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Research Article

Valid Custom (*urf al-sahih*): Its Legitimacy and Implications in Nangarhar Province, Afghanistan

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About Article

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ABSTRACT

This study examines the role and implications of valid custom (*urf al-sahih*) in Nangarhar Province, Afghanistan, focusing on how traditional practices influence legal and social frameworks within the region. The aim of this article is to understand the significance of these customs in the everyday lives of the residents of Nangarhar province, particularly in maintaining social relationship and order. The importance of this research is to acknowledge the residents of Nangarhar province that they should follow and obey a custom which is in accordance with the common good and needs of a society. From the other hand, people must follow a custom which does not contradict people's interests, and at the same time does not propagate corruption in a society. The methodology used in this research is doctrinal and the research approaches are explanatory, descriptive and analytical. It is worth mentioning that this research study is entirely based on library sources. Most of the sources are reputable and trustworthy textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area. The findings suggest that all Islamic scholars pay special attention to valid custom. There is still some conclusive implications of the holy Quran and hadith that strongly support the mentioned custom. Furthermore, the adherence to valid customs contributes to social cohesion and stability within communities by reinforcing shared values and norms, which can enhance community solidarity and collective identity.

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1. INTRODUCTION

Human society has long been facing with a phenomenon called community. Always in this community, simple relationships have been flowing between people in the form of existed customs and habits. Social habits and customs are among the oldest legal phenomena which are known as the source and manifestation of law. It should be noted that a social and customary understanding of the subject matter paves the road for Islamic jurists to derive and infer religious rulings and decrees in order to find out a solution to a problem. As well as, knowing the origin of custom and habit enables community dispute resolution practitioners such as Jirgas and shuras' members to solve various kinds of disputes at community level (Qadri, 2015).

Custom encompasses everything that flows steadily and repeatedly among people and plays a vital role in the social life of human beings. Customary matters are mostly passed down from generation to generation in oral form. Hence, the custom of any societies is in the form of oral traditions, and many of them have even remained unwritten and have not become written law (Ghani, 2011). Furthermore, as Afghanistan has become a battlefield over the last four decades, the international media has portrayed the country's social structure in a negative light. However, they also showed the world that Afghanistan's crude and ugly customs had caused it to be considered one of the world's most backward countries. That is why, in this research article, the author intends to present full information about Afghanistan's beneficial and consistent customs, which have existed in Afghanistan for a long period of time and that all Afghans willingly use and follow.

The most important source of Islamic law is the commandments of Allah Almighty. Allah says that the decisions and rulings just and only belong to Allah. This idea is ultimately in harmony with sound nature. There is not one except the essence of Allah Almighty who has determined the way of life for each tribe and nation because Allah is the only one who is fully aware of the desires, circumstances, needs, and aspirations of human beings. No one among the scholars and scientists in the world is capable of drafting and presenting a law which is acceptable and satisfying for people of different colors and races with different civilizations and different customs and habits.

If a custom is not in contradiction with the provisions of Sharia, it is considered as a valid custom. For example, the Prophet (P.b.u.h) did not forbid buying and selling before the confiscation, but the exact concept and meaning of seizure have not been determined. Therefore, in every age and place the particulars or nature of seizure is determined by custom and habit (Qadri, 2015). Apparently, it is a clear fact that most of the rules and issues of jurisprudence depend on the custom of their time and place. The nature of these rules and regulations also changes with the change of time and place. In this regard, scholars have considered custom (*Urf*) to be a particularly debatable subject matter all the time.

2. LITERATURE REVIEW

According to Hafiz Abdul Ghani, custom (*'urf*) is widely accepted in many legal systems and it is one of the important sources of law. Islamic jurisprudence acknowledges custom

(*'urf*) and as essential legal sources that are intricately woven into the structure of Islamic Fiqh. According to scholars, many of the injunctions included in Islamic law are derived from the norms and practices that are common among the populace (Ghani, 2011).

In Darar alhukaam sharh majalat al'ahkam, Ali Haidar highlights the importance of custom (*'urf*) in Islamic jurisprudence and how, when it conforms to Shariah principles, it can serve as a legally binding source. He investigates how dependable and widely recognized practices, so long as they do not conflict with Islamic principles, can impact court decisions and clear up uncertainties. This viewpoint emphasizes how flexible Islamic law is in adjusting to cultural norms while upholding its essential values (Haidar, 2003).

The publication by the Islamic Fiqh Academy India (1995), titled Custom and Habit, compiles the discussions from the 8th jurisprudential (Fiqhi) Seminar and explores the role of custom (*'urf*) and habit (*'Adah*) in Islamic jurisprudence. It highlights how customs have historically influenced the derivation of rulings and examines their validity based on alignment with Shariah principles. The work categorizes customs as valid or invalid and provides practical examples of their application in Islamic societies while offering guidelines for evaluating and integrating contemporary customs into Islamic legal frameworks. This publication reflects the Academy's commitment to addressing modern legal challenges through the lens of classical jurisprudence.

This research study "Valid Custom (*'urf al-sahih*): Its Legitimacy and Implications in Nangarhar Province, Afghanistan aligns closely with the above discussed literature which emphasize the importance of Custom (*'urf*) as a source of law in Islamic jurisprudence. Both research study and the literature acknowledge that *'urf* can be a binding legal source when it conforms to Shariah principles and discuss its legitimacy and the need for customs to align with Islamic teachings. The literature however, focus more generally on the role of *'urf* in Islamic law and its adaptability across different cultural contexts, whereas the research study points to a specific examination of valid custom (*'urf al Sahih*) in Nangarhar province, Afghanistan, suggesting a localized study that explores the validity and practical implications of customs in that region. The research study thus adds a more focused, regional perspective, specifically addressing the impact of valid custom within Nangarhar's legal framework, which may differ from the broader, theoretical discussions of *'urf* found in the paragraphs.

3. METHODOLOGY

The methodology used in this research is qualitative and quantitative, and the research approaches are explanatory, descriptive and analytical. It is worth mentioning that the qualitative part of the study is entirely based on library sources. Most of the sources are reputable and trustworthy textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area. In the quantitative part of the study some interviews and group discussions were conducted to collect the data and analyzed them.



3.1. The concept of custom and its definition

According to Islamic law, linguistically the word custom is derived from an Arabic term '*Urf*' which refers to the tradition or knowledge of a given society. Custom (*Urf*) has multiple meanings which differ according to their structure and position in the context. According to Ibn al-Faris, custom (*Urf*) is literally used in two senses: 1. Tranquility and peace. 2. Appearance to two things that- one followed by the other (Ibn Faris, 1313 AH: 234). Imam Raghīb al-Isfahani says: custom (*Urf*) means to recognize something because of its impacts (Al Asfahānī, 1423 AH: 343).

Juristically, custom (*Urf*) is defined by many scholars according to their knowledge and point of view as follows: 1. Abd al-Wahhāb al-Khallāf defines custom (*Urf*) as, custom (*Urf*) is a matter known and followed by the majority of the people whether it is in terms of words (saying), practice (action) or abandonment. But it does not contradict Sharia rules. 2. Ibn Abidin defines Custom (*Urf*) as, custom (*Urf*) is a state which is firmly established in hearts logically and pious natures embrace them (Ibn Ābidīn, 1198:114).

To the best of the author's knowledge, among the above definitions the first one (the definition of Abd al-Wahhāb al-Khallāf) is a comprehensive and applicable one, because it includes various types of custom (*Urf*) such as common custom, specific custom, valid custom, and void custom.

Customary affairs are accepted and passed down from generation to generation, mostly in oral form. Hence, the custom of any society is in the form of oral traditions and customs, and many of them have even remained unwritten and have not become written law. Many Customs (*Urf*) arise and exist in a community due the social and economic necessities and conditions of the people. Some of the Customs (*Urf*) are respected by society even though they are not really needed, as they are the memories of their ancestors. Such as customs related to the rituals and ancient festivals and celebrations like the feast of Nowruz (It is the first day of solar calendar or Persian New Year in Iran and Afghanistan which falls on or around 21 March. Nowruz is celebrated world widely such as in Tajikistan, Russia, Kyrgyzstan, Kazakhstan, Syria, Iraq, Georgia, the Republic of Azerbaijan, Albania, China, Turkey, Turkmenistan, India, Pakistan and Uzbekistan). Furthermore, some customs (*Urf*) in the beginning were derived from the will and desires of the rulers and were merely authoritarian. But, over the time, they have been repeated regularly and have remained in the society for ever. For instance, scales, units of weights, and units of measures.

Finally, it can be inferred from the above various definitions of custom (*Urf*) that any social activities which is accepted must be related to a group of people, should be fair and reasonable, and must not contradict the fundamental principles of Shari'ah. Consequently, Muslims of sound mind should reject any customary activities that is harmful to the public or promotes corruption in a society.

3.2. The legitimacy of custom (*urf*)

Apparently, it is a clear fact that most of the rules and issues of jurisprudence depend on the custom of their time and place. The nature of these rules and regulations also changes with the

change of time and place. In this regard, scholars have considered custom (*Urf*) to be a particularly debatable subject matter all the time. There are a bunch of reasons for the legitimacy of custom (*Urf*). The legitimacy of custom (*Urf*) in the holy Quran, the legitimacy of custom (*Urf*) based on the authentic hadiths, the legitimacy of custom (*Urf*) in the Afghan civil law, and the legitimacy of custom (*Urf*) based on legal maxim (al-Qawa id al-Fiqhiyyah). Each of the mentioned sources will be discussed in detail as follow.

3.2.1. The legitimacy of custom ('*urf*) in the holy quran

Many verses of the holy Quran witnessed the legitimacy of custom (*Urf*) which are as follows: Allah says, "And for divorced women is a provision according to what is acceptable" (Quran, 2:241). Moreover, Allah says, "And women shall have rights similar to the rights against them" (Quran, 2:228). Furthermore, Allah says, "And for him who is forgiven somewhat by his injured brother, prosecution according to usage and payment unto him in kindness" (Quran, 2:178). Additionally, Almighty Allah says, "The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child" (Quran, 2:233).

These verses emphasize that societal norms and customs, as long as they are just and reasonable, play a role in guiding the behavior and responsibilities of individuals, especially in matters such as divorce, the rights and duties of spouses, reconciliation, and the welfare of family members. By referencing established customs, these verses encourage a balance of rights and responsibilities, kindness, and consideration in dealings with one another, fostering social harmony and ethical conduct within the framework of Islamic teachings.

3.2.2. The legitimacy of custom ('*urf*) in hadith

Custom (*Urf*) and Sunnah of the prophet Mohammad P.b.u.h are very well linked. Because when the prophet P.b.u.h migrated to Madina, he forbade those practices which were against the principles of Islamic Sharia and kept silence concerning those practices which were inviolated. There are various hadiths regarding the legality of custom (*Urf*) as follow:

i. Whatever Muslims regards as good; it is good in the sight of Allah.

It infers from the above hadith that those deeds which are accepted by the people, regularly practiced in the society, and are not against Islamic teachings are normally considered as good and decent practice. Hence, these actions are also virtuous in the sight of Allah Almighty. From the other hand, if some of the deeds are considered unpleasant among the people, they are also bad in the sight of Allah. Furthermore, the above hadith gives us a clear clue that in custom (*Urf*) is regarded as a source of law in Islam.

ii. Aisha R.A. reported: One day the Hind 'Utba's daughter and wife of Abu Sufyan, entered upon the prophet Mohammad P.b.u.h and said: Abu Sufyan, my husband is a miser. He does not provide me and my offspring sufficient alimony (Nafaqa). However, I take a portion of his wealth without his consent and knowledge. Is there any sin for me? Prophet S.A.W replied. You can take from the wealth of your husband the amount that is reasonable and adequate for you and for your children.



It infers from the above hadith that custom (*Urf*) plays a vital role in solving different sort of matters. The residents of a community should rely and trust upon custom and use them to solve those matters in which the teaching of Sharia did not provide exact details. Therefore, the decision of the prophet Mohammad was entirely based on custom. Like, in the above hadith, Hind desperately needed to take something from the property of her husband without his knowledge to feed herself and her children. Therefore, she intended to ask Allah's messenger to suggest the possible solution. Allah's messenger did not have enough knowledge to tell her the exact amount; therefore, he referred the issue to the custom (*Urf*). In this case, Hind should realize and find out what amount is sufficient to fulfill the daily necessities of her and her children without extravagance and wasting. It is worth mentioning that spending the wealth of husband should be based on the accepted practice of the people. People differ in terms of tolerance, intensity, generosity, and miserliness. Moreover, custom differs from country to country and from a society to society.

3.2.3. The legitimacy of custom (*urf*) in the afghan civil code

In addition to the above-mentioned Shari'ah (Quran and hadith) texts which indicate the legitimacy of custom and consider it as a valid and permissible practice. The subject of custom has also been mentioned in the applicable statutory laws of Afghanistan. Article 2 of the Afghan civil code states "Where neither do provisions of law exist, nor any ruling is found among principles of Hanafi Jurisprudence of Islamic Sharia, courts shall decide according to common custom, provided that the custom does not contradict provisions of law or principles of justice" (Civil Code of Afghanistan, 1976).

In the above-mentioned article, the civil law attaches great importance to custom and even considers it as the authority for issuing orders. Whenever there are not specific rulings and provisions existed in the laws to solve conflicts in society, courts must make decisions based on common practice. So here we observe that custom fills the gaps of the statutory laws.

According to article 9 of the Afghan civil code, (1). A person who violates his rights will be held accountable. (2). the following situations constitute a violation of rights: "1. Actions against custom. 2. Having the intention to infringe rights of another. 3. Triviality of interest of the person as compared with the harm inflicted on another. 4. Impermissibility of the interest" (Civil Code of Afghanistan, 1976).

From the above article, it clearly infers that anyone who has acted contrary to custom and the common practices of the people, means that he/she has violated the rights of others. Furthermore, the above article highlights the general limits to our presumed individual rights. Especially when they are exercised against the custom and tradition, intentionally infringe on the rights of others, obviously outweighed by another's interests, or defend an untenable goal. Moreover, the Civil Code recognizes the importance of custom in societal interaction.

3.2.4. The legitimacy of custom (*urf*) in majallat al-ahkam al-adliyyah or in legal maxim (al-qawa id al-fiqhiyyah)

The Majallat al-Ahkam Al-Adliyyah is a codification of laws that was written in the era of Ottoman Empire and declared to be the Empire's law. This code is based on the Hanafi School of law which was compiled from a number of Hanafi fiqh works. The code contains 1,850 articles, divided into three sections. The first part deals with the definition and classification of Islamic law, the second section addresses the legal maxims of Islamic law, and the last section includes the decisions on Islamic commercial law (*mu'amalat*). (Rahman & Usmani, 2018). When it comes to the theory of custom (*Urf*), there are numerous legal maxims (*al-Qawa id al-Fiqhiyyah*) in fiqh which have been developed by jurists that are directly related to the theory of custom (*Urf*) and should be kept in mind when making decisions on specific issues. The most important and pertinent legal maxims are as follow:

i. It cannot be denied that the requirements of the law changes as time passes (Haidar, 2023). For instance, to prevent theft, it is permissible to close the door of the mosque when it is not prayer time. Moreover, the issue of offer and acceptance in electronic based transactions. Such as internet banking, ATM, and etc.

ii. A matter known by custom is treated as if it was a contractual obligation (Haidar, 2023). It means that custom should be accepted by the sound soul of the people. For example, in the manufacturing of cloths, as a custom, the customer will provide the cloth and body size to the tailor. Following that, the tailor will make cloths without giving any items.

iii. A thing recognized amongst merchants is regarded as being a contractual obligation between them (Haidar, 2023). For instance, if a merchant sold a commodity to a buyer without agreeing on a period or method of payment, and it was customary for a merchant to collect the price in weekly installments, the contract of sale should be interpreted in accordance to a particular custom. The purpose of writing this article independently is to highlight the importance of business transactions so that traders will act according to their customs and habits.

The fact that the theory of custom (*Urf*) is stated in the Majallat al-Ahkam al- 'Adliyyah suggests and highlights that it was being used by scholars at the time to make legal decisions pertaining social, criminal, economic, commercial, and other fields of life.

3.3. Kinds of custom (*URF*)

Islamic law and the statutory laws experts have divided up custom (*Urf*) from different perspectives. Such as, division of custom (*Urf*) in terms of usage in a society (The verbal custom (*Urf al-Qawli*), and practical custom (*Urf al-Amali*), division of custom (*Urf*) in terms of generality and specialty (General custom (*Urf Al-Amm*) and special custom (*Urf Al-Khass*), division of Custom (*Urf*) in terms of soundness and defect Valid custom (*Urf al-Sahih*), and invalid custom (*Urf al-Fasid*). Among the above each division of custom, the valid custom (*Urf al-Sahih*) is going to be discussed along with its implication as follows:



3.3.1. Valid custom (*urf al-sahih*)

If the custom contains all the conditions under which the Shari'ah argument is based, then it is called a valid custom. It is considered to be the correct custom if it is prevalent among the people and do not contradict the specific text and the objectives of the Shari'ah, and it also does not condemn any good that Shari'ah supports and encourages (Islamic Fiqh Academy India, 1995). Therefore, People should follow valid custom (*Urf*), which is in accordance with the common good and needs of a society. From the other hand, people must follow a custom (*Urf*) which does not contradict and deny people's interests, and at the same time does not propagate corruption in a society. All Islamic scholars pay special attention to valid custom (*Urf*).

There are still some conclusive implications of the holy Quran and hadith that strongly support the mentioned custom (*Urf*). For instance, Allah Almighty states in holy Quran, "but he shall bear the cost of their food and clothing on equitable terms." (Quran, 2:233). The research infers from this Quranic verse that the husband is required to provide a maintenance payment to his spouse. Since providing maintenance allowance is based on the accepted custom of a society, so it will be determined in accordance with the financial situation of the husband. If the husband is wealthy, he can spend plenty. If the financial situation of the husband is weak, he could spend according to his economic condition. As a result, the teachings and rulings of Islamic Shari'ah have not defined a specific amount of maintenance allowance for a husband to support his children and spouse. Therefore, the issue of maintenance allowance is referred to the custom of the people and has created a customary law which is not in contradictory to the fundamental principles Islamic Shari'ah.

3.4. Implications of valid custom (*urf al-sahih*) in nangarhar province, afghanistan

There are a bunch of customs in Afghan society which are accepted and practiced from a very long time. These customs are approved by principles of Islamic Shari'ah as well as by statutory laws of Afghanistan. Some of them are discussed in detailed as follow:

3.4.1. The custom of marriage

Marriage is a good tradition that leads each individual towards peace, prosperity, chastity, completion of honor and faith (Iman), avoidance of deviations and continuity of generation; Therefore, in the holy religion of Islam, marriage has a vital status in a society. In other words, marriage is a natural event that has become a culture after the formation of the structure of human society. According to Article 60 of the Afghan Civil Code, marriage is a contract that legitimizes the association of a man and a woman with the aim of forming a family and creates rights and duties between the spouses. Even though Afghanistan is a multiethnic and Tribal society, the culture of marriage has not changed much. There are only small differences regarding marriage rules between cities and villages. In Nangarhar province, Afghanistan, before a boy can marry a girl, it is necessary to go through several premarital stages, which are as follow:

(i) **Searching to find the right girl:** This is the first stage

of marriage in Nangarhar province, Afghanistan. In this case; the mother, sister, a few white-haired women (Speen sari) or relatives of the boy begin searching to find a girl they like. A good girl is one who must obey the groom's family, have good morals, have a good past history, and have a good and famous family.

(ii) **Proposing a girl:** This is the controversial stage of marriage; because getting the consent and the satisfaction of all members of the girl's family is very important and time consuming. The boy's mother explains the reason to the girl's mother of their arrival. At this stage, the girl's family inquires and getting information pertaining the boy and his family. If the girl's family agree, they tell the boy's mother to send the boy's father, and other relatives to their house. Then, the boy's family gathers white beard men (Speen giri) and some influential people and informs the girl's family of their arrival to their home. When they arrive, the boy's family have a good and long meeting and interview with the girl's family and finally the person in charge propose the girl's father to have relations with them in the shape of giving the girl away in marriage.

After this, the girl's family prepares a good meal party for the boy's family and invite them to their house. Then the boy's family inform their close relatives including elder women and young girls to participate in the party. The girl's family has already invited their close relatives to participate in the feast. Before the serving of meal, the guests are given some juice (a simple kind of juice made of some common ingredients such as water, sugar and nectar which must be served in engagement party in all Afghanistan). After serving and eating food, the boy's father puts a certain amount of money on the table while collecting the tablecloth, which is called tablecloth money. The tablecloth money is considered the right of the engaged girls (bride) and directly given to her. Finally, late at night the boy's family and relatives return to their homes. After some times, the boy's family also prepares a feast for the girl's family and then they all go there with their relatives and the same custom that was performed in the girl's house is performed in the boy's house too.

(iii) **Engagement ceremony:** After all mentioned activities, the engagement ceremony takes place at the girl's house. In the engagement ceremony, all the members of the boy's family and relatives visit the girl's house by noon except the boy (groom). However, the girl who is engaged adorned by the young girls of the village and placed her (bride) in the corner of the room with the red shawls on her head. Then one by one, the village women look at the girl's face and gives her money. All the expenses of the engagement ceremony are borne by the boy's family.

(iv) **The night of henna:** When the wedding date is approaching, two or three days before the wedding day, the female relative of the groom gather at the boy's house and bring some ready-made wedding dresses and make up tools for the girl. Furthermore, groups of women from the village come to the groom's house and bring bowls full of henna. Then women put henna on the groom's hands, start singing and cheer for the groom and the groom gives them money in return. After the completion of this ceremony Some people go to their homes and some older women and older men stay at the boy's house.

(v) **Wedding ceremony:** A wedding is a party where a girl



is made a bride. In other words, a wedding is a celebration in which a girl (bride) marries a man. In ancient times, weddings were said to be the night when women wore colorful clothes and danced. Wedding is one of the most important happy memories in the life of a couple. On the wedding night 100 to 500 people from both sides are invited to participate and eat wedding meal at the groom's house.

3.4.2. The custom of mourning

When someone passes away, his/her neighbors and relatives including women and men go to the house of the deceased and share their grief with the deceased family. In many cities and provinces of Afghanistan, people think of the bread and water of all those who attend the funeral as soon as they buried the dead body. In some areas, it is a well-known custom to help and sympathize with the mourner and take food to the house of the deceased for three or four days and bear all the expenses of the mourner.

Mourning is one of the popular customs in Afghanistan. The ceremony of mourning has several religious purposes. One of the main and core purposes of a funeral and condolence ceremony is burying a deceased with dignity, making prayers (dua) and asking Allah Almighty for forgiveness of mistakes and sorrows during his lifetime, reciting the Holy Quran, doing charity to ease a person's soul.

These traditions are somewhat acceptable to Afghan intellectuals and the rest of the traditions are considered undesirable such as, in many cases, the family of a deceased person sell their land and animals to complete such rituals. Or they owe themselves by borrowing money. Furthermore, the deceased family spend a lot of money in funeral ceremony to receive guests and arrange delicious food. In Afghanistan, the charity that has been popularized for the purpose of the third, seventh, fortieth day or annually does not have any basis in Shari'ah but it is the custom of the people. However, absolute charity and alms giving after three days has no obstacle but also has a religious basis.

The Joint Committee of the National Assembly of Afghanistan, ratified the law of condolence ceremonies in 2013. The mentioned law consists of four chapters and twenty-one articles. According to article first of the mentioned law the objectives of law are as follow:

1. Preventing customs contrary to the rules of the holy religion of Islam in relation to condolence ceremonies.
2. Avoiding extravagance and unnecessary expenses in condolence ceremonies.
3. Supporting the promotion of Islamic culture, values and good traditions in relation to condolence ceremonies. (Law of Condolence Ceremonies of Afghanistan, 2015). Furthermore, the provision regarding funeral ceremonies is stated as follow:
 1. Condolences and funeral ceremonies should be done in accordance with the rules of Islamic law.
 2. It is not permissible to hold condolences and hold mourning for more than three days. The state of emergency and travel is an exception to this rule.
 3. The ministry of Hajj and pilgrimages, municipalities and private institutions can undertake the services of preparing graves, bathing, burial and equipping the dead in exchange for

money, which is regulated in a separate bill or free of charge.

4. Relatives and friends of the deceased can express their condolences to the deceased's survivors directly or mass media like radio, telephone and other (Law of Condolence Ceremonies of Afghanistan, 2015).

Moreover, holding ceremonies in hotels and extravagant expenses in other places is prohibited for this purpose. Survivors or relatives of the deceased can perform alms, charity and in accordance with the Shari'a rulings (Law of Condolence Ceremonies of Afghanistan, 2015). In addition, neighbors, friends, and relatives of the deceased to prepare food for the family of the deceased and their guests until the third day, should be based on Islamic basic teachings, and their financial situation and ability (Law of Condolence Ceremonies of Afghanistan, 2015).

The researcher recommend that the Ministry of Hajj, pilgrimages, and Endowments is obliged to observe the provisions of this law. Moreover, to devise and organize programs, seminars, round tables, and to assign Imams of mosques to enlighten the minds of the people to abandon the customs and traditions contrary to the provisions of Islamic Shari'ah. Besides, The Ministry of Information and Culture is obliged in cooperation with the ministry of Hajj, pilgrimages, and Endowments, ministry of women's Affairs and municipalities, to organize public awareness programs to express the harms of bad customs and traditions and the consequences of violating Islamic principles in condolences and funeral ceremonies and to broadcast them through the mass media.

3.4.3 The custom of celebrating the birth of a newborn baby

In many Pashtoon's areas, when a baby boy is born in a house, father, mother, close relatives, friends and neighbors of the newborn baby boy celebrate this special occasion with a lot of joys and happiness. In this way, the family of the newborn baby provides a good meal party for their relatives, friends, and neighbors and invites them to their home to participate in the celebration.

4. RESULTS AND DISCUSSION

The research highlights the pivotal role of valid custom (*'Urf al-Sahih*) in shaping legal, social, and cultural frameworks in Nangarhar Province, Afghanistan. The findings indicate the following:

- i. Customary practices that align with Islamic Shari'ah are considered important and valid in society. These traditions, backed by the Quran, Hadith, Afghan laws, and legal principles, act as a secondary source of law when clear legal rules are unavailable.
- ii. Valid customs like the Jirga, mourning, etc., strengthen community bonds, promote shared values, and offer ways to resolve conflicts at the local level.
- iii. Customs surrounding marriage, mourning, and celebrating a newborn's birth blend cultural traditions with Islamic values. These practices hold social importance and help strengthen family and community connections.
- iv. Acknowledging Valid custom (*'Urf al-Sahih*) adds legal flexibility and addresses gaps in formal laws, promoting



inclusivity and fairness while ensuring cultural practices align with Islamic principles and legal standards.

The discussion highlights how important Valid custom (*'Urf al-Sahih*) are to preserving cultural identity and fostering social harmony. These practices, which have their roots in Islamic ideals, are useful instruments for addressing contemporary issues rather than merely being holdovers from the past. The Jirga, a community-driven dispute settlement mechanism, for example, shows how regional traditions complement the Shariah focus on justice and reconciliation by offering prompt and easily accessible resolutions to conflicts. The economic and social value of customs is also demonstrated by activities like collective volunteer work (Hashar) which allow communities to work together to help one another, support those in need, and carry out development initiatives.

However, the study also recognizes the drawbacks of some traditions, especially those that place needless financial strain on people, like lavish wedding or mourning rituals. Despite their cultural value, these customs frequently put families in financial straits, underscoring the need for change. It is possible to maintain the essence of such traditions while reducing their detrimental effects by modifying them to conform to modern ethical norms and ideals.

Because of its versatility, valid custom (*'Urf al-Sahih*) is an important part of Afghanistan's social and legal structure. Customs can be a flexible and inclusive addition to formal legal systems as long as they follow Islamic principles and don't conflict with the law. In addition to reflecting Afghan society's cultural diversity, this integration promotes social development, community cohesiveness, and sustainable governance—proving the timeless value of respectable traditions in both traditional and contemporary settings.

5. CONCLUSIONS

A custom is a practice that is established by repetition and succession and is accepted by the sound mind of people and is institutionalized as a practice in society. In both Islamic and statutory laws, custom is a source of law, although custom is not accepted as a law or source of law until it is valid. A custom is acceptable in Islamic law if it is not against the holy Quran and sacred Sunna and has been approved by the collective conscience of the people. The concept of valid custom (*'Urf al-Sahih*) such as the custom of marriage, the custom of mourning ceremony, the custom of collective volunteer work (Hashar), the custom of hospitality (Melmastya), the custom of celebrating the birth of a newborn baby, and the custom of Jirga, holds significant legitimacy and practical implications in Nangarhar Province, Afghanistan. As a culturally rich and diverse region, Nangarhar relies heavily on traditional customs that align with Islamic principles to guide social conduct and maintain community harmony. Understanding and incorporating these customs into the broader legal system can contribute to more effective governance and sustainable peace in the province, reflecting the values and needs of the people.

RECOMMENDATIONS

For *'Urf al-Sahih* to continue effectively contributing to social harmony and legal coherence, several recommendations should

be considered:

i. It is important to educate the community about the boundaries of *'Urf al-Sahih* to prevent customs that conflict with Islamic principles or human rights from being practiced. Awareness programs can help distinguish between valid and invalid customs.

ii. Efforts should be made to document and standardize valid customs to prevent misuse and ensure consistency in their application. This would help in creating a clear framework for their use in resolving disputes.

iii. Encourage practices that promote inclusivity, especially concerning women and minority groups, to ensure that all community members benefit from fair and equitable access to justice.

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