The Position of Custom (‘Urf / ‘Adat) in Issuing Fatwa

In the works of Ibn ‘Abidin al-Shami (d. 1252/1836)

Mohammed Farid Ali Al-Fijawi
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Contents

Introduction .................................................................................................................. 1

Notes .......................................................................................................................... 10

Ibn 'Ābidin's Life, Works, and 18th Century Damascus .......... 15

His Life ...................................................................................................................... 15

His Works .................................................................................................................. 17

His Published works ............................................................................................... 18

Published Treaties ................................................................................................... 20

Treaties on 'Urūf ........................................................................................................ 20

Unpublished Manuscripts (Makhtūtāt) ................................................................. 21

Extant Works (Kutub Mafqūdah) ........................................................................ 22

A Brief Scenario of 18th Century Ottoman Damascus ....... 22

Role of Scholars and Muftis in 18th Century Damascus .. 23

Notes .......................................................................................................................... 28

Definition and the Types of 'Urūf in the Works of Ibn 'Ābidin .................. 33

The Definitions ......................................................................................................... 33

Types of 'Urūf .......................................................................................................... 36

First Classification .................................................................................................. 36
Second Classification ..................................................37
Values of General and Special Customs .........................38
Values of Verbal and Actual Customs ..............................42
Notes ........................................................................44

**Recognition and Role of ‘Urf in Islamic Jurisprudence** ..........48

- Argumentations of Recognizing Custom .........................49
- The Legal Ruling Varies Because of Variation of Custom ....51
  - Custom in Opposition of Text (Naṣṣ) or
  - Manifest Rulings (Ẓāhir al-Riwayah) .......................52
- The Objection ................................................................53
- Answer to the Objection ...............................................55
Notes ........................................................................58

**Fatwa, Mufti and Custom (‘Urf)** ...........................................60

- Importance of Following Recent Custom ........................61
- Importance of Knowing the Accepted Custom ...............62
- Observation of Public Interest (Al-Maṣlaḥah) in Al-Iftā ....64
- Importance of Knowing the People, Time and
  their Situations (Al-Ahwāl) .......................................65
- Observation of Custom in Al-Iftā Provided it
  Does Not Oppose the Sharī‘ah .................................68
Notes ........................................................................70

**Conclusion** ..................................................................72

Notes ........................................................................76

**Bibliography** ...............................................................77

**Index** ..........................................................................87
Fatwa issued currently by Shari‘ah scholars, committees, and muftis occasionally fall short of meeting the challenges of modern society. Ibn ‘Ābidin’s concept of custom (‘urf) and its application provide a basic guide to meet the modern challenges in its totality. The present work refers to his three works—Sharh ‘Uqud Rasm al-Mufti, Nashr al-‘urf fi bina‘ ba‘d al-ahkam ‘ala al-‘urf, and Radd al-Muhtar ‘ala al-Durr al-Mukhtar Sharh Tanwil al-Absar (al-Hashiyah)—written in 13th century A.H. These works present ‘urf as a practical instrument for muftis and those responsible to issue fatwa. The first work is used as an overall framework, while the other two works offer commentaries on the latter, providing details and cases of application. This work enunciates that Ibn ‘Ābidin identifies custom as effective in Islamic law only if it fulfils the condition to specify the legal text (nakhsis al-Nass), without opposing it completely. The variations of ‘urf in society will only affect those legal issues that are custom-related and not directly based on nass (Qur’an and Sunnah). Moreover, all custom-related issues in manifest rulings (zahir al-riwayah) of a Legal School are subjected to change as custom changes.

Mohammed Farid Ali al-Fijawi, Dr. specialized in fiqh and fatwa, and later pursued his MA (Islamic Civilization) and PhD (Muslim World Issues). He is currently teaching in Fiqh and Usul al-Fiqh Department, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia.