

Ijma: its Types

Parliament: A Valid

Body for Legislation

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(1) Introduction

The will of community is will of Allah (Abdul Razag). Islam has given opportunity to take decision through their consensus. That consensus is called Ijma. Ijma may be defined as absolute consensus of jurists and people over a matter and come to decision. There are many types of Ijma on different basis. Ijma can be on the basis of participants, method of Ijma and evidence of Ijma. Today Parliaments are legislative bodies which function on basis of relative consensus. So, they are valid. Islam, through Ijma, make society democratic, plural, rational, ^{and} progressive. Ijma is absolute consensus and binding on all community.

(2) Defining Ijma

(a) Definitions:

* Safy. ul-Din Alamidi define Ijma as an expression of consensus of generalists by Mujtahid having capacity to loosen and bind and are from community of the prophet. They give consensus over a particular matter that is binding on all.

(*) Abdul Kallam defines Ijma as Ijma is consensus of community on a matter ⁱⁿ over a particular time.

(*) Sir Abdur Rehman defines Ijma as consensus of Jurists over a legal question.

(b) Requirement of Ijma:

(*) Ijma require "absolute consensus of all participants."

(*) For "consensus plurality of Mujtahid is mandatory."

(*) In Ijma transgressors and deviants are allow to participate.

(*) The Decision of Ijma is "binding"

(c) Proof of Ijma:

The Proof of Ijma are less in Quran and more in Hadith. As Quran say O my believers! Obey Allah and obey my messenger and obey also those have authority over you (Al-Nisa 4:59).

Furthermore, on Ijma Hadith is clear and emphasize more. The apostle has said "My community will never agree upon an error." Similarly, the prophet prayed for the community and asked O Allah! never bring my community to a place where they have to decide agree on an error.

Therefore, the Hadith is more explicit and vocal about Ijma than Quran.

(3) Type of Ijma

There are three type of Ijma on basis of Participants, methods and evidences of Ijma. They are explained following.

(a) On the Basis of Participants:

There are four Fiqqah in Islam and every fiqqa have different constituents who shows consensus and decide a matter. Hence there are four types of Ijma

on a basis of Participants.

(i) Ijma ul-Ulama: The Hanifi opines that consensus should be made by scholars (Mujtahid). The rationale behind it they give that scholars are well-versed in religious matters and know much more than people, so, their decision is more credible. Thus, Hanifi supports Ijma ul-Ulama.

(ii) Ijma-ul-Umma: The Shafi are proponents of Ijma (consensus) should be made by people. They believe so because the prophet said my community will never agree on an error. Therefore, in Ijma-ul-Umma the Shafi gives more stress on people than scholars.

(iii) Ijma-ul-Madina: The Madinan are the people of school of thought that Madinan are the most truthful in their their decisions. They do not agree on error. So, consensus should be made by Madinans.

"The traditions say that Madinan expel bad people like furnace expel impurities."

(iv) Ijma - al - Muhammadi: The advocates of this type of Ijma are Maliki who believe that Ijma can take place only by the companion of the prophet (S.A.W).

(b) Type of Ijma on Method:

This type of Ijma is based on the method how consensus is made whether it is made by expression of all Mujtahid or some. Therefore, on basis of Method Ijma is divided into following sub-types.

(i) Explicit Ijma:

This type Ijma is carried out when all the jurists give their opinion. (absolute consensus).

(ii) Tacit Ijma:

When some Mujtahid give their consensus and few remains silent is called Tacit Ijma.

(relative Ijma).

(c) Type of Ijma on basis of evidence

Ijma on basis of evidence means when jurists decide matter uses their logic or precedents.

Because of their approach to decide matter Ijma is categorized.

(4) Parliament as a valid body for consensus and legislation.

Parliament plays important role on legislation. The legislation are made after vote which means by the will of people. The same thing is proposed by Ijma. When there is no specific commandment in Quran and Sunnah, the Mujtahids can go for Ijma. The consensus of parliament would be valid due to following reason.

(a) Legislation through parliament fulfils all the requirement of Ijma.

The 2nd source of Islamic law is Ijma which is consensus by group of people on a particular issue. At the time of prophet (S.A.W) there was no any dedicated place for Ijma, and there was no need for Ijma as the prophet (S.A.W) himself was there for guidance. The predecessor had carried out consensus in Mosques. This means at initial eras of Islam there was no formal place. Now as societies have progressed institutions are made and there is division of

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responsibilities among them. The role of parliament is legislation. The same responsibility which was carried by companions of prophet in the mosque. Therefore, Parliament is a place for consensus development so all the decision would be valid.

(b) Bright Scholars favours Parliament:

Many well known scholars of Islam have favoured Parliament for decision making in parliament and considered its decision as valid.

Allama Iqbal in his book "The Reconstruction of Islam as Religion" has argued that there should be transfer of power of making consensus from limited group of people to ijtahadi legislative assembly (Parliament).

Shah Waliul Allah argues that there is need to take relative consensus from Mujtahids/people than absolute consensus. He says in the contemporary time there is impossible to take universal consensus. Therefore, Parliament is good place to take relative consensus.

(c) Valid Ideas through Democratic norms and Rationality:

Ijma give people to take wise decision on the democratic norms and rationality. One may say that by implying democracy and rationality the decisions are more well informed.

The parliament follows the same mode where public sovereign vote is counted and majority decide rationally on a particular decision.

The parliament serves the democracy and rationality, the both functions of Ijma. Thus the parliament legislation can be valid in the spirit of Ijma.

(d) Legislations are valid as they meet needs of the contemporary time.

The validity of parliamentary legislation is due to it fills the gap between present needs and legislation. The Ijma is needed when there is need of enlightenment on an issue which is not clearly addressed in Quran and Sunnah. Consequently, the need of moment

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is that Mujtahid decide matter. The same is with parliament which legislate new laws to meet the need of present. The older laws may be useless, the new laws are valid and do justice with present.

Conclusion

One may conclude from the above discussion that Ijma is 2nd source of laws after Quran and Sunnah. The Ijma is absolute consensus driven by need to interpretation of Quran and Sunnah or make consensus ^{and} make decision. The function is Ijma is making laws ^{that} are binding, flourishing democratic norms, strengthening rationality and nourishing natural growth of idea. The Ijma can be divided into three types. The type one is Ijma on the basis of Participants, the 2nd is Ijma on basis of method and the 3rd is Ijma on the basis of evidence. In present the parliament acts as an institution for consensus making, therefore its legislations are valid.