The Role of Ijma in Contemporary Society

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Abstract

By the passage of time certain malpractices and irregularities crept into Muslim Society which claimed to be the part of Islamic Fiqah. Further various interpretations were made by different Schools of Muslim Law. Certain perverted notions were so deeply rooted in the Society that the true and genuine principles of Muslim Law lost their original position and there arose the maxim "What is, is right".

In India especially it gave rise to certain problems. The need was felt that these anamolies be set at right and the principles of true Islamic Law be adhered. As the time passed on sociological conditions and needs also raised their heads which should also be tackled with the genuine Islamic principles.

These trends also arose in the Muslim countries where they remedied them by passing Laws in consonnance with the correct interpretation of Islamic law.

Statement of Problems:

The major problems besides other problems which appeared to the Muslims and which they thought to be faced were especially:-

(a) Marriage & Divorce
(b)   Property and succession
(c) Insurance
(d) Interest.

Now arose the difficulty that how these problems should be solved. As Quran is the last word of God for all times to come and immutable so all inspiration to solve the problems facing the Muslim Umma should come from Quranic sources. Then comes Ahadith which are also the primary source of Muslim Law. These are the recognised sources besides Qiyas and Ijma. Now whatever methodology be adopted to solve the problems facing by the Muslim community the Ijma, seems to be best. Through this a consensus can be achieved to solve our problems in a particular way.

Object of Study

The aim of this attempt as apparent from its heading is to discuss "The Role of Ijma in contemporary Society." The word 'Contemporary Society' may also be termed as 'Present Era'. This role is the need of the day as the modern era is developing fastly in the field of Social Economic legislation. The old values are crumbling and new values are developing. This state of affairs is not restricted to the Islamic countries but also in the countries in which though Muslims are in minority but in-habitated in large numbers specially in India.

As Sir Henery Main was of opinion that societies are never static, such is the position of law, it never remain static. Progressives societies march forward with the time and become healthy while the sick societies go downward and become sick.

Quran describe Muslims as follows:-

"You are the best nation raised up for man;

You enjoin good and forbid evil and you

believe in Allah"

Aljassa, interpreting this verse, was of opinion that the three important merits of Muslim Community, namely excellence, enjoing good and forbidding evil. If the community agrees on an error, the Quran would never have praised in terms of these qualities.

The above verse declares that the Muslim Society is not a static or conservative or fundamental society but a progressive society running with the time and solving its problems since the days of Prophet Mohammad (Peace be upon him). At present there exists a lot of work on Islamic law and jurisprudence which have opened new vistas of knowledge and good work can be done in this field. Everybody acknowledge that even after the orthodox schools of law there is a development in legal theory, doctrine and norms. Though it is natural that modern concepts are influenced by these historical schools. Today, no law in any society, even in a religious one, is static. It develops with the development of society. Such is the case with Islamic Law although it is Divine and authoritative on the basis of Quran & Ahadith, it is not rigid in nature. It can be said that it does not change rapidly but it is structured by means of fresh interpretations in the light of Quran and Ahadith.

Generally it is accepted that Islamic jurisprudence is based on direct sources, i.e., Quran and Hadith and Indirect sources, i.e., Ijma and Qiyas.

These considered to be the basic sources of Muslim law. outwardly they seem to be autonomous and separated from each other but it is a wrong conception. As the main sources are Quran and Sunnah while the Ijma and Qiyas are subsidiary principles. They are generally made applicable when the original sources are silent on a certain question. They are closely related to each other and carry the same spirit of revelation, the Quran is the word of God, the Sunnah is its Commentary, explaination and its application in practice. Ijma is based on evidence derived from either of them (but through consensus). Qiyas requires an original basis, it is therefore due to this, that Islamic law is recognised as divine Law.

To cope with the needs of the change of society Ijma played an important role. Ibn-e-Maja reported a Hadith which is widely accepted, "My community will not agree on an error. When you see disagreement, you should follow the overwhelming majority." This Hadith is a basis for the justification of the principle of Ijma.

This principle of Ijma played a vital role in keeping the Muslim community as integrated and united upto this time by declaring an ideological concept having an evidence in Quran & Hadith. This principle of Ijma feeded the needs of society at different stages.

Ijma played a basic role in preserving the past heritage and creation of institutions in Islam. It served as a unifying force in the Muslim community. This purpose was also served by other religious institutions like Church Council of Christians, Sangha of Buddhist and Sanhede-in of Jews. Ijma generated unity and solidarity in the whole system of law, dogma and rituals. In medieval times the main function of Ijma was creating Unity in diversity.

This shows that the idea of Ijma originally began as a theory of the will of the community which continued for some period of time until the Scholars developed as a pressure group in Muslim Society. As the pressure of scholars developed and they got dominance in religious matters, apart from political matters, the scholars were regarded as the will of community (Umaiyyads and Abbasides). The main cause of the pressure of these ulamas in medieval times was due to this fact that they were well versed in Islamic religious teaching, well educated and were in the same intellectual elite of Islamic Society. The people ordinarily relied on them in religious matters.

In modern times the people grew fastly conscious in the affairs of society whether social, religious or political. The idea of allegiance to a single authority which was the chief characterstic of medieval society was replaced allegiance to public will. Modernists want to employ Ijma as a tool of reforms.

Influenced by the modern democratic set up, they identify public opinion, public will, opinions of intellectual elite of the society, and the enactment by representatives of Muslim countries, assemblies with the Ijma of the community at large. But this public opinion must not be miscontrued with the public opinion theory as laid down by **A.V. Dicey** in his work **"Law and Public Opinion"**. The public opinion theory as mentioned by Dicey may not have roots on any authoritative source. "While the Ijma (consensus) must be based on an authoritative evidence i.e., Quran or Hadith. Without this authoritative Ijma may be meaningless".

Ulamas and scholars at the most can mobilise and motivate public opinion even in modern days to form a consensus because they are competent for that. And if they are agreed and followed by the community it will certainly constitute Ijma.

Ijma may be local or universal. There are problems which are of purely religious nature and require the assent of universal community. Others relate to a local situation. Universal nature questions may be discussed at international meeting just it has happened in the case of declaring Ahmadias as Muslim or non-Muslims. Local nature questions may be discussed in their own sphere. We find various Muslim countries of the world have enacted Family-Inheritance-Social laws suitable to their own conditions which are not repungnant to each other but different in nature, details and procedure in each country. They constituted Ijma when accepted and practiced by the community at large and based on Quran and Hadith.

After the death of prophet (PBUH) the revelation of Quran and practice of Sunnah were stopped. In order to keep "UMMAH" (community) united and integrated and on the basis of this tradition that "My community shall not agree on error" there developed the idea of Ijma having an authoritative evidence in Quran and Hadith.

The pressing need of the time is to enable Ijma to function prospectively and not retrospectively. One can not bring the laws at present on the statute books and prevailing institutions

into conformity with the principles of Shariah by retrospective methods. A machinery for prospectively ascertaining Ijma is required which can amend, rescind and replace what is un-Islamic in our present social structure and legal system, and which recognizing the "Isma limits of past Ijma" verdicts and the community's general protections from errors, enables Ijma to resume its creative, and at the same time stablizing, role in the Islamic system.

The Muslim world today is splited into different states, some are Muslim majority states while others are Muslim minority states, each faced with its special problems, each attempting particular solutions. This is an essentially transitional period in Muslim History and in many ways we can only tackle problems in the context of individual states, initially. This perhaps is the necessary piece of realism; the approach of Islam in one country or making one's particular country a laboratory for Islamic ideas and their practical implementations.

A wider discussion of the issues facing Islamic jurisprudence and translation of the classical works into different languages spoken in Muslim world to enable as wide a cross section of public to participiate in understanding that issues involved and the aims sought. The development of institutes for Islamic studies and research in specialised branches of knowledge and to tackle the exacting demands that is entrusted to them.

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