UNDERSTANDING OF IJTIHĀD FROM THE MIND OF SISTER IN ISLAM: A CRITICAL ANALYSIS

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Abstract

The human problems are not endless and keep on changing in accordance with their current needs, times and circumstances. Yet, disputes among humankind regarding their matters of life will continue to exist. In Islam, the use of reasoning (ijtihād) is permissible and necessary in solving human problems, finding answers and reaching conclusions. In Malaysia, the need of using ijtihād is promoted by a Non-Governmental Organisation (NGO) called “Sisters in Islam” (SIS). This NGO offers alternative solutions for any current problems facing Muslim society. Since the method of problem solving in Islam is significant to ensure the given solution does not contradict with Islamic principles. This article aims to examine the concept of ijtihād as interpreted by SIS and then, it analyzes the method of problem solving through ijtihād exercised by SIS. The method of this study is critical analysis by analyzing same related statements presented by its founding member named Zainah Anwar in Musawah, an initiative of Sisters in Islam (SIS Forum Malaysia). Her ideas and understanding have been analyzed from the Islamic thought perspective. There are two main findings of the analysis, the first is misunderstanding of the categorization relating to the matter of ijtihād and the second is the inconsistency of the methods of problem solving through ijtihād with Islamic principles. Notwithstanding the use of ijtihād is vital to understand and derive Islamic rulings, certain methods must be followed accordingly. Thus, every proponents of SIS must have a clear understanding about the concept of ijtihād and its proper methods in practicing ijtihād. This is because their answers and proposed solutions can give a big impact to the beliefs and practices of Muslim society in Malaysia.

Keywords: Ijtihād, Sisters in Islam, Islamic thought perspective, the use of reasoning, Islamic principles, critical analysis

1. INTRODUCTION

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
2. THE DEFINITION OF IJTIHĀD

IJTIHĀD is a masdar of the Arabic word “ijtahada” (اجتهاد), which means to exert his best or utmost effort. It is derived from the Arabic root word (ج ح د: j-h-d) means hardship and energy, and ج ج ج: j means only energy. Literally, ijtihād means the utmost effort 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. In other words, ijtihād literally is defined as the exertion of utmost effort on a matter that requires it.

Terminologically, ijtihād has a few meanings such as the following:

i. To exert utmost effort to deduce (idrāk) ḥukm sharʿī.
ii. To exert utmost effort to discover evidence to reach al-qaṭī or al-ẓannī of ḥukm sharʿī.
iii. To exert utmost effort when considering sharʿiyyah evidence to deduce al-aḥkām al-sharʿiyyah.
iv. The utmost efforts of jurists in obtaining ḥukm from ẓannī evidence (dalīl ẓannī).
v. To exert utmost effort to reach the goal. Or: The jurist (faqīh) exerts his utmost effort to find out a legitimate rule of evidence. (dalīl)
vi. The mujtahid has spent so much effort in pursuit of the knowledge of aḥkām al-sharʿiyyah.

ijtihād is also defined as,

The exertion of the utmost effort by a trained jurist, taking into account all the relevant texts of the Quran 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.

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. 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 methodology related to Islamic jurisprudence (uṣūl al-fiqh) or legal theory for the purpose of discovering Divine Law. The practice of ijtihad or independent legal deduction is permitted in Islam with certain conditions underlined by Muslim jurists.

3. AN ANALYSIS OF SIS’S UNDERSTANDING OF IJTIHĀD

SIS claims 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…”

Based on the above statement, SIS has to be aware that the interpretation of religious texts should be based on the Quran 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 the proper methods that have been laid down by our Muslim scholars if they want to practice *ijtihād*. 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.\(^{18}\)

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?\(^{19}\)

Any group who claims that "there is no need for any condition to do *ijtihād*" should 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 transformation (*al-tagyir*) movement are similar to the *bāṭiniyyah*.\(^{20}\)

Zainah states that "as a concept, Shariah 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."\(^{21}\)

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 she is 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."\(^{22}\)

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 *ijtihād* 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 *ijtihād* must fulfill certain qualifications and follow the predetermined methods of *ijtihād*, to ensure the *ḥukm* that is derived is based on the Quran and Sunnah, and not based merely on what is considered rational.

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.\(^{23}\) In the process of *ijtihād*, the *ḥukm* or laws are derived from the Quran and Sunnah.

A ruling (*ḥukm*) decided upon by qualified jurists (*mujtahid*) must be obeyed,\(^{24}\) because the *ḥukm* is always derived from the Quran 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.”

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.

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 hukm or law that has been deduced is based on the Quran and Sunnah.

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 Quran 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 Quran 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 Quran, the Sunnah, the consensus of the șaĥabah 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.’”

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 Quran 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.”

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*. 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 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 Quran and *Sunnah*. In other words, they have to make sure that all these opinions are based on the Quran 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. 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. Zainah states,

There are two categories of legal rulings: *'ibadat* (devotional / spiritual acts) and *mu'āmalat* (transactional / contractual acts). Rulings in *'ibadat* category regulate relations between God and the believer, and therefore offer limited scope for change. Rulings in *mu'āmalat* category, however, regulate relations between humans, and therefore remain open to change.

The above statement should be corrected because not all legal rulings categorized as *mu'āmalah* are open to change. Only certain matters of *mu'āmalah* are open to *ijtihād*. The categories stated in the above quote are also incorrect. The group should have proper knowledge on the texts or *naṣ* which are categorized as *qatṭ* and *ẓannī* if they want to exercise *ijtihād*. The matter of *ijtihād* is not based on *'ibādah* or *mu'āmalah* categories. Thus, any member of SIS 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'āmalah* category remain open to change. There are rulings/matters in the *mu'āmalah* that are categorized as *thawābit*.
(unchangeable) and there are ruling/matters in the *mu‘āmalah* 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 (*ẓannī*).

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*. This is clearly not allowed.

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 Qurān 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 *maṣlaḥah* 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 needs 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 *maṣlaḥah* or public interest is from an Islamic point of view. The understanding of ‘public interest’ should be based on the Qurān 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 Qurān and Sunnah.

*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 Qurān and Sunnah to determine what *maṣlaḥah* actually is.

Only Allah SWT 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 the primary sources namely the Qurān and Sunnah.

Hence, SIS cannot just claim that something is of public interest without referring to the guidance of Allah SWT 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 Qurān 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.

The majority of Muslim jurists agreed that Allah SWT 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 SWT 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 SIS want to apply the concept of maṣlaḥah when solving problems that arise in society, they need to have the knowledge on it. They have to follow the guidelines and principles determined by Muslim scholars to avoid the misuse of 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 needs to be based on what is stated in the Qur'an and Hadith.

CONCLUSION
In conclusion, based on the above analysis, the analysis shows that the method of problem solving through ijtihaḍ as interpreted by SIS do not run parallel with the method of problem solving through ijtihaḍ 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 ijtiḥād 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 categorization relating to the matter of ijtihaḍ by Zainah, the founding member of SIS. Hence, any member of SIS who intends to talk about ijtihaḍ must clearly understand what ijtiḥād involves.

With reference to the qualifications of a mujtahid, any individual, regardless whether male or female is allowed to engage in ijtihaḍ with the condition that he or she must fulfill 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 interests 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 nas (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 al-Quran and al-Sunnah.

ENDNOTES

Ibid.


Ibid., 58.


Abū ʿAbdullāh, Ahmad bin ʿUmar bin Musāʿid al-Ḥāzimī, *Sharh al-Muḥtaṣar Li Nuzum al-Waraqāt* (t.tp.: Durūs Śawtiyyah, t.t.), 25.


Abū ʿAbdullāh, Ahmad bin ʿUmar bin Musāʿid al-Ḥāzimī, *Sharh al-Muḥtaṣar Li Nuzum al-Waraqāt*, 16.


Zainah Anwar is one of the founding members of SIS. She has worked as a Chief Programme Officer in the Political Affairs Division for the Commonwealth Secretariat, London; became a Senior Analyst at the Institute of Strategic and International Studies, Kuala Lumpur; and was a Political and Diplomatic Writer for the New Straits Times, Kuala Lumpur. As the public face of SIS, she was chosen to become the project director of Musawah: For Equality in the Family. She has published a book entitled “Islamic Revivalism in Malaysia: Dakwah Among the Students”.


Ibid., 11.

Ibid., 5-6.


Ibid., 17.


Ibid., 134.

Ibid.

Ibid.


Ibid., 17.


Ibid., 9.


