

## POSSIBILITY OF CONDUCTING *IJMA`* IN THE CONTEMPORARY WORLD

Muhammad Amanullah\*

### ABSTRACT

*Classical Muslim jurists unanimously have 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 continued until today. On the other hand, different types of new human problems and issues emerge everyday from the onset of modern times. 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`* (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 it is possible to conduct *ijma`* at present times. In order to reach this objective, the researcher would critically discuss the arguments of both opponents and supporters on this possibility using both classical and modern sources. This article would be divided into five sections: a definition of *ijma`*, opponents' arguments against conducting *ijma`* at present, supporters' arguments for this idea, critical analysis of the arguments, and suggestions for how to conduct an *ijma`* (consensus) and implement its ruling at present times.*

**Keywords:** *Ijma`* (consensus), *mujtahids*, *Shari`ah* rulings, *ijtihad*, modern times

### DEFINITION OF *IJMA`*

Classical Muslim jurists have provided a number of contradicting definitions of *ijma`*. The researcher provides only the definitions of the majority of these jurists and will

strive to compare them with components of other definitions. *Ijma`*, according to the majority of Muslim jurists, 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* and to be conducted after the death of the Prophet (p.b.u.h.).<sup>1</sup>

According to this definition, *ijma`* is the agreement of *mujtahids*, who possess all the conditions of *mujtahid*, such as having the knowledge of the Qur'an and the *Sunnah*, a very good command of the Arabic language, sufficient knowledge of *Usul al-Fiqh*, knowledge of previous *ijma`ic* issues, and so forth.<sup>2</sup>

Some jurists like Imam al-Ghazali, and al-Amidi maintain that *ijma`* is the agreement of the whole *ummah*.<sup>3</sup> However, it seems to the researcher that these scholars do not mean "the whole *ummah*" to be 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 old and specific issues that are supported by decisive (*qat`i*) proofs and accepted by all Muslims whether they are laymen or *mujtahids*.

This however had already been done in the past and the *ummah* does not need this type of agreement anymore. Some scholars such as Shah Wali Allah, Muhammad Iqbal and Muhammad `Abduh argue that modern Muslim jurists do not possess knowledge of contemporary emerging issues. Therefore, they alone are not capable of doing *ijma`* in modern times. Therefore, instead of a group of *mujtahids*, the legislative body or the parliament of an Islamic country should perform *ijma`* because the latter possesses this type of knowledge. According to this group, some *mujtahids* should be included among the members of the parliament.<sup>4</sup>

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. Any decision by the parliament, therefore, might be influenced by the ideology and interest of the ruler and void of any freedom of speech, which is essential to formulate a *Shari`ah*

rule. Nevertheless, problems that have nothing to do with the rulings of the *Shari`ah* could be solved by non-*mujtahid* members of a parliament.

Al-Zuhayli 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.<sup>5</sup> Another contemporary jurist, Mustafa al-Zulami, also supports this opinion. He has added other fields, such as economics, medicine, agriculture and military, to those mentioned above.<sup>6</sup>

This opinion is so general that it excludes jurists from conducting *ijma`* for fields other than *Fiqh* and *Usul al-Fiqh*. This statement should be qualified, that is, scientific and other mundane problems that do not require any ruling of the *Shari`ah* 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 only,<sup>7</sup> not for other aspects.<sup>8</sup> On the other hand, 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 hands of the *mujtahids*, who should consult the specialists before deciding on 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, a unanimous agreement of all jurists is not required. Rather, an agreement by the majority is enough for conducting an *ijma`*.<sup>9</sup> This opinion has some justification because a thorough scrutiny of the past *ijma`* that was conducted by the companions of the Prophet (p.b.u.h.) prove that many *ijma`ic* issues were not solved via this method but were still considered as *ijma`* by the *ummah*. However, issues of *fara'id* were agreed by all without any exception. Some jurists like imam Malik maintains that the agreement of the people of Madinah only is enough to conduct an *ijma`*.<sup>10</sup> 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 the early caliphs, this opinion should not be valid anymore because people of Madinah were considered to be a part of *ummah*, not the whole *ummah*. According to a narration, a Hanafi jurist, Qadi Abu Hazim and Imam Ahmad, opined that the agreement of four caliphs was considered to be an *ijma`*.<sup>11</sup> This opinion was also unacceptable because these caliphs were part of the *ummah*. Imami Shi`ites and Zaydiyyah, on the other hand, maintain that in order

to conduct an *ijma`*, agreement of the Prophet's family was sufficient.<sup>12</sup> This view is also refutable because this family was 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.<sup>13</sup> 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 religions should not be applicable to Muslims if it goes against well established confirmed rulings of the *Shari`ah*. Additionally, consensus of the contemporary international community is not applicable to 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 Quran 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, as the international community forbids drug trafficking, Muslims should adhere to this rule because it is in conformity with the *Shari`ah*.

According to its definition mentioned above, *ijma`* should be conducted after the death of the Prophet (p.b.u.h.) because there was no necessity of such agreement during his lifetime. 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.) consulted several mundane affairs with his companions and solved them unanimously. Although these instances were supported by the revelation, they can be considered as strong justifications to validate *ijma`* (consensus) made by the companions and could be made by others after them.

Moreover, *ijma`* is allowed to be conducted at any period of time following the Prophet's death until the end of this world. According to a report, some scholars like Dawud al-Zahiri, Ibn Hazm, and Imam Ahmad maintain that *ijma`* was allowed to be conducted only by the companions because they were the whole *ummah* at that time.<sup>14</sup> 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 *Shari`ah* rulings as discussed above. For aspects that do not require *Shari`ah* ruling *Shar`i ijma`* is not necessary.<sup>15</sup> Rather, a simple agreement of the community other than jurists is sufficient. Furthermore, this ruling should be subject to *ijtihad*. If

it does not require an *ijtihad*, then once the ruling is confirmed decisively by the certain texts, no *ijma`* is required.

### **Opponents Against the 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 the Mu`tazilite group, some Kharizites, most of the Rafi`ites, and some others.<sup>16</sup> Some scholars who recognize only the *ijma`* of Prophet's, such as scholars of Zahiri school of law, and according to a report, Imam Ahmad are also considered to be opponents of conducting *ijma`* after the era of the companions, including modern times.<sup>17</sup> Scholars, such as Shah Wali Allah, Muhammad Iqbal, Muhammad `Abduh, and some others, are considered to be opponents of classical definition of *ijma`*. Shah Wali Allah maintains that a ruling sanctioned by the *shura* and enforced by the caliph is *ijma`*.<sup>18</sup> On the other hand, Iqbal and `Abduh opine that the decisions of the elected legislative assembly are *ijma`*.<sup>19</sup> 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:

1. There are no prescribed regulations or measures through which it can be judged who is a *mujtahid* and who is not. Without recognizing *mujtahids*, it is not possible to conduct *ijma`*.<sup>20</sup>
2. Following the era of the four caliphs, jurists and *mujtahids* scattered over so many cities and countries that it had become impossible to invite them to gather in one place.<sup>21</sup> The same problem might be applicable during the modern times. Without being assembled in one place it is not possible to conduct an *ijma`*.
3. 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. This is because they are from different mental, cultural, ideological, circumstantial, geographical, and legal backgrounds. The same problems have been continuing in the modern times.
4. 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.<sup>22</sup>

5. 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.<sup>23</sup>
6. *Ijma`* is considered to be way of the whole believers (*sabil al-mu`minin*), as it is mentioned in its Qur`anic proof. Allah says: “The one who contends with the Messenger even after guidance has been plainly conveyed to him, and follows a way other than the way of believers We shall leave him in the path he has chosen, and land him in Hell.”<sup>24</sup> 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.
7. Some 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,<sup>25</sup> 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:

1. 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.<sup>26</sup> 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, and some others. The same type of *ijma`* on those issues that have been remained disputed is even possible in modern times.

2. 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 Quran 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 Quran nor by the *ahadith* of the Prophet.<sup>27</sup> Therefore, a group *ijtihad* or *ijma`* is worthy to be conducted to deduce the rulings for these issues.
3. 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.<sup>28</sup>
4. 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 Quran and *Sunnah* are not confined to a particular age. Rather, they are suitable for all the ages until the end of this world. One such proof is the verse no. 115 of the *Surat al-Nisa`* mentioned earlier.<sup>29</sup>

### **Analysis of the Arguments**

1. The argument of the opponents of the feasibility of conducting *ijma`* during modern times that the regulations and measures for judging a *mujtahid* are not known is not acceptable because most of the classical and modern books of *Usul al-Fiqh* mentioned conditions for a *mujtahid*, 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.
2. Another argument 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.

3. 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.
4. Moreover, the argument that it is not possible for an *ijma`ic* 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.
5. 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.<sup>30</sup>
6. 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.

7. The idea of inability of *mujtahids* with classical education of not having knowledge of newly arisen social, economic, political, and scientific problems is acceptable. But this is not considered to be a valid hindrance for them from conducting *ijma`* because they can consult the specialists of every field prior to making their agreement over the ruling of an emerging new issue. This could be an additional condition for contemporary *ijma`* especially for those new issues for which consultation with the specialists is required.
8. The first argument of the supporters that since conducting *ijma`* was possible for companions it should also be possible for *mujtahids* of modern times is sound because the necessity of doing it during modern times is higher than it was in early Islam, and facilities of conducting it presently are better than they were at the time of the companions as discussed earlier.
9. The argument that the fulfillment of the conditions of *ijma`* stipulated by the majority of the classical jurists is possible during contemporary times is likewise sound. This is because the most important condition of *ijma`* is that some jurists should have qualifications of doing *ijtihad*, acquiring of which nowadays has become easier. This is because thousands of sources on commentaries of the Quran and *hadith*, criticism of *hadith*, *fiqh*, *usul al-fiqh*, language, Arabic grammar, etc. are available in both hard and soft copies all over the world. Additionally, nowadays Muslims do not need an absolute *mujtahid* who can do *ijtihad* for every branch of Islamic law. Rather, they need that type of *mujtahid* who can conduct *ijtihad* for certain issues or who can do comparison and contrast between conflicting opinions and can give preferences to the stronger opinion over weak ones. This type of *mujtahids* is available presently even according to those who are reluctant to recognize the existence of any *mujtahid* during modern times.
10. The argument that proofs of *ijma`* are suitable to be proofs of the feasibility of conducting *ijma`* in modern times is not that strong. This is because all the arguments of classical supporters of *ijma`* are criticized by the opponents in a way that nothing of them left as a strong proof of *ijma`*. However, some other

arguments given by some later scholars are considered to be very strong, such as the argument of *shura*, which is established through those verses whose meanings are certain, such as the verses “Their affairs should be mutually consulted,”<sup>31</sup> and “Consult with them in their affairs.”<sup>32</sup> The concept of *shura* mentioned in these verses is certain, which was utilized by the Prophet himself for solving different issues through consulting them with his companions. These issues were no doubt a type of *ijma`ic* decisions. The same *shura* had continued during the time of righteous caliphs for solving many newly arisen issues, which are in other words could be called *ijma`*. Since this command of the Quran about *shura* is for every generation of Muslims, conducting *ijma`* during modern times is not only lawful and feasible, rather, it is obligatory, especially for those issues for which there is no other ways except *ijma`* is left for deducing rulings of the *Shari`ah* for them.

### **Steps to be Taken for Conducting *Ijma`* at Present**

Although most of the contemporary jurists maintain that it is possible to conduct an *ijma`* during contemporary times, only a few of them has provided the methods of conducting it. Five different proposals regarding how to conduct a contemporary *ijma`* are available.

First, Mustafa al-Zulami maintains that the specialists of every field should conduct *ijma`* in their particular field.

Second, al-Zulami has a second opinion about the issue. He also maintains that those who are capable of making *tarjih* (preference of stronger opinions over the weaker ones) and those who are capable of *istinbat* (deducing new rulings) should assemble themselves in either Makkah or Madinah during the occasion of Hajj, and discuss the issues and solve them unanimously.<sup>33</sup> Al-Zulami, however, has not proposed to form an organized body.

Third, `Abduh, Iqbal, and some others maintain that the parliament of every Muslim country should do *ijma`*.<sup>34</sup>

Fourth, another contemporary jurist, `Abd al-Karim Zaydan maintains that a central *Fiqh* Academy should be established to conduct *ijma`* in contemporary period. All jurists capable of doing *ijtihad* should be members of this academy.<sup>35</sup>

Fifth, `Abd al-Wahhab Khallaf 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.<sup>36</sup> The researcher elaborates the steps of conducting *ijma`* at present based on Zaydan's brief idea and ideas of some other scholars and his own inputs. These steps are as follows:

1. The above central academy or association must be independent from any particular government or political party.
2. The head office of this academy or association should be in a neutral country.
3. 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.
4. All modern facilities, such as computers, fax machines, telephones, teleconference equipments, Internets, printers, etc. should be supplied for this head office.
5. Most of the sources of *tafsir*, *hadith*, *fiqh*, *usul al-fiqh* and dictionaries both in hard and soft forms, including books, journals, articles, *fatawa*, etc. should be abundantly available in this office.
6. 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*.

7. 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`*.
8. *Mujtahids* should consult specialists of scientific, technical and other fields about which the formers don't have sufficient knowledge to judge them.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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`ic* decisions might not be able to be implemented.
14. If this ruling is based on a *sanad* (proof) of the Quran 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`*.<sup>37</sup> 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 choose the view of minority, if they feel that that is the most appropriate ruling. But according to majority of the jurists, they are not allowed to choose a third opinion.<sup>38</sup>

## CONCLUSION

This article 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 Quranic 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 decisive rulings of the *Shari`ah* for them. 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`* (consensus), which must be followed and implemented by all individual Muslims and their governments all over the world.

## Endnotes

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\* Assoc. Prof with Department of Fiqh and Usul al-Fiqh, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur, Email: [amanullah@iiu.edu.my](mailto:amanullah@iiu.edu.my)

<sup>1</sup>Ibn Amir al-Hajj al-Halabi, *Al-Taqrir wa al-Tahbir `ala al-Tahrir fi Usul al-Fiqh* (Beirut: Dar al-Kutub al-`Ilmiyyah, 1999), vol. 3, p. 102; Abu `Abd Allah bin Muhammad bin al-Husayn Fakhr al-Din al-Razi, *Al-Mahsul fi `Ilm al-Usul* (Beirut: Dar al-Kutub al-`Ilmiyyah, 1999), vol. 2, pp. 3-4; Abu al-Barakat `Abd Allah bin Ahmad Hafiz al-Din al-Nasafi, *Kashf al-Asrar Sharh al-Musannaf `Ala al-Manar* (Beirut: Dar al-Kutub al-`Ilmiyyah, 1990), vol. 2, pp. 179-180; `Abd al-Karim Zaydan, *Al-Wajiz fi Usul al-Fiqh* (Beirut: Mu`assasat al-Risalah, 6<sup>th</sup> ed., 1997), pp. 192-193; Wahbah al-Zuhayli, *Usul al-Fiqh al-Islami* (Beirut: Dar al-Fikr al-Mu`asir, 1996), vol. 1, p. 490.

<sup>2</sup> Al-Zuhayli, vol. 1, pp. 496-498.

<sup>3</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, *Al-Mustasfa min `Ilm al-Usul* (Egypt: Al-Matba`ah al-Amiriyyah bi-Bulaq, 1322 A. H.), vol. 1, pp. 181-182; see Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi* (Salt Lake City: University of Utah Press, 1992), p. 214; see also al-Zuhayli, vol. 1, pp. 499-500.

<sup>4</sup>See Ahmad Hasan, *The Doctrine of Ijma` in Islam* (Islamabad: Islamic Research Institute, 1991), pp. 227-255.

<sup>5</sup>Al-Zuhayli, vol. 1, p. 501.

<sup>6</sup> Mustafa Ibrahim al-Zulami, *Usul al-Fiqh fi Nasijih al-Jadid* (Kurdistan: Matba`at Ufsit ha Walir, 6<sup>th</sup> ed., 1999), vol. 1, p. 49.

<sup>7</sup> Such as *wajib* (obligatory), *mandub* (recommended), *haram* (forbidden), *makruh* (disliked), *mubah* (permissible).

<sup>8</sup>Zaydan, p. 181.

<sup>9</sup>See Abu Hamid Muhammad bin Muhammad bin Muhammad al-Ghazali, *Al-Mankhul min Ta`liqat al-Usul* (Beirut: Dar al-Fikr al-Mu`asir, Damascus: Dar al-Fikr, 3<sup>rd</sup> ed., 1998), p. 409; Abu Muhammad

- Alī bin Ahmad bin Sa`id bin Hazm al-Zahiri, *Al-Ihkam fī Usul al-Ahkam* (Beirut: Dar al-Kutub al-`Ilmiyyah, 2004), vol. 1, p. 671; Al-Razi, vol. 2, p. 78; Al-Zuhayli, vol. 1, p. 518.
- <sup>10</sup>See al-Ghazali, *Al-Mustasfa*, vol. 1, p. 187; Al-Halabi, vol. 3, p. 127; Al-Ghazali, *Al-Mankhul*, pp. 411-412; Al-Zuhayli, vol. 1, p. 505.
- <sup>11</sup>See al-Halabi, vol. 3, p. 125; Al-Zuhayli, vol. 1, p. 512.
- <sup>12</sup>See al-Halabi, vol. 3, p. 125; Al-Zuhayli, vol. 1, p. 515.
- <sup>13</sup>Al-Zuhayli, vol. 1, p. 524.
- <sup>14</sup>See al-Ghazali, *al-Mustasfa*, vol. 1, p. 189; Al-Zahiri, vol. 1, pp. 632-633; Al-Zuhayli, vol. 1, p. 532.
- <sup>15</sup> *Shar`i ijma`* is the consensus which is accepted from Islamic legal point of view, i.e. the consensus of all Muslim *mujtahid* scholars available in a particular age on the Islamic legal ruling of a particular issue.
- <sup>16</sup>See al-Nasafi, vol. 2, p. 189; Al-Halabi, vol. 3, pp. 104, 106; Al-Rzi, vol. 2, p. 9.
- <sup>17</sup>See `Abd al-Wahhab Khallaf, *Kitab `Ilm Usul al-Fiqh wa Tarikh al-Tashri` al-Islami* (Egypt: Matba`at al-Nasr, 1940), p. 32.
- <sup>18</sup>Shah Wali Allah, *Izalat al-Khafa`* (Urdu tr. By `Abd al-Shakur) (Karachi: n. p., n. d.), vol. 1, pp. 266-267, in Ahmad Hasan, *The Doctrine of Ijma` in Islam* (Islamabad: Islamic Research Institute, 1991), pp. 227-228, 255.
- <sup>19</sup>Muhammad `Abduh, *Tafsir al-Manar*, ed. Muhammad Rashid Rida (Cairo: n. p., 1367 A. H.), vol. 3, pp. 9, 12; vol. 5, pp. 209-210, 213-214, in Hasan, op. cit., pp. 244-245, 255; Muhammad Iqbal, *Reconstruction of Religious Thought in Islam* (Lahore: n. p., 1962), pp. 173-174, in Hasan, op. cit., pp. 239-240, 255.
- <sup>20</sup>Abd al-Karim Zaydan, *Al-Wajiz fī Usul al-Fiqh* (Cairo: Dar al-Tawzi` wa al-Nashr al-Islamiyyah, 1993), p. 191; Khallaf, p. 31.
- <sup>21</sup>Zaydan, 1993, p. 191; Al-Zuhayli, vol. 1, p. 569; Khallaf, p. 31.
- <sup>22</sup>Zaydan, 1993, p. 191; Khallaf, p. 31.
- <sup>23</sup>Zaydan, 1993, p. 191; Al-Zuhayli, vol. 1, pp. 569-570; Khallaf, p. 32.
- <sup>24</sup>Surat al-Nisa`, 4: 115.
- <sup>25</sup>See Hasan, pp. 227-228, 244-245, 255.
- <sup>26</sup>See Zaydan, 1993, p. 191.
- <sup>27</sup>See Zaydan, p. 192.
- <sup>28</sup>For instance, see these conditions in al-Zuhayli, vol. 1, pp. 496-498; vol. 2, pp. 1043-1051.
- <sup>29</sup>For instance, see these proofs in Muhammad Mustafa Shalabi, *Usul al-Fiqh al-Islami* (Beirut: Dar al-Nahdah al-`Arabiyyah, 1986), p. 165-168.
- <sup>30</sup>Zaydan, 1993, p. 192.
- <sup>31</sup>Surat al-Shura, 42: 38.
- <sup>32</sup>Surat Al `Imran, 3: 159.
- <sup>33</sup>Al-Zulami, , vol. 1, pp. 49-50.
- <sup>34</sup>See Hasan, pp. 227-255.
- <sup>35</sup>Zaydan, 1993, p. 193.
- <sup>36</sup>Zaydan, 1993, pp. 193-194.
- <sup>37</sup>Al-Zuhayli, vol. 2, pp. 973-975.
- <sup>38</sup>See Al-Ghazali, *Al-Mankhul*, pp. 417-419; Al-Halabi, vol. 3, pp. 135-136; Zaydan, p. 186.

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