



## EJMĀ'

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**EJMĀ'** (consensus), a technical term in Islamic jurisprudence (*oṣūl al-feqh*). Opposed to *kelāf* (dissent, disagreement), *ejmā'* is defined by most jurists of the four Sunni schools and by many later jurists of the Twelver and Zaydi Shi'ite schools as the unanimous agreement of authoritative Muslim jurists on a given point of the law (e.g., Jowaynī [Shafi'ite, d. 478/1085] p. 11; Qāzī Abū Ya'lā [Hanbalite, d. 458/1066], I, p. 170; Bājī [Malikite, d. 474/1081], p. 459; Ebn al-Homām [Hanafite, d. 861/1456], p. 399; Bahā'-al-Dīn 'Āmelī [Twelver Shi'ite, d. 1030/1621], pp. 75-76; Aḥmad b. Yaḥyā b. Mortazā [Zaydi, d. 840/1436-37], pp. 183-84). There is, however, a point of difference. In Sunni jurisprudence, consensus represents a synchronic agreement, which takes into account the opinions of qualified Muslim legal scholars within a given generation. The Shi'ites, on the other hand, require the agreement of all their qualified jurists throughout the ages, most important, the first three centuries when imams were present in the community. There is also a minor difference of terminology. *Ejmā'* is of two categories: verbal and practical. In Shi'ite jurisprudence the second is known as *sīrat al-motašarre'a*, or simply *sīra*.

Some theorists hold that consensus should include the opinions of common Muslim believers, as is the case with basic issues such as the obligations to pray and fast or the prohibition of murder and theft. This concept is known as *ejmā' ommat al-mo'menīn* which requires the agreement of all Muslims (Turki; Bernand, "Idjmā'," p. 1024; Modarressi, pp. 128-29; see also Goldziher, p. 151, who described *ejmā'* as "a nearly unconscious vox populi"). This seems to have been the meaning of the term as understood by the first generation of



Muslims. Most later Muslim theorists, however, limit consensus quite strictly to fully competent jurists on the grounds that the common people are not qualified to decide legal issues (Šīrāzī, p. 89; Bājī, p. 459; Āmedī, I, p. 204; Šawkānī, p. 159). Such jurists equate the status of the layman's opinion with respect to consensus with that of a child, an unbeliever, or a madman (Saraḳsī, p. 312; Ebn Taymīya, p. 323). The opinion of scholars competent in other fields are not considered relevant either, even when they are grammarians, mathematicians, experts in Prophetic tradition (*moḥaddeṭūn*), or philosophical theologians (*motakallemūn*; Saraḳsī, p. 312; Ebn Taymīya, p. 331; Maqdesī, pp. 69-70). Even the opinion of a scholar competent in legal theory alone (*oṣūlī*), or of a jurist versed in the points of law but without an adequate background in legal theory is not taken into consideration (Ebn Taymīya, p. 331; Maqdesī, p. 70).

*Ejmā'*, according to the four Sunni and the Twelver and Zaydi Shi'ite schools, is the third source (*aṣl* or *dalīl*) of Islamic law, after the Qur'ān and the Sunna, as embodied in Hadith. It is intimately related to *ejtehād* (q.v.). Rather than a source of law *per se*, it may be seen as a principle governing legal interpretation once a question has been examined and enters "the battle of jurists' opinions" (Bebahānī, p. 7). According to Sunni jurisprudence, a legal opinion which gains the approval of all contemporary qualified Muslim jurists is said to have entered the purview of consensus. The unanimous agreement of the jurists confers the sanction of binding authority upon that legal opinion. Until such uniformity of opinion is reached, an individual jurist may choose among the various speculative opinions that have been expressed on the issue. However, if a jurist wishes to make a contrary ruling on a specific case that is apparently subject to this consensus, he must demonstrate the existing consensus to be false or show that the case in some manner falls outside its application. With the important difference that it is generally a consultative opinion (i.e., *fatwā*) and not a judge's decision (*ḥokm*), which is taken to have legal quality, *ejmā'* and its antithesis, *kelāf*, are in a sense the Islamic methodological counterparts of judicial precedent in common law systems. For this reason, the requirements for *ejtehād* (q.v.) set by many Islamic legal theorists stipulates that the jurist must be aware of the points on which there is consensus so that he will not give a contrary ruling (Karakī, p. 16; Šawkānī, p. 420). This stipulation is equivalent to a requirement that the jurist examine all precedents in a case and follow any existing binding authority.

In practice, *ejmā'* was most often established in negative terms, by the absence



of dissenting opinion, as clearly indicated by prolific literature concerning *kelāf* (Makdisi, 1981, pp. 105-11; idem, 1990, pp. 32-33). Notwithstanding, a number of works, including *Marāteb* by Ebn Ḥazm (d. 456/1064), attempt to catalogue the questions on which consensus exists (*masā'el al-ejmā*). Ebn Qayyem Jawzīya (d. 751/1350) explains the centrality of *kelāf* in the legal system as understood by most jurists of his day: “When a jurisconsult or judge is faced with a case, he must first determine whether or not there is disagreement (*eḳtelāf*) concerning it. If there is no disagreement, he need not examine the Qur’ān or the Sunna, but rather gives his opinion or verdict on the case on the grounds of consensus. If there is disagreement concerning the case, he determines through personal effort (*ejtehād*) which of the opinions is closest to the evidence and gives his opinion or verdict accordingly” (III, p. 174).

In Sunni jurisprudence, five Koranic verses are generally cited as proof of the binding authority of consensus (Baṣrī, II, pp. 4-16). Three of them are interpreted as emphasizing the special status of the Muslim community and the obligation to avoid conflict and follow the middle path (Qur’ān 2:143, 3:103, 3:110). The verse “Oh you who believe! ...If you differ in anything among yourselves, refer it to God and his Messenger” (4:59) implies that reference to God and the Prophet, explained by the jurists (e.g., Āmedī, I, pp. 185, 198) as the Qur’ān and the Sunna, is necessary only in cases of conflicting opinion. In a case of unanimous agreement, one assumes, reference to the Qur’ān and the Sunna is not necessary. This understanding implies that consensus itself may serve as a source of law. Verse 4:115 states, “And whoever opposes the Messenger (*yoṣāʾeq al-rasūl*) after the guidance has been manifested to him, and follows other than the way of the believers (*wa yattabe’ ḡayra sabīl al-mo’menīn*), We appoint for him that to which he himself has turned, and expose him to Hell—a hapless end!” This verse is interpreted as equating failure to follow the generality of believers with opposition to the Prophet. In addition to these verses, numerous Hadith reports are cited, such as the famous report, “My community shall not agree on an error,” “Whoever separates from the group by so much as a span’s width has removed the bond of Islam from his neck,” and others (Baṣrī, II, p. 16; Āmedī, I, p. 199). On the basis of these proof texts, Sunni jurists conclude that the Muslim community is infallible and that if all Muslim jurists agree on a certain opinion, it is guaranteed to be correct. It is clear, then, that *ejmā*’ defines Islamic legal orthodoxy, at least according to strict adherents to the religious authority promoted by the jurists (Makdisi, 1981, p. 106). Other Islamic groups in history,



including philosophers, theologians, and mystics, often did not share these views. Consequently, violating the consensus (*moḳālafat al-ejmā'*) was tantamount to heresy, and many jurists deemed the violater an unbeliever (*kāfer*) and a sinner (*fāseq*; Šawkānī, p. 138).

As a legal concept, *ejmā'* can be traced back to the 2nd/8th century. The Omayyad Caliph 'Omar b. 'Abd-al-'Azīz (99-101/717-20) is said to have written to provincial governors, advising them that cases should be decided according to the consensus of the jurists of each region (Makdisi, 1981, p. 106). A letter from the Basran judge 'Obayd-Allāh Anbārī to the 'Abbasid Caliph al-Mahdī (158-69/775-85) holds that cases should be decided with reference to the Qur'ān, then to the Sunna, then to the consensus of leading scholars, and thereafter by the *ejtehād* of the governor in consultation with scholars (Crone and Hinds, p. 93). Mālek (d. 179/795) apparently held that the consensus of the people (scholars?) of Medina was binding, but Šāfe'ī (d. 204/820) rejects this view in *Ketāb al-omm* (Šāfe'ī, 1902-06, VII, pp. 147-48). Šāfe'ī presents a theory of legal interpretation which became the basis of most later Islamic jurisprudence. He proposed the doctrine that the law is based on four sources, the Qur'ān, the Hadith, consensus, and *qīās*, or analogical reasoning (1979, p. 598). Valid consensus for him is agreement among all Muslims (*ejmā' al-moslemīn*), although it seems clear that he refers here to Muslim scholars or jurists (*ahl al-'elm* or *foqahā' al-moslemīn*; 1979, pp. 402-3, 457-58, 527, 599). He bases the requirement to abide by consensus on a Hadith of the Prophet which stresses the believer's obligation to "stick to the generality" (*lozūm al-jamā'a*) of Muslims (1979, pp. 474-75). Other sources report that Šāfe'ī also cited the Koranic verse 4:115, mentioned above, as proof of the authority of consensus. These sources say that he was the first to cite the verse for this purpose (Jowaynī, 1980, II, p. 677; Ebn Taymīya, p. 315; Sobkī, II, p. 19). During the 3rd/9th century the binding authority of consensus became more widely accepted, and violation of consensus was deemed prohibited. Apparently under opponents' pressure to accept the doctrine, Naẓẓām (d. ca. 220-30/835-45) adopted as consensus "all opinions which have been proven correct" (Ġazālī, I, p. 173). This definition allowed him to claim adherence to consensus without changing the substance of his views. The anti-rationalist Dāwūd b. 'Alī Zāherī (d. 270/884) espoused the opinion that only the consensus of the Prophet's Companions was a binding authority (Āmedī, I, p. 208). By the 4th/10th century consensus had become a standard part of Sunni legal doctrine. While texts by Qaffāl Šāšī (d. 365/976) and many others about *oṣūl al-feqh* from this period have been lost, this doctrine is clear from extant works



on jurisprudence by later authors, such as Qāzī ‘Abd-al-Jabbār (d. 415/1024) and Baṣrī (d. 436/1044). The doctrine is also indicated by Qāzī No‘mān (d. 363/973-74), who presents the Isma‘ili Shi‘ite refutation of Sunni legal doctrine in his *eḳtelāf oṣūl al-maḍāheb*.

The late 4th/10th and early 5th/11th centuries, the period of Buyid hegemony in Persia and Iraq, witnessed the Zaydi and Twelver Shi‘ite incorporation of the concept of consensus into their developing systems of legal theory. The Zaydi scholar Abū Ṭāleb Nāṭeq be’l-Ḥaqq Hārūnī, who wrote *Ketāb al-de‘āma fī taṭbīt al-emāma* before 395/985 (published as *Noṣrat maḍāheb al-zaydiyya* and erroneously attributed to Ṣāḥeb b. ‘Abbād [d. 395/985]), recognized the validity and binding authority of the consensus of *ahl al-bayt*. The Twelver Shi‘ite theory of consensus apparently was first presented by Shaikh Mofīd in his treatise on *oṣūl al-feqh*, extant only in abridged form in *Kanz al-fawā‘ed*, which was composed by his student Moḥammad Karājekī (d. 449/1057).

*Ejmā‘* was further elaborated by Šarīf Mortazā in *Jawāb al-masā‘el al-tabbānīyāt* (written before 420/1029), *Enteṣār, al-Darī‘a elā oṣūl al-šarī‘a*, and other treatises and by Shaikh Abū Ja‘far Ṭūsī (d. 460/1067) in *‘Oddat al-oṣūl*. Shaikh Mofīd does not include consensus as a source of law; his three sources are the Qur‘ān, the Sunna of the Prophet, and the statements of the Imams. Nevertheless, he recognizes the authority of the consensus of the Muslim community (*ejmā‘ al-omma*) on the grounds that a consensus necessarily includes the opinion of the Imam of the time, who is infallible and whose opinion has binding authority. It is presumably Shaikh Mofīd’s theory that Qāzī ‘Abd-al-Jabbār criticizes anonymously in *Moḡnī*, holding that the Twelver Shi‘ites do not actually have an infallible Imam and that if the real authority is the opinion of the Imam himself, there is no reason to claim the authority of consensus. This understanding is particularly odd because the Shi‘ites have often maintained that community consensus is invalid. Yet Qāzī ‘Abd-al-Jabbār claims that Mofīd’s theory is tantamount to saying that the consensus of Jews, Christians, and Muslims is a binding authority because it includes the Muslims (Qāzī ‘Abd-al-Jabbār, XVII, p. 204). Šarīf Mortazā and Shaikh Ṭūsī further accommodated the Twelver Shi‘ites to Sunni legal theory by recognizing consensus as a *dalīl* or source of law. They also defined two tiers of consensus: the consensus of the entire Muslim community (*ejmā‘ al-omma*) and the consensus of the Twelver Shi‘ites (*ejmā‘ al-ṭā‘efa* or *ejmā‘ al-ferqa*). The Zaydis developed a similar system, which included the consensus of the Prophet’s descendants (*ejmā‘ ahl al-bayt*) in addition to that of the Muslim community. In



answer to the objection that a Shi'ite theory of consensus is not necessary if the incontrovertible position is really only the Imam's opinion, Šarīf Mortazā and Shaikh Ṭūsī hold that during the occultation of the Twelfth Imam it may be difficult to determine his opinion in a direct manner. The consensus of Muslim jurists, and of Twelver Shi'ite jurists in particular, must include the Imam's opinion; therefore, consensus serves the function of locating the Imam's opinion during the occultation. As this concept came to be expressed, "consensus discovers the opinion of the Imam" (Moḥaqqueq Ḥellī, p. 126).

Later Twelver scholars questioned the possibility of ascertaining whether the Imam's opinion was included in a given consensus (Zayn-al-Dīn 'Āmelī, 1885, p. 34; idem, 1895-96, pp. 88-89) and criticized their predecessors for being too hasty in claiming consensus on particular issues. Particularly in Šarīf Mortazā's *Entešār* and Ṭūsī's *Ḳelāf* and *Estebšār*, *ejmā' al-ferqa* seems to function as a catchall justification for authors' positions on legal questions. Later scholars, such as Zayn-al-Dīn 'Āmelī (1971), criticized many of their claims, and other complained that jurists such as Šahīd-e Awwal Moḥammad b. Makkī (d. 786/1384) used the term consensus too loosely in reference to a well-known (*mašhūr*) opinion or to the agreement of a limited number of Twelver jurists on a point of law (Ḥasan 'Āmelī, p. 193). Scholars noted that forming consensus during the occultation is either extremely difficult or impossible, and they have argued for a more limited legal application of consensus (Ḥasan 'Āmelī, p. 194).

The modern Shi'ite jurist Moḥammad-Bāqer Šadr (d. 1984) uses the language of probability to describe *ejmā'*, regarding the legal opinion of a jurist on an issue a conjectural report (*ekbār al-ḥadsī*) about that point of law (II, pp. 171-75). The report has a certain probabilistic value less than a statement concerning sensory matters (*ḳabar ḥessī*), because the likelihood of error is higher in matters of conjecture than in matters of sense perception. *Ejmā'*, which he defines as agreement of a large number of qualified jurists on a ruling — and not unanimous agreement — is a valid proof because while the conjecture of each jurist has a particular likelihood of error, their large number renders the margin of error for the whole group negligible.

Isma'ilis and Twelver Akbārī Shi'ites reject the validity of consensus, regarding it as a heretical innovation irreconcilable with the doctrine of the imamate.



See also [EJTEHĀD](#); JURISPRUDENCE; and QĪĀS.

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