

MCCBCHST: Hudud conflicts with federal constitution
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The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) believes that the debate on hudud should be carried out rationally and within the constitutional scheme of things.

It cannot be carried out in disregard of the federal constitution. It is not in dispute that the syariah courts have jurisdiction only over matters as mentioned in the 9th Schedule List II and the concurrent List (List II).

It does not have jurisdiction in respect of offences except in so far as conferred by federal law. Matters under List II are mainly dealing with marriage, divorce, inheritance, adoption, guardianship, etc.

Further, Syariah Courts have only jurisdiction over persons professing the religion of Islam.

It must be noted that the state legislative's authority to legislate under List II is limited by the words "except in regard to matters included in the federal list".

And included in the federal list are civil and criminal law and procedure and offences like murder, rape, theft, robbery, unnatural sex or incest. Most of these are also prohibited by hudud, but since they are included in the federal list, the Syariah Courts have no jurisdiction over them.

If Syariah Courts were also to be given jurisdiction over these criminal offences, then this would create a parallel system which is against the general structure of the constitution.

On this issue, Professor Shad Saleem Faruqi states in The Star (Oct 5): "Actually the federal constitution has provided clear guidelines about who may legislate for crimes, who may prosecute criminal offences, which courts may try offenders, who is the subject of the law and what penalties may be imposed.

The constitution is supreme and its imperative cannot be lightly disregarded. The clear intention of the 1957 constitution was to allocate almost all penal powers to the federation and to confer on the states only residual powers over syariah offences like khalwat, zina, skipping of Friday prayers and failure to observe the compulsory fasts during Ramadan. In sum, attempts by some states to legislate hudud laws and to impose hudud penalties will bring forth embarrassing constitutional law issues pitting the constitution against religion..."

The Malaysian Bar constitutional law committee member Nizam Bashir Abdul Kariem Bashir (NST, Oct 3) stated: "The Federal Constitution cannot simply be amended to allow for the implementation of hudud even if the amendment was proposed to be passed with a two-thirds majority. This is because the constitution's basic founding structure was based on secularism and not theocracy".

Former law minister Zaid Ibrahim was of the view that: "It is impossible to have two sets of laws for Muslims in the country. People must understand that hudud is a criminal law and for it to be implemented, the federal constitution needs to be amended." (NST, Sept 28).

A human rights lawyer Malik Imtiaz has asserted that Hudud law debate is a non-issue: "...the federal constitution does not allow two parallel criminal systems to exist....." (The Star, Sept 27).

The MCCBCHST therefore calls upon all parties to respect our federal constitution. Imposition of hudud would require an amendment to the federal constitution and would affect Non-Muslim rights that are

guaranteed in the constitution.

The legal fabric of the constitution should not be disturbed. Any argument that if the majority of people in a state are in favour of hudud, and therefore people must accept this change, is fallacious.

A constitution cannot be overthrown because of popular opinion. The fundamental rights guaranteed in the constitution cannot be changed by the majority.

A single citizen shall be entitled to challenge to uphold his rights. Changing the fundamental character of a constitution because of majority will is dangerous.

Can the Buddhists in Thailand (who form 95 percent of the population) say they want to be governed by the Buddhist principles and want the constitution amended?

Again, can the Christians who form the majority in our neighbouring Philippines be allowed to say they want to be ruled according to their personal religious beliefs?

Thus, all religions must respect the sensitivities and rights of other religious communities and strive to live in peace and harmony. Any changes to be done must be done in accordance with, and not in disregard of our constitution.

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