

Notes of Lectures on Fiqh by Maulana Sadiq Hasan Lecture # 19 (Thursday 10 July 2003)

ROLE OF 'URF' IN FIQH

- ✳️ 'Urf' is an Arabic term, which means general opinion or custom in a community. This is a very important term in fiqh as many of the rulings (fatwas) issued by a mujtahid on different issues (masail) are based on Urf. On the other hand, there are also many rulings in fiqh, which are not based on Urf.
- ✳️ A more technical term in fiqh is 'Urful Mutasharre'een' or 'Urful Muttaqeen' meaning general opinion of the righteous momineen in a community.
- ✳️ Urf about an issue may change by passage of time and also by change of place.
- ✳️ An understanding of 'Urf' will make it easier to understand the logic and reasons of many fatwas issued by a mujtahid.

EXAMPLES OF MASAIL BASED ON URF

- ✳️ (1) Fatwa: "Wearing of gold is haram for men". But what is gold? Is '18-karat gold' or a '14-karat gold' or a 'white gold' considered as gold in Islam for this fatwa? This will depend upon Urf. For example, if in a community (village, town etc), people consider an 18-karat gold as gold, then wearing of 18-karat gold is haram for men. Otherwise not. An opinion of gold expert will not be accepted by the sharia for implementation of this fatwa.
- ✳️ (2) A sick person is in a state of coma or is considered 'brain dead' or 'clinically dead' and is on a life-support system. Should such a person be considered alive or dead from Islamic sharia point of view? The answer of a mujtahid to this question will be conditional upon Urf. If according to Urf, such a person is considered a living person, then it is wajib to keep him alive at all costs. If according to Urf, such a person is considered dead, then he is taken as dead. Again, the opinion of an expert doctor will not have an effect on this fatwa.
- ✳️ (3) Doing good (Husne Sulook) to your parents is wajib. But what is meant by doing good? Doing harm to your parents or making them angry is haram. But what is meant by causing harm? This will depend upon Urf.
- ✳️ (4) Being good (Sile Rahmi) to your relatives is wajib. But who is a relative according to sharia? This will depend upon Urf. And such Urf may change with passage of time or even with passage of place.

☀(5) Your neighbours have rights over you. But how far is neighbourhood from your house according to sharia ? (Some hadeeth says that upto 40 houses are your neighbourhood). This will depend upon Urf. And this Urf may be different at different places. For example, Urf about the range of neighbourhood in Karachi may be different than the Urf about range of neighbourhood in Melbourne.

☀(6) Neighbour of a masjid has some special rights and duties. But how far is neighbourhood around a mosque ? This will depend upon Urf and this Urf may be different at different places.

☀(7) In salat, it is wajib that the body must be motionless during all wajib recitations, especially Takbeeratul Ihram. What is meant by being motionless ? This will depend upon Urf. (Note that in sharia, hands, face and neck are not included as part of the body in this requirement of being motionless).

☀(8) Wearing of neck tie is allowed or not? This will depend upon Urf.

EXAMPLES OF MASAIL NOT BASED ON URF

☀There are many Islamic laws and fatwas, which are not based on Urf at all, and can not change with time and place. Some examples:

☀(1) What is a halal meat ? A mujtahid has laid down specific conditions and method for slaughtering an animal. This will not change by Urf.

☀(2) Salat becomes Qasr after traveling a certain distance. Urf will not apply here.

☀(3) In how much area, one Salatul Juma can be held ? This can not be decided by Urf.

☀(4) What is a tahir water ? Urf will not decide this matter.

☀(5) Taking interest is haram. But what is the definition of interest in Islam ? This will not be decided by Urf.

MUJTAHIDS MAY DIFFER IN MATTER OF URF

☀Some mujtahids also differ on what masail should be based on Urf. Some examples:

☀(1) What is music ? Ayatullah Khui and Ayatullah Seestani say it depends upon Urf. Ayatullah Khomeini says it is not based on Urf.

☀(2) Is it allowed to do Tawaf of Holy Kaba at a certain radius around Kaba ? Ayatullah Khomeini says that Tawaf should be within a radius of 13 meters. Ayatullah Khui and Ayatullah Seestani say that this will depend upon Urf in Mecca.