valid, and being so grave a matter, the Qur'an would have addressed it, and it also does not. The Qur'an quite categorically affirms the freedom of faith. Yet, although thankfully this trend is changing, many scholars have set aside the higher Qur'anic principle in favor of a solitary hadith.

Despite the painstaking contribution of our scholars to research and sift through the treasure of Hadith, the fact remains that Hadith generally yields only probabilistic knowledge. Hence this body of literature, the Hadith we have today, needs to be used more as a source of information, as well as moral inspiration and wisdom, while a much more restrained approach needs to be taken when the Hadith literature is used to arrive at laws or codes that have a direct and serious impact on the life, honor and property of people. This restraint is even more important in case of laws or codes that might result in discrimination and injustice.

Chapter Four

The Doctrine of Ijmaᶜ: Is there a Consensus?

Ijmaᶜ or consensus is one of the four sources of Islamic jurisprudence. The Qur'an and the Sunnah are the two primary and foundational sources of Islam, while ijmaᶜ and *qiyās* (analogical reasoning) represent two secondary sources. From dogma to norms to laws and codes, ijmaᶜ is recognized to have a pivotal place in Islamic discourse and socio-religious unity. Discussion deals with the subject of ijmaᶜ, where most of the claims concerning it are demonstrated to be unfounded and untenable based on a consistent lack of consensus regarding almost all aspects of ijmaᶜ as a source of Islamic jurisprudence.

Despite the well-established position of ijmaᶜ in Islamic jurisprudence, ordinary Muslims are generally unfamiliar with the reality that ijmaᶜ, as an authority or source of Islamic jurisprudence, stands on rather thin ice. While ijmaᶜ has to an extent played an integrative role in Islamic legal discourse, it has also contributed to some entrenched divisiveness. But even more importantly is the existence of abuses of ijmaᶜ, in terms of it being used as a frequently cited tool to quieten opponents or to allow abuse to occur through the frequent claim of ijmaᶜ applying to something where no ijmaᶜ is apparent. This issue is

vital, because traditional opinion considers that if there is an ijmaᶜ on something, whether referring to dogma or legal issues, it is binding upon the Muslims.

The following are some examples where it has been a common practice among Muslim scholars and jurisprudents to claim consensus (ijmaᶜ): the pronouncement of *ṭalāq* (divorce) three times at one sitting is valid; *tarāwīḥ* prayer is 20 *rakᶜah* long; women's leadership is prohibited; *talfīq* (mixing of opinions of different *madhhabs*) is invalid; and many others.

First, the problem with ijmaᶜ begins with the definition of the term. There is no ijmaᶜ (consensus) on the definition of ijmaᶜ. In fact, the issue of the definition of ijmaᶜ was not raised until the time of Imam Shāfiᶜī (d. 820 CE). It was not until the end of the tenth century that attempts by various scholars to deal with the definition of ijmaᶜ began to appear. There have been many scholars who disagree with the criteria for defining ijmaᶜ. The Companions themselves did not display a high level of consensus on a wide variety of issues so as to qualify these as ijmaᶜ (*ijmāᶜ al-ṣaḥābah*).

Second, there is no consensus about what source its authority is derived from. Some scholars attempted to identify the relevant sections of the Qur'an that support its status as one of the final authorities of Islamic jurisprudence. At the same time, notable scholars have countered the claim. The most commonly quoted hadith adduced in support of ijmaᶜ has been that the Prophet said: "My community (Ummah) will not agree on an error."[19] But, variations of the same hadith have also been reported in other collections. A fundamental problem with this or other *aḥādīth* mentioned in support of ijmaᶜ is that the traditions in question are not *mutawātir* and thus do not yield certainty of knowledge, whether in terms of the actual text or their meaning and implication. As mentioned above, except in the case of a few narrations, most are not *mutawātir* (instead the vast majority are *āḥād* – solitary narrations) and even if authentic (*ṣaḥīḥ*), their actual status is probabilistic to varying degrees.

The doctrine of ijmaᶜ played a vital role in the emergence of *madhhabs* (schools of jurisprudence), representing a systematization of both the methodology and corpus of laws, codes and dogmas. Diversity of thought and room for disagreement can represent dynamism in certain respects. However, it was deemed desirable that broad agreement or

near-consensus should crystallize in each *madhhab* concerning various aspects of worship and rituals. But, this does not mean that issues concerning whether *tarāwīḥ* prayer corresponds to eight or 20 units, or whether '*āmīn*' should be said aloud in congregational prayer, have been resolved across the *madhhabs* even over the course of fifteen centuries.

In fact, the systematization of laws and codes has contributed toward rigidity and intolerance at the inter-*madhhab* level. For instance, although according to the Ḥanafīs a marriage between a Ḥanafī male and a Shāfiʿī female is valid, according to the Shāfiʿī school it is invalid.[20] Elements of Islamic laws and codes have become inconsistent not just with the contemporary era, but also with the very principles and values of Islam that such laws and codes are supposed to uphold. Another important aspect pertinent to ijmaʿ that requires critical attention is that the process of ijmaʿ cannot be elitist and people whose lives are going to be affected by any decision or policy must be consulted in establishing an ijmaʿ. Of course, it would be impractical for the entire Ummah to be directly involved in such a process of approval. But this is precisely where the principle of *shūrā* becomes relevant. Both *shūrā* and the issue of ijmaʿ have to be reconciled and integrated to devise a representation-based decision-making process, so as to provide functionality and dynamism. In line with this thought, a law becomes Islamic rather when it meets the following conditions: (a) the formulation of the law is rooted in the foundational sources of Islam, (b) it is derived with explicit attention to the *maqāṣid* and values of Islam, and (c) the adoption and enactment of the law by the society is through *shūrā*.

Ijmaʿ has played an important role in the history of Islam and does have relevance to some aspects of jurisprudence. The argument of this chapter, however, is that Muslims neither need nor should claim divine sanctity for a concept that simply does not possess such agreed upon sanctity. Furthermore, as explained, there is hardly anything, except concerning a few broad and basic matters, on which there actually exists an ijmaʿ or consensus. Thus, Muslims need to be circumspect in accepting any claim which presents as proof the validity of having an ijmaʿ. Accordingly, conscientious Muslims need to rededicate themselves to practicing Islam and living their lives in line with a dynamic, problem-solving method and value-orientation, instead of blindly adhering to rigid dogma or self-indulgent legalism.