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THE HISTORICO-NORMATIVE PRINCIPLE IN ISLAM

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ABSTRACT

This article critically explores the conceptual divergence between Islamic and Western perspectives on public order, constitutionalism, and sovereignty. Islamic public order, rooted in the Covenants of Medina and the historical precedents of the Caliphate, emphasizes a structure based on continuity, communal cooperation, and decentralized authority. In contrast, Western constitutionalism is depicted through the metaphor of atomism, where the state, akin to an atomic nucleus, centralizes power and sovereignty. The article critiques neo-Islamist attempts to reconcile Islamic thought with Western atomistic political theory, particularly the notion of sovereignty. It argues that framing God's sovereignty as a political function undermines the historico-normative foundations of Islamic constitutionalism, distorting it into a hypothetico-deductive model similar to Western frameworks. This misalignment, the author contends, shifts Islamic thought from its traditional communal basis to a monolithic, state-centered ideology. The discussion extends to the concept of *Ijma* (consensus) in Islamic jurisprudence, highlighting its historical evolution

and distortion. Early Islamic jurists emphasized overt, collective consensus as a cornerstone of public order, rejecting silent or implied consensus as invalid. However, over time, oppressive regimes and complicit scholars reduced *Ijma* to the agreement of elites, marginalizing laypeople and eroding the democratic essence of Islamic polity. The article concludes by advocating for the restoration of Islamic public order principles, emphasizing inclusivity, overt consensus, and decentralized authority. It underscores the need to distinguish between authentic Islamic governance and adaptations influenced by Western political paradigms, ensuring alignment with the foundational values of Islam.

Muslim outlook on public order is internally controlled by the historical precedents of the Covenants of Medina and that of the Khilafah (Succession of the Prophet), and thus is protected from irrational myths or unverifiable fictions as actual or potential frame of reference to build up their social and political theory.

The logical meanings latent in the Muslim thought are, therefore, considerably different from those which are dormant in the fictions of the Western theory.

The image of a physical atom, with a nucleus around which so many electrons rotate with speed, is an image which faithfully conveys the sense of the Western constitutionalism. It is of no use to the Muslim way of looking at the human problems. The logical structure the Muslim Mind seeks may best be depicted by a vector. The latter has a direction and a set.

The idea of a centre or nucleus as applied to· it proves futile. What it has is a structure and a continuity. Such or similar imageries are near to the Muslim sense of the public order, consisting of different communities peoples, organisations and institutions. They are independent existentially yet are related to one another and form a continuity in authority, scope, function and execution of their intents.

It is the congregation (or society) which obtains between them by its real and effective presence and preserves the totality of human order by its actions and processes.

Atomism

The social image of the West seeks unity in defecto or dejure resolution of all with reference to a nucleus. To the West thus belongs 'Atomism' as the main determinant of its political thought. The Western State, known as the Modern State is indeed shaped on Atomism, its idea of sovereignty is nothing but a description of an atom like entity with logical precision.

Quite unawakened to the generic difference between the inventory of modern state and the basic imagery of Islam posited as it were by the Precedent Historical of the Madinite State that it has in its nature,

the neo-Islamists try to raise the structure of their concepts on the Atomism (a nucleus with so many electrons) of the West and attribute sovereignty to state as the basic analytical proposition in the development of their religious and political thought.

When they do so, they are logically forced to severe themselves from the historico-normativism inherent in the Muslim Constitutionalism. Then they are impelled to fabricate a fiction to square their thought with their borrowed analytical foundation.

1. The fiction or hypothesis they forge at the basis of their theoretical constructs runs as follows:
2. Sovereignty over the entire universe belongs to God;
3. He has delegated the authority (inherent in His Sovereignty) to the state through its people as a sacred trust: and
4. Thus, therefore the state is sovereign unto the people.

This fiction does not deepen the meanings of state anymore. On the other hand it strikes at the very foundation of the Islamic outlook, for it drastically changes the basis of the Muslim thinking from historico-normativism to the hypothetico-deductive system of the political thought.

Secondly, it absolutely conforms to the Western definition of state, which against the specific intents of the Muslim imagination, implies mono-centricism or atomization of the Umma and makes state the nucleus of all the organizations and activities of the society and declares it sovereign unto them.

Now we shall address ourselves to a thorough analysis of this neo-Islamist's fiction which undoubtedly has marshalled in its favour a host of the contemporary Muslim populists, mostly on emotional ground.

Political Function

It may be noted that sovereignty is a political notion. It means that beyond the discourse of political theory it has no meanings. When it is asserted that the state is sovereign, it means that the will of the state arbitrates between all things which are within its territories, and

this arbitration is a potential, actual, unceasing, ever-renewable function which it performs in relation to all the Urfs (conventions), institutions, arrangements, organizations etc. of the people under its charge. And this function is political.

When this idea of "Sovereignty" is applied to God, it makes Him perform the political function in His Universe. What it means is that the Universe is a political phenomenon. The entire fiction is thus reduced to an hotch-potch of wild imagination.

The Universe at large, if at all could it be comprehended, is a gigantic Divine affair, wherein everything is fixed in its path; everything is with a measure; and no civil dispute ravages its stretches. No jealousy and no competition. The sun does not overtake the moon; nor does the moon betrays its course:

> Blessed is He Who created the seven heavens. Thou seest no incongruity in the Benefient's creation. Then look again. Can't thou see any disorder (gap). Then turn thy eye again - thy look will return baffled, fatigued.[1]

Everything is at its place and is set on its course. The heavens have no civil disputes that the Lord should deliver His judgement to keep them in order by His civil power. God, therefore, has no political function to perform in His Universe. He is one and has absolute power over it.

Human Situation

The concept of sovereignty is meaningful only in human situation beset with civil disputes and future uncertainties, ever requiring the presence of an authority for its smooth functioning. God is invisible to His creatures. He is absent from the human world in the sense in which concrete individuals are present in it with their problems and conflicts. This very fact makes the idea of sovereignty utterly inapplicable to God, His lofty position and station.

The fiction of the sovereignty of God in a state or the delegation of that sovereignty is, therefore, untenable as the basis of political generalisation and ordered life in Islam.

Before the neo-Islamists, the Muslim thought was free from fictionism. It never entertained the idea of sovereignty as attributed to God. Nasiruddin Tusi (d. 672 A.H/1274 A.D.) in his *Ikhlãq i*

Nasiri gave a general answer about the nature of state. He denoted it under the concept of a plan: What is meant by city is not the dwelling of the inhabitant of a city but a particular association (*Jamiyat Makhsus*). Now the motives for men's actions differ and their movements are directed to varying ends. 'No cooperation can conceivably result among them'. Necessarily, therefore, some kind of Tadbir (plan) is required to render each one content with the station which he deserves and bring him to his due, to restrain each man's hand from depredation and from infringement of the rights of others and to concern itself with the task for which one is responsible concerning the matters pertaining to cooperation. Such a Tadbir (plan) is called Siyasah.[2]

Jalaluddin Dawani (d. 908 A.H/l502 A.D.) following Tusi propounds thus: Hence the people came to make a Tadbir under which each agrees to remain within his rights and withdraw his hand of aggression from others and the plan is the institution of the Siyasah Uzma (the high political order. i.e. the state) which involves law (Namus), an arbiter (Hakim), and wealth (dinar). It was in this way that the Muslim thinkers unlike the neo-Islamists viewed the nature of state in Islam.[3]

Public Opinion in Ijma

The opinion of the common man in an Ijma (consensus) in respect of the affairs of Umma is of cardinal importance in Islam but efforts to realize collective support or opposition of the community at least on the injunctions or laws of Shariah could not be fruitful for obvious reasons after the early periods of the Muslim history.

As the usurpers of power in the second and third centuries A.H. (eighth and ninth centuries A.D.) applied every coercive measure to deprive the believers of their obligatory right in the constitution of authority for administration of their affairs, and blocked every channel of consultation between them, the upholders of revealed norms and doctors of sacred traditions increasingly began to look in the direction of indirect means for realizing the collective consensus at least for producing fresh ordinances of the Shariah to meet the growing needs of the people.

At last in their search they found that passage of Time was not in any control and expected it to work the miracle of producing the consensus authenticating an ordinance in Islam. Let different learned opinions on a matter of public concern travel on the shoulder of Time. Those of them which would attract the masses for general following in the course of Time would be integrated in the established law of Islam. The dire need why Time was adopted as means of Ijma (consensus) was gradually forgotten.

Centuries rolled on and fructified in a genus of Ulema (scholars) who were acclimated enough to the oppressive regimes. They could conveniently ignore Ijma (consensus) as by its very nature it came to stay as a matter of periods, involving in the course of time, a very long time.

But the mechanism of Time, the last refuge of a demoralized group that does not rise up and struggle for its right, is very treacherous. It raises great hopes and tears at them. The flow of Time duly circulated the learned opinions in the Muslim lands and widely propagated them to generations but stabilized them into time-honoured divisions on fiqhi (legal) problems. The expected miracle did not occur. Different fiqhi schools got established.

Then polemics were written to show that the consensus of the community in respect of the problems of public importance was an unattainable ideal. But nobody could forget it that it was a necessary requirement for an authentic Hukm (decree) in Islam. In spite of it, the Muslim world failed to produce leaders to lead the masses to restore their own right of reference to them in the social order and its polity.

Then came the most decadent centuries in which attempts were made to modify the nature of Ijma by its successive reduction to the agreement of the Muslim Ulema. The seventh century Hijra (13th century A:D.) saw this reduction strongly fortified on an unprecedented thesis that opposition or support of the commoners was of no consequence to the decision-making authority of the Umma in the Shariah of Islam. .

Thus a gigantic metamorphosis of the public order and religious consciousness was taking in its grip the entire populace of Islam. The religious scholarship was drifting into the moorings of priestly order.

In their writings on jurisprudence they were collecting arguments to prove that God. His Messenger and themselves (the Ulema) were the ultimate seal of authentication and validation on every ordinance and institution of the people.

The priestly order outlined in the treatises of the Ulema was worthless unless the holders of power and rulers were assuredly drafted to it. And it was done. Ijma which was distorted to mean an agreement of the religious scholars of Islam was once again expanded and rephrased in the subsequent centuries so as to mean that it was an agreement of the religious scholars and the wielders of power in respect of a problem of Shariah or that of the public order.

The questions of legitimate or de facto power were regarded as of no significance by the Ulema. They were prepared to work with any wielder of power. Badavi's *'Minhaj AI-Usul,'* one of the most standard work projecting this new change defined ljma thus: 'And it is an agreement (lttefaq) of the looseners and binders (Ahl LHal wal Âqd of the Umma of Mohammad (peace be on him)'.[4]

Ibn Taymiya, Ibn Qayyim and other revivalists of the post Tartarian Islam also could not save themselves from the felony of this view. Their outline of Siyasati Shariah. i.e. politics (state and administration) in accordance with the Shariah was raised on the theses (1) that the wielders of power and the Ulema of Islam formed the class of the looseners and binders of affairs of the Umma and (2) that the agreement of theirs was the Ijma binding on the common people of the Muslim Ummah.

The following rule from that age came down to and widely hailed by the Ulema as cornerstone of the Muslim commonwealth: 'When the men of Ijtehad (the probers. i.e. top Ulema and wielders of power) of a period have inferred a Hukm (ordinance) and draw their agreement on it, the people of the period are under (compulsory) obligation to accept it, for the agreement as such is the proof that it is aHukm.[5]

Abul Hasan AI- Amidi (d. 631 A.H. / 1234 A.D.), one of the most celebrated Usuli (expert in the principles of legislation and Fiqh in Islam), recapitulated the mental climate of his time:

> The majority of Ulema hold that opposition or support of a layman is of no significance for Ijma.[6]

A powerful potentate surrounded by Ulema was their utopian dream. Or an hegemony of religious scholars and secular authorities was their ideal as the main feature of the Muslim civilization.

It is a sad commentary on reformists of the seventh and eighth centuries that they were envisioning nothing better than a recreation of Judah and Ephraim (of the eighth and seventh century B.C.) for the resurgence of Islam and rehabilitation of the glory of the Ummah.

Support of Layman

AL-Amidi was however particular enough to record the other opinion being entertained by a minority of the Ulema surviving from the past of Islam. According to it support or opposition of the layman is of critical importance in an Ijma on a Hukm (injunction of the Shariah).

But before the arguments of the men of this opinion are reproduced, the arguments invented by the champions of collaboration between Ulema and Umara (clergymen and men in authority) for dismissing common man in the conduct of the affairs of Umma may be recorded.

1. It is obligatory for a layman that he abides by the agreed opinion of the Ulema, because his opinion is of no worth in the matters in which *Taqlíd* (following) is incumbent on him.

2. The opinion of the Ulema is Hujja (final proof) on the basis of *lstidlal* (reasoning and argument), for no Hukm (decree) is provable without it. Since the layman does not possess insight and reasoning, his opinion is as good as the opinion of a child or a lunatic.

3. Having no support from Istidlal (reasoning) the perception of a layman in the matters of religion is an error in itself. And a person whose demonstration (of an opinion) is flawed with error does not carry weight whether he opposes or supports.

4. Men of knowledge and commoners in the early period of Islam i.e., the age of Companions had their consensus on that the opposition or support of the layman was of no value.

5. The Umma is saved from error by its reasoning. A statement about lhkãm (ordinances of the religion and Shariah) unsupported by reasoning proper to it is an error. Since a layman is not competent enough in reasoning, his immunity from error cannot be held.

6. Since a layman entertains opinions without arguments, soundness of opinion cannot be attributed to him. Consequently freedom of error which is a condition of the soundness of opinion is not for him.[7]

Collecting and polishing those arguments, most of the learned clergy dismissed the people of the Umma as worthless mass and turned their faces to those who were saddled in power. Decadence of unfathomable scales had full grip over them and never could they stop the decline of the Umma that they held under their custody in alliance with the ruling powers.

Muadh a prominent companion of the Prophet of God in a sermon said:

> The Devil sometime may cause an '*Âlim* (expert in law and religion) to go wrong in what he opines. It is also possible that sometime one of shabby character utters what is right.

He was asked how one could know that the 'Âlim was wrong and the one of shabby character was right. He said: Hold back from the doubtful opinion of an 'Âlim. And it is that opinion which on its being heard, the question of what and how about it rises at once.

In that way, Muadh lucidly explained to the believers the methodology of Islam. The crucial test did not relate to the stature of the learned but to the hearts of the people which shall have to be satisfied with it.

The Ulema cleft to the pristine methodology of Islam were not altogether extinct in the seventh century of the Muslim Civilisation which by all standards was a massive antithesis of Islam. In spite of their being in minority the Ulema restated its case in rebuttal to the reactionary contention that 'the opposition or support of the layman is of no consideration in law-making process for the Umma of Islam.

Abul Hasan AI-Amidi, the great Jurist of that century approvably recorded their arguments to expose the superficiality of this

dangerous contention held by a decadent clergy, proliferating in all parts of the Muslim land and feeling quite flattered to define Ijma (consensus) as but an agreement of the Ulema of Islam, which as a duty should be followed by its laymen. The arguments to refute this distortion in Islam were forwarded as follows.[8]

1. That a layman must turn towards the judgment of Ulema itself entails the thesis that the judgment, (opinion) of the Ulema, without (support from) him are not authoritative for other reasoners (Ahl I Ijtihad). The required authoritativeness of their judgment shall be established for those others by virtue of the laymen's agreement with it.'

AI-Amidy duly recognizes here that the laymen are but to depend on men of knowledge. But this dependence, according to him, is no proof of the possibility of an Ijma (consensus) without their participation.

2. It is said that drawing a consensus requires reasoning. If consensus requires reasoning either experts must do it or the whole of the people. The former contention holds good, the latter does not. In spite of this no bar is there against a layman to stop him from extending his agreement to the reasoners as a prerequisite of the Ijma (of the Umma). Not withstanding the layman's lack of competence in forwarding arguments it is (his agreement) as such (a necessary condition).

That the agreement of lunatics and children cannot be a condition (of Ijma) does not serve as an analogy for revocation of the condition of layman's agreement in this matter. There is a difference between the former (lunatics and children) and the laymen on account of which the latter are bearers of responsibility (*Mukallaf*).

The Shariah declares the laymen Mukallaf who are answerable. They cannot, therefore, be classified alongwith the immature lads and out of sense lunatics. AI Amidi states that the agreement of children and lunatics is not part of the Ijma because they are absolved of all responsibility, and not because they are incapable of (good) reasoning. Therefore, incompetence in (good) reasoning is no disqualification for participation in Ijma for those who are categorized as Mukallafín.

3. Although the opinion or judgment of a layman unsupported by argument in the affairs of the Din (Islam) is an error, yet it does not prohibit others (Ulema etc) to make his support a condition. for selecting an opinion from a number of (well reasoned out) opinions.

4. The fourth contention (of the other party) has no basis whatsoever. It claimed that ever since the age of the Companions, the laymen and the learned had been in consensus that the opposition and support of a layman was of no consequence. AL-Amidi rejected this contention categorically and said that no such consensus had been in transmission since the first generation of Islam.

The seventh century Hijra was indeed seething with many such wicked conventions or practices which had their beginning in the fourth and fifth centuries but were now looking in it like holy traditions from the first generations of Islam.

It reminds us of an exhortation from Abdullah bin Masud, another companion of importance for transmission of the knowledge of law and Shariah to the later generations. In a lecture he said:

> Look what happens when some mischief prevails among you. Those of middle age will grow old, and those of tender age will grow young with it. People will then say, 'It is a Sunnah.' And when it will disappear, it will be said that the Sunnah was abandoned.

He was asked about its timings. He said:

> You live in this time in which men of understanding are many but those of letters are few'. Much more regard is paid to follow the limits (orders) of the Quran than to the (beautiful) recitation of its words... A time will come when those of understanding will be few and those of learning will be many. Word of the Quran will be closely watched (for beauty) and the limits of the Quran will be brazenly flouted. Receivers will be swelling and donors will be scarse. Motives will be first (for self servicing) and (good) deeds will be last (in performance).

The seventh century was such a time since long in the making. The unprecedented mischief of ignoring the believing masses in as important a thing as consensus had permeated the Muslim lands so deeply that to the superficial men of learning it was appearing as a Sunnah from the very early times. AI-Amidi exposed their ignorance.

5. A layman may not be among the men of independent reasoning (Ahl I Ijtihad), but this does not produce any obstacle in making his unreasoned consent a condition for giving authoritativeness to the consensus (in making).

Even great men of learning are not men of independent reasoning. Jurists of original thinking are very few indeed. To confine Ijma to them means an attempt to the impossible. They may not be in agreement among themselves. Therefore the only course open is to see how others than those who are parties to disagreement take the matters, and the matters are decided in the light of their preferences.

Once the condition of independent reasoning is relaxed no one can justifiably stop an unreasoned preference or opinion, the consent of a layman, to have been forming part of the consensus which is binding on the Umma.

6. The sixth objection of the opposite party is replied thus: 'If by a layman, an individual is meant then of course soundness of opinion can not be attributed to him. But how can it be an obstruction to him if he joins to support expert opinion? A layman is certainly right and on sound opinion when he supports one of the learned (opinion). And on this basis. it is valid that his agreement is a necessary condition for the authoritative development of an Ijma.

The quintessence of this argument is that a layman does not have the necessary ability to work out a thoughtful opinion but he can support a thoughtful opinion as he must support some (thoughtful) opinion to get him live on. If he does not do as that he is wrong. This necessity becomes the logical and rational basis for refuting the idea that consensus is an agreement of the learned ones only to the utter disregard of the opinion. support or opposition of the laymen.

The theory of *Taqlíd* (layman's compulsory following of a learned one) also admits this principle and holds that a layman is not in error but is perfectly on the right path when he follows a learned opinion. When the position is like this then the opinion which has to become the law for all the people can only be drawn by the support of the laymen and as such it becomes the Ijma of the Umma.

The unholy innovation that consensus is an agreement of the Ulema and wielders of power of the Umma and that the laymen must submit to it is thus refuted completely.

AI-Amidi insists that there is no contradiction between the learned and the masses. There is a wide continuation between them. Knowledge is on both the sides to different degrees.

An '*A*ami (layman) is also a *Fiqih* (jurist) but he is the one who does not exert his own Ijtihad (probing and reasoning). And the one who does not exert his own Ijtihad is however a *Muqalid Fiqih* (dependent jurist who follows higher authorities) for he understands and remembers the ordinances. His participation in Consensus means association of the dependent jurist in the affairs of the religion, Shariah and the public order of Islam.

The status of the unlettered layman in Islam is that of a Fiqih though a follower Fiqih who can and who must fully participate in its affairs.

The Silent Opposition

The commoners have the status of follower-jurists in Islam. Therefore, their support is a portent of legitimacy for every matter of importance in the body politic of Islam. But it is either an overt and open support or no support at all.

But the idea of silent Ijma (consensus) and covert agreement of the believers was coined and exploited by the wielders of power in the history of the Muslim Civilisation, dispensing with the institution of right, open and overt consensus, for giving a semblance of legitimacy to those evil institutions and practices of their lust that ate into the fundamental values of Islam.

It is plain enough that silent agreement by nature is a shapeless thing as it is indistinguishable from its contradiction the silent opposition.

If a man keeps quiet it indicates nothing; neither his assent nor dissent. However, there is an admissible occasion to allow silence as a sign of approval.

Girls are universally shy. They are allowed to express their no-objection to a marriage proposal just by keeping quiet on hearing it. But even this situation is not accepted as such by Islam for there is always a chance that the shy girl may not be in favour of the proposal. In that case the Shariah makes a necessary provision. There is to be an agent of the girl who after searching her mind must communicate her will to others.

In addition, two witnesses must also be present during the whole proceedings of marriage to testify that the agent has faithfully represented the girl.

If silence of the community is to be taken as a consenting consensus then it has to undergo the same procedure. Every member of the community will need an agent to probe into his heart and communicate, and two witnesses to testify the correctness of communication. Otherwise, silence as such is of no account for deciding a matter in Islam.

Consequently, if there is consensus, it is an overt communication and institutionalization of approval by the people themselves.

The people must verbalise what they want then their consensus is demonstrated, proved and established; otherwise it has no meaning whatsoever. Thus silence cannot be taken to mean consensus in Islam for the purpose of legislation of and constitution of authority to conduct the affairs of the Ummah and its state.

Tool of Research

The concept of covert consensus was used by early jurists of Islam but in a different sphere. It was involved for determining the credibility - value of a number of transmissions of traditions from the first generation of Islam. There were traditions which were transmitted by a very small number of narrators belonging to the first generation of Islam. Now, the question arose about the religious value of those traditions (or Ahãdith) and the opinion recorded in them.

The methodologists of the Shariah of Islam solved the problem by treating them as transmission of the consensus of the companions as regard to those particular opinions. They argued that had there been no consensus on those opinions in transmission by a scanty number of narrators, then some other opinions contradictory to those ones

would have been in transmission from some other companions. This methodic device was appelated by them as the implicit/or silent consensus of the companions.

In the second / third century Hijra, the main problem for the methodologists of Islam was to distinguish the collective Sunnah of the Messenger of God and the companions from other traditions and innovations of the society and preserve them in their compilations and works.

The concept of the silent consensus was thus contrived by them as a tool of research to overcoming those difficulties they had to face in the proper grasp of the collective Tradition for ensuring a systematic foundation to the continuity of Islam in the face of all sorts of changes. The technique had no further use. It was thus not meant to develop into a rule of proving or claiming an Ijma (consensus) of the ongoing community on pertinent issues.

Rule of Conduct

To sum up, covert Ijma was a procedure of inquiry in the historical and religious sciences to compile the ways of the first generation of Islam, while the overt Ijma is a rule of conduct, a fundamental institution for the functioning of the Muslim Ummah.

But some short-sighted jurists of the later ages. particularly of the decadent periods in the government service as Qadis (magistrates and judges) and a bulk of the mischief makers in its history represented the silence of the people as an Ijma of the people.

It was not infrequent that the usurpers of power interpreted the graveyard peace imposed by them on the community as an Ijma of the Ummah in support of their devilish game. When some voice in opposition was raised, they branded it as a negligible voice of a handful of individuals who were bent on engineering disorder in the land.

Al Shafi'i had performed great service in the third century Hijra by repudiating the claim of Ijma behind a number of laws claimed on the ground that no opposition was known about them. He-said that lack of knowledge about opposition was not a proof of Ijma behind

them. In this approach, he was followed by Ahmed b. Hanbal, Daud Al Zahiri and by nearly all the great methodologists of Islam. All of them emphasized the principle that lack of opposition should not be taken as a proof of an ljma (by silence) behind an opinion in law.

Thus, the public order in Islam has in its constitution the ground rule that if there is a consensus, it is open and public. It is either overt consent or it is unproved and non-existent. In other words, none is allowed in Islam to scandalize the silence of the people or the absence of visible opposition into a proof of consensus behind his pretentions.

Most of the important questions about the institution of overt Ijma in the public order of Islam are related to its concrete realization. The Ummah cannot hold consensus by participation of all the people on every issue whether important or unimportant. Only in a small community say a city state it is possible to give call to citizens to assemble at a particular place discuss a proposal and give their approval or express their disapproval. In large communities this method cannot be adopted.

Ibn Hanbal and Ibn Hazm' talked about the impossibility of managing an Ijma or of tabulating the consensus of the people in view of the enormous increase of the Ummah from East to West.

This practical hindrance of large number and great distances, which they observed, was fully exploited by the wielders of power in Muslim dominions for setting themselves free from the requirement of Ijma without ever challenging its place as final authority on public matters in the congregation of Islam.

Method of Shariah

But the Shariah of Islam could not be frustrated like this for it had its own methods of solving the problems of practical nature. If there are hindrances, the Shariah is bound to evolve methods for their removal. Al Shatibi (d. 728/1328) said Removal of Haraj (obstruction) is one of the Usul (fundamental rules) of the Shariah'.[9]

The rule means that the difficulties will not be allowed to obliterate an important institution of Islam and the necessary obligations of the people it involves, but will be handled in such a manner that the interest of the latter is preserved amicably.

Since the very beginning, the Shariah had the method of fiduciary delegation (legal authorization to an agent) known as *Wikala* and the appointment of a fiduciary agent (Wakil) in different matters in which the real agents (individual men) were unable to perform their work due to some difficulty.

The institution of fiduciary delegation could be made articulate enough to present Ijma and every town could appoint its agents (Wakils) to go and record it at a central place. But it was not done and things were left to themselves as they were in the Muslim Civilization.

Notes and References

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