and agreement with explicit texts. A further question is how each separates general custom from local custom. The study analyses selected fatwas on business dealings, marriage and divorce, and social practices. Through these, it shows where the two approaches agree and where they differ. The analysis finds that both collections treat urf as a recognised supporting principle that is valid only where it does not contradict explicit texts or established rights. They differ in style: Fatawa Razawiyyah states principles alongside rulings and in greater detail, whereas Fatawa Darul Uloom Deoband offers more rulings and examples in a briefer form. Overall, the study aims to show how scholars of both schools applied Hanafi principles to the social life of the subcontinent.

Keywords: *Urf, Hanafi jurisprudence, Fatawa Razawiyyah, Fatawa Darul Uloom Deoband, comparative study*

Introduction

Islamic law offers guidance on all the important aspects of human life. Human society, however, is a constantly changing system. As time, circumstances and social needs change, so do people's way of life, their dealings and their mutual relations. These changes give rise to problems that are directly connected with social routines and with the methods people have come to follow. To resolve such problems, Islamic jurisprudence draws on the primary sources of the law, but it also takes into account certain principles that help in interpreting rulings and applying them in practice. Custom (*urf*) and habit (*ʿadah*) are among these important principles.

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In the jurisprudential tradition of the Indian subcontinent, *Fatawa Razawiyyah* and *Fatawa Darul Uloom Deoband* are two important and well-known collections of fatwas. Each answers a range of social, commercial, family and religious questions according to its own scholarly and jurisprudential method. Studying them shows how custom was taken into account in these two circles of Hanafi scholarship, and how problems that arose on the basis of custom were resolved.

This paper examines the role of custom in the light of these two collections. Its aim is not merely to point out the questions in which custom is mentioned. It also seeks to show how far custom actually served as an argument in resolving a question, and how its limits under the Shariah were observed.

Literature Review

Recent scholarship has examined custom and necessity from several directions. Marinsah et al. (2025) treat *urf* as a tool for reforming rulings in contemporary jurisprudence. They classify it by content (verbal and practical), by scope (general and specific) and by validity (sound and defective), and they hold that sound custom must not conflict with the Qur'an and the Hadith, must preserve public welfare and must avoid harm. Putra et al. (2026), working on the maxim *al-ʿādatu muḥakkamah*, propose a staged test for local practices: they are checked against the textual sources, for how widely they are practised, for whether they are consistently followed, and for whether they serve public benefit. These criteria correspond closely to the conditions of generality, consistency and agreement with explicit texts that this study looks for in the two fatwa collections.

Work on the two collections themselves is more limited. Qazi (2026) analyses the legal reasoning of Ahmad Raza Khan Barelvi in 116 fatwas on the mawlid, drawn from his thirty-volume compendium, and compares them with fatwas by Deobandi and Ahl-i Hadith scholars. Dalvi et al. (2025) cite Darul Uloom Deoband fatwas in their study of mortgages and insurance, in which necessity is the main justification for concessions. Zaman (2024) places Ahmad Riza Khan among the pivotal figures in articulating Barelwi identity in the wider debate on law and Sufism in South Asia. Among the studies reviewed here, none compares how the two collections use custom as evidence, which is the gap this paper addresses.

Methodology

The study follows a qualitative, comparative and analytical approach. It selects fatwas from *Fatawa Razawiyyah* and *Fatawa Darul Uloom Deoband* in three areas: commercial dealings, family law (marriage, dower and divorce), and social and religious practices. For each fatwa it asks what role custom plays in the reasoning, what conditions are attached to its acceptance (generality, consistency and agreement with explicit texts), and whether the custom concerned is general or local. The findings from the two collections are then compared to identify points of agreement and difference. The study also bears in mind that not every

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question in which a social practice is mentioned is an example of reasoning from custom; the actual evidence on which a fatwa rests and its method of reasoning must be analysed.

Custom (Urf): Concept, Types and Authority

Some principles of Islamic jurisprudence rest on social interaction, public conduct and established everyday practice. Among them, "custom and habit" holds a special place. This principle reflects the flexible nature of the Shariah, which recognises human civilisation, circumstances and traditions within the framework of the religion, provided they do not contradict the texts of the Shariah.

Custom or habit is a settled and general pattern of conduct that is continuously current among a people or in a region, that people act upon, and that does not contradict any explicit ruling of the Shariah. Al-Zarqa defines custom as follows:

> That which people have become accustomed to and follow in their dealings, whether in word or deed, without contradicting a textual ruling of the Shariah. (Al-Zarqa, 1998, vol. 1, p. 223)

Custom thus refers to a collective pattern of conduct that has become routine among people and gained general acceptance. The condition is that the practice must not conflict with any ruling of the Shariah; otherwise, it is no longer valid.

Scholars of legal theory have divided custom into several types so that its different applications can be better understood:

- *Verbal custom (urf qawli):* words that carry a particular meaning in common usage, such as *dar*, which means "residential house."
- *Practical custom (urf fiʿli):* practices that are current in a society, such as dress, table manners and business methods.
- *General custom (urf ʿamm):* custom that prevails across a whole society or country.
- *Particular custom (urf khass):* custom specific to a certain class, region or profession.

Ibn Abidin writes:

> In rulings, consideration is given to the prevailing (general) custom, not to rare (unusual) occurrences. (Ibn Abidin, 2005, vol. 1, p. 123)

The jurists give many examples of the application of custom and habit:

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- If no dower is fixed at the time of marriage, the proper dower (*mahr al-mithl*) becomes obligatory on the basis of custom.
- Provided the requirements of lawful covering are observed, the dress of every country, region and period is acceptable.
- Customary methods of buying and selling, such as issuing a receipt, oral agreements, the rate of profit and the time of payment.

The importance of custom in the legal maxims is shown by the following rule:

> What is known by custom is like what is stipulated by condition. (Al-Suyuti, n.d., p. 119)

The majority of jurists accept custom as evidence, and the Hanafis in particular have derived many rulings on its basis. Imam al-Shatibi regards it as an aid to the objectives of the Shariah (*maqasid al-shariʿah*). Imam al-Qarafi writes:

> Recourse to custom is practiced in the Maliki school and in others, and it is among the principles of jurisprudence. (Al-Qarafi, 2001, vol. 1, p. 186)

The majority of jurists have accepted custom as valid evidence because it is closer to practical life and rests on people's actual dealings. Where no explicit text exists in the Shariah, custom is accepted as a guide in determining rulings.

Reasoning from Custom in Fatawa Razawiyyah

Marriage Customs, Dowry and Inheritance

The method of Maulana Ahmad Raza Khan Barelvi in his fatwas, especially in *Fatawa Razawiyyah*, is notably balanced in its use of custom. He states explicitly that the particular customs of different peoples and cities on the occasion of marriage may be followed if they are permissible and do not conflict with any ruling of the Shariah. But where the matter concerns ownership of the dowry, the division of inheritance, dower, debts or other financial rights, custom is not allowed any role whatsoever. For Ahmad Raza, it is a firm principle that custom cannot change a ruling of the Shariah, even if the whole society follows it. He states that the dowry is the woman's own property and that custom cannot alter this:

> Everyone knows that the dowry is the woman's property; no one else has any right in it. (Barelvi, 2009, vol. 17, p. 145)

In this passage Ahmad Raza makes clear that the dowry is the woman's personal and permanent property, on which custom, social pressure or the practices of the community can have no effect. In Indian and subcontinental societies, it is sometimes the practice for the

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husband or his family to regard themselves as owners of the dowry, or to declare it the joint property of the family. Ahmad Raza calls this notion outright injustice and a deviation from the Shariah. The Shariah gives strong legal protection to a woman's property, so it is not acceptable to alter this by appealing to custom. He thus makes clear that non-financial customs connected with marriage can be tolerated, but that where a woman's financial rights are concerned custom has no room. He also states that where definitive rights such as inheritance are concerned, any role for custom is utterly false and unjust:

> The estate of Zayd... being divided into twenty-four shares, three shares will go to the wife, four to the mother and seventeen to the son... To hand over the whole estate of Zayd to the son is injustice and ignorance, and to add the wife's dowry to it as well is injustice upon injustice... The consent of the maternal grandfather or of the members of the community counts for nothing, for they are not owners. (Barelvi, 2009, vol. 26, p. 372)

Here Ahmad Raza rejects the custom, found in some communities, under which the whole property of the deceased is handed over to the son and the women's shares are in effect abolished. In his view this is not only a plain violation of the rulings of the Shariah but also injustice and ignorance. He holds that inheritance is a system laid down by God, in which custom can have no role, even if all the elders, the family, the tribe or the community agree to it collectively. Adding the dowry to the inheritance as well is a double injustice. It follows that in matters of marriage customs the real standard is the Shariah, not the social pressure of the community. Ahmad Raza's principle, therefore, is that custom is valid only where the Shariah is silent; where a text exists, custom has no room. Ibn Nujaym states that custom is valid so long as it does not contradict an explicit text:

> Custom is authoritative, and what is known by custom is like what is stipulated by condition; but custom carries no weight when it contradicts the text. (Al-Suyuti, n.d., p. 87)

This statement of Ibn Nujaym lies at the root of the great principle of Islamic jurisprudence that social habits have an effect in the Shariah, but only so long as custom does not collide with an explicit text, ruling or fixed limit of the Shariah. If a custom opposes a text, it retains no legal standing. Ahmad Raza applies this same principle in detail in his fatwas. He declared permissible customs at weddings that are lawful in themselves, such as certain ways of serving food, styles of hospitality, or a city's particular way of announcing a marriage, because these are all forms of "valid custom." But in the matters of dowry, inheritance, dower, financial rights and a woman's ownership, he rejected custom, because there the explicit text is decisive. There is thus a very deep consistency between the two methods, and Ahmad Raza appears not as a rigid traditionalist but as a principled representative of Islamic jurisprudence.

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Commercial Custom and Contractual Conditions

Custom holds an important place in Islamic jurisprudence, especially in commercial dealings. In the course of buying and selling, many conditions are current in markets that are adopted to create ease and trust between the parties, such as advance payment, fixing a period for credit, or prescribing a particular method for taking delivery of goods. The Shariah accepts such contractual conditions when they are also well known in general custom and do not conflict with any ruling of an explicit text. The approach of Maulana Ahmad Raza Khan Barelvi is likewise to treat custom as valid in matters of trade, provided it does not lead to unlawful gain, injustice, deceit or major sins such as usury. In this way the fixed principles of the Shariah are preserved while ease is created in the everyday dealings of the markets. Ahmad Raza states that a condition that has become part of the market's custom and does not contravene the Shariah is regarded as part of the contract:

> Whatever is customarily accepted in the market stands in the contract in the place of a stipulated condition, and the transaction will be deemed to have taken place on that basis, provided it does not contravene any prohibition of the Shariah. (Barelvi, 2009, vol. 16, p. 458)

Here Ahmad Raza explains that if a particular practice has become the custom of the market, that custom is treated as part of the contract even if it is not stated orally. For example, if a requirement of advance payment for a certain commodity, or a fixed date for payment, is common and well known in custom, that condition becomes part of the contract. In this case neither is the buyer wronged nor is the seller deceived; rather, custom is a source of ease for both. If, however, a practice becomes a means of deceit, usury or unlawful profit, the Shariah rejects it. In this way a balance is maintained between custom and the Shariah. Ahmad Raza states that conditions in accordance with commercial custom are lawful so long as they are not of a kind that makes the contract invalid or defective:

> If a condition is of a kind that enters into the custom of the transaction and does not collide with any prohibition of the Shariah, it will be given regard and the contract will remain valid; and if the condition is of a kind that vitiates the contract, custom cannot be a cause of its permissibility. (Barelvi, 2009, vol. 18, p. 112)

This passage states the principle of jurisprudence that conditions in accordance with custom can become part of a contract, but that the Shariah does not allow any condition to be included in the name of custom if it would cause unlawful gain, excessive loss or compulsion on either party. For example, if it is the custom in a market that payment for goods is made "at the end of the month," this condition is valid and lawful, because it is recognised in general custom and agrees with the principles of the Shariah. But if a custom arises under which the buyer is penalised before the due date, or the seller imposes unlawful benefits to increase his profit, such a custom is void. This proves that commercial custom is valid but subordinate to

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the Shariah. Ibn Abidin states that custom in transactions is valid so long as it does not conflict with the basic principles of the Shariah:

> What is established by custom is like what is established by text, and custom in transactions is valid so long as it does not contradict the Shariah. (Ibn Abidin, 2005, vol. 4, p. 432)

This statement of principle by Ibn Abidin makes clear that the Shariah gives custom a practical and firm standing in transactions. Custom is valid because people's financial and commercial affairs are conducted through it, and the Shariah is a religion of ease and facility. But this standing of custom is not absolute. If any aspect of a custom collides with a basic principle of the Shariah, such as the prohibition of usury, injustice, deceit or uncertainty (*gharar*), it is rejected at once. The same principle is prominent in the fatwas of Ahmad Raza. He holds advance payment, payment within a fixed period, stipulations about the quality of goods and other factors that lessen hardship, as found in market custom, to be lawful, provided they do not produce results contrary to the Shariah. It is thus clear that commercial custom is valid evidence in the Shariah, but subordinate to the text.

Custom of Dress and Its Legal Status

The concept of custom is extremely important in Islamic jurisprudence, particularly in matters where the Shariah has not required any specific form, such as everyday dress. Many styles of clothing are current in different regions, peoples and civilisations. The Shariah permits any dress that protects the parts of the body that must be covered, preserves the distinction between men and women, and does not become a means of arrogance, indecency, ostentatious extravagance or improper imitation of others. In his fatwas Maulana Ahmad Raza Khan Barelvi stated this principle comprehensively: the real standard for dress is sound custom (*urf salih*), provided it does not exceed the limits of the Shariah. This shows that the Shariah does not place people in difficulty over dress, but follows, in accordance with custom, the path of ease and purity. Ahmad Raza states that the dress current by custom is lawful in the Shariah if it does not contain prohibited elements:

> In dress the basis is custom: whatever cloth is worn by men in that country is for men, and whatever is worn by women is for women, provided it does not collide with any prohibition of the Shariah. (Barelvi, 2009, vol. 22, p. 214)

In this passage Ahmad Raza clarifies the basic principle concerning dress: the Shariah has not restricted the shape, colour or texture of clothing to any particular pattern; rather, the custom of each country is valid. The dress regarded in that society as specific to men will be worn by men, and that specific to women will be used by women. The only condition is that the dress must not involve what the Shariah prohibits, such as thin cloth for a woman, silk for a man, or anything that causes indecency or arrogance in either party. It thus becomes clear that the custom of dress is not part of the Shariah but holds a valid ruling when subordinate to

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it. In one place al-Qarafi states that custom is valid in matters of habit and social life such as dress:

> All matters in dress and clothing proceed according to custom so long as it does not contradict the religion, for habits are authoritative. (Al-Qarafi, 1998, vol. 1, p. 177)

Al-Qarafi's statement shows that dress is fundamentally a matter of habit and social custom, and that the Shariah gives custom a decisive standing in such matters. At the same time he made clear that custom must be subordinate to religion; if dress becomes a means to something the Shariah prohibits, such as indecency, arrogance or improper imitation, that custom is no longer acceptable. The same principle is present with equal force in the method of Ahmad Raza: whatever the region from which a garment comes, it is lawful so long as it does not go beyond the limits of the Shariah. This shows that Islamic jurisprudence not only accepts the custom of dress but regards it as a means of social balance.

Removal of Impurity from the Body and Purification by Means Other Than Water

The rulings on the removal of impurity, especially on removing its traces from the body, rest on jurisprudential evidence and consensus. Maulana Ahmad Raza Khan discusses this subject in detail in *Fatawa Razawiyyah* in order to determine whether purification is possible without water, or with only a small amount of it, and in which cases the body is considered clean through the use of saliva or cloth. He writes:

> If impurity touches the body, then even without water it suffices to wipe it with a cloth moistened three times, provided the visible quantity of the impurity is removed and a fresh cloth is taken each time. By this method the body is deemed clean even if not a single drop of water has been used. (Barelvi, 2009, vol. 2, p. 412)

Maulana Ahmad Raza Khan also relates from *Fatawa Razawiyyah*:

> If impurity touches a finger or a breast, and a person or a child licks it or sucks milk from it, then if the trace of the impurity disappears after saliva has been used three times, these places will be clean. This principle is stated in *Fatawa Razawiyyah*, *al-Durr al-Mukhtar* and *al-Bahr al-Raʾiq*. (Barelvi, 2009, vol. 2, p. 412)

If wine or an impure taste is in the mouth and its effect disappears after licking three times and swallowing the saliva, the mouth will be clean. Similarly, after an animal has eaten, if the mouth is cleaned with saliva, then drinking water will not make it impure.

These rulings make clear that in Islamic jurisprudence the flowing of water is not always a condition for removing the effects of impurity. When impurity is removed through the use of cloth or saliva, the body, finger, breast and mouth are counted as clean. In *Fatawa Razawiyyah*, Maulana Ahmad Raza Khan states these principles in the light of the evidence of

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secondary jurisprudential sources such as *al-Durr al-Mukhtar*, *al-Bahr al-Raʾiq* and *Radd al-Muhtar*, so that questions of purity in practical life can be resolved easily.

Weights and Measures in the Marketplace

In Islamic jurisprudence, the determination of weight, measurement and price in sale and purchase is an important matter. In *Fatawa Razawiyyah*, Maulana Ahmad Raza Khan makes clear that, although the texts do not contain every detail, the customs and recognised procedures of the market should be treated as valid. The aim is that commercial dealings should be conducted easily, transparently and in accordance with justice. In Islamic jurisprudence, where verbal offer and acceptance are lacking, tacit mutual consent and customary practice are also treated as valid, because the real object is the parties' consent and the practical effect of the sale, not the presence of every verbal formula. Maulana Ahmad Raza Khan relates in *Fatawa Razawiyyah*:

> Although the texts do not mention every kind of instrument of measure or weight, if the buyer and the seller settle the price and quantity between them according to the recognised practice of the market and agree on it, the sale will be valid in the Shariah. As stated in *al-Hidayah*: and meaning is what counts in these contracts. (Barelvi, 2009, vol. 12, p. 34)

In jurisprudence, custom and practice are regarded as valid even where verbal offer and acceptance are lacking. Imam Ahmad Raza Khan says that the real purpose of a commercial sale is the consent of both parties and the meaning of the sale, not the utterance of every word. The jurists here explain that if recognised practice is used in fixing price and quantity and both parties are satisfied, the sale is complete and effective in the Shariah. This principle guarantees that justice and ease are maintained in trade, and that neither party later has a right of withdrawal or compulsion. Shaykh Zahid Ali states in his marginal notes on *Hidayat al-Muntahi*:

> If the verbal offer and acceptance in a sale are not complete, but the price and quantity are settled according to the routine of the market and recognised practice, the sale takes effect in the Shariah and neither party has a right of withdrawal afterwards. (Zahid Ali, 1330 AH, p. 182)

This emphasises the completeness of a sale on the basis of custom and practice. That is, if buyer and seller conclude a sale according to the method current in the market, the sale is effective and binding even if verbal offer and acceptance are not fully present. This principle ensures transparency, justice and practical ease in the commercial system.

In Islamic jurisprudence, recognised practice and custom in the market are held to be valid and effective. In *Fatawa Razawiyyah* Maulana Ahmad Raza Khan repeatedly affirms the principle that where verbal offer and acceptance are lacking, or specific instruments are not

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used, if this accords with practice the sale is binding and effective in the Shariah. The conclusion drawn is that Islamic jurisprudence has given priority in commercial matters to practical ease, justice and the legal completeness of the sale, so that neither party faces unnecessary hardship or disputes.

Reasoning from Custom in Fatawa Darul Uloom Deoband

The Derivative Role of Custom

In Islamic jurisprudence, custom and habit hold the status of a supporting and explanatory indicator (*qarinah*) that plays an important part in understanding the texts of the Shariah and in determining particulars. In Hanafi jurisprudence in particular, custom is recognised as a valid source, provided it does not conflict with an explicit text or with clear analogy (*qiyas jali*). Among the institutions that gave systematic form to the practical interpretation of this principle in the subcontinent, the Dar al-Ifta of Darul Uloom Deoband is prominent, where custom is included in fatwas as an explanatory and supplementary element. The principle is stated in theory as follows:

> Custom is valid when it does not conflict with the text or with analogy.

In the fatwas of the Dar al-Ifta, regard for custom is clearly visible in marriage, dower, allusive expressions of divorce, financial dealings and modern questions (such as photocopying). Mufti Aziz al-Rahman Uthmani states:

> In the amount of dower the real consideration is mutual consent; however, if no amount has been fixed, the proper dower will be obligatory according to the custom of the locality, provided it does not exceed the limit permitted by the Shariah. (Uthmani, 2003, vol. 7, p. 54)

The Proper Dower and Social Custom

In the chapter on marriage, determining the dower is an important question. If the amount of dower is not specified at the time of marriage, Hanafi jurisprudence adopts the principle of the proper dower (*mahr al-mithl*), in which the custom of the woman's family and region is made the standard. Here the role of custom is not merely secondary but explanatory: the Shariah text has not fixed any particular amount of dower but left it to custom and mutual consent. Following this principle, the Dar al-Ifta made local custom the standard, provided it does not reach the point of extravagance or injustice. In this way custom, within the bounds of the Shariah, becomes a means of determining particulars. Mufti Mahmud Hasan Gangohi writes:

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> In allusive expressions of divorce the basis is intention; but if the intention is not known, then the prevailing custom will be considered, as to what is commonly meant by these words. (Gangohi, n.d., vol. 12, p. 301)

In the matter of divorce a distinction is made between explicit words (such as "divorce") and allusive words (such as "you are free"). In allusive words intention is the fundamental element. But if the intention cannot be determined, recourse is had to custom. Here the literal meaning alone is not relied upon; rather, it is seen what practical meaning the word has in society. If in custom the word is used in the sense of divorce, the ruling will be given accordingly. This method of derivation makes clear that custom can be a supporting and even decisive indicator in jurisprudential interpretation. Mufti Aziz al-Rahman Uthmani states:

> Making a photostat merely for one's own use does not harm its owner, for the real harm arises when copies are multiplied, printed, published and used for commercial purposes. (Uthmani, 2003, vol. 15, p. 214)

The question of photocopying is not explicitly mentioned in the early jurisprudential texts, since it is a modern invention. Here Mufti Aziz al-Rahman Uthmani took customary practice as his basis. If someone makes a copy of a book for personal use only, and the author or publisher suffers no financial loss, it was not declared unlawful. But if the same act is carried out on a commercial scale and the owner's rights are affected, it was regarded as unlawful. This decision was made on the basis of customary reality and social practice. It shows that Mufti Aziz al-Rahman Uthmani brings custom into modern questions as a practical indicator. Imam Ibn Abidin states:

> Custom is authoritative, and it is a principle on which many rulings are built. (Ibn Abidin, 2005, vol. 1, p. 123)

Ibn Abidin is among the later Hanafi jurists and has discussed the authority of custom at length. According to him, custom is a principle on which many jurisprudential rulings are founded. This principle fully supports the method of *Fatawa Darul Uloom Deoband*. In marriage, dower, divorce, financial dealings and modern questions, custom was regarded as valid only when it was not contrary to the text. Thus, custom was treated not as an independent source but as an indicator assisting in the understanding of the texts. It is used as an explanatory and supplementary indicator. Where it conflicts with a text or with analogy, custom is not valid. In personal matters such as marriage, dower and divorce, custom plays a decisive role.

In modern questions, a jurisprudential ruling is determined on the basis of customary practice. This approach keeps jurisprudence from becoming static and keeps it in harmony with social reality. The derivative role of custom appears in *Fatawa Darul Uloom Deoband* in a disciplined and principled form. Regard for local custom in fixing dower, the consideration of prevailing custom in interpreting allusive words of divorce, and decisions on modern questions such as photocopying on the basis of social practice are all evidence that the Dar al-Ifta includes

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custom as a supporting element in jurisprudential interpretation. This consideration, however, is not absolute but subordinate to the texts and to analogy. Thus custom, within the bounds of the Shariah, becomes a means of determining particulars and of applying rulings in practice, and it keeps jurisprudence in step with the changing demands of life.

Ramadan Expenses and Collective Religious Practices

In Islamic jurisprudence, custom and habit are an important principle: matters that are carried out in a particular way in society, with general currency and continuity, are regarded by the Shariah as valid so long as they do not contradict any text or principle of the Shariah. The aim of this principle is to create ease in the collective and social affairs of human life and to keep the rulings of religion in harmony with people's familiar way of life. In a blessed month such as Ramadan, collective arrangements are made in different ways in different regions under this same principle. *Fatawa Darul Uloom Deoband* states:

> This too may be taken as permissible on the evidence of earlier practice; expenditure on ice is closer to permissibility, while the distribution of sweets and a gift to the hafiz is open to reservation. (Uthmani, 2003, vol. 13, p. 441)

This fatwa mentions certain collective expenses incurred during Ramadan, such as providing ice at the time of breaking the fast, distributing sweets on the completion of the Quran, and giving a gift to the hafiz of the Quran. According to the principle of custom and habit, since these practices have been current in society for a long time, they were not declared wholly unlawful; rather, the ruling was stated in detail. Because the provision of ice serves the convenience of breaking the fast and of the *tarawih* prayer, it was declared closer to permissibility (*aqrab ila al-jawaz*), as it contains no particular objection in the Shariah and is a general convenience. As for the distribution of sweets and the gift to the hafiz, some jurists have expressed reservation, because if the act takes the form of showing off, affectation or being regarded as obligatory, objections under the Shariah may arise. Under the principle of custom and habit, the real aim in such matters should be goodness and sincerity, not display or adherence to ritual.

This example makes clear that the Shariah does not wholly reject what is current in society, but assesses it according to its background, intention and manner. If an act is customarily a means of good and contains nothing objectionable in the Shariah, it is permitted; but if it takes the form of a mere ritual or involves unnecessary affectation, it is reconsidered. Imam Ibn Abidin al-Shami states:

> Custom is authoritative so long as it does not contradict the Shariah. Custom and habit are to be given regard so long as they are not contrary to the Shariah. (Ibn Abidin, 2005, vol. 1, p. 234)

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According to Imam Ibn Abidin, social custom and practice are given weight in jurisprudential rulings, provided they do not contradict the basic principles of the Shariah. Collective Ramadan expenses are viewed under this principle. Arrangements made on the occasions of ice, iftar, *tarawih* and the completion of the Quran are lawful if they are moderate, sincere and free of any defect under the Shariah; but if they become a ritual, a display or a financial burden, reform in them becomes necessary.

This citation makes clear that Islamic law does not wholly reject custom and habit but accepts them within a framework of principle. Collective expenses during Ramadan are lawful if they are undertaken out of convenience, sincerity and religious feeling, but if they take the form of an unnecessary ritual or affectation, caution is necessary. This shows that the Shariah favours moderation, ease and harmony with practical life.

Earnest Money

Mufti Aziz al-Rahman Uthmani states:

> If earnest money is given by mutual consent and neither party is subjected to injustice or uncertainty, there is no obstacle to its basic validity, because prevailing custom regards it as valid, and the Shariah has taken sound custom into account. (Uthmani, 2003, vol. 6, p. 148)

On the question of earnest money (*bayʿanah*, advance payment), if apparent analogy (*qiyas zahir*) is applied, difficulties may arise over certain rulings concerning money paid before the contract is complete, especially when the transaction is cancelled. In practical life, however, earnest money is a well-known commercial custom whose purpose is to show the seriousness of the parties. Two principles stand out here:

- The authority of sound custom (*urf sahih*)
- The removal of uncertainty (*gharar*) and injustice

The Dar al-Ifta did not declare earnest money unlawful in absolute terms, but examined whether it contains injustice or uncertainty (*gharar*). Where these defects were absent, it was permitted on the basis of custom. This is in fact a form of juristic preference on the basis of custom (*istihsan bi-l-urf*), in which sound custom is preferred over bare analogy. This approach shows that the aim of the Shariah is not to complicate transactions unnecessarily but to regulate them with justice and transparency.

Sale on Instalments

Mufti Mahmud Hasan Gangohi writes:

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> In selling an article bought on instalments before full payment has been made, if there is the permission of the original owner and the consent of the parties and no harm is established, there is room for it, because the real aim is the removal of harm and the lifting of hardship. (Gangohi, 1996, vol. 17, p. 233)

In the question of instalment sales, apparent analogy may in some cases lead to strictness, particularly when ownership has not been fully transferred. But this passage makes clear that the Dar al-Ifta kept in view the real aim, namely the removal of harm and the ending of hardship. Here there is a case of juristic preference to lift hardship (*istihsan li-daf' al-harj*). Although no explicit text exists on this particular case, the general temper of the Shariah and its universal rules (such as "harm is to be removed") support the view that unnecessary hardship should not be placed on people. Three elements stand out in this decision:

- The consent of the parties
- The permission of the original owner
- The absence of established harm

Thus bare analogy was set aside and the legal interest recognised by the Shariah (*maslahah shari'yyah*) was preferred.

Discussion: A Comparative Review of the Two Collections

A comparative study of *Fatawa Razawiyyah* and *Fatawa Darul Uloom Deoband* brings out several aspects of the practical use of custom. Both collections discuss social, commercial and family questions of various kinds, and in them custom is taken into account to some degree.

Points of Agreement

A. Both collections give custom a legal standing, but only so long as it does not contradict the rulings of the Shariah.

B. Topics such as commercial dealings, family questions and the customary meaning of words show that social routines cannot be wholly ignored in applying a jurisprudential ruling.

C. The study of both collections also brings out the principle that the acceptance of custom is not unconditional. That a practice is common in society is not sufficient to make it valid under the Shariah; it must accord with the principles of the Shariah and with established rights.

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Points of Difference

A. In the material drawn from *Fatawa Razawiyyah*, examples relating to sale by exchange (*bayʿ bi-l-taʿati*), commercial practices, contracts, marriage customs and financial rights stand out, whereas in the material drawn from *Fatawa Darul Uloom Deoband*, the proper dower, customary words of divorce and certain modern commercial and social questions are the subjects of study.

B. *Fatawa Razawiyyah* states principles along with the questions, whereas *Fatawa Darul Uloom Deoband* gives more questions and examples.

C. *Fatawa Razawiyyah* is in general more detailed, whereas *Fatawa Darul Uloom Deoband* is relatively briefer.

Findings

The study yields the following findings:

- Custom is an important supporting principle in Hanafi jurisprudential reasoning, especially in transactions and social questions.
- Custom can clarify the meaning of certain words, contracts and practical dealings.
- In commercial matters, the method current in the market can help in understanding the parties' consent and the nature of the transaction.
- In family matters, custom can play an important part in determining certain financial and social aspects.
- The authority of custom is subject to the limits of the Shariah; no custom can be valid against an established right or a definitive ruling of the Shariah.
- A comparative study of the use of custom in *Fatawa Razawiyyah* and *Fatawa Darul Uloom Deoband* helps in understanding the practical aspects of the Hanafi jurisprudential tradition of the subcontinent.
- It is not correct to treat every question in which a social practice is mentioned as an example of reasoning from custom; this requires an analysis of the real evidence of the fatwa and of its method of reasoning.

Conclusion

Custom and habit are an important part of the practical system of human society, and their importance in Islamic jurisprudence cannot be denied. By taking custom into account in various questions, Hanafi jurisprudence has provided a way of interpreting and applying rulings

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in accordance with social conditions and practical needs. The study of *Fatawa Razawiyyah* and *Fatawa Darul Uloom Deoband* is an important means of understanding how custom is used to give jurisprudential guidance on commercial, family and social questions.

However, the standing of custom always remains subordinate to the principles of the Shariah. Hence, on the one hand sound custom cannot be ignored, and on the other an un-Islamic practice cannot be accepted merely on the basis of social convention. This balance provides the foundation for the correct use of custom in Hanafi jurisprudence.

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