IJMĀ‘ (Consensus of Opinion) in the Shaping of Islamic Law: A Comparative View of Classical Jurists

Labeeb Bsoul

Department of Arabic and Islamic Studies, Khalifa University, Abu Dhabi, United Arab Emirates

Abstract: Despite the fact that ījmā‘ or consensus is considered as one of the four most authoritative sources of Islamic law/Shari‘a according to the Islamic legal orthodoxy, it is still surrounded with the extensive amount of scholarly interpretations and disagreements. Historically however, there has been serious disagreement among scholars regarding the functional use of ījmā‘. Today, the issue of ījmā‘ still presents a controversial topic among Muslim scholars. As early as the formative period of Islamic thought and law (third-ninth century), however, the earnest ambition of Muslim jurists was to systematically develop a dynamic function and use of ījmā‘ to issue legal opinions on matters and issues concerning the evolving life of the Muslim community. This paper discusses the scholarly views and interpretations of Muslim jurists on ījmā‘, the understanding of which helps researchers to acquire a better insight into the later developments and ramifications not only of ījmā‘, but also of many other aspects and extensions of the legal apparatus.

Key words: Qur‘ān - sunnah - ījmā‘ - qiyyās - jurist - law

INTRODUCTION

The second and third centuries in the central Islamic lands saw an unprecedented proliferation of juridical opinions and the emergence of schools (madhhab (pl. madhāhib), or school of legal doctrine); however, there was no mechanism in place to deal with the varying opinions until the emergence of ījmā‘ (consensus of mujahids (one who exercises ijtihād) on a point of law) as the third source of Islamic law [1]. Nevertheless, these schools did not agree on what constituted ījmā‘ [1, 3-6]. Muslim scholars from different schools of thought, such as Ibn al-Mundhir (d. 319/931) [7], Ibn Hazm (d. 456/1064) [9, 10], AbūHāmid al-Ghazālī (d. 505/1111) [5], Ibn Taymiyya (d. 728/1328) [11] and others were at the heart of this debate. In reading their treatises, we can extrapolate their opinions on both ikhtilāf al-‘ulamā‘ (disagreement of scholars) and ījmā‘ al-‘ulamā‘ (consensus of scholars), thanks to their diligence in recording the various opinions of previous jurists. While addressing a specific issue that demanded ījmā‘, they indicated both opinions, i.e., the one in favor and the one against and then concluded with their own summation. What is unique about their treatises is that they used the same methodology and style as that of ḥādīth narrator/muḥadithīn [3]. By collecting and examining the āḥādīth (traditions) and reflecting on the authority of their users and reporters, they performed the tasks of both muḥaddith and faqīh ((pl. fuqahā’) (a scholar versed in fiqh) [12-15].

BACKGROUND OF ĪJMĀ‘

Ījmā‘ is the third source of Islamic law (Shari‘a) or Islamic jurisprudence. The Qur‘ān is the original (aṣl) and foremost source of Islamic law, while the Sunnah (prophetic traditions) is the second source [4], followed by ījmā‘ (consensus of community), which relies on the Qur‘ān and the Sunnah as the ultimate sources of fiqh (jurisprudence). These sources of Islamic jurisprudence vary in terms of their authoritative ranking, according to which the ruling (aḥkām) is derived or is based upon. Any rule derived outside these or not consulted from these sources is not accepted [3, 16].

Any rulings derived from or based on these sources are considered sacrosanct and none, whether an ordinary person, jurist or ruler, may dispute them. Any disagreement with such rulings would be null because an affirmed or authoritative case[s] does not require ijtihād [6, 17, 18]. An opinion circulated among jurists holds that whoever contravenes ījmā‘ is a kāfir (infidel or the person who commits a major sin) [19]. This particular attribute prompts closer examination of ījmā‘ in order to reach a better understanding. Indeed, there is
a disagreement (ikhtilāf) among jurists as to the principles and sources of ījmāʿ, especially regarding its conditions and authoritative content, with regards to its chain of evidence or opinions. The prime concern is whether ījmāʿ can be abrogated or not when confronted with Islamic legal opinion, which sometimes seeks to overturn rulings to the benefit of today’s Muslims [20].

METHODOLOGY

This study’s methodological approach consists of a review of the available classical literature as its primary source, making reference to modern scholars’ works and critically analyzing specific scholars’ works on ījmāʿ. Furthermore, this study will focus not on any single school of thought, but rather on delivering a comparative analysis of prominent schools of opinion. Preference will be shown for the opinions of schools or jurists on the basis of the integrity of evidence. Modern scholars have dealt with similar subjects in the field of Islamic law; however, they have not addressed the specific issue of ījmāʿ in shaping the Islamic law, neither has anyone done an independent study of this kind, let alone those jurists who have predominantly focused on ījmāʿ in different schools of thought. Thus, this study will bridge the works of classical and modern scholars. In approaching the literature, both original sources and secondary sources by Western and non-Western scholars will be cited [6, 20].

This study will be divided into two main parts. The first will examine the juristic and lexical meanings of ījmāʿ according to different schools and selected opinions, along with references, evidence and the conditions of ījmāʿ. In the second part, ījmāʿ will be considered according to those who favor it or disagree with it, looking at the opinions offered by each side.

IJMĀʿ ACCORDING TO MUSLIM SCHOOLS OF LAW

The technical definition of ījmāʿ is not connected to its lexical definition, because the original source was revealed in the Arabic language. Therefore, ījmāʿ is a mutual expression denoting agreement and determination [21-26]. For example, in the Qur’ān, ījmāʿ is used to signify agreement, as shown in the following verses:

So, when they took him away, they all agreed to throw him down to the bottom of the well. (Q. 12:15); This is of the news of the unseen which We reveal by Inspiration to you. You were not (present) with them when they agreed on their course of action. (Q. 12:102).

According to Ibn Kathīr’s commentary (tafṣīr), they (Joseph’s brothers) agreed to throw Joseph into a well [27]. In another passage of the Qur’ān the term is used to denote determination. The verse reads:

So devise your plot, you and your partners and let not your plot be in doubt for you. (Q. 10: 71).

In Ibn Su’ūd’s Tafsīr the term “ījmāʿ amrakum” can be determined or conceived as meaning “your plot” [28]. In the Prophetic traditions, the Prophet used the term ījmāʿ in a number of hadiths/traditions. In the tradition “lā šiyām li man lam yajma’ al-ṣyām mina al-layl” (no fasting for one who did not determine his intention at night) [29], the term “yajma’” means determine. According to al-Qādisī Abū Bakr al-Bāqillānī (d. 403/1012), determination refers to the concurrence and harmony of agreement because, when someone makes a determination about something, that person is willing to act in the intended manner [29].

Ījmāʿ can also be general or specific. General ījmāʿ occurs when there is no association to a specific group. For example, whenever a case refers to zakāt (legal almsgiving), a concept mentioned in the Qur’ān and the Prophetic teachings, ījmāʿ here covers issues that are applicable and agreed upon by all scholars and Muslims. Another example is the ījmāʿ of the Muslim community on the acceptance and performance of the basic five daily prayers, plus the consensus of all Muslims to agree on obedience to the Prophet [5]. Specific ījmāʿ on the other hand refers to a specific group or individual stating the same opinion in regard to a subject. An example of this is the ījmāʿ of the Ahl al-Madīna (the people of Medina or the scholars of Medina), or the ījmāʿ of the Ahl al-Haramayn (the people of both Mecca and Medina), or the ījmāʿ of the rightly Guided Caliphs.

Additionally, five schools of thought, namely the Hanafī, Mālikī, Shāfiʿī, Ḥanbāli and Abādī address the issue of specific ījmāʿ. Other schools of opinion, such as the Shīʿī, Zaydī, Zahirī and Muʿtazilī Schools (in the latter case, especially that of Naẓẓām, d. 221/835) developed different terminology attached to the meaning ījmāʿ. The task will be to illustrate the legal terminological definition of ījmāʿ by each of the above mentioned schools [7, 21].

According to the Shāfiʿī School, ījmāʿ constitutes the agreement of the Ummah (community) [30], i.e., the entirety of the scholars and ordinary people since the time of the Prophet and theoretically until the Day of Resurrection [3]. Subsequently, in his Risāla, Shāfiʿī defined ījmāʿ as the obligation of the Muslim community to reach a decision on cases that deal directly with the permissions and prohibitions that emerged after the Prophet’s death [3]. Concomitantly, Shāfiʿī’s opinion is that ījmāʿ represents the consensus of the Muslim community forming the basis of religious obligation. In all other instances, whenever
a case requires a legal opinion, the opinion of the learned scholars will be chosen [3]. Shafi’i’s view had an impact on later jurists from the Shafi’i School, such as al-Mawardi (d. 450/1058) who defined ‘ijma’ as the elaboration by scholars of evident rulings and the process of arriving at a decision, verdict or ruling on a case on the basis of consensus [4].

Al-Juwaini, likewise a Shafi’i jurist, defines ‘ijma’ as an agreement among scholars, in their era, on the ruling or verdict on a legal case [29]. Other Shafi’i jurists’ opinions, such as that of al-Ghazali in his Mushtatfa, defined ‘ijma’ as the agreement of Prophet Muhammad’s community on an issue of religious importance [5]. Al-Amidi (d. 631/1233), another Shafi’i jurist, defined ‘ijma’ as the agreement of the ahl al-‘iql wa al-qad (the qualified and authorized elite) on matters affecting the Prophetic community at any given time on an existing verdict or ruling from previous events [1, 20]. Afterwards, the opinion of al-Amidi was confirmed within the Shafi’i School [31-34].

Jurists from the Maliki and Hanbali Schools are in agreement with al-Amidi’s definition of ‘ijma’, such as al-Nasafi (d. 710/1310) [35], al-Qarafi (d. 684/1285), Ibn Qudama (d. 630/1232), Ibn Taymiyya (d. 728/1327) and the Abaid jurist al-Salami (b. 1871), who defined ‘ijma’ as adherence to the congregation of the jurists. However, in cases where scholars had disagreed, the average Muslim could in turn disagree, with or without knowing the case and issues. Therefore, this will not lead to a consensus [3]. However, if there was a case approved by scholars and jurists that did not lead to a disagreement, then that was ‘ijma’.

One of the schools most given to discussing their jurists’ opinions was the Zahir School. The latter generally defines ‘ijma’ as the consensus of the Muslim community in general and in particular on whatever is considered the necessary knowledge of the religion, following the agreement of the Companions. A leading Zahir jurist, Ibn Hazm, defines ‘ijma’ as what is known and said by the Prophet's Companions without a single disagreement. This is because the Companions learned from and witnessed the entire conduct of the Prophet and followed his example since anyone who disapproved of his conduct could not have counted himself among the ranks of true believers. And since the Prophet's Companions were all believers and followed the Prophet's example, their agreement was fully accepted. Whoever claimed that their agreement was not valid ‘ijma’, would have to provide proof of his objection and this was considered impossible [3, 38].

The Shi‘ite School defines ‘ijma’ as all agreements that contain a statement by an infallible Imam, whether the agreement includes all or a few jurists. Even if hundreds of jurists agree on one issue, but the text of their agreement lacks the statement of the infallible Imam, it will not be considered as ‘ijma’. Rather, it will only be considered as a proof of the issue's existence. According to Shi‘ite thought, the words of the infallible Imam reveal the truth and proof of the hidden Imam, not that of the revealer. Therefore, ‘ijma’ belongs to the Qur’an and Sunnah and does not stand independent of the two; it is derived from consensus on many evident cases [39, 40]. The Zaydi School differs from the Shi‘ite School with respect to the definition of ‘ijma’; thus they see the agreement of mujtahids/jurists as being divided into phases. The first phase is the agreement of jurists from the Muslim community in a specific period of time on an issue that included the lineage of the Prophet and others. This particular definition is in line with Sunni Schools of opinion.

The second phase is the agreement of jurists about the lineage of the Prophet, specifically in his particular era and on his verdicts on issues. The lineage of the Prophet refers to ‘Ali, Fatima, al-Hasan and al-Hasayn and whoever is related (by marriage) to both al-Hasan and al-Hasayn in all periods from their father's side. If the ‘ijma’ occurred among the lineage of the Prophet, regardless of others who disagreed, it is considered true [41].

The Mu'tazilite followers of al-NazZam (d. 221/835) defined ‘ijma’ as a statement of all opinions that contain evidence and proof [5]. Al-Juwaini (d. 478/1085) indicated that al-Nizam was the first one who permitted the rejection of ‘ijma’, which led to the emergence of other groups of scholars who rejected ‘ijma’. Of particular importance is the opinion of the pre-eminent Imam of the time, who is engaged with and even one of the people. If the ‘ijma’ becomes abiding, his sayings are regarded as evidence itself and they should be followed and agreed upon [19].

Ibn Qudamah’s reflection on al-Nizam’s opinion is that he accepts certain instances of ‘ijma’ as applicable, but rejects others. This is so because the ‘ijma’ of the qualified and authorized elite in such matters is taken as evidence among their supporters. This is furthermore proven by the disagreement amongst scholars over forbidden ‘ijma’ [1, 42].

Finally, the most selective definition of ‘ijma’ from the above, whether put forward by an independent jurist or by a school, is that of the Sunni schools; it can be summarized as the agreement of all the jurists from the Muslim community at a given period of time, after the death of the Prophet, on a practical legal ruling [43, 44, 20].

Scholars have identified five aspects/conditions of ‘ijma’: Ahl al-‘Ijma (people of consensus), inqrad
al-‘aṣr (cessation of era or age), Mustanad al-Ijmā‘
(authority for consensus), ‘adām mukhālafat al-ijmā‘
(non-violation of consensus), ijmā‘ ‘alā hukum shar‘ī
‘amlī (the consensus should be on a practical legal
ruling) [45, 46, 29, 1]. It is important to state that the
abovementioned conditions are subject to some
disagreement within the Sunni schools.

Ahl al-Ijmā‘, or the people of consensus, are
acknowledged by the Muslim scholars as the qualified
and authorized elite jurists for such affairs because they
are the ones who possess the tools of ijtihād, such as
maturity and ability. For example, if a boy reaches the
level of ijtihād, his opinion will not be taken into
consideration because only the opinion of mature
individuals can be taken seriously [19, 17]. Mature
individuals should have six characteristics in order to
have their opinion taken into consideration. These
characteristics are as follows: master of the Arabic
language, knowledge of the Qur‘ānic ruling verses and
ruling traditions, knowledge of the methodology of
qiyyās (legal decision making and argumentation by
means of “analogy.” One of the four sources of Sunnī
fiqh), basing decisions on substantiating evidence, fiqh
al-nafs/the ability to understand the reality of issues,
submissions of concrete evidence that reaches justice
and the interest in the welfare of the Muslim
community when deriving Islamic rulings [47, 19]. It
is obvious the jurist should be a devout Muslim, have a
sound mind, be pious, healthy and a first rate scholar
[5, 19, 47, 29].

From these particular characteristics one can reach
an understanding that ijmā‘ is limited to the jurists and
scholars who specialize in jurisprudence and no one can
even exercise ijmā‘ without being a mujtahid. Although
scholars from different fields such as medicine,
pharmacy, engineering, mathematics, etcetera, might
occasionally be needed for some religious interpretation
of cases that are directly related to religious rulings, yet
they are not in a position to practice ijmā‘ without
consulting a specialized jurist [42, 19, 48].

The second category of a firm ijmā‘ is the inqīrād
al-‘aṣr (cessation of era or age), which means that an
era of the age of scholars has ceased. This is a condition
of acceptable ijmā‘, for example, if scholars of
advanced age agreed on an issue without a single
disagreement, it will be known to the later jurists or
generations as a firm ijmā‘ and it should be followed [1,
4]. The opinions of Shafi‘i, Abū Ḥanifa, Ash‘arite,
Mu‘tazilite, Maliki, Zaydi and Abādhi jurists, do not
consider that the cessation of an age as a condition,
because if they agreed on that condition the gate of
ijmā‘ will be closed for modern later jurists [50].

The third category of a firm ijmā‘ is the Mustanad
al-Ijmā‘ (the authority for consensus). The majority of
the scholars or the people of consensus agreed that
for ijmā‘ to be acknowledged as firm, it must have a
reference to an authoritative source [s] or verdict
on a previous case. Without any reference to an
authoritative source, the ijmā‘ would be considered
void. For example, to innovate an attestation to prove a
case of any kind after the death of the Prophet would
be null [19, 29]. The Hanafi jurists refer to the
authority of ijmā‘ as a decision on the case for ijmā‘, as
Sarakhsi indicated the cause for ijmā‘ should be
attesting with the Qur‘ān and Sunnah. For example, the
issue of forbidden marriage as implicitly stated in the
Qur‘ān:

Forbidden to you (for marriage) are: your mothers,
your sisters, your daughters, your sisters, your father’s
sisters, your mother’s sisters, your brother’s daughters,
your sister’s daughters, your foster mother who gave
you suck, your foster milk sucking sisters, your wives’
mother, your step-daughters under your guardianship,
born of your wives to whom you have gone in—but
there is no sin on you if you have not gone in them to
(marry their daughters), --the wives of your sons who
(spring) from your own loins and two sisters in
wedlock at the same time, except for what has already
passed; verily, Allāh is Oft-Forgiving, Most Merciful.
(Q. 4: 23)

An example from the Sunnah is that it is forbidden
to sell food to a buyer before paying for it.
Additionally, what was derived through ijtihād from the
Qur‘ān and Sunnah was the decision to divide kharāj
(the land tax levied on lands deemed to be owned by
the state but left in the possession of the individuals) to
Ahl al-Sawād (the people of a city in northern Iraq (al-
Mūsā) [50], 51), by ‘Umar Ibn al-Khaṭṭāb, the second
Caliph, based on consensus. When ‘Umar was about to
divide the kharāj (taxes) among Ahl al-Sawād, Bilāl b.
Rabā‘ah and a group of Companions opposed Caliph
‘Umar’s decision, so ‘Umar recited the verse from the
Qur‘ān,

And those who came after them say: “Our Lord!
Forgive us and our brethren who have preceded us in
Faith. And put not in our hearts any hatred against those
who have believed. Our Lord! You are indeed full of
kindness, Most Merciful. (Q. 59:10) and said, “I can see
that the people who are after you should have a share of
that booty and if I divided it among you there will be
none left for people after you”. Then Bilāl and the
group of Companions agreed with him and this was an
example of a firm authoritative ijmā‘. This ijmā‘
emerged through deriving from an authoritative source,
the Qur‘ān [30, 52-55].

(And there is also a share in this booty) for the poor
emigrants, who were expelled from their homes and
their property, seeking Bounties from Allāh and to

please Him and helping Allâh and His Messenger. Such are indeed the truthful. (Q. 59:8)

When these verses were recited by Caliph ‘Umar, the people who opposed him were convinced and they accepted the ijmâ’ because it was not ‘Umar’s own opinion, rather it was derived from the Qur’ân. This particular incident became a case of reference when the later generations encountered similar situations. They could rely on this incident without a disagreement or confrontation. All schools, i.e., Shâfi‘î [34], Mâlikî [34], Ḥanâfî [42], Ṭayî [56], Abîâdî [57], Ḥanâfî [50, 29, 17], are in favor of that case and do not agree on a firm authoritative ijmâ’[50, 29, 17, 43]. Difference of opinions emerged between Ḥanâfî and Shâfi‘î jurists on whether to take a single opinion (al-ra’y) as evidence to prove ijmâ’ or not. The Shâfi‘î jurists argued that it is not possible for ijmâ’ to be firm on the basis of a single opinion or qiyyâs (analogy). Such a case lacks evidence and hinders the possibility of deriving ijmâ’ from it.

The Ḥanâfî jurists however, replied to that discussion by declaring that the consensus of the Muslim community is based on legal & religious evidence because it is not an evident matter. Furthermore, the reply of the Ḥanâfî to the Shâfi‘î School states that the authority of ijmâ’ should be proved to be derived from circumstantial evidence such as ‘ilm or knowledge. Thus circumstantial evidence should be used to reach a firm authoritative ijmâ’ on the plea of qiyyâs [50, 29].

The fourth category or condition of a firm ijmâ’ is ‘adam mukhâlafat al-ijmâ’(non-violation of consensus). The majority of the scholars agree that a firm ijmâ’ should not contradict the Qur’ân and Sunnah, if in case ijmâ’ occurred without the reference of the primary sources, i.e., Qur’ân and Sunnah, the majority of scholars, in particular the jurists, will immediately oppose and condemn this [38, 5, 17]. Ijmâ’ should always be derived from the firm evidence in accordance with the Qur’ân and Sunnah.

When the jurist is asked to look into a case demanding ijmâ’, he should first look into a previous, similar case to determine if ijmâ’ existed earlier and if it did exist, then he should not look for another reference. The previous ijmâ’ is considered firm because it was agreed upon by earlier scholars as it did not violate the Qur’ân or Sunnah, even if it is a known abrogation or interpretation. This is so because an ijmâ’ is a firm evidence itself and does not accept further abrogation or interpretation. This has two interpretations by scholars [49]. One interpretation is to leave it as it is without addressing any concerns and the second interpretation is to question whether the consensus is directly connected with the interpretation of the Qur’ân in accordance with the Text. For example, the ijmâ’ of the right of the mother, in which the Qur’ân grants her the inheritance between the third to the sixth with two brothers as the Qur’ân reads:

...If the man or women whose inheritance is in question has left neither ascendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they shared in a third. (Q. 4:11)

It appears to be that this particular case of ijmâ’ is not in accordance with the Text, because the Text does not mention what happens to the remaining inheritance after the distribution occurs. Hence here the ijmâ’ is given two interpretations of either taking the lexical meaning of the Text or leaving it open for interpretation [17]. However, one cannot assume that ijmâ’ bases its authority on opposing evidence, because scholars cannot have consensus without authoritative evidence. Perhaps because the opposing evidence is weak, or a false report or an abrogated ruling. Therefore, ijmâ’ cannot occur if it is in disagreement with the Text, because Muslim jurists believe that the Qur’ân is infallible. Furthermore, the scholars cannot agree or favor a case contradicting the Text because they cannot agree on anything that is inherently wrong. They must always choose the Text as the primary source and refer to it in any given situation [42]. Even some scholars within the Ḥanâfî and Mu‘tazî jurists have differing opinions in reference to the Qur’ânic verse chapter 4: 11. However, the jurists should distinguish between a firm authoritative reference that cannot be violated and references based on assumption, till they are proven with certainty [33, 56].

The last category of a firm ijmâ’ is the Ijmâ’ ‘alâ hukm al-sharî ‘amâli (the consensus should be on legal practical ruling). Because different definitions of this have emerged from scholars, the leading scholars who have direct connection with this matter must be selected, such as al-Ghazâlî and al-Juwaynî. For instance, al-Ghazâlî defines ijmâ’ to be a case in religious affairs. Al-Juwaynî too, indicated in his definition of ijmâ’ that it is a ruling on a religious incident [5, 19]. Ijmâ’ should be limited to religious affairs; however, jurists sometimes go beyond this limit and reflect upon a given issue by incorporating the lexical, logical and customary practices [1, 17].

Ijmâ’ should be based on practical religious rulings in order to support the articles of faith, such as the Oneness of God, the duty of the Prophet to convey the message of God, the news about the Judgment day and if all of the fore mentioned faith related issues do not appear in the field of jurisprudence it would not be among the legal terminology [43, 44]. Thus, all religious cases in particular believe in the Oneness of God and could not omit the basic article because the
IJMĀ': BETWEEN SUPPORT AND DENIAL

In order to better understand whether ijmā' can be a firm authority in a legal matter or not, we need to look at three different opinions that need to be examined. The first opinion opposes ijmā' and does not consider it as an authority or evidence on legal matters. The second opinion is in favor of ijmā' and considers it as an authority on legal matters. The third is the most feasible as it considers the previous opinions and presents a new point of view.

The first opinion: Deniers of Ijmā': Al-Nizām and some of the Shi‘ite scholars agree on the principle of deriving the ruling from a single source that is not recognized; yet, it is impossible for it to be considered a firm ijmā' because to agree on a specific timeline is impossible [50, 29]. According to al-Juwaini, the first scholar to pronounce the denying of ijmā' was al-Nazzām, who was followed by other groups of rejecters [34, 41]. However al- Nizām considered ijmā' when it is a consensus of the scholars as evidence. This is obscure because he considered evidence as the saying of the Imām at that time, while he was engaged with the people’s affairs. Consequently ijmā' became the accepted sayings of the Imām that the people should follow and consider sufficient [19].

There are the cases where ijmā' is not considered as evidence: the first is when a single case is addressed and presented to the whole community, scholars or jurists from all over the Muslim world and Muslims residing in non-Muslim countries are asked to pass a ruling. Such an action is clearly impossible because Muslims would not be able to communicate to overcome any disagreements that may take place and applying the rulings to their own environment would be difficult.

The second issue is that reaching an agreement might be difficult and might introduce a weak ruling, especially if the agreement is based on partitioning of opinions or on misconceptions, because the partitions of opinions do not reach the majority. People become selective in using opinions that serve their interest alone. However, if an opinion manages to reach the majority then it might reach another unexpected outcome. Consequently, it is questionable how an ijmā' may be considered firm when there is a chance of opinions failing to reach an agreement due to misunderstandings.

And the third case is the excuse of considering the view point of other schools and considering them authoritative. These cases are used to summarize the third set of weak ijmā'. For example, if a scholar adopts a school’s opinion, what guarantee
can be made that the opinion remains within that school [19, 29]?

The deniers of ījāmā' derive support for their position from evidence taken from Qur'ān, quoting verses that justify their opinion. For example the Qur'ān reads:

...And we have sent down to you the Book [Qur'ān] as an exposition of everything, a guidance, a mercy and glad tidings for those who have submitted themselves (to Allāh as Muslims). (Q. 16:89)

They use this particular verse to indicate that there is no need of ījāmā' because there is no reference to derive the ruling from sources other than the Text [64]. Another verse that has been used by the deniers of ījāmā' when a disputes take place and it reads:

O You believe! Obey Allāh and obey the Messenger (Muhammad) and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allāh and His Messenger, if you believe in Allāh and in the Last Day. That is better and more suitable for final determination. (Q. 4:12)

They argue that there is another alternative to resolve a dispute or conflict besides consulting the Qur'ān and the Sunnah. Moreover, they use these Qur'ānic verses to justify their position:

And eat up not one another’s property unjustly (in any illegal way e.g. stealing, robbing, deceiving), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully. (Q. 2:188)

Do not kill anyone whose killing Allāh has forbidden, except for a just cause. And whoever is killed wrongfully (mazāliman intentionally with hostility and oppression and not by mistake), We have given his heir the authority [to demand Qisāş, - Law of Equality in punishment- or to forgive, or to take diyah (blood-money)]. But let him not exceed limits in the matter of taking life (i.e. he should not kill except the killer). Verily, he is helped by (the Islamic law). (Q. 17:33)

Say (O Muḥammad): “(But) the things that my Lord has indeed forbidden are al-Fawâdish (great evil sins, every kind of unlawful sexual intercourse) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partner (in worship) with Allāh for which He has given no authority and saying things about Allāh which you have no knowledge.” (Q. 7:33)

The group denying ījāmā' says that the above mentioned verses contain prohibition for the Muslim community to say anything wrong and to display improper conduct. Also the latter indicates that whoever intends to do such wrong things should imagine the sin and guilt associated with that and the speech and conduct of such people should not be taken into consideration. Furthermore, their opinion should not be considered solid [1]. The second source they derive their evidence from to support their position is the Sunnah. The hadith/tradition which the deniers use to justify their view, is the tradition that took place during the Prophetic era when the Prophet asked one of his Companions, Mu’āḏ b. Jabal, that how he should carry on the responsibility as envoy to Yemen. They claim that the Prophet had directed him through the path of how to conduct his duty if he should be confronted with questions [65].

The second opinion: Supporters of Ījāmā' based on legal matters: Supporters of ījāmā' have a different interpretation of ījāmā' and they were among the recognizable schools in that. They decided that ījāmā' is a legal evidence. Āmidī indicated that as long as the majority of Muslims agreed on ījāmā' as conclusive proof, each Muslim should act upon it [1]. Furthermore, Saraksi indicated that the ījāmā' of the Muslim community is obligatory because it is an honor to their religion [50, 19, 32]. These schools derived their conclusive evidence from primary sources of the Qur'ān and Sunnah and rā'y/rationale [6, 20]. Among them they focused only on the primary sources and left the rational opinion aside.

Regarding the Qur'ān, Shāfi‘ī derived his evidence in favor of ījāmā' from the Qu'rânic verses that read:

And whoever contradict and opposes the Messenger (Muhammad) after the right path has been shown clearly to him and follows other than the believers’ way. We shall keep him on the path he has chosen and burn him in Hell – what an evil destination. (Q. 4:115)

In his Akhām al-Qur'ān, Shāfi‘ī indicated that the one who contradicts and opposes the Prophet will not be burnt because they are in disagreement with the believers, unless it expresses explicit disagreement [30, 33]. This verse refers to individuals who follow paths other than the believers. Accordingly, it's forbidden. If following a path other than the believers is not forbidden, Allāh would not have associated forbidden conducts or deeds with the threat of hardship. Moreover, those individuals who oppose and follow a path other than that of the believers tend to change their conduct in order not to be among the people who are threatened to be punished in the Hereafter. Rather, they should follow the path that provides conclusive evidence of ījāmā' [34, 1, 29, 50, 17]. The second Qur'ānic verse utilized to support the case of ījāmā' as a conclusive proof reads:
Thus, we have made you [true Muslims—real believers of Islamic Monotheism, true followers of Prophet Muhammad and his Sunnah (legal ways)], a just (and the best) nation, that you be witnesses over mankind and the Messenger (Muhammad) be witness over you... (Q. 2: 143).

This verse refers to the nation that was given the role of being just and was raised to be the best among nations. This distinction was given on the basis of being true followers, as well as those ones who are responsible for saying the truth and being a witness over mankind. The witness should be trustworthy and reliable to make statements accountable as conclusive proof. Therefore, it is an indication of agreement on ijmâʿ and it is obligatory for Muslims to take it into consideration as a conclusive evidence [50, 1, 34, 17].

The third Qur’anic verse used to support the pro ijmâʿ group reads:

You [true believer of Islamic Monotheism and real followers of Prophet Muhammad and his Sunnah (legal ways)] are the best of people ever raised up for mankind; enjoin al-Maʿrûf (i.e. Islamic Monotheism and all that Islam has ordained) and forbid al-Munkar (polytheism, disbelief and all that Islam has forbidden) and you believe in Allāh. And had the people of the Scripture (Jews and Christians) believed, it would have been better for them; among them are some who have faith, but most of them are rebellious against Allāh’s Command. (Q. 3: 110).

The attribute of the adjective al-maʿrûf, the definite article here refers to the noun and indicates the obligation to enjoin what the Islam ordained. If they had a consensus on a single wrong issue then it would be known to be wrong. Therefore, the verse implicitly reads that the Muslims are ordained to enjoin good and forbidden to commit wrong deeds, as it is the Muslims’ philanthropic mandate to reach consensus on right issues [50, 17].

The fourth verse reads:

O You believe! Obey Allāh and obey the Messenger (Muhammad) and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allāh and His Messenger, if you believe in Allāh and in the Last Day. That is better and more suitable for final determination. Q. 4: 59.

The reason behind using this particular verse is that it is conditional. In the case of disputes, it’s obligatory to refer to the Qur’an and Sunnah. If it was not conditional then Muslims would be flexible in using any evidence other than the Qur’an and Sunnah and there would be no obligation to rely on the primary sources [1].

The fifth verse that is utilized by the ijmâʿ supporters reads:

And hold fast, all of you together, to the Rope of Allāh (i.e. this Qurʾān) and be not divided among yourselves and remember Allāh’s Favor on you, for you were enemies one to another but He joined your hearts together, so by His Grace, you became brethren (in Islamic Faith) and you were on the brink of a pit of Fire and He saved you from it; Thus Allāh makes His Ayāt (proofs, evidences, verses, lessons, signs, revelations, etc...) clear to you, that may be guided. (Q. 3: 103)

Again in this verse, the Muslims are ordained not to be divided, therefore, the violation of ijmâʿ is a sort of division. And it is forbidden to violate the use of ijmâʿ as a conclusive evidence for Muslims [1].

The second source that is utilized to support the conclusive use of ijmâʿ is the Sunnah and the case of Muʿādhdul b. Jabal is employed for that purpose. And another reference to the Sunnah is the tradition that reads “Whatever Muslims see as good is good to Allāh.” [29]. As these traditions indicate in general, any claims of deviation from what is right is refuted and belief in the Faith and all branches of Islamic law is established. They also reflect the resistance of the Muslim community against the practice of wrong deeds, their persistence to follow the traditions that were narrated from the Prophet and to employ them in their worldly affairs and practice caution in case they are not certain about the legal issues. It is highly recommended to use these verses as a reference and guidance [5, 1, 50].

THE SELECTED OPINION

The disagreement of scholars over ijmâʿ is divided into two groups; one in the favor of who believe that it is conclusive and derived from the Qurʾān and Sunnah and the other group who believe it is inconclusive. However, the emergence of scholars who express their opinion about ijmâʿ occurred right after the Rightly Guided Caliphs’ era, both groups derived their opinions from the consensus of the rightly Guided Caliphs and the leading scholars such as Mālik, Abū Hānīfa, Shāfiʿī and Aḥmad b. Ḥanbal. Although, the latter mentioned scholars agreed that they did not encourage scholars to take their opinion into consideration and that they should not be imitated. They said, if you have heard and seen an opinion derived and substantiated from the Qurʾān and the Sunnah, the people/scholars should not take from their derived opinion then and discard the former [66, 67].

Ijmâʿ is an important issue that needs to be taken into consideration by the Muslim scholars of our time.
and exercised to overcome difficulties and misunderstandings of current day problems. As for the concerns of early Muslim scholars, the exercise of ijmā’ was an acceptable case when it was derived over specific issues that confronted the Muslim world of that time. After fourteen centuries of Islamic teachings, Muslims should realize the valuable right that was granted to them by the Noble Qur’ān and the Prophetic traditions which allowed Muslims to conduct their own affairs under the guidance of Islam for the well-being of the Muslim community.

Although ijmā’ was and still is a debatable matter among early and modern scholars, it should be utilized by modern scholars because many issues have arisen in the modern period that need to be addressed by specialized modern scholars in order to protect the Muslim world from further division. Ijmā’ is not a prohibited matter as long as it does not go beyond any article of Faith. Therefore, it should be exercised and enforced by modern scholars. As noticed in the above pages, some jurists realized ijmā’ was in demand and needed to be utilized in the third/ninth century, they devoted works on that matter. It is important to consider the rarely mentioned work of a jurist who devoted work on ijmā’, such as Ibn al-Mundhir al-Naysabūrī (242/856-319/931), Imam al-Ḥaram, a jurist of Mecca, a mujahid, a muḥaddith and a muḥaṣṣir [68-72], was one of the leading scholars on issues of ikhtilāf [disagreement during the third century A.H.] [73-79]. However, in the modern Islamic world he has not gained much attention or recognition despite that fact that he was highly regarded by his contemporaries and biographers [77, 80, 14, 74, 75, 12]. Although we know he wrote abundantly, all that remains available to us are but a few treatises namely: al-Iṣnā’, al-Ijmā’, al-Awṣāṣ and al-Iṣrāf [81-84].

Although Ibn al-Mundhir was an important mujahid, there is nothing in the available literature that deals with him specifically as an independent mujahid, aside from the occasional references by his contemporary biographers. He was claimed by the Shafi‘i and Ḥanbali Schools as one of their own, even though he was not affiliated with them in his life time [77, 74]. The other Sunni schools such as the Shafi‘i and Ḥanbali Schools made extensive references to his work [74, 75, 14]. In his treatises, Ibn al-Mundhir cited the opinions of many prominent jurists without partisan loyalty to any school of thought. His independence and ability to evaluate the opinions of scholars relative to their proximity to the primary texts made him one of the leading scholars of ikhtilāf of his time [75, 17].

Ibn al-Mundhir was not the only scholar of ikhtilāf in the third century. There were others jurists from different schools who wrote on the topic, such as al-Ṭabari (d. 310 H.), al-Ṭahāwī (d. 321 H.) [85-88] and Ibn Naṣr al-Marwazi (d. 294 H.) [89]. Their respective works all bear the same title Ikhtilāf al-Fuqahā’. According to the available literature, the above mentioned jurists received more attention than Ibn al-Mundhir, largely due to their affiliations with mādhhab who spread their works. Many questions remain with regards to the spreading of the teachings of prominent jurists and schools and the extinction of others. The issue at hand is much more than just a matter of recognition or fame. It concerns the specific reasons for which a prominent jurist, such as Ibn al-Mundhir, escaped the attention of a great number of jurists in the classical and modern periods. Therefore, the above mentioned pages attempted to highlight the importance of ijmā’, along with the role of some jurists, such as Ibn al-Mundhir’s works from the third century A.H. onwards. This fact adds to the importance in understanding the structure of authority among Muslim jurists throughout the evolution of Islamic law. It is imperative to mention that most of the well-known scholars in Ikhtilāf al-‘ulamā’, mainly the later jurists, have relied heavily on the works of Ibn al-Mundhir [37].

CONCLUSION

Interestingly, there has been no previous study or research focusing primarily on ijmā’ as a case for debate, not necessarily a case of agreement or disagreement, but rather whether debate on ijmā’ is prohibited or it is an issue that needs to be addressed in all given times by Muslims wherever they are. This study of the debate over ijmā’ was well known to scholars in the field of Islamic law during the third century/ninth century, highlighting that there are serious problems in functional use of ijmā’. Also, as was exposed above, that there is no agreed upon textual basis for ijmā’ per se. However, there are some lessons that can be extracted from ijmā’ for modern scholars, such as the legal support that encourages Muslim scholars to enforce and practice ijmā’ as a consultative participatory of scholars and experts. This is an important contribution to the field of Islamic law, as it provides a comprehensive account of the different views and teachings that have impacted the field of ijmā’. This will surely shed light on the need for scholarly debate among Muslim scholars, who should be engaged in building a political system that might produce a workable and acceptable ijmā’ between the real and ideal.
REFERENCES