

CHAPTER SIX
ANALYSIS OF SELECTED ISSUES
CONCERNING WOMEN AND HUMAN RIGHTS

6.0. INTRODUCTION

In this chapter, the issue concerning women that will be discussed is related to the ‘*awrah*, whereas the issue concerning human rights will touch on the topic of enforcing public morality. The topic of ‘*awrah* has been discussed by SIS under hijab and the topic of enforcing public morality has been discussed under public morality. Both are among the primary topics highlighted in SIS’ website. SIS’ perspectives on these selected issues and their recommended solutions and problem solving methods will be presented in this chapter, and an analysis from an Islamic thought perspective will be done.

**6.1. Method of Problem Solving of SIS Regarding Issues Related to Women’s
‘*Awrah*: An Analysis from Islamic Thought Perspective**

Literally, the word ‘*awrah* means something that should be covered. ¹ ‘*Awrah* “denotes those parts of the body which Islam requires to be covered in front of others whether of the same or the opposite sex.”²

The women’s ‘*awrah* and dress code in front of their non-*maḥram* will be discussed from the perspective of SIS, followed by an analysis of their recommended solutions and problem-solving methods from the Islamic thought perspective.

¹ Ibnu Manzur, *Lisan al-'Arab* (Beirut: Dar al-Fikr, 1990), 4: 616.

² Hasan Khan Deshmukh, *Islamic Book Man - A Wonderful Creation* (tt.p: Hasan Khan Deshmukh, 2010), 209.

According to SIS, there are three rules to the dress code of women in Islam:
“(1) *The BEST garment is the garment of righteousness; (2) Whenever you dress, cover your chest (bosoms); (3) Lengthen your garment.*”³

6.1.1. The Issue Regarding the First Rule of Women’s Dress Code According to SIS

According to SIS, “*The BEST garment is the garment of righteousness*” is the first rule of the dress code for women in Islam. SIS states that this rule of dress code for Muslim women can be found in the al-Qur’an 7:26.⁴

Allah s.w.t. says:

يَا بَنِي آدَمَ قَدْ أَنْزَلْنَا عَلَيْكُمْ لِبَاسًا يُؤَارِي سَوْآتِكُمْ وَرِيشًا وَلِبَاسُ التَّقْوَىٰ ذَٰلِكَ خَيْرٌ ۗ
ذَٰلِكَ مِنْ آيَاتِ اللَّهِ لَعَلَّهُمْ يَذَّكَّرُونَ

Al-'A'rāf 7:26

Translation: O ye Children of Adam! We have bestowed raiment upon you to cover your shame, as well as to be an adornment to you. But the raiment of righteousness,- that is the best. Such are among the Signs of Allah, that they may receive admonition!

Analysis:

Verse 26 of Surah *al-'A'rāf* 7:26 forms the basis of the law in general and the details should be referred to other verses of the Qur’an and hadiths of the Prophet. *Taqwā* (righteousness) is an important aspect of steadfastness towards the commandments of Allah s.w.t. in the dress code for Muslims. However, this does not mean that Muslims are liberated to dress how they wish to. The rules and regulations of dressing

³ “Women's Dress Code in Islam”, *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

⁴ *Ibid.*

has been outlined in the al-Qur'an and further explained by the Prophet s.a.w. as mentioned in the Hadith.

The commandments of Allah s.w.t. are conveyed to mankind through the Qur'an and Hadith, as these are the points of guidance to the right path. The obligation of covering the *awrah* is explained through the Qur'an, and described clearly through the Hadith of the Prophet s.a.w.. The parts of the body that must be covered are also mentioned in the Qur'an and Hadith of the Prophet s.a.w..⁵

In conclusion, *taqwā* (righteousness) can only be achieved by obeying the commands of Allah s.w.t., and in this matter obeying the command of Allah s.w.t. requires one to cover the *awrah*. This requires the correct understanding of the Qur'anic verses and subsequent hadiths relating to it. How can one rely on *taqwā* if the Qur'anic verses and Hadith are misunderstood or neglected? How does one achieve *taqwā* without covering the *awrah* in the way that is commanded?

6.1.2. The Issue Regarding the Second Rule of Women's Dress Code According to SIS

According to SIS, the second rule of women's dress code is "*Whenever you dress, cover your chest (bosoms).*" SIS states that this rule is based on the Qur'anic verse 31, Surah 24. The group mentions that in this verse, God commands women to cover their bosoms every time they dress themselves.⁶

Allah s.w.t. says:

وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ

Al-Nūr 24: 31

Translation: that they should draw their veils over their bosoms

⁵ Shofian Ahmad, and Lotfiah Zainol Abidin, *Aurat: Kod Pakaian Islam* (t.tp.: Utusan Publications, 2004), 31-32.

⁶ "Women's Dress Code in Islam", *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

6.1.2.1. The Issue Regarding the Meaning of the Word *Khimār*

According to SIS, the Arabic word *khimār* means

... cover, any cover, a curtain is a Khimar, a dress is a Khimar, a table cloth that covers the top of a table is a Khimar, a blanket can be used as a Khimar.. etc. The word KHAMRA used for intoxicant in Arabic has the same root with Khimar, because both covers, the Khimar covers (a window, a body, a table . etc.) while KHAMRA covers the state of mind. Most of the translators, obviously influenced by Hadith (fabrications) translate the word as VEIL and thus mislead most people to believe that this verse is advocating the covering of the head.⁷

Analysis:

It is very important to understand the meaning of the word “*khumur*” (خُمْرٌ) that is used in this verse. *Al-Khumur* is the plural noun for *khimār* (خِمَارٌ). It is any garment used by a woman to cover her head, neck and chest.⁸ According to the Arabic dictionary *Al-Munjid*, *al- khimār* means “*something with which a woman conceals her head*”. While according to Fakhr in *Majma‘ al-Baḥrayn* the word *al- khimār* means “*scarf.*” Ibn Kathīr interprets the following, “وَلْيَضْرِبْنَ” (and to draw) which means “*to pull it around and tie it securely,*” while “بِخُمْرِهِنَّ عَلَىٰ جُيُوبِهِنَّ” (their veils all over their juyūb) means “*over their necks and chests so that nothing can be seen of them*”.⁹

Thus, the word *khimār*, by definition, means a piece of cloth that covers the head or hair. Most Arabic words have more than one meaning and even though the word *khimār* has several meanings, this does not indicate that they may choose whatever meaning they deem appropriate. To obtain the correct meanings of Arabic

⁷ “Women's Dress Code in Islam”, *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

⁸ Muhammad Sayyid Tantawi (Dr.), *Adab Dialog dalam Islam: 'Adab al-Hiwār Fī al-Islām*, translated by Mohd Nor Mamat (Kuala Lumpur: Institut Terjemaan Negara Malaysia Berhad, 2008), 83.

⁹ Abu Al-Fida Ismail Ibn Kathir, *Tafsir Ibn Kathir (Surat An_Nur to Surat Al-Ahzab, Verse 50): Al-Miṣbāh Al-Munīr fī Tahdhīb, Tafsīr Ibn Kathīr*, ed. / abridged by A Group of Scholars under the Supervision of Shaykh Safiur-Rahman Al-Mubarakpuri (Riyadh: Maktaba Dar-us-Salam, 2003), 7: 69.

words, the text should be reviewed according to what is most fitting within the context of the verse. In addition to this, one has to refer to the Arab-speaking community in understanding the meaning of certain words of the language.

According to Dr. Mustafa, the verse that mentions the *khimār* is relevant to the people of the time of its revelation. He highlights that in the Arabic books of *tafsīr*, it is understood that the purpose of wearing the *khimār* was to cover the head or hair, and “عَلَىٰ جُيُوبِهِنَّ” explains the extent of which parts the *khimār* must cover.¹⁰ This means that the Arabs use the word *khimār* to refer to a piece of cloth that covers the head or hair. To provide a meaning that would not be comprehended by the Arabs within the context of the verse would make the verse irrelevant.

Incorrect interpretations come from inaccurate definitions of certain words found in the verse. One cannot simply derive any meaning they deem appropriate or convenient. The meaning of the word *khimār* must be referred to the Arab community and the period in which the verse was revealed. *Khimār* or *khumur* was used by Arab women to cover their head or hair, and to derive a meaning which describes it differently is unacceptable from an Islamic perspective.

In applying the principles of Qur’anic hermeneutics to interpret Qur’anic verses, SIS claims that they examine the language of the text and its syntactical and grammatical structures. If SIS really does examine the language of the text, they would not have come up with the conclusion that “*most of the translators, obviously influenced by Hadith (fabrications) translate the word as VEIL and thus mislead most people to believe that this verse is advocating the covering of the head.*”

¹⁰ Mustaffa Bin Abdullah (Associate Professor Dr.), Department of Al-Quran and Al-Hadith, Academy of Islamic Studies, Malaya University, in an interview with the writer, April 11, 2014.

SIS has to understand that being knowledgeable of the Arabic language is one of the conditions that must be fulfilled by a *mufassir* in interpreting the Qur'an in order to avoid its misinterpretation. However, the *mufassir* cannot simply derive any meaning that they deem appropriate or convenient. The *mufassir* has to follow certain methods and guidelines when applying his or her knowledge of the Arabic language.

6.1.2.2. The Issue of Covering the Head and Hair

According to SIS,

In 24:31 God is asking the women to use their cover (khimar) (being a dress, a coat, a shawl, a shirt, a blouse, a tie, a scarf . . . etc.) to cover their bosoms, not their heads or their hairs. If God so willed to order the women to cover their heads or their hair, nothing would have prevented Him from doing so. GOD does not run out of words. GOD does not forget. God did not order the women to cover their heads or their hair. He was not waiting for a Scholar to put the words for Him. The Arabic word for CHEST, GAYB is in the verse (24:31), but the Arabic words for HEAD, (RAAS) or HAIR, (SHAAR) are NOT in the verse. The commandment in the verse is clear - COVER YOUR CHEST OR BOSOMS, but also the fabrication of the scholars and most of the translators is clear by claiming- cover your head or hair.¹¹

Analysis:

Khimār is used to cover the woman's neck, bosom, head or hair from the lure of any form of slander against her.¹²

Juyūb has two meanings; one is interpreted as the opening or the collar of the item of clothing, while the other is interpreted as the bosom (*ṣadr*).¹³

¹¹ "Women's Dress Code in Islam", *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

¹² Quṭb, Sayyid, *Fī Zīlāl al-Qur'ān* (Bayrūt: Dār al-Shurūq, 1992), 45.

¹³ Safiyah Shams al-Din (Assist. Prof. Dr.), in an interview with the writer, September 4, 2014.

The interpretation of the verse: “...they should draw their veils over their bosoms...” means that the *khimār* or *khumur* must cover their necks and bosoms.¹⁴ It also is agreed by all mainstream scholars that the woman’s hair must be covered.¹⁵

In order to avoid the misinterpreting and misunderstanding of the verse, the group has to follow the general principles of interpretation as outlined by Muslim scholars who are experts in this field. For example, in this issue, SIS must understand the context of the revelation, as the understanding of the context is a principle that must be applied when interpreting verses. If the group fails to understand the context of the revelation, it can lead to the misinterpretation of the verse.

Based on earlier discussions, SIS has mentioned that the group has engaged actively in a model of Qur’anic hermeneutics that examine the socio-historical context of Revelation as a whole, and that of particular Qur’anic verses. If SIS has really examined the context of the revelation, they would not have come up with the conclusion that “God is asking the women to use their cover (*khimar*) (being a dress, a coat, a shawl, a shirt, a blouse, a tie, a scarf . . . etc.) to cover their bosoms, not their heads or their hairs.”

According to Dr. Sofiyah, in order to understand the Qur’an, one must review the context of its revelation. The Qur’an was first revealed to the Arab society and the Arab women during the era of *jāhiliyyah* (ignorance) were already covering their heads with what they referred to as *khimār* or *khumur*. However, the way they wore their *khumur* was inappropriate. During the *jāhiliyyah* period, women wore the *khumur* (a long piece of cloth) that was twisted over their heads and pushed behind their shoulders. They wore the *khumur* in such a way as to expose their adornments

¹⁴ Ibn Kathir, *Tafsir Ibn Kathir*, 7: 69.

¹⁵ Hasan Khan Deshmukh, *Man a Wonderful Creation*, 209.

such as their necklaces, earrings and their bosoms.¹⁶ Allah soon commanded women to wear *khumur* to cover their adornments and those parts of their bodies.

Hence, to say that *khimār* or *khumur* was used to cover only the woman's bosoms and not the head or hair is invalid. During the *jāhiliyyah* period, women were known to wear a kind of head-band where it was tied in a knot at the nape of the neck. Although they wore this head-band, the necklines of their garments were open and revealing, exposing their necks and cleavage. This verse was then revealed to command Muslim women to cover their head/hair, neck, and bosoms in the appropriate manner. In addition to this, there are hadiths explaining how Muslim women responded to the revelation.

Among the conditions of a *mufassir*, he or she must know *al-ḥal al-jāhiliyyah*, or the situation of the Arabic *jāhiliyyah* society during which the Qur'an was revealed. If a *mufassir* ignores this, he or she will not be able to interpret the verses within its context of revelation.¹⁷

SIS must also refer to the Hadith in understanding the verse. SIS has to understand that when interpreting the Qur'an, a *mufassir* does not only refer to the Qur'an, but they have also to refer to the Hadith of the Prophet s.a.w. and reports from the Prophet's companions r.a., and the *tabi'īn* r.a.. This is the proper method of problem solving through Qur'anic interpretation used when solving problems from an Islamic thought perspective.

Among the Hadiths that clearly give detailed explanations about women's *ʿawrah* are as follows:

¹⁶ Safiyah Shams al-Din (Assist. Prof. Dr.), in an interview with the writer, September 4, 2014.

¹⁷ *Ibid.*

Aisha used to say:

لَمَّا نَزَلَتْ هَذِهِ الْآيَةُ: {وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ} [النور: 31] «أَخَذْنَ
أَزْرَهُنَّ فَشَقَّقْنَهَا مِنْ قِبَلِ الْحَوَاشِي فَاخْتَمَرْنَ بِهَا

When (the Verse): "They should draw their veils over their bosoms," was revealed, (the ladies) cut their waist sheets at the edges and covered their heads and faces with those cut pieces of cloth.¹⁸

Narrated Aisha, Ummul Mu'minin:

يَرْحَمُ اللَّهُ نِسَاءَ الْمُهَاجِرَاتِ الْأُولَى، لَمَّا أَنْزَلَ اللَّهُ: {وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ
جُيُوبِهِنَّ} [النور: 31]، شَقَّقْنَ أَكْتَفَ - قَالَ ابْنُ صَالِحٍ: أَكْتَفَ - مُرُوطِهِنَّ،
فَاخْتَمَرْنَ بِهِ

Translation: May Allah have mercy on the early immigrant women. When the verse "That they should draw their veils over their bosoms" was revealed, they tore their thick outer garments and made veils from them.¹⁹

The hadith above clearly reveals that the neck, head or hair of the women is 'awrah in front of their non-mahram. SIS must understand the verse the way Prophet Muhammad s.a.w. understood and commanded it upon Muslim women. It is also important to review how Muslim scholars of the early generations of Islam interpreted the verse.

The above hadith gives a clear picture of what was happening after the verse was revealed. These hadiths indicate how Muslims reacted spontaneously in adherence to the revelation of the verse. Muslim women wore the *khumur* which covered their bosoms, necks, and head/hair. None of them covered their bosoms without covering the head or hair. This shows, without any doubt, that the neck and

¹⁸ Narrated by al-Bukhārī, Kitāb Tafsīr al-Qur'ān, Bāb [31: النور] {وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ} Number of hadith 4759.

¹⁹ Narrated by Abū Dawūd, Kitāb al-Libās, Bāb fī Qawlih Ta'ālā {وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ} Number of hadith 4102, ṣaḥīḥ (al-Albānī).

head/hair of the women is '*awrah* that must be covered in front of the women's non-*maḥram*. The *khimār* was used to cover the head or hair and the loose ends of the *khimār* were used to cover the neck and the bosoms.

The Hadiths mentioned clearly explain in detail which parts of a woman's body must be covered when she is in the company of a non-*maḥram*. Why does SIS not refer to these Hadiths when interpreting the verse? Why do they insist on using logic to understand something that has already been clearly explained in the Qur'an and Hadiths? There is no valid reason to prove that the head or hair is not part of a woman's '*awrah*.

Over the last fourteen centuries, it has been continuously affirmed by Muslims that the neck, head, and hair of women are the '*awrah* that must be covered in front of men who are their non-*maḥram*. It is unacceptable to say that the neck, head and hair of women are otherwise. Hence, it is believed that the true teaching of Islam stipulates the '*awrah* as all parts of the woman's body except the face and hands. It is not a cultural issue, a personal choice or biased interpretation. Thus, it is not sound to accuse the male Muslim scholars of discrimination against Muslim women in this matter.

As a conclusion, SIS does not fulfil the requirements of proper method for Qur'anic interpretation in this issue. Then, this leads to the misinterpretation of Qur'anic verses and their views contradict with the Islamic thought perspective. SIS must also refer to Hadiths of the Prophet in order to obtain clear explanations of the verse.

6.1.2.3. The Issue of the Interpretation of "Except that which is Necessary."

SIS highlights:

... the expression in 24:31, 'They shall not reveal any parts of their bodies, except that which is necessary.' This expression may sound vague to many because they have not understood the mercy of God. Again God here used this very general term to give us the freedom to decide according to our own circumstances the definition of 'Which is necessary'. It is not up to a scholar or to any particular person to define this term. God wants to leave it personal for every woman and no one can take it away from her. Women who follow the basic rule number one i.e. righteousness, will have no problem making the right decision to reveal only which is necessary. The word 'zeenatahunna' in this verse refers to the woman's body parts (beauty) and not to ornaments and decorations as some people interpret it or translate it.²⁰

Analysis:

SIS must adhere to the proper method of problem solving through Qur'anic interpretation (*tafsīr*). In understanding the general statement of the verse in the Qur'an, the interpreters or the *mufasssīr* find other verses within the Qur'an that specify, explain or elaborate it. If there is no other verses found, they would then refer to the Hadith, reports from *ṣaḥābah* and *tabi'īn* as discussed in Chapter 3.

Pertaining to this issue, there are many Hadiths that specify, explain and elaborate the mentioned verse.

Allah commands in *Sūrah Al-Nūr* verse 31, “ولا يبدین زینتهن إلا ما ظهر منها” (*that they should not display their beauty and ornaments except what (must ordinarily) appear thereof*). In this verse, according to Dr. Yūsuf al-Qaraḍāwī, the adornment or ornaments of women refer to their natural features and artificial enhancements. The face, hair, and other parts of the woman's body are considered as their natural features. While their dress and ornaments, make-up and the like are considered as artificial enhancements of their beauty. In this matter, women are ordered not to display their adornments "*except that*

²⁰ "Women's Dress Code in Islam", *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

which is apparent of it". Muslim scholars have different opinions regarding the extent of this exception ("*except that which is apparent of it*"). They have different opinions on whether the women's adornment is displayed through necessity and done so unintentionally, or displayed ordinarily, unconsciously, or by its very nature. The majority of the early Muslim jurists are of the opinion that "*it means what is customarily, or instinctively, or by its very nature exposed*".²¹

"*Except what is apparent of it*" has been interpreted by Ibn 'Abbās as *kohl* and any rings on their fingers. Sa'īd ibn Jubayr, 'Atā' and al-Awza'ī are of the opinion that it is permissible to display the face and hands. 'Ayshah, Qattādah and several others, have included bracelets among adornments that may be displayed by the woman. Others such as 'Abdullah ibn Mas'ud, have interpreted "*what is apparent*" to mean what necessarily appears, for example the outer garment.²²

There are those who extract the literal meaning of what is exposed by necessity and without intention, believing that every part of the woman's body is '*awrah* to men who are their non-*maḥram*. While for those who are of the opinion that it means what is customary, or instinctive, or by its very nature exposed, believes that every part of the woman's body is '*awrah* except for the face and hands. There are also opinions among Muslim scholars where every part of the woman's body is '*awrah* except for the face, hands and feet. Therefore, there is no question on whether the woman's head or hair is considered '*awrah* or otherwise. It is agreed among Muslim scholars that it is and must be covered within the presence of non-*maḥram*.

Each of these three opinions has evidence (*dalīl*) and arguments as stated in the books of *fiqh*. What is important is that these three opinions have fundamentals from the Qur'an and *Sunnah* and is not intended to be advantageous to any party.

²¹ Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam: Al-Ḥalāl Wa al-Ḥarām Fi al-Islam*, translated by Al-Falah Foundation. t.tp.: Al-Falah, t.t., 152

²² *Ibid.*

The sources which are the Qur'an, *Sunnah* and *ijmā'* (the consensus of scholars) are carefully reviewed and analysed. These interpretations are not based merely on personal opinions or preferences as the scholars are most knowledgeable in their fields of study and reputed to be steadfast in their practice as Muslims.

Renowned Muslim scholars interpret “*except that which is apparent of it*” based on the correct method of *tafsīr* for the Qur'an and *Sunnah*. They take the necessary precautions to ensure that their interpretations are unbiased and there are even diverse opinions for the meaning of “*except that which is apparent of it*”. However, the consensus is that the head or hair is part of the woman's 'awrah and should be covered in front of their non-*maḥram*.

There is no statement that claims the woman's head or hair does not form part of the woman's 'awrah in any known books of *tafsīr*. The problem of SIS in interpreting the verse is that they do so without applying the proper method of interpretation, thus resulting in errors. They also do not refer to the hadiths of the Prophet that clearly clarify the details of the woman's 'awrah. There are hadiths that specify and elucidate the verse "*except that which is apparent of it.*"

Narrated 'A'ishah, Umm al-Mu'minīn:

أَنَّ أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ، دَخَلَتْ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَعَلَيْهَا
ثِيَابٌ رِفَاقٌ، فَأَعْرَضَ عَنْهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَقَالَ: «يَا أَسْمَاءُ،
إِنَّ الْمَرْأَةَ إِذَا بَلَغَتِ الْمَحِيضَ لَمْ تَصْلُحْ أَنْ يُرَى مِنْهَا إِلَّا هَذَا وَهَذَا» وَأَشَارَ
إِلَى وَجْهِهِ وَكَفِّهِ قَالَ أَبُو دَاوُدَ: «هَذَا مُرْسَلٌ، خَالِدُ بْنُ دُرَيْكٍ لَمْ يُدْرِكْ عَائِشَةَ
رَضِيَ اللَّهُ عَنْهَا

Translation: Asmā', daughter of Abī Bakr, entered upon the Messenger of Allah (ﷺ) wearing thin clothes. The Messenger of Allah (ﷺ) turned his attention from her. He said: O Asmā', when

a woman reaches the age of menstruation, it does not suit her that she displays her parts of body except this and this, and he pointed to his face and hands. Abu Dāwud said: This is a mursal tradition (i.e. the narrator who transmitted it from 'Ayshah is missing) Khālid bin Durayk did not see 'Ayshah r.a.²³

The above Hadith indicates that the entire body of the woman is 'awrah except for the face and hands. Muslim women cannot freely define “*which is apparent of it*” because the dress code and 'awrah of women is determined by Allah s.w.t. and has been described in detail by the Prophet s.a.w..

Muslim scholars do not define the verse based on personal opinions, but it is based on the Qur'an and *Sunnah*. There is no evidence to prove that these Muslim scholars interpret the verse under gender discrimination as they are reputed to be pious individuals. None of these scholars have made any claims that the woman's neck, head or hair are not 'awrah in front of their non-*maḥram*. Evidence or *dalīl* that clarifies the woman's neck, head or hair as 'awrah is not only based on evidence from the Qur'an, but also strongly supported by the Hadiths of the Prophet s.a.w.. Any interpretations saying otherwise are based on personal preferences and desires.

From an Islamic thought perspective, it is unacceptable to say that “*God here used this very general term to give us the freedom to decide according to our own circumstances the definition of 'Which is necessary.*”

²³ Narrated by Abū Dawūd, Kitāb al-Libās, Bāb fīmā Tubdī al-Mar'ah min Zīnatihā, number of hadith 4104, ṣaḥīḥ (al-Albānī).

6.1.3. The Third Rule of Women's Dress Code According to SIS; an Analysis from an Islamic Thought Perspective

According to SIS, the third rule of women's dress code is "*Lengthen your garment.*"²⁴

They claim that they based this third rule on *Sūrah Al-Aḥzāb* 33:59.²⁵

Allah s.w.t. says:

يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ

Al-Aḥzāb 33:59

Translation: O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad

The translation given by SIS is as follows:

Translation: O prophet, tell your wives, your daughters, and the wives of the believers that they shall LENGTHEN their garments.

SIS states that:

If you reflect on this verse and how God ordered the prophet to tell his wives, his daughters and the wives of the believers to lengthen their garments, you would understand the great wisdom of the MOST WISE, the MOST MERCIFUL. In this verse, God, DELIBERATELY, (and all the TRUE believers know that everything GOD says, does, or did is DELIBERATE) said, tell them, to lengthen their garments, and never said how long is considered long. God could have said tell them to lengthen their garments to their ankles or to their mid-calf or to their knees, but HE DID NOT. He did not, OUT OF HIS MERCY, not because HE FORGOT as God does not forget. God knows that we will be living in different communities and have different cultures and insists that the minor details of this dress code will be left for the people of every community to hammer for themselves.²⁶

Analysis:

²⁴ "Women's Dress Code in Islam", *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

²⁵ *Ibid.*

²⁶ *Ibid.*

Verse 59, *Sūrah Al-Aḥzāb* clearly mentions the command for the Prophet s.a.w. to tell his wives, daughters and women to lower down or draw themselves over with their garments. Some women of the *jāhiliyyah* period left their houses with certain parts of their bodies exposed such as their neck, cleavage and hair. They were then harassed and attacked by men. This verse was revealed to order and command women to cover themselves with their garments.²⁷ There are two notable *ḥikmahs* to covering the ‘*awrah*. When a woman covers her ‘*awrah*, it becomes a form of identity for Muslim women. This gives a clear differentiation between Muslim women who cover their ‘*awrah* and non-Muslim women who do not. While the second *ḥikmah* of covering the ‘*awrah* is, that these women are less likely to be harassed by men.²⁸

SIS must implement the proper method of Qur’anic interpretation (*tafsīr*) in order to obtain the correct meanings. They must refer to other verses of the Qur’an that discusses the same issue, the Hadith of the Prophet s.a.w., the *asbāb al-nuzūl*, the most suitable meaning of each word of the verse, and the situation of when the verse was revealed. They cannot interpret the verse without implementing the correct method. Incorrect interpretations come from improper method by those who do not fulfil the requirements of a *mufasssir*. Those who refer to the Hadith of the prophet s.a.w. would have no difficulty in understanding the length that the woman is commanded to lengthen her garment to.

As a conclusion, with regards to the lengthening of the woman’s garment in front of non-*maḥram*, the Islamic perspective is not in accordance to the statement made by SIS: “*the minor details of this dress code will be left for the people of every community to hammer for themselves*”. The Qur’an and hadith has given detailed explanations pertaining to the woman’s ‘*awrah*. The problem lies in the

²⁷ Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam: Al-Ḥalāl Wa al-Ḥarām Fi al-Islam*, 156157.

²⁸ Shofian Ahmad, Lotfiah Zainol Abidin, *Aurat: kod pakaian Islam*, 22-23.

misinterpretation of the verse due to erroneous method of Qur'anic interpretation in understanding it.

SIS' Solution to the Issues Related to Women's *Awrah*

SIS states that:

... the DRESS CODE for the Muslim women (Submitters) according to the Quran is righteousness and modesty. God knows that this modesty will be understood differently in different communities and that is why He left it open to us to decide for ourselves. Decide, after righteousness what is modesty. Modesty for a woman who lives in New York may not be accepted by a woman who lives in Cairo, Egypt. Modesty of a woman who lives in Cairo, Egypt may not be accepted by a woman who lives in Saudi Arabia. Modesty of a woman who lives in Jidda in Saudi Arabia may not be accepted by a woman who lives in a desert oasis in the same country. This difference in the way we perceive modesty is well-known to God, he created us, and He put NO hardship on us in this great religion. He left it to us to decide what modesty would be. For any person, knowledgeable or not to draw a line and make conclusions for God about the definition of modesty is to admit that he/she knows better than God. God left it open for us and no one has the authority to restrict it, it has to stay open.²⁹

SIS mentions that:

Furthermore, in the history of Islamic jurisprudence and scholarship, there has been no consensus regarding the "right" form of women's dress. Even the several verses in the Qur'an that talk about women's dress do not explicitly espouse a specific type of dress. In fact, the Qur'an infers that modesty can be achieved in different forms of dress suitable to different cultures, times and places.³⁰

Analysis:

²⁹ "Women's Dress Code in Islam", *Sisters In Islam* website, November 18, 2014, <http://www.sistersinislam.org.my/news.php?item.604.10>.

³⁰ "Don't Enforce Dress Code on Women Undergrads (11 November 2005)", *Sisters In Islam* website, November 26, 2014), <http://www.sistersinislam.org.my/news.php?item.985.120>.

SIS concludes that the women's dress code is righteousness and modesty. However, they fail to acknowledge that *taqwā* (righteousness) can only be attained by obeying what is commanded by Allah s.w.t. and avoiding what is prohibited.

According to Umar Ibn al-Aziz, "*Taqwa of God is avoiding what God has prohibited, and performing what God made obligatory.*"³¹

One must interpret and understand the verses of the Qur'an according to the proper interpretations and understanding. This can be achieved by applying the proper method of Qur'anic interpretation and following the principles and guidelines outlined by renowned Muslim scholars in this field. Without fulfilling the requirements, the Qur'anic verses would be misinterpreted and misunderstood. One would not be able to understand the commandments and the prohibitions of Allah s.w.t. if the Qur'anic verses are misinterpreted.

Taqwā can be attained by obeying the commands of Allah s.w.t. and avoiding His prohibitions. Hence, the correct interpretation and understanding of the Qur'anic verses is required in order to attain *taqwā*. In this matter, the dress code and *'awrah* of women is determined by Allah s.w.t. in the Qur'an and has been explained clearly by His Messenger in the Hadith. Every Muslim woman has to obey the command of Allah s.w.t. with regards to the rules and regulations of women's dress.

On the matter of modesty, Islam stresses the reflection of modesty in the dress code, where it is obligatory for women to cover their whole bodies except their hands and face.³² Modesty is among the characteristics highly regarded in Islam and must be in line with what is stated in the Qur'an and Hadith, not based on personal desires and preferences. Therefore, in order to achieve modesty of dress in front of her non-

³¹ Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach*, 49.

³² Arshad Khan, *Islam 101: Principles and Practice* (Lincoln, NE: iUniverse, 2003), 106

mahram, the Muslim woman is required to cover her whole body except for her hands and face.

It must also be noted that according to Islamic opinions, modesty in women's dress code is consistent no matter where a woman resides in the world. It is not valid to claim that "*modesty will be understood differently in different communities*". It is also unacceptable to say that:

Modesty for a woman who lives in New York may not be accepted by a woman who lives in Cairo, Egypt. Modesty of a woman who lives in Cairo, Egypt may not be accepted by a woman who lives in Saudi Arabia. Modesty of a woman who lives in Jidda in Saudi Arabia may not be accepted by a woman who lives in a desert oasis in the same country.

It is understood among the Muslim scholars throughout history, that a woman must cover her body, except the face and palms in front of their non-*mahram*. This requirement applies to all women over the centuries and it does not apply only to Arab women as the entire female anatomy is the same, regardless of race and origin. None of the renowned Muslim scholars is of the opinion that women can expose their stomach, buttocks or any other parts of her body.³³

The woman's '*awrah*' is one of the important matters in Islam as it is mentioned in the Qur'an and further elaborated by the Prophet s.a.w. in the Hadith. Such an important matter would not be left vague or unclear. Regarding SIS' claim that "*there has been no consensus regarding the "right" form of women's dress*", the group must understand that the different opinions of Muslim scholars in the issue of women's '*awrah*' does not mean that they have differing opinions on whether the head, hair, neck, stomach, or buttocks must be covered or not. The different opinions of '*awrah*' pertain only to the woman's face, hands or feet.

³³ Adian Husaini, Abdurrahman al- Baghdadi, and Budi Permadi, *Hermeneutika & Tafsir Al Quran* (t.tp.: Gema Insani, 2007), 24.

Ibn Rushd in his book *Bidāyat al-Mujtahid* said that the majority of *ulamā'* (*jumhūr ulamā'*) are of the opinion that the entire body of a woman is '*awrah* except for her hands and face.³⁴

There are many *naṣ* (text) of *Shara'* that indicate the parts of women's bodies which are considered as '*awrah* and must be covered.³⁵ However, one of the main issues of SIS is they misunderstand the Qur'anic verses due to their improper method of interpretation. The woman's dress code and '*awrah* is not a cultural matter, but a command of Allah s.w.t.. There are certain rules and regulations of dress code that must be followed by women, and its conditions are not subject to the community that they live in. The conditions of women's dress code are stated in the Qur'an and Hadith. Islam does not reject fashion; women are free to choose whatever fashion they wish to wear as long as they fulfil the conditions of dress code as mentioned in the Qur'an and Hadith. The Muslim woman's dress code in Islam is suited to different cultures, times and places as commanded by Allah s.w.t..

The dress code of Muslim women as explained by Muslim scholars is well established by means of the Qur'an, the *Sunnah*, and the consensus of reliable *Shariah* scholars in the past and present. The Arab community understands the woman's '*awrah* as outlined in the Qur'an and the authentic *Sunnah*. For that reason, they are dressed to cover their bodies as commanded. Renowned Muslim scholars are those who are reputed to be pious and fear Allah, and their views on religious matters are based on the Qur'an and *Sunnah*. It is impossible for all of them to have a consensus on something that is claimed by certain parties to be untrue. It is impossible that the command for women to cover the entire body except the face and hands was fabricated by these Muslim scholars.

³⁴ Ibn al-Rushd, *Bidāyat al-Mujtahid* (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 2002), 110.

³⁵ Alias Othman, and Anisah Ab. Ghani (Dr.), *Islam Yang Mudah* (t.tp.: PTS Islamika, 2008), 3.

6.1.4. Conclusion

As a conclusion, although SIS has their own methods of interpretation, they do not fully implement the method when it comes to the issue of women's *'awrah*. Even if it is fully implemented, they would still fail to attain the correct meanings of the Qur'anic verses as they do not fulfil the requirements of *tafsīr*. The method applied by SIS in this issue results in Qur'anic misinterpretation. Thus, the methods they use to solve problems related to the issue of *'awrah* contradict with the Islamic thought perspective. In order to understand the proper meaning of a verse, SIS must apply the proper methods of interpretation and follow the general principles as outlined by renowned Muslim scholars in this field.

6.2. PROBLEM SOLVING OF SIS REGARDING ISSUES RELATED TO ENFORCING PUBLIC MORALITY: AN ANALYSIS FROM AN ISLAMIC THOUGHT PERSPECTIVE

The paper pertaining to the enforcement of public morality was presented by Zainah Anwar, the founding members of SIS, on 27 April 2005 at the Public Forum organised by Liberal Forum Malaysia and Friederich Naumann Foundation Kuala Lumpur.³⁶ The paper was uploaded to SIS' official website. Based on this paper, an analysis of the enforcement of public morality from the perspective of SIS will be done, followed by an analysis of their recommended solutions and method of problem solving from an Islamic thought perspective.

Enforcing is derived from the verb enforce. To enforce something (on/against somebody /something) means “*to make sure that people obey a particular law or rule*”, enforce something (on somebody) means “*to make something happen or force somebody to do something.*”³⁷

The word public (adj) means “*of ordinary people; for everyone; of government; seen/heard by people; place*”.³⁸

The word “morality” comes from the French word *moralite* and Latin word *moralis*.³⁹ Morality means “*principles concerning right and wrong or good and bad behaviour*”.⁴⁰

In the West, private morality is considered as an individual's private conduct which is not a governmental or societal concern, and should be free from intrusion, while, public morality refers to the conduct that

³⁶ Zainah Anwar, “Paper on "Enforcing Public Morality" by Zainah Anwar (27 April 2005)”, *Sisters In Islam* website, December 8, 2014, <http://www.sistersinislam.org.my/news.php?item.470.10>.

³⁷ Oxford Advanced Learners's Dictionary (Oxford University Press), 484.

³⁸ Oxford Advanced Learners' Dictionary (Oxford University Press), 1172-1173.

³⁹ Oxford American English Dictionary, 87

⁴⁰ Oxford Advanced Learners' Dictionary (Oxford University Press), 953.

affects other individuals or the larger society, and which should be governed by externally imposed laws.⁴¹

In Islam, *akhlāq* is

good character, virtue, morality and good manners.”⁴² Akhlaq is “those universal standards of right and wrong that prescribe what humans ought to do as taught by the Qur’an, and demonstrated in the exemplary life (actions and words) of the Prophet (s.a.w).” In this sense, akhlaq (ethics) “subsumes all actions that are characterised as amal solih (virtuous deeds) in the terminology of the Qur’an.”⁴³

According to SIS,

Moral policing” refers to the set of provisions that criminalise personal breaches of religious conduct for Muslims in the Syariah Criminal Offences Act (SCOA). The “crimes” in this list are wideranging and not provided for in the Penal Code. They include failure to perform Friday prayers for men, consumption of intoxicating drinks, sexual intercourse out of wedlock, not fasting in Ramadan, and holding opinions contrary to official fatwa.⁴⁴

6.2.1. The Issue of What Constitutes Public Morality

Zainah says:

Public morality must depend on public consensus. For example, there is public consensus that sex in public constitutes immoral behaviour. Hence such behaviour is criminalised by the state as a display of public indecency. There is public consensus that wearing a bikini in the streets of Kuala Lumpur or in the halls of Parliament, even among the non-Muslims, is unacceptable behaviour.⁴⁵

Analysis:

Allah s.w.t. and His Messenger s.a.w. command us to behave with good conduct. The

Qur’an and *Sunnah* are two primary sources of *akhlāq*. These two sources guide

⁴¹ “BusinessDictionary.com”, February 20, 2015, <http://www.businessdictionary.com/>.

⁴² Ahmet Kilinc, *Islam - The Perfect Way of Life* (t.t.p.: Ahmet Kilinc, t.t), 143.

⁴³ Abdurezak A. Hashi, “Islamic Ethics: An Outline of its Principles and Scope”, 123, *IIUM Repository (IREP)* website, December 29, 2015, http://irep.iium.edu.my/18564/1/Islamic_Ethics.pdf.

⁴⁴ “Introduction of Moral Policing”, *Sisters In Islam* website, December 25, 2014, <http://www.sistersinislam.org.my/news.php?cat.10>.

⁴⁵ Zainah Anwar, “Paper on “Enforcing Public Morality” by Zainah Anwar (27 April 2005)”, *Sisters In Islam* website, December 8, 2014, <http://www.sistersinislam.org.my/news.php?item.470.10>.

Muslims on how to behave.⁴⁶ It means that the Qur'an and *Sunnah* must be referred to in differentiating morality and immorality. In the Qur'anic verse, it indicates that what is forbidden has been decided by Allah s.w.t..

Allah s.w.t. says:

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ

Al-Aḥzāb 33: 21

Translation: Ye have indeed in the Messenger of Allah a beautiful pattern (of conduct) for any one whose hope is in Allah and the Final Day, and who engages much in the Praise of Allah.

In another verse, Allah s.w.t. says:

وَمَا لَكُمْ إِلَّا أَنْ تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا

اضْطُرُّرْتُمْ إِلَيْهِ وَإِنَّ كَثِيرًا لَيُضِلُّونَ بِأَهْوَائِهِمْ بِغَيْرِ عِلْمٍ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِالْمُعْتَدِينَ

Al-An'ām 7:119

Translation: Why should ye not eat of (meats) on which Allah's name hath been pronounced, when He hath explained to you in detail what is forbidden to you - except under compulsion of necessity? But many do mislead (men) by their appetites unchecked by knowledge. Thy Lord knoweth best those who transgress

“*He hath explained to you in detail what is forbidden to you*” shows clearly that what is made *ḥarām* for human beings has been explained by Allah s.w.t., including both objects and actions.⁴⁷

Unlawful acts are explained in the Qur'an and/or Hadith, and those acts do not require public consensus to prohibit or to permit, to be punishable or to enforce a law for the committed act. It also does not require public consensus to decide on whether those who neglect the obligations must be punished.

⁴⁶ *Ibid.*

⁴⁷ Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam: Al-Ḥalāl Wa al-Ḥarām Fi al-Islam*, 51.

If an act is prohibited as stated in the Qur'an, this means it is unlawful, regardless of public consensus. It is immoral whether committed in private or public. The Qur'an and Hadith must be referred to when determining what constitutes morality in Islam.

According to Dr. Nasimah, *akhlāq* and religion are one. An act which goes against morals will be considered immoral whether it is committed in private or in public.⁴⁸ It does not require public consensus to be punished for the act.

Dr Mustafa states that Shariah must be referred to the *manhaj*. If it is *thawābit*, then wherever one is, one must behave according to what has been decided. If it is *mutaghayyirāt*, then it may be subject to circumstance. As an example, fashion is not *thawābit*, thus it does not matter how a woman chooses to wear her *ḥijāb*, as long as it does not contradict with the teachings of the Qur'an and Hadith.⁴⁹

For example, the rules of obligation to cover the '*awrah* do not depend on public consensus. Public consensus is only on matters that are *mutaghayyirāt* with the condition that it does not violate the Shariah.⁵⁰ It means that the obligation to cover the '*awrah* in front of non-*maḥram* has been decided by Allah s.w.t., thus disobeying or neglecting this obligation is considered unlawful.

Thus, what constitutes public morality must be referenced to the Qur'an and Hadith. Any act that is prohibited in the Qur'an or Hadith is considered unlawful whether it is committed in private or in public. Any disregard of obligatory practices is also considered unlawful, whether it is in private or public. It does not require the

⁴⁸ Nasimah Binti Hussin, (Associate Professor Dr.), Department of Islamic Laws, Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia, in an interview with the writer, April 25, 2014.

⁴⁹ Mustafa Bin Abdullah (Assoc. Prof. Dr.), in an interview with the writer, April 11, 2014.

⁵⁰ *Ibid.*

public consensus to decide whether to punish those who neglect the obligation commanded by Allah s.w.t.; or to determine an immoral from moral act; or to decide on whether an immoral conduct committed in public should be punished. Decisions that are merely based on public consensus and not on actual sources of knowledge are all subject to human suspicions and desires.

Allah s.w.t. says:

وَمَا يَتَّبِعُ أَكْثَرُهُمْ إِلَّا ظَنًّا إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا إِنَّ اللَّهَ عَلِيمٌ بِمَا يَفْعَلُونَ

Yūnus 10: 36

Translation: But most of them follow nothing but fancy: truly fancy can be of no avail against truth. Verily Allah is well aware of all that they do.

Zainah states that *“In a country where Islam is used as a source of law and public policy, those in religious authority can no longer claim monopoly over the interpretation and meaning of Islam.”*⁵¹

There is a rising number of people criticising religion and expressing controversial views and ideas on the matter. These people make their own interpretations of religious commands and practices, considering themselves free in giving opinions without barriers. This is apparent even among those who lack expertise and knowledge on the issue as they intend to interpret and undergo *ijtihād*.

According to Dr. Mustafa, a person who wishes to express opinions in certain fields must be qualified in doing so, just as a doctor would be considered qualified in discussing medical matters. In the field of religion, people who are qualified to talk about it are scholars and reputed religious individuals. If one intends to talk about Islam, one must first gain the necessary knowledge of it. Religious models and

⁵¹ Zainah Anwar, “Paper on "Enforcing Public Morality" by Zainah Anwar (27 April 2005)”, *Sisters In Islam* website, December 8, 2014, <http://www.sistersinislam.org.my/news.php?item?470.10>.

scholars do not intend to conquer⁵² or monopolise interpretations and meanings of Islam, rather they aim to protect the religion from Qur'anic misinterpretation.

Many may seek knowledge on Islam to the highest degree, but if their thought processes are not validated, their qualifications will be rendered invalid.⁵³ According to Dr. Nasimah, the reason why only the '*ulamā*' can talk about religion is because they have sufficient knowledge of it. If the public have enough knowledge about religion, they may talk too. '*Ulamā*' (the plural form of '*ālim*') are those who have sufficient knowledge and are qualified to discuss religious matters. The public must refer to these experts when it comes to religion. They are not qualified to discuss religion if they are not experts or do not have adequate knowledge of it.⁵⁴

The issue of morality and immorality must be based on Qur'an and Hadith. Muslim scholars are required to confer based on these two primary sources, not on personal desires and opinions. Those who do not have knowledge on religious matters are not qualified to discuss it. It is not the issue of who monopolises the interpretations and meaning of Islam, but it is the issue of who has the right to interpret it.

SIS need to understand that a Muslim is not free to express anything about Islam without sufficient knowledge. A Muslim is also not encouraged to say anything according to his desires or opinions without limitation. The Muslim scholars have determined certain criteria for a *mufasssir* or *mujtahid* in order to carry out *tafsīr* (interpretation) or *ijtihād*.

If people criticise in a field that they are not experts in, they do so without sufficient knowledge, disregarding the rules involved in methods of interpretation (*tafsīr*) and *ijtihād*. Therefore, the interpretation of the Qur'an can only be done by those who are qualified to do so under a certain set of rules. They are not free from these rules. Without

⁵² Mustaffa Bin Abdullah (Assoc. Prof. Dr.), in an interview with the writer, April 11, 2014.

⁵³ *Ibid.*

⁵⁴ Nasimah Binti Hussin, (Assoc. Prof. Dr.), in an interview with the writer, April 25, 2014.

such rules, how would one be able to reject any interpretation that stray from the truth? How can one claim interpreters "manipulate text"? One who intends to interpret must meet the rules of interpretation and one who intends to undergo *ijtihad* must fulfil the conditions of *ijtihad*.⁵⁵ It is not a matter of monopoly over interpretation, but it is a matter of qualification.

Zainah said:

Neither should this debate exclude citizens of other faith. They when have every reason to engage in the debate because too are affected by the law - when their children are charged for indecent behaviour for holding hands in a park, for being denied entry to the public library or to a government department because they wear clothes considered indecent by the norms of another religious group.⁵⁶

SIS should further clarify this matter. A Muslim who intends to discuss the topic of Islam must be knowledgeable of it. How would citizens of other faiths debate on a topic that relates to Islam without sufficient knowledge of it?

Dr. Nasimah says that in the enactments of Malaysia, there are offences which apply upon both Muslims and non-Muslims, and also offences applied upon Muslims alone, as an example, unmarried non-Muslims will not be penalised for holding hands with their partner in a park, as this penalty is only imposed upon Muslims. Whereas offences for both Muslims and non-Muslims under the penal code, Laws of Malaysia, Act 574, includes the sale and distribution of obscene books, etc.,⁵⁷ outrages on

⁵⁵ Ahmad Al Raysuni menulis bahagian Ijtihad: Antara Teks, Maslahat, dan Realitas,

⁵⁶ Zainah Anwar, "Paper on "Enforcing Public Morality" by Zainah Anwar (27 April 2005)", *Sisters In Islam* website, December 8, 2014, <http://www.sistersinislam.org.my/news.php?item.470.10>.

⁵⁷ Section 292: Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

decency,⁵⁸ subjecting children to acts of indecency,⁵⁹ and more. Offences for both Muslims and non-Muslims under Minor Offences Act 1955, Laws of Malaysia, Act 336 include insulting behavior,⁶⁰ and even spitting in public places.⁶¹ The aspect of morality or *akhlāq* is wide-ranging. Anything that is contrary to *akhlāq* is considered immoral.⁶²

As highlighted by Dr. Mustafa, non-Muslims are also bound by laws of Islam as these laws transgress racial boundaries.⁶³

Any act considered moral or immoral must be based on Shariah, and must not be based on personal preferences or merely public consensus. It must be understood that one of the characteristics of Islamic law is that it is universal and suitable for all mankind regardless of location. As Allah s.w.t. is the Creator of human beings, He knows what the best form of regulation for man is.

6.2.2. The Issue Regarding the Role of the State in Legislating Morality

Zainah questions: *“Is it the duty of the state - in order to bring about a moral society - to turn all "sins" into "crimes against the state"?”.*

Analysis:

⁵⁸ Section 377D. Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

⁵⁹ Section 377E. Any person who incites a child under the age of fourteen years to any act of gross indecency with him or another person shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to whipping.

⁶⁰ 14. Any person who uses any indecent, threatening, abusive or insulting words, or behaves in a threatening or insulting manner, or posts up or affixes or exhibits any indecent, threatening, abusive or insulting written paper or drawing with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, shall be liable to a fine not exceeding one hundred ringgit.

⁶¹ 15 (d) spits in any coffee shop, eating house, school premises or public place or in any trolley-bus, omnibus, railway carriage or other public conveyance or in or near any public road: Provided that nothing in this paragraph shall prohibit any person from spitting into any receptacle provided for the purpose or into any drain, shall be liable to a fine not exceeding one hundred ringgit.

⁶² Nasimah Binti Hussin, (Assoc. Prof. Dr.), in an interview with the writer, April 25, 2014.

⁶³ Mustafa Bin Abdullah (Assoc. Prof. Dr.), in an interview with the writer, April 11, 2014.

The role of the state in Islam is to implement the divine law. Islam rules and regulates both the private religious life of an individual, and all aspects of public life. In Islam, religion and state are two concepts that cannot be separated.⁶⁴ It is among the roles of those in authority to enjoin good and prohibit evil, and this includes carrying out punishments as prescribed by Allah s.w.t. on those who break the rules of Shariah. Punishment is considered as one of the ways to prohibit *munkar* or forbidden acts.⁶⁵ The group has to understand that morality or *akhlāq* is part of religion and cannot be separated from one another. Therefore, enjoining people to behave with good morals and prohibiting them from immoral behaviour is part of the duties of the state. Morality and immorality must be defined based on the Qur'an and Hadith.

It is among the roles of the state to establish, maintain and develop the virtues that Allah s.w.t. enjoins, and prevent the evils that He prohibits. The moral system regarding virtues and evils is clearly outlined in the Qur'an. Thus, one of main roles of the state is to establish those virtues and prevent those evils.⁶⁶ As highlighted by Dr. Mustafa, a system is required in a life of family, society, or state. If there is no system, it will lead to the ruin of a nation. One of the systems in a state is *hisbah*.⁶⁷

“*Al-‘amr bi al-ma’rūf wa al-nahy ‘an al-munkar*” (enjoining virtues and forbidding evil) is the social injunction in Islam to discipline the moral character of the society. The word “*al-nahy*” means “*forbidding others from doing evil, which varies according to the level of authority.*”⁶⁸

⁶⁴ “The Basics of the Political System in Islam”, 4-6, *IslamHouse.com* website, February 16, 2015, http://d1.islamhouse.com/data/en/ih_articles/single2/en_The_Basics_of_the_Political_System_in_Islam.pdf.

⁶⁵ Ibn Taymiyya, “Enjoining Right & Forbidding Wrong”, translated by Salim Abdallah ibn Morgan, 6, *IslamHouse.com* website, February 16, 2015, http://d1.islamhouse.com/data/en/ih_books/single/en_Enjoining_Right_and_forbidding_wrong.pdf.

⁶⁶ Abul A'la Mawdudi, *Human Rights in Islam: Huqūq al-Insān fī al-Islām*, translated by Khurshid Ahmad, Ahmed Said Khan (Prof.), and M.M. Ahsan (Dr.) (Leicester, UK: The Islamic Foundation, 1980), 11.

⁶⁷ Mustaffa Bin Abdullah (Assoc. Prof. Dr.), in an interview with the writer, April 11, 2014.

⁶⁸ Munawar Haque et al., *Ethics and Fiqh for Everyday Life: An Islamic Perspective* (International Islamic University Malaysia: IIUM Press, 2010), 49, 51.

The Prophet s.a.w. said:

مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيَعْبِرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ،
وَذَلِكَ أَوْعَفُ الْإِيمَانِ

Translation: Whoever amongst you sees an evil, he must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of Faith.

As mentioned by Dr. Mustafa, what the Prophet s.a.w. says in the above Hadith does not mean that he violates human rights.⁶⁹ According to the book, *Ethics and Fiqh*, the word “*biyadih*” refers to someone who has power and authority. As a person who has power and authority, he or she must play his or her role in preventing evil.⁷⁰

Dr Nasimah states that in Islam, an offence is an act that is prohibited or *ḥarām* and withholding what is *wājib* or obligatory and must be punished. Punishment is in the form of *ḥad*, or *qīṣāṣ* or *tazīr*. In Islam, any act that is *ḥarām*, or the withholding of an act that is *wājib*, is considered an offence and is punishable. The form of punishment may not necessarily be clarified in the Qur’an, but it is determined by a set of rules and regulations. An offence can be based on *ma‘ṣiyah* and it can be based on *maṣlaḥah*. As an example for *maṣlaḥah*, a person who does not wear a seatbelt in a moving car is considered to have committed a traffic offence. Although the choice to wear a seatbelt is one’s own, one must adhere to this rule for the interest and safety of the public; in this case, the other road users. If one chooses not to wear the seatbelt, one is considered to have committed an offence.⁷¹

Another point that must be understood by SIS is the meaning of crime in Islam. Crime is “*an unlawful act for which punishment has been prescribed by the*

⁶⁹ Mustaffa Bin Abdullah (Assoc. Prof. Dr.), in an interview with the writer, April 11, 2014.

⁷⁰ Munawar Haque et al., *Ethics and Fiqh for Everyday Life*, 57.

⁷¹ Nasimah Binti Hussin, (Assoc. Prof. Dr.), in an interview with the writer, April 25, 2014.

*Shariah by way of fixation or discretion". Muslim jurists have unanimously defined it in the words: "Unlawful acts for which punishments have been provided (directly or indirectly) by God, either fixed (had) or discretionary (ta'zir)."*⁷²

It is a crime to commit a prohibited act or to neglect an obligatory act.⁷³ Abd al-Qādir 'Awdah defines crime as follows: "A crime is the commission or omission of an act which is forbidden by the Shari'ah and punishment is recommended for it."⁷⁴

As mentioned by Dr. Nasimah, Islam itself consists of three components: 'aqīdah, Shariah, and akhlāq. Where akhlāq is a component of the religion, any crime committed is a transgression of akhlāq. Any act that goes against akhlāq is considered a crime, or an offence. This is the difference between Islam and other religions. In other religions, although morality is part of religion, the relationship between man and fellow man is isolated from the relationship between man and God. This is contrary to Islam, where all relationships are interrelated – between man and man, man and God, man and the universe.⁷⁵

*An unlawful act which has been declared a crime can be either: commission of any prohibitory act or omission of any obligatory act.*⁷⁶ One of the conditions of what constitutes a crime is "the presence of legal argument of Shari'ah which prohibits the commission or omission of a certain act."⁷⁷

Dr. Nasimah reiterates that akhlāq is a part of Islam and cannot be separated. In the case of zinā, according to laws outside of Islam, it is not considered as an offence. However, according to Islamic law, the act of zinā is considered as an offence

⁷² Dr Muhammad Tahir-ul-Qadri, Islamic concept of Crime (Lahore: Minhaj-ul-Quran Publications, 1st edition (1985), 5th edition (2005)), 5.

⁷³ Muhammad Tahir-ul-Qadri (Prof. Dr.), *Islamic Concept of Crime* (Lahore: Minhaj-ul-Quran Publications, 1987), 5.

⁷⁴ *Ibid.*, 6.

⁷⁵ Nasimah Binti Hussin, (Assoc. Prof. Dr.), in an interview with the writer, April 25, 2014.

⁷⁶ Dr Muhammad Tahir-ul-Qadri, Islamic concept of Crime (Lahore: Minhaj-ul-Quran Publications, 1st edition (1985), 5th edition (2005)), 5.

⁷⁷ Muhammad Tahir-ul-Qadri (Prof. Dr.), *Islamic Concept of Crime*, 12-13.

because it goes against the *akhlāq*. Even with the consent of both parties, *zinā* is considered as an offence in Islam as it goes against the *akhlāq*.

As mentioned by Dr. Nasimah, it is also an offence for a Muslim who neglects performing the five daily prayers. However, before any punishment is served, it must first be proven with sufficient evidence.

In Islamic law, covering the *awrah* is part of *akhlāq*. However, if it is stated in the dress code, it is considered as a law and must be adhered to. A legal regulation is in the form of an enactment, or rules and regulations. It is considered Islamic, or under Islamic law, as long as it does not contradict Shariah. If the regulation made does not contradict Shariah, then it is valid in accordance with Islamic law.

Dressing indecently in public is not permitted as it violates the interests of other who are trying to avert from sin and remain true to their faith.⁷⁸

According to Dr. Nasimah, an act is considered immoral if it goes against Islamic morals, regardless of whether it is committed in private or in public. If the act is committed in public, it is less difficult for the authorities to take action. If an immoral act is committed in private but is later known by the public, the act would be considered public. When the public makes a report to ‘Jabatan Kemajuan Islam Malaysia’ (JAKIM) of an unmarried couple cohabiting, the couple is considered to have committed an offence in public and the authorities have the right to impose the necessary punishment. Such action taken against them is believed to help prevent the spread of *ma’siyah* within the community.

Zainah further questions: “*Should the state extend the long arm of the law to what should be best left to the religious conscience of the individual?*”

Zainah said: “*a debate has revolved on whether private behaviour should be morally policed and punished on the basis of religious values and teachings. Or*

⁷⁸ Zaharuddin Abdul Rahman, *Untukmu Umat* (t.tp.: Alaf 21, 2009), 218-219.

whether these values should be best left to the religious conscience of the individual."⁷⁹

Dr. Nasimah does not agree that these values should be left to one's religious conscience. The ultimate goal is to prevent harm from society. That is why punishment is necessary in ensuring the community adheres to religious laws. The law relating to morality is vital in ensuring people are free from any elements that could lead to immoral activities and in turn cause moral decay among the society and the state.⁸⁰

The Prophet s.a.w. says:

تَرَكْتُ فِيكُمْ أَمْرَيْنِ لَنْ تَضِلُّوا مَا تَمَسَّكْتُمُ بِهِمَا: كِتَابَ اللَّهِ وَسُنَّةَ نَبِيِّهِ

Translation: I have left two matters with you. As long as you hold to them, you will not go the wrong way. They are the Book of Allah and the Sunnah of His Prophet.⁸¹

From the standpoint of Islamic jurisprudence, the provisions of a law must be in accordance with the Qur'an and *Sunnah* and this includes any law relating to decency and morality. Even among the goals of sending the Messenger s.a.w. to humankind was to perfect good character.⁸²

⁷⁹ Zainah Anwar, "Paper on "Enforcing Public Morality" by Zainah Anwar (27 April 2005)", *Sisters In Islam* website, December 8, 2014, <http://www.sistersinislam.org.my/news.php?item.470.10>.

⁸⁰ Hassan Abdul Rahman, *Undang-undang Berkaitan Kesusilaan di Malaysia, Isu-isu Kebebasan Beragama & Penguatkuasaan Undang-undang Moral* (Selangor: Jabatan Undang-undang Islam, Kulliyah Undang-undang Ahmad Ibrahim, UIA dan Pusat Undang-undang Harun M. Hashim, 2009), Ed. Mohd Hisham Mohd Kamal and Shamrahayu A. Aziz, 121.

⁸¹ Narrated by Mālik, *Muwatta'*, *Kitāb al-Qadr*, Bāb Al-Nahy 'an al-Qawl bi al-Qadr, number of hadith 678/3338.

⁸² Hassan Abdul Rahman, "Undang-Undang Berkaitan Kesusilaan di Malaysia: Satu Tinjauan," in *Isu Isu Kebebasan Beragama & Penguatkuasaan Undang-Undang Moral*, ed. Mohd Hisham Mohd Kamal, and Shamrahayu A. Aziz (International Islamic University: Jabatan Undang-Undang Islam, and Pusat Undang-Undang Harun M. Hashim, 2009), 114.

Therefore, the law and enforcements are needed to ensure that society adhere to them. Without enforcement, it is impossible to prevent people from conducting immoral behaviour. There are three forms of punishment in Islam: *qiṣāṣ* (*retaliation*), *ḥadd* and *ta'zīr*. *Ta'zīr* is dependent upon the law and on the considerations of a judge. The degree of punishment for the offence varies from case to case depending on its severity to a society.

The scope and applicability of morality in Islam is universal. Muslims must behave with good moral conduct, and at the same time, enjoin others to do so, too. They should refrain from immoral behaviour, and at the same time prevent others from it.⁸³

Allah s.w.t. says:

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ

'Āl-'Imrān 3: 110

Translation: Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah..

Zainah says that “*Women were forced to wear the hijab, without fully understanding or imbibing the reasons for it.*”

Furthermore, SIS mentions that “*The question this raises is: would it have been more effective to educate young people to be able to freely choose to do the morally right thing for the right reason, and not because of the fear of the coercive power of the state?*”⁸⁴

In this issue, SIS must understand that Muslims have to follow the Islamic rules. Thus, Muslim women must follow the Islamic dress code and are not free to

⁸³ Khalid Latif, “Morality and Ethics in Islam”, *The Region of Islam* website, February 16, 2015, <http://www.islamreligion.com/articles/1943/>.

⁸⁴ Zainah Anwar, “Paper on "Enforcing Public Morality" by Zainah Anwar (27 April 2005)”, *Sisters In Islam* website, December 8, 2014, <http://www.sistersinislam.org.my/news.php?item.470.10>.

wear whatever they like. They are not free to choose whether to obey it or not, but as Muslims, they have to obey Islamic laws.

As mentioned by Dr. Nasimah, in Islam, punishment is the last resort where it is executed to prevent society from committing further crimes and offences. It is a form of education for the society to adhere to Shariah and the law. Although education is important, enforcement should still prevail for those who remain adamant in committing offences even after being educated. Education alone is not enough.

Dr. Nasimah highlights that in Malaysia, the ignorance of any law or regulation is not an excuse for one to escape punishment. Many Malaysians are not aware of certain laws in Malaysia, but their ignorance is not an excuse to be acquitted of any form of punishment. As an example, a person who consumes alcohol cannot say he was not aware of its prohibition in Islam.⁸⁵ In other words, he is still considered to have committed an offence, even unbeknownst to him upon committing it.

Dr Nasimah states that education is necessary, but at the same time, there must be laws enforced as an example for others to abstain from committing offences and crimes. Education alone is insufficient in preventing harm within a society. In other words, both education and enforcement are needed for the best interests of the society.

⁸⁵ Nasimah Binti Hussin, (Assoc. Prof. Dr.), in an interview with the writer, April 25, 2014.

6.2.3. Conclusion

In discussing and offering solutions to problems related to religious matters, SIS must ensure that their members refer to the Qur'an and *Sunnah*. When discussing issues related to the enforcement of public morality, Zainah Anwar, the founding member of SIS, has not referred to any evidence (*dalīl*). How, then, can she offer solutions that comply with the Islamic framework?

SIS has to understand that the method of problem solving in Islam involve referring to the Qur'an and Hadith. It means that if one cannot find the answers they seek in the Qur'an, then they must refer to the Hadiths. If they cannot find the answer in the Hadiths, they have to refer to the reports from the *ṣaḥābah*. If they cannot find the answer from these sources, then they must refer to the reports from the *tabi'īn*. If they still cannot find the right answer, then they can practise *ijtihād*. *Ijtihād* here does not mean that they can freely pick whatever they feel that is most convenient for them. *Ijtihād* requires individuals to follow the proper methods and rules of *ijtihād* so that misinterpretation of Islamic teachings does not occur.

Akhlāq and morality is part of Islam and the group have to understand what constitutes morality under the context of Shariah. They have to refer to the Qur'an and Hadiths when offering solutions to problems faced by society. Any ideology that is not parallel with Islamic teachings must be rejected. The ideology that divides morality into two: private morality and public morality, claims that what constitutes public morality must depend on public consensus. However in Islam, an act is considered immoral if it goes against morality or *akhlāq* as commanded in the Qur'an and Hadith, regardless of whether it is committed in private or in public. In this issue, the group must understand that public consensus cannot be used as a tool to decide whether or not an immoral act should be punished if the doer commits the offence in public.

SIS must also refer to the Qur'an and Hadith in defining the word crime or any other terms in the discussion of Islamic matters. Any individual who intends to discuss Islamic matters must first ensure that they are not influenced by terminologies and ideologies that are unparallel to the true teachings of Islam.

It must also be understood that one of the important duties of the state is to prevent forbidden acts. Punishment is only executed upon those where the act is supported with valid evidence.

In addition to this, education of the society is crucial but the state authorities must enforce the law to ensure the people abide to the rules and regulations. Both education and the enforcement of the law are important to prevent people from committing prohibited acts or neglecting obligations.

SIS has to ensure that their members use the proper methods and follow the proper guidelines when offering solutions to problems in society so that they can avoid giving the wrong solutions. The group also has to ensure that their solutions do not contradict with the Qur'an and Hadith.

Zainah Anwar did not apply the principles of Qur'anic hermeneutics when solving issues related to the enforcement of public morality. She did not refer to any Qur'anic verses when discussing this issue. Instead, Zainah makes points that are based on her own personal opinions. Thus, her method of problem solving does not fulfill the requirements from an Islamic thought perspective. She also appears to be partial to perspectives that come from the West, especially in defining and understanding certain terminologies. Hence, this leads to proposed solutions and ideas that do not coincide with the Islamic thought perspective.