CHAPTER FOUR

METHOD OF PROBLEM SOLVING THROUGH THE PRACTICE OF

*IJTIHĀD*

4.0. INTRODUCTION

This chapter discusses the method of problem solving through *ijtihād*. This chapter begins with the topic of general principles of the method of problem solving through *ijtihād* from an Islamic context. After which, *ijtihād* as interpreted by SIS is presented, followed by an analysis from an Islamic thought perspective.

4.1. GENERAL PRINCIPLES OF THE METHOD OF PROBLEM SOLVING THROUGH *IJTIHĀD*

The human mind is very important when it comes to guiding people to their destination. The mind is very essential in being human, and it is considered a gift to humans. In order to live a true, just and good life, people have to use their ‘*aql* or mind to think, to reflect, and to observe a religious way of life.¹

The people’s needs are not endless, just as the agenda of human life is not endless. Yet, at the same time, disputes among people will continue to exist. This is why *ijtihād* is necessary. It is needed to find the answers we humans are constantly looking for.²

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4.1.1. The Definition of *Ijtihād*

The following are literal and technical definitions of *ijtihād*:

(a) **Literal Definition**

*Ijtihād* is a *masdar* of the Arabic word “*ijtahada*” (اجتهد), which means to exert his best or utmost effort.\(^3\) It is derived from the Arabic root word (*ج ح د*) *j-h-d* which means hardship and energy, and جهد بالضم means only energy.\(^4\)

Allah s.w.t. says:

والذين لا يجدون إلا جهدهم

Al-Tawbah 9:79

Translation: and [criticize] the ones who find nothing [to spend] except their effort

Literally, *ijtihād* means the utmost effort\(^5\) in doing something. Utmost effort here means with maximum and full energy. Hence, it is not called *ijtihād* if there is no hardship or maximum effort involved. Thus, *ijtihād* is not used to carry a seed, but it is used to carry a rock, as carrying rocks require great effort.\(^6\) In other words, *ijtihād* literally is defined as the exertion of utmost effort on a matter that requires it.

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\(^4\) Ibid., 58.


(b) Terminology

Terminologically, *ijtihād* means:

1. To exert utmost effort to deduce (*idrāk*) ḥukm *Sharʿī*.7

2. To exert utmost effort to discover evidence to reach al-*qatʿī* or al-*zannī* of ḥukm *Sharʿī*.8

3. To exert utmost effort when considering *Sharʿīyyah* evidence to deduce al-*aḥkām al-Sharʿīyyah*.9

4. The utmost efforts of jurists in obtaining ḥukm from *zannī* evidence (*dalīl* *zannī*).10

5. To exert utmost effort to reach the goal.11 Or: The jurist (*faqīh*) exerts his utmost effort to find out a legitimate rule of evidence. (*dalīl*)12

6. The *mujtahid* has spent so much effort in pursuit of the knowledge of *aḥkām al-Sharʿīyyah*.13

7. *Ijtihād* is also defined as,

The exertion of the utmost effort by a trained jurist, taking into account all the relevant texts of the Qur’an and Sunna as well as principles of jurisprudence, to discover, for a particular human situation, a rule or law. Ijtihād is the mechanism by which Islamic law, as revealed in the Qur’an and the Sunna, may be interpreted, developed and kept alive in line with the intellectual, political, economic, legal, technological and moral developments of a society.14

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Terminologically, *Jumhūr Uṣūliyyin* defines *ijtihād* as the utmost effort of jurists to obtain *ḥukm* from *ẓannī* evidence (*dalīl ẓannī*). Thus, *ijtihād* is only acceptable if one exerts his utmost efforts in searching to the point where he feels that there is nothing left to search for.\(^{15}\) It is the exertion of energy to the extent that the faculties of the jurist become incapable of making further effort. In the other words, *ijtihād* is the maximum effort expanded by the jurist to master and apply the principles and rules of *uṣūl al-fiqh* (legal theory) for the purpose of discovering God’s law.

### 4.1.2. Method of *Ijtihād*

Generally, there are three methods or modes of *ijtihād* that can be exercised by qualified *mujtahid*:\(^{16}\)

1. The first method that is used by a jurist is through focusing closely on texts and by understanding their literal meanings. In this process, a jurist applies the rule of plain meaning, in which he attempts to discover descriptions for difficult words in the texts. Then, he finds the meaning of the words from other sources, for example, in literature. “*This also depends on whether the words have been used in the texts in their literal sense or their use is figurative (haqīqah and majāz).*” The jurist needs to apply the technique of *dalālat* if the text may not show the required meaning through plain reading.

2. The jurist will turn to syllogism (*qiyyās*) whenever he feels he has exhausted the method of literal construction. This method is limited to strict forms of analogy known as *qiyyās al-ma’nā* and *qiyyās al-‘llah*.

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iii. *The second mode of ijtihād is confined to the extension of the law from individual texts, while in the third mode the reliance is on all the texts considered collectively. This means that legal reasoning is undertaken more in line with the spirit of the law and its purposes rather than the confines of individual texts.*”

The spirit of the law and its purposes can be witnessed clearly in the general principles of the legal system. The principles are used by methods like istihsan and maslahah mursalah. The third mode of ijtihad provides the jurist with the opportunity to generate new principles provided he observes a prescribed methodology and fulfills the conditions imposed for such legal reasoning.  

4.1.3. The Process of Ijtihād

Someone who wishes to exercise *ijtihād* must fulfill the requirements to qualify as a *mujtahid*. They must know and understand the various kinds of *bayān* or elaboration of the texts. They also must recognize the “*occasions on which such bayān is invoked.*” In their struggle to derive laws from the sources, they must apply all three methods or modes of *ijtihād*, if necessary. Besides that, they must know and understand abrogation (*naskh*). Lastly, they must “*exercise preference (tarjīḥ) and reconciliation (jamʿ) among apparently conflicting sources.*”  

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4.1.4. The Matters of *Ijtihād*

Legal problem-solving is needed because situations and problems are constantly changing. *Ijtihād* plays an important role in this context.\(^{19}\) *Ijtihād* is a method to uphold truth and justice, and to explain the history of Islam. It is used for guidance, coaching, and for the shaping of ethics and laws practiced over time in each place.\(^{20}\)

When discussing *ijtihād*, the main point that must be understood is the connotation of the words definitive (*qat‘ī*) and probable (ẓ*annī*). *Qat‘ī al-thubūt* means “definitive with respect to its transmission”, and *qat‘ī al-dalālah* means “definitive with respect to its meaning.” Thus, a text may be categorized as *qat‘ī al-thubūt* and *qat‘ī al-dalālah*. All Qur’anic verses and texts of the *mutawātir Sunnah* are categorized as *qat‘ī al-thubūt*. Very few of these texts are classified under *qat‘ī al-dalālah*.\(^{21}\)

Matters that have been decided by *qat‘ī* evidence (dalil) are categorized as *uşūl*, while matters that have been not decided by *qat‘ī* evidence (dalil) are categorized as *furū‘*. *Ijtihād* can only be practiced for matters of *furū‘*. Therefore, *ijtihād* cannot be applied for matters that have been decided by *qat‘ī* evidence (dalil), such as the matters pertaining to the obligation of *ṣalāh*, *zakāh* and etc., and the prohibition of adultery and drinking alcohol and etc. Thus, *Ijtihād* is not practiced in matters categorized as *uşūl*.\(^{22}\)

*Ijtihād* can be applied when solving problems related to ẓ*annī* texts, or when the problems are not mentioned in any texts,\(^{23}\) or when there is no evidence (dalil) in any text (nas) regarding the matter at hand.\(^{24}\)

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\(^{20}\) Muhammad Sayyid Tantawi, *Al-Ijtihād*, ix

\(^{21}\) Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 266.


Thus, *ijtihād* can be applied when looking at texts (*naṣ*) that are *ẓannī al-dalālah*, such as some verses in the Qur’an or Hadith that can be interpreted in many different ways depending on the understanding of the language or Islamic evidences. An example of this kind of verse is verse 6: *Sūrah al-Māʿidah*. This verse is categorised as *qatʻī al-thubūt*, but differences of opinion among the *fuqahāʾ* occur because the understanding of particular words and phrases in the text vary.²⁵

*Ijtihād* is usually applied for texts (*naṣ*) that are *ẓannī al-thubūt*. Texts that are considered *ẓannī* include some hadiths constantly discussed by *ahl hadith*. The main points of contention include the *sanad* (chain of narrators) and *matn*, and whether they are categorised as *ṣaḥīḥ, hasan, ḍaʿīf*.²⁶

Besides that, the *mujtahid* can also exercise *ijtihād* in cases where no evidence, direct or indirect, can be found for a problem.²⁷

*Ijtihād* can be exercised in matters where there are differences in opinions (*ikhtilāf*) among the scholars, and in matters that have never been discussed by any *mujtahid* before.²⁸

Not all texts need to be interpreted by *mujtahid*, as certain texts are universally acknowledged as authentic and have clear meanings. In other words, certain texts can be understood just by reading them.²⁹

Even though *ijtihād* is very important, it does not mean that it can be done on everything. *IJtihād* cannot be done on any *ḥukm* that has been established. Texts (*naṣ*) that are classified as being *qatʻī al-dalālah* cannot be reinterpreted through *ijtihād*. For example, the *naṣ* that commands people to worship Allah s.w.t. and to follow the Prophet s.a.w., to

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²⁶ Ibid.
perform the duties as stipulated by Allah s.w.t. and to keep away from acts of adultery, acting as false witnesses, murder, ribā, consuming the property of orphans which is prohibited by Islam, etc., have been classified as qat‘ī al-dalālah, and cannot be reinterpreted through ijtihād.\(^\text{30}\)

Qat‘ī al-dalālah indicates that a certain text has only one meaning. One example of qat‘ī al-dalālah is the text regarding the punishment for those who commit zinā. This text states that those who commit zinā should be flogged with a hundred stripes. This text has definitive meaning—the punishment is specifically mentioned as flogging with a hundred stripes, no more and no less. The number of stripes is clearly stated, and so, ijtihād is not needed in this case. However, the meaning of “stripes” in the text is unclear, and so mujtahids need to interpret the definition of the word. Mujtahids must also determine how the flogging is to be carried out. Should they use a stick, a whip or something else? Which part of the body is involved?\(^\text{31}\)

Ijtihād cannot be applied for texts that are considered qat‘ī al-thubūt and qat‘ī al-dalālah.\(^\text{32}\) Under normal situations, an existing rule cannot be subject to the process of ijtihād if the rule is clearly and unambiguously affirmed in the Qur’an and Sunnah. As an example, the process of ijtihād cannot be done to decide whether theft should be prohibited or not because the prohibition of theft is clearly and unambiguously affirmed in the Qur’an.\(^\text{33}\)

Ijtihād also cannot be exercised on texts have already been interpreted and agreed upon by ijmā’. Even though these texts may be ambiguous in their meanings, jurists have

\(^{30}\) Muhammad Sayyid Tantawi, *Al-Ijtihād*, 5.
\(^{31}\) Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 266.
\(^{32}\) *Ibid.*
reached a consensus over them. A mujtahid must find out if there is ijmā’ on the issue at hand before they attempt to interpret the text through ijtihād.\textsuperscript{34}

According to Shaykh ’Isā Manūn, there are three types of Shariah law, and they are as follows: \textsuperscript{35}

First: The Inevitable Law, which came by the way of tawātur qat‘ī, inherited by Khalaf scholars from the Salaf scholars. Every Muslim, whether they are from public or specific groups, should know about this law. For example, all Muslims know that it their duty to pray 5 times a day, give alms, fast during Ramadān, make the pilgrimage to Bayt al-Ḥarām, etc. Ijtihād does not allow to be performed on these laws. \textsuperscript{36}

Second: Islamic laws (ḥukm Shar’) that were unanimously agreed upon by mujtahids, without any opposition from other parties. These laws were established through a consensus. This type of law is only known to a particular group of people. It is not compulsory for the public to know about the laws that fall under this category. An example of rulings that fall under this type of law can be taken from the subject of inheritance. For instance, a daughter of the son (granddaughter) is entitled to 1/6 of an inheritance. The process of ijtihād cannot be done on this type of law, as the rulings have already been agreed upon by consensus (ijmā’). Rejecting the consensus is prohibited (ḥarām). \textsuperscript{37}

Third: Islamic Laws (ḥukm Shar’) in which the dalīl are deep and hidden. Mujtahids have differences of opinion regarding laws that fall under this category. Differences of opinion do not give rise to any offense, and are thus allowed,\textsuperscript{38} as long as their interpretations are in line with the Qur’ān and Sunnah.

\textsuperscript{34} Imran Ahsan Khan Nyazee, \textit{Islamic Jurisprudence}, 267.
\textsuperscript{35} Muhammad Sayyid Tantawi, \textit{Al-Ijtihād}, 7.
\textsuperscript{36} \textit{Ibid.}
\textsuperscript{37} \textit{Ibid.}
\textsuperscript{38} \textit{Ibid.}
The matters of *ijtihād* are very important and need to be fully understood by those who wish to participate in exercising *ijtihād*. This is the reason why *ijtihād* can only be applied to certain matters only.

### 4.1.5. The Qualifications of a *Mujtahid*

In the process of *ijtihād*, the first most important thing one must be concerned about is the person who wishes to exercise *ijtihād*. An unqualified *mujtahid* is not allowed to exercise *ijtihād*. This topic is very important, as in it, the researcher discusses what makes a qualified *mujtahid*, and what a *mujtahid* needs to know before attempting to exercise *ijtihād*. Mastering is the knowledge a *mujtahid* needs to master is essential so that the *mujtahid* can derive a ruling accurately from the sources.

A person who wishes to exercise *ijtihād* must be well-educated and have good intentions for want to exercise *ijtihād*. One cannot claim to have exercised *ijtihād* if they have not fulfilled the conditions to become a qualified *mujtahid*. The characteristics of a *mujtahid* are as follow:

**(a) A *Mujtahid* must be Muslim**

*Ijtihād* that is done by a non-Muslim cannot be accepted, even if he is extremely knowledgeable in the field of Shariah.

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Allah s.w.t. says:

يَا أَيُّهَا الَّذِينَا آمَنُوا إِن تُطِيعُوا فَارِقًا مِنَ الَّذِينَا أُوتُوا الْكِتَابَ يُدُونُكُم بِأَنفُسِكُمْ كَافِرِينَ

‘Āl Imrān 3:100

Translation: O ye who believe! If ye listen to a faction among the People of the Book, they would (indeed) render you apostates after ye have believed!

(b) A Mujtahid must be Mentally Healthy
Any fatwas or *ijtihād* from a person who is mentally unstable cannot be accepted.\(^{42}\)

(c) A Mujtahid must have Reached Puberty\(^ {43}\)

Narrated ‘Alī ibn Abū Ṭālib: The Prophet (peace be upon him) said:

رفَعَ الْقَلَمُ عَنْ ثَلََاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمُبْتَلَى حَتَّى يَبْرَأَ، وَعَنِ الصَّبِيِّ حَتَّى يَكْبُرَ

Translation: There are three (persons) whose actions are not recorded: a sleeper till he awakes, a lunatic till he comes to reason, and boy till he reaches puberty.\(^ {44}\)

(d) A Mujtahid must be Master of the Arabic Language

Arabic is the language of the Qur’an and the Sunnah.\(^ {45}\) Therefore, a *mujtahid* must know the original language of the Arabs as emphasized in *Kitāb Lisān al-‘Arab* by Ibn Manẓūr. A *mujtahid* must have a firm grasp of Arabic grammar, morphology, *al-bayān*, etc. Without this knowledge, it is impossible to understand the Qur’an correctly and precisely.\(^ {46}\)

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\(^{43}\) *Ibid.*

\(^{44}\) Narrated by Abū Dawūd, *Kitāb al-Ḥudūd*, Bāb fī al-Majnūn Husriq aw Yuṣīb Haddā, number of Hadith 4398.


A mujtahid who wants to study and derive ḥukm from the Qur’an and Sunnah is required to be a master of the Arabic language. Suyūṭī mentions that there is a consensus among jurists who say that only those who are highly knowledgeable in Arabic are allowed to interpret the word of God, as Arabic is the language of the Qur’an and Sunnah.47

The mujtahid must be skilled in Arabic language48 because the fundamentals of jurisprudence (uṣūl fiqh) are within the Qur’an and is also its core.49 Thus, a mujtahid must have enough knowledge of the Arabic language required to comprehend the Qur’an and Sunnah. In other words, he must be fluent in the Arabic language.50

A mujtahid must also know enough about the language to understand the circumstances of the Arabs how they use the language, so that he can distinguish textual indications (dalālat al-alfāż).51

Learning about the Arabic language and its grammar is a huge endeavour. However, a mujtahid must have sufficient knowledge of the Arabic language and grammar that is needed to guide him to understand the meaning of the Qur’an and Sunnah correctly and precisely. He must learn the Arabic language to the extent that is required. Knowledge of the Arabic language is a vital tool that can be used to enable him to explain the text in the Qur’an and Sunnah 52

The mujtahid must know the nuances of the language and be able to comprehend the sources accurately and deduce the aḥkām from them with a high level of competence.53

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47 Ibid., 21.
51 Abū ‘Abdullāh, Ahmad bin ‘Umar bin Musā’id al-Ḥāzimī, Sharḥ Mukhtasār, 7.
52 Ibid., 6.
53 Ibid., 7.
According to al-Ṭūfī in “Sharḥ Mukhtaşir al-Rawdah”, a mujtahid must have sufficient [كاف] knowledge of the Arabic language and grammar. He must know enough by which he can comprehend the Qur’an and Sunnah.54

The mujtahid cannot recognize and understand the indications mentioned in the Qur’an unless he is sufficiently fluent in Arabic. He must be able to distinguish the differences between texts (ناش). He must be able to interpret apparent meanings (زاهير), literal meanings (هاقيقاه) and metaphorical ones (مياژ). He must understand what the Qur’an enjoins (امر) and forbids (نحى), and he must know what is general (ام) and what is particular (خش). A mujtahid must also be able to tell what is excluded (مئثننا) and excluded of it (مئثننا مينه), what is absolute (معلم) and what is restricted (موقايةدد).55 He must be able to determine what is explicit (صورى الكلام), outward (زاهير) and mujmal,56 muhkamah and mutashābihat, and etc.57

He must be also knowledgeable about the linguistic jurisprudence (فقه اللغة), declaration statements (البيان),58 morphology (سارف), ‘ilm al-حرف,59 al-tarākib, vocabulary and its meanings,60 rhetoric (بلاغة) texts (ناش), content, operatives, and concept, etc.61 It is essential for a mujtahid to master these essentials elements of the Arabic

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55 Abū ʻAbdullāh, Ahmad bin ʻUmar bin Musāʻid al-Ḥāzimī, Sharḥ Mukhtaşar, 7.
57 Abū ʻAbdullāh, Ahmad bin ʻUmar bin Musāʿid al-Hāzimī, Sharḥ Qawāʾid (t.tp.: Durūs Ṣawtiyyah, t.t.), 15.
58 Abū ʻAbdullāh, Ahmad bin ʻUmar bin Musāʿid al-Hāzimī, Sharḥ Mukhtaşar, 6.
59 Abū ʻAbdullāh bin Yūsūf bin ʻIsā bin al-Ya’qūb al-Juḍī al-ʼAnzī, Taṣāfīr ʻIlm, 381-382.
60 Abū ʻAbdullāh, Ahmad bin ʻUmar bin Musāʿid al-Hāzimī, Sharḥ Naẓm al-Waraqāt (t.tp.: Durūs Ṣawtiyyah, t.t.), 15.
61 Abū al-Karīm bin ʻAlī bin Muḥammad al-Namilah, Al-Jāmiʿ Li Masā’il Usūl, 400.
language. Without this knowledge, a person will not be able to understand the words in both the Qur’an and Sunnah.

(e) **A Mujtahid must have Sufficient Knowledge of the Qur’an and its Sciences.**

The Qur’an is the primary source of Islamic law. This means that it is a source for the law as well as the general principles of this law. The Qur’an is the source that validates all the other sources of the law.

A *mujtahid* must be knowledgeable of the sciences of the Qur’an. However, the memorization of the Qur’an is not obligatory. A *mujtahid* only needs to know parts of the Qur’an that can relate to the rulings at hand.

Some scholars have said that there are 500 verses in the Qur’an related to rulings. However, some scholars believe that there are 900. Others may state that there are a thousand verses. There are, however, many more verses in the Qur’an from which rulings can be extracted.

The late Shaykh Muḥammad Nūr al-Ḥasan once said: "In doing *ijtihād*, there are conditions that have been agreed upon by all people and there are also the conditions which are still disputable." 67

One of the conditions that have been agreed upon is that a *mujtahid* has to know the texts related to the law. A *mujtahid* cannot do *ijtihād* if he does not know the texts related to the law he is dealing with.

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Zarkashī said: "It is not a requirement to know all the contents of the Qur'an, it is enough to know the texts related to the law only."\(^69\)

Imām al-Ghazalī and Ibn ‘Arabī said, "The verses that are needed to know is at the rate of 500 verses." Imām al-Mawardi agreed with this opinion.

But Ibn Daqīq al-ʻAyd said:

It is actually not limited to a specific number, but it varies according to the differences of their ‘aql, coupled with the award of Allah to His servants in doing istinbāt. It may be that the number is meant by the scholars above, are verses that show the law, through key indicators only, and not by the content or commitment (iltizām). This is because if a person is knowledgeable about the laws of the Qur’an, is he still required to memorize verses of the Qur’an.\(^70\)

Ibn Daqīq adds, as he stated in his book al-Qawātī: “Most scholars view that a mujtahid must be a person who memorizes the Qur’an, because a hafiz can understand the deeper meaning of the Qur’an. According to the other opinion, a mujtahid does not necessarily have to memorize the Qur’an.”\(^71\)

During the earlier periods, some Muslim jurists required a mujtahid to memorize the Qur’an before they attempt to partake in the process of ijtihād. However there is a group who believes that the condition of memorising the Qur’an is secondary, mainly because times have changed. The Qur’an is so accessible nowadays.\(^72\) Thus, it is sufficient for a jurist to just know where the related verses in the Qur’an are located.\(^73\)

\(^{69}\) Ibid., 9.
\(^{70}\) Ibid.
\(^{71}\) Ibid.
\(^{72}\) Luthfi Assyaukanie, Institute of Southeast Asian Studies, Islam and the Secular State in Indonesia, (Singapore: Institute of Southeast Asian Studies Publications, 2009), 29.
\(^{73}\) Abū ‘Abdullāh, Ahmad bin ‘Umar bin Musā’id al-Ḥāzimī, Shahr Naẓm, 11.
The Qur’an is the main source of religion. Thus, a mujtahid must generally know all about its contents, have more detailed knowledge of the verses related to the injunctions (aḥkām) of jurisprudence (fiqh), and be acquainted with all their finer points.

Imām Al-Shāfiʻī said:

It is not allowed for anyone to issue a fatwa in the Religion of Allah, except for a man who knows the Book of Allah through its abrogating (texts) and its abrogated (texts) (al-nāsikh and al-mansūkh), its clear and its ambiguous (muḥkamah and mutashābihah), its interpretation and (the details of its) revelation (ta’wīl and tartīl), and its makkī and madanī, and what was intended by it.74

A mujtahid must be familiar with Arabic and Arabic poetry. He must also be familiar with everything else that could help him understand the Qur’an and the sayings of the Prophet Muḥammad s.a.w.. He must be absolutely well-acquainted with the Qur’an.75359

Asbāb al-nuzūl is also very important. Failure to understand asbāb al-nuzūl can lead to many problems. Asbāb al-nuzūl is the knowledge that enables us to understand the situations in which the verses of the Qur’an were revealed, and many more.76 A mujtahid must have knowledge of asbāb al-nuzūl, as without it, a mujtahid may create interpretations that can lead to the misunderstanding or omission of a part or even a whole injunction.

A mujtahid must be knowledgeable of the abolishing and abolished.77 Some verses had rules that where then overridden by other verses revealed by Allah s.w.t. later on (there are reasons why Allah s.w.t. did this, and discussions on why He did this are part of the field of the science of the Qur’an).

74 Muhammad bin al-Ḥasan bin al-‘Arabī bin Muḥammad al-Ḥujuway al-Thaʿālabī al-Ja‘farī al-Fāsī, alFikr al-Samī, 495.
75 Ibid., 495.
76 ‘Abdullāh bin Yūsūf bin ‘Isā bin al-Ya’qūb al-Juḍī al-‘Anzī, Taysīr ʿIlm Usūl al-Fiqh, d1, 384.
77 ‘Ayāḍ bin Nāmī bin ‘Awaḍ al-Sullamay, Usūl al-Fiqh, 452.
A *mujtahid* must know about Shariah proofs, such as *āyah al-aḥkām* and the sayings of the Prophet Muḥammad s.a.w. pertaining to rulings.\(^78\)

Thus, a *mujtahid* must be knowledgeable of the sciences of the Qurʾan. Having knowledge in the science of the Qurʾan enables a *mujtahid* to understand and identify evidence (*adillah*) contained in the texts and to deduce and extract judgments from them. He must have knowledge of *asbāb al-nuzūl* or the historical reasons why certain verses were revealed, and must have a firm grasp of its commentaries and of *taʿwīl*.

**(f)** **A Mujtahid must have Sufficient Knowledge of the Hadith or Sunnah**

A *mujtahid* must know not only the content of the Hadiths, but also the degrees of their soundness.

According to Mawardī, there is opinion that states that a *mujtahid* needs to know 500 Hadiths. Ibn ʻArabī, on the other hand, said that a *mujtahid* needs to know 3000 Hadiths.\(^79\)

However, Imām Aḥmād Ibn Ḥanbal said: "*What is required of a mujtahid is more than that.*" He believes that we must be cautious and make sure that a *mujtahid* is fully qualified before he is allowed to engage in the process of *ijtihād*.\(^80\)

During the earlier periods, some Muslim jurists required a *mujtahid* to memorize 100,000 Hadiths. However there is now a group who believes that the condition to memorize 100,000 Hadiths is unnecessary, as times have changed and the Hadiths have become so accessible nowadays.\(^81\)

In the book *Al-Ijtihād fī al-ʿAḥkām al-Sharīʿah*, it is mentions that a *mujtahid* does not need to memorise all the Hadiths, because nowadays, the Hadiths have already been well-

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\(^78\) Muḥammad bin Ṣāliḥ bin Muḥammad al-ʻUthaymīn, *ʿal-Usūl*, 85.


\(^80\) *Ibid.*

organized and compiled in books. It is so much easier now to refer to Hadiths, as they are arranged according to specific chapters and are accompanied by descriptions (ṣahīḥ or daʿīf etc.). In these books, there are also explanations from ‘Ulamā‘ al-Rijāl about the Hadith narrators, along with information on each one of the narrators. Whether the Hadiths are strong or weak is also stated in these books. So, a mujtahid just needs to refer to and read these books in order to derive laws from them. Memorizing all the different Hadiths would be much too difficult and complicated. 82

A mujtahid merely needs to know the specific Hadiths related to the matter at hand. However, a mujtahid still needs to know all the evidences (dalīl) from the Qur’an and Hadith related to the laws he is dealing with. He must also be able to refer to verses of the Qur’an or Hadith whenever there is a problem, and be able to extract the information he needs from them. 83

Al-Zarkashi said there are 3000 Hadiths that the Shar‘ī rulings are derived from. Someone had asked Aḥmad Ibn Ḥanbal, “How many Hadiths are sufficient for a man to give a Fatwa? Is one hundred thousand sufficient for him? He said: No. That person said: two hundred thousand? He said: No. The person said: three hundred thousand? He said: No. The person said: four hundred thousand? He said: No. The person said: five hundred thousand? He said: No. I said: Five hundred thousand? He said: I hope so.” 84 When the scholars mention large numbers like this, what they actually mean is that issuing a fatwa is not something that should be taken lightly.

When a mujtahid seeks to find evidence (dalīl) for a new problem that has arisen, he must first have knowledge of the Qur’an and Hadith. Besides that, he must also have

82 Muhammad Sayyid Tantawi, Al-Ijtihād, 9-10.
83 Abū ʻAbdullāh, Aḥmad bin ʻUmar bin Musāʿid al-Ḥāzimī,Sharḥ Mukhtaṣar, 4.
84 Abū al-Mundhir Mahmūd bin Muṭṭammad bin Muṣṭafā bin ʻAbd al-Łatīf al-Maniyāwī, al-Sharḥ alKabīr, 598-599.
knowledge of *sanad* (chain of narrations), of how the Hadith was transmitted to us (*ta‘rīq* *wuṣūluh ilaynā*) and the state of the man who narrated the Hadith (*al-rāwī*).\(^{85}\)

A *mujtahid* must also be able to differentiate between the *ṣahīh* and the *ḍaʻīf*,\(^{86}\) *mutawātir* or *aḥād*, and have knowledge of the six *ṣahīh* compilations of the Hadiths.\(^{87}\)

Ibn al-Najar said in “*Sharḥ al-Kaukīb*” that a *mujtahid* is required to know about authentic Hadiths and weak Hadiths, its *sanad* (chain of narration) and *matn*. He must have knowledge of its narrators and know whether a Hadith is strong or weak. Besides that, he must also use a variety of ways to find out why the Hadiths are considered weak.\(^{88}\) By being able to distinguish strong Hadiths from weak ones, a *mujtahid* can choose to ignore weak or fabricated Hadiths.

A *mujtahid* must be knowledgeable of the transmitters of Hadiths (*rijāl*), to the extent he is able to discern the validity of the Hadiths. He must be cognizant of the qualities and the circumstances of the narrators of Hadiths.\(^{89}\)

If a scholar has not memorised all the related information about the Hadith narrators, he must, at the very least, be able to have access to the required books so that he can make the right judgment when interpreting the Hadiths and studying the chains of narration. Among the universally recognized and accepted books of Hadiths are the books of Bukhārī, Imām Mālik, Abū Dāwud, al-Dār al-Qutnī, al-Tirmidhī, al-Ḥakīm and etc, as these scholars were experts in this field.\(^{90}\) Besides that, a *mujtahid* must have sufficient understanding of the rules in this field, to the extent he is able to judge a Hadith when there

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is disagreement (ikhtilaf). He must be knowledgeable of the aḥādīth al-aḥkām, or at least have a source to refer to that compiles Hadiths and their rulings. Books of the aḥādīth al-aḥkām include Muntaqī al-Akhbār (متنقى الأخبار) by Ibn Taymiyyah and Bulūgh al-Marām (نقل المراة) by Ibn Ḥajr al-'Asqalānī.

Thus, a mujtahid must be well-versed in Prophetic traditions. He must be able to know which Hadiths are authentic and which are weak, and he must have knowledge of isnād and rijāl al-Ḥadīth. He must have knowledge on a hadith’s chain of transmitters. A mujtahid must also have knowledge of adillah (evidence) of al-ḥukm from al-Sunnah. He must know its matn and asānīd, al-maqbūl and al-mardūd, and almuḥtaj bih and ghayr al-muḥtaj bih.

(g) A Mujtahid must have Knowledge of Ijmāʻ

A mujtahid must be knowledgeable of ijmāʻ, so that he does not issue a fatwā that is contrary to what has been acknowledged through ijmāʿ. This means that a mujtahid must have knowledge of cases where a consensus has been reached. A mujtahid should know what scholars have agreed on so that he doesn't violate those agreements or consensus or issue a fatwa that is contrary to what the religious authorities have already agreed upon. It is prohibited to oppose or question what has been decided on through consensus. A mujtahid must also be aware of issues where differences of opinions are involved.

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92 Ibid., 386.
93 Muḥammad bin Ṣāliḥ bin Muḥammad al-‘Uthaymīn, al-Usūl min ‘Ilm al-Usūl, 85.
95 Ibid., 8.
98 Muḥammad bin Ṣāliḥ bin Muḥammad al-‘Uthaymīn, al-Usūl min ‘Ilm al-Usūl, 85.
100 ‘Abd al-Karīm bin ‘Alī bin Muḥammad al-Namilah, Al-Jāmi’ Li Masā’il, 400.
(h) A Mujtahid must Possess the Knowledge of Analogical Reasoning (Qiyās)

A mujtahid must possess the knowledge of analogical reasoning (qiyās). More than half of Islamic fiqh is deduced from qiyās. Al-Shāfī’ī once said that a person who does not have the knowledge of qiyās is not a faqīh. Aḥmad Ibn Ḥanbal, on the other hand, has stated that qiyās cannot be ignored.101

A mujtahid should have a comprehensive knowledge of qiyās that covers its conditions, rules, division, ‘illah and its oppositions, as qiyās is a platform for ijtihād. Knowledge of qiyās is very important for a mujtahid because the knowledge of fiqh is also growing from it and in certain cases, it is useful to istinbāṭ the hukm / law.102

(i) A Mujtahid must be Knowledgeable of ‘Ilm Uṣūl al-Fiqh

A mujtahid must be knowledgeable of ‘ilm uṣūl al-fiqh, because it is the pillar upon which ijtihād stands on.103 A mujtahid must have comprehensive knowledge of Islamic jurisprudence. (uṣūl al-fiqh)104

(j) A Mujtahid must possess a Thorough Knowledge of the Objectives (Maqāsid) of the Shariah

The mujtahid must possess a thorough knowledge of the objectives (maqāsid) of the Shariah. This means he must have an understanding of the aims and purposes of the Shariah.105

102 Muhammad Sayyid Tantawi, Al-Ijtihād, 10.
103 Al-Jāmi‘ah al-Islamiyyah, Mudhakkirah, 59.
105 Ibid.
(k) A Mujtahid must have Knowledge of His People’s Problems, Conditions, Customs and Traditions.\textsuperscript{106}

(l) He must have the Aptitude to Exercise Ijtihād and have the Ability to Extract Rulings from the Evidences (Adillah).\textsuperscript{107}

(m) A Mujtahid must be an Upright (‘Ādil) Person

A mujtahid must be an upright (‘ādil) person who refrains from committing sins and whose judgment his people can trust. His sincerity must be beyond question and untainted by self-seeking interests. For ijtihād is a sacred trust, and anyone who is tainted with heresy and self-indulgence is unworthy of it.\textsuperscript{108}

Some scholars do not consider ‘adālah a condition, while some scholars insist on it as a basic requirement. This difference of opinion exists among scholars divide ijtihād into two categories. The first category of ijtihād is that which is exercised to determine hukms and issue fatwas. The second category of ijtihād is ijtihād that is exercised to gain knowledge for one’s own use. For the second category, a mujtahid is not required to be ‘adālah. However, for the first category, a mujtahid must be an upright person.\textsuperscript{109}

In conclusion, our Muslim scholars have determined the requirements for those who wish to exercise ijtihād. Those who do not meet these requirements are not allowed to exercise ijtihād.

\textsuperscript{106} Ibid., 401.
\textsuperscript{107} Muḥammad bin Ṣāliḥ bin Muḥammad al-‘Uthaymīn, ‘al-Usūl, 86.
\textsuperscript{109} Muhammad Sayyid Tantawi, Al-Ijtihād, 11.
4.1.6. Maṣlaḥah

Since the term “maṣlaḥah” is often used by SIS in their discussions regarding problem solving, this topic is very important. In this topic, the writer seeks to understand the issues related to maṣlaḥah.

Islamic law preserves the maṣlaḥah or interest of humans. The classification of maṣlaḥah is based upon the purposes of Islamic law (maqāsid al-Sharīʻah) and their types.

Islamic law preserves human interests by fulfilling their al-ḍarūriyyāt, al-ḥājiyyāt and al-tahsiniyyāt goals. All these are intended to preserve the benefits and interests of all mankind. Al-ḍarūriyyāt means the basic needs of human beings. Without these basic needs, a disruption in human lives will occur and cause damage. Al-ḍarūriyyāt involves five things, namely religion, life, intellect (ʻaql), honour and property.110

All things that are a necessary for the everyday lives of human are categorised as al-ḥājiyyāt. There is a big difference between al-ḍarūriyyāt and al-ḥājiyyāt. If something that is categorized under al-ḥājiyyāt is missing, nothing is disrupted or gets damaged. Things that fall under the category of al-ḥājiyyāt are important because they exist to remove difficulties and ease our burdens so that we may live much easier lives with one another.111

Without al-tahsiniyyāt, human beings can continue to live without trouble or inconvenience. However, living without al-tahsiniyyāt can cause human being to live unhappy and uncomfortable.112

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111 Ibid., 28.
112 Ibid.
For example, one basic human need is the need for shelter to protect us from the heat and cold. Humans can take shelter in caves or on mountain, for example. This is the example of al-ḍarūriyyāt. Having a more comfortable home is an example of alḥājiyyāt. Having a clean, comfortable home with doors and windows makes living more easily. Then, al-taḥsiniyyāt is something that can make a person feels relaxed, comfortable and happy in their dwelling. In this case, al-taḥsiniyyāt would be decorations and furniture in the home. When a person has all three (al-ḍarūriyyāt, alḥājiyyāt, al-taḥsiniyyāt), they can live comfortably and happily.\textsuperscript{113}

*Al-ḍarūriyyāt* is the most important element in the lives of human beings. It is followed by al-ḥājiyyāt and al-taḥsiniyyāt. Al-ḍarūriyyāt is the most important of all because the absence of it can result in disruptions in our lives. Without al-ḍarūriyyāt, human lives can be damaged.\textsuperscript{114}

Some of the principles of Shariah specifically aim to remove hardships and difficulties in order to preserve human interests. However, preservation of human interests should be done according to priority. Thus, the preservation of matters that are al-taḥsiniyyāt (complementary) cannot be done if it threatens the preservation of matters that are related to the al-ḥājiyyāt (requirements). Similarly, matters that are al-taḥsiniyyāt and al-ḥājiyyāt in nature come second to matters of al-ḍarūriyyāt.\textsuperscript{115}

*Manfaʻah* (benefit) or mafsadah (harm) is measured by referring to the purpose of Shariah (maqāṣid al-Sharī‘ah), which is to protect religion (ḥifẓ al-dīn), protect the soul (ḥifẓ al-nafs), protect the ‘aql (ḥifẓ al-‘aql), protect our offspring (ḥifẓ al-nasl), and protect our property (ḥifẓ al-māl). All matters that contain elements of protection as mentioned above are called maṣlaḥah. Anything that denies maṣlaḥah is called mafsadah.

\textsuperscript{113} Ibid. 
\textsuperscript{114} Ibid., 29. 
\textsuperscript{115} Ibid.
Thus, as stated by al-Ghazālī (W. 505 H), *manfa‘ah* or *mafsadah* cannot be measured by human judgment because it is very susceptible to the influence of human desires.¹¹⁶

The book of *Islamic Accommodative* agrees with what was expressed by al-Ghazālī. By generalizing *maṣlaḥah* without a definite limitation, or by following only the desires when determining what is good or bad, someone will be misled.¹¹⁷

In conclusion, our great Muslim scholars have given clear explanations regarding *maṣlaḥah*. When making decisions, we must not contradict with the Qur’an and Sunnah.


4.2. THE METHOD OF PROBLEM SOLVING THROUGH IJTIHĀD FROM SIS’ POINT OF VIEW

According to Zainah, “Since human affairs constantly evolve, there is always a need for new rulings that use new interpretations of the religious texts to bring outdated laws in line with the changing realities of time and place (zaman wa makan). This is the rationale for ijtihad.”

Zainah mentions that ijtihād literally means ‘endeavor’ or ‘self-exertion’. To her, ijtihād is a method used by jurists to solve new issues or problems faced by Muslims through the guidance of Islamic revelation.\(^{119}\)

According to Sisters In Islam, in order to ensure that justice is upheld in any society, the human agency should play its very significant function to interpret and deduce law from its sources in unprecedented cases by taking into consideration the public interest.\(^{120}\)

Zainah, the founding members of SIS, explains that it is normal procedure in Muslim legal tradition to have reforms in certain laws and practices, as they are done to benefit society and public interest (maṣlahah).\(^{121}\)

According to SIS, current Islamic family laws in many countries must be reformed, as some of these laws do not current views of marriage and personal relationships. Currently, the group believes that some of these laws seem to condone inequality and bias against women.\(^{122}\)


\(^{119}\) Ibid.

\(^{120}\) Andrew Clinton Willford, Kenneth M. George, Spirited Politics, 110.


\(^{122}\) Ibid.
Thus, SIS explains that present-day Muslims should reformulate personal law. The group believes that Muslims have to follow the guidance provided in the Qur’an and ensure that their personal law fulfills the purposes of the Shariah (maqāṣid alSharī‘ah) and public interest (maṣlaḥah), and, at the same time, they need to understand current socio-economic situations. According to SIS, “The ijma‘ (consensus) of how the shari‘ah should be interpreted is different today than what it was five hundred or one thousand years ago.”

Zainah believes that Shariah is closer to ethics than law. She mentions that Shariah represents ethical values and principles that lead people towards justice and correct conduct.

Zainah also believes that in order to deal with issues surrounding marriage, divorce and the sustainability of the family institution, a new interpretation of Islamic jurisprudence is necessary.

She states that in this ever-changing modern world, Islam and Muslims cannot forever stay inflexible and secluded from the changes occurring around them. According to her, Muslims have to deal with the challenges around them when looking for solutions to new issues that arise in Muslim society, so that Islam and Muslims can continue to live, be guided and be inspired by knowledge and faith.

According to Zainah, even after the formal schools of law were established, there was no uniformity of view or opinion in fiqh. She mentioned that this diversity of points of view is called ‘ikhtilāf’. Zainah said: “The very existence of multiple schools of laws in different countries today, attests to the fact that no one person, group or country can

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124 Ibid.
127 Ibid.
claim there is unified, monolithic, divine Islamic law over which they have ownership.”

She believes this multiplicity of opinions and views must be recognized and engaged with for the interest of the public (maṣlahah) and to ensure that equality and justice can be implemented within the context of the modern state.\textsuperscript{128}

Zainah said:

Thus, contemporary family laws, whether codified or uncodified, are not divine, but are based on centuries-old, human-made fiqh interpretations that were enacted into law by colonial powers and national governments. She believes that since these interpretations and laws are human-made and concern relations between humans, they can change within the framework of Islamic principles and in accordance with the challenging realities of time and place. She also states that the recent positive reforms in Muslim family laws and evolutions in practices provide support for this possibility of change.\textsuperscript{129}

According to SIS, the Qur’an and the Sunnah calls for Muslims to practice justice and equality within the family and in other relationships. Zainah says that this is the reason why Muslim societies around the world are working hard to reform current laws, and are re-embracing the teachings of the Qur’an and the Sunnah.\textsuperscript{130}

SIS mentions that the concepts of marriage and family life rooted in family law rules established 100-400 years after the time of the Prophet (s.a.w.) are based on actual experiences, and are thus influenced by socio-cultural conditions of the time and place. According to SIS, the major schools of Islamic law developed rules revolving around family and marriage for their own era and society.\textsuperscript{131}

\textsuperscript{129} Ibid., 17
\textsuperscript{131} Ibid.
According to SIS,

When Muslims seek to understand the shari'ah, regardless of how sincere they may be, their conclusions are no longer the same flawless, immutable, pure shari'ah of the Qur'an but inevitably become human interpretations, or fiqh. Because it is man-made, fiqh can be and has been changed to conform better to the teachings in the Qur'an and the Sunnah and better reflect current Muslim societies.\(^{132}\)

In Zainah’s opinion, there are present-day family laws that must be reformed to reflect the values of equality and justice in Islam, strengthen universal human rights standards and so that they can be relevant to the lives that Muslims families lead today. She believes that the values of equality, justice, love, compassion, and mutual respect among people should also be reflected in these laws.\(^{133}\)

According to Zainah, Islam is just. However, she wonders why there are laws and policies codified and implemented in the name of Islam still contain elements of injustice and discrimination. She believes that laws and policies should aim to bring justice for all if it is to be considered ‘Islamic’\(^{134}\).

Zainah states that there are women’s groups fighting for equality and justice in Islam are not satisfied with some decisions made by those in authority, whether they are in religious, political, or social matters, as these decisions do not reflect gender equality. She says that there are also women’s groups who do not satisfied because the authorities who make the decisions claim that that their views are the only right ones.\(^{135}\)

Zainah explains that “every mujtahid is correct, or every mujtahid will be rewarded.” According to her, there are several solutions to any issue. She believes that when interpreting the infinite message of the Qur’an, one should not only look at the

\(^{132}\) Ibid.

\(^{133}\) Zainah Anwar, “Introduction: Why Equality,” 17


opinion of just one mujtahid, as different mujtahids may have different opinions based on their learned understanding of the text.\(^\text{136}\)

Zainah states that legal rulings can be classified into two major categories: “’ibadat”, which means devotional or spiritual acts; and “mu’amalat” which means transactional or contractual acts. She says that for the first category, which is “’ibadat”, changes in rulings are restricted, as this category regulates relations between God and believer. Ruling for “mu’amalat”, on the other hand, can change because it regulates relations between people.\(^\text{137}\)

According to Zainah, there is always a need for new rulings for “mu’amalat”, as human issues continuously change. She believes that Muslims have to apply new interpretations of Islamic texts, and these interpretations should be applicable to real life experiences of all contemporary societies throughout the world.\(^\text{138}\)

Zainah emphasizes that the category of “mu’amalat” also includes rulings pertaining to family and gender relations. Thus, she believes this means that Muslim jurists have always considered matters relating to family and gender relations open to rational deliberation and change, as its rulings regulate relations between humans and do require changes according to time and context.\(^\text{139}\)

Hence, according to her, the rulings of “mu’amalat” can change because it regulates relations between people. She believes that the matters of family and gender relations are open to rational consideration and change because its ruling regulates relations between humans and this requires changes according to the time and context.

\(^{138}\) Ibid., 16.
\(^{139}\) Ibid.
Zainah criticizes people who ask other groups with differing opinions to keep silent just because they think that they are most qualified to provide answers. According to her, these people always claim that Islam is a way of life, Islam is the solution, and that Islam has all the answers, but they continue to tell groups who disagree with them to keep quiet.\textsuperscript{140}

Some women who claim to be Islamic feminists in Malaysia have argued that women should also engage in \textit{ijtihād} to interpret Islamic texts for themselves, as they say Muslims should not settle with or rely only on interpretations made by men from patriarchal societies.\textsuperscript{141}

SIS says that in societies where its members are taught to believe that religious matters should only be discussed by the \textit{ulamā’}, anyone who disagrees with the opinion of the traditionalists, are often condemned because they ‘do not have the rights to express their opinions when it comes to religious matters.’ According to SIS, to a majority of the members of these societies, only the \textit{ulamā’} have the right to give their opinions on religious matters.

Thus, Sisters In Islam believe that when it comes to Islam as a source of law and public policy, all members of a society have the right to talk about the subject, be they Muslims or non-Muslims, experts or non-experts.\textsuperscript{142}

\textsuperscript{140} Zainah Anwar, “Silence Not the Women - The Star - Sharing the Nation”, \textit{Sisters in Islam} website, January 27, 2015, \url{http://www.sistersinislam.org.my/news.php?item.337.6}.

\textsuperscript{141} Andrew Clinton Willford, Kenneth M.George, \textit{Spirited Politics}, 109-110.

4.3. AN ANALYSIS OF SIS’S UNDERSTANDING OF *IJTIHĀD* FROM AN
ISLAMIC THOUGHT PERSPECTIVE

SIS do claim that *ijtihād* is needed because human affairs constantly evolve. Zainah says, “...there is always a need for new rulings that use new interpretations of the religious texts to bring outdated laws in line with the changing realities of time and place. This is the rationale of ijtihad...”\(^{143}\)

Based on the above statement, SIS have to be aware that the interpretation of religious texts should be based on the Qur’an and Sunnah. *Ijtihād* is important. However, to understand and derive Islamic laws from evidence, certain methods, rules and regulations must be followed. Thus, SIS must follow these proper methods that have been laid down by our Muslim scholars if they want to practice *ijtihād*.

As mentioned earlier, a *mujtahid* needs to try his utmost to discover proof and reasoning. A *mujtahid* is not free to say anything according to his own desires.\(^{144}\)

SIS are not free from proper rules and regulations. Without proper rules, how can we determine what is right and what is wrong? How can we then determine if someone has "manipulated" religious texts?\(^{145}\)

Any group who claims that “there is no need for any condition to do *ijtihād*” must be rejected. Groups who claim that *ijtihād* can be done without limitations or rules are part of what is called the transformation movement (*al-tagyir*). Groups in this movement are similar to the *bāṭiniyyah*. These people believe that they are free to interpret religious text as they please and without any limitations.\(^{146}\)

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\(^{145}\) *Ibid.*, 11

\(^{146}\) *Ibid.*, 5-6.
Zainah states that “as a concept, Shari’ah cannot be reduced to a set of laws—it is closer to ethics than law. It embodies ethical values and principles that guide humans in the direction of justice and correct conduct.”

This statement shows that Zainah does not understand some terms in her explanation of Islam. As the founding member of SIS, Zainah Anwar constantly gives ideas on how to solve problems that arise in society. However, she seems to have misunderstood and is confused about several basic terms often used in discussions pertaining to Islam. How is she going to give ideas on how to solve problems related to Muslim societies if she herself does not understand Islam well? Zainah seems confused about what Shariah is all about. How can she talk about matters pertaining to Shariah or Islamic laws? SIS should ensure that their members understand Islam very well before they give any ideas related to Islam. The group should not create more confusion regarding Islam amongst members of society.

Zainah says, “Thus, contemporary family laws, whether codified or uncodified, are not divine, but are based on centuries-old, human-made fiqh interpretations that were enacted into laws by colonial powers and national governments.”

This statement is very dangerous and confusing. Interpretations made by Muslim scholars are not merely based on what is rational. Scholars interpret the texts based on Islamic sources and supporting evidence. It should be understood that even though ījtihād is done by humans (mujtahid), it doesn’t mean that the law or ḥukm comes from mujtahids. This is the reason why people who wish to exercise ījtihād must fulfill certain qualifications and follow the predetermined methods of ījtihād, to ensure the ḥukm that is derived is based on the Qur’an and Sunnah, and not based merely on what is considered rational.

148 Ibid., 17.
There is certain method of *ijtihād* that is applied by jurists when interpreting religious texts. This means that jurists do not interpret texts without any regulations. Interpretations are done by following the predetermined methods.\(^{149}\) In the process of *ijtihād*, the *ḥukm* or laws are derived from the Qur’an and Sunnah.

A *ḥukm* decided upon by qualified jurists (*mujtahid*) must be obeyed,\(^ {150}\) because the *ḥukm* is always derived from the Qur’an and Sunnah, and not based merely on the opinion of a *mujtahid*.

A *mujtahid* should take his responsibility to derive *ḥukm* or laws from religious texts very seriously, as he deals with Allah’s laws. The law or *ḥukm* derived by qualified *mujtahids* is considered to be discovered from authoritative sources of the law. In other words, the *mujtahid* or jurist does not make this law. Therefore, any tampering of the law by people who do not qualify as *mujtahids* should not be taken lightly. “The validity of a source of law depends on the issue of whether the aḥkām of Allah can be proved through such a law.”\(^ {151}\)

*Uṣūl Fiqh* is a methodology used to make sure that “valid sources are used, in equally valid ways, to discover the law”. It is “a body of principles” that jurists follow when interpreting religious texts.\(^ {152}\)

The *mujtahid* are not free to exercise *ijtihād* as they like. They are bound by specific rules. This is the reason why those who want to practice *ijtihād* must first fulfill all the conditions required in order to become a qualified *mujtahid*, and, once they become qualified *mujtahids*, they must follow proper methods of *ijtihād* in order to ensure that the *ḥukm* or law that has been deduced is based on the Qur’an and Sunnah.

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\(^{150}\) Ibid., 134.

\(^{151}\) Ibid.

\(^{152}\) Ibid.
According to Zainah, “…family laws must evolve to reflect the Islamic values of equality and justice reinforce universal human rights standards and address the lived realities of families in the twenty-first century.”

First of all, SIS must understand the meaning of equality and justice in Islam. They have to define the meaning of equality and justice according to the actual meaning in Islam, and not according to Western definitions or what they deem is rational. They have to look for definitions in the Qur’an and Sunnah.

The group also does not mention clearly what they mean by universal human rights standards. Islam has already given detailed explanations of what human rights are. So, which human rights were SIS referring to? Were they referring to Islamic or the Western definition of human rights? If they were referring to Western definitions, they will never find the right answers. Allah created us, so Allah knows best what our rights are. We need to refer to the Qur’an and Sunnah when discussing human rights.

SIS need to understand that current laws do consider the lived realities of contemporary societies. However, they also need to realize that laws do not always have to consider them. Instead, they must change their lives to readapt to the established laws. The laws can be altered to suit the context of the societies and contemporary needs, as long as they do not end up contradicting Islam.

Besides that, SIS need to understand that fiqh and Shariah cannot be taken from existing facts or circumstances. They should be taken from the evidences (dalīl) of the Qur’an, the Sunnah, the consensus of the ṣaḥabah and Qiyās. Even though society is constantly changing, it does not mean that fiqh and Shariah must be modified to adapt to these changes. Instead, society must change according to fiqh and Shariah, not the other way around.

According to Zainah, “Diversity of opinion (ikhtilaf) is a basic concept that has always been a part of fiqh, even after the formal establishment of schools of law. There is not now, nor has there ever been, a single, unitary ‘Islamic law’.”\(^{154}\)

It should be highlighted here that any group cannot make this statement as the reason to be free in exercising *ijtihād*. Any group also cannot use this as an excuse to change existing established laws or to give their opinions using their ‘*aql*, without following the predetermined methods set by Muslim scholars. The diversity of opinions is a source of mercy and leniency. However, opinions that are unacceptable are a source of deviancy.

Muslim scholars only exercise *ijtihād* when it is allowed. They do not apply *ijtihād* on matters that are not open to *ijtihād*. The multiplicity of opinions and views are allowed if they follow the methods, rules and regulations determined by our Muslim scholars. All those opinions and views must be based on the Qur’an and Sunnah.

Then, Zainah says, “The very existence of multiple schools of law, let alone the dozens of Muslim family laws in different countries today, attests to the fact that no one person, group or country can claim there is unified, monolithic, divine Islamic law over which they have ownership.”\(^{155}\)

Based on the above statement, she must understand that the jurists may differ in their interpretation of texts that are interpretable. The differences of opinion may be caused by the different rules of interpretation applied by the jurists in their *ijtihād*.\(^{156}\)

Even though they apply different rules of interpretation in their *ijtihād*, it doesn’t mean that just anybody can create their own rules and methods as they wish. There are certain general principles of acceptable methods and rules of interpretation that have been determined by Muslim scholars in exercising the *ijtihād*. Thus, *mujtahids* still have to

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155 Ibid., 17.
follow these general principles that have been agreed upon by Muslim scholars to ensure
his or her *ijtihād* is acceptable.

Even there are differences of opinion in certain matters; scholars must make sure
that all these differing opinions do not contradict the Qur’an and *Sunnah*. In other words,
they have to make sure that all these opinions are based on the Qur’an and *Sunnah*. They
cannot derive *ḥukm* or laws without following proper methods.

Any group cannot reject religious authorities. They have to understand that real
experts exist in every field of knowledge. People must refer to these experts if they want
to learn more. Sick people go to doctors because doctors are medical experts. Religious
experts are called *ulamā’* (Muslim scholars) or religious authority. Those who want to
learn more about Islam should go to *ulamā’*. The *ulamā’* do not claim ownership of the
religion, but identify as experts of the religion. When it comes to handling religious
matters in this country, we need to rely on them.

Muslims cannot be influenced by relativism. Relativism is a methodology that
states that truth is relative and cannot be claimed by any party. Rejection of religious
authority by any group is made by those who want to have freedom of opinion. These
people do not want to be bound by the rules set by Muslims scholars.¹⁵⁷ This methodology
of relativism is rejected because what is true and untrue in Islam is clear. *Mujtahids* are
bound by rules and regulations, so they are not free to say whatever they want. Methods
and rules play a very important role in protecting the original teachings of Islam.

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¹⁵⁷ Mazlan Ibrahim et al., “*Pengajian Islam Di Ipt Malaysia Dalam Menangani Islam Liberal*(Islamic
Zainah says,

There are two categories of legal rulings: ‘ibadat (devotional / spiritual acts) and mu’amalat (transactional / contractual acts). Rulings in the ‘ibadat category regulate relations between God and the believer, and therefore offer limited scope for change. Ruling in the mu’amalat category, however, regulate relations between humans, and therefore remain open to change.\(^{158}\)

The above statement must be corrected because not all legal rulings categorized as *mu‘amalah* are open to change. Only certain matters of *mu‘amalah* are open to *ijtihād*. The categories stated in the above quote are also incorrect. Any group who wants to exercise *ijtihād* must have proper knowledge on the texts or *nas* which are categorized as *qat‘ī* and *zannī*. The matter of *ijtihād* is not based on ‘ibādah or *mu‘amalah* categories. Thus, anyone who wants to talk about *ijtihād* must clearly understand what *ijtihād* involves. *Ijtihād* also cannot be done on matters already solved through *ijmā‘*.

Thus, SIS cannot say that rulings in the *mu‘amalah* category remain open to change. There are rulings/matters in the *mu‘amalah* that are categorized as *thawābit* (unchangeable) and there are ruling/matters in the *mu‘amalah* which are *mutaghayyirāt* (changeable). Ruling/Matters that are categorized as *thawābit* are not open to *ijtihād*, while rulings matters that are categorized as *mutaghayyirāt* are open to *ijtihād*. Thus, in discussing the matter of *ijtihād*, SIS must understand the connotation of the word *thawābit* and *mutaghayyirāt* or definitive (*qat‘ī*) and probable (*zannī*). Nowadays, more and more people like to criticise religion and express their controversial views and ideas. These people interpret religion in their own way. They feel that they are free to practice *ijtihād* and give their opinions even though they are not experts of religion, nor are they qualified *mujtahid*.\(^{159}\) This is clearly not allowed.\(^{160}\)


\(^{159}\) Ahmad Al Raysuni, *Ijtihad*, 7.

\(^{160}\) Ibid., 9.
People who do not have enough knowledge of religion must refer to the ulamā’ to solve any religious problems. Thus, in order to avoid wrong interpretations of Islam, our Muslim scholars have determined the criteria that must be met by those who wish to become mujtahids, so that those who do not have the qualifications as mujtahid are not allowed to engage in ijtihād.

Anyone can engage in ijtihād to interpret Islamic texts, but they must be fully qualified and they must follow the determined methods of ijtihād to ensure that Islamic laws or ḥukm remain in accordance with the teachings of Islam based on the Qur‘an and Sunnah. Therefore, those who are involved in issuing Islamic laws must be qualified mujtahids and follow the predetermined methods and rules of ijtihād.

Another issue raised by SIS is related to maṣlahah or public interest. According to Zainah, “Within the context of the modern state, it must recognize and engage with this diversity of opinions to determine how best to serve the public interest (maslahah) and meet the demands of equality and justice.”

In this matter, SIS need to understand that any mujtahid who wants to interpret and deduce the law from religious texts for unprecedented cases may take into consideration the public interest. However, at the same time, a mujtahid must understand what maṣlahah or public interest is from an Islamic point of view. Our understanding of ‘public interest’ should be based on the Qur‘an and Sunnah. Coming up with conclusions without referring to these sources is dangerous as the capability of the human mind is very limited. We should always be guided by the Qur‘an and Sunnah.

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Maṣlaḥah must be genuine and general (kuliyyah). Besides that, it must also not be in conflict or contrast with clear naṣ (textual evidence). Maṣlaḥah must be comprehensive and cover both interests in this world and in the hereafter. It must also take into account individuals as well as groups, and the present generation as well as future generations. The human mind is fickle, so we must refer to the Qur’an and Sunnah to determine what maṣlaḥah actually is.

Only Allah s.w.t. knows what maṣlaḥah really is. Human beings will never be able to fully comprehend it. The only way for us to understand it is to refer to our primary sources—the Qur’an and Sunnah.

Hence, SIS cannot just claim that something is of maṣlaḥah (public interest) without referring to the guidance of Allah s.w.t. and His Messenger beforehand. They must also ensure that the maṣlaḥah that they refer to is genuine, general (secures the interests of all parties) and do not conflict with clear naṣ (textual evidence).

The Shariah does not recognize any maṣlaḥah that clashes with the Qur’an or Sunnah. Thus, it will not be acknowledged if the provision recommended conflicts with what the Shariah has already provided.

Laws and practices can be reformed if it is necessary, but these reforms should be done properly, according to the right methods by the right people, so that the reforms do not go against the Qur’an and Hadith. The process of reforming the laws should be done through the proper procedures.

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165 Nyazee, Imran Ahsan Khan, Islamic Jurisprudence, 198-199.
The majority of Muslim jurists agreed that Allah s.w.t. alone lays down the laws regarding the *maṣlaḥah* of human beings. Muslims are not allowed to determine what their interests solely based on their own opinions. Muslims should know that Allah s.w.t. determines the *maṣlaḥah* of human beings. Muslim scholars and experts in this field have laid down methods and regulations so that not just anybody can create or change the laws. Muslims have to follow these methods and regulations so that the any new laws derived are still Allah’s laws.

If someone wants to apply the concept of *maṣlaḥah* when solving problems that arise in society, they must have the knowledge on it. They have to follow the guidelines and principles determined by Muslim scholars to avoid misusing the term ‘*maṣlaḥah*’. They have to really understand and follow the regulations to identify *maṣlaḥah*. *Maṣlaḥah* cannot be determined from a mere logical perspective. It must be based on what is stated in the Qur’an and Hadith.

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166 Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, 43.
4.4. CONCLUSION

In conclusion, based on the above analysis, the analysis shows that the method of problem solving through *ijtihād* as interpreted by SIS do not run parallel with the method of problem solving through *ijtihād* as seen from the Islamic thought perspective. The group must refer to the general principles of *ijtihād* as determined by Muslim scholars in the field in order to understand the proper method of problem solving through *ijtihād* in Islam. SIS’s understanding of the method of problem solving through *ijtihād* needs to be corrected to avoid the formation of irrelevant solutions to societal problems. Those who are involved in issuing Islamic laws must be qualified mujtahids and follow the predetermined rules and methods of *ijtihād*.

Based on the analysis, it is found that there are misunderstandings in terms of categorisation relating to the matter of *ijtihād* by Zainah, the founding member of SIS. Hence, any member of SIS who intends to talk about *ijtihād* must clearly understand what *ijtihād* involves.

With reference to the qualifications of a mujtahid, any individual, regardless whether male or female is allowed to engage in *ijtihād* with the condition that he or she must fulfil its qualifications as determined by Muslim scholars.

In the issue of *maṣlaḥah*, SIS does not fully comprehend its meaning. SIS has to understand that Muslims do not determine their *maṣlaḥah* solely based on human opinion. They must ensure that the *maṣlaḥah* that they refer to is genuine, general (secures the interests of all parties) and do not conflict with clear *nāṣ* (textual evidence). *Maṣlaḥah* must be comprehensive and cover both interests of this world and in the hereafter. A mujtahid must understand what *maṣlaḥah* or public interest is from an Islamic point of view and the understanding of ‘public interest’ should be based on the Qur’an and Sunnah.