



Journal Homepage: -[www.journalijar.com](http://www.journalijar.com)

## INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI:10.21474/IJAR01/18955  
DOI URL: <http://dx.doi.org/10.21474/IJAR01/18955>



### RESEARCH ARTICLE

#### THE REALITY OF HABIT IS TIGHT AND ITS CONTEMPORARY CONTROLS

Ms. Meryem Abous<sup>1</sup>, Dr. Akli bin Ahmad<sup>2</sup>, Dr. Saad Gomaa Gomaa Zaghoul<sup>3</sup>, Dr. Ahmed Ramadan Mohamed Ahmed<sup>3</sup> and Shukiriat Bint Ismail<sup>1</sup>

1. Lecturer, Kulliyah of Shariah & Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia.
2. Dean of the College of Sharia and Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia.
3. Senior Lecturer, Kulliyah of Shariah & Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia.

#### Manuscript Info

##### Manuscript History

Received: 20 April 2024  
Final Accepted: 24 May 2024  
Published: June 2024

##### Key words:-

Rule, Habit, Court, Controls,  
Contemporary

#### Abstract

Among these legal rules that were devised by Islamic Sharia scholars **is a court rule**, this jurisprudential rule, which would, when applied by the legal application, solve many of the problems and calamities surrounding contemporary society, it is known to every researcher and student in forensic sciences the importance of studying the jurisprudential rules that scientists have devised and set appropriate controls and conditions for them, and dropped them on the facts and descent that descend society over time and eons; Confirms the comprehensiveness of Islamic law for all aspects of life, whether the devotional aspect or the transactional aspect, so the provisions of Islamic Sharia came to regulate those aspects and set controls and systems that achieve happiness for humanity in the two homes when adhering to the application of those provisions and Sharia rules. Jurisprudence rules differ from the so-called jurisprudential controls, the field of the jurisprudential officer is narrower than what we found for the jurisprudential rule, as its scope does not exceed the one jurisprudential subject to which some of its issues are due, and some fundamentalists have warned about this, Scholars of assets and jurists set a set of controls for this jurisprudential rule must be available so that the rule can be applied and worked out in the construction of legal provisions branching from it, as well as the scholars statement of the relationship between this rule and custom.

Copy Right, IJAR, 2024,. All rights reserved.

#### Introduction:-

Praise be to Allah, Lord of the Worlds, and prayers and peace be upon the most honorable of the prophets and messengers, our master Muhammad, and on his family and companions.

#### After

It is known to every researcher and student in forensic sciences the importance of studying the jurisprudential rules that the scholars have devised and set appropriate controls and conditions for them, and dropped them on the facts

**Corresponding Author:- Ms. Meryem Abous**

Address:- Lecturer, Kulliyah of Shariah & Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia.

and descent that descend on society over time and eons, which confirms the comprehensiveness of Islamic law for all aspects of life, whether the devotional side or the transactional aspect, so the provisions of Islamic law came to regulate those aspects and set controls and systems that achieve happiness for humanity in the two homes when adhering to the application of those provisions and rules. Legality.

Among these legal rules that Islamic Sharia scholars have devised is the **rule of habit court**, this jurisprudential rule, which, when applied to it, would solve many of the problems and calamities surrounding society.

#### **The importance of the topic:**

Hence the importance of this topic ( the **rule of habit is court and its contemporary applications**) in contemporary Islamic societies by shedding light on the legal controls of this rule and its suitability with the legal provisions, and the impact of custom in controlling these contemporary calamities, and how to invest this rule in achieving solidarity among Muslims, and finding solutions and answers to many contemporary issues that appear on the Islamic scene from time to time.

#### **Search problem:**

Searching for ways to apply the usual Sharia rule to contemporary issues, and a statement of the Sharia controls on which the Sharia ruling of these contemporary issues is built, and the study of the prohibitions prohibited by this Sharia rule, and the delegates that are lamented observance, and the impact of custom in controlling these legal rules.

#### **Reasons for the study:**

1. Search for the legal aspects included in the rule of custom court
2. Showing the importance of custom in controlling this rule
3. Explanation of the importance of the rule of habit and its effects.
4. Find the relationship between a tight rule of habit and custom

#### **Research Questions:**

1. What is meant by the jurisprudential rule?
2. What is the meaning of court habit?
3. What is the difference between custom and custom?
4. What are the rules of habit tight?

#### **Objectives of the study:-**

1. The research aims to show the importance of the rule of habit court
2. Work on deriving legal rulings for contemporary issues
3. Show the legal rooting of the rule of habit court
4. Spreading jurisprudential awareness among members of Malaysian society

#### **Study Methodology:-**

The research depends on the inductive approach, and the descriptive approach, so as to extrapolate the legal controls of the rule of habit court, and the application of these rules on social banquets.

#### **Study plan:**

Due to the nature of the study, the research plan will be divided into an introduction, three demands and a conclusion.

#### **Opening words: rule - habit - court - controls - contemporary.**

We ask Allah, may He be exalted, to grant success and success to the brothers in charge of the esteemed conference to serve Islam and Muslims, and to forgive us for what happened to us in terms of mistakes, forgetfulness or negligence, for perfection belongs to Allah alone and infallibility is the attribute of His Prophets, and every mujtahid has a share.

Pray, peace and bless our master Mohammed and his family and companions

Praise be to Allah, Lord of the Worlds

The first requirement: the concept of the jurisprudential rule and its controls

( Rule of custom court )

First: Definition of the jurisprudential rule

**In the language:**

The term compound - a descriptive structure - of two words ((rules)), and ((jurisprudence)), and the definition of the jurisprudential rule is based on the definition of each of the two parts of the compound separately (Al-Abd al-Latif; 1/33).

**The rule is a language:**

The weight of the actor from sitting, and sitting is comparable to sitting, which is the opposite of standing. However, some linguists differentiate between sitting and sitting in terms of sitting is from standing, sitting from lying down, and prostration.

Some linguists (Ibn Manzur: 11/236; Zubaidi 9/49; al-Fayoumi 263) stated that sitting is one of the words of opposites. It is said: Sit if he rises, and it is said: Sit if he sits.

The rule is the root of the foundation, and the rules of the house are its foundation, and the rule is gathered on the rules, and it is called the sensory rules, as in the Almighty's saying: " ( وَإِذْ يَرْفَعُ إِبْرَاهِيمَ الْقَوَاعِدَ مِنَ الْبَيْتِ وَإِسْمَاعِيلَ ) [Al-Baqarah: 127 ], and the Almighty says (فَأَتَى اللَّهُ بُنْيَانَهُمْ مِنَ الْقَوَاعِدِ فَخَرَّ عَلَيْهِمُ السَّقْفُ) [An-Nahl: 26], and al-Qa'idah refers to sensory and moral matters, such as the rules of religion and science (al-Fayrouzabadi 1/328) and jurisprudence: relative to fiqh. Fiqh is a language: understanding something and knowing it (al-Jawhari: 6/324).

**Definition of the rule of jurisprudence idiomatically:**

Varied definitions of scientists of the meaning of the rule, and by extrapolating the definitions of the rule when jurists and fundamentalists find that there are two trends in the definition of the rule.

**The first trend:**

They are the scholars who wrote in the books of jurisprudence rules, where they stipulated that the rule is: "a total rule or a total issue applicable to all its parts" (al-Subki 1/11; al-Tufi 1/121; al-Futuhi 1/30), it was defined by Imam al-Subki: "The rule: the total matter to which many parts apply, the rulings of which are understood from them" (al-Subki 1/11).

**The second trend is** that the jurisprudential rule is the rule of the majority in the sense that the ruling includes more than one branch or the issue of the majority applies to most of its parts to know its rulings from it (Al-Hamawi: 1/51).

Shaykh Mustafa al-Zaqa' defined the rules: "Complete jurisprudential principles in brief texts that include general legislative provisions on incidents that fall under their subject and there is no difference in terminology" (al-Zarqa 2/947).

**Second: Definition of the jurisprudential officer:**

The officer is a language: the name of the subject of the tuning, and the control of the necessity of the thing and according to it, and the control of the thing memorized firmly, and the man is an officer i.e. firm (Ibn Manzur 8/15; al-Jawhari 3/1139).

**As for the terminology:**

It can be defined as a majority rule from which the provisions of the two jurisprudential parts related to one chapter of jurisprudence are recognized directly, it shares - in its idiomatic meaning - with the jurisprudential rule that each of them combines multiple parts linked by a jurisprudential link. (Al-Abd al-Latif 1/40)

**Third: The difference between the jurisprudential rule and the jurisprudential officer**

The jurisprudential rules differ from the so-called jurisprudential controls, the field of the jurisprudential officer is narrower than what we found for the jurisprudential rule, as its scope does not exceed the one jurisprudential subject

to which some of its issues are due, and some fundamentalists have warned about this, in the footnote of Al-Banani: The rule does not concern a door, unlike the officer.

The scholar Ibn Najim also tends to the difference between al-Qaeda and the officer, so he says in the second art of the likenesses: "The difference between the officer and the rule: that al-Qaeda gathers branches from different doors, and the officer gathers them from one door" (Juma 330).

One of the most famous and showed what differentiated between the jurisprudential rule and the jurisprudential officer is that the rule includes branches of multiple chapters of jurisprudence.

As for the officer, it includes branches of one chapter of jurisprudence, provided that one of the scholars who call the officer a rule, and may call the opposite, because of the convergence of their meanings, and because the launch of the term ((rule)), or ((officer)) on a formula has no impact on the strength or weakness of deducing the ruling from it, and the distinction between them is a terminological distinction (Ibn Najim 166; Al-Banani 2/290; Al-Nadawi 46, Al-Muqri' 1/108).

### **The second requirement: the definition of the rule of habit is tight**

#### **The meaning of habit is language:**

Article (p and d) indicates that the thing is returned again and again. The habit is the path and persistence in something until it becomes his character, and it is said to the perseverance of the thing: the returner, and the habit of the thing and his habit and his return to the promises, and he used it and restored it and returned it: that is, he became his habit, and the return of the thing: making him get used to it (Ibn Manzur 6/505). She says: So-and-so returned to us with his favor. And this matter is up to you, that is, I attach to you more than others. And how much more returns so-and-so to his people, and it is a lot of returns on them. And the family of so-and-so has the repetition of any mourning and comfort. They say: They went out to the returnee: because they return to it again and again. May Allah grant us home back and forth. I saw something that starts and repeats, and does not speak with a prefix, and does not return (al-Zamakhshari 1/683).

#### **Habit in terminology:**

Definitions varied and varied, some of which are true of custom and custom together, and some of them limited the custom to the practical side only (Al-Jurjani 188; Al-Ansari 72), and perhaps the truest that distinguished it from the concept of custom and made it comprehensive of the actual and verbal habits of individuals, as is the case in the definition formulated by Ibn Amir Al-Hajj, where he said: "Habit is: the repeated matter without a mental relationship" (Ibn al-Hammam 1/281).

#### **He said in another place:**

"What settled souls on it with the testimony of minds, and received natures acceptance, which is also an argument, but faster to understand, as well as habit, which is what people continued to rule the minds, and returned to him again and again" (Jurjani 188).

Al-Siraj al-Hindi al-Hanafi said, as quoted by the scholar Ahmad ibn Muhammad al-Masri al-Hamawi al-Hanafi: "It is what settles in the souls of the repetitive things that are acceptable to sound temperaments" (al-Hamawi 1/127).

The best thing that was said in the definition is what the scholar Shaykh 'Abd al-Wahhab Khalaf (d. 1375 AH) said: "It is what people know and follow in terms of saying, doing, or leaving" (Khalaf 185).

The custom is: to continue on something acceptable to the right nature, and to return to it again and again, which is intended by practical custom.

#### **What is meant by it then:**

What is not different from what the people of religion and the upright mind are, nor is it denied in their eyes.

#### **It is intended to be general:**

To be sustainable, or predominant in all countries.

It is being special: to be so in some of them.

Consistency and predominance are a condition for being considered, whether public or private.

**Custom and custom are synonymous terms, as Al-Nasafi defined them:**

"Custom and habit have settled in the souls from the point of view of the minds, and the sound temperament has received it with acceptance " (Al-Ghazali 1/17; Ibn al-Hammam 1/317).

The scholar Ibn 'Abidin explained the source of the habit from which it was derived and said: "The habit is taken from the repetition, it is repeated and repeated after another became known and stable in the souls and minds, received by acceptance without relationship or presumption until it became a customary fact, custom and custom in one sense" (Ibn Abidin 1/186).

The scholar Sheikh Muhammad Abu Zahra defined habit and custom as: «It is the matter that the souls were reassured and knew, and investigated in their decisions and familiarity, based on the approval of the mind and was not denied by good taste in the group» and said: «But there is stability for something in the souls and acceptance of the temperaments to it by the frequent common use issued by inclination and desire" (Abu Zahra 42).

**Term (Court):**

The name of the effect of arbitration, which is taken from the judgment, and its origin in the language of prevention, and the judgment was called so because it prevents injustice, and the meaning of arbitration is the judiciary and the separation of people to resolve the dispute between them (Al-Firouzabadi 388).

The meaning of the court (that custom is the reference for adjudication in the event of a dispute) and is synonymous: the court and the judiciary.

**The overall meaning of the rule:**

It means that the custom was general or private makes a ruling to prove a legal ruling, which is not stipulated otherwise in relation to it, if there is no text contrary to it originally, or it is stated but general, the custom is considered (Zarqa 219, Zaidan 106).

**The origin of this rule** is the origin of this rule to the saying of Ibn Mas'ud (may Allah be pleased with him): "What the Muslims saw as good is good with Allah, and what the Muslims saw ugly is ugly with Allah" (al-Hakim 3/83; al-Haythami 1/187), which is a good hadith, and if it is based on it, it has the ruling of the one who is raised up, because there is no entrance to opinion on it (Juma'a 330).

**Al-Qaeda has other evidence, including:**

The Almighty says: {Take pardon and command custom} [Al-A'raf: 199], He said: [Ibn Al-Samaani]: What is meant is what people know and know among themselves.

**Ibn 'Atiyyah said:**

"It means: everything that souls have known is something that the Sharia does not want."

**Ibn Zafar said in al-Yanbu':**

"The custom is what the wise people knew as good and the street approved them for it."

All that is repeated from the word known in the Qur'aan towards: {And they lived with virtue} [an-Nisa: 19], so what is meant is what people know of such a thing (al-Mardawi, 8/386).

This rule is one of the major universal rules, and its meaning in the sentence: "The custom in the eyes of the street is governed by the provisions of behavior, and these provisions are established according to what is required by the custom if there is no legal text contrary to that custom." "The actions of doctors and their health reports and the resulting side effects are bad, or serious! It can be presented on this rule, if their actions are commensurate with the custom of work, and they are in accordance with the usual medical procedures in the field of medicine, there is no guarantee for them, because the custom is tight.

**Third Requirement****Controls of the rule of habit tight**

Scholars of assets and jurists set a set of controls for this jurisprudential rule must be available so that the rule can be applied and worked out in the construction of legal provisions branching from it, as well as the scholars statement of the relationship between this rule and custom

**Al-Hamawi said:**

" I know that the consideration of custom and custom is due to him in fiqh, in many matters, until they made that an asset, so they said in the principles of what the truth is left behind: the truth is left in terms of use and habit" (al-Hamawi 2/123).

**Al-Suyuti said:**

"Know that the consideration of custom and custom referred to him in jurisprudence in matters that are not considered many, such as the age of menstruation, puberty, ejaculation, less menstruation, postpartum, purification, most of them, the officer of the few and the many in the dabbah and acts contrary to prayer and impurity pardoned for a few, and between the offer, acceptance, peace and response and delay preventing the response with the defect and in drinking and watering the animals from streams and rivers owned by the establishment of his permission place. In the return of the circumstance of the gift and the lack thereof, and in the weight or measure of what was unknown to the situation during the era of the Messenger of Allaah (peace and blessings of Allaah be upon him), it is more correct that it usually takes into account the country of sale, and in the acceptance of the gift by the judge from those who have a habit" (as-Suyuti 90).

**Branches of this rule:**

Based on the care of custom and custom, many branches have branched from this rule, some of which we mention briefly with examples that illustrate what is meant:

**Known customarily as conditional condition:**

Any custom is taken into account and is considered without the need to stipulate it in people's contracts and behavior, sleeping in hotels, washing in bathrooms, and eating in restaurants, all of this requires the payment of fare, because custom requires that, even if not mentioned by the parties to the contract

**Appointment by custom is like appointment by text:**

That is, what requires the appointment of custom is like the appointed by explicit text, such as the power of attorney in the absolute sale carries the sale at the price of the proverb

For example, if he buys something from the market at a known price without declaring a current or deferred price, and it is customary among traders that the seller takes the price after a certain period, or in installments, the price goes to the customary without the need to mention it explicitly

It is not denied that the provisions change by changing the times: that is, by changing the custom of its people and their custom, if their custom and habit call for a ruling and then change to another custom and habit, the judgment changes to what corresponds to what has moved to their custom and custom, and therefore the advanced jurists said: The creditor does not have to pay his debt from the debtor's money in the event of his absence unless he is of the sex of his right, and they said: The wife must follow up with her husband after he has paid her dowry where he loves, because in their time people were led to rights. Then when the habit of people moved to disobedience, the fuqaha' said: The creditor has the right to pay his debt, even if he is not of the sex of his right, and the late ones said that the wife should not be forced to follow the husband to a country other than the one where he married her, and if he fulfilled her dowry expeditedly, the condition of the people would change to disobedience (al-Zarqa 219; Zaidan 106; Juma'a 330).

**Conclusion, main findings and recommendations**

Praise be to Allah, thanks to whom good deeds and prayers and peace be upon our master Muhammad, who is sent as a mercy to the worlds, and upon his family and companions, and those who follow his guidance until the Day of Judgment and grant him much blessings.

**After**

With the help of God Almighty and the success of him, this research paper on the subject of custom was completed, and the paper included an introduction, two sections and a conclusion, through which he dealt with the statement of the concept of jurisprudence and the relationship between the rule and the jurisprudential officer and the difference between them, and we showed the reality of habit and the relationship between custom and custom and their impact on building legal rulings through the rule of court habit, which the imams of the schools of jurisprudence relied on in deriving legal rulings when there is no evidence from the Qur'an, Sunnah and consensus. And measurement, and we mentioned the relationship that links habit with custom and the impact of this on the inference of the rule of habit court, and through this research paper we reached some results, including:

1. We found that the jurisprudential rule is a majority rule in the sense that the judgment includes more than one branch or a majority issue that applies to most of its parts to know its rulings from it.
2. Jurisprudential officer: a majority rule from which the provisions of the two jurisprudential parts related to one chapter of jurisprudence are recognized directly
3. Custom is a court: It means that custom, whether public or private, makes a ruling to prove a shar'i ruling, unless otherwise stipulated .
4. It does not work by custom and custom at all, but certain conditions must be met to invoke it .
5. We found out that working according to the correct custom in which it lifted the embarrassment of many people, so the Holy Qur'an, the Sunnah and the effects of the Sahaabah and the reasonable indicated that it was considered .
6. Custom and custom have applications in various chapters of jurisprudence in purity, prayer, buying and selling, and others .
7. Applications of the rule of habit can be used to find solutions to many contemporary issues .

**Sources and References:-**

- Al-Abdul-Latif: A.R.B.S.A.A.L. (2003); Jurisprudential rules and controls included for facilitation:, Deanship of Scientific Research at the Islamic University, Medina, Kingdom of Saudi Arabia, First Edition, 1423 AH/2003 AD.
- Ibn Qayyim: I.Q.A.J (1997); Informing the signatories about the Lord of the Worlds; T: Muhammad Mohieddin Abdel Hamid, Dar Al-Fikr, Beirut, 1377 AH - 1997 AD.
- Al-Ansari: Z. A.A. (1411) ; Elegant Borders and Precise Definitions, published by: Dr. Mazen Al-Mubarak, Dar Al-Fikr Al-Mu'asim, Beirut, 1st edition, 1411 AH.
- Al-Taftazani: S.A.D.A.T ; Explanation of Al-Talouhih on Al-Tarih, Al-Asriyya Library, Sidon
- Al-Zarqa: A.B.S.M.A.Z (1409) ; Explanation of the jurisprudential rules, edited by: Mustafa Ahmed Al-Zarqa, Dar Al-Qalam, Beirut 1409 AH.
- Al-Futuhi: M.B.A.A.F (1400) Sharh Al-Kawkab Al-Munir; T: Muhammad Al-Zuhayli and Nazih Hammad, published by the Center for Scientific Research and Revival of Islamic Heritage, Mecca, 1st edition 1400 AH.
- Al-Tawfi: N.D.S.A.T (1407); A brief explanation of Al-Rawdah, published by: Abdullah Al-Turki, Dar Al-Risala, Beirut, 1st edition, 1407 AH.
- Al-Hamawi: A.B.M/A.H (1405); Winking Eyes of Insights, Explanation of the Book of Similarities and Analogues, Dar Al-Kutub Al-Ilmiyyah, Beirut, 1st edition, 1405 AH.
- Al-Firzu Abadi: M.A.D.M.B.Y.A.F.A (2008) The Ocean Dictionary, reviewed by: Anas Muhammad al-Shami and Zakaria Jaber, Dar al-Hadith, Cairo, 2008 AD.
- Al-Bahsin: Y.A.B (1988); Jurisprudential rules, principles and theories, Al-Rushd Library, Riyadh, 1st edition, 1988 AD.
- Al-Zamakshari: J.A.A.Z. (2005); Al-Kashaf, Dar Al-Ma'rifa, Beirut, edited by: Khalil Mamoun, 2nd edition, 2005 AD.
- Al-Zarqa: M.A.Z (1968); General Jurisprudential Introduction, Alif Baa Al-Adib Press, Damascus, 1967-1968 AD.
- Al-Naysaburi: A.H.A.N (1411) Al-Mustadrak on the Two Sahihs, edited by: Mustafa Abdul Qadir, Dar Al-Kutub Al-Ilmiyyah, 1st edition/1411 AH.
- Al-Fayoumi: A.B.M.A.F, the reciter; The enlightening lamp, taken care of by Youssef Sheikh Ahmed, Modern Library, Sidon, Lebanon0
- Juma: A.J.M.A.W (1422), Introduction to the Study of Doctrines of Jurisprudence, Dar al-Salam, Cairo.
- Khalaf: A.W.K (1956); The science of jurisprudence; Dar Al-Hadith, Cairo
- Zidane: A.K.Z (1997); Al-Wajeez fi Sharh al-Qawa'id al-Fiqhiyya, Al-Risala Foundation, Beirut, 1st edition, 1997 AD.