

Legislative Assemblies, Institutions and Practicable

Concept of Ijmaa

Dr.Zahid Shahⁱ

Dr.Habib Elahiⁱⁱ

Abstract

The jurists of Islam are unanimous on the acceptance of Ijmaa as the third source of Islamic law and constitution. There is ample material available on it in the books on Islamic jurisprudence. Although there is unanimity on its acceptance as source of Islamic law and constitution but opinion widely differs on its definition, basic conditions, and exact position in the law making. Its concept is fuzzy by and large. The concept of Ijmaa needs clarity keeping in view the importance of law making in the modern age.

This paper tries to give clear concept of Ijmaa. It explains its kinds, requirements and elements and its place and importance in the contemporary process of law making.

Ijmaa is the product of the struggle exhausted collectively by Islamic jurists. This is one of the principle source of Islamic law and is based on Quran and Sunna. It is in a way a kind of Ijthihad and can be termed as collective Ijthihad. This source of law making can be exercised through parliament or committee on Ijthihad. Its scope can be further widened for the Umma through an international council or congress of Islamic scholars.

Key words: *Ijmaa, Ijthihad, Jurists, Islamic Law, Quran, Sunnah*

Introduction

All the prominent Scholars of Islam agree that Ijma is an important source of Islamic law and Jurisprudence. In this connection there exist a lot of material in the books of Jurisprudence and Principles of Jurisprudence. But it is strange to know that in spite of its importance and deep discussion there is no clear concept about it. There is difference over its definition, authenticity, occurrence and condition. In modern time the more the importance of law making has become, the more it has become obscured.

i Interpreter Provincial Assembly KP

ii Assistant Professor Education Department Hazara University

In this article, an effort would be made to present a clear concept of Ijmaa and its importance and implication in modern ages.

The meaning of the terms “Ijma”

Literally it means determination and concurrence. According to Islamic terminology, it means the concurrence and harmony of mujtahid (learned person of highest degree) and scholar over a question having a base and authenticity¹.

There is a great difference among the Islamic scholar over the definition of Ijma. Imam Shaukani defines it in the following words. Ijma is the name of concurrence and agreement of Mujtahideen over a matter after the death of holy prophe².

According to Imam Ghazali:

“The concurrence of Ummat-e-Muhammade (SAW) over any matter³.”

But Amdi has criticized the above definition on the following three grounds:

- *In this definition the Ummat-e-Muhammadi (SAW) has been considered as “Ijma”. The Ummat-e-Muhammadi (SAW) will remain till the last day (Qiyamat) and it will be unknown that on what matter the Ummah has agreed at specific time.*
- *If it is agreed that Ummah mean, Ummah at a specific time and if there are no Ahl-e-Hal Wal-Aqad (Scholars of the highest degree), the concurrence of common people over a religious matter will not be Ijma.*
- *The concurrence over national and social matters will not be Ijma due to its confinement to religious matters only.*

Al-Amdi defines Ijma as:

“The concurrence of all the Ahli-Hal-Wal-Aqad of the Ummat-e-Muhammadi of any age over a matter⁴.”

Al-Amdi’s definition is close to the above definition. But any how he has added the word “all” (entire) Ahli-Hal-Wal-Aqad. Al-Amdi is right in criticizing the definition of Al-Ghazali that according to him Ijma is the concurrence of Ahli-Hal-Wal-Aqad. It is not the task of common people but of proper people i.e Mujahideen⁵ (Jurists).

Abdul-Qadar Auda defines Ijma in the following words:

“Ijma means the concurrence and harmony of all the Mujahideen of any time after the time of the Holy Prophet (SAW) over the matter of Shariat⁶.”

If Ijma is admitted as a permanent source of law on one side and on other side the definitions and conditions imposed by scholars than Ijma remains a theoretical thing and it become impossible to hold an Ijma on on matter dealing with practice life. But in the result of thinking over the Holy Quran and Sunnah and having a glance at the period of the companion’s fellows of the Holy Prophet (SAW) it is known that Ijma is collective decision of major Mujtahideen and the members of Shura. If the representative forum of the Ummah does Ijma for the whole Ummah, it will be considered for the whole Ummah. If it is done in a country, it will be binding on the people of that country. It is a clear cut concept of Ijma.

The conditions for Ijma:

Ulama have described some conditions which are mentioned in all the definitions and are as under⁷.

1. Ijma is to be held after the age of the Holy Prophet (SAW).
2. Ijma must be based on proper arguments and authenticity
3. One who does Ijma must be a Muslim.
4. One who does Ijma must be an adult and a wise Muslim.
5. He must be Mujahid (Jurists) and not a common person.
6. All the Mujahideen of the time have consensus over it.

Ijma in the time after the Holy Prophet (SAW)

As for as the concept of Ijma, available in the books of the jurisprudence is concerned, there was no need of it during the age of holy prophet as that was the time of revelation and direct guidance from the God. Anyhow, the holy prophet used to get advice from his companion on important matter but as such there was no need for formal Ijma during that time.

Authority for Ijma

Islam is the way of life which is based on arguments and wisdom so Arguments and authenticity is inevitable for Ijma. As only God and prophet are the Law giver so no one has this authority. As far law making through Ijma is concerned it is

important that arguments and proofs must be based on the Holy Quran and Sunnah.

The companions of the Holy Prophet (SAW) had proofs and arguments when they did Ijma on a matter. There was Ijma (Consensus) among the companions of the Holy Prophet (SAW) that grand mother will share inheritance. For this agreement, they adduced proof from the narration by Mughaira Bin Shuaba. Similarly the companions of the Holy Prophet (SAW) agreed that two Muhram women cannot be married to the same person at a time and they deduced their argument from the narration of Abu Hurairah. In case one has no real brother, half paternal brother was considered in place of real brothers. In this case they argued on interpretation by the Holy Prophet (saw)⁸.

In short Ijma can be based on either holy quran or sunnah it is because of this reasons that jurist forbidden marriage with grand mother based on the verse Of holy quran:

“Your mothers a forbidden to you⁹.”

Similarly in case of edible things, their sale is forbidden before they are taken in one’s possession. The jurist have consensus over it and they argued on the basis of the saying of the Holy Prophet (saw). As he has said, “One who purchases an edible thing, it is not permissible to sell it before it is taken in one’s possession¹⁰”.

In short for Ijma, the argument can be adduced from either the Holy Quran or Sunnah customs or precedents etc.

A Wise and Adult Muslim

Ijma is either a kind of Ijtihad or source of Ijtihad and for it a man must be Muslim, wise and adult as mentioned above.. It is a commandment in the Holy Quran:

“Obey Allah, His prophet (SAW) and the men of authority among you¹¹.”

In this verse the Muslim have been ordered to obey the men of authority (Leaders) among them, Authority holders mean responsible and Mujtahideen from Muslims. Similarly wisdom and adulthood is also a condition for Ijma in the light of the Holy Quran and Sunnah¹².

They must be Mujtahideen

One condition for the acceptance of Ijma is must be conducted by Mujtaheden. The Ijma of common and ignorant illiterate people is not acceptable. They can not do the difficult task like legislation. Ijtihad is the responsibility of Mujahideen¹³.

All the Mujtahideen of the time must be agree over it

Most of the Ulama think that all the Ulama must have consensus over the matter about which the Ijma is made none has different view. In this case Ijma is established. Some Ulama says that when some Ulama do Ijma on a matter, it must be followed after their demise that it may be known that none differ in this matter, another condition is added that people must also be agree with the Ulama. Similarly another condition is that all the Ulama should have used the same words in their Ijma and they define it in such a way that all the Mujahideen agree in the some words during their ijtiḥad, it is called Ijma¹⁴.

All these are only ceremonial condition. Accordingly the Ulama have made it impossible by imposing too much condition. The agreement of all jurist and Mujahideen of the time are not a condition based on the Holy Quran and Sunnah. According to the convention of the world majority of the Ulama must have consensus and harmony over it. It will be quite enough in this connection Amin Ahsan Islahi writes:

“Any matter of Ijtihad on which the Mujahideen of the time have consensus or agreement and no mentionable difference is known and it is admitted that there is Ijma on it¹⁵.”

Legitimacy of Ijma (The Holy Quran and Ijma)

Neither in any verse of the Holy Quran nor in the sunnah of the Holy Prophet (Saw) the word “ Ijma “ is mentioned clearly. There was neither any literal conception of Ijma in the age of the Holy Prophet (Saw) nor in the age of the (salf saliḥeen). It has been deducted from the Holy Quran and sunnah in late times.

Iman Shafee has based his argument of Ijma on the verse of Suratun-Nisa which is as under:

“And whoever contradicts and opposes the Messenger (Saw) after the right path has been shown clearly to him and follows other than the believers’ way, we shall keep him in the path he has chosen, and burn himself on Hell. What an evil destination¹⁶.”

In this verse those people are given a threat who give up the way of believers i.e. Ijma. It is evident from it that adopting the way of believers is inevitable on which believers act concurrently. It is very important to adopt that way¹⁷.

The legitimacy of Ijma is evident from another verse to:

“Believers obey Allah the Holy Prophet and those who authority among you. If there exists dissension among you in a matter take it to Allah and his Holy Prophet (Saw), if you really believe in Allah and the last day¹⁸.”

From this verse Ijma has been proved in two ways i.e. The obedience of Allah and the Holy Prophet (Saw) has been ordered along with it the obedience of the persons of authority among you. Ulil-Amr means those persons who have the authority of leading the people which may be legally approved just like in the case of rulers to abide by morality and law (Shariah) and to obey some persons because of their rank and status such as to follow the opinions of Mujahideen. In short the Ijtihad and Ijma of Mujtahideen come under this ambit of above verse¹⁹.

Moreover, it is also ordered that in case of dissension matter should be referred to Allah and His Holy Prophet (SAW). It is quite clear that the consensus will be substitute of the Holy Quran and Sunnah and it does mean Ijma²⁰.

Similarly in Surah-e-Shura, it is said:

“They conduct their affairs by mutual consultation²¹”

When consultation is held in such a manner that all the participants express their opinion freely and a consensus decision is arrived at is called a concurrent decision or agreement and literally this agreement is called Ijma. It is also evident from this verse that it is the responsibility of the men who have either authority or are Mujahideen to make laws keeping in view the time and circumstances regarding matters and issues which are not clearly mentioned in the Holy Quran and sunnah, their solution is sought in light of Holy Quran and sunnah²².

The Sunnah of the Holy Prophet and Ijma

The Ulama have based their argument of Ijma on following tradition of the Holy Prophet (SAW):

“My Ummah will never agree on falsehood”²³”

In this Hadith the Holy Prophet said that Muslim Ummah would never agree on falsehood and they would agree on truth.

“A thing which the Muslim considers it good will also be a near Allah”²⁴.”

It means that the Muslims will entirely act upon truth.

“It is inevitable for you to follow Jamaah”²⁵.”

“The Hand of Allah is on the Jamaah and those who get separation will have no place”²⁶.”

“One who separates himself from Jamaah will go to Hell”²⁷”.

Although these traditions deal with Muslim Ummah and administration of Muslim state and Ijma is not clearly mentioned in it but the Ulama have argued and based the edifice of Ijma on it.

Types of Ijma

Ulama (Jurists) have mentioned many types of Ijma, but any how two kinds of Ijma are described one is called verbal clear Ijma in which Fuqaha have clear agreement concerning a commandment. It is also called real Ijma. The other is called tacit Ijma (consensus). In other words, it means tacit consent of jurists. In this type of Ijma a mufti issues fatwa and other Jurists of his time have information about it but neither have they showed agreement with it nor do they differ with it. The first type of Ijma is of binding nature while the other there are differences among the jurist regarding the latter one²⁸.

Ijma in Recent Times

On the one hand Ulama have admitted Ijma as a source of law and on the other hand they set such conditions which are, if not impossible, are difficult to meet. They prove its legitimacy from the Holy Quran and Sunnah, yet they put conditions that such Ijma was not for the times of the Holy Prophet (SAW) and it is a thing for later times. Then question arises that if it was allowed (legitimized) by the Holy Quran and

Sunnah for later age? If it is the name of legislation, taking decision on consensus and the opinion of Mujatahideen then it is for every age and period. Moreover ulma have only theoretically discussed without sitting any formal institution for it is practical implication neither at government level nor privately. Therefore, it is very difficult for us to ascertain that on what matters there had been Ijma at specific time or otherwise²⁹.

In the period of the companion of the Holy Prophet (SAW) Ijma was considered as simple form implication. They acted upon the Holy Quran and Sunnah collectively and where there were no clear indications than they either individually or at proper forum tried to find out solution in the light of holy quran and sunnah. same was the practice during the life of holy prophet but it was latter that the concept was complicated. And they added that the if the jurist agreed on a matter in certain time than it would law for ever and no one can deviate from it³⁰.

Moreover many conditions we set which have already been discussed. It is not the right concept of Ijma because a thing which gets the position of law must be based on the Holy Quran and Sunnah and its implication may be found in the Holy Quran and Sunnah. The reason is that the Holy Quran and Sunnah, Ijma does not mean as for this purpose verses of the Holy Quran and Ahadith are produced in which it does not mean rightly. On one hand the verse of Shura is produced for argument and on the other hand it is separated from shura (consultation). For this traditional implication of Ijma mostly this Hasith is produced.

“My Ummah will not agree on falsehood³¹.”

But it is dear that the matter is not only of falsehood but time and circumstances. It is possible that in a specific time all the people agree on a law but after wards with the passage of time it _____ a need may arise to to be amended modified the law. Only the Holy Quran and Sunnah are as not to be amended and all other than human Ijtihads either in individual from in social form need to be changed³².

The companions of the Holy Prophet (SAW) were unaware that of the fact that Ijma was as unalterable source of law as quran and sunnah and that Ijma once concluded is for al

the time. That is why the companions of the Holy Prophet (SAW) acted upon a commandment then the men of opinion (Arbab-e-Halwal Aqal) amended it. It means to say that they opined this door because to them the name of the Holy Quran and Sunnah³³.

Parliament (Ijma through Majlas-e-Shura)

If the parliamentarians of an Islamic state consist of Ulema and Mujahideen, the law passed by the parliament will have status of Ijma for the concerned state. If it is not wholly consist of Ulema and Mujtahideen as we see today, than, like that of techno rates, it is possible that there must be a reasonable quota for Ulema and Mujtahideen and a committee consist of these Ulema may continue the task of Ijtihad in the parliament.

There may be another institution like Islamic ideology council or Ijtihadi council or what ever may be the name of it, can decide about a thing whether it is Islamic or un-Islamic and where there are procedure for its implementation. In this context a question arises that such an institution will affect the supremacy of the parliament but here it is pertinent to mention that it is not the question of supremacy of either one institution or other but that of supremacy of Quran and Sunnah. Similarly what is wrong if a committee of experts for law in parliament is arranged and the services of experts outside the parliament are also consulted in this context to prove what is permissible or non-permissible? If the Mujtahideen of a country outside the parliament have consensus on a matter, it may be a code for that country.

Social Affairs of the Muslim Ummah and Ijma

So far we have discussed Ijtihad only with in the contest of state but there some issues relates to whole Muslim Ummah or relation between different Muslim states or it is relation with other non Muslim community or states. Same was different earlier because of geographical location or difficulty involves in means of communication but this is no longer any issue in modern world.

For example, there must be an established organization or secretariat any where in muslim world with branches all over the world and when they consider a question worth the Ijma

than that question may be circulated in all its branches to sought the opinion of different jurist for an early and consolidated reply and when the reply as received weteher unanimous or otherwise but must be based on logic than it may be announced that muslim have agreed collectively and if there is any difference of opinion than it may be sent to the all those who had different opinion because it is just possible that they might change their opinion.

Similarly when the answer comes from all the branches after due deliberation, it will be known that on what thing there is consensus or there is disagreement. Moreover opinions must be received on the point of dissensions. They must be issued in the shape of a magazine in which answer must be produced along with arguments³⁴.

In some matters the afore said organization may also convene seminar or convention representing all branches and a decision arrived may be called as Ijma and may be duly published.

An Ijma verus another Ijma

1. Most Ulama think that once Ijma is held, there is no place for another Ijma because it will abrogated the previous one and the opposition of previous Ijma is prohibited.. Therefore counter Ijma will not be right³⁵.

This school of thought thinks that it will cancel the previous one and the principle of cancellation is confined to the age of the Holy Prophet (SAW). A commandment of Shariah can not be cancelled after him³⁶.

2. The other school of thought is that if the Mujatahideen of a time have a consensus to conduct an Ijma. It will be quite right and the first one will be deemed cancelled. But the condition is that the Mujatahideen of previous Ijma have passed away³⁷.
3. The third opinion is that saying is that a new Ijma can not be conducted in the opposition of the Ijma of the companions of the Holy Prophet (SAW)³⁸.

This condition is confined to the extent of the Ijma of the companions of the Holy Prophet, because after the companions of the Holy Prophet (SAW) it is impossible hol another Ijma As Ijma is conducted through Ijtihad based on

human reason. It is conducted for solving the facing problems. So an Ijma can be conducted after the previous one. There is no proof for the conditions that an Ijma cannot be done after the previous one or the death of all the Mujatahideen of the Ijmal.

The first opinion that the second Ijma is cancellation for the previous or cancellation is confined to the age of the Holy Prophet (SAW) is a very weak argument because there was no traditional concept of Ijma during the revelation of the Holy Quran. It is the production of the later ages and the Holy Quran and Sunnah never explains that there will be no Ijma after the previous one. If there exists a commandment, it was the cancellation of the Holy Quran and Sunnah which is clearly impossible after the Holy Prophet (SAW) and the Holy Quran cannot be cancelled after revelation. Revelation can be cancelled only by revelation. As far legislation and constitution making based on Ijtihad and human reason are concerned, they can be cancelled according to needs, conditions and arguments. It cancellation (Naskh) means that a law, Ijma, or Qias etc cannot cancel the other ones then it will be understood that laws cannot be made. And the doors are closed for law making and constitution making according to the conditions and time. Islam has been completed by Allah. As he has said:

“This day, I have perfected your religion for you”³⁹.

Perfection means those basic principles which have been laid down in the Holy Quran and Sunnah that cannot be amended or abrogated. Beside this, law making can be conducted through Ijtihad using the means like Ijma and Qias.

As far the Ijma of the companions of the Holy Prophet (SAW) is concerned regarding interpretation of holy Quran is concernrd or tradition, it cannot be abrogated because they had directly heard it word by word from the prophet (SAW). As far the Ijma of the later time is concerned, it means the agreement and concurrence of Major Mujatahideen on a question. The word “Jamhoor” is used in place of the Ijma of the companions of the Holy Prophet (SAW) i.e. the consensus of the majority of the Ulema on a question. Similarly it is called the opinion of “Jamhoor”. Now it is clear that if a new Ijma is required according to the new conditions and needs. Ijtihad and Ijma is

important for new circumstances and this Ijma will be practicable as that of the previous one.

Suppose, it is admitted that Ijma can not be conducted in the case of existing or previous one which is social in form. Then question arises that the previous Ijma was conducted for the circumstances and needs of that time and now if the circumstances change and needs of the time change, in such case the previous Ijma can subsist. It is clear that the answer will be in negative and an Ijma can be established in place of the first one. Dr. Hamidullah writes about establishing Ijma in place of the previous one:

“It is a fundamental question that a law giver can change a law or a supreme one or an inferior one can not change it .if Allah has given an order. It can be change by Allah (SAT) similarly the law given by a Prophet can be changed by the some prophet or another prophet can changed it which has been sent by Allah (SWT). A jurist can not change it. So those teachings that lie in the Holy Quran can not be changed by a person. But a jurist can reject the opinion of another one and he can produce his own opinion as I have mentioned in previous lecture that it does not concern with the individual analogical Deduction. It least, it is accepted in Hanafi shool of thought that a new Ijma can abrogate The previous one. Suppose that a consensus is found over a thing should we shall surrender before it (Ijma). But it does not mean that one can not argue against it till the last day. If a person dares with veneration to give his opinion based on arguments and proofs and other jurists also accept this new opinion; it will take the shape of a new Ijma. This new Ijma abrogate the old one. A famous Hanafi Imam Abdul Yasir Albuzadawi has mentioned these principles in his book “Usole fiqah”. Imam Buzdawi has been a Jurist between fourth and fifth century. This is his great success in Islamic law. From this description we conclude that Ijma can not be a cause of trouble for us. If Ijma (consensus) has been conducted on an improper thing and we can not act upon it due to the changing circumstances. It is possible that we arrange to change the Ijma and we change the old consensus by a new one through deduction⁴⁰. ”

In another place the Dr.Hameed Ullah writes:

“If a new Ijma is established in place of the old one, it will be practicable just like the previous one and the previous Ijma can not subsist. It is also the opinion of Imam Razi.

The law made through Ijma is not permanent just like the law come from Allah and his Holy Prophet (SAW) but it is based on human opinion. It can not be acted upon for ever and can be changed by the law made by another person (jurist) ⁴¹.”

From this discussion, it is proved that those matters which are affected by time, place and customs, another Ijma can be conducted. But new consensus is important for the new circumstances so that we can follow and execute the Holy Quran and Sunnah according to the new circumstances.

Conclusion

Ijma (consensus) is the name of collective exposition of law (Ijtihad) of the jurists of Islam. Ijma is an authentic argument which is deducted from the Holy Quran and Sunnah. In one respect, Ijma is a kind of Ijtihad (Exposition of Law) i.e. collective Ijtihad, an other way it is the mean and way through which Ijtihad can be conducted. The parliament or its Ijtihad committee of a state can conduct Ijtihad for the concerned country. For the collective affairs of the Muslim Ummah, Ijma can be conducted through an International organization or conference of Ijtihad. An Ijma (Consensus) can be conducted in place of the precious one.

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