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Uncertainty of fatwa enforcement

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DEFYING a fatwa (a religious ruling) can get you into trouble. For the five Muslim women who took part in beauty pageants recently - three in Selangor and two in the Federal Territory - the defiance of a fatwa has cost them a great deal of money. And, public humiliation.

But how can you defy something you aren't aware of?

When the women were arrested by religious enforcement officers for dressing indecently as well as taking part in beauty contests, they said they didn't know they were contravening the law.

And they weren't alone.

It can be assumed, from the public outcry following the arrest of the three women in Selangor, that most Malaysians were also unaware of the existence of such laws.

That Datuk Seri Anwar Ibrahim has had to emphasise moderation and the need for education prior to the enforcement of Syariah laws implies a certain discomfort even among political leaders over methods used by religious officers.

Just as worrying - and this was pointed out by Datuk Seri Dr Mahathir Mohamad in the interview he gave Utusan Malaysia last weekend - is the uneven enforcement of Syariah laws and how this has only succeeded in alarming and alienating many Muslims.

Even without being told, most Malaysians would know that beauty contestants, and not body-builders, will get arrested for displaying their personal attributes; and that more women will be nabbed for indecent dressing even though just as many men can be hauled up for not covering their aurat, as well.

Now that State religious department officials are planning to meet early next month to decide on guidelines and ways to enforce laws on indecent dressing and behaviour, more confusion is likely to ensue.

For a start, guidelines on what constitutes indecent dressing and behaviour will tighten the gridlock on Muslim minds even more.

Religious officers, who already have enough on their hands, will have to fuss over the length, thickness, type and colour of cloth that can be used to cover the body.

Or, they may have to spend an inordinate amount of time watching people sitting closely together to determine whether they are actually rubbing against each other (duduk bergesel-geselan appears under new guidelines on indecent dressing and behaviour. See accompanying story) or just squeezed together because of lack of space.

Already, Muslim women, who for the most part dress decently, are paranoid of wearing or doing anything that can land them in court or jail.

And, self-appointed moral guardians will be falling over themselves, drawing up the dos and don'ts on dressing and behaviour.

Without a doubt, the obsession to establish standards for both will have the tragi-comic effect of reducing Malaysians to such small-mindedness.

For the idea that piety can be measured by the amount, shape and colour of cloth one has on one's body will only trivialise faith.

One lawyer, disturbed current trends to determine what is decent and right, says flexibility in the definition of what constitutes indecent dressing and behaviour is most desirable.

"Certainty is important but too much certainty will straightjacket the law. It will have the effect of freezing the law and preventing its

growth."

He says life does not demand that we be precise about everything. Decisions on indecent dressing and behaviour can be dealt with, case by case.

Society, time and circumstance must be taken into consideration and not, he says, a fixed guideline which prevents society from dealing with unique situations.

Of course, who you are and where you stand on the social ladder can sometimes determine how removed you are from the long arm of the law.

Given the arbitrary way in which laws have been and will continue to be enforced, it comes as no surprise that murmurs of discontent and rumours are now gathering along the grapevine about Muslim women being apprehended in hotel gyms, shopping complexes and public swimming pools.

Indeed, if it is the end-goal of religious authorities to drive Muslim women into seclusion (not exactly a Vision 2020 objective) and non-Muslims into a state of uncertainty, they are certainly doing a marvellous job of it.

Fear, a weak motivating force used by some to control the majority, has only succeeded in making Muslims feel at siege.

Fear, too, has silenced many into asking questions.

The two cases involving the five beauty contestants unnerved many yet, it failed to generate any intellectual inquiry into the position of fatwas in the larger legal framework.

The fatwa on beauty contests should have alerted Muslims to two fundamental points: why was it largely unheard of until the women were arrested for violating the fatwa? And, how can fatwas be issued by people or persons who are not democratically elected to make laws binding on Muslims?

As responsible citizens, Malaysian Muslims should find out how fatwas are issued; what makes them legally binding; whether, in the deliberation of any fatwa, procedures are being fully adhered to; whether a fatwa is being made public in the best possible way; and, whether it has been consistently enforced by the religious authorities.

Reasonable enough queries given the widespread impact of such laws on fundamental liberties, yet few have dared to ask these questions because of the existence of yet another fatwa in the Syariah Criminal Enactment which disallows such inquiries.

Under Section 12 of the Selangor Syariah Criminal Enactment (No.9, 1995), "any person who acts in contempt of the lawful authority, or defies or disputes the lawful orders or directions of a) His Royal Highness the Sultan in His capacity as the Head of the religion of Islam; b) the Majlis; c) the Mufti, expressed or given by way of fatwa, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding RM3,000 or imprisonment for a term not exceeding two years or to both".

This means that once a fatwa is gazetted, it becomes legally binding for all time until or unless the mufti who issued it decides to amend, modify or revoke the fatwa. Only another mufti after him is allowed similar powers.

Even the State Legislative Assembly (the law-making body which delegates powers to the Mufti in his capacity to issue fatwas) cannot annul or amend a fatwa.

That fatwas, once issued, are enshrined for eternity and cannot be questioned, not even by the primary authority that empowers the Mufti, suggests that certain fundamental constitutional issues need to be addressed. (see story on constitutional issues).

For centuries, throughout the Muslim world, fatwas issued by leading religious scholars assisted Muslims from all walks of life in efforts to

arrange their affairs in accordance with the Syariah.

These scholars and jurists articulated legal-religious views of important doctrinal questions, societal issues and political events but their opinions, for the most part, were advisory and not binding and enforceable.

If the person was dissatisfied with the fatwa of one mufti, he was free to consult a different mufti for another opinion.

Over time, religious institutions were co-opted by State authorities to confer Islamic legitimacy on the State. With that, muftis then became State officials.

This greatly benefitted the people. As and when advice was required, the mufti's office would deliberate on the matter and issue a fatwa to assist the person or people seeking help.

In Malaysia, fatwas on lotteries, organ transplants, interest accruing from EPF savings and the like have all been dealt with by State religious authorities.

Now, however, there appears to be a new and rather alarming trend: religious authorities are expanding their jurisdiction to regulate - right down to the minutest of details - the fundamental liberties of Muslim citizens.

The authorities are hoping to control the way in which Muslims think, talk, dress and behave and this, even in the tightest totalitarian state, is close to impossible.

Guidelines on dressing and behaviour, even if they remain vague, will lead to selective prosecution and create a climate of fear and public disgruntlement.

Finally, the fact that an edict issued in the name of Islam cannot be questioned, is most frightening.

Although muftis are knowledgeable in religious matters, society has become so complex, education so universal and knowledge so specialised that religious scholars can no longer be the exclusive arbiters of religion.

Matters affecting the lives of human beings cannot be decided by a small group of people who are trained to think and behave in a certain way.

Nor should they squelch attempts by ordinary folk to ask questions.

For to question is not to disbelieve. Rather, questioning can strengthen one's faith. It needn't lead one astray, as is the constant fear of the religious authorities.

If this is their main concern, state religious authorities should then focus on education.

And, the first lesson they should teach is this: that what God has revealed is divine and infallible; and that which is the result of human effort is fallible and, therefore, changeable.

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