

Define Ijma and explain its different kinds. Can legislation by a parliament of an Islamic state be regarded as a valid consensus?

Introduction :

Ijma is an essential component of Islamic jurisprudence. It is also endorsed by Allah in the Quran. Moreover, the Ijma is further divided into two types. Additionally, there are certain rules and regulations regarding Ijma, if these rules are fulfilled by the legislative body of Islamic state, in that case the legislation will be regarded as Ijma.

Definition of Ijma:

Ijma is the third source of Islamic jurisprudence after Quran and Sunnah. It is defined as a agreement among the jurists of the age on a legal rule. Additionally, it is refer as general agreement or consensus among the muslim community about any matter affecting the muslims in the light of Quran and Sunnah.

Concept of Ijma in the light of Quran and Sunnah :

Any concept for the muslims in the contemporary world is not acceptable until it is ordered or explained in the Quran or by the Prophet. In Surah Nisa verse 59 Allah stated that

يا ايها الذين امنوا اطيعوا الله واطيعوا رسوله واطيعوا اولى الامر منكم
"O who you believe! obey Allah and obey the messengers and those in authority from among you". This verse of Quran commands muslims to obey the "ulol-amar" among them. According to companion of Prophet, Abdullah ibn-Abbas, "amar" means the wise scholars. Other commentators consider "amar" for political leaders. Despite of this contradiction, the Quran clarifies the concept of Ijma (consensus), as essential part of Islam.

Formalism of Ijma :

After the dissolution of Caliphate, muslims relied on different jurists and those who are favourable to them they joined their school of thought, therefore, the formalism of Ijma is also different in each school of thought.

Formation of Ijma in Hanafi jurisprudence:

Hanafis consider "Ijma al-ulema" as valid consensus, accordingly, ulema's are expert in Islamic knowledge and jurisprudence. According to them there must of unanimous agreement among scholars over the matter. It must be based upon the teachings of primary sources and can be consider valid practise among early generations.

Ijma under Shafi'i school of thought:

Through agreement of entire community and public at large, this Ijma is known as "Ijma al-ummah". This interpretation of Ijma is derived from the hadith of Prophet that "My community will not agree upon error". This perspective not only includes the ulema but also seeks consensus from whole community.

Ijma according to Maliki school of thought:

According to Maliki's, the agreement of the entire residents of Madina is necessary due to two basis. Firstly, the concept of Ijma born in Madina due to during the selection of Caliph. Further, the Prophet said that "Madina expels bad people like the furnace expels impurities from iron".

Hambali's perspective regarding Ijma:

According to them the Ijma on every matter must be done through the agreement and practice of Prophet's companions, this Ijma is known as "Ijma al-Sahaba". Because they are most knowledgeable and religious and rightly guided on every matter.

Shia's views on Ijma:

The concept of Ijma in Shia is different. It is about the legal matter that arise after the period of Prophet. Such matter can be solve by the consensus among scholars of the era under the light of divine authority. The divine authority among Shia is Prophet and twelve imam's of Shia order.

Types of Ijma :-

Ijma is divided into two types, in view point of method.

i) Al-ijma-al Sarih and al-ijma-al Sukuti:

According to Ijma al-Sarih all the mujtahideem of ijma must express their agreement. Whereas, in Ijma-al Sukuti only

the expression of some of the mujtahideen will amount to consensus. However, except Hanafi's other schools consider Ijma al Sulciti as unappropriate way. According to Imam Ghazali, ijma al sulciti is only acceptable when silent mujtahideen show indication that they understand the nature of matter and their silent is not because of negligence.

Ijma-al Muhassal and Ijma-al Manqul :-

Ijma-al muhassal means the ~~mut~~ mujtahideen gain direct knowledge of the agreement of other knowledgable scholars. On the other hand, Ijma-al manqul means the transmitted agreement by time through continuous reports. If the agreement is reported in a same way in each report then it will be consider valid. It cannot be established by doubtful evidence. Moreover, only the ijma of Prophet's companion comes under the condition of ijma-al Manqul.

Modern jurists and parliamentary legislation of Islamic state as ijma :

According to modern jurists the legislation by the parliament of Islamic state is regarded as the ~~ijma~~. The modern jurists rely

upon the Shaq's logic that majority of muslims can not agree upon error.

Muhammed Iqbal's thought on Parliamentary ijma :

According to the book of Iqbal "reconstruction of Islamic religious thought in Islam" argues that in modern time the ijma can only hold its powerful position through the muslim legislative assembly. Therefore, it can be considered that legislation by the parliament of Islamic state is regarded as ijma.

Criticism over the thoughts of parliamentary ijma :

The criticism arise due to the institutionalization of Ijma. According Mahmud Shaltut, in this way ijma can become the political tool for the powerful factions of the society and there is a lesser chance that such ijma works for the majority of muslims. Moreover, in modern times the Parliamentary body does not meet the conditions of valid ijma.

i) Lack of knowledge:

If it is analyzed around the world in every muslim state that have parliament, the majority parliamentarians are not knowledgeable regarding legal aspects of Islamic law and are not able to resolve issue.

ii) Diversity of opinions in Parliament:

In most of the Islamic parliaments the diverse number of members comes from different school of thoughts and follows different jurisprudence. Along with, the minority religious parliamentarians also exist. If they are excluded, even after that it will be hard to create consensus and provoke civil unrest in the state.

iii) Gap between consensus and application:

The main purpose of parliament is legislation, therefore, if they do ijma on any matter and pass that legislation then it will become law. However, the problem of application arise then because the opposition of that ijma will not follow that rule and the problem of rule of law arises.

Add and highlight references/examples against these arguments

Add more arguments in this part

After analyzing such facts, it can be understood that in modern times the parliamentary legislation can not be regarded as *ijma* because there are lot of conditions need to be fulfilled for that

Conclusions

A 20 marks answer should have around 15 subheadings