POSSIBILITY OF CONDUCTING IJMA'I CONSENSUS IN MODERN TIMES

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Abstract

Classical Muslim jurists unanimously had provided rulings for many pre-modern religious and mundane issues of Muslims in the past. However, many other classical issues have not been soved this way. Rather, different opinions of different schools of law regarding them have been continuing until today. On the other hand, different type of new human problems and issues have been emerging everyday from the onset of modern time. Since Islam is considered to be a complete and continuing code of life, it should be able to provide solutions and rulings for these new issues. Likewise, in order to maintain harmony and unity of the society, there should be some continuous ways to reduce differences among Muslim jurists. Among others, ijma'ic consensus is deemed to be a source of law and way to remove such disagreements and to deduct new rulings for the issues mentioned above. The purpose of this paper is to investigate whether ijma'i consensus is possible to be conducted at present, in order to reach this objective, the researcher would critically discuss the arguments of both opponents and supporters of this possibility using classical and modern sources. This paper would be divided into five sections: definition of ijma', arguments of the opponents of conducting ijma' at present, arguments of the supporters of this idea, critical analysis of the arguments of both groups and preferring one opinion over the other, suggestions for how to conduct an ijma 'i consensus and implement its ruling at present.

Keywords: Ijma'I Consensus; Muslim; Religoius

INTRODUCTION

Classical Muslim jurists unanimously had provided rulings for many pre-modern religious and mundane issues of Muslims in the past. However, many other classical issues have not been solved this way. Rather, different opinions of different schools of law regarding them have been continuing until today. On the other hand, different types of new human problems and issues have been emerging everyday from the onset of modern time. Since Islam is considered to be a complete and continuing code of life, it should be able to provide solutions and rulings for these new issues. Likewise, in order to maintain harmony and unity of the society, there should be some continuous ways to

reduce differences among Muslim jurists. Among others, ijma'i consensus is deemed to be a source of law and way to remove such disagreements and to deduct new rulings for the issues mentioned above.

The purpose of this paper is to investigate whether ijma'i consensus is possible to be conducted at present. In order to reach this objective, the researcher would critically discuss the arguments of both opponents and supporters of this possibility using classical and modern sources. This paper would be divided into five sections: definition of ijma', arguments of the opponents of conducting ijma' at present, arguments of the supporters of this idea, critical analysis of the arguments, suggestions for how to conduct an ijma'i consensus and implement its ruling at present.

Definition Of Ijma'

Classical Muslim jurists provided a number of contradicting definitions of ijma'. The researcher mentions here only the definition of the majority of these jurists and during explaining this definition strives to compare it with components of other definitions. Ijma', according to the majority of Muslim jurists, therefore, is: "Consensus or agreement of all mujtahids of Muslim ummah during any particular period of time on a particular Shari'ah ruling, which is subject to ijtihad to be conducted after the death of the Prophet (p.b.u.h.)" (Wahbah al-Zuhayli 1996:1/490).

According to this definition, ijma' is the agreement of mujtahids, who possess all the conditions of ijtihad, such as knowledge of the Qur'an, knowledge of the Sunnah, very good command of Arabic language, sufficient knowledge of Usul al-Fiqh, knowledge of previous ijma'i issues, etc (Al-Zuhayli 1996: 1/496-498). Some jurists like Imam Shaf'i, Ghazali, Abu Bakr al-Baqillani and Amidi, maintain that ijma' is the agreement of the whole ummah. (Al-Zuhayli 1996: 1/499-500). However, it seems to the researcher that these scholars do not mean by "the whole ummah' the entire Muslim community beginning from the time of the Prophet until the end of this world. Rather, they confine it to the whole Muslim community of a certain period of time.

This type of stipulation is not acceptable because it would cause the ijma' to be a theoretical source of Islamic law, which has nothing to do with the emerging issues of the life of contemporary Muslims. This is because it is not possible for all members of the ummah to be united upon every single issue of this kind. Likewise, laymen have no knowledge of deducing rulings of the Shari'ah. According to this stipulation, there would be no use of ijma' except for those old and certain issues that are supported by certain (qat'i) proofs and accepted by all Muslims whether they are laymen or mujtahids. This had already been done in the past and the ummah does not need this type of agreement anymore. Some modern scholars such as Shah Wall Allah, Muhammad Iqbal, etc. argue that modern Muslim jurists do not posses knowledge of contemporary emerging issues.

Therefore, they alone are not capable of doing ijma' in modern times. Hence instead of a group of mujtahids, the legislative body or the parliament of an Islamic country should perform ijma' because the latter possess this type of knowledge. According to this group, some mujtahids should be included among the members of the parliament. This view however, is not feasible for the present situation of Muslim countries where most of the rulers rule the country for their own sake. Agreement of a parliament, therefore, might be influenced by the ideology and interest of the ruler and it would be void of freedom of speech, which is essential to formulate a Shari'ah rule. Nevertheless, the problems that have nothing to do with the rulings of the Shari'ah could be solved by non-mujtahid members of a parliament. Al-Shawkani (Al-Shawkani in al-Zuhayli 1996: 1/501) maintains that an ijma' for the problems of every field, such as fiqh, Usul al-Fiqh, Nahw, etc. should be conducted by the specialists of that field. Al-Zuhayli, a contemporary jurist, supports this view.

Another contemporary jurist, Mustafa al-Zulami also supports this opinion. He has added other fields, such as economics, medicine, agriculture, military, etc. with those mentioned by al-Shawkani (Mustafa Ibrahim al-Zulami 1999: 1/49). This opinion is so general that it excludes the jurists from the business of ijma' for fields other than fiqh and Usul al-Fiqh. This statement should be qualified, i.e., the scientific and other mundane problems that do not require any Shari'ah ruling could be solved by the agreement of the specialists of those fields, which are not considered to be an ijma' because ijma' is done for Shari'ah rulings, not for other aspects. On the other hand, the problems of scientific nature that require rulings of the Shari'ah should not be allowed to be solved solely by the specialists of those fields. Rather, the leadership of ijma' should remain in the hand of the mujtahids, who should consult the specialists before concluding a ruling for a scientific issue.

The above definition also states that all jurists should agree without any exception. According to ibn Jarir al-Tabari, Abu Bakr al-Razi and some others, unanimous agreement of all jurists is not required. Rather, the agreement of the majority is enough for conducting an ijma' (Ibn Jarir al-Tabari & Abu Bakr al-Razi in al-Zuhayli 1996: 1/518). This opinion has some justification because a thorough scrutiny of the past ijma' that were conducted by the companions of the Prophet (p. b. u. h.) prove that many ijma'ic issues were not solved via this method but still they are considered by the ummah as ijma'. However, issues of fara'id were, no doubt agreed by all without exception.

Some jurists like imam Malik maintains that the agreement of only people of Madinah is enough to conduct an ijma'. (Malik ibn Anas in al-Zuhayli 1996: 1/505). He has some justification for this opinion because many early ijma's were based on jurists of Madinah during the period of first three caliphs when most of the jurists remained at this

city. However, after the era of early caliphs, this opinion should not be valid anymore because people of Madinah are considered to be a part of ummah, not the whole ummah. A Hanafi jurist, Qadi Abu Hazim, and Imam Ahmad according to a narration, opine that the agreement of four caliphs is considered an ijma' (Qadi Abu Hazim and Ahmad bin Hanbal in al-Zuhayli 1996: 1/ 512). This opinion is also unacceptable because these caliphs are part of the ummah. Imami Shfites and Zaydiyyah on the other hand, maintain that in order to conduct an ijma', agreement of the family of the Prophet is sufficient. (Al-Zuhayli 1996:1/515). This view is also refutable because this family is also a part of the ummah.

The above definition likewise stipulates that ijma' should be conducted by Muslims. Non-Muslims have nothing to do with ijma' because it is related to rulings of the Shari'ah, which cannot be decided by other than Muslims. (Al-Zuhayli 1996: 1/524) However, the opinions of non-Muslim specialists could be accepted for the aspects that do not require Shari'ah rulings. Likewise, the consensus of the people of other religion should not be applicable for Muslims if it goes against well established confirmed rulings of the Shari'ah. Additionally, consensus of the contemporary international community is not applicable for Muslims if it contradicts certain rulings of the Shari'ah.

For instance, usury is considered to be lawful by this community, which is not acceptable by Muslims because it contradicts the Qur'an and Sunnah. On the other hand, if this consensus has nothing to do with Shari'ah rulings, or it is in conformity with these rulings, Muslims should adhere themselves to it. For instance, the international community forbids drug trafficking. Muslims should adhere to this rule because it is in conformity with the Shari'ah.

According to the definition mentioned above, ijma' should be after the death of the Prophet (p.b.u.h.) because there was no necessity of such agreement during his time. The revelation was enough for him to know the rulings of the Shari'ah. However, Islamic history indicates that the Prophet (p.b.u.h.) had consulted several mundane affairs with his companions and solved them unanimously. Although these instances were supported by the revelation, they could be considered as strong justification to validate ijma'ic consensuses that were made by the companions and could be made by others after them.

Moreover, ijma' is allowed to be conducted in any period of time following the Prophet's death until the end of this world. Some scholars like Da'ud al-Zahiri, Ibn Hazm, and according to a report, Imam Ahmad (Da'ud al-Zahiri, Ibn Hazm & Imam Ahmad in al-Zuhayli 1996: 1/532) maintain that ijma' is allowed to be conducted only by the companions because they were the whole ummah at that time. For them it was feasible to conduct it. This condition is not acceptable because it causes ijma' to be inappropriate for later generations.

Additionally, ijma' should be for a Shari'ah ruling as discussed above. For aspects that do not require Shari'ah ruling do not need a Shar'i ijma'. Rather, simple agreement of people other than jurists is sufficient. Furthermore, this ruling should be subject to ijtihad. If it does not require an ijtihad, rather, the ruling had already been confirmed by the certain texts, no ijma' is needed.

Opponents Of Feasibility Of Conducting Ijma' At Present

Those who are considered to be opponents of the authority of ijma' are also considered to be opponents of conducting ijma' at present. They are Ibrahim al-Nazzam and al-Qashani of Mu'tazilite group, Kharizites, most of the Rafidites, etc. Some scholars who recognizes only the ijma' of the companions of the Prophet (p. b. u. h.), such as scholars of Zahiri school of law, and according to a report, Imam Ahmad, etc. are also considered to be opponents of feasibility of conducting ijma' after the era of the companions, including modern times. Modern scholars, such as Shah Waliullah, Muhammad Iqbal, Muhammad 'Abduh, etc., are considered to be opponents of classical definition of ijma'. Shah Waliullah maintains that a ruling sanctioned by the shura and enforced by the caliph is ijma'.

On the other hand, Muhammad Iqbal and Muhammad 'Abduh opine that the decisions of the elected legislative assembly are ijma' (Shah Wali Allah, Muhammad Iqbal & Muhammad 'Abduh in Ahmad Hasan 1991: 255). Hence for them, ijma', according to its classical definition, is not possible to be conducted in modern times. Arguments of this group are as follows:

There is no prescribed conditions or methods through which a mujtahid could be recognized. Without recognizing mujtahids, it is not possible to conduct ijma' ('Abd al-Karim Zaydan 1993:191).

Following the era of the four caliphs jurists and mujtahids scattered over so diverse cities and countries that it had became impossible for them to be assembled in one place (Zaydan 1993: 191, Al-Zuhayli 1996: 1/569). The same problem might be applicable for the modern times. Without being assembled in one place it is not possible to conduct an ijma'.

If it is possible for them to be assembled in one place, it is not possible for them to be united on a single fixed ruling for a particular issue because they come form different mental, cultural, ideological, circumstantial, geographical, and legal backgrounds. The same problems have been continuing in the modern times.

According to some opponents, even if the mujtahids agree on a single ruling for a certain issue, it is not possible for this ruling to be known to all Muslims all over the world. Ijma', therefore, is not worthy to be conducted (Zaydan 1993: 191).

The point of agreement either could be certain (qat'i), or speculative (zanni). If it is certain, which is supported by certain proofs of the Shari'ah, there is no necessity of ijma' because other certain proofs are enough to deduce the rulings from them. On the other hand, if it is speculative, it would be impossible for mujtahids to agree on its ruling because of their several types of differences (Zaydan 1993: 191, Al-Zuhayli 1996 1/569-570).

Ijma' is considered to be way of the whole believers (sabil al-mu'minin), as it is mentioned in its Qur'anic proof. This notion is only applicable for the era of the companions because at that time they were the mostly believers. Hence, it was possible to conduct ijma' by the whole of them. However, it is not possible for subsequent generations including the modern times after the era of the companions because none of them is considered to be the whole of the believers. Rather, they are a part of them.

Modern scholars argue that presently many different types of social, political, economic, scientific, medical and other problems have arisen in a way that it is not possible for classically educated mujtahids to know all these aspects, and without knowing them, it is not possible for them to do ijtihad, and subsequently it is not possible for them to conduct ijma'. Rather, ijma should be conducted by those who are in charge of the affairs of the community, i.e., the government and its legislative body, among whom some mujtahids could be included.

Proponents Of Feasibility Of Conducting Ijma' At Present

Majority of Muslim jurists maintain that it is possible to conduct ijma' according to its classical definition both during the era of the companions of the Prophet (p. b. u. h.) and after this era including modern times. Their arguments are as follows:

Most of the proponents of feasibility of conducting ijma' at modern times argue that since ijma' was possible to be conducted in the past it should be possible at modern times (Zaydan 1993:191). For instance, the companions of the Prophet (p. b. u. h.) had unanimously agreed to distribute one sixth of the inheritance to grandmother; they had unanimously maintained that marriage with grandmothers and granddaughters is forbidden; they had unanimously agreed upon the caliphate of Abu Bakr, etc. The same type of ijma' on those issues that have been remained disputed is even possible in modern times.

The reason for which the companions of the Prophet (p. b. u. h.) conducted ijma' was to have had many new issues that had rulings neither directly mentioned in the Qur'an nor in the Sunnah of the Prophet. This reason at modern times has become many times stronger than it was during the time of the companions because nowadays unlimited new issues have been arisen and continuing to arise everyday for which direct

rulings are neither prescribed by the Qur'an nor by the ahadith of the Prophet. Therefore, a group ijtihad or ijma' is worthy to be conducted to deduce the rulings for these issues.

Conditions of ijma' stipulated by the majority of the classical jurists through its definition are possible to be achieved at modern times as they were possible to be materialized during the time of the companions.

All of the proofs of the authority of ijma' are suitable to be proofs of the feasibility of conducting it at modern times. This is because the texts of the Qur'an and Sunnah are not confined to a particular age. Rather, they are suitable* for all the ages until the end of this world.

METHOD

This study employed field research or commonly known as Qualitative Field Research. Descriptive Qualitative Field Research described the research as qualitative regarding the object discussed in accordance with the reality that existed in society. The sources of data in this study consisted of primary data and secondary data. The primary data sources were obtained directly at the research location through written questions using questionnaires or verbal using interview method with community members. The research came from writings or documents that discussed research topics. The authors used several methods to collect, including observation, documentation, and interviews. The research instrument was the author himself because the author played an important role in completing the research by acting as executor, planner, analyzing, and interpreting data so that the reporting of research results.

RESULT AND DISCUSSION

The argument of the opponents of the feasibility of conducting ijma' during modern times that conditions of mujtahid are not known is not acceptable because most of the classical and modern books of usul al-fiqh mention these conditions, which are well known within the community of Muslim jurists. However, some new conditions according to the demand of the modern time could be added.

Another arguments of the opponents that mujtahids are scattered in so many countries all over the world that it is not possible for them to be assembled in one place is likewise not acceptable. This is because nowadays the transportation system is so sophisticated that it is possible for any number of jurists and mujtahids from all over the world to be assembled in any place of this world within a period of one or two days. Likewise, if any mujtahid is unable to travel to the place of conducting ijma', he can send his opinion through phones, faxes, telexes, emails, websites, or even he can appear before other mujtahids through teleconferences.

It is true that the agreement on a particular issue is not easy, but it cannot be impossible. Examples of the companions prove that after their disagreement for a while, they were able to be united on rulings for many newly arisen issues of their times. During modern times, the international community has united themselves on many common issues. If they can be united, Muslim mujtahids also should be able to be united on rulings for certain issues of the ummah of today.

Moreover, the argument that it is not possible for an ijma'i ruling to be known to all Muslims is not acceptable because the media of transmitting information is so advanced that within a few minutes or so following making any ijma'ic decision it could reach all Muslims all over the world. This could be done through televisions, radios and Internet websites.

The argument that there would not be much benefit if an ijma' were done for a certain issue, which is established through a certain proof of the Shari'ah is partially sound. This is because in doing ijma' for this type of issues there will be a second proof for them, which is a contemporary ijma'. Additionally, nowadays some ignorant Muslims have tendency to ignore or give no importance to some of those rulings that are established through certain proofs. An instant ijma' for these issues would enhance the position of the Shari'ah regarding them. Likewise, the argument that mujtahids would not be able to agree on the ruling of a speculative issue is not always sound because the implementation of the method of comparison and preference would enable the mujtahids to agree on the rulings of this type of issues. Thus ijma' would make these rulings certain (qat'i) though they were speculative prior to this consensus (Zaydan 1993: 192).

The argument that only companions could do ijma' because they were the only community who were at their time considered to be the whole of the ummah, which cannot be applicable for any other generation is full with flaws. This is because according to this notion, there was not a single moment in the history of Islam when all the companions were present together. For instance, some of them passed away during the era of the Prophet (p. b. u. h.) and some others departed this world before conducting some of ijma'ic rulings of second and third caliphs. However, since companions conducted ijma' through consultation, mujtahids of subsequent generations, including the modern times, should also be allowed to do so.

Fifth: 'Abd al-Wahhab Khallaf, a third contemporary jurist, opines that a central legislative association (jam'iyyah tashri'iyyah) should be established to conduct ijma'. All mujtahids must be members of this association.

We have discussed earlier that the first and third proposals, i.e., ijma' of the specialists of every field and ijma' of the parliament cannot be accepted. The third proposal, i.e., doing ijma' during hajj, is also not suitable because during this time every

body, including participating mujtahids, remains busy with different types of worshipping. Extra burden of ijma' might distract a mujtahid pilgrim from these worships. Additionally, there is a possibility that ijma' of this period might be influenced by the views of Saudi kingdom. There is no big difference between the last two proposals, i.e., creating a central academy or association. Anyone could be suitable for this task because each one has the capacity to organize the procedures of ijma' neutrally. However, many steps should be taken to conduct ijma' through this type of academy or association.

From among the above scholars, Zaydan has provided a brief idea about these steps (Zaydan 1993: 193-194). The researcher elaborates Zaydan's idea adding some important inputs to it. These steps are as follows:

The above central academy or association must be independent from any particular government or political party. This condition is not discussed by Zaydan. Shaltut, a contemporary Egyptian jurist, has mentioned that freedom of speech for participants in ijma' should be there. The researcher, based on this idea, maintains that the above condition is feasible for a contemporary ijma'. The head office of this academy or association should be in a neutral country. This condition is also based on the opinion of Shaltut.

All Muslim governments should participate to finance this academy or organization because the cost could be so high that for one government it would be a burden. Likewise, if a single or some particular governments finance it, this academy or organization could be influenced by them.

All modern facilities, such as computers, fax machines, telephones, teleconference equipments, Internets, printers, etc. should be supplied for this head office. Most of the sources of tafsir, fiqh, usul al-fiqh, dictionaries, in hard form, soft form, including books, journals, articles, fatawa, etc. should be abundantly available in this office.

The conditions of ijtihad should be determined. In addition to classical conditions, a new condition should be added, i.e., a mujtahid should have knowledge of different emerging issues of the contemporary ummah.

The emerging issues that require ijtihad and ijma' should be listed by the specialists of every field. The most urgent ones should be selected first to conduct ijtihad and ijma'.

Mujtahids should consult specialists of scientific, technical and other fields about which the formers don't have sufficient knowledge to judge them.

The members of this academy or association should assemble together according to an organized timetable. Before they will come to this meeting they should be given the new topics to be discussed in it. There should be enough time for them to do their own ijtihad at their homes prior to attend this meeting. During the meeting the proposed

topics should be discussed freely. All different views should be tabled for judging. The strongest opinion should be accepted by the assembly.

Once these members of the academy or organization reach an agreement on the ruling of a particular issue, the ijma' will be accomplished for it. This ruling of ijma' should be published through the publishing media of this academy or organization so that it will be known to other scholars all over the world.

This ruling of ijma' should be binding for these mujtahids and all other Muslims all over the world including all Muslim governments. However, without having a central powerful Islamic government many ijma'c decisions might not be able to be implanted. In that case regional countries or even a local government, if willing, should implement this ruling.

If this ruling is based on a sanad of the Qur'an or Sunnah, the subsequent generations will have no authority to change it. However, if it is based on a public interest, once this interest changes, the ruling also could be changed via another ijtihad and ijma". (Al-Zuhayli 1996: 21 973-975). If the mujtahids are unable to agree on a ruling, rather, they have two opinions, i.e., the opinion of the majority and the opinion of the minority, the former opinion still will be binding for the Muslims. But the subsequent mujtahids will have the right to chose the view of minority, if they feel that that is the most appropriate ruling.

CONCLUSION

This research paper concludes that the definition of the majority of the classical jurists about ijma' is sound and appropriate to be followed. According to this definition and some Qur'anic verses whose meaning is certain (qat'i), the researcher maintains that conducting ijma' during modern times is not only feasible and allowed, rather, it is obligatory for those issues for which there is no other way except this ijma' is left for deducing rulings of the Shari'ah.

The suitable method of doing this ijma' is to establish a central and neutral fiqh academy or association in a neutral country, to which all mujtahids of all Muslim countries of the world without exception should be affiliated as its members, who would assemble together in its headquarters and thoroughly and freely discuss rulings of the issues that require such rulings, and finally they would arrive at combined and united views regarding these rulings. This must be considered a valid ijma'ic consensus, which must be followed and implemented by all individual Muslims and their governments all over the world.

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