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# Х А Б А Р Ш Ы С Ы

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**ВЕСТНИК**

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК  
РЕСПУБЛИКИ КАЗАХСТАН

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## **THE FUNCTION OF RITUAL IN TRADITIONAL SOCIETY**

**Abstract.** The aim of the study is to analyze the functions of the ritual in the conditions of customary law.

On the basis of historical analysis and dialectical approach the main functions of traditional rituals, as well as the reasons for the refusal of society from the rituals in the distribution of written law are highlighted.

The study analyzes the specifics of the rite as an element of customary law. The rite is discussed in conjunction with custom, as an essential condition for the validity of custom.

It is concluded that customary law as an institution is represented by a set of elements, each of which performs certain functions and ensures the existence of the entire system. Features of act and conservation of customs became the reason of the quantitative and qualitative development of the rites. With the loss of regulatory values of customs, society begins to abandon the rites.

**Key words:** customary law, custom, rite functions, custom, traditional way of life.

**Introduction.** In the early stages of the formation of the society and the state, custom was the main regulator. With the development of the state custom begins to "give" leading positions to other sources of law. The process of development of other sources of law is gradual, so for a long time customs are preserved and actively used by society. A regulatory system based on custom and customary law is always ceremonial. The existence of rites is an integral part of customary law. As a rule, rites are given cultural and religious significance. Although the value and scope of use of rites in the early stages of historical development was much broader.

**Methods.** The role of rites in the regulation of social relations is analyzed with the use of historical and legal research methods.

**Results.** The main functions of the rites in the traditional society and their purpose in the regulation of social relations are highlighted.

The traditional regulatory system was characterized by a single direction, integrity, with each element performing its functions [7]. Customs and rituals were closely interrelated and acted as a whole. The custom contained a rule of conduct, and the rite visualized procedural issues and put this rule into effect. According to I. V. Sukhanov, the procedure could be more important than the norm itself. Without performance of ritual actions the norm was considered invalid [9, p. 122-123]. The rite was the mechanism or condition under which the existing rule was put into effect. Therefore, the layman takes the rite and custom as mono-norm. This symbiosis existed also during tribal or community relations [8, p.156-168]. In all periods, much attention was paid to the conduct of ceremonial actions. All peoples have had special training with the performance of ritual acts, use of special clothes and items, preparation of venue, ceremony, etc. In total, ritual actions gave meaning to the event or rule, which began to act after the rite.

Ceremonies developed, so there was layering features of different periods, for example, different religious beliefs [2]. Often the rituals were merged with the ritual action. The rite united religion, morality, culture, law and worldly wisdom. In the ritual it is possible to allocate the archaic heritage, the continuity of generations, of ethnic or religious affiliation, the climatic or geographical conditions of residence, the specificity of farming, etc.

For a long time, the rites were of great importance and performed several functions. The main functions of the rites include:

- socialization of the person (adaptation to the existing foundations, introduction to the existing traditions and values of the society);
- educative (formation of stereotypes of behavior of members of society, consolidation of rules of behavior and limits of permissible);
- informative (transfer of information to members of society and future generations);
- legal (procedural consolidation of legally significant facts, assessment of the behavior of the participants in the proceedings).

Unlike customs, rites do not have a regulatory function. The ritual regulates social relations, because it does not contain a rule of conduct, but is only a form of implementing rules. A particular rite may not have all the functions.

Rites can be divided into secret and public (or collective). Some people have mixed versions, i.e. the rite includes two components: a secret action performed alone (a preparatory stage associated with moral "purification" or psychological humility) and a public action, with the presence of a group of participants (the main stage that brought the norm into action and showed the collective the importance of the event). The functions of a particular rite depend on its orientation to the external environment (public rites) or to the inner world of a person (secret rites). The rites committed secretly, have the psychological and moral significance, for them, was typical of the educational impact on people. As a rule, such ceremonies were a synthesis of religious beliefs, superstitions and moral attitudes. Secret rites have many characteristics in common with rituals. Public ceremonies are aimed at the external environment, are more complex cultural, legal and socio-moral phenomenon. As a rule, secret ceremonies had an educational function. For characteristic all public functions ceremonies.

The function of socialization is most often characteristic of rites. Most of the ceremonies were held as conducting events, creating a special emotional background. Emotional attitude allowed to fix in memory the values significant for society [1]. Participation or contemplation of rites created a sense of belonging to social values and collective. The rites contributed to the formation of ideals, distribution of social roles, adaptation to the existing reality. The customary law system was inherently collectivist and was based on close family or community ties. Therefore, the rites formed a collective spirit and were aimed at the unity of all members of society.

Socialization of personality is closely related to the educational function [6]. Rites formed stereotypes of behavior, ideal images, moral foundations [4, p. 37]. For realization of educational function each people had a large number of mass ceremonies directed on formation of the personality (religious, national and seasonal holidays, wedding ceremonies), and also ceremonies motivating on certain actions (seeing off troops or blessing on fight, honoring of heroes, etc.). The presence of a system of rituals allowed to constantly influence the consciousness of the individual and form stereotypes in the minds of members of society.

Each rite can be considered as a source of information, which included the experience and knowledge accumulated by generations, religious beliefs, cultural values. The rites ensured the fixation and transmission of information in a compressed and concentrated form. Due to multiple repetition, emotional mood, "bright picture" of the ceremony, this knowledge is easily assimilated by all members of society.

The legal function is not typical for all public ceremonies. Public ceremonies could have a purely religious orientation. It was especially characteristic for public ceremonies in the family and household sphere, management and legal proceedings. The ceremony was a form of visual expression and consolidation of legally significant facts and served as the basis for the emergence of rights and obligations, change of status of the individual or the adoption of power decisions. The ceremony fixed significant events (birth, marriage, initiation into the knights...). In the absence of writing, the rites "fixed" the event in the public consciousness. Therefore, visualization was of great importance. Rituals in the family and domestic sphere provided for the solemnity, the presence of special attributes (clothes for the ceremony, decals for the participants, a special sequence of actions, etc.) and special training. For example, the wedding ceremony was held in public in a specially established solemn form. The rite was the basis for changing the status and the rights and duties of the spouses. Publicity rites was aimed at informing the tribesmen of legally significant actions. The brightness of the action made the event memorable. Low migration

of the population allowed, thus, to "fix" the most important information of the individual and society as a whole.

Ceremonies also acted as the basis for adoption of imperious decisions. At the stage of tribal relations was widely used by the Institute of ordalii. Various rites of oath (or oath) [6, 10], which were based on religious beliefs and superstitions. Such ceremonies were considered as the main evidence of guilt (or innocence) in the proceedings [3]. Failure to conduct such a ritual was proof of the guilt of a person [5, 11, 12].

The rites were so ingrained in people's minds that some were included in legal acts (for example, in the court of law of 1497 court fights were included to prove guilt). The widespread use of writing has changed the purpose of the rites, from the procedural form of consolidation of legally significant facts; they have become an attribute of the culture of society. The need to create a vivid memorable event has become outdated. Written fixation of legal facts has been developing for several centuries and exists in parallel with the rites. Despite the solemnity, emotionality and significance of the society begins to abandon the rites. The reasons for failure were:

- development of written law;
- improvement of the management system;
- migration and loss of ethnic and religious unity;
- expensive cost of rites (for example, the rite of marriage was not available to all, so the poor men got married late enough);
- large labor and time costs of preparation and conduct of the ceremony;
- increase in the intensity of life.

All these processes began to destroy the existing system. Ceremonies today are the cultural heritage of society, as the relation of rules of behavior and its visualization has been lost (i.e., custom and ritual). The displacement of customs by law destroyed this relationship, so the need for visualization disappeared. Ceremonies are used to create a solemn and emotional atmosphere. Some rites or their elements are preserved today in the public administration in the form of ceremonies (e.g. coronation, significant awards, military funerals, etc.) and in the family and household sphere (marriage, birth of a child, coming of age, etc.).

At the turn of XX–XIX centuries began the revival of rituals. The artificial return of rites is of cultural significance and is a manifestation of national or religious affiliation. Such rites can have an educational effect, but do not have all the functions of the rite.

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### **ДӘСТҮРЛІ ҚОҒАМДАҒЫ АРНАЙЫ ФУНКЦИЯЛАР**

**Аннотация.** Зерттеудің мақсаты – әдет-ғұрыпты құқық контексіндегі функцияларын талдау.

Тарихи талдауға және диалектикалық көзқарасқа негізделген дәстүрлі рәсімдердің негізгі функциялары, сондай-ақ жазбаша заңдарды таратқанда қоғамның рәсімдеуден бас тарту себептері анықталған.

Зерттеу әдет-ғұрыптық заңның элементі ретінде салт ерекшелігі талданады. Салт-дәстүр әдет-ғұрыптармен бірге қарастырылады.

Біртұтас заң ретінде институт ретінде көптеген элементтер бар, олардың әрқайсысы белгілі бір функцияларды орындайды және бүкіл жүйенің бар болуын қамтамасыз етеді. Ис-әрекеттердің ерекшеліктері мен кеденді сақтау салт-дәстүрлердің сандық және сапалы дамуына себеп болды. Кедендік реттеу құндылығын жоғалтқан кезде қоғам бұл рәсімдерден бас тартады.

**Түйін сөздер:** қарапайым заң, әдет-ғұрып, рәсім функциялары, дәстүрлі өмір-салт.



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### **ФУНКЦИИ ОБРЯДА В ТРАДИЦИОННОМ ОБЩЕСТВЕ**

**Аннотация.** Целью исследования является анализ функций обряда в условиях действия обычного права.

На основании исторического анализа и диалектического подхода выделены основные функции традиционных обрядов, а также причины отказа общества от обрядов при распространении письменного права.

В исследовании проводится анализ специфики обряда, как элемента обычного права. Обряд рассматривается во взаимосвязи с обычаем, как неотъемлемое условие действия обычая

Сделан вывод, о том, что обычное право как институт представлен совокупностью элементов, каждый из которых выполняет определенные функции и обеспечивает существование всей системы. Особенности действия и сохранения обычаев стали причиной количественного и качественного развития обрядов. С утратой регулятивного значения обычаев общество начинает отказываться от обрядов.

**Ключевые слова:** обычное право, обычай, функции обряда, традиционный уклад.

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