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Analyzing and Criticizing the Position of Minhāj in Jewish Jurisprudence and Its Impact on the Development and Refinement of the Religious Teachings of the Bible

Mohammad Reza Asadi ¹ 

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Abstract

Next to Islam, Jewish jurisprudence is the most extensive jurisprudence among all divine laws. "The Bible" is the most important written source and "Minhāj" is considered one of the most useful non-written sources in Jewish law. The important question of the upcoming article is that according to the special nature of Minhāj and the experiences gained from human life in different times and places, 'Can the current realm of the authority of Minhāj in Judaism be reconciled with the realities in societies and the defined position of the Bible among the sources of Jewish law and the principle of Torah rule?' The present study aims to identify the roots of some problems and behavioral chaos attributed to religion and to provide the necessary suggestion for method reform. The following article investigates the nature of Jewish jurisprudence and religious sources in Judaism with a descriptive-analytical method, and after studying and analyzing the position of the Bible and Minhāj and its various

1 . Assistant Professor, Department of Religions, Imam Khomeini Educational and Research Institute, Qom, IRAN. reza.shaer@gmail.com

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dimensions, it comes to the conclusion that considering the basic position of the holy book and the Torah in Judaism as the main sources of Sharia and the source of revelation, as well as the disturbing results of accepting the independent source of Minhāj throughout history, must be seriously reflected in the current territory of Minhāj.

Keywords: Minhāj, Custom, Jewish Jurisprudence, Bible, Tanakh, Halakha, Jewish Law.

Introduction

Human life in a world full of various beliefs and manners will be perfect and happy when people existence be formed based on correct beliefs and actions. The first step in this path is to recognize and choose the correct belief, and the next step is to recognize practical plans and adjust behaviors based on that belief. The divine religion presents a set of beliefs and rules of the life evaluated by the creator of the world, which, if its correct example is known, can be considered as a guarantee of the perfection and eternal happiness of man; because no one except the creator is aware of the details and subtleties of the facts and relationships between the phenomena and is not willing and able to bring the creation to its perfection. Jewish jurisprudence tries to regulate the behavior of Jews by providing a wide jurisprudential system. The importance of knowing the correct jurisprudential sources should be sought in the purpose of referring to them, which is discovering God's plans; because in misrecognition and unjustified introduction of sources, actions may be attributed to it, assuming the truth of the belief, which will cause chaos in individual and social life and displeasure of God. "The Bible" is the most important written source and "Minhāj" is one of the most useful non-written

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sources in Jewish law. But considering the special nature of Minhāj and the experiences gained from human life in different times and places, it is worth investigating whether the territory of the authority of custom in Judaism is collected with the realities in societies and the defined position of the Bible and Torah among Jewish religious sources. To find the answer, we must first check what is meant by Jewish jurisprudence and its sources, especially the Bible and Minhāj. ‘What is the position of these sources in the process of deriving Jewish Sharia rules? What are the uses of Minhāj in this field?’ Can Minhājs be changed and what analysis is there about the reason for Minhāj change and the problems caused by this?’ The upcoming innovation article is a comparative study of the nature of these two sources and presents an analysis based on Jewish teachings as well as an external religious view.

1. Jewish Jurisprudence

Jewish jurisprudence, next to Islamic jurisprudence, is the most extensive jurisprudence system among all divine laws. The current system of Jewish jurisprudence is rooted in the Torah, but its structure was formed after the Torah. In Jewish jurisprudence, detailed rulings about worship, vows, endowment, purification, impurity, prayer, fasting, edible and drinkable things, and other such matters have been discussed (for more information on the classification of Torah commandments, cf. : Levy, 1978 AD/1357 SH; Azarhian, n.d.). According to Jewish scholars, there are 613 commandments in the Torah, which are scattered from chapter 20 of Exodus to the end of Deuteronomy (Jacobs & Hirsch, 1906: 10, 220). Of course, all these rulings are not jurisprudence in its special sense, but religious and moral issues are also ruled in the form of rulings in the Torah. Jewish jurisprudence has a

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system and framework for identifying and introducing the Mosaic Law. This system contains valid rules from the point of view of Judaism to discover Jewish Sharia rules.

The history of jurisprudence in Judaism goes back to the period of the first temple. In that period, people with the title Tofse Torah (Torah learned) were in charge of studying and interpreting the Sharia, and in the period of the Second Temple, when Ezra was reciting a part of the Torah to the people (445 BC), a group of Levites stood next to the him to explain the full meaning of the text (Steinsaltz, 2013: 36). Among all scholars in this field, Ezra is the first person who is known by name. In the Bible, it is said about him: "Because Ezra had determined to study and obey the Law of the LORD and to teach those decrees and regulations to the people of Israel." (Ezra, 7:10) This task was later assigned to the "Sanhedrin" (Great Council) during the Keneset Gedolah period, and in subsequent periods to other Jewish jurists.

Religious teachings are identified and introduced through jurisprudence and exegesis of divine law on matters of theology and law. The realm of jurisprudence in Judaism includes all religious matters and in addition to practical rulings, it also includes ideological aspects, morals and religious beliefs. The religious scholar should provide correct and specialized answers to the new questions that arise in every period with the same method and based on authentic Jewish sources. Throughout history, Jewish jurists have dealt with this matter with all this extent. In the journey of "Deuteronomy," the necessity of referring to jurists is specified (Deuteronomy, 17:8-12) and the punishment for someone who is arrogant and does not listen to the words of a priest or judge is to be killed (Deuteronomy, 17:13).

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2. Sources of Jewish Jurisprudence

The sources that the Jewish community recognizes as reliable sources for understanding religion and deriving practical rulings are divided into two categories: written sources and non-written sources (Soleimani, 2014: 44). The written sources of Jewish jurisprudence are: 1. Tanakh; 2. Mishnah and Talmud; 3. Baraita (separate halakhas and writings covering Tannaim topics outside the Mishnah); 4. Collections of Fatwas and Laws. Non-written sources also include: 1. Midrash (a collection of rules and rulings that are deduced from the written law, i.e. Tanakh, with a special interpretation method); 2. Takkanah and Gezerah (new halakhas that are based on expedients, new conditions and the requirements of time and place, established by halakha scholars and added to the collection of halakhic rules specified in the Tanakh or discovered from it. In this category, the obligatory rules are called Takkanah and sanctioning orders are called Gezerah); 3. Ma'aseh (conduct of the scholars, the way of the scholars); 4. Minhāj (custom); 5. Sevarah (intellect). It is reminded that the focus of this article is on examining the place of Minhāj among these sources and evaluating its impact on the development and narrowing of the biblical commandments.

3. The Bible, the Main Source and Root of the Authority of Sharia Rulings

In Judaism, Tanakh is considered the first and most important written source and the root of the authority and validity of the entire Sharia system (Hinels, 2015: 2, 65). After returning from Babylon and since Ezra succeeded in reorganizing and rewriting the Jewish holy book, Tanakh became the main source of Jewish law, and from then on, the Jews considered their duty to be

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pure obedience to the commands and decrees contained in it. Obedience to the book is not only a duty, but basically the life and everything of the Jews, and "Mitzvah Talmud Torah" means the "Shariah duty of learning and studying the Torah" is considered one of the most important Shariah commandments in Judaism (Steinsaltz, 2013: 23). Therefore, how to use the book better was one of the most important intellectual concerns of the Jews. According to the Jewish belief, "Studying and learning the inspired contents of the holy book, thinking about them and deducing everything that can be understood from them, is the greatest privilege and the most important duty of a Jewish person." (Cohen, 1971 AD/1350 SH: 143). Jewish holy book is known as "Tanakh", which is an abbreviation of its three parts, the Torah, Neviim (the books of the prophets) and Ketobim (the writings).

The most important part of Tanakh is the Torah, which is actually the main source of Jewish law and practical rules. This book is the source of revelation and prophecy and the source of inspiration for the following prophets and it has been said about its validity: "This is a firm religious belief and accepted by everyone that the entire Torah was spoken by God... about the five Asfars (the five parts of the Torah) there is this belief that every word of it in its current form was inspired by God and spelled to Moses." (Cohn, 1971 AD/1350 SH: 164) It is stated in the Mishnah: Whoever says that the Torah is not from heaven and from God, will not have a share in the world to come (Mishnah Sanhedrin, 10:1). Jews believe that although religious jurisprudence covers all spheres of life and neglects almost nothing, the realm of the Torah is wider than this. In other words, the concept of "Torah" is much broader than the concept of religious law (Steinsaltz, 2013: 147). The books of the other prophets are all guides to the laws of the Torah, and no new

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rulings were created after the Torah. The laws of Jewish law are often found in the Torah, and other holy books are more historical or didactic in nature.

The point that can be emphasized in this text is that the written law (the five Asfars of Torah) as a compilation of the Sharia of Moses was the main source of Jewish Sharia and the Jews from the beginning considered their duty to be pure obedience to the commands and decrees contained in it. In the Era of the Zugot, the "Rule of the Torah" was accepted by the Jews, based on which the Jewish community accepted that the law of the Torah and the will of God should determine the behavior of the entire community; to the extent that Simeon Ben Shetah, one of the great Jewish scholars and leaders, agreed to the execution of his son, who was accused of committing an immoral act, in order to preserve this principle (Steinsaltz, 2013: 45).

4. Minhāj, an Independent Source in Jewish Jurisprudence!

Among the non-written sources, Minhāj is one of the useful sources in the process of deriving Jewish religious rulings. The position of this source and its independence among other sources of Jewish jurisprudence is a subject that needs to be carefully examined and the examination of its nature, position and importance, types, applications, mode of change and dimensions of its development and then its serious analysis can clarify new dimensions of its truth.

"Minhāj"² is a Jewish term and equivalent to "Urf" in Arabic and Persian usage. Urf or custom is a rule that is gradually and spontaneously accepted

2. The current use of Minhāj for "Custom" may have been influenced by the word "Minhāj" in Arabic; Although there are major differences between the two terms in usage, and in common Islamic usage, Minhāj is a word for the thought method of a researcher or school of thought; Not the customs of a local or ethnic community.

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among all people or a special group of them as a binding rule (Katoozian, 2013: 188). Minhāj in Judaism is briefly defined as "A local or collective practice." (Grosman, 5783: 3, 105) and more precisely, it is: a fully established religious practice that, although it is not in the written law, but it has the validity and power of binding provisions (Turner, 1996: 21, 636). In addition to the rabbinic law derived from the Torah and Talmud, which is binding for all Jews, there have always been customs and prohibitions among Jewish communities, some of which are observed only in some regions or groups. These requirements are customs that do not exist in the 613 commandments and official laws of Judaism and are not based on any specific part of the Bible, but based on the ancient and general usage and their long-term observance in the Jewish community, became sacred and binding (Julius H., 1901-1906: *Minhāj*). These customs can also be referred to as customary compromises (Kanarfogel, 2020: 59). Some of the laws that are not mentioned in the Torah (such as the laws of marriage and buying and selling) have a very basic and important place in Jewish life. This group of rabbinic rules and laws is called "Minhāj" (custom) in Jewish jurisprudence and is now considered one of the most important and practical sources of Jewish jurisprudence. In this way, Minhāj refers to the rules and regulations that are accepted and mandatory among all people (general custom) or a special group of them (special custom); without an argument based on religious texts, reason or other religious sources.

Minhājs include a wide range of Jewish customs, including the variety in the order or language of some prayers and the wide variety in holding wedding ceremonies due to the dispersion of Jews throughout the dispersion areas of the Diaspora. Meanwhile, there are Minhājs that are performed only

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by minorities and small groups of Jews. For example, German Jews put their hands over the wine on Shabbat before saying the Kiddush (a Jewish prayer that is recited immediately before the meal on Shabbat night or over a cup of wine. This ceremony refers to the sanctity of the day that has just begun). While most Jews wash their hands after drinking Kiddush wine (Grosman, 5783: 106). Shulhan Arukh contains many examples of these customs that were adopted and implemented by one group (and not another group).

Jewish researchers have emphasized that the Minhājs are an independent non-written source with inherent legitimacy and the lack of textual support cannot be a reason to reject it (Bedzow & Broyde, 2020: 141-142). In rabbinic literature, the importance of ancient traditions has always been emphasized. A Jewish statement states: "The Minhāj of our fathers is [equivalent to] Torah." (Tosafot to Menahot 20b s.v. nifsal) Also, according to the Talmud, an authentic Minhāj accepted by previous generations of a family or community is binding on all subsequent generations (Tosafot on Talmud Pesachim 50).

An important point is that custom precedes law (Soferim xiv. 18) and sometimes replaces Halakha (Grosman, 5783: 105). This precedence is true not only for Talmudic laws prescribed by rabbis, but also for many biblical laws (Bedzow & Broyde, 2020: 143). It is said that Minhājs are so important in Judaism that according to them, angels also follow some local practices or Minhājs (Grosman, 5783: 105). Jewish rabbis emphasize: "When you come to a city, follow its customs; because when Moses went to heaven, he abstained from food for forty days and forty nights, and when the angels came down to visit Abraham, they partook of his food and each one submitted to the custom of the place of the other." (Gen. R. xlvi. 16) According to the

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words of Jews, even God himself followed the custom when burying Moses (Seder Nizigin, Sanhedrin Message. 46b). If a Jewish judge is in doubt about a particular law, he is advised to follow the custom of the people (Yer. Peah vii. 5; Ber. 45a). Therefore, the rabbis always attached binding importance to the customs that existed among the people in different places and in different forms. Hatam Sofer, the great Jewish jurist in the 19th century, in his last testament, emphasized that every community should follow its own customs (Muskin, 2018: 2).

Since personal acceptance of a new Minhāj is a promise to perform that Minhāj, leaving it typically requires Hatarat Nedarim (revocation of a vow or oath) and halachic procedures for discharging one's dhimma from a vow or oath. But sometimes it is necessary to leave the Minhāj, and this often happens when, for example, an Ashkenazi Jew moves to the Sephardic area and wants to join their local community. If the custom is different from Halacha, a God-fearing person should seek to do both and discharge his dhimma based on both views (Kanarfogel, 2020: 53).

According to the type of influence, Minhājs can be placed in three categories (Simi Grosman, 5783: 106):

1. Minhājs that act as a fence around the law to protect against unwanted violations of the Torah.
2. Minhājs that stimulate a person's awareness and effort so that he does not succumb to negative influences and the material environment around him.
3. Minhājs that show and strengthen a person's love for mitzvah by decorating them. For example, Jews hung decorations on the horns of the sacrificial cow or sang at the Shabbat table and covered it with a beautiful

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embroidered cloth instead of a simple cloth cover, which shows the love of the people for the related mitzvahs.

5. Minhāj Applications

In order to be able to make an accurate and fair judgment about the place given to Minhāj in the process of discovering and practicing the Jewish Sharia rules, it is necessary to pay attention to the different dimensions of the problem. The most important of these dimensions are the uses of Minhāj, which can be categorized into the following five items:

5.1. Determining Halachic and Judicial Practice in Cases of Disagreement between Rabbinic and Judicial Authorities

Custom can determine halachic practice in cases of disagreement between rabbinic authorities (<http://www.yoatzot.org/article/91>). Also, in cases where the law is discussed and there is a dispute about it, custom resolves the dispute. The strength of an established custom is such that it may even replace some legal methodological principles due to its social impact. Of course, if Minhāj is regional, that change must be prevented from entering other communities (Bedzow & Broyde, 2020: 143). It should also be noted that one should not destroy existing established law with a wrong custom, but if the custom is in conflict with the larger legal methodology and cannot be integrated with each other, the created custom will not be approved, even if believers and pious people have followed that custom. Therefore, in most cases, a way to show the legitimacy of Minhāj should have been sought first, and only if it does not have the necessary support, it should not be allowed (Bedzow & Broyde, 2020: 150). Therefore, in cases where the custom is contrary to the written law, an attempt is made to reinterpret the law to justify

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the custom, so that the actions of those who follow such a procedure are included in the realm of legal acceptability, and even if a customary custom cannot be Confirmed at all, efforts are being made to support other supporters (Bedzow & Broyde, 2020: 154). In any case, the custom is valid and precedent and cannot be easily rejected or ignored.

5.2. Establishing New Halakhas according to New Conditions

In case of the emergence of new conditions and requirements of time and place, if new issues arise whose answer or ruling is not determined in the Shari'ah, custom can determine the new halakhas in accordance with the new conditions and add a halakha to the existing halakhas (Soleimani, 2005 AD/1384 SH: 62). This function of custom is in line with "Takkanah" (new positive rules) and "Gezerah" (new prohibitive rules) and at the same time it is different from them. Takkanah and Gezerah are new halachic rules and regulations that are not based on the discovery process in the text of the Tanakh, but based on the expedients, new conditions and requirements of time and place, established by the halachic scholars and added to the set of halachic rules specified in the Tanakh or added to it. they become The difference between "Minhāj" and "Takkanah and Gezerah" is that this is a religious order or prohibition not by a halachic scholar or scholars, but by being accepted and obligatory among all people (common custom) or a special group of them (special custom) is formed; without an argument based on religious texts, reason or other religious sources.

5.3. Violation of Halakha or Existing Law

The purpose of many Minhājs that were implemented throughout the ages was to create a fence to protect or strengthen the mitzvah and halakhas, but according to Jewish teachings, custom can be a source and document for

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creating new rules that violate the existing halakhas (Soleimani, 2005 AD/1384 SH: 62). Even some Jewish sources have mentioned about some commandments that have changed in custom, that if Elijah himself appears and orders us not to act like this, we will not listen to him; Because this custom has been accepted by the people (Grosman, 5783: 108). One of them is the change of the amount of Jews waiting between consuming meat and dairy products. According to later Minhāj, a Jew must wait at least one hour between consuming meat and consuming dairy, and basically the act of waiting between consuming meat and dairy varies considerably by country and region, but Halakha states that it is necessary to wait at least six hours between them (Grosman, 5783: 108). Of course, Jews emphasize that the Minhāj never ignores the clear laws of the Tanakh or the Talmudic, and it is not possible to violate the clear laws of the Tanakh and the Talmud for the sake of custom, but on the contrary, any Minhāj that inherently contains an element that violates the Halakha is considered invalid (Piskei Riaz, Pesachim 4:1:7); However, in practice, there is a different assessment and in many cases, if there is a ruling or a written law that Minhāj is against, that law can be violated with the support of Minhāj. When a popular Minhāj is in conflict with Shulhan Arukh, the acceptability of the Minhāj and the popular custom is defended. One of the ways to support such customs is to apply or promote legal principles that have already strengthened the legitimacy of that Minhāj by citing them (Bedzow & Brojde, 2020: 143 and 146-147).

5.4. Counting as a Primary Source in Legal Proceedings and Programs

As it has always been in the legal sources of all societies, custom has been given serious attention, and basically, from a historical point of view, custom has been considered prior to other sources of law (Vecchio, 2010: 2, 471), In

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the civil cases of the Jewish communities, customary laws and customs are also very important, and there is this general rabbinical principle that everything depends on the customs of the land. Many examples of the authority of custom in the field of Jewish law can be mentioned. The impossibility of bringing a charge of accusation of acting contrary to chastity (ta'anat betolim) against a woman where the bride and groom were allowed to remain alone before marriage (Ket. 12a; "Yad," Ishut, xi. 8; Shulḥan 'Aruk, Eben ha-'Ezer, 68, 1); Determining the materials from which the fence should be built and the thickness of the fence based on the custom of the region if the partners have agreed to divide a piece of land between them and participate equally in the construction of the fence (B. B. 2a; "Yad," Shekenim, ii. 15; Shulḥan 'Aruk, Ḥoshen Mishpat, 157, 4); determining the length of a working day and the type of food to be given to the laborer (B. M. 83a; "Yad" Sekirut, ix. 1; Ḥoshen Misbpat, 331, 1 & Iserles' gloss); whether or not a household servant is obliged to pay for breaking household utensils during service (<https://www.jewishencyclopedia.com/articles/4816-custom>) are examples of this.

Undoubtedly, custom is considered a legal source if the legal system acknowledges a universally accepted behavior as a legally binding rule. Therefore, it is sometimes necessary to take a stand between custom and law. This task is not so simple and sometimes vague and cautious approaches are seen from the Jewish elders. For example, R. Meyer's tendency to be strict or soft in halachic rulings with the aim of creating compromise and inclusiveness in matters of custom and law, despite his hundreds of answers, can hardly be understood; because he has cautious words and avoids precise classification. For example, he writes in one case:

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In all cases where the gedolim³ disagree, I rule with the stricter view, unless there is an obvious relaxation adopted and carried over from the practices of earlier sages (Bloch, 1891: 294).

This is despite the fact that he was not committed to this basis in practice, and in some cases, he directly challenged his predecessors and, contrary to their views, ruled with gentleness and ease.

5.5. Determining How to Perform a Mitzvah

One of the important uses of Minhāj is to act according to that when there is doubt as to how to perform a specific mitzvah or action. In this regard, Jewish teachings say: "See what the masses are doing in relation to a specific action and act accordingly." (Grosman, 5783: 109) This law has played a vital role in preserving the Minhājs and Jewish customs.

6. The Influence of Time, Place and Circumstances in the Emergence and Change of Minhāj

There is disagreement among Jews as to whether or not the Minhāj requires some formal acceptance by a community, but there are many examples of some Jewish customs being changed or abolished. For example, "Burning incense to honor the deceased and surrounding the deceased with flowers" was a Jewish Minhāj that was later abolished (Grosman, 5783: 107). Therefore, it is an indisputable fact that today Jewish custom has undergone many changes. Sometimes legal changes are also emphasized, and for example it is said that if the Jewish Council imposes a Minhāj on the people and the masses accept it, then that is considered as a custom and only if the

3. In Hebrew, it means "Great people" and it refers to famous Jewish rabbis who are admired by Jews.

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subsequent councils are greater in wisdom and numbers than the previous council, they can cancel or change that Minhāj (Grosman, 5783: 107).

Basically, this indisputable fact of custom change and even its repetition and abundance has caused some scholars to try to record authentic Jewish Minhājs and revive lost and forgotten Minhājs by focusing on identifying Minhājs. These works have been developed since the Middle Ages (from about the 8th century AD) and are generally known as Minhājim. In particular, extensive literature of this genre was created among Ashkenazi Jews, but Sephardi Jews have made fewer efforts in this field. The recording of their own customs in the form of illustrated versions of the Minhājim books was followed among the Ashkenazi Jews of Europe, and the printing of these books flourished in the Hebrew press of Italy, Germany and Holland (Turner, 1996: 21, 636).

The Talmud recognizes different types of customs and traditions: the customs of the land, the customs of the location, the customs of certain families, the customs of the men of Jerusalem,⁴ the customs of the pious, the customs of the scholars, the customs of chaste women, the customs of the elders of the family, the customs of the prophets, the customs of Gentiles and common custom (<https://www.jewishencyclopedia.com/articles/4816-custom>). Therefore, a rabbi or other respondents should always know which customs the questioner follows. In general, there are different types of Jewish Minhājs. Some customs are universally or almost universally accepted; Like monogamy. Others are found only in some major sections of Judaism; like

4. The men of Jerusalem sometimes had their own customs. For example they were very careful in their transactions, and in their bills they noted even the hour of the day when the transaction took place. Of the pious men—the earlier Ḥasidim—it is said that they used to spend a whole hour in preparing themselves for prayer.

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not eating rice on Passover. Some are also considered subspecies, localities, or even families (<http://www.yoatzot.org/article/91>). For example, Jews whose ancestors lived in the Middle East and Africa (regardless of where they live now), tend to follow different customs; like Mizrahi, Sephardi or Temani Jews. Jews whose roots go back to the Mediterranean countries generally follow Sephardic customs, and Jews whose ancestors lived in Central Europe in the Middle Ages (regardless of where they live now) tend to follow Ashkenazi customs (<http://www.yoatzot.org/article/91>), while those whose families were in the Iberian Peninsula usually follow Sephardic customs they do. There are also broad sub-categories based on descent, location or sect affiliation. Also, some families and even individuals may adhere to a particular Minhāj that is not followed by others.

One of the most important and well-known differences in customs in Jewish societies is the difference between Sephardi and Ashkenazi Minhājs (Grosman, 5783: 106). The scope of these differences is wider than the existing differences among local customs and the like. Sephardic Jews mean Jews following Spanish and Portuguese culture and Ashkenazi Jews mean Jews adhering to German and Polish cultures (<http://www.yoatzot.org/article/91>). These two groups of Jews differ not only in minor customs, but also in worship, how to pray, and even pronunciation of Hebrew (<https://www.jewishencyclopedia.com/articles/4816-custom>). Now, independent collections have been compiled to introduce the specific customs of these two groups of Jews.⁵

5. For example, to see the customs of Ashkenazis, cf. Muskin, Elazar, *Sefer Minhagim*; young Israel of century city, Los Angeles, California: nameless, 2018.

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Different conditions have always followed custom changes. Regarding this Talmudic ruling that the verses of the Torah should not be recited from memory, but should be recited from the text, due to the lack of written prayer books in the 13th century and even after that, medieval rabbis in some regions opposed this ruling; Due to this restriction, some allowed the leader of congregational prayer to read the verses on behalf of others, and some considered this Talmudic ruling to be valid even in prayer, and only allowed the verses to be recited from memory for one of two reasons: 1. These verses are completely familiar to the worshipers, and the worshipers can recite them from memory without any mistakes (which would solve the Talmudic concern, because the verses were always recited completely and correctly), 2. The prohibition of reading from memory is related to the situation where a person reads the discussed verses on behalf of other people (Kanafogel, 2020: 60).

7. An Analytical Review of the History and Changing Nature of Minhājs

At the beginning of the 19th century, a movement began among German Jews with the aim of reforming Jewish customs. This movement started by rejecting some of the beliefs on which the old customs were based and then spread to other aspects of Judaism. As a result of this movement, new customs were established and some things such as the form of worship in the synagogue and Saturday and holiday ceremonies were changed. Of course, although the reform movement has many supporters in Europe and America today, it has never led to the establishment of unity in Jewish custom, and old Jewish customs still remain in many communities

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(<https://www.jewishencyclopedia.com/articles/4816-custom>). During the two hundred year history of the Reform movement in Judaism, Jewish religious practices have undergone profound changes.

The stand of the first religious reformers, first in Amsterdam and then in Westphalia and Hamburg, was that their reforms did not violate the halakha and only presented a variation of the prevailing Minhāj. Therefore, they could claim that their different Minhājs are rooted in old Jewish customs and practices (Meyer, 2020: 228). But in cases where the custom has changed so much that it is clear that its old form is no longer applied, in order to adapt the procedures, social changes are described, analyzed and explained in a way that takes into account the new conditions and changes and custom should be consistent with the principle of law (Bedzow & Broyde, 2020: 157). The first generation of reform leaders did not seek to abandon the halakhic framework or a principle and tradition, but to reject what they considered outdated (Bedzow, 2012: 2). In the same way, the traditionalist rabbis also acted to support the necessity of adhering to some old Jewish customs by examining the justifications for changes by reform leaders and the justifications for maintaining the old customs (Bedzow, 2012: 3).

Later, the reform movement sought to completely break traditional Judaism and presented the previous reforms as absurd and impotent. In this context, pamphlets were published, some of which called for a complete reform of the liturgy and the removal of all nationalist or mystical elements, and modern hymns of freedom were replaced medieval laments related to the persecution of Jews (Bedzow, 2012: 4). A rabbi justified the lenient ruling of his opinion, despite the fact that it contradicted previous custom, by arguing that previous generations had created an opportunity for future generations to

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make a drastic, yet at the same time, legitimate, prove themselves. He also stated that the halachic scholars of previous generations were afraid of their rivals, but we are not worried about these issues because of the cry of the poor and Jewish soldiers (Bedzow, 2012: 5).

The fact is that the special nature of "Custom" sometimes causes things to become custom which are not logically acceptable. Therefore, an attempt has been made in Jewish law to provide a mechanism to change or remove a custom if it is found to be wrong or unreasonable (cf. Tosafot on Talmud Pesachim 51a). Orthodox rabbi and historian of Jewish law, "Menachem Elon" writes:

“Due to its spontaneous and undirected nature, custom sometimes requires some supervision and control. Sometimes a custom may be based on a mistake, or it may develop irrationally in a certain direction, or it may even be in conflict with the essential and fundamental principles of Jewish law, so that there is no room left for its integration into the system” (The Principles of Jewish Law, single volume English edition).

This challenge became bigger when the displacement of Jews and their extensive migration to different regions, including the United States and various European countries, led to the mixing of different Minhājs and the gradual forgetting of some deep-rooted Jewish habits and customs. Basically, as the Jews moved further away from the centers of Jewish learning in Babylon after the completion of the Talmud, their customs became more and more elaborate. Local customs developed in various micro and macro communities and were respected by the people of the same region, and this situation was aggravated when the Gaons, as those who had great influence over the Jews of the diaspora, did not want to manipulate the local Minhājs

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And they even repeatedly supported the preservation of custom which they themselves did not accept. With the passage of time, on the one hand, the number of these Minhājs increased and many differences emerged between them, which pointed to the danger of schism in the Jewish community.

The currents were also not unaffected. The Kabbalah, which flourished among the Jews of the Middle Ages, has had a profound influence on the customs of some Jews. The form and meaning of many old customs were changed by receiving Kabbalistic interpretations. Attention and explanation of the role of evil spirits, magic, combination of letters and words to create special effects and the like, can be seen in the comments of some Jewish scholars who were influenced by the mysterious teachings of Kabbalah. Later, even the specific rituals of some great Kabbalists were collected and published to be a guide for the practitioners of those rituals. For example, a collection called "Minhāj ha-ARI" is the specific customs of Rabbi Isaac Luria, a prominent rabbi and Jewish mystic in Ottoman Syria who considered the father of contemporary Kabbalah and his teachings are referred to as Luria Kabbalah (Eisen: 213). Gradually, superstitions penetrated among the customs of the Jews.

Feeling worried, the rabbis raised their voice against the multitude of emerging and unacceptable customs and practices. These protests were the beginning to select and systematize Minhājs. During the 13th and 14th centuries, many researchers took effective steps to create unity in Jewish customs by trying to find the roots of various customs and traditions and of course with a critical approach. The most important figure in this era is Rabbi Jacob Levi Molin, who was born in the middle of the 14th century and died in 1427. His book on Minhājs, published posthumously, became a standard

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on Jewish customs for generations to come
(<https://www.jewishencyclopedia.com/articles/4816-custom>).

8. Pathology of the Current Position of Minhāj in Jewish Jurisprudence

It seems that the root of this confusion and division of rulings, the danger of superstitions entering the circle of Sharia rulings and the concerns of scholars in this regard should be found in the inappropriate position of Minhāj in Jewish jurisprudence. The importance and necessity of paying attention to custom in discovering and expressing religious rulings is clear and inevitable, but it should be noted that ignoring the features of custom can cause difficulties in recognizing and presenting rulings approved by Shari'ah and the stability of religious rulings. Identifying the correct place of custom among jurisprudential documents and the correct way of using it is one of the most important issues that should be considered in the system of religious discussions.

In Judaism, Minhāj has found an equivalent position to the Torah, and with this logic, it sometimes takes precedence over the law and sometimes replaces Talmudic Halakha and even the Tanakh. The Minhāj can be a document to confirm new commandments that violate existing halakha and even to quote the Jews, "If Elijah himself appears and commands us not to act like this, we will not listen to him; because this custom has become accepted by the people!" In this regard, there are points and ambiguities that can be a challenge for the Jewish inference method and process compared to their counterparts in religions that have been able to avoid such problems with more complete explanations and better positioning.

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Calling the Minhāj to the Torah and its precedence over Talmudic Halachas and the Tanakh is a very high position given to this source of jurisprudence in Judaism. This is while Jewish scholars are discussing the legitimacy of Minhāj that is not written in authentic Jewish sources! Also, even if there is any doubt in this position, the Jews are advised to be God-fearing and if custom and halakha are different, to follow both and try to acquit themselves based on both views! Jewish scholars, on the other hand, have introduced custom as a determinant of halachic practice in cases of disagreement between Jewish laws or rabbinic authorities, and consider it a substitute for some legal methodological principles, but they are still worried that What was the supporter of custom accepted among Jews and what extent it is possible to vote against the existing established law or greater legal methodology and put it first! They seek to legitimize customs that are contrary to the written law and recommend that the law be reinterpreted to justify customs so that those who follow such practices be included in the realm of legal acceptability. Undoubtedly, this kind of dealing with customs is a retreat from the position adopted the custom.

In general, one of the challenging points in the described source of Minhāj in Jewish jurisprudence is that custom is considered a legal source if the legal system considers that universally accepted behavior as a legally binding rule. Based on this, sometimes it is necessary to take a position between custom and law, which is not an easy task according to the Jews word them. On the one hand, custom with its popular support and maximum approvals is in the knowledge of jurisprudence, and on the other hand, its binding nature must be recognized by the legal system! It is clear that this field will become an arena for the disagreements of scientists and the expression of ambiguous

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approaches, which like many such cases, will result from "Caution" for gathering them and trying to hide the differences and disagreements.

In general, it is impossible to simply ignore this important fact that sometimes there are customs that are clearly wrong and illogical, some of them should be changed and some should be completely removed. Basically, the rule that if custom is in conflict with legal precedents bigger than itself and cannot be integrated with each other, even if pious and faithful people have followed that custom, it cannot be confirmed, shows that all Minhājs are not the same and some Minhājs may have been developed outside the acceptable framework. Therefore, it is necessary to answer the question that there is a complete guarantee and mechanism of control and supervision that such customs, and more importantly, baseless and false customs whose invalidity is not so clear and visible, are properly Is it recognized and the purity of teachings is preserved as a religious reality and approved by Sharia?! Shouldn't the efforts of many contemporary Jews to examine and select only some Minhājs be rooted?!

The increase of various and numerous customs in the scattered areas and the development of local customs due to the departure of the Jews from Babylon, led to many differences between them, and the Gaons, although they knew that many of them were superstitions and actually many of them did not accept those customs, but they did not oppose them. As one of the manifestations of established but clearly false Minhājs, we can mention the custom of "Afikoman theft". Today, one of the most exciting parts of Seder night for children is this custom. According to this Minhāj, children are looking for a calculated theft and to gain a profit through that, and in this

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regard, they plan in advance when is the best time to steal the desired object; where should they hide it and what should they ask for it? (Brodt, 2016: 274)

The truth is that there is a big gap between the customs of ordinary people and the true rules of Sharia. Shariah rules cannot be reduced to current customs among people; And that too with such degradation that the customs of a region and even temporarily are considered as Sharia rulings. The discussion of religion and the ruling of Sharia must have a solid connection with revelation or reason so that its conformity with the will of God is verified at an acceptable level and free from any human assistance that may have been caused by desires, lusts, ignorance and the like stay safe. Therefore, just as Judaism has given a fundamental place to the Tanakh, it has been considered the first and most important written source and the root of the authority and validity of the entire Shariah system, and then "Torah" is the most important part of it and the main source of Jewish Shariah and practical rules and considers it to be the source of revelation and prophecy and the source of inspiration for the following prophets, it should be committed to this fact in introducing the sources of Sharia and based on the principle of Torah rule. It should separate the field of God's will from human desires and don't let baseless and even wrong desires of people in some times or places cause the development or narrowing of the rulings of the true owner of the religion. Jews who believe that even the books of other prophets are all guides to the laws of the Torah and that no new commandment was created after the Torah, should have a serious reflection on the wide scope they have given for the source of the Minhāj.

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Conclusion

Although the first Jewish perception of the Minhāj may have been different from the current one, the current position of the Minhāj in Jewish jurisprudence and its inclusion as an independent source among other sources, especially the Tanakh, causes many problems that disturb the stability and inclusiveness of all rulings and creating the risk of placing unacceptable things in the true owner of the religion are among the most important of them. In this regard, in addition to the necessity of separating the two types of practical custom and verbal custom, the correct place of practical custom in jurisprudence and the process of deriving the Shari'i ruling and the extent of its role creation should be carefully examined and identified so due to the change of customs and traditions existing among the people of different societies in different places and times, the rules be based on customs in a way that does not hinder the stability of the religious rules and the emergence of chaos.

What can be acceptable is to place custom in the position of discovering the rulings intended by God as the sender of religion, not the clarity of the rulings; because the author of the rules of religion cannot be anyone other than its sender. Attributing rulings taken from people's custom and way of life to religion, if it is not in accordance with God's will, cannot be justified. Precedence of customs over Sharia halakhas recorded in written sources, considering that people's tastes and opinions are undoubtedly not the same in different times and places, increases the risk of attributing "Rulings inconsistent with God's will" to his religion. Therefore, it must be accepted:

First of all, custom has an authority in understanding, not a source in ruling, and otherwise it causes confusion, internal contradictions, differences

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and chaos in religion. Customs should have a tool function and serve the resources. In this case, the use of customs in the conceptual and affirmative understanding of written source expressions, applying customary concepts to examples, finding the rules governing legislation and applying them in the arena of the validity of evidence and the conflict between them and coordination of evidence, application in contracts and transactions and Also, the effectiveness of subjecting or de-subjecting the flow of documents and rulings and their non-flow can be discussed and accepted (Alidoost, 1972 AD/1443 AH: 154). However, in addition to not being fully compatible with the Jewish intro-religious view and the established position of written sources, the use of customary sources for Sharia is also not acceptable from an extra-religious point of view. How can you give the right to legislate and establish religious rules to people who are separated from the reservoir of knowledge and God's will, who do not know their true duty?! Legislation of Shariah laws is the monopoly of God and many people who live in different times and places with different views and tastes, and it is never fixed and possible for them to be delegated the position of Shariah by God, cannot play a role in Legislation of Shariah. How will the precedence of customs that have been rejected by the Shari'a in written sources and even customs that were not at the time of the Shari'a, but are subject to opposition from general or specific reasons (found in written sources) be accepted?! The result of accepting independent origin of custom is that jurisprudence has become customary and Sharia is subject to unstable habits and non-comprehensive and people-made customs. It is obvious that with the creation of such jurisprudence, it is not clear that due to the passage of time, nothing will remain of the authentic Sharia rules and laws.

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Secondly, the custom of issuing rulings has exclusive authority; because otherwise it will cause confusion and internal contradictions in religion. A ruling derived from customary law should be considered as proof only if it has been signed and approved by owner of the Shariah (Al-Kanani, 2013: 54-67). Therefore, in explaining the position of custom as a way to discover the ruling approved by the owner of the religion and the possibility of referring the ruling derived from it to the religion, conditions should be considered: 1. Commoning and overpowering (impairment in case of non-compliance in some cases); 2. Symmetry with the era of formation of written sources; 3. No prohibition by the creditor; 4. Not contradicting the text or definitive rule of Sharia; 5. Not opposing practical reason. In this way, the custom can be a dependent and not an independent source and with specific limitations can be justified on the condition that there are evidences indicating the signature and approval of the owner of Shariah. However, the authority of custom is acceptable in expressing the subject, implication and appearance. This means that in the case of expressing a Shariah ruling on a subject and using a specific word, if the meaning is not determined, If the meaning is not stated and not proving the establishment of the term and subject by the owner of Sharia, the custom must understand the meaning of the word and revise and explain the subject of the ruling. Also, in determining the meaning and purpose of various sentences and phrases in religious texts, custom can be considered as a criterion. Based on this, if the word has a conventional meaning, due to the discovery and being the way of "Appearance" to know the meaning of the speaker, it will have the same apparent meaning as proof. It is clear that the validity of customary implication does not require proof and since the

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transmitter of religion did not introduce another way of understanding; the customary way to understand will be proof.

However, the statement of ruling by custom is acceptable only under certain conditions. Custom as a way of wise people and in the absence of any Shariah evidence to the contrary in written sources and connecting it to the time of those who have the right to express or establishing rulings from the owner of the religion, can also be Considered as a way for reasoning on the general Shariah ruling; because in this situation it is possible to prove the satisfaction and consent of the owner of religion.

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