**NUST COLLEGE OF ELECTRICAL AND MECHANICAL ENGINEERING**

**ISLAMIC STUDIES PRESENTATION:**

**GROUP D**

**AL-IJMA IN THE VIEW OF THE MODERN WORLD**

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**AL-IJMA AND ITS VIEWPOINT ACCORDING TO THE MODERN WORLD**

Consensus or agreement. One of four recognized sources of Sunni law. Utilized where the Quran and Sunnah (the first two sources) are silent on a particular issue. There is considerable debate concerning whose opinions are relevant for ijma. Some argue that only the opinions of scholars are relevant. Others contend that ijma includes the consensus of the laity. Most agree that the consensus of Muhammad 's (PBUH) companions, the people of Medina, or the family of the Prophet is authoritative. Once an ijma is established, it serves as a precedent. According to the majority of jurists, a decision based on ijma generally cannot override a statement of the Quran or the Sunnah. The binding force of ijma is based on a hadith in which the Prophet Muhammad is reported to have said, “My community will never agree on an error.” In Twelver Shiism, consensus is neither an infallible sanctioning instrument nor a source of law. Ideas of consultation (shura) and parliamentarianism are used in attempts to formulate a theory of consensus useful in the modern world.

 A student of Islamic law should be aware that Ijma does not enjoy the reverence of the

Quran or the Sunnah of the Prophet (PBUH). Ijma enjoys law making authority in

Islamic Law only when the Holy Quran or the Sunnah do not provide legal answers or,

when the answers are incomplete. It should be noted that the norms stipulated in the Holy

Quran and the Sunnah whilst they are universal in their scope, require further

development to apply to future circumstances. Hence, the jurists in Islamic Law used to

make further laws through consensus.

The question arises, if Islam is a complete code of life then what is the need of ijmah. This was answered by the many problems that raised which were not discussed directly in the Quran and Sunnah. Like the problem, what if one wants to say his prayers on the moon where should he face to. At problems like these the scholars of the time and sit together and discuss the problem and come to a final conclusion that all the ummah has to obey and is mandatory.

Al Ijma in Islam has often been misinterpreted by the Scholars of different school of thoughts, which led to conflicting ideas. The Scholar’s efforts of finding a common ground in terms of beliefs has done more harm than good which has led to fallacious practices which therefore affected the peaceful coexistence of the people. Thus, the gap between the theory and practice of ijma` remains a striking feature of this doctrine. A universal ijma` can only be said to exist, as al-Shafi'i has observed, on the obligatory duties, that is, the five pillars of the faith, and other such matters on which the Qur'an and the Sunnah are unambiguous and decisive. However, the weakness of such an observation becomes evident when one is reminded that ijma` is redundant in the face of a decisive ruling of the Qur'an or the Sunnah. The gap between the theory and practice of Shari'ah law has grown to alarming proportions, and any attempt at prolonging it further will have to be exceedingly persuasive. While the taking of every precaution to safeguard the authentic spirit and natural strength of ijma` is fully justified, this should not necessarily mean total inertia. The main issue in institutionalizing ijma`, as Shaltut has rightly assessed, is that freedom of opinion should be vouchsafed the participants of ijma.

**Ijma as in view from the Religion:**

* **As from the QUR’AN:**

Elsewhere we read in the Quran

**'Will they not meditate on the Quran, or do they have locks on their heart?'**

Muhammad, 47:24

The Qur’an:

**· “O ye who believe! Obey Allah and Obey the Messenger and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger…”** (Al-Nisa’ (4):59)

The word ‘uli al-amr means ulama’ (scholars) of the community. Thus, the agreement of the mujtahids is bound to follow

**· “And when there comes to them information about (public) security or fear, they spread it around.  But if they had referred it back to the Messenger or to those of authority among them, then the ones who (can) draw correct conclusions from it would have known about it”**

(Qur’an, 4: 83).

As from AHADITH:

The binding force of ijma is based on a hadith in which the Prophet Muhammad is reported to have said

**“My community will never agree on an error.”**

 In another Hadith, the Prophet is reported to have said:

**'Strive and endeavor, (ijtihad), for everyone is ordained to accomplish that which he is created for.**

At another incident Prophet Peace Be Upon Him said:

· **“If anything comes to you for decision, decide according to the Book of Allah. If anything comes to you, which is not in the Book of Allah, then look to the Sunnah of the Holy Prophet (PBUH). If anything comes to you which is not in the Sunnah of the Holy Prophet (PBUH), then look to what people unanimously agree upon.”**

It can be clearly seen from the above verses and hadith that Ijma’ is permissible in the

case where the rulings are neither existing in the Qur’an nor in Sunnah. These verses

indicate the authenticity of taking the majority scholarly opinion in the case where no

direct reference to rulings from the Qur’an and Sunnah can be made. Therefore, the

scholars of Usul al Fqih have unanimously agreed on the permissibility and

recognition of Ijma’ as a third source of Shari’ah.

As from SCHOLORS

Ijma’, in broader terms, means the consensus of the jurists of a certain period of the Muslim community over a certain legal matter. A contemporary attempt defines it as a legal concept comprising the consensus of the competent scholars of the *Ummah* with regard to legal questions that are not commented upon in the written sources.

 While avoiding the discussion pertaining to definition, Iqbal like the generality of Muslim jurists declares *Ijma’* as the third source of Islamic law but considers it the *most important legal notion in Islam.*

Abdul Hamid A. Abu Sulayman, "Islamization of Knowledge: A New Approach Toward Reform of Contemporary Knowledge" in the book Islam: Source and Purpose of Knowledge, 93-118 at 104 (U.S.A, 1988)

 He regrets that this important notion remained practically a mere idea and rarely assumed the form of a permanent institution in any Muslim country.

He attributes the non-transformation of this institution into a permanent legislative institution possibly to the political interests of absolute monarchy especially to that of the Umayyad and the Abbasside Caliphs. Besides, refuting the theory of some orientalists that *Ijma’* can repeal Qur’an, he contends that *Ijma’* of companions could only extend or limit the application. of a Qur’anic rule provided the companions were in possession of a Shariah value *(Hukm)* entitling them to such a limitation or extension.

Generally, *Ijma’* of the companions is considered valid and binding with regard to all affairs whether religious or legal. We have even jurists on record who did not accept any other *Ijma’* except the *Ijma’* of the companions. But Iqbal has unique a opinion about this type of *Ijma* In *Reconstruction*, he informs us:

But supposing the companions have unanimously decided a certain point, the further question is whether later generations are bound by their decision... I think it is necessary in this connection to discriminate between a decision relating to a question of fact and the one relating to a question of law. In the former case as, for instance, when the question arose whether the two small *Surahs* known as *Mu’awwidhatan* formed part of the Qur’an or not, and the Companions unanimously decided that they did, we are bound by their decision, obviously because the companions alone were in a position to know the factor. In the latter case the question is one of interpretation only, and I venture to think, on the authority of Karkhi, that later generations are not bound by the decision of the Companions. Says Karkhi: The *Sunnah* of the Companions is binding in matters which cannot be cleared up by *Qiyas*, but .it is not so in matters which can be established by *Qiyas*.

In these lines Iqbal gives his opinion that where there is a consensus of the Companions on a question of act, then such a consensus is unquestionably binding in its entirety on the succeeding generations on the ground that the Companions alone possess the knowledge of those questions and such questions cannot be answered by analogy and individual interpretation. However, where the problem pertains to a question of law, then the *Ijma’* of the Companions is not binding upon future generations for the reason that such questions relate to interpretation which is a right of every competent person in every age.

Ahmad Hassan. The Doctrine of Ijma' in Islam. 241 (Islamabad, 1978)

Before we embark upon analyzing the prospects of the above views, we deem it relevant to quote the way Professor Mohammad Hashim Kamali. reproduces the above passage:

Iqbal draws a distinction between the two functions of *ljma’* namely. Discovering the law and implementing the law. The former function related to the question of facts and the latter relates to - the question of law.

“In the former case as, for instance, when the question arose, whether the two small surahs known as *‘mu’awwazatain’* formed part of the Qur’an or not, and the Companions unanimously decided that they did, we are bound by their decision, obviously because the Companions alone were in a position to know the fact. In the latter case, the question is one of interpretation only, and I venture to think, on the authority of Karkhi, that later generations are not bound by the decision of the companions”.

Mohammad Hashim Kamali, Principles of Islamic Jurisprudence. 240 (Selangor, 1989)

With due respect it is submitted that we fail to locate these two-fold functions of *Ijma’* in Iqbal’s Reconstruction. Iqbal nowhere talks about ‘discovery’ and ‘implementation’ functions of *Ijma’*. He is simply concerned with the binding relevance of *Ijma’* of the Companions and to this self-posed question he answers that an *Ijma’* of Companions relating to question of law is not binding on future generations. By way of analysis, it is pointed out that if the function of *Ijma* is to ‘discover’ the law, then this object can be served not only *vis* a *vis* question of fact but also question of law. Secondly we fail to accept the view that the function of *Ijma’* is to implement law which can be fulfilled regarding question of law only. *Ijma’* is mainly concerned with the interpretation of existing law according to changed circumstances and also with the formulation of new laws in the light of guidance from the Qur’an and the Sunnah according to the exigencies of time. Implementation of laws does not fall within the ambit of Ijma’; it has always been the concern of the executive branch of the state. Perhaps the learned professor has relied for the above passage upon some secondary source in which the author might have put his own construction upon Iqbal’s views.

Regarding the prospects of Iqbal’s thesis that *Ijma’* of the Companions relating to question of laws is not binding on the future generations, it is worth mentioning that the observations of 1 contemporary Muslim jurists and writers seem to be implicitly endorsing Iqbal’s approach. For example, Taha Jabir al ‘Alwani in one of his papers *“Ijtihad”* contends:

**Muslim scholars should realize that time constantly travels forward, making it impossible for situations or events to recur in exactly the same way. It just is not possible today to impose proposals and ideas put forward in Madinah by Imam Malik and his contemporaries fourteen hundred years ago. Similarly, it is not possible to ignore or discount the developments and achievements made during all the intervening generations in the field of human sciences. In economics, for instance, how would it be possible to follow the Madman market mentality in reference to contemporary economic issues. To apply the Madman market model to contemporary financial and economic situations would result in poverty and prevent the *Ummah* from meeting the people’s basic requirements. It will neither be possible to have any dealings with today’s complex world economic systems nor for any Muslim state to build a -strong economy capable of meeting the challenges of the present time. *Muslims can, no doubt, learn from their predecessors by incorporating the latter’s ideas into their own.***

Taha Jabir al 'Alwani, Ijtihad, 24-25 (IIIT, USA, 1993). [Emphasis Laid]

Likewise, while justifying on merits the present price control system, Dato Abdul Hamid A. Abu Sulayman states:

While instituting reform, the factors of time and place have to be given adequate consideration with regard to the influence they might have on the interpretation or amendment of each text within the frame work of the principles of Divine guidance.

From the above details it is apparent that in order to prove that Islam as a living ideology is susceptible to evolution and growth we would have to resort to re-interpretation of the corpus of Islamic legacy and eliminate from its components the inconsistency and irrelevancy which might have crept in its legal and other fabrics. We are not to forget that the current concept of Usul was formulated in an earlier period and in that capacity, it responded to the needs of that age. But the developments, changes and the trends in the realities of Muslim life require a reforming in order to determine the amendments that have to be introduced with regard to the individual and collective life of the Muslims.

Ijma as in view of the Modern World:

Ijtihad is the most important source of Islamic law next to the Quran and the Sunnah. The main difference between ijtihad and the revealed sources of the Shari'ah lies in the fact that ijtihad is a continuous process of development whereas divine revelation and prophetic legislation discontinued upon the demise of the Prophet. In this sense, ijtihad continues to be the main instrument of interpreting the divine message and relating it to the changing conditions of the Muslim community in its aspirations to attain justice, salvation and truth. Since ijtihad derives its validity from divine revelation, its propriety is measured by its harmony with the Quran and the Sunnah. The sources of Islamic law are therefore essentially monolithic, and the commonly accepted division of the roots of jurisprudence into the primary and secondary is somewhat formal rather than real. The essential unity of the Shari'ah lies in the degree of harmony that is achieved between revelation and reason. Ijtihad is the principal instrument of maintaining this harmony. The various sources of Islamic law that feature next to the Quran and the Sunnah are all manifestations of ijtihad, albeit with differences that are largely procedural in character. In this way, consensus of opinion, analogy, juristic preference, considerations of public interest (maslahah), etc., are all interrelated not only under the main heading of ijtihad, but via it to the Quran and the Sunnah.  
  
The subject of ijtihad must be a question of Shari'ah; more specifically, ijtihad is concerned with the practical rules of Shari'ah which usually regulate the conduct of those to whom they apply (i.e. the mukallaf). This would preclude from the scope of ijtihad purely intellectual (`aqli) and customary (urfi) issues, or matters that are perceptible to the senses (hissi) and do not involve the inference of a hukm shar'i from the evidence present in the sources. Thus, ijtihad may not be exercised in regard to such issues as the created ness of the universe, the existence of a Creator, the sending of prophets, and so forth, because there is only one correct view in regard to these matters, and anyone who differs from it is wrong. Similarly, one may not exercise ijtihad on matters such as the obligatory status of the pillars of the faith, or the prohibition of murder, theft, and adultery. For these are evident truths of the Shari'ah which are determined in the explicit statements of the text.

Legal theory in all of its parts derives its validity from the revealed sources. It is partly for this reason and partly for the reason of man's duty to worship his Creator that the practice of ijtihad is a religious duty. The ulema are in agreement that ijtihad is the collective obligation (fard kafa'i) of all qualified jurists in the event where an issue arises but no urgency is encountered over its ruling. The duty remains unfulfilled until it is performed by at least one mujtahid. If a question is addressed to two mujtahids, or to two judges for that matter, and one of them exerts himself to formulate a response, the other is absolved of his duty. But ijtihad becomes a personal obligation (wajib or fard `ayn) of the qualified mujtahid in urgent cases, that is, when there is fear that the cause of justice or truth may be lost if ijtihad is not immediately attempted. This is particularly the case when no other qualified person can be found to attempt ijtihad. With regard to the mujtahid himself, ijtihad is a wajib 'ayni: he must practice ijtihad in order to find the ruling for an issue that affects him personally. This is so because imitation (taqlid) is forbidden to a mujtahid who is capable of deducing the hukm directly from the sources. Should there be no urgency over ijtihad, or in the event where other mujtahids are available, then the duty remains as a fard kafa'i only. Furthermore, ijtihad is recommended (mandub) in all cases where no particular issue has been referred to the mujtahid, or when it is attempted in the absence of an issue by way of theoretical construction at the initiative of the jurist himself. And finally, ijtihad is forbidden (haram) when it contradicts the decisive rules of the Quran, the Sunnah and a definite ijma'.

Conclusion :  
  
The conditions under which ijtihad was formerly practiced by the ulema of the early periods are no longer what they were. For one thing, the prevalence of statutory legislation as the main instrument of government in modern times has led to the imposition of further restrictions on ijtihad. The fact that the law of the land in the majority of Islamic countries has been confined to the statute book, and the parallel development whereby the role of interpreting the statute has also been assigned to the courts of law, has had, all in all, a discouraging effect on ijtihad. The mujtahid is given no recognized status, nor is he required to play a definite role in legislation or the administration of justice in the courts. This is confirmed by the fact that many modern constitutions in Islamic countries are totally silent on ijtihad. It was this total neglect of ijtihad which prompted Iqbal to propose, in his well-known work 'The Reconstruction of Religious Thought in Islam, that the only way to utilize both ijma` and ijtihad (which he refers to as the 'principle of movement') into the fabric of modern government is to institutionalize ijtihad by making it an integral feature of the legislative function of the state  
  
Essentially the same view has been put forward by al-Tamawi, who points out that ijtihad by  
individuals in the manner that was practiced by the fuqaha' of the past is no longer suitable to modern conditions. The revival of ijtihad in our times would necessitate efforts which the government must undertake. Since education is the business and responsibility of modern governments, it should be possible to provide the necessary education and training that a mujtahid would need to possess, and to make attainment to this rank dependent on special qualifications. Al-Tamawi further recommends the setting up of a council of qualified mujtahids to advise in the preparation and approval of statutory law so as to ensure its harmony with Shari'ah principles.  
  
This is, of course, not to say that the traditional forms of learning in the Shari`ah disciplines, or of the practice of ijtihad, are obsolete. On the contrary, the contribution that the ulema and scholars can make, in their individual capacities, to the incessant search for better solutions and more refined alternatives should never be underestimated. It is further hoped that, for its part, government will also play a positive role in preserving the best heritage of the traditional modes of learning, and encourage the ulema to enhance their contribution to law and development. The universities and legal professions in many Islamic countries are currently committed to the training of lawyers and barristers in the modern law stream. To initiate a comprehensive and well-defined programme of education for prospective mujtahids, which would combine training in both the traditional and modern legal disciplines, would not seem to be beyond the combined capabilities of universities and legal professions possessed of long-standing experience in Islamic legal education. Furthermore, in a Shari'ah-oriented government it would seem desirable that the range of selection to senior advisory, educational and judicial posts would include the qualified mujahidin. This would hopefully provide the basis for healthy competition and incentives for high performance among the candidates, and help to create a definite role for them in the various spheres of government.