

THE FORTRESS OF ISLAMIC LAW

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Introduction

Ijma' is one of the four main sources of Islamic law. It is a fortress and protective fence against adulteration in all spheres and phases. It is an unalterable axle of Islamic Canonical Law. Although it is generally believed to be so, this doctrine of Ijma' has suffered, in so called modern researches, from fanatic objections.

Some people depict the existence of Ijma' as far fetched and almost impossible. They argue: it is extremely difficult for all the scholars, as it is defined by the classical books, around the globe to come together and have a consensus on a particular issue.

Some question its validity and substantiate their notion with the fact that it was not enacted at the time of the Prophet (peace be upon him).

On the other hand, some portray the Ijma' as the public practice and opinion which through the pass of time become characterized as Ijma'. Thus, it is not retrospective by nature as the classical theory depicts it; instead, it is on-going process liable to be changed with the change of time.

As it is always said; 'history repeats itself', most of these arguments are not new in their core message. Instead, they existed long before this generation. In the present generation, it has gained fame because, in my opinion, of two possible reasons: (a) relaxation of traditional scholars, and, (b) growth of modernists' schools. It is an appeal to the traditional scholars to wake up and defend for their classical theory. (So many things the older generation left for the latter generation). Although is not easy to respond to each argument, it is worthy to elucidate how the theoretical and practical methodology work.

The current study will deal with some of the above-mentioned points with a little detail. Most of these arguments emerge from the very beginning of the definition of Ijma'. Therefore, it is commendable to start with definitions.

Definition

The word Ijma' can be classified, as far as its connotation, into two divisions,

literal meaning, and,

technical meaning.

The literal meaning has two denotations:

Determination, resolution, decision etc. Ajma'a fulan 'ala ra'yih. So and so has resolved on his decision.

Agreement. Ajma'a al-qawm ala ... people have agreed on...

There have been some differences among the scholars with regard to its technical meaning.

Imam Al-Ghazali defines it as: The harmony or concordance of the nation of Muhammad (peace be upon him) in particular, on a religious matter.[1] Quoting Ahmad Hasan, “definitions, as pronounced by Al-Ghazali, which stipulate the agreement of the whole Muslim Community beginning from the rise of Islam till the Day of Judgment have been severely criticized by the jurists. This is because such an ijma’ according to them is not practically possible.”

Al-Amidi has, in his al-Ihkam[2] delineated the deficiencies in Ghazali’s definition in three points:

It gives impression that there can never be any Ijma’ till the last day, since the nation of Muhammad is truly applied to any of his followers till the day of Judgment. Any one who is found in any era forms part of the nation not as the whole.

Even though the designation “nation of Muhammad” is applicable to those who are present in any era, it, however, necessitates that if, we assume that, there was no true scholars in an era and the laymen agree on some religious matters it becomes a recognized consensus, where as the answer is a negative even to Ghazali himself.

When Ghazali restricts the Ijma’ on religious matters it gives the impression that if the whole Ummah agree on certain rational matters it will not be recognized as Ijma’ religiously, where as the result is not like that, (at least according to al-Amidi).[3]

Some have defined it as “The harmony of the Mujtahids (independent jurists) of the nation of Muhammad (peace and blessing of Allah be upon him), after his demise, upon any rule of Islamic law, in a determined period.[4] This definition seems to have acquired, to certain extend, a global acceptance, so to say if we have to give an exaggerated expression.

We, however, prefer to leave this polemic feud for the reader himself, to see the differences since this study is not intended superficially on definitions. The definitions will, however, help us in answering some questions put forward by few scholars who want to dismantle the sources of Islamic law.

Is Ijma’ Practically Possible or Just A Theory?

There are some disagreements about the possibility of consensus of scholars and its actual occurrence. When some people look at the definitions given by the scholars, they find it as impractical and unfeasible. Al-Nazzam and other Shi’te scholars, denied its existence. They, in substantiating their notion on its impossibility, said: just as it is impossible for the whole nation at large to be unanimous on eating one kind of food or to say one word on one and the same time, it is even more implausible to have harmony on one legal ruling. They further claim that the hadith of Mu’adh b. Jabal when he was dispatched to Yemen makes no mention of Ijma’ as reference of the source of law if he, i.e. Mu’adh, finds no answer of new incidents from the Qur’an or Prophetic Tradition.

Scholars from time to time have discussed the issues like these and given answers to all these questions. As the rule “the most reasonable answer to any dilemma in question is the occurrence”. In other words, if the protagonists establish, with evidence off cause, the existence of some thing, then opponents have nothing but to lower their heads submitting to the facts and leave their preoccupied ideas if they are unbiased antagonists.

The consensus of Independent Jurists can be depicted within the fact that the Muslim nations all around the world are unanimous on the five Islamic fundamentals, viz. testifying the oneness of Almighty Allah, the obligation of every day five prayers, fasting in the month of Ramadan, the alms due and pilgrimage. The companions of the Prophet (peace be upon him) were united on the leadership of Abu Bakr (may Allah be pleased with him), the granting of one-sixth share in the inheritance to the grandmother etc.

We also know the fact that the whole nation, including the jurists, is compelled to follow the authentic nusus (text). Thus, they can not have consensus on something from a vacuum. It is logically possible to have an agreement on something based on texts and all other acceptable ways of deduction, since every one is using, in principle, one method. This differentiates the cracks of the matter from the example of eating same specific kind of food, alluded by the antagonists, in that there is no motive to drive the whole world to eat that one kind of food.

Substantiating illegitimacy of Ijma' using the tradition of Mu'adh, as cited above, is very weak because Ijma' is a source that comes into operation only after the death of the Prophet (peace be upon him) and Mu'adh could not possibly mention it.

Some accept its occurrence in the neo-Islamic era since the leading jurists in that age were in minority and could easily be distinguished from the rest. After the collapse this epoch, for the whole world of independent jurists, from the mass growth of Islamic demographic regions, to come together and have one ruling on a specific matter is irrational discussion.

This argument falls flat with the historical evidence that these scholars did not sit back at home, relaxing, enjoying the cup of tea. They exhausted their time used all their belongings in search for knowledge. They left no stone unturned for the acquisition of this knowledge. They went from city to city, person by person to acquire the Islamic knowledge. That was when the other parts of the world were still in the darkness of ignorance.

In today's time, with the rapid advancements in technology, the world is becoming smaller again. Therefore, the argument will even be more preposterous if the antagonist refers it in today's world.

The Authoritativeness of Ijma'

Some scholars have questioned the authority of Ijma'. They have raised serious objections to its license. This is so because, according to them, there is no overwhelming evidence to show its legitimacy. The majority, however, have proven it from the Qur'anic texts and prophetic traditions. Some have even gone and deduced its proof from the logical point of view. Imam al-Haramayn has contended this view and shown its weaknesses in his 'Kitab al-Talkhis.[5]

It is worthy noting that no evidence given by the advocates of Ijma' has managed to escape from the bullet of the antagonist, even though have gained the upper hand in the battle field.

Here are some of the main proofs:

From the Qur'an:

Surah: 2:143. Translation: ((thus We have made (Oh Muslims) just (and best) nation that you be witness over mankind and the Messenger (Muhammad Peace be upon him) be a witness over you.))

The induction goes as follows; Allah has vindicated the Muslim nation and made them the witness against other nations in accepting their statements in the same way He did to the Prophet (peace be upon him) against us. None can be witness except that his words are accepted. Therefore, it shows that the Muslim nation, in its bulk, is infallible. Thus, if they agree on something it becomes a binding force since they can not unite on falsehood. The opponents have tried to demolish the product of this deduction. This verse, they said, refers to the scene on the Day of Judgment not in this world. The advocates throw their rejoinder by saying: Allah brought the verse in the case of showing grace and kind unto this nation. It was revealed to show its magnitude. This demonstration of kindness can truly be in this world, or in the hereafter like how you assumed. However, the latter possibility finds hindrance with the fact that on the Last Day everyone will be trustworthy and infallible, because there will be no mistakes. Therefore, this vindication is not referred except in this world.

Surah: 4:115. Translation: ((And whoever contradicts and opposes the Messenger (Muhammad peace be upon him) after the right path has been shown clear to him and follows other than the believer's way, We shall keep him in the path he has chosen, and burn him in hell, what an evil destination!)) The promoters of Ijma' elucidate the verse in support of the doctrine of Ijma' saying that Allah has severely warned the consequence of following the path other than that of the believers. This warning is correlated with the consequence of opposing the Prophet (peace and blessing be upon him). If opposing the path of the believers was not haram then, exponent argued, Allah could not associate its punishment with that of opposing the Prophet (peace and blessing be upon him). Therefore, to follow the path of the believers, the provoker concludes, is compulsory. And the path of the believers is what they have agreed upon. In the verse, the antagonist debates, following the path other than the path of the believers is mentioned, how can you extend it to the person not following the path of the believers? It is possible, he explains further, that a person follows none of the paths, i.e. neither the path of the believers nor the non-believers. In response to this, the protagonist puts in plain words that if a person is not following the path of the believers then automatically has followed other than the path of the believers. There are only two groups, believers and non-believers. There is not middle group or neutral. The debate still goes on. Fakhr al-Din al-Razi and al-Amidi have discussed the whole polemic dilemma at length in there usul books.

Al-Ghazali in his 'Mustasfa'[6] states regarding this verse to the strongest proof after all the other verses that he has cited earlier, including the first one in this work. Despite this claim, he still admits that it does not clearly engender the matter in discussion. Quoting Ahmad Hasan "it is generally believed that al-Shafi'i justified the doctrine of Ijma' for the first time on the basis of the Qur'anic verse 4:115. This assumption is untenable because al-Shafi'i discusses Ijma' in his works at the length but nowhere he refers to the Qur'an. He establishes its legitimacy on the basis of prophetic traditions. The extant works of al-Shafi'i and of the early jurists before him show that the Ijma' was not justified on the basis of the Qur'an until his time, i.e. during the first two centuries of the Hijrah. It is difficult to trace, for the lack of information, the person who justified Ijma' for the first time on the basis of the Qur'an." [7]

From the Prophetic Reports: There are many reports which have been used to justify this doctrine. Some scholars have summed these reports up to seven. Here are some of these reports:

A section of my community (ummah) will continue following the truth. One who is hostile to them will do no harm to them until the divine decree comes to them.[8]

The hand of Allah is over the community (Jama'ah).[9]

Whoever separates himself from the Muslim community even a span, he dies a pre-Islamic death.[10]

My community will not agree on an error.[11]

Of all the above quoted traditions, and others, "My community will not agree on an error" is often used for the approval of the doctrine of Ijma'. As far as its indicant content on the issue is clearer and stronger than the textual indication drawn from the Qur'anic verses adduced for the support of its validity. Although this tradition has a decisive indication on the subject, some scholars have made an attempt to dismantle its content on rational grounds.

Wael B. Hallaq, among the others, has rejected the concept of infallibility of the community. This concept which was represented by the leading jurist based on this tradition "can not be guaranteed", he says, "on the basis of reason." His words further read: "the argument that an entire community can not agree on an error was flatly rejected on rational grounds, for both Christians and Jews, severally and aggregately, have managed to agree on many falsehoods, such as the doctrine of trinity and crucifixion of Christ." [12]

What the invaders do not see or neglect is that the Prophet (peace be upon him) said: "My community..." referring to Muslim community or Islamic nation. None of the Jews and Christians forms part of Mohammedan community unless one believes in the prophet hood of Muhammad. The infallibility is only correlated to the Muslim consensus. Therefore, the rejection that was assumed to have been based on rational grounds finds no concrete axis to hold it. The truth still stands intact on its solid deep rooted base.

Does Ijma' render a decisive or probable ruling ?

After the authority of Ijma' has been established, there remains a question; does Ijma' produce certainty or not. It is very important to take note of this, since if the answer is in affirmative then it will necessitate other conclusions.

There are some diversities among the advocates of Ijma' on the issue. The views can be summarized in the following words: The majority of the theologians hold the view that it is hujjah qat'iyyah, i.e. it renders certainty. It vies all other textual indicant. No textual indicant can contend with it. Furthermore, the denial of it leads to disbelief, deviation or heresy.[13] Ijma' is "an honour for this nation" as Shams al-Aimma and al-Dabusi put it.

Amidi, Isnawi and few others, have gone to the view that the denial decisive Ijma' will lead to disbelief, if it is well known and worldly spread among the common people, e.g. the fundamentals of Islam. If it is not of that kind, then it will not lead to disbelief, e.g. the intricate issues of trading etc. Other scholars, on the other hand, maintain that all types of Ijma' render a probable rule. Al-Razi belongs to this group.

There exists a middle group which has handled the matter with further clarity. They look at each scenario in isolation. If it belongs to the category which all considerable scholars have agreed to be recognized as Ijma' then it renders a decisive rule. If there are some differences with regard to its soundness as source, for example, the silent Ijma' or the one in which none among the considerable scholars was known to have different opinion, then it gives a probable ruling.

Imam al-haramayn said: "it has been in circulation on the mouth of the jurists that whoever breaks the Ijma' is kafir (unbeliever). It is completely wrong and falsity. Because the one who rejects the Ijma' completely is not classified as unbeliever. To classify some one as kafir is not facile job. Yes, the Imam says, a person who acknowledges the authenticity of Ijma' and he confesses the integrity of the transmitters of that Ijma', thereafter, he denies the matter upon which they have agreed, then it will mean that he has belied the Shari' (legislator). Whoever belies the Shari' becomes a kafir.[14]

It is generally accepted, based on the views of the majority, that Ijma' is un-interruptive source of Islamic law. It is not receptive to any change. In other words, if there is consensus of intellectual elite on a certain question then that ruling accepts no change whatsoever. The issue in question qualifies that degree whether it was based on dalil which is susceptible to change or not. Once Ijma' is attached to it maintains fortress and protective fence against changes. However, this general acceptance has collided with some reasonable objections. "How can Ijma' be a concrete source inaccessible to any change, whereas we find no lucid text to establish its authority? All those textual evidences adduced to substantiate its doctrinality are susceptible to interpretations. The Qur'anic verses are speculative as far as their indications on the issue of Ijma'. Those traditions which have definite indications on the validity of this doctrine are solitary reports. So how can a speculative proof establish a definitive source of law?

Imam al-Ghazali in his Mustasfa[15] has addressed the issue and answered this question. His wordings can be summarised in the following paraphrase: There are many traditions reported from the Prophet (peace be upon him) with different wording but all dealing with one aspect. The core content of all these traditions is the infallibility of the Muslim Ummah (community). [It is solitary in wording but concurrent in meaning].[16] It was widely spread on the mouth of the most renowned companions of the Prophet (peace be upon him) viz. 'Umar, Ibn Mas'ud, Abu Sa'id al-Khudriyy, Anas bin Malik, Ibn 'Umar, Abu Hurayrah, Hudhayfah bin al-Yaman etc. Those traditions used to establish the soundness of the Ijma' were in use at the time of the companions, successors till to day. The Muslim ummah has used it in fundamental issues of din as well as in furu'.

Is Ijma' retrospective by nature or on-going process?

This question, as simple as it may seem to be, can cause confusion if not carefully scrutinised. Because of some truth attached to both affirmative and negative answer, one can easily be caught up with dangerous conclusions. Before I go further in explaining this notion, I would like to put forward the following questions to make the answers easy and clear for the reader. What is meant by

retrospective? Does it mean having other Ijma' on the same issues or on different problems? What is meant by on-going process? Does it mean the process of Ijma' on new issues or overriding the existing one? Once the issue is clear then we start our discussion with little details.

Induction has strongly shown that it is a retrospective. When the companions had consensus on the Caliphate of Abu Bakr due to his priority, the granting of one-sixth share in the inheritance to the grand mother, the prohibition of sale of food before the buyer has taken possession and all other matters which have been said to have agreed upon, no one from the latter generations has claimed the overriding these matters.

This, however, does not prevent the on-going process. If the latter generations have agreed on a certain issue and it does not change the first issue, then the scholars have agreement that there is on problem in doing so. If, on the other hand, defames the first decision then it will not be accepted, since that will mean that the first Ijma' was not correct. Thus, goes against the Prophetic tradition "My nation will not agree on an error".

Some times we find scholars saying that there is no Ijma' in that particular mas'alah whereas it is known that there was Ijma' in the same mas'alah, isn't that breaking Ijma'? How can that be explained in terms of what has been said above? At times people claim the mas'alah to have been fortified with Ijma' whereas in reality there was no Ijma' on that issue. So if a considerable intellectual elite comes and clarifies that there is no Ijma' on the issue, with evidence off cause, then he is not breaking it. He is just saying the true colour of the matter. With the above notes, one can conclude that Ijma' is a retrospective by nature in the sense that whatever was agreed upon there is no room for any change. On the same time, it is on-going process in terms of 'no closure has taken place that we can not have any Ijma' on new issues'. If new issue arises the scholars must exert themselves in finding what the Islamic rule on that matter is. If all intellectual elites agree on one thing, without overriding the existing one, that becomes Ijma' by definition.

Allah knows best!!!

Yaqoub Yusuf Abdullah, Cape Town. Tuesday, November 15, 2005

Footnotes

[1] Al-Mustasfa vol. 1 p. 173.

[2] Vol. 1, p180.

[3] Sentence in bracket mine.

[4] Al-Shawkan, Irshad al-fuhul, p. 132.

[5] Vol. 3 p. 10.

[6] Vol. 1, p. 175.

[7] Ahmad Hasan, the doctrine of Ijma' in Islam. p.37.

[8] Al-Bukhari, al-Sahih (kitab al-Manakib, hadith no: 3640).

[9] Al-Tirmidhi, Sunan, vol 4, p, 214. hadith no:2166-2167.

[10] Al-Bukhari, al-Sahih (Kitab al-Fitan, hadith no;7054.

[11] Ibn Majah, Sunan, vol. 2 p. 1303 hadith no: 3950.

[12] Wael B. Hallaq. A history of Islamic legal theories. p. 75. Italics mine.

[13] Irshad al-Fuhuli, p.145.

[14] Al-Zuhayli, Usul al-Fiqh al-Islamiyyah, vol. 1 p.551.

[15] Vol. 1, p. 175.

[16] Sentence in brackets mine.