

Q: Define Ijma and explain its different kinds. Can legislation by a parliament of an Islamic State be regarded as a valid Consensus?

## INTRODUCTION

Ijma, according to Imam Ghazali, can be defined as, "The agreement of the community of Prophet P.B.U.H on a religious point". For further understanding, it is also defined as the agreement of jurists among the followers of Islam in a particular age, on a question of law. Ijma requires a unanimous agreement of Mujtahidin (jurists qualified to exercise ijma) on any matter intellectual, juridical, customary or linguistic.

## KINDS OF IJMA IN ISLAM

Ijma is primarily classified into four segments, as follows:

### 1. Explicit Consensus - Ijma al-Sarih

This is achieved when all mujtahids openly declare their opinions regarding particular occurrence, either in word or action. It is considered the strongest



and most authoritative form of Ijma wherein, all mujtahidin clearly and openly agree on a ruling.

✓ Example: There is explicit consensus on the obligatory nature of five daily prayers, fasting in Ramadan.

## 2. Tacit Ijma - Ijma al-Sukuti

✓ This occurs when some jurists declare a ruling and others remain silent without objection. The silence is

✓ also considered as a form of approval.

Example: When Caliph Umar R.A fixed the punishment for wine drinking at 80 lashes, some jurists remained silent, which was taken as tacit approval.

## 3. Consensus of Companions - Ijma al-Sahabah

✓ This refers to the consensus reached by the companions after Prophet's death. This remains binding as Sahabah were closest to the Prophet.

✓ Example: The decision to fight tribes that refused to pay Zakat was made under Caliphate of H. Abu Bakr, using Ijma.



#### 4. Universal vs. Regional Ijma

Universal Ijma refers to the agreement of <sup>all</sup> jurists across the Muslim world, while regional or local Ijma is agreement of jurists in a specific region.

Example: ~~Consensus~~ Had There is a universal consensus by jurists on the invalidity of incestuous marriages.

### PARLIAMENT AS A FORM OF MODERN

#### SHURA: PROSPECTS AND CRITIQUES

There is much debate on whether the legislation of the parliament can be considered as a form of consensus. The following highlights some of the main points of contention.

##### 1. Institutionalized Shura

"And those who conduct their affairs by mutual consultation"

(Al Quran, 42:38)

Supporters believe the parliament provides a permanent platform for consultation. It gives muslims a space to voice their concerns and take action, rather than consensus as just a theoretical concept.

Critics view: Most parliamentarians



✓ are politicians rather than trained jurists with basic understanding of Quran and Sunnah. Thus, their decisions lack juristic depth to be considered as Ijma.

## 2. Representation of Ummah

Parliament is representative of the Muslim community they are chosen by the people. Therefore, even in decision where muslims are silent, it can be considered as Tacit Ijma.

Critics view: Ibn Hazm argued

✓ that Ijma must be universal, binding on the entire Ummah.

National parliament, however, is restricted to a region.

## 3. Practical Necessity

✓ "My community will never agree upon a misguidance"  
(Al-Hadith)

In present fragmented world,

✓ Ijma is hard to achieve. There are many contrasting views and issues. Parliament presents a solution for avoiding disunity in muslims and ensuring order.



Critics View: Ijma requires decisions to be binding whereas parliamentary laws are temporal and reversible. Laws are amended and changed regularly, thus cannot be constituted as Ijma.

#### 4. Adaptation to Modern Situations

With the fast paced and changing world, new situations arise for which decisions are required. The parliament provides a forum for ensuring laws are up to date and cater to new dynamics.

Critics View: legislation by Parliament is more political in nature, and often deviates from the roots of Quran and Sunnah. Decisions are politically motivated.

### RECOMMENDATIONS FOR PARLIAMENTARY LEGISLATION TO BE CONSTITUTED AS IJMA

For any legislation to be considered as authentic consensus, the following aspects need to be integrated into the parliamentary system.

- (i) Inclusion of Qualified Mujtahidin. Muslim jurists need to be a part



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if the decision making process and advise on laws.

(ii) Conform to Quran and Sunnah

✓ Laws should be rooted and find their basis in Quran and Sunnah.

(iii) Longevity of Consensus

✓ Legislation needs to be permanent and binding to maintain its status as Ijma.

(iv) Genuine Shura

✓ Decisions must be made through an inclusive and truly consultative process.

## CONCLUSION

answer is well composed and satisfactory  
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9. Define Ijtihad, also highlight its contemporary importance in light of Islamic Fiqh.

## INTRODUCTION

Ijtihad is derived from the root 'j-h-d', meaning to "strive, exert effort".

"And judge between them by what Allah has revealed to you"

-(Al-Quran 4:105)

It is a process performed by mujtahids, and refers to the re-application of Islamic principles according to the changing times. It can also be described as "an attempt to choose, in light of Quran and Sunnah, between two or more differing legal interpretations and deduce any new rulings to address new legal situations", by Dr. Hamidullah.

## ROLE OF Ijtihad In Islamic Fiqh

1. During Era of Companions

After the Prophet P.B.U.H, the companions regularly faced new situations for which decisions needed



to be made. Companions resorted to Ijtihad in light of Quran and Sunnah.

Example: Caliph Umar (RA) suspended the Hadd punishment for theft ~~during~~ a famine, prioritizing public welfare.

It thus served as a tool to uphold objectives of Islamic law.

## 2. Formation of Schools of law

Imams like Abu Hanifah, Al Shafi, ~~Ahmed~~ Ibn Hansal, systematized the methods of Ijtihad.

Example: They developed legal tools like Qiyas (analogy), istisna and Istislah (public interest), which became a part of fiqh.

## 3. Preservation of Legal Continuity

Through Ijtihad, jurists addressed ~~cases~~ not explicitly covered in Quran and Sunnah, helping to fill the gaps. This allowed ~~the~~ prevention of stagnation of the Shariah, and to ensure it remained relevant and in accordance to principles of Islam.



## CONTEMPORARY IMPORTANCE IN LIGHT OF FIQH

The importance of Ijtihad is visible in its use across various segments of life. Some of the areas for its application are listed as follows:

### 1. Economics and Finance

"Allah has permitted trade and forbidden usury"

— (2:275)

Modern Ijtihad has allowed scholars to establish Islamic Banking system, Islamic Bank Bonds (Sukuk) and Insurance (Takaful). This helps counter the west dominated interest based systems.

### 2. Bioethics and Medicine

"... And whoever saves one life - it is as if he had saved mankind entirely"

— (5:32)

Modern issues like organ transplant, IVF treatment and surrogacy are not explicitly dealt with in primary sources of Islam. Through collective Ijtihad, scholars permitted organ donation based on public welfare (Maslahah)



3. Governance and Law Making  
"And those who have conducted their affairs by mutual consultation (Shura)"

-(42:38)

Modern Ijtihad has allowed updation of laws pertaining to areas of civil, commercial and economic law. The parliament and assemblies serve as potential forums for upholding Ijtihad.

#### 4. Technology and Society

New contemporary issues like cyber crime, artificial intelligence and data privacy require guidance under Islam. Fatwas in such areas provide the means for upholding Islamic principles and safe use of such technology.

#### 5. Intellectual and Religious Renewal

Allam Iqbal called Ijtihad the "principle of movement in Islam".

It allows laws and rules to be upgraded in relevance to modern world and extend its application to new areas.



## CHALLENGES IN IMPLEMENTATION OF IJTEHAD

Despite its importance in the contemporary world, Ijtihad faces numerous issues leading to its limited implementation.

(i) Lack of Qualified Mujtahidin  
Ijtihad requires qualified jurists. Certain conditions need to be met e.g. expert in Arabic language, high calibre scholar of Quran, for one to exercise Ijtihad. However, few school scholars meet these requirements today.

(ii) Fragmentation of Muslim World

There is no single authority or institution that unifies Ijma and Ijtihad. This leads to various and often contradictory rulings around the world.

(iii) Politicization of Decisions

Decisions made are usually influenced by political factors and self preserving motives, leading to unsatisfactory rulings and which go against welfare of citizens.



#### (iv) Resistance to Renewal

Conservative scholars refrain from making new decisions or adapting to new circumstances. They adhere strictly to previous rulings, without relevance for modern situations.

#### (v) Complexity of Modern Issues

Modern issues like cryptocurrency and biotechnology require knowledge of different subjects and education of vast matters. This is absent in modern scholars, thus hampering their ability to make decisions on such matters.

### CONCLUSION

"So judge between them by what Allah has revealed"

-(4:105)

For effective Ijtihad, scholars need to work together and be unified. They need to be well versed in modern issues and problems faced by the Muslims. Effective decision making requires effort and honesty from the end of scholars, to ensure fatwas and rulings are in accordance to teachings of Islam.

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