

SECONDARY SOURCE: *IJMA'*

There are several secondary sources of evidence or tools for *Ijtihad* (juristic reasoning and deduction of rulings). One is *Ijma'*: a consensus of opinion. This consensus could mean, to various scholars, either unanimous or majority opinion.¹

The majority of scholars view *ijma'* as a “rational proof” and the third source of Islamic law after the Qur'an and Sunnah when there is an absence of any textual evidence.² If *ijma'* is resorted to as a third independent authoritative source of legislation and only in the absence of clear textual evidence from the Qur'an or Sunnah, then such an *ijma'* must have been arrived at by *ijtihād*, hence its description as a “rational proof” and described by some scholars as consensus of collective *ijtihād* (*ijtihād jama'iy*).³ There is safety in numbers! However, an *ijma'* or a consensus that is arrived at by the collective *ijtihād* of scholars in a particular context and which is established based on secondary sources of Shari'ah such as local custom (*'Urf*) or “public interest” (*Maslahah*), etc. is naturally bound to change as the customs, priorities and interests of the communities concerned also evolve and change.⁴ This calls for serious caution in blindly holding on to a conclusion based on *ijma'* but without understanding the nature of the evidence for it and how such a consensus was arrived at.⁵

If all of the distinguished jurists (*mujtahidun*) happened to arrive at one particular ruling on a certain issue, this agreement was referred to as *ijma'* (consensus). But as this happened only rarely, such distinguished jurists as Imam Ahmad ibn Hanbal believed that *ijma'* was feasible only

¹ Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation*, OUP, Oxford, 2009, p.361; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, London, 2008, p.109-112

² Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008, p.90

³ Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999, p.97-99

⁴ See Yusuf al-Qaradawi, *Al-Ijtihad fi al-Shari'ah al-Islamiyyah*, Dar al-Qalam for Publishing and Distributing, Kuwait, 1996, p.26

⁵ For further reading on Collective Ijtihad, please see: Ahmad al-Raisuni, *al-Ijtihad al-Jama'i*; Sha'ban Muhammad Ismail, *Al-Ijtihad al-jama'i Wa Ahmiyyatuhu fi Muwajahah Mushkilat al-'Asr*; Muhammad Taqiyy al-Uthmani, *al-Ijtihad al-Jama'i*; Islami (all paper presentations at the conference of al-Majma'al-Fiqh al-Islami, Rabitah al-Álam al-Islami, Mecca, date 31, July, 2008)

in matters for which specific evidence is explicit in the Qur'an or the Prophet's sunnah.⁶ According to this view, the only *ijma'* likely to take place was the *ijma'* held by a particular legal school,⁷ or group of people,⁸ or *ijma'* confined to particular localities.⁹

Scholars therefore, differ on the definition, the feasibility or way of determining and ascertaining how a "consensus" is reached, the level of certainty it gives, how it was to be used, its authority and binding nature, etc.¹⁰ It is partly due to their concern over the feasibility of *ijma'* that according to Imam Ahmad ibn Hanbal, *ijma'* refers to the consensus of the Companions alone. Imam Malik on the other hand confines *ijma'* to that of the people of Madinah.¹¹ According to the Shafi' jurist Imam al-Haramayn al-Juwayni, *ijma'* is the agreement by the jurists of a generation on a case of Sacred Law, and it is binding upon the next generation.¹²

So, despite the great many differences over the very definition of *ijma'* (consensus), as previously explained, many past and present jurists considered it "an evidence as certain as the script" (*dalilun qat'iyyun kal-nass*), "an evidence constructed by The Legislator" (*dalilun nasabah al-Shari'*), and even counted its rejectors amongst "infidels" (*jahdi al-ijma'l kafir*).¹³ This effectively

⁶ It is reported that Imam Ahmad said: "It is no more than a lie for any man to claim the existence of *ijma'*. Whoever claims *ijma'* is telling lie." See Muhammad ibn 'Ali al-Shawkani, *Irshad al-Fuhul ila Tahqiq al-îaqq min 'Ilm al-Usul*, ed. Muhammad Hasan, Dar al-Kutub al-'Ilmiyah, Beirut, 1999, p.64; Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* al-Maktabat al-Tijariyah, Cairo, 1374, vol.1 p.30. Among recent scholars who held that classical *ijma'* is not feasible in modern times are al-Shakhyh al-Khudari Abu Zuhrah and Abd al-Wahhab Khallaf. See al-Zuhayli, *Usul al-Fiqh al-Islami*, vol.1, p.578-81.

⁷ This kind of *ijma'* is often cited in classical book of fiqh with the following citation "That on which our associates (*ashabuna*) have agreed and disagreed." For instance, see 'Umar ibn 'Abd al-'Aziz al-Husam al-Shahid Ibn Maza, *Sharh Adab al-Qadi*, ed. Abu al-Wafa' al-Afghani and Muhammad al-Hashimi, Dar al-Kutub al-'Ilmiyah, Beirut, 1994, p.4-5. Cited in Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* Cambridge University Press, Cambridge, UK, 2001, p.80.

⁸ Such as "*ijma' al-shaykhayn*", "*ijma' al-khulafa' al-rashidin*", or "*ijma' al-'itrah*".

⁹ Such as "*ijma' ahl al-Madinah*" and "*ijma' 'ulama' al-Kufah*". See al-Zuhayli, *Usul al-Fiqh al-Islami*, vol.1, p.505, 512-16; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, Cambridge University Press, Cambridge, 1997, p.20.

¹⁰ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, London, 2008, p.109-112; Mohammad Omar Farooq, *Towards Our Reformation: From Legalism to Value Oriented Islamic Law and Jurisprudence*, IIIT, London, 2011, p.141-167; Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.130.

¹¹ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p.169

¹² Mahmud Adam, *Introductory Studies in Usul al-Fiqh: An Annotated Translation of Imam Al-Haramayn's Waraaqat*, The Imam Shafi'i Bookstore, London, 2014, p.28.

¹³ Refer to, for example: al-Haj, *Al-Taqrir*, Vol. 3, p.158, Jalal al-Din al-Suyuti, *Al-Dur Al-Manthur* (Beirut: Dar al-Fikr, 1993), Vol. 3, p.86. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.193.

has resulted in blurring the lines and levels of authority between the position of Allah and His Messenger on the one hand, and that of the “consensus” of others.¹⁴

According to some scholars, a ruling of *ijma'* may have reached us by continuous multiple testimony (*tawatur*) in which case they would regard it as definitely proven (*qat'i al-thubut*) and similar to the Maliki “*Amal* of Medina” (to be discussed in Lesson 14).¹⁵ But when *ijma'* is transmitted through solitary reports, its authenticity would be open to doubt and therefore of only presumptive authority (*zanni al-thubut*).¹⁶ Therefore it is not sufficient in the view of these scholars that there exists a claim of *ijma'* (of whatever definition and feasibility) on an issue, it is also has to be proven (as with hadith narrations) that such a claim is definitely authentic and corroborated with multiple independent claims.

Some scholars also regard as *ijma'* the consensus on issues upon which there is no known dissent concerning the meaning or implication (*dilalah*) of the text of the Qur'an or *Sunnah*.¹⁷ Consequently, the determination of whether a particular text is explicitly clear (*qat'i*) or speculative (*zanni*) in its meaning and implication (*dilalah*) is determined by the existence of *ijma'* or absence of recognized dissent (*khilaf*). *Ijma'* in this sense therefore has the benefit of giving greater certainty and authority to an interpretation of the text and the rulings or verdicts (*fatwa*) arrived at. Others would argue that this so-called “*ijma'*” is merely complete agreement on the interpretation of an existing text of the Qur'an or *Sunnah*, and not an independent source of jurisprudence or law when the text is silent or ambiguous, which real *Ijma'* is described as by the majority of its proponents. According to Ibn Hazm's, “matters of consensus are either explicitly mentioned in the Qur'an or most famous hadith, or otherwise, matters of difference of opinion over some interpretation or *ahad* narration. In the first case, the verses or hadith do not need consensus for evidence, since they are primary evidences in their own right. In the second case,

¹⁴ Abou El-Fadl, *Speaking in God's Name*, p.275. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.194.

¹⁵ The word “Madinah” is spelt differently by various authors – Medina, Madeenah, Medinah, etc.

¹⁶ See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p.21

¹⁷ Muhammad bin Ibrahim bin al-Mundhir, *Al-Ijma'*, Dar al-Muslim, 1425 AH

consensus is untruly claimed.” He argued: “consensus could never be proven, even if it were to be restricted to the companions, whose number was in the thousands.”¹⁸

Like the word Sunnah (as we shall see in Lessons 28 and 29), *Ijma'* constitutes a loaded, or “complex term”. Attention must therefore be paid to how particular jurists and their schools defined and used it. Moreover the concept of consensus in Islamic legal history must always be juxtaposed against the phenomenon of dissent, which served as the index by which jurists generally determined the contents of their general agreement. *Ijma'* could be regarded as the absence of known or recognized dissent.¹⁹

The authority of *ijma'* is often derived from the following evidence:

And anyone who splits off from the Messenger after the guidance has become clear to him and follows a way other than that of the believers, We shall leave him in the path he has chosen, and land him in Hell. What an evil refuge! (Qur'an 4:115)

...If they would only refer it to the Messenger and those among them who hold authority, those of them who seek its meaning would have found it out from them. (Qur'an 4:83)

O you who believe, obey Allah and obey the Messenger, and those placed in authority over you”. (Qur'an 4:59)

And among those We created is a community which guides by truth and thereby establishes justice (Qur'an 7:181)

Ali was reported to have said that, “*I said, O Messenger of Allah; an issue might arise (after you) which has no justification from Qur'an, and which no tradition from you has come to prove.*” The prophet (ﷺ) said: “*Gather on it (i.e. the new issue) the scholars or*

¹⁸ Ibn Hazm, *Al-Ihkam*, Vol. 8, p.103. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.112

¹⁹ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.130.

he said the true worshippers among the believers, and mutually consult among yourselves, and do not base your judgment of it on one man's opinions".²⁰

Other hadith include: *"My Ummah will not agree on error."²¹ Allah's hand is with community (jama'ah)"²²; "Those who seek the joy of residing in Paradise will follow the community of Muslims. For Satan can chase an individual, but he stands farther away from two people"²³; "The hand of God is with the community, and (its safety) is not endangered by isolated oppositions"²⁴; "Whoever leaves the community or separates himself from it by the length of a handspan is breaking his bond with Islam"²⁵; "Whoever separates himself from the community and dies, dies the death of (People of) Ignorance (jahiliyyah)"²⁶; Abdullah Bin Masud said: "Whatever the Muslims consider good is good in the eye of Allah, and whatever they consider evil is evil in the eyes of Allah".²⁷*

Having discussed the evidence in the *ahadith* relating to *ijma'*, Ahmad Hasan observes that they are inconclusive and do not amount to authoritative textual evidence for *Ijma'*. "All of them emphasise unity and integration. Some of them are predictive and others circumstantial: They may mean *ijma'*, or something else.' Hence the argument that they provide the authority for *ijma'*

²⁰ Jalal al-Din al-Suyuti, *Jami'i al-Ahadith*, Hadith no. 34212. Some Hadith scholars regard this hadith as "weak" (*da'if*). See Al-Ayni, *Umdat al-Qari: Sharh Sahih al-Bukhari*, Al-Maktabah al-Shamila, version 3.13, vol. 24, p.220

²¹ Al-Tirmidhi, no. 2167; Ibn Majah, no. 3950; and Abu Dawud, no. 4253 Albani said this hadith is *Hasan* ("good") in *Silsilat al-Ahadith al-Sahihah*, no. 1331

²² Al-Tirmidhi, no. 2166

²³ *Al-Risalah* of Imam Shafi'i, p.471 – 476; *Al-Umm*, Vol. VII, p.191- 193; *Al-Mustadrak*, vol.1, p.114 - Cited in Ahmad Hassan, *Doctrine of Ijma' in Islam*, Kitab Bhavan, New Delhi, 2nd Ed., 2003, p.40.

²⁴ Cited in Ahmad Hassan, *Doctrine of Ijma' in Islam*, Kitab Bhavan, New Delhi, 2nd Ed., 2003, p.40.

²⁵ Abubakar Ahmad bin Husain bin Ali Al-Baihaqi, *Al-Sunan Al-Kubra*, no. 16391, Maktab Dar al-Baz, Makkah, 1414 AH; *Sunan* Abu Dawud, no. 4760. Albani Said it is authentic in *Sahih al-Jamiu al-Saghir*, no. 6410.

²⁶ *Sunan* Abu Dawud, no. 4760; *Sunan* al-Tirmidhi, no. 2863; *Musnad* Imam Ahmad, no. 21460; Abu Abdullah Al-Hakim, *Al-Mustadrak*, no. 259, 408; Abu Nua'im Ahmad bin Abdullahi Al-Asbahani, *Hilyat al-Awliya*, Dar al-Kitab al-Arabi, Beirut vol. 9, p.58; Abubakar Ahmad bin Husain Al-Baihaqi, *Shu'ab al-Iman*, Dar al-Kutub al-Ilmiyyah, Beirut, 1410 AH, no. 7495 and in *Al-Sunan Al-Kubra*, no. 16391, Maktaba Dar al-Baz, Makkah, 1414 AH; Abu al-Qasim Sulaiman bin Ahmad Al-Maharani, *Al-Ma'am al-Awsat*, Dar al-Haramayn, Cairo, 1415 AH, no. 3405; Al-Albani authenticated the hadith in *Tahrim Alatal-Tarb*, p.135, and in *Silsilat al-Ahadith al-Sahihah*, no. 984.

²⁷ See comments of various traditionists (Muhaddithun) on this saying in the annotations of Al-Shaybani's *Al-Muwatta* by Abd al-Hayy, p.112 Abu Abdullah Al-Hakim, *Al-Mustadrak*, no. 4465. Dar al-Kutub al-Ilmiyyah, Beirut, no.1411 AH; Abu al-Qasim Sulaiman bin Ahmad Al-Tabarani, *Al-Mu'jam al-Awsat*, Dar al-Haramayn, Cairo, 1415 AH, no. 3602; *Musnad* Imam Ahmad, no. 3600; Abdurahman Al-Sakhawi, *Al-Maqasid al-Hasana*, no. 959.

is 'definitely subjective'. The same author elaborates that: "There was no idea of *ijma'* as a doctrine of jurisprudence in the early period; The jurists could not determine a definite meaning for '*ummah*' or *Jama'ah* ; and *Ahadith* which convey a general meaning should not be restricted to a particular point of view." ²⁸

According to Kamali however, notwithstanding the doubts and uncertainties in the texts (*nusus*) used to give authority to *Ijma'*, "the majority of ulema have concluded that the consensus of all the *mujtahidun* on a particular ruling is a sure indication that the word of truth has prevailed over their differences; that it is due to the strength of that truth that they have reached a consensus. This rational argument in support of *ijma'* has been further advanced to the effect that consensus upon a *shar'i* ruling is bound to be founded on sound *ijtihad*. In exercising *ijtihad*, the *mujtahid* is normally guided by certain rules and guidelines. *Ijtihad* often consists of an interpretation of the text (*nass*), or of a rational extension of its ruling. Even in the absence of a *nass*, *ijtihad* still observes both the letter and spirit of the sources which the *mujtahid* has mastered through his general knowledge. Since *ijtihad* is founded on sound authority in the first place, the unanimous agreement of all the *mujtahidun* on a particular ruling indicates that there is clear authority in the *Shari'ah* to sustain their consensus. In the event of this authority being weak or speculative, we can only expect disagreement (*ikhtilaf*), which would automatically preclude consensus. *Ijma'* in other words, accounts for its own authority."²⁹

Consequently, while there is a general consensus in principle on the validity and authority of *Ijma'*, it is when it is to be demonstrated in practise on a specific case that differences of definitions and perspectives on *Ijma'* begin to become clearer. It has therefore been argued by some that in view of the differences over the concept of *Ijma'*, that it be viewed not strictly as a "source of law", but more as a mechanism of consultation or "multiple participant decision-making" by key competent stakeholders.³⁰

²⁸ Ahmad Hasan, *The Doctrine of Ijma*, p.59-60, cited in Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p.168

²⁹ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p.168.

³⁰ Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.163.

Examples of issues on which some have claimed there is an *ijma'* include the opinion that intentional laughter during *Salat* invalidates the *Salat*;³¹ that intentionally missed prayers must be made up; that a woman's leadership is prohibited; the punishment for leaving Islam (apostasy) is fixed (*hadd*) capital punishment; that the pronouncement of *talaq* (divorce) three times at one sitting is valid as terminal; and that slaughtering an animal without mentioning Allah's name is unlawful.³²

It should be noted that, despite the claims by some that an *ijma'* exists on these issues, a number of classical jurists have in fact differed on these topics. The claimed *ijma'* on these might therefore simply have meant "consensus due to unknown or unrecognized dissent".³³

As Auda notes, readers familiar with traditional *fiqh* literature know that an *ijma'* is often claimed by some, in rulings of clear difference of opinion, in order to sanction one opinion or the other. This has the effect of monopolising *fatwa*-making.³⁴

Another challenge with the concept of *ijma'* among scholars of the past, is that it is unfortunately often used by some as proof or supportive evidence for a particular position – especially when related to social, political or economic issues - without due regard to the obvious historical differences in their underlying circumstances. This is effectively using an *ijma'* out of its proper context. This use (or misuse!) of *ijma'* often hinders research by such scholars and prevents many from addressing various issues from a contemporary and realistic perspective. This in turn contributes to "inflexibility" in Islamic law, in terms of creative responses to new circumstances and questions based on original analyses of primary texts.³⁵ This is how *ijma'* has sometimes been used to keep the so-called "doors of *ijtihad*" closed on some issues.

³¹ Muhammad ibn Ibrahim ibn al-Mundhir, *Al-Ijma'*, Dar al-Muslim, 1425 AH, p.38

³² Mohammad Omar Farooq, *Towards Our Reformation: From Legalism to Value Oriented Islamic Law and Jurisprudence*, IIIT, London, 2011, p.144-147.

³³ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.130.

³⁴ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.193-194.

³⁵ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.165-166.

DISCUSSION QUESTIONS:

1. What is meant by *Ijma'* and why is it regarded as a useful secondary source of *Shari'ah*?
2. What type of *ijma'* do scholars disagree on, if any?
3. Give at least 3 examples of textual evidence used in justifying the authority of *ijma'*.
4. Why do some scholars question the credibility of any textual support for the *ijma'*?
5. Why do you think some scholars (such as IbnTaimiyyah) would regard *ijma'* as a form of *ijtihad*, or consensus of collective *ijtihad* (*al-ijtihad al-jama'i*)?
6. Give examples of issues on which there is genuine consensus (*ijma'*) among all scholars and give reasons why such a consensus would be regarded as an example of *ijma'*.