



Majlis Perundingan Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Tao

Malaysian Consultative Council of Buddhism
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MCCBCHST - AN OPEN LETTER TO MEMBERS OF PARLIAMENT TO VOTE AGAINST HADI'S HUDUD BILL

The **Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST)** is gravely concerned with Hadi's Private Member's Bill which will be coming up for debate soon in our Federal Parliament. As the Bill will have far-reaching consequences for the Nation, the MCCBCHST feels duty bound to issue this open letter to Members of Parliament to do their duty as required by their oath of office to protect our Federal Constitution.

I. Is HADI's Private Member's Bill a Bill empowering HUDUD offences?

The answer is a clear 'YES'. Here it is why.

The **AIM** of HADI's Private Member's Bill is to seek Parliament's approval to enhance the jurisdiction of the SYARIAH COURTS. Presently, the Syariah Courts can only impose punishments up to 3 years imprisonment, fine up to RM5,000.00 and whipping up to 6 lashes (commonly known as 3-5-6 limits). This is provided for by the Syariah Court (Criminal Jurisdiction) Act 1965 (Act 355).

HADI's Bill seeks to amend the 1965 Act (Act 355) as follows:-

- (i) menggantikan Seksyen 2 dengan Seksyen berikut:

"2. Mahkamah Syariah akan mempunyai kuasa ke atas seseorang penganut agama Islam dan di dalam hal-hal kesalahan di bawah perkara-perkara yang disenaraikan di dalam Butiran 1 Senarai Negeri di bawah Jadual Kesembilan Undang-Undang Persekutuan",

dan

- (ii) memasukkan selepas Seksyen 2 dengan Seksyen berikut:

2A. *"Dalam menjalankan undang-undang jenayah di bawah Seksyen 2 Mahkamah Syariah berhak menjatuhkan hukuman yang dibenarkan oleh Undang-Undang Syariah berkaitan hal-hal kesalahan yang disenaraikan di bawah Seksyen yang disebutkan diatas, selain dari hukuman mati".*

The proposed new Section 2A is very wide and states that Syariah Courts can impose punishments which are allowed by Syariah Law in relation to punishments which are listed under the above Section, other than the death penalty.

Now, let us look at the Syariah Law Enactment passed by the State Legislature of Kelantan, known as the "Kelantan Syariah Criminal Code II (1993) 2015". The offences included in this Kelantan Enactment are:

- (i) ***HUDUD (fixed punishments). The offences included are theft, robbery, adultery, false accusation of adultery, sodomy, intoxication, heresy (these are II Hudud Offences).***
- (ii) ***Qisas (retaliatory) – punishments for homicide and causing bodily injuries (these are "qisas offences").***
- (iii) ***Ta'zir (discretionary) punishments imposed when hudud or qisas punishments cannot be meted out.***

Thus if Hadi's Bill is passed by Parliament it would allow the Kelantan Syariah Criminal Code II (1993) 2015 to be implemented and to impose HUDUD punishments of theft, robbery, adultery, sodomy, etc.

Thus, the proposed Hadi's Private Member's Bill is clearly a HUDUD BILL as it seeks to empower States to be able to introduce amendments empowering Syariah Courts to impose HUDUD Punishments.

II. MCCBCHST since its formation has always supported:

- (i) **The Federal Constitution**
- (ii) **Rukunegara**
- (iii) **Islam as the religion of the Federation**
- (iv) **Loyalty to King and Country**
- (v) **Rule of Law**

III. Is HADI's proposed Bill constitutional.

The MCCBCHST is of the view, that it is clearly unconstitutional. These are the reasons why it is so.

(1) The Historical documents and evidence point to Malaysia being a Secular State.

- (i) ***The ALLIANCE MEMORANDUM submitted jointly by UMNO, MCA, MIC to the Lord Reid Commission in 1956 specifically stated that they wanted a secular state, although the religion of the State was to be Islam, and we quote:***

“The Religion of Malaya shall be Islam. The observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religion, and shall not imply that the State is not a secular state”.

- (ii) Lord Reid Commission Report recommended that although Islam was to be the State religion, it did not imply that the State is not a secular State (Para 169 of Reid Report).***
- (iii) The White Paper issued by the British Government in June 1957 reconfirmed that the inclusion of the declaration that Islam is the religion of the Federation, “will in no way affect the present position of the Federation as a secular state” (Paragraph 57 of the White Paper).***
- (iv) Letter dated 31st May, 1957 written by the colonial Secretary (Lennox-Boyd) to Lord Reid:

“... changed their tune about Islam and the Government presented a united front in favour of making Islam a state religion even though Malaya is to be a secular state”.***
- (v) The Cobbold Commission Report 1963 again reiterated the secular nature of the new Federation comprising Malaya, Sabah, Sarawak and Singapore.***
- (vi) The 20 points consensus Agreement for Sabah and the 18 points consensus Agreement for Sarawak. The 1st point of agreement was that there would be no State religion for Sabah and Sarawak.***
- (viii) Tunku Abdul Rahman who was deeply involved in the drafting of the constitution and attainment of Independence for Malaya on 31st August, 1957 had clearly stated on a number of occasions that Malaysia was a secular state and not an Islamic state, including:-***
 - During debate in the Federal Legislative Council in 1958 “..... I would like to make it clear that this country is not an Islamic state as it is generally understood, we merely provide that Islam is the official religion of the State”.***
 - Our First Prime Minister and founding father Tunku Abdul Rahman stated clearly that Malaysia was set up as a secular state with Islam as the official religion” (The Star (9/2/1983) under the heading “Don’t make Malaysia an Islamic State”)***
- (ix) There appears to be no Historical document to contradict the fact that Malaysia was intended to be a secular state.***

- (2) The Hadi’s Bill seeks to empower the States to be able to impose HUDUD sentences. This proposed HUDUD offences are already offences under the Federal Penal Code. The Federal List which comes under Parliament and States cannot legislate on it. The HUDUD offences thus seek to encroach into the Federal List and seek to create a dual legal system, which is not allowed by the constitution, as it will undermine the basic structure of the constitution.**

Article 160 (2) of the Federal Constitution defines “Law” as :-

“Law includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof”.

Thus, Syariah Law (of which HUDUD offences is part), is not even included in the definition of “Law under our Federal Constitution.

Thus, the introduction of Hudud offences, will affect the very fabric of the Federal Constitution, as basically we are governed by secular laws.

(3) Religion of the Federation

Article 3(1) explained:

It provides:

“Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation.

The Supreme Court in the case of Che Omar Bin Che Soh v. PP (1988) 2 MLJ. 55 after going through the History of the Formation of Malaysia held that the Federation is governed by secular Laws.

Prof. Shad Faruqi in his book “Document of Destiny” at page 123 stated:

“The word ‘secular’ does not appear anywhere in the constitution. However, there is historical evidence in the Reid Commission papers that the country was meant to be secular and the intention in making Islam the official religion of the Federal was primarily for ceremonial purposes.”

Article 3(4) explained:

It provides:

“Nothing in this Article derogates from any other provision of this constitution”.

This Article 3 (4) is the controlling Section of Article 3 and is very often overlooked in discussions.

The effect of Article 3(4) is that “no right or prohibition, no law or institution is extinguished or abolished as a result of Article 3’s adoption of Islam as the religion of the Federation”. (Shad Faruqi. “Document of Destiny”, p. 126).

This further means that Article 3 cannot be used to affect or abridge any other provision of the constitution.

(4) Islamic Law is confined to what is provided for in the State List II (9th Schedule), with the limitations imposed therein.

The present limitations are imposed by Act 355 commonly known as 3-5-6 limit.

In fact words "Islamic law" or "Syariah Courts" were not found or included in Schedule 9 List II in the 1957 Federal Constitution. This meant that Syariah Law or HUDUD offences were never in contemplation of the framers of the constitution.

The Schedule 9 List II was amended in August, 1976 to rename "Muslim Courts" as "Syariah Courts" and "Muslim Law as "Islamic Law".

(5) Article 4 (1) provides that :

"This constitution is the Supreme Law of the Federation....."

This means all other laws are inferior and they must conform to the constitution, failing which they will be declared unconstitutional.

Thus, Syariah Laws and other laws are subject to this constitution.

It also means that this constitution is supreme and not Parliament. Therefore any Law passed by Parliament that contravenes our Federal Constitution, can be declared null and void by our Courts.

In the Indian Supreme Court case of ***Kesavananda Bharati v. the State of Kerala***, the Court held that in any Country where the constitution is supreme, there must be an implied restriction of the power of Parliament to change the basic structure of the Constitution. This case has been accepted by our Malaysian Courts and the basic structure doctrine being endorsed.

(6) Higher status of secular authorities.

"If by a theocratic State is meant a State in which the temporal ruler is subjected To the final direction of the theological head and in which the law of God is the Supreme Law of the land, then clearly Malaysia is nowhere near theocratic, Islamic state. Syariah authorities are appointed by State Government and can be dismissed by them. Temporal authorities are higer than religious authorities". (Shad Faruqi, "Document of Destiny", p. 126.)

IV. Would HADI's Bill infringe Non-Muslim Rights?

Our YAB Prime Minister is reported to have said....

"I would like to clarify that the amendment (bill) is not hudud law It also involves the Syariah Courts and only involves Muslims. It has nothing to do with Non-Muslims"..... [Malaysiakini – 28/5/2016 extract from article by Wong Chin Huat]

The YAB Prime Minister is entitled to his opinion, but we beg to defer.

The following personalities are also not convinced and believe that Hadi's Bill will lead to HUDUD:

- a. 4 Cabinet Ministers had threatened to resign if Hadi's Bill is passed
- b. Sarawak Government had made its stand clear that it rejects Hadi's Bill
- c. "Hadi's Bill will lead to hudud, G25 refutes Najib (M.Kini 06/07/2016)
- d. Ex-IGP warns of PAS' tactic to slowly push for hudud law (The Star 02/06/2016)
- e. 284 Malay NGO'S: Hadi's Bill is unconstitutional (The Star 26/07/2016)
- f. DON: Muslim's Not obliged to support Hudud. (The Star 02/06/2016)
- g. Two sets of criminal laws not for modern countries says top Islamic scholar (Malaysian Insider 25/05/2015)
- h. Refrain from calling for Islamic state, Perlis Mufti tell Muslims (M.Kini 04/02/2016)
- i. "No need to discuss something that will not happen. It's stupid for anyone to even be discussing Hudud" – Datuk Seri Nazri Aziz.

These are the reasons why, Hadi's Bill, if passed will have serious consequences to the Nation and to the Non-Muslim position:

- (i) *The Kelantan Syariah Enactment Bill passed in 1995 as amended had by Section 56(2) of the Enactment given option to Non-Muslims to come under its Jurisdiction.*

This option is clear violation of the Constitution, which has declared in List II Schedule 9 that Syariah Courts have jurisdiction only on Muslims.

- (ii) *A paper prepared by the Jakim Syariah Civil Technical Committee dated May 8, 2014 had proposed Hudud to be implemented in 2 stages, the first involving amendments to Federal and State Laws.*

In the second stage it will include education and promotion of the Hudud implementation and would then apply to Non-Muslims [See MalaysiaToday, "Hudud should apply to all Malaysians - Jakim paper suggests dated 6/9/2014].

Hadi's Bill, thus appears to be the first stage.

- (iii) Hadi's Bill is indeed empowerment of Hudud offences.

The Aim of the Bill is to empower States like Kelantan to be able to impose Hudud punishments. Thus it is clearly a Hudud offences Bill.

- (iv) Innocent packaging of Hadi's Bill

The authorities and those supporting Hadi's Bill now refer to it as "Act 355". By this they appear to be hoping to Lull people into believing that they are just enhancing powers of Syariah Courts, e.g. from 6 to 100 lashes and no Hudud offences are involved.

(v) **Hudud offences would undermine the Non-Muslim rights as follows:**

(a) Under an Islamic theocracy, God's law is supreme. This position would undermine the fundamental rights guaranteed to citizens.

(b) A Non-Muslim cannot be a witness under Syariah Law. In most Hudud offences the victim must produce four (4) male Muslim persons of good character to give evidence on his or her behalf.

Thus the Non-Muslim victim must rely on the Muslim witnesses although there may be scores of Non-Muslim witnesses available.

(c) In our multi-cultural country people of different faiths live side by side. When crime is committed involving Muslims and Non-Muslims which Court would have jurisdiction?

(d) In rape cases, the burden is on the rape victim (women) to produce 4 adult male Muslim witnesses which in most cases would be impossible.

The experience of other Hudud countries show that such perpetrators go free while the victim can be punished for "zina".

(e) The Kelantan Syariah Criminal Enactment 1993 (2015) seems to recognise the fact that crime may be committed against Non-Muslims by Muslims or vice versa when it provides in Section 56 (2) that a Non-Muslim can elect to come under the Syariah Enactment. This "choice" given by the Enactment is unconstitutional as jurisdiction is given by law.

[NOTE: We understand that this section 56 (2) may be removed now. But there is nothing to stop them from introducing again on the pretext to allow Non-Muslim victims to obtain justice in Syariah Courts].

(vi) **Members of Parliament Oath of office.**

The Members of Parliament upon being elected have to swear an oath to protect the Federal Constitution.

It has been shown above that the 1957 Constitution was a product of consensus reached between the communities. All documents, as shown above, re-iterate Malaysia as a secular State.

It has been shown above that Hadi's Bill has the potential to affect the basic fibre and structure of the Federal Constitution. It will also create a dual legal system.

Sabah & Sarawak Position

When Sabah and Sarawak together with Singapore and Malaya formed Malaysia, Sabah and Sarawak were guaranteed the 20 and 18 points in the Agreement.

The 1st point of the Agreement stated that there shall be no State religion for Sabah and Sarawak.

Thus, the Hudud introduction will undermine Sabah and Sarawak's rights for joining Malaysia.

Oath of Office.

Therefore, the Members of Parliament must attend Parliament sittings diligently and be guided by their oath of office into rejecting the Hudud Bill.

One Minister had stated that she would not support the Hudud Bill and will also not attend Parliament.

Non-attendance is not an option. It will be a serious mistake not to attend Parliament sitting. For if the Hudud offences Bill is passed, it will affect all. One's non-attendance will not be a defence. All must attend and help to defeat Hadi's Private Member's Bill.

MCCBCHST call upon all Members of Parliament to attend Parliament and help defend the Constitution by vigorously opposing Hadi's Bill and voting against it. This is what the Nation expects of You.

Dated: 14 October 2016

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President

Datuk R.S. Mohan Shan
Deputy President

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