

Customary law (common usage) by the jurisprudential view of Imam Khomeini (God rest his soul)Manizheh Rajabi (M.A)*¹, Sedigheh Mosaddegh Sedghi (Ph.D)², Jamal Rezaie HoseinAbadi (ph.D)³¹Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran²Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran E-mail: mosaddegh_sedghi@yahoo.com, Tel: +989123965831³Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran. E-mail: Jamal-rezaei@yahoo.com

Abstract: Customary law is considered as a referral amongst the quadruple sources of jurisprudential deductions therein. The customary law howbeit is not considered an independent source but it biases many religious edicts and authoritative decree of Islamic law e.g. rules of vending and options, matrimony and the deduction of issues related to accessions respectively. The religious jurispudent grubs the unprecedented issues from the quadruple common usage, titles and the reasons for award, so various newly-created issues shift to religious matters considered in Shiite jurisprudence henceforth. Imam Khomeini adapts the deduction of judgments juristic by the common usage, considering it in the deduction of unprecedented edicts as a reliable body thereafter. The paramount jurist has deducted the following edicts by the common usage and the views of wise men: Vending, options e.g. exhibitory defect short change option, seeing of falcate with modern accouterments, banking operations, drawing lots, lotteries, rules of banker's draft, note of hand and drafts. He believes that the Shiite jurist would be dwindled from dynamism, suffering from sharp downturn if the common usage plays a part in paving the ways of religious edicts thereafter. He affirms that we cannot uphold any common usage by the standpoint of the divine law and mere common usages which have been rooted in the conducts of wise men with no contradiction to the letter of the bible and the deeds and words of Holy Prophet are regarded the referrals of the religious jurispudent respectively. In the following thesis we define and scrutinize the proper lexical meanings of the word "Custom" and its relation with the quadruple sources besides Imam Khomeini's indults and jurisprudential doctrines about the common usage and its limitation of participation regarded in religious edicts.[Manizheh Rajabi · Sedigheh Mosaddegh Sedghi. Jamal Rezaie HoseinAbadi, **Customary law (common usage) by the jurisprudential view of Imam Khomeini (God rest his soul)**. *N Y Sci J* 2014;7(3):46-49]. (ISSN: 1554-0200). <http://www.sciencepub.net/newyork>. 8

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1. Introduction

Various judgments juristic are dependent on the common usage considered in Islamic jurisprudence besides some questions which are religiously correct but as yet, the limitation of the interposition of customary law and the meaning of the validity of it regarded in certain judgments juristic are not pronounced therein.

In the following thesis we present an all-embracing definition from the common usage, scrutinizing the validity of it considered in Islam religion and its limitations and standards respectively.

In the next chapters the most overriding issues related to the customary law will be scrutinized to delimit the interposition of it thereafter. In a separated chapter we study the conventional interests presented in the Twelve's jurisprudence besides the connection between the common usage and interests respectively.

The quintessential advantage of the following thesis is clarifying the terms of standards and the connection between Islamic law and the common usage which elucidates the standards and criteria of

the Islamic edicts, especially in the modern world in which the conventional developments turn up full steam ahead, altering the ties of humans thereafter.

Lexical meaning of common usage

It means promoting good and it is antonym with the word "Necker" which means indecent and the word "promoting good" means what has been undertaken by reason and canon respectively.

Others believe that the word "common usage" means remittance and what has been gifted and taken.

The penman of the book "Lesan-Al-Arab" says that the word "common usage" is regarded what has been known by a man-jack, acclimating with and persuaded.

The derivatives of the word "common usage" are beyond a singular meaning which clarify the characteristics of something, a cognition which does not segregate the good; thereafter the knowledge is more specific than the science.

But the word "abnegated" is unknown characteristically and effectively and on the contrary, the common usage means a patent thing therein.

The word “common usage” in Dehkhoda's lexicon means known, notorious and what has been widely used by the society.

Philologists say that the word “common usage” means custom, good morals and a constant matter which is prevalent in the society.

It also means “Custom” which denotes a sagacious man-jack, an expert, jimmy and theosophist respectively.

Idiomatic meaning of the word “common usage”

It means regarding in a comprehensive realm a phenomenon which is obvious by the reason on the spirits of humans or peculiar groups who have habituated it. It has a ripple effect on their words, deeds and failure which is accepted by non-concupiscence natures therein.

The essence of common usage and its role on the deduction of edicts

1- The common usage, the order of statute and the source of canon

It has been regarded synonymous with the word “will of God” which is considered the source of legislation and edicts in monotheism.

The assumption says that either the informed consent must be practiced or abandoned if relinquished and branded.

2- Common usage as a documentation of canons' detection

It has been regarded synonymous with Koran, tradition, consensus, reason and acts manifestation of Islamic law, canonized by will of God therein. The aforesaid assumption says that the common usage, what has been founded by wise men, public' contentment or discontentment are not implied by statute but the common usage is a path connecting the incumbent of presumption to do's and don'ts (Islamic law) separated by various reasons and papers related to expertise to interpret matters independently respectively.

There are two assumptions here which say that the common usage is regarded the documentary evidence on the consideration of others e.g. Koran, tradition, reason and consensus of opinion.

3- Common usage as the means to find the Islamic law

The common usage is considered as a mean to find the evidence of edicts, constructing them liberally but it never documents the edicts independently.

Imam Khomeini's viewpoint about the common usage

He considers the normative and precise usages more and more in details besides indulgence which means the common usage notices the whole aspects of the matter without inadvertency therein.

Imam Khomeini's doctrine about the usage of customary law considered in vending

He rebuts the assumption which says that the standards of identifying the common usage are measured by the one used in the era of Prophet and says that the premises and records of the aforesaid view is the assumption of “measuring by proportion” of the objective proposition which symbolizes the non-actual facts respectively.

Imam Khomeini's characterized reasons considered about the validity of common usage

He just appropriates the common usage either when the conducts of wise men or the ripple effects of lapse of time and locality are considered thereafter. He is known amongst the thinkers of Shiite jurisprudential fundamentals that has regarded the validity and authenticity of the common usage expressly by the following proofs:

1. Infallible saints' wisdom

He believes by referring to Shiite moral fundamentals that the Prophet (peace be upon Him) or the infallible saint are cognizant of future and what would be passed in the eras pro major absence amongst the ummah therein. If they would not be cognizant of common usage, then they are obliged to prohibit the Saracens of common usage which will be materialized thereafter but since they have not prohibited the aforesaid matters, hence it is concluded that the common usage is valid on all epochs.

2. System preservation and preventing to thrown into disorder

Imam Khomeini believes that the lawgiver is not allowed to deny the common law, thence the various life matters revolve around the rational affairs since the invalidity of the common usage brings about disorder, while the lawgiver accentuates on the system preservation therein.

3. Unification of the lawgiver's and the common usage practice

It is obvious that the lawgiver has embarked on silence and it means that he puts himself in which is considered an evidence to affirm the validity of common usage; otherwise he is obliged to prohibit from the common usage and represent his own manner respectively.

Counts of referring to the common usage by Imam Khomeini

He has referred to the common usage considered in his works, so pay attention to the following instances:

1) Issuing a fatwa to the authorization of the authenticity of sales without verbal or written communication

He writes on the book named “vending” that the rational conduct indicates the authenticity of sales

without verbal or written communication from the beginning of the civilization; haply the former is more precedence than irrevocable sales therein.

Humans have embarked upon on exchange of goods without verbal or written communications undoubtedly and rarely would thou consider the verbal communications regarded in vending. The aforesaid manner proceeds in the days of the lawgiver, henceforth; it would be failed if the lawgiver would not have confirmed it therein.

He adds that the basis of the rationality of the canonist is not merely on the permissibility of sales without verbal or written communication but it is based upon proprietorship and the exigency of it.

2) Engagement to condition as an integral part of contract providing the absoluteness which means it is stipulated that if the parties to a sale contract rue it to reimburse without the specification of any date, hence does it consign to the common usage or absoluteness?

Imam Khomeini says in response to the above-said question that:

It would be consigned to the customary if there is any absoluteness and vice versa.

3) The main yardstick and standard considered in the specification of proportionality is the customary law of the time.

4) The standards considered in the specification of wealth are the common usage.

5) The standards considered in the discernment of short change option and option of defect is the common usage.

Defect has been defined peculiarly by diverse opinions, whereunto; it is said to be a defect but vice versa considered in on various intervals, even though it is considered the sophistication off and on respectively.

For example there are divergence of views about cutting the hair of carlines and being white or Negro respectively.

Some believe that giving birth to few babes is considered a defect besides the circumcising of boys in Saracens or the Jews community therein which must be titled to the common law by considering the time intervals of the minority transactions thereafter.

6) Issuing a fatwa to the revocability of insurance contract

7) Issuing a fatwa to the revocability of long-term lease sale

8) Issuing a fatwa to the revocability of sale of blood

9) Issuing a fatwa to the revocability of minor sale considered in unimportant issues.

Imam Khomeini's view about the rule of vending

The non-order nisi to engagement to a sale contract is considered a preemptory principle unless the wise men correlate it with prerequisite and its interdependency is not established as a necessity since the termination of the contract might be considered illegal or in effect, howbeit; the parties of a sale contract would be considered legal.

Imam Khomeini (God rest his soul) says that the engagement to a sale contract and a legal transaction is mandated by God but the conducts of wise men consider it correlated, much as certain canonical restrictions count it illegal. The principal engagement to a sale contract is considered either the order of God or the basis of what wise men have recognized therein.

Imam Khomeini adds that the wise men do not differentiate between oral and written contracts; rather the prerequisite of oral contracts is considered the validity of wise men which means that both parties must engage to the sale pro-termination of the contract therein.

The aforesaid validity is evident in sales without verbal or written communication i.e. the engagement of the sale parties to legal contracts is regarded the manner of wise men.

The common usage and wise men engage it binding pro termination the contract without the consent of both parties to terminate the contract by one party thereupon.

So they believe that the termination is void and null in which the verse implies it.

The termination of a contract without the tacit consent of both parties is considered null and voids by the viewpoint of wise men and the express of the verse, so the reciprocal contract is preserved and duty-bound by the interference of a lawgiver therein. In most cases there is a doubt about the interference of something recognized on the transaction e.g. hesitating doubt in the validity of indefeasibility respectively.

The matter related to edicts is not necessarily a real intention to create since all creators would not be maintained and the lawgivers define them to prohibit exclusion.

The aforesaid matters are either valid or customary and Imam Khomeini says that in sale contracts, the term "irrevocable" or the purport per se are not the yardsticks but the engagement is based on the rational validity therein.

The following terms are not used in the sale contracts:

The absoluteness of offer and acceptance or both cases when they are correlatively affirmative or used in effect therein; Vending does not mean offer and acceptance but it is a contract concluded between two persons with conditions as an integral part of the

contract or with the mutual consent of both parties by exchanging goods instead of ready money upon.

The propensity of Pure Imams to practice common usage relates to their consent.

The aforesaid matters were common in the time of infallible Imams and they are the indication of the consent of Imams and validity of the common usage thereafter.

4. Discussions

The common usage is a phenomenon which has produced an effect on humans' life by wisdom or a peculiar group as a custom and it influences on the speech, deeds and manners, accepted by a sound temper therein. There is a deep bond between the common usage and the conducts of wise men with common aspects as well as a deep-rooted connection respectively.

Tradition means in jurisprudential terms a behest, action or the utterance of a fallible Imam, hence it is synonymous with the common usage when indicates a prevalent matter or a constant one respectively. It means the custom and an independent source of edicts when it means the tradition of prophet and infallible Imams' therein.

The common usage is not recognized as an independent source pronounced in the quadruple sources of jurisprudence i.e. bible, tradition, reason and consensus but it indicates the branches of jurisprudence e.g. vending, matrimony and the referral source of the religious jurisprudent as well. Shiite jurists refer to the common usage to recognize juridical matters but not to alter the jurisprudential evidences therein.

In most cases the juristic opinions and issues related to edicts originate from traditions and the common usage scope respectively.

Imam Khomeini accredits the common usage as a referral of the religious jurisprudent athwart the words quoted by some people who believed that the only valid customs are those existed in the time of infallible Imams.

Imam Khomeini accredits the referral to religious jurisprudents in certain rules of jurisprudence e.g. principles of harm and dominion. For example in the following cases the common

usage interferes directly: determination of the loss and substantial damages and compensation for damages.

Corresponding Author:

Manizheh Rajabi (M.A)*

Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran

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