

Ijma'

(Consensus of Legal Opinion)

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Definition

- Literal meaning:
 - determination, resolution and agreement upon something.
- Technical meaning:
 - “the agreement of the mujtahids (jurists) from among community of Muhammad (peace be upon him) after his death in a certain period of time upon a rule of Islamic law.”

Conditions for the validity of ijma'

1. The agreement must take place among mujtahids. Mujtahid is a person who is qualified to exercise ijtihad.
2. The agreement must be unanimous.
3. The mujtahids must belong to the Islamic community.
4. The agreement of mujtahids must be held after the death of Allah's Messenger (peace be upon him).

Conditions continue...

5. The agreement must be among the mujtahids of one period, even though some mujtahids of subsequent periods may differ from them.
6. The agreement should be held on a rule of Islamic law (in legal matter).
7. The mujtahids should have relied upon a sanad for deriving their opinion.

Sanad is the evidence (proof) upon which the mujtahids rely on, for arriving upon an agreement.

Types of Ijma'

There are two types of ijma':

1) Explicit Ijma' (ijma' sarih):

“one in which the legal opinions of all the mujtahids of one period converge in relation to legal issue, and each one of them states his opinion explicitly.”

- This is realized sometimes by their meeting in one place and examining an issue in question and finally they express a unanimous opinion.
- It may also takes place when an issue occurred and every mujtahids give the same legal opinion.

Type of Ijma' continue...

2) Silent or tacit ijma' (ijma' sukuti):

- It takes place when some mujtahid, one or more, give a legal opinion with regard to specific rule about a particular legal issue, then the rest of them are informed of this opinion and they keep silent and they neither acknowledge it nor object to it.

Position of Ijma' as a Source of Islamic Law

Position of express ijma'

- The majority of Muslim jurists, particularly the jurists of four well-known schools of law, are in agreement that express ijma' is an authoritative source of Islamic law.
- It is incumbent on the Muslim to follow the legal rule of Islamic law that derived from ijma' as similar to the rule established by the text of the Qur'an and the Sunnah.
- The legal rule based on ijma' is definitive and it is not permitted to oppose it.
- In addition, the mujtahids are not allowed to exercise ijtihad on the legal issue that has been settled through ijma'.

Proof and Justification of Ijma' as a Source of Islamic Law

It is established by the Qur'an and the Sunnah.

- 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.

Proof and Justification continue...

- The Sunnah;
There are many Sunnahs indicated that the Muslim community is infallible in their agreement.
Although each of this Sunnah is probable if it stands independently but collectively they are definitive and convey the same idea. This make adherence to ijma' is obligatory on the Muslims.
- “My community will not agree on mistake.”
- “My people will not agree on an error”
- I prayed to Allah, the Exalted, that my community may not agree on error, and He gave it to me.”
- “Allah’s hand is over the community”

The position of silent ijma'

- The Muslim jurists have different of opinion regarding the position of silent ijma'.

1-The first view is the view of Imam Shafi'i and the Malikis. They holds that the silent ijma' is not considered to be ijma' nor a probable proof.

The argument:

- Silence cannot be considered as consent to the opinion expressed by others. Since no statement can be attributed to a silent person.
- Possibly he might have kept his silent due to respect for the one who expressed the opinion, for fear of that person, or he could not form his opinion about that problem and so on.
- Silence, therefore, cannot be considered as an evidence of agreement.

Continue...

2. The second view, majority of the Hanafi jurists and some of the Hanbali jurists, maintains that silent ijama' is an ijma' like an explicit ijma'. It is legally binding and definitive source.
- The argument is that silence is an evidence of consent if there is no any circumstantial evidence that indicated otherwise, and if there is no any constraint to express the opinion.
 - It is improbable that the jurists abstain from pronouncing a correct rule of Islamic law.

Continue...

- The third group is the opinion of some jurists of the Hanafi and Shafi'i. They hold that silent ijma' is not ijma' but it is a probable proof.
- The argument of this view is that ijma' is the agreement of all mujtahids, but silent ijma' does not fulfill this condition. However, it is considered as a proof because the opinion expressed by some jurists is not opposed by anyone.

Basis of ijma' (sanad al-ijma')

- The legal theorists hold that there must be some proof to which the mujtahis refer to in their agreement.
- They are in agreement that the Qur'an and the Sunnah can be a proof for ijma'.

E.g. of ijma' based on the Qur'an;

The prohibition of marriage with grandmother and granddaughter. This ijma' is relied on the verse "Prohibited to you (for marriage) your mothers, daughters..." (al-Nisa'(4):23).

The jurists hold that the meaning of mother is an origin and daughter is a branch.

Continue...

E.g. of ijma' based on the Sunnah.

Ijma' on the portion of grandmother in inheritance is one-sixth. This ijma' is based on the Sunnah where the Messenger awarded one-sixth to the grandmother.

- However, the jurists have different of opinion regarding to other proof like qiyas and public interest (*maslahah*).