202271 - Consensus (ijmaa') and analogy (qiyaas) and their application in the modern context

the question

What is the clear difference between consensus (ijmaa') and analogy (qiyaas)? Please give some examples to clarify, from the time of the Prophet and modern times.

Detailed answer

Praise be to Allah.

Consensus (ijmaa') and analogy (qiyaas) both come under the heading of evidence based on general principles on which shar'i rulings may be based. Consensus comes after Qur'an and Sunnah in the list of shar'i evidence.

From a linguistic point of view, the word ijmaa' may refer to two things:

1.Decision, as in the verse in which Allah, may He be exalted, says (interpretation of the meaning): "So decide upon your course of action [fa ajmi'u]" [Yoonus 10:71].

2.Agreement, as it is said Ajma'at al-jamaa'ah 'ala kadha [the group agreed upon such and such].

In Islamic terminology, it was defined by az-Zarkashi (may Allah have mercy on him) as follows: It is the unanimous agreement of the mujtahid scholars of the ummah of Muhammad (blessings and peace of Allah be upon him) after his death concerning some issue at any particular time.

End quote from al-Bahr al-Muheet by az-Zarkashi, 6/379

From this definition it is known that certain conditions must be met for there to be consensus, which are:

1.The agreement should be among the mujtahid scholars of the ummah of Muhammad (blessings

and peace of Allah be upon him); this excludes the consensus of previous nations.

2.It should come after the death of the Prophet (blessings and peace of Allah be upon him)), because consensus during his lifetime is of no significance.

3.It should come at a particular time, so that no one will think that what is meant is the consensus of all mujtahid scholars throughout all ages until the Day of Resurrection, because that is impossible.

Consensus constitutes shar'i proof, because it is based on the idea that the ummah as a whole is infallible and that it cannot agree on misguidance. This is proven by the texts of the Sunnah. At-Tirmidhi (2167) narrated from Ibn 'Umar that the Messenger of Allah (blessings and peace of Allah be upon him) said: "Allah will not cause my ummah – or the ummah of Muhammad (blessings and peace of Allah be upon him) – to agree on misguidance."

Classed as saheeh by al-Albaani in Saheeh al-Jaami' as-Sagheer, no. 1848

Ahmad narrated in his Musnad (27224) from Abu Basrah al-Ghifaari, the companion of the Messenger of Allah (blessings and peace of Allah be upon him) that the Messenger of Allah (blessings and peace of Allah be upon him) said: "I asked my Lord, may He be glorified and exalted, for four things, and He granted me three of them and withheld one from me. I asked Allah, may He be glorified and exalted, not to cause my ummah to agree on misguidance, and He granted me that."

Some Qur'anic texts support this principle too, such as the verse in which Allah, may He be exalted, says (interpretation of the meaning): "And whoever contradicts and opposes the Messenger (Muhammad SAW) after the right path has been shown clearly to him, and follows other than the believers' way. We shall keep him in the path he has chosen, and burn him in Hell - what an evil destination" [an-Nisa' 4:115]. In this verse, He makes it obligatory to follow the way of the believers and warns against differing from them. This indicates that when they are unanimously agreed on something, it must be sound, because if it were possible for them to agree on a mistake, then the one who is told to follow them would be being told to follow them in their

mistakes, but what Allah enjoins us to follow can only be true and correct.

See: al-Fusool fi'l-Usool, 3/262

Shaykh al-Islam Ibn Taymiyah said: The consensus of this ummah constitutes shar'i proof, because Allah, may He be exalted, has told us that they enjoin all that is good and forbid all that is evil. If they agreed on making permissible something that is forbidden, or waiving an obligatory duty, or prohibiting something that is permissible, or saying something false about Allah, may He be exalted, or any of His creation, that they would be described as enjoining what is evil and forbidding what is good.

End quote from Majmoo' al-Fataawa, 28/125

Hence it is known that Allah, may He be exalted, has protected the ummah of Muhammad (blessings and peace of Allah be upon him) from agreeing on misguidance or error. There is a subtle reason for this that was explained by az-Zarkashi when he said: The reason why only this ummah was given this quality of only agreeing on what is correct is that they are now the only believing group on earth, because the Prophet (blessings and peace of Allah be upon him) was sent to all mankind, whereas the Prophets who came before him were sent only to their own peoples, so the followers of each one were only part of the total number of believers. Therefore each community was not the only one that was the believing group in any particular era. But in the case of this ummah, the believers are all in this ummah (and not anywhere else), and the hand of Allah is with the jamaa'ah (main body of Muslims). Hence – and Allah knows best – they were given the privilege of agreeing only on that which is sound and correct.

End quote from al-Bahr al-Muheet, 6/396

Examples of consensus (ijmaa'):

There are no examples of consensus at the time of the Prophet (blessings and peace of Allah be upon him) because, as we explained above, consensus can only be valid after the death of the Prophet (blessings and peace of Allah be upon him). Al-Aamidi said: The consensus of those who

lived at the time of revelation does not constitute proof or evidence at the time of revelation, according to scholarly consensus. Rather it only constitutes proof or evidence after the death of the Prophet (blessings and peace of Allah be upon him).

End quote from al-Ihkaam fi Usool al-Ahkaam, 1/213

With regard to examples after the death of the Prophet (blessings and peace of Allah be upon him), there are many examples, including, for example:

The consensus of the scholars on the prohibition on building new churches in Muslim lands. This consensus was narrated by Shaykh al-Islam Ibn Taymiyah. It says in al-Furoo' wa Tasheeh al-Furoo' (10/338): They are to be prevented from building new churches and synagogues. Our shaykh (Ibn Taymiyah) stated that there was consensus on this point. End quote. It says in al-Insaaf fi Ma'rifat ar-Raajih min al-Khilaaf by al-Mirdaawi (4/236): They are to be prevented from building new churches and synagogues. Shaykh Taqiy ad-Deen (may Allah have mercy on him) stated that there was consensus on this point. Our companions made an exception for what they (the Jews and Christians) stipulated at the time of making peace deals, if they said "These are ours." It was also narrated by as-Subki. It says in Fataawa as-Subki (2/369): Building (new) churches is forbidden, according to scholarly consensus. End quote.

There are several modern examples of consensus, such as the consensus of Muslim scholars that it is forbidden to play the role of the Prophet (blessings and peace of Allah be upon him) or other Prophets and Messengers of Allah (blessings and peace of Allah be upon them) in movies and TV shows. This consensus was mentioned by Shaykh Bakr Abu Zayd (may Allah have mercy on him) when he said: Those scholars who allowed acting within certain guidelines are unanimously agreed that it – playing certain roles – is prohibited in the case of the Prophets and Messengers of Allah (blessings and peace of Allah be upon them), and that it is prohibited in the case of the Mothers of the Believers, the wives of the Prophet (blessings and peace of Allah be upon him) and his descendants (peace be upon them), and in the case of the Rightly Guided Caliphs (may Allah be pleased with them).

End quote from Hukm at-Tamtheel, 1/43

With regard to analogy (qiyaas):

This is evidence on which shar'i rulings may be based; it comes after consensus. In linguistic terms it refers to comparing and seeing similarities. In Islamic terminology, it was defined by Ibn Qudaamah as follows: Giving a ruling concerning a novel issue (i.e., one that is not directly mentioned in shar'i texts) that is the same as the ruling on a basic issue (i.e., one that is directly mentioned in shar'i texts), on the basis of some common factor between the two issues.

End quote from Rawdat an-Naazir wa Jannat al-Manaazir, 2/141

What is meant by giving the same ruling on a novel issue as that given on a basic issue is putting it under the same category and giving it the same ruling.

There are four pillars or components of analogy: the basic issue, the novel issue, the ruling and the common factor.

These components may be understood further by giving an example. If we say, for example, that nabeedh is an intoxicant, then it is haraam like khamr (wine). In this case the basic issue is khamr. This is called the basis of the analogy, which is the issue or item of which the text speaks or on which there is consensus.

The novel issue is nabeedh, which is the matter concerning which analogy is made. This is the matter concerning which there is no text or consensus; it is the issue for which we want to find the shar'i ruling.

The ruling is that it is prohibited. This refers to a ruling that is proven concerning the basic issue, whether on the basis of a text or consensus, and whether the ruling is one of prohibition or otherwise, which we want to transfer to the novel issue concerning which there is no evidence or direct mention in any text.

The common factor is intoxication. The factor is the reason for which the Lawgiver issued a ruling

concerning the basic issue.

It is worth noting that the Prophet (blessings and peace of Allah be upon him) used analogy in his fatwas to point out this principle to the people and teach it to them.

For example:

Al-Bukhaari (1852) narrated from Ibn 'Abbaas (may Allah be pleased with him) that a woman from Juhaynah came to the Prophet (blessings and peace of Allah be upon him) and said: My mother vowed to perform Hajj, but she did not perform Hajj before she died; can I perform Hajj on her behalf? He said: "Yes, perform Hajj on her behalf. Don't you think that that if your mother owed a debt, wouldn't you pay it off? So pay off the debt owed to Allah, for Allah is more deserving of having debts owed to Him being paid off."

Muslim (1148) narrated from Ibn 'Abbaas (may Allah be pleased with him) that a woman came to the Messenger of Allah (blessings and peace of Allah be upon him) and said: My mother has died and she owed one month (of fasting). He said: "Don't you think that if your mother owed a debt, you would pay it off on her behalf?" She said: Yes. He said: "The debt owed to Allah is more deserving of being paid off."

It says in al-Fudool fi'l-Usool (4/48): … Another example is the hadeeth of Ibn 'Abbaas: A man came to the Prophet (blessings and peace of Allah be upon him) and said: My father is a very old man and he has not performed Hajj; should I perform Hajj on his behalf? He said: "Don't you think that if your father owed a debt, wouldn't you pay it off?" He said: Yes. He said: "So perform Hajj on his behalf."

According to another hadeeth, a woman from Khath'am asked the Prophet (blessings and peace of Allah be upon him): "The obligation of Hajj has come when my father is an old man and he cannot sit firmly on his mount; can I perform Hajj on his behalf? He said: "Don't you think that if your father owed a debt, and you paid it off, wouldn't that be sufficient?" She said: Yes. He said: "The debt owed to Allah is more deserving of being paid off."

Ibn 'Abbaas narrated that a man came to the Prophet (blessings and peace of Allah be upon him) and said: My sister vowed to perform Hajj, but then she died. The Messenger of Allah (blessings and peace of Allah be upon him) said: "Don't you think that if she owed a debt, wouldn't you pay it off?" She said: Yes. He said: "So pay off the debt owed to Allah, for it is more deserving of being paid off."

These reports affirm the principle of analogy and highlight the comparison of matters to others that are similar. It was narrated from Muhammad ibn al-Munkadir that the Messenger of Allah (blessings and peace of Allah be upon him) was asked about making up missed Ramadan fasts: could they be done separately (not one after the other)? He said: "What do you think, if a man owes a debt to another man, and he starts to pay it off little by little?" He said: There is nothing wrong with that. He said: "And Allah is more generous and easy-going." Thus he gave an analogy and highlighted points of similarity.

Another example is the hadeeth of 'Umar who said: I got excited and kissed (my wife) whilst I was fasting, then I said: O Messenger of Allah, today I did something serious; I kissed (my wife) whilst I was fasting. He said: "What you think, if you rinse your mouth with water whilst you are fasting?" I said: There is nothing wrong with it. He said: "So what is the problem?" The Messenger of Allah (blessings and peace of Allah be upon him) gave an analogy and pointed out something similar. End quote.

With regard to the modern application of analogy, one example is that of DNA testing as compared with the skill of examining the features of fathers and children to detect similarities and family resemblance, and confirm parenthood. The Islamic Medical Science Organisation, in its eleventh session, in which they dealt with the topic of genetic engineering, the human genome and genetic treatment, which was held in Kuwait, 23-25 Jumaada ath-Thaaniyah 1419 AH/13-15 October 1998 CE, was of the view that: DNA testing, from a scientific point of view, is an almost foolproof means of establishing biological paternity and determining the identity of an individual, especially in the field of forensics. It has reached a level of definitive proof that is accepted by the majority of fuqaha' in matters other than issues related to hadd punishments. This view was supported by the

Islamic Fiqh Council belonging to the Muslim World League during its sixteenth session which was held in Makkah al-Mukarramah, 21-26 Shawwaal 1421 AH, on condition that all its conditions are completely fulfilled, as it says in its recommendations that "If DNA testing completely fulfils all its conditions, and human error is avoided, then its results are virtually definitive in proving or disproving paternity of children."

Another example is comparing taking a certain amount of blood in the case of one who is fasting, to the procedure of cupping, as we have discussed in fatwa no. 50406

And Allah knows best.