

## Islam and Human Rights: Conflicting or Complementary?



Programme Manager Norhayati Kaprawi introduces SIS to the Grand Mufti of Egypt Sheikh Ali Gomaa at a conference in West Sussex, UK.

Iran's chief of judiciary, Ayatollah Mahmoud Hashemi Shahroudi, recently lauded the idea of setting up an Islamic International Court focusing on "Islamic human rights". He compared this idea with that of existing European Union mechanisms to address human rights issues. However, the precise implications of using the term "Islamic human rights" are yet to be discussed. Borrowing Shahroudi's analogy to the European Union, would the concept of "Islamic human rights" be entirely dissimilar to "European" or "Western" human rights?

There is little doubt that this suggestion will probably be met with ridicule by the many Western governments and organisations that have long accused Iran of state-led human rights violations. Indeed, one of the most problematic areas of discussion post-9/11 has related directly to the state of human rights in Muslim societies.

Tired arguments from either side of the debate have been resurrected, over and over again. Anti-Muslim voices, especially in the West, conclude that Muslims will remain incapable of understanding, let alone upholding, human rights as long as they cling on to Islam. Anti-West Muslims have, predictably, taken the bait and responded either by hurling ad hominem against George W. Bush, Tony Blair, John Howard and the "War on Terror", or by reiterating that the divinely-inspired Shariah is in fact superior to the "Western", "man-made" concept of human rights. And from this point onwards, the debate usually degenerates into either meaningless apologetics or name-calling and even violence.

Nevertheless, we at Sisters in Islam believe that critical and open discussion on this matter is crucial now more than ever. Hence, in this issue of Baraza!, we explore some of

the thorniest aspects of the debate around Islam and human rights. In our feature article, renowned Muslim scholar Abdullahi Ahmed An-Na'im, a self-professed "Muslim advocate of human rights", tells us why he sees Islam, human rights and secularism as mutually dependent, and why, in this light, it is perfectly possible for Muslim societies to exercise absolute self-determination while also upholding universal human rights standards.

According to An-Na'im, this self-determination can be realised only when it is exercised with due regard to the specific national and global contexts of these respective Muslim societies. In the context of Malaysia in the past couple of years, the discussion on human rights has raised at least three extremely difficult questions: do Muslims have the right to convert out of Islam? Can the State regulate the personal morality and religious expressions of its citizens? Are women's rights under Islamic law so different from women's human rights provided for by international human rights mechanisms?

To answer the first question, we asked respected law professor Shad Saleem Faruqi and writer Umran Kadir to explore two different aspects of the debate. Shad explores constitutional perspectives on freedom of religion in his piece. While acknowledging that Malaysia's record of multi-racial and multi-religious solidarity "should be the envy of many plural societies", he admits that an increasingly conservative view of Islam is being cast on Malaysian society. This, in turn, affects

- 01 Editorial
- 03 Negotiating Authenticity and Justice
- 05 Constitutional Perspectives On Freedom of Religion
- 08 Punishing Apostasy: A Divine Prerogative?
- 09 Apostasy in the Muslim World
- 12 Can Personal Expressions of Faith be Treated as Crimes Against the State?
- 13 You Belong To Me
- 15 But I'm a non-Muslim...
- 16 The CEDAW Convention and Muslim Women
- 19 Is CEDAW Incompatible with Shariah?
- 20 Sisters Doing It For Themselves
- 21 Recommended Reading
- 22 Recommended Weblinks
- 23 SIS Activities Update

**CONTENTS**

how the Constitution is interpreted vis-a-vis freedom of religion, especially for Muslims.

Umrn, on the other hand, explores the historical and doctrinal aspects of the debate on apostasy. He argues that the precise definition of apostasy and whether it carries a worldly punishment continues to be debated inconclusively in the Muslim world. He finds that the vehement calls for death to apostates are grounded neither in the Qur'an nor the prophetic traditions.

On the question of whether the State can regulate personal morality and expressions of faith by individual citizens, Baraza! co-editor Shanon Shah notes an increasing trend in Malaysia for various authorities to turn personal sins into crimes against the state. He explores both the political and theological dimensions of this phenomenon, and concludes that in our current scenario, an individual's personal relationship to God is radically transformed into a matter of public policy. He argues that when such a relationship is so radically altered and has such far-reaching implications on the public, it is only right that the public be allowed to debate this matter critically and openly. We supplement Shanon's piece with a brief exploration of how this also affects those who are not of the Muslim faith.

Last but definitely not least, SIS members Rozana Isa and Nik Noriani Nik Badlishah analyse whether Muslim countries are justified in maintaining legislation and policies that effectively prevent Muslim women from accessing international human rights mechanisms. Rozana and Nik Noriani do this by exploring the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the reservations placed on this convention by its Muslim state signatories on the basis that the objectives of CEDAW are incompatible with the Shariah. Not only do Rozana and Nik Noriani find that the objectives of CEDAW match the Shariah's exhortation to universal justice, balance and equilibrium, they also find that all around the world, Muslim women are working very hard to reclaim their rights by getting their respective governments to remove their reservations to CEDAW.

Difficult times lie ahead for Muslims worldwide, especially when we discuss the issue of Islam and human rights. Several debates on this issue seem to have brought out the worst in its participants – Muslim or otherwise. Perhaps this is because human beings often have a way of insisting on "our" rights at the expense of the rights of the "others". Some find it hard to believe that we can all respect each other's basic human rights without compromising our own.

But we at Sisters in Islam have always believed that a solution can only be found if we each stand by our right to be, while also respecting everyone else's right to be. We stand by our commitment to uphold universal human rights – as Muslims, as men and women, as feminists, as fellow citizens and as mere human beings.

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**BARAZA!**



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A Sisters In Islam Bulletin

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BARAZA! is a resource primarily for activists; policy makers; academics and students of law, Islamic and gender studies; and SIS funders and supporters.

It provides:

\* a focus on contemporary matters affecting Muslims today, especially women's rights in Islam

\* resources for reference

\* an update of SIS activities

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# Negotiating Authenticity and Justice

Abdullahi Ahmed An-Na'im, Ph.D.  
Professor of Law, Emory University

For me as a Muslim advocate of human rights, it is important to clarify the positive relationship between Islam and human rights as a matter of principle, as well as for practical concerns about the commitment of Muslims to these rights. The issue is not peculiar to Islam, as it is relevant to all religious and cultural traditions, but I am raising it because I want to affirm that I do not need to make a choice between my religious beliefs and commitment to human rights. The Universal Declaration of Human Rights of 1948 did not make any explicit reference to the foundations or sources of human rights to avoid disagreement about that obstructing consensus over this vital principle. But this does not mean the issue is not important, or that human rights can only be founded on secular justifications.

Rather than viewing secular and religious foundations of human rights as incompatible rivals, I would emphasise the interdependence of Islam, human rights and secularism defined as the religious neutrality of the state.

In fact, I need the state to be neutral regarding religion so that I can be Muslim by my own free conviction and not out of fear of the coercive powers of the state.

Since historical experience of all human societies confirms that the exclusivity of religion tends to undermine possibilities of peaceful co-existence and solidarity among different communities of believers, secularism has evolved as a means of ensuring the possibility of pluralistic political community among different religious groups. However, the need to avoid ethical conflict over the state also means that secularism cannot support deeper moral convictions, like the universality of human rights. That necessary quality of secularism also fails to address the need of religious believers to express the moral implications of their faith in the public domain.

At the same time, the transcendental aspect of religion should provide a moral framework for the actual experiences of believers, and can only be understood in the concrete historical context and material circumstances of each religious community. Competing interpretations of religious doctrine and their ethical and behavioural implications are bound to reflect existing human power relations within each religious community. Human rights and secularism are critical for the fair and sustainable mediation of these competing claims within the framework of prevalent power relations within and between different communities.

This view of the religious neutrality of the state and protection of human rights to ensure the integrity of religious experience is premised on a belief in the ability of human agency to promote understandings and practice of religion, human rights and secularism that are conducive to mutual

"I was involved in an extreme or radical religious path from 1984-1989. I carried knives in the name of religious conflict. In point of fact, I felt something missing with the function of religion. I came to question whether Islam had truly commanded me to be exclusive and to isolate myself from other communities. There was a battle inside me: does Islam exist for Allah or does it exist for humans in order to construct a better society in general? I found that religion is revealed for the latter purpose. I agree with Gus Dur (Abdurrahman Wahid) that God needs no bodyguards to protect Him. Religion must benefit [humanity]... Eventually, I left that extremist group since it was impossible for me to survive in an exclusive community."

Munir, assassinated Indonesian human rights defender

interdependence of all three of them. Secularism is critical for maintaining the equal human dignity and rights of believers and non-believers alike, but its ability to play that role in political communities depends on its legitimacy within all segments of the population, including religious believers. Moreover, secularism also needs the normative guidance of human rights and moral justification of religion.

The importance of human rights standards is obvious because secularism, by itself, may not be enough for safeguarding individual freedoms and social justice, as illustrated by recent experiences with totalitarian secular regimes, like Nazi Germany and the Soviet Union.

What is not sufficiently appreciated is the importance of a religious justification and rationale for secularism. While the material conditions of co-existence may force a level of religious tolerance and diversity, this is likely to be seen as temporary political expediency by believers unless they are also able to accept it as at least consistent with their religious doctrine.

Thus, sustained secularism needs a religious justification for believers. This is not as difficult as it may seem, for secularism and religion are, in fact, fundamentally overlapping and interacting.

This interdependence in relation to Islamic societies should affirm their principled commitment to the protection of human rights and openly acknowledge the realities of secularism in their religious as well as political life. But this can only happen through internal transformation, and

not external imposition. There is a theological and political dimension to internal debates about these relationships. On the theological side, while such debates should take place within an internal frame of reference (the Qur'an and sunnah of the Prophet), human agency has always been central to the understanding and practice of Islam.

As a Muslim, I believe the Qur'an to be the final revelation and the sunnah explains and elaborates on that message. But it is also clear that these sources can only be relevant in the daily life of individual believers and their communities through human understanding and behaviour. The Qur'an was revealed in Arabic, which is a human language that evolved in its own specific historical context, and many normative parts of the Qur'an were addressing specific situations in Mecca and Medina when they were conveyed by the Prophet. The sunnah had to respond to the immediate issues and concerns that emerged in that context, in addition to any broader implications it may have. It is therefore clear that human agency was integral to the process of revelation, interpretation and practice from the very beginning of Islam.

In this light, it is apparent that a sharp distinction between the religious and secular is misleading. Religious precepts necessarily respond to the secular concerns of human beings, and have practical relevance only because those responses are believed to be practically useful for the people they are addressing. Some Muslims may find this proposition disturbing because they assume it undermines the divine quality of the sources of Islam. But that apprehension fails to recognise that the Qur'an and sunnah are intended to redress human imperfections, and are not simply manifestations of the divine in the abstract. This point is critical for the theological basis of the relationship between Islam and both human rights and secularism.

One cause of the commonly presumed incompatibility of Islam and secularism is the tendency to limit secularism to the experiences of West European and North American countries with Christianity since the 18th century.

In fact, there are significant differences in the terms and operation of the relationship between religion and the state/politics among European and North American countries due to historical and current experiences in this regard.

Reference should also be made to the claim that Islam mandates the establishment of an Islamic state which will implement and enforce the Shariah as the law of the land. In fact, the notion of an Islamic state is a contradiction: any Shariah principle ceases to be the normative system of Islam by the very act of enacting it as the law to be enforced by the state. Another factor to note here is that the extensive diversity of opinion among Islamic schools of thought and scholars means that any enactment of Shariah principles as law would have to select certain opinions over others, thereby denying Muslims their freedom of choice among equally legitimate, competing opinions. Moreover, there is neither a historical precedent of an Islamic state to be followed, nor is such a state practically viable today.

"One morning [at the Jerusalem courthouse] Rabbi Arik Ascherman, the executive director of Rabbis for Human Rights, had to appear before a judge to answer charges that he had obstructed the demolition of a house of an Arab in the Jerusalem area. The house had been built without a permit and, therefore, according to the law had to be demolished. Part of Ascherman's argument is that Arabs in Jerusalem find it very difficult to obtain building permits and, therefore, out of desperation, some choose to break the letter of the law. Those of us who came out in his support did so in the conviction that Israel's obligations to its Arab citizens require more than legalities. We felt sufficiently strongly about the asymmetry between the power of the government of Israel and the powerlessness of the Arab inhabitants to suggest that Ascherman shouldn't be punished. I surmise that there are those who want to know if among the Ascherman supporters there were representatives of Imams for Human Rights. Of course, there were none. But it would be dangerous to suggest that this is a reflection on Muslim indifference to human rights. It's more likely yet another sign of the desperation of the dispossessed."

Rabbi Dow Marmur,  
member of Rabbis for Human Rights

The fact that there was never an Islamic state accepted as such by all Muslims is clear since the first Caliph, Abu Bakr, and the state ruled by the Prophet in Medina cannot be replicated because they had no prophet after the Prophet.

Islamic societies certainly have the right to self-determination, but that can be realised only when exercised with due regard to the realities of their national and global context, and through viable constitutional and political institutions. In my view as a Muslim, the realisation of this right should be founded on a clear and categorical acknowledgement of the interdependence of Islam, human rights and secularism. But in practice, this relationship cannot be definitely settled through theoretical analysis like this one, but through actual practice over time. Theoretical models like this one can facilitate that process, but it is only through the actual protection of human rights and the secular nature of the state that the process can be realised.

Space does not permit further explanation. For more downloadable materials, see [www.law.emory.edu/aannaim](http://www.law.emory.edu/aannaim)

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(From the author's website: <http://people.law.emory.edu/~abduh46/>)



# Constitutional Perspectives On Freedom of Religion

Prof Dr Shad Saleem Faruqi  
Universiti Teknologi Mara

## INTRODUCTION

Malaysia has a record of racial, cultural and religious tolerance that should be the envy of many plural societies. There is much inter-religious friendship and tolerance. Cultural and religious pluralism are not only tolerated; they are celebrated.

Legislation provides for Muslim and non-Muslim religious institutions.

Financial allocations, gifts of land and tax exemptions are granted to all religions. Cultural and religious tolerance extends to the use of minority languages in trade and commerce, and the establishment of private schools using Chinese and Tamil.

The Malaysian approach is that the state should not be indifferent to or hostile towards religions. It must promote tolerance. Tolerance comes not from the absence of faith but from its living presence.

### Constitutional Protection of Freedom of Religion:

Islam is the religion of the federation. But all other religions may be practised in peace and harmony: Article 3(1)

In respect of religion, every person has the right to three things:

- to profess
- to practise
- and, subject to Article 11(4), to propagate his/her religion: Article 11(1)

The right to religion is available not only to individuals but also to groups and associations: Articles 11(3) and 12(2). Every religious group has the right to:

- manage its own affairs
- establish and maintain institutions for religious purposes.
- acquire and own property and administer it: Article 11(3)
- establish and maintain institutions for religious education: Article 12(2).

The right is available to citizens as well as to non-citizens: Article 11(1)

There is no compulsion on anyone to support a religion

other than his/her own.

No person shall be compelled to pay any tax the proceeds of which are specially allocated to a religion other than his/her own: Article 11(2).

There is to be no discrimination on the grounds of religion in relation to the rights of students to education or in public support for educational institutions: Articles 12(1) and 8(2).

No person shall be required to receive instructions in or to take part in any ceremony or act of worship of a religion other than his/her own: Article 12(3)

There can be no discrimination on the grounds of religion against employees in the public sector; in the acquisition, holding or disposition of property; and in any trade, business or profession: Article 8(2)

A preventive detention order cannot be issued on the grounds that a convert out of Islam is involved in a programme for propagation of Christianity amongst Malays: *Minister v Jamaluddin bin Othman* [1989]

Article 150 (6A) provides that freedom of religion cannot be restricted even in times of emergency by an emergency law under Article 150.

## AREAS OF CONCERN

### 1. Non-mandatory Practices

Does freedom of religion extend only to those practices and rituals that are essential and mandatory, or does it also cover practices that are non essential and optional? *Halimatussaadia v PSC* (1992) 1 MLJ 513 implies that a non mandatory (like wearing purdah, or the face veil) is not protected by Article 11. The case also distinguished between beliefs and practices. The latter may regulated if they lead to public disorder, affect public health or public morality. However, *Meor Atiqulrahman Ishak v Fatimah binti Sihi* (2000) 5 MLJ 375 correctly holds that the constitutional freedom extends to practices (like wearing a serban, or turban), which, though not mandatory, are part of the religious tradition.

### 2. Planning Permissions

Local authorities often drag their feet in granting planning permissions for religious establishments. Such abuse of power is contradictory to the constitutional right.

It is also contrary to the letter and spirit of Islam. In the Holy

Qur'an there is explicit mention of religious and cultural pluralism and freedom of conscience.

### 3. Inter-religious Marriages

As Muslims are not allowed to marry under the civil law of marriages, non-Muslims seeking to marry Muslims have to convert to Islam. This has caused pain to the parents of many converts.

Likewise it has led to several difficult cases of apostasy by Muslims who, for reasons of the heart, wish to marry their non-Muslim counterparts.

### 4. Atheism

Does the right to religious belief include the right to disbelief and to adopt atheism, agnosticism, rationalism and other declarations of non-affiliation to any religion?

In most democratic countries, the right to disbelief is constitutionally protected.

But in light of the Rukunegara (Kepercayaan kepada Tuhan – Belief in God); the language of Article 11(2) – no tax to support a religion other than one's own; Article 12(3) – no instruction in a religion other than one's own; and the mandatory application of Shariah laws to Muslims, it is possible to argue that atheism is not protected by Article 11 – at least not for Muslims.

### 5. Propagation of Religion to Muslims

Under Article 11(4) of the Federal Constitution, any preaching of religious doctrine to Muslims (whether by non-Muslims or unauthorised Muslims) can be regulated by state law.

Many non-Muslims complain that this amounts to unequal treatment under the law. Indeed it does. But it is one of the pre-Merdeka compromises between the Malays and the non-Malays in order to insulate Malays against internationally-funded and powerful proselytising forces that had become entrenched in the country because of official support from the colonial government.

There is the additional fact that proselytising activities like seeking death-bed conversions, generous grant of funds to potential converts and indirect and subtle proselytising activities amongst minors have distinct implications for social harmony.

Prof. Harding, in his book *Law, Government and the Constitution of Malaysia*, 1996, p. 201, is of the view that Article 11(4) was inserted because of public order considerations.

To this may be added a unique ethnic and political factor in Malaysia. Renunciation of Islam would automatically mean abandoning the Malay community because Islam is one of the defining features of a "Malay" in Article 160(2).

### 6. Restraints on Freedom of Religion

The right to religious belief is, of course, not absolute. All religious conduct is subject to the power of Parliament to regulate it on the grounds of public order, public health and morality: Article 11(5).

In the case of Muslims in Malaysia, additional restraints are possible due to the power of the States to punish Muslims for "offences against the precepts of Islam": Schedule 9, List II, Item 1: Kamariah bte Ali lwn Kerajaan Kelantan [2002].

"Ironically, the first thing that appealed to me about Islam was its pluralism. The fact that the Qur'an praises all the great prophets of the past. That Mohammed didn't believe he had come to found a new religion to which everybody had to convert, but he was just the prophet sent to the Arabs, who hadn't had a prophet before, and left out of the divine plan."

Karen Armstrong, scholar of religion and former nun

### 7. Conversions and Apostasy

The right to convert out of one's faith is not mentioned explicitly in the Malaysian Constitution though it is alluded to in Article 18 of the International Covenant on Civil and Political Rights 1966 and Article 18 of the Universal Declaration of Human Rights.

For a non-Muslim, the right to opt out of one's faith and choose another has been regarded as an implicit part of religious liberty guaranteed by the Constitution. But because of its implications for child-parent relationships, the court in the case of *Teoh Eng Huat* [1990] held that a child below 18 must conform to the wishes of his/her parents.

In relation to Muslims, the issue of conversion or apostasy raises significant religious and political considerations.

The traditional Muslim view is that as Islam is the religion of the federation and Malays are, by constitutional definition, required to be of the Muslim faith, all Malays are liable to prosecution for apostasy or deviationism. The notion that freedom to believe includes the freedom not to believe is rejected in relation to Muslims.

But liberal Muslim scholars argue that Islam is a religion of persuasion, not force. The proposal to detain apostates runs counter to the spirit of Islam which is one of tolerance for the disbeliever. It is noteworthy that the Holy Qur'an nowhere prescribes a worldly punishment for apostates. The difficulty is that there is a known hadith ordering that apostates should be advised, imprisoned and, if they still persist, then beheaded.

This hadith must be read in the context in which it was made – in times of war, emergency and grave threat to the Islamic community. It must also be noted that Prophet Muhammad s.a.w. never ordered the execution of an apostate. (Editor: for a more detailed analysis of textual sources on punishment

# SIS hails move not to gazette contentious Act

FROM PAGE 1

and Community Development Minister Datuk Seri Shahrizat Abdul Jalil, which included views from women's groups, and the other from the Attorney-General.

"However, we have to wait for Shahrizat to return from the haj. She is important in this issue. Later, she will have to meet the Sultans on amending the law."

The Act was submitted to the Yang di-Pertuan Agong on Dec 23 for royal assent. Should assent be given in the meantime, the Government will not set a date to gazette it, pending the discussion.

Asked why the Government had chosen to amend the law, Nazri explained that the Rulers Council had agreed that Islamic laws in the country



Nazri: 'We hope that something good will come out of this'

have a state assembly.

the law.

"Hopefully, when the Sultans agree, we will have the same protection for all women, not only in the Federal Territories but also in all states," he said.

IZATUN SHARI reports that Sisters in Islam (SIS) described the move not to gazette the amended Islamic Family Law for the Federal Territories as a positive step towards having a more comprehensive law that is just and equal.

However, its programme manager Zaitun Mohamed Kasm said there should be a moratorium of the law in states which had gazetted it since 2003.

## SIS to voice concerns on Islamic Family Law

**KUALA LUMPUR:** Sisters in Islam (SIS) will voice its concerns to Attorney-General Tan Sri Abdul Gani Patail regarding the "flawed" Islamic Family Law (Federal Territories) (Amendment) Bill 2005 in the first Syariah Community meeting today. SIS executive director Zainah said its representative will

reforms on the Muslims: "We would also like to government what they a about the Islamic Fam (IFL) in the other 11 st said yesterday after a "Amendments To The Do They Affect Wome Meanwhile, Zaina that the SIS office ir

## SIS opposes Jakim move to silence writers

SISTERS in Islam is shocked by the report, "Get guidance needed for Islamic writers," (The Star, April 19) that the National Islamic Development Department (Jakim) is planning to ban Muslims with no "in-depth" Islamic knowledge from expressing themselves on Islamic issues.

"It is a threat to be an able to authorities to monopolize discourse on Islam in Malaysia to only subscribe to one particular point of view."

When Islam in Malaysia is used as a law and public policy with widespread on the lives of the citizens of a democracy, any attempt to limit writing about it only those who supposedly have "in-depth knowledge of Islam" is tantamount to religious dictatorship.

This is particularly disturbing when the most view in Islam that prevails among many Islamic scholars and preachers in Malaysia today discriminates against women and perpetuates gross injustices.

When Muslim scholars give advice in the newspapers give advice to women in divorce that they do not have a right to divorce their husbands, that it is better to touch a pig rather than to shake hands with a woman, that hell is full of women because they divorce their husbands, that a woman does not have the right to visit her dying father without the permission of her husband, even if the father is an ill, widowed, destitute and crying for the daughter in his last breath, then the situation demands that such gross distortion of God's message must remain unchallenged.

When certain Muslims with Islamic degrees publicly accuse other Muslims of being kafir because of differences of opinion on issues such as the Islamic state, hudud law, freedom of expression and freedom of religion, it is dangerous that those accused and those concerned about the impact of such ignorant and extremist views are denied the public space to have their voices heard.

Letters  
Berita Harian

## SIS ketengah isu moral umat Islam

Oleh Halina Mohd Noor

SIS berkenaan pengiraan undang-undang Islam membabitkan moral pertikaian yang Islam di tempur awam mudah dengan diperkatakan khawassnya di kalangan pertubuhan badan bukan kerajaan (NGO). Sepertimana NGO ini mendidik dengan hati dengan kerdif pengiraan dan undang-undang yang dibekas oleh perantaraan kerdif dan dua orang awam. Perantaraan dua orang awam yang telah lalu perantaraan dua orang awam.



news without borders

## OPINION & LETTERS

## Respect individual's right to practise his religion

THE government must take a brave and principled stand to respect freedom of religion.

Sisters in Islam views with concern the punitive action taken by the authorities on Ayah Pin and members of the Sky Kingdom.

This attempt has resulted in detention of 48 followers and a state-wide police search for Ayah Pin.

In addition, some quarters - including religious leaders and politicians - have even called for the use of detention without trial on the followers.

On July 18, a mob of 30 to 35 masked persons launched a pre-dawn attack on Kampung Batu 13 in Hulu Baid. Two days later, the state religious department, aided by the police, arrested 58 villagers, including children, most of whom have been charged under the Syariah Criminal Offences Enactment for practising a "deviant religion". (On Sunday, the state

authorities tore down the structures in the community).

The saga of the Sky Kingdom shows how religious authorities use state and federal resources to punish Ayah Pin and his followers.

This happens despite the principle of freedom of religion clearly affirmed in the Quran and reflected in Article 11 of the Federal Constitution and Article 18 of the Universal Declaration of Human Rights.

The Quran is explicit and consistent in its recognition of freedom of religion. Surah al-Baqarah verse 256 states: "There is no compulsion in matter of faith." (Ahmed Ali translation).

This Medinan verse was revealed when some companions asked Prophet Muhammad for permission to convert their relatives to profess Islam.

It has been widely interpreted to mean that no one can be compelled to embrace Islam.

How can religious authorities and Muslims demand that those wishing to convert to Islam should have all the freedom to do so, and at the same time, deny this freedom to Muslims who wish to leave their faith or believe otherwise?

In Surah Yunus, 10:99, Allah

The Quran is explicit... in its recognition of freedom of religion.

addressed the Prophet: "If your Lord had willed, all the people on the earth, would have come to believe, one and all. Are you going to compel the people to believe except by God's dispensation?"

In another verse, Surah an-Nahl, 16:125, Allah said: "Call them to the path of your Lord with wisdom and

words of good advice, and reason with them in the best way possible."

Such messages in the Quran should not be translated into detention and forced rehabilitation for those who believe differently.

Freedom of religion must recognise the right to practise one's religion, however unorthodox the beliefs may be.

This right includes the freedom to change one's religion or belief, either alone or in community with others, in public or private.

Followers of unorthodox beliefs should be treated with respect and dignity. Unless they resort to violence, and there has been no evidence of such, there is no basis to claim they are a threat to the rule of law, let alone our nation's security.

Islam began by inviting and persuading people to embrace it on the merit of its rationality and truth.

If truly the religious authorities are concerned about the spiritual practices of Ayah Pin and his

followers, then the path to is not through punitive mandatory detention, but education and dialogue.

The Quran has given guidance on this: "Call to path of your Lord with words of good advice; each them in the best way not detain them will separate them from the and family members, so forced rehabilitation them to submit to the i has been forced upon it."

Sisters in Islam is effort to criminalise p basis of their faith. It context of many g violence and terror to religion, it is imperi upheld and respect believers to peacefully faith.

SIN programme manager Norhayati binti Yusoff said the Quran was silent on the workability Surah al-Baqarah 2:256 explicitly states: "Let there be no compulsion in religion."

On behalf of Sisters in Islam

## SIS: Many of opinion apostasy not capital crime

By Jacqueline Ann Surin

PETALING JAYA: There is a significant body of opinion among the scholars from various Islamic history that apostasy is not a capital crime, and not punishable by death, Sisters in Islam (SIS) said.

SIN programme manager Norhayati binti Yusoff said the Quran was silent on the workability Surah al-Baqarah 2:256 explicitly states: "Let there be no compulsion in religion."

proposed to the Day of Judgment.

"The Maliki jurist Abul Wafid al-Baji and the renowned Hanbali jurist Ibn Taymiyyah have both held that apostasy is a sin which carries no fixed punishment, that is, death."

"The Sheikh of al-Ashar, who was Egypt's former grand mufti, Dr. Muhammad Sayid Tantawi, also declared that apostasy is not a capital crime."

Norhayati said SIS viewed two IHM lecturers at a convention on Wednesday that

for apostates, refer to the following piece by Umran Kadir, "Punishing Apostasy: A Divine Prerogative?"

Since the 1990s the conservative view has prevailed in Malaysia. A number of states have enacted rehabilitation laws that permit detention and re-education of converts out of Islam.

Apostasy laws raise difficult constitutional issues under Articles 11(1), 5(1), 10(1)(c) and 12(3). They are triggering a massive constitutional debate that pits religion against the

Constitution and disturbs the delicate social fabric that has held all Malaysians together for 48 years. At the moment the following judicial attitudes and conflicts have emerged.

According to the High Court, the act of exiting from a religion is not part of freedom of religion - at least not in the case of Muslims: Daud Mamat v Majlis Agama [2002] 2 MLJ 390. A contrary view was expressed by the Court of Appeal in Kamariah bte Ali Iwn Kerajaan Negeri Kelantan [2002]. Muslims too have a right to renounce. But this renunciation cannot be done unilaterally. A Muslim who



wishes to declare apostasy must first get the Shariah court to confirm that he/she has left the religion. A statutory declaration of apostasy is not enough.

The problem is that the applications of most apostates to the Shariah courts are left unattended.

In some cases criminal action for insulting Islam is taken.

## CONCLUSION

### A. The right to propagate

The right to propagate one's faith has traditionally been regarded as an integral part of religious freedom. Unfortunately in a multi-religious society, the ideological fervour of religious zealots can have serious implications for social stability. For this reason some internal as well as external restraints must be built around all proselytising activities.

An Inter-Faith Commission must be set up which can assist to draw up some ground rules. Religious preachers need to be told that no religion has a monopoly to the truth; that there are many ways of finding salvation.

There is a need to avoid words and acts that are patronising, self-righteous and insulting.

It is insulting and narrow-minded to tell the believer of another faith that his/her God is not the true God and that he/she needs to "see the light".

"Ambulance chasing" by some proselytisers who roam hospital corridors to try to secure conversion of the dying, the critically injured or their vulnerable relatives is despicable.

Hospital staff who alert evangelical groups about who to target must be warned not to subordinate official duties to personal convictions. Attempted conversions of minors through direct or indirect "social activities" must be strictly controlled.

"Cheque-book" conversions by resorting to financial benefit for the proselytiser as well as the proselytised must be condemned. In exposing the overzealousness of some proselytisers, double standards should not be applied. We must not single out some religions and ignore malpractices in other religious establishments.

### B. The right to convert

Just as with the right to propagate, the right to convert is part of the constitutional and international right to freedom of religion.

However, though conversion is an intensely personal decision, its exercise must be regulated by the law if the conversion adversely affects the rights of others. The recent case of Sgt. Moorthy highlighted the pain and anguish a conversion can cause to the non-converting spouse.

In the Moorthy case, the legal system was seriously scandalised. It was totally unjust and unnecessary for the Shariah authorities to commence the action ex parte in the Shariah court. Moorthy's wife and other relatives should have

been heard. The issue of whether Moorthy had, subsequent to his conversion to Islam, become a murtad and reverted to Hinduism should have been investigated.

Subsequently, the High Court judge who tried the case and the officers of the AG's Chambers, who supported the argument that Moorthy's wife had no recourse to any court, did much damage to our system of justice. Islam was defamed.

As to the ruling that a Muslim has no unilateral right to apostate and must seek a court ruling, it can be observed in support that status is generally other-determined, not self-determined. In the context of Malaysia it is reasonable to argue that as an act of apostasy has serious legal, political and economic implications, it should be adjudicated upon by the courts.

An act of apostasy by a Muslim would cause a divorce between the apostate and his/her Muslim spouse. Issues of custody and guardianship of children will arise. The apostate will lose his/her status as a Malay. He/she may end up losing many privileges like Malay reserve land. A court declaration is, therefore, appropriate. But time limits must be imposed on the Shariah courts for determination of the applications of murtads. Justice must not be allowed to be defeated through delays.

Procedural hurdles in the way of apostasy are justified. But criminalisation of apostasy is not. In matters of religion there should be no compulsion. Criminal penalties against murtads run contrary to international law, contrary to constitutional guarantees and in violation of the spirit of Islam, which is one of tolerance for the disbeliever.

Also, like the procedural hurdles that exist for those intending to leave Islam, there must likewise exist some procedural requirements when someone wishes to embrace Islam and the conversion would adversely affect the rights of his/her spouse and children. Specifically the family must be informed and must be heard. No conversion certificate should be issued till the issues of divorce, distribution of property, guardianship and custody of children have been resolved in accordance with the law under which the marriage took place.

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Certain Muslim groups in Malaysia have been vehemently protesting the idea of freedom of religion for Muslims, as evidenced by their publication of pamphlets denouncing the proposed Interfaith Commission ("Oppose the IFC", "Islam is under threat", "You need to act now" etc.) and disruptive protests against the public forums on constitutional protection of freedom of religion. One of the fears expressed by these Muslim groups is that things like the Interfaith Commission will allow Muslims to apostasise en masse, tearing asunder the fabric of a perceived Islamic Malaysia.

## Punishing Apostasy: A Divine Prerogative?

Umran Kadir

In recent years, few issues of a religious nature have been as controversial in Malaysia as that of religious conversion. For example, Lina Joy and Kamariah Ali have become household names in Malaysia due to the high-profile court cases involving attempts to leave Islam. These cases have brought into sharp focus a debate which has taken place amongst scholars of Islam for centuries – specifically, how Muslims should deal with those who wish to leave the faith of Islam. An examination of the writings of traditionalist Muslim scholars may leave some with the moral certitude that Muslims are obliged to put unrepentant apostates to death. Yet, such a conclusion is distinctly at odds with the concept of a God who is ar-Rahman and ar-Rahim (Merciful and Compassionate).

### What is apostasy?

The precise definition of apostasy and whether it carries a punishment continues to be an elusive issue in the Muslim world. Opinions range from scholars who believe that leaving the faith carries no punishment, to more extreme teachings often cited to label Muslims of other sects as kafirun

(disbelievers). In addition, historical reports suggest that there were tribes who apostatised only to commit hiraabah (treason) by later attacking the early Muslim community. There are thus scholars who distinguish between treason as a punishable act and apostasy as not punishable in and of itself. For the purposes of this discussion I will confine the definition of apostasy simply to the act of renouncing Islam.

### Disbelievers in the Qur'an

It may come as a surprise to some that the justification for the death penalty with regard to apostasy is absent in the Qur'an. To the contrary, in a surah entitled Al Kafirun (The Disbelievers) it is stated that a Muslim is simply to tell a disbeliever "unto you your religion, and unto me my religion." (109:6) The Qur'an also mentions that there are those who will "believe, then disbelieve, then believe again, then disbelieve, and then increase in their disbelief", indicating that there are those who will inevitably explore and question their faith. (4:137) It is further stated that had God willed "they would all have believed, all who are on

earth! Wilt thou then compel mankind, against their will, to believe!"(10:99)

Indeed, what good is there in forcing someone to remain a Muslim only in name? Such folly would not fool the Almighty who "best knows who goes astray from His way," and "best knows those who follow the right course." (6:117)

### Justification for punishing apostates

Having established that the Qur'an sanctions no punishment for leaving the faith, what then forms the basis for penalising those wishing to leave Islam?

First, it is crucial to understand that verses in the Qur'an which refer to fighting and killing of unbelievers refer to situations during the time of the Prophet Muhammad in which the small Muslim community faced extinction had it not defended itself. Understood in their historical context, it becomes apparent that such verses cannot apply to a society like Malaysia where Muslims are in a majority and not threatened.

Second, we should recognise that the justification for the capital punishment of apostates is solely derived from various ahadith. To begin with, we have to acknowledge that the corpus of ahadith that we refer to today was entirely human endeavours to collect the reported sayings and actions of the Prophet Muhammad after his death. Furthermore, we also have to understand the methodology that early scholars used to compile these hadith. One aspect that sometimes escapes scrutiny is that classical hadith compilers often graded the different ahadith according to their reliability. For example, a mutawatir hadith is one that is reported by an indefinite number of people in such a way that it could not possibly have been fabricated, or false. On the other hand, many ahadith are also ahad (isolated), meaning that the narrators do not exceed two persons in each generation. It is a well-known principle in Islamic jurisprudence that an ahad hadith cannot be used to formulate binding rules and it is unnecessary to act upon it. Furthermore, a hadith also cannot be accepted if it is contrary to the Qur'an.

Thus, those who refuse to allow Muslims the right to choose their faith will usually interpret the meaning of verse 2:256

which plainly states that there is "no compulsion in religion", to say that this provision only applies to non-Muslims entering the faith of Islam. As there is no Qur'anic foundation for this contention, subscribers to this view will usually cite a scholar who will in turn invariably cite a contrary hadith. And thus the cycle of confusion is perpetuated.

### The Qur'an is the supreme authority

Yet central to the faith of any Muslim is the belief that the Qur'an is the inerrant and complete Word of God, from which we can deduce that no other source can rival, let alone alter, the meaning of a Qur'anic verse. The Qur'an itself states that "Allah forgiveth not that a partner should be ascribed unto Him" and that "whoso ascribeth partners to Allah, he hath indeed invented a tremendous sin". (4:48) Thus to allow mortal writings in the form of scholarly writings or hadith, however authoritative or authentic, to abrogate or subvert the Qur'an is akin to being complicit in committing the tremendous sin of shirk (idolatry).

While it would be unrealistic to expect every Muslim to become a scholar of the Qur'an, this should not prevent every Muslim from reflecting on tradition and the Qur'an to decide the truth for themselves, particularly on an issue with such grave consequences. Supporting this notion are numerous verses in the Qur'an exhorting Muslims to reflect on the Qur'an for themselves: "Do they not then earnestly seek to understand the Qur'an, or are their hearts locked up by them?" (47:24)

It is clear that those who are convinced of the obligation to kill or punish apostates have either decided to usurp God's prerogative or have failed to appreciate that the Qur'an does not sanction the earthly punishment of apostates. To avoid committing the sin of shirk Muslims should be very wary of adopting teachings which contradict the Qur'an. With regard to apostasy, Muslims should derive their guidance from the Qur'an which explicitly states that it is only for God to judge what truly resides in our hearts.

Umran is a law student involved in Malaysian activism. He believes that change is only possible if we have the courage and conviction to work for it.

## Apostasy in the Muslim World

In order to demystify the debate surrounding the highly-charged subject of apostasy, we have compiled a summary of different positions regarding apostasy in the Muslim world. Our first table summarises the positions taken by the various schools of jurisprudence regarding different aspects of apostasy during the classical era. Our second table summarises contemporary legal provisions regarding apostasy all around the Muslim world.

Proponents of capital punishment for apostates refer, with moral certitude, to the writings of classical Muslim scholars on the subject. While it is true that all four schools of jurisprudence in Sunni Islam did prescribe death to apostates in the classical era of Islam, there were – as always – subtle but significant variations in their legal logic. For example, the Shafi'is maintained that the

punishment for apostasy was a hadd punishment (in other words, a punishment prescribed in the Qur'an and/or sunnah). However, the Hanbalis were of the view that such punishment was not a hadd punishment. Accusations of "deviation from the divine" do not take into account such diversity of opinion to begin with.

Similarly, in the contemporary era, there are several inconsistencies in legal provisions on apostasy in various Muslim countries. In Malaysia, while Article 11 of the Constitution guarantees freedom of religion, under Shariah laws Muslims wishing to renounce Islam are subject to criminal sanctions. Saudi Arabia's laws provide for the protection of human rights, but public apostasy is a crime punishable by death. Similarly, the constitution of Syria guarantees freedom of religion but puts apostates to death.

## Apostasy in the Muslim World (continued)

However, it is even more interesting to note that not all Muslim countries have provisions punishing apostasy. The constitution of Jordan protects freedom of religion without fetters, while in Lebanon, the National Reconciliation Charter similarly protects freedom of belief.

But we rarely hear discussions on apostasy anchored in

facts rather than sentiments. While we respect sentiments that call for a sensitive discussion of this heretofore taboo subject, we also understand that healthy curiosity has been aroused among several quarters. And healthy curiosity sparks healthy debate, in which we are all free to examine facts and discuss them in a civil manner without resorting to violent intimidation and death threats.

Comparative classical fiqh positions on apostasy among Sunni Muslims

School of Jurisprudence	Shafi'i Madhab	Hanafi Madhab	Maliki Madhab	Hanbali Madhab
Conditions for Determining Apostasy	Voluntary, sane ('aqil) and not legally insane (majnun)	Voluntary, sane ('aqil) and not legally insane (majnun)	Voluntary, sane ('aqil) and not legally insane (majnun)	Voluntary, sane ('aqil) and not legally insane (majnun)
Ascertaining Apostasy	<p>First, confession is the most important form of evidence; confession is enough to convict a person of apostasy.</p> <p>Second, the testimony of two upright witnesses is also sufficient and the testimony should be accepted prima facie.</p> <p>The judge requires the accused to utter "declaration of faith" (khalimah shahadah) in order to confirm further whether or not there is a case of apostasy.</p> <p>However, the majority of jurists believe that if the two upright witnesses give evidence that a person has committed apostasy, but the person denies it, the denial is not sufficient and the accused must pronounce the declaration of faith.</p>	<p>First, confession is the most important form of evidence; confession is enough to convict a person of apostasy.</p> <p>Second, the testimony of two upright witnesses is also sufficient, however, the witnesses are to be interrogated and investigated by the judge to ensure they have correctly interpreted statements by the accused.</p>	<p>First, confession is the most important form of evidence; confession is enough to convict a person of apostasy.</p> <p>Second, the testimony of two upright witnesses is also sufficient, however, only a full investigated testimony is acceptable due to the seriousness of the offence.</p>	<p>First, confession is the most important form of evidence; confession is enough to convict a person of apostasy.</p> <p>Second, the testimony of two upright witnesses is also sufficient.</p>
Authority to impose punishment	The only authority that can impose the death penalty on the apostate is the ruler or his deputy; others may not take the law into their own hands	The only authority that can impose the death penalty on the apostate is the ruler or his deputy; others may not take the law into their own hands	The only authority that can impose the death penalty on the apostate is the ruler or his deputy; others may not take the law into their own hands	The only authority that can impose the death penalty on the apostate is the ruler or his deputy; others may not take the law into their own hands
Is punishment prescribed (hadd)?:	The punishment is a hadd punishment (prescribed in the Qur'an or sunnah or remains at the discretion of a judge); it cannot be changed to the generally accepted principles of Islamic law; the death penalty remains as the only penalty for apostasy.	n/a	n/a	Punishment is not hadd punishment

Source: Saeed, Abdullah and Hassab Saeed. Freedom of Religion, Apostasy and Islam. England: Ashgate, 2004.

# Comparison of Contemporary Laws

## MOROCCO

School of Jurisprudence  
Maliki majority  
Legal Provision\*

1. Constitution adopted on March 10, 1972; major revisions in 1992 and 1996. Article 6 declares Islam the official state religion and guarantees freedom of worship for all citizens.
2. Voluntary conversion from Islam to other religions is not a crime under the criminal or civil code.
3. Any attempt to persuade a Muslim to convert, however, is illegal.

## TUNISIA

School of Jurisprudence  
Maliki majority  
Legal Provision\*

1. Constitution adopted on June 1, 1959. Article 1 declares Islam the state religion, and Article 38 that the religion of the President must be Islam.
2. Constitution guarantees freedom of religion with reservation that it does not disturb public order.

## SYRIA

School of Jurisprudence  
Hanafi majority  
Legal Provision\*

1. Constitution guarantees freedom of religion, however apostasy is punishable by death.

## IRAN

School of Jurisprudence  
Ja'fari majority  
Legal Provision\*

1. Article 12 provides that the official religion is Islam and the twelve Ja'fari school; other schools of law are to be accorded full respect and freedom of religious practice, including in matters of personal status. Apostasy is punishable by death.
- Case(s)
1. Prof. Hashem Aghajari was charged with apostasy in August 2006 after a philosophical speech in which he rejected demands to "blindly follow" clerical rule.

## COUNTRY PROFILE

\* The bulk of these legal provisions is taken from An-Na'im, Abdullahi. "Islamic Family Law: Possibilities of Reform Through Internal Initiatives." Emory University Islamic Family Law Project. <http://www.law.emory.edu/IFL/legal/index.html>

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## LEBANON

School of Jurisprudence  
Hanafi and Ja'fari majority  
Legal Provision\*

1. There is no official state religion or recognition of Shariah as source of legislation. Accords recognition to heads of legally-recognised sects, with respect to personal affairs, freedom of belief, exercise of religious rituals and freedom of religious education.
2. The National Reconciliation Charter similarly protects freedom of belief.

## JORDAN

School of Jurisprudence  
Ja'fari majority  
Legal Provision\*

1. The 1952 Constitution declares Islam to be the religion of the State, and also provides for the establishment of separate civil and Shariah courts.
2. Constitution guarantees freedom of religion.

## EGYPT

School of Jurisprudence  
Hanafi majority  
Legal Provision\*

1. Constitution adopted on September 11, 1971; Article 2 affirms Islam as the state religion; amended in 1980 to add recognition of the principles of Islamic jurisprudence as the principal source of legislation.
- Case(s)
1. Sa'id Al-Ashmawy, an Islamic scholar and retired judge, was accused of apostasy for his opposition to the implementation of Islamic law, which he considered to be man-made.



# on Apostasy in the Muslim World

## AFGHANISTAN

School of Jurisprudence  
Hanafi majority  
Legal Provision\*

1. Constitution guarantees freedom of religion.
2. While the constitution makes no direct reference to Shariah, and Article 7 of the constitution commits the state to abide by the international treaties and conventions requiring protection of religious freedom, no law contrary to the beliefs and provisions of Islam is permissible under the constitution.
3. While not legally prohibited, conversion from Islam is strongly discouraged, and the legal consequences of conversion are subject to legal interpretation.

Case(s)  
1. Abdul Rahman faced the death penalty for converting to Christianity but was freed from jail due to pressure from the international community. He was charged with rejecting Islam but found mentally unfit to stand trial and was given asylum by the government of Italy.

## BANGLADESH

School of Jurisprudence  
Hanafi majority  
Legal Provision\*

1. Secular Constitution, adopted on November 4, 1972, was amended in 1977 to remove principle of secularism included in Part II entitled Fundamental Principles of State Policy. Amended again in 1988 to insert Article 2(a) declaring Islam official state religion, while reiterating that other religions may be practised in peace and harmony.

Case(s)  
1. Fitri Christian, a Muslim convert to Christianity, was stabbed while returning home from a film version of the Gospel of Luke.

## PAKISTAN

School of Jurisprudence  
Hanafi majority  
Legal Provision\*

1. Under the blasphemy provision of the Penal Code, apostasy is a crime punishable by death. The blasphemy provision also includes the use of derogatory remarks, etc., in respect of the Holy Prophet: whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet, shall be punished with death, or imprisonment for life, and shall also be liable to a fine. In October 1990, the Federal Shariat Court (FSC) ruled that "the penalty for contempt of the Holy Prophet ... is death and nothing else".

Case(s)  
1. Catherine Shaheen, a Christian headmistress of a government school, reportedly was falsely accused of blaspheming against the Prophet Muhammad by colleagues jealous of her promotion and to avoid being imprisoned and/or killed, she fled her home and had to live in hiding.  
2. Rafiq, a Christian man who was given a promotion, was accused of importing and distributing Christian literature in public by his jealous colleagues. For his safety, he had to move away.

## MALAYSIA

School of Jurisprudence  
Shafi'i majority  
Legal Provision\*

1. Under Shariah law, Muslims wishing to renounce Islam to profess other faiths or beliefs are subject to criminal sanctions (punishments vary from state to state – e.g., Perak, Malacca, Sabah and Terengganu have criminalised apostasy with fines not exceeding RM3,000 and/or imprisonment of not more than two years)
2. In most states, non-Muslims are not allowed to proselytise Muslims but Muslims are allowed to proselytise non-Muslims.

Case(s)  
1. Kamariah Ali, who publicly renounced Islam some seven years ago when she became a member of the "Sky Kingdom" sect, has been continuously persecuted socially and legally in her attempts to leave Islam.  
2. Lina Joy, a Muslim convert to Christianity, claiming her rights under the Constitution, approached the National Registration Department (NRD) in February 1997, seeking permission to change her name and also her religious status.

3. Nyonya Tahir, who was born a Malay Muslim, was "allowed to apostate" posthumously and buried according to Buddhist rites; Nyonya was raised by a Malay grandmother and Chinese grandfather who converted to Islam, but married a Chinese man who did not convert and practised Buddhism all her life. She also made a written declaration that she wanted to live as a Buddhist and be buried as one.

## SUDAN

School of Jurisprudence  
Hanafi majority  
Legal Provision\*

1. Art. 1 of Constitution states that Islam is the religion of the majority of the population, but does not proclaim it to be the state religion;
2. The 1991 Criminal Act makes apostasy a crime punishable by death.

Case(s)  
1. In June 2001, Aladin Omer Agabani Mohammed, a Khartoum resident, was arrested for converting from Islam to Christianity and detained incommunicado for three months; he reportedly was tortured. In September 2001, he was released on medical grounds, but was required to report daily to the security forces. In January and February 2002, security police again harassed Aladin, put him under surveillance, and refused his requests to travel because he had converted to Christianity. On January 30, 2002, airport authorities refused to allow Aladin to board a plane to Uganda to study at St Paul Theology Seminary even though he had received his visas and military exemption; the authorities reportedly told him that he was an apostate abandoning Islam.

## SAUDI ARABIA

School of Jurisprudence  
Hanbali majority  
Legal Provision\*

1. There is no formal Constitution. Basic law articulating the government's rights and responsibilities was issued by King Fahd in March 1992.
2. Art. 26 provides that the state protects human rights "in accordance with the Islamic Shariah".
3. Public apostasy is a crime under Islamic law and is punishable by death.

Case(s)  
1. In March 2004, a schoolteacher teaching students about tolerance was convicted of blasphemy and sentenced to three years' imprisonment and 300 lashes.
- 2. In November 2005 a religious court convicted a high school teacher of blasphemy, sentencing him to more than three years' jail and 750 lashes. The teacher was teaching his students about tolerance and challenging extremism. Both teachers were pardoned by King Abdullah after appealing their cases.

## YEMEN

School of Jurisprudence  
Shafi'i majority  
Legal Provision\*

1. The Constitution prohibits apostasy and imposes capital punishment.

## INDONESIA

School of Jurisprudence  
Shafi'i majority  
Legal Provision\*

1. The Constitution, promulgated in August 1945, does not adopt any official religion, but Art. 29(1) provides that "the State is based upon the belief in the One, Supreme God"; Art. 29(2) guarantees freedom of religion.
2. Pancasila affirms the belief in God but does not accord special status to Islam.

Case(s)  
1. Yusman Roy, a former boxer and convert to Islam, is serving two years in prison for leading prayers in Indonesian and Arabic instead of solely in Arabic.

# Can Personal Expressions of Faith be Treated as Crimes Against the State?

Shanon Shah

Even though the PAS-ruled state of Kelantan has backed down on its threat to fine non-Muslim women for dressing “sexily”, it has nevertheless warned that it could still target them if they continued to dress “indecently” by Islamic standards. There has already been a public outcry on how this kind of thinking is not only derogatory to women but non-Muslims as well. In addition, the phrase “Islamic standards” is interesting, because its ambiguity allows the Kelantan state government to evade a crucial question – can personal sins and aspects of personal faith be turned into crimes against the state?

This is because the consequences of turning sins into crimes are far-reaching. For example, due to an application of logic that is not entirely dissimilar to the logic of the PAS state government, women in Saudi Arabia are denied certain jobs and their mobility in public spaces is highly regulated – they are not even allowed to drive. This clearly impacts women’s access to all kinds of essential public services, not to mention their right to livelihood and their freedom of movement. In fact, Saudi Arabia has witnessed the tragic consequences of its policies towards women when, in March 2002, 14 schoolgirls died in their school as they tried to flee a fire. They could not escape through the gates, which were locked to ensure full segregation of the sexes. Shocked and grieving parents were told that the guards refused to release the girls because their heads were uncovered, and ordered them to cover themselves if they wanted to be let out.

Such catastrophic and extreme instances notwithstanding, it is important to note recent trends in the move by state actors to treat personal sins as crimes against the state:

- In October 2006, a group of enforcement officers from the Islamic Affairs Department of Kedah harassed an American couple in their own condominium, alleging that they were engaging in immoral behaviour, when in fact they were husband and wife, non-Muslim and citizens of the United States.
- In January 2005, officers from the Islamic Affairs Department of the Federal Territories (JAWI) raided Zouk, a popular nightclub in Kuala Lumpur, and detained the Muslim patrons there. It later emerged that the female detainees were sexually harassed by the religious officers while in detention.
- In Indonesia, the Anti-Pornography and Pornographic Acts Bill is being pushed through the legislative assembly by a coalition of Islamist groups. Although this Bill was initially framed as a move to protect women and children from exploitation, the definition of “pornography” and “pornographic acts” has since been expanded, with great ambiguity, to target women’s everyday mobility, dressing and general conduct.
- In Malaysia, the state has also imposed fines on individuals who are “caught” missing Friday prayers, not observing the fast in Ramadan and consuming alcohol.

Advocates of such laws say that they are necessary to keep the integrity of an Islamic society intact. However, these advocates often miss the point that the motivation for passing these laws is very often less spiritual than it is political. Take Turkey, for example, where 99.8% of its population is Muslim. In the 2002 general election, the Islamic conservative Justice and Development Party (AKP) was voted into power. In October 2005, Turkey finally began talks on joining the European Union. In light of its ambitions to accede to the EU, the Turkish government, although Islamist in orientation, has refrained from passing laws that police personal sins and morality on the basis of religion, because these would violate the EU’s universal human rights requirements for member countries.

However, the political sphere does not wholly decide the spiritual pulse of a community. Several scholars have also pointed out more doctrinal and jurisprudential opposition towards turning sins into crimes. For example, Mohammad Hashim Kamali questions the claim that there has always been ijma (consensus) on exerting punishments for such acts as missing Friday prayers and drinking alcohol. Kamali stresses that although several Muslim intellectuals from the classical era of Islam agreed that many of these acts were sins before God, they were reluctant to prescribe any worldly punishments.

C.G. Weeramantry questions the overzealous actions of those who claim to be policing morality and sins, since their acts very often border on the violation of personal privacy, when the Qur’an is explicit about the importance of respecting individual privacy and presumption of innocence.

“O you who believe, avoid most suspicions: Some suspicions are indeed sins. So do not pry into others’ secrets and do not backbite.” (Qur’an, 49:12)

Furthermore, quoting the renowned 20th-century Muslim intellectual Mohammed Iqbal, Weeramantry asserts that it is impossible to use coercion in order to change an individual’s



The Mufti of Terengganu pays the SIS office a friendly visit. Back row from left: SIS legal officer Razlinawati Razali, SIS member Hjh Nik Noriani Nik Badlishah and SIS member Prof Dr Norani Othman. Front row from left: SIS member Prof Datin Dr Rashidah Shuib, Mufti of Terengganu Dato’ Hj Ismail Yahya and SIS Executive Director Hjh Zainah Anwar.

conduct towards God. "...[O]ne cannot be good unless one enjoys the freedom to act and consciously chooses to act correctly."

Recently, even the new Mufti of Perlis, Dr Mohd Asri Zainul Abidin, argued that the act of snooping on couples to charge them with *khalwat* (close proximity) is "an embarrassment to Islam" and gives people the mistaken impression that Islam condones violation of a person's right to privacy.

In effect, turning personal sins into crimes against the state radically alters the relationship between the believer and his or her God from one of personal piety to one of duress. Furthermore, an individual's personal relationship with God is transformed into a matter of public policy. In any sensible democracy, when policies have such far-reaching implications, the public has the right to debate them extensively and offer as many divergent viewpoints as possible in a civil manner.

However, such debate remains difficult in countries where there are laws that restrict freedom of expression. Moreover, laws that restrict freedom of information also deny citizens

access to the diversity of opinions within the Islamic tradition, some of which support and some of which oppose turning sins into crimes. In a climate that is already rife with censorship and intimidation, the outcome of discussions on such crucial topics will inevitably emerge lopsided and prejudiced.

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## "You Belong To Me":

### Are we Better Citizens When the State Monitors all our Personal Thoughts and Actions?

"Every breath you take  
Every move you make  
Every bond you break  
Every step you take  
I'll be watching you

Oh can't you see?  
You belong to me"

The Police

Between 1995 and 1997 most states in Malaysia adopted a version of the Shariah Criminal Offences Act/Enactment. However, in 1997, Prime Minister Dr Mahathir Mohamad ordered the Attorney-General's Office to suspend and review the Shariah Criminal Offences [Law](#). He was appalled by the arrest of three Muslim women by the Jabatan Agama Islam Selangor for participating in the Miss Malaysia Petite contest. The women were publicly handcuffed – an action most law enforcement officers around the world reserve only for potentially violent criminals – before they were taken away for questioning.

And as we have come to witness over the years, it is extremely problematic when human authorities turn personal obligations of faith into crimes against the state. Just by referring to the table we have compiled of various

cases of such policing over the years, it is clear that the application of such laws exacerbates existing injustices and discrimination. Women have overwhelmingly been targeted and extensively humiliated in many of these instances, while men get away with a proverbial slap on the wrist.

Which brings us to the sheer zeal with which these laws are applied. In many of these instances, the people who were accused of committing these sins-turned-crimes were publicly humiliated and sometimes even subjected to physical violence. Surely we cannot justify such violence as being divinely-inspired?

Last but not least, it is also alarmingly ironic how the very concept of law and order breaks down once these laws come into force. It is not only religious officers who go around policing citizens now. There is also a marked rise in vigilantism. Worse, these vigilantes often get away with impunity after violating the rights of their fellow citizens.

Those who disagree with the turning of personal obligations into crimes against the state have been characterised as hedonistic, elitist and anti-religion. Similarly, those who staunchly support such policing have been caricatured as being Taliban-like and terrorists. However, such labels only serve to deepen existing hostilities and obfuscate the real issue: do we actually have the right to force others to believe and act as we demand in matters of personal faith and conscience?

## Instances in which personal obligations were treated as offences by state and non-state actors

The "To not do" list	Told you so...
What not to wear (if you're a woman)	<ul style="list-style-type: none"> <li>The PAS-led Government in Kelantan announced that its dress code for Muslim women would be extended, minus the tudung, to non-Muslim women. The dress code would initially be only a guideline designed to encourage non-Muslim women to dress appropriately. In contrast, Muslim women can be fined: in the first eight months of 2004, a total of 160 women were fined between RM10 and RM50 by the Kota Baru Municipal Council for not wearing headscarves at their workplaces. (2005)</li> <li>A single mother, Wan Nurizan Shaikh Mohamad, claims that she and her daughter were harassed by a female police officer for dressing like perempuan sundal (immoral women) in Jalan Petaling, KL. (2006)</li> </ul>
Whom not to greet (if you're a Muslim)	<ul style="list-style-type: none"> <li>Ustaz Zamri Hashim of Jabatan Mufti Negeri Perak stated that it is forbidden for Muslims to celebrate festivals of "non-believers." (2004)</li> <li>Fauzi Mustaffa, head of the Shariah division of Takaful Malaysia, issued a directive to his staff not to extend festive greetings to their Hindu clients. Fauzi later issued a public apology that his directive was a personal opinion and not that of Takaful Malaysia. (2006)</li> <li>The Mufti of Perak, Harussani Zakaria, urged the government to scrutinise Kongsi Raya (joint Chinese New Year and Eid celebrations) which can potentially lead to erosion of the faith of Muslims. (2006)</li> <li>The Muzakarah Ulama released 21 resolutions asking the government to intervene on issues such as Liberal Islam, pluralism, Kongsi Raya, etc. (2006)</li> </ul>
Whom not to ask about homework and projects (even if it's in school)	<ul style="list-style-type: none"> <li>Two schoolmates – one male and one female – were caned 25 times on the grounds of a school in Kelantan for the "crime" of talking to each other in public. The two men who caned the students were not teachers at the school, but frequent visitors, and had taken it upon themselves to punish the students for "committing vice". (2003)</li> <li>A college student received a summons from the council "for talking with a classmate" at the stairway of Ipoh's Tun Razak Library. The summons was later cancelled on technical grounds as the "talking" took place in the library and not at a recreational park. (2003)</li> </ul>
What not to sell (even though you're not drinking it and even though you have a licence)	<ul style="list-style-type: none"> <li>A café owner and his employee were verbally and physically assaulted during a JAIS raid. The café owner was chastised for selling alcohol despite having the necessary licence and the employee was physically assaulted with batons and sticks not by JAIS officials, but by six men who accompanied the officials on the raid. (2006)</li> <li>JAIS charged a female pub singer with insulting Islam by being in premises where alcohol was served. Charges against a male singer were quickly dropped; charges against the female singer were only later dropped. (2000)</li> </ul>
Where not to hang out with your buddies	<ul style="list-style-type: none"> <li>Jabatan Agama Islam Wilayah Persekutuan (JAWI) and the Volunteer Reserve Corps (Rela) detained many people during raids on nightspots. After a woman was refused the use of a toilet and told to ease herself in the truck, her friends had formed a circle around her and she covered herself with a shawl while she eased herself. One officer pushed her friends aside, pulled away the shawl and photographed her. Three months after the incident, religious enforcement officers questioned the woman for 3½ hours; her lawyer was not allowed to be present during this interrogation. She was charged with abetting another to commit the offence of drinking and selling alcohol and committing vice (maksiat). (2003)</li> <li>Mufti of Perak Harussani Zakaria, on behalf of the Mufti Council, released a fatwa that Sure Heboh organised by TV3 is forbidden (haram). (2004)</li> <li>Arrest, detention and humiliation of 100 Muslim youths by JAWI at Zouk nightclub in Kuala Lumpur. After several hours of verbal abuse and humiliation in the lockup, a few of the youths were charged with "indecent behaviour"; others were released without charge. Most of the charges and summonses to undergo counselling were later dropped because they were based on non-existent provisions in the Shariah Criminal Offences Act. (2005)</li> <li>Arrest of non-Muslim transgender journalist in the garden of a friend's house by Taiping Religious Department officers. (2005)</li> <li>31 Muslims, 23 of whom were women, detained by JAIS at three outlets serving liquor. All charges were eventually dropped after the then Chief Minister of Selangor, Abu Hassan Omar, said the arrest was a mistake and that JAIS officers misunderstood a section of the Shariah Criminal Enactment 1995. The State Government directed JAIS to develop guidelines for enforcement operations and to require intensive training on Shariah law, its procedures and implementation. (2000)</li> </ul>
What not to say or think or listen to (even if you didn't slaughter a goat)	<ul style="list-style-type: none"> <li>National Fatwa Council released a fatwa that black metal music is forbidden in Islam (haram) (2006). Among others, black metal fans in Malaysia are accused of insulting the Qur'an, slaughtering goats and drinking blood as part of a set of pseudo-Satanic rituals.</li> <li>JAKIM planned to ban Muslims with no "in-depth knowledge of Islam" from expressing themselves in public on Islamic issues. (2002)</li> <li>A leaflet was widely circulated calling for the death of prominent lawyer Malik Imtiaz Sarwar who held a watching brief on behalf of the Bar Council in Lina Joy's on-going appeal against the decision by the National Registration Department in not removing the word "Islam" from her identity card. (2006)</li> </ul>



## But I'm a non-Muslim...

...so why should I be concerned about the authorities legislating on personal faith? They've assured me that any such legislation will only affect Muslims anyway, so I'm not affected at all.

There are a couple of problems associated with this notion. Firstly, it is patently untrue. Over the past five years alone, the facts have shown that legislation on matters of faith and morality affect non-Muslims quite seriously as well. For example:

- In 2002 in the state of Kelantan, a non-Muslim Chinese food seller was fined because a Muslim woman bought food from his shop before 3pm during Ramadan.
- In August 2003, the Kuala Terengganu Municipal Council announced a ban on all women, including non-Muslims, from public singing and dancing. As a result, the authorities were empowered to interfere at the last minute in a Deepavali (Hindu) celebration at a Kuala Terengganu hotel that same year.
- In December 2003, non-Muslim women in Terengganu were banned from wearing short-sleeved blouses, long skirts with slits and mini-skirts to work. Employers whose workers were found to flout this dress code would be fined up to RM250 or lose their licences.
- During the same period, a Christmas party in Kelantan was disrupted by the Kota Baru Municipal Council because the organisers did not have a permit to hold Christmas celebrations. The MPKB officers only dispersed at 11.30pm when they were told that it was a family Christmas gathering. However, they remained on the premises and forced the party to disperse at midnight.
- In December 2004, there was confusion as to whether the federal government had banned all Christian religious symbols and carols that made reference to Jesus Christ, including hymns, the Nativity scene, and excerpts from the Bible. The Minister of Arts, Culture and Heritage, Dr. Rais Yatim, only later denied that a ban had been imposed.

And these are only some of the examples that managed to be documented by the human rights organisation Suaram. We have not even elaborated on the spate of controversies regarding religious conversion and apostasy that have gained publicity in the last couple of years.

Secondly, any such lip service promising that non-Muslims will be untouched by Islamic legislation also assumes that Malaysians are happy to be divided on the basis of religion. The fact that two different legal standards are applied to citizens of the same country purely on the basis of religion implies that the constitutional guarantee of equality for all Malaysians is a farce.

...yet I'm not convinced that things are as bad as you make them out to be.

The above examples are not meant to provoke panic. But they are indicative of a trend to set coercive standards for how non-Muslims have to behave in order to appease the authorities. It is also indicative of a shift in how we define Malaysian society, which has always been multi-cultural and multi-religious.

"Throughout my mission [in Saudi Arabia], I never heard of any question from any quarter, including the media, as to why a non-Muslim was invited by the Government to look into and comment on their system. If a conservative Islamic State could invite a non-Muslim, though I was no doubt then holding an international mandate, to look into their system and advise, I find it very difficult to understand why in a plural society like Malaysia there should be such strictures over open dialogue on one another's religion, race, culture, including human rights and procedural rights in Islam. I for one will not fold my arms and stay away from expressing my concerns openly if I find that my Muslim sisters' and brothers' human rights are violated or may be violated in proposed legislation just because being a non-Muslim I should not be seen interfering in their affairs. That will be a betrayal of my broader societal duty as a Malaysian."

Datuk Param Cumaraswamy,  
former UN Special Rapporteur on the Independence of Judges  
and Lawyers

...but I don't know what I can say: I don't want my Muslim friends to think that I'm insulting their religion if I voice my concerns.

A diverse society like ours will inevitably have to deal with its constituents having questions about each other, and how we are connected. Sometimes the differences will seem more obvious than the similarities. However, there are always civil ways to engage in discussion with each other that do not degenerate into name-calling or violence, even for a topic as sensitive and emotionally-charged as religion.

Furthermore, when religion is used as a basis to formulate laws and policies that affect the public, the public has every right to interrogate the very formulation of these laws and policies. Accusations that such interrogation constitutes an attack on the religion itself are baseless, because laws and policies are entirely human endeavours and subject to the follies and biases of those who are in power.

Besides, we also have to recognise there are mechanisms in this country that restrict freedom of information – the discourse on Islam is no exception. There is a rich diversity of opinion in Islam among both contemporary and classical scholars and ulama but this treasury of information is often censored or banned by the authorities.

Indeed, this rich diversity of opinion is the hallmark of all major world religions, and it is incumbent upon us to ensure that we keep the discussion open so that we can compare these interpretations and choose the ones that promise justice, fairness and equality to all of humanity. Even then, we must remember that no matter what religion we belong to, we are all human beings first, and as human beings we have the right to question any action or philosophy that violates our fundamental rights.

Perhaps it is useful to think of dialogue as needing some healthy amount of space in order to flourish. Many voices participating in continuing dialogue ensure a healthy, balanced space in which we can all play. But if we choose not to let our voices be heard, we actually allow ourselves to be pushed out of this space even though it is for all of us to share in.

# The CEDAW Convention and Muslim Women

## Promoting Equality and Justice Without Reservations

Rozana Isa and Hjh Nik Noriani Nik Badlishah

### The CEDAW Convention

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a comprehensive bill of rights for women based on the principles of substantive equality and non-discrimination. The CEDAW Convention is an international human rights treaty that demands for the rights of women to be recognised and exercised not just in law (de jure) but also in fact (de facto).

Substantive equality refers to the equality between men and women whereby differences between men and women are recognised and corrective measures are put in place to correct the environment that disadvantages women. Substantive equality is different from formal equality or the protectionist approach to equality whereby women remain disadvantaged. Substantive equality demands for the equality of women and men in terms of opportunities, access and results.

The CEDAW Convention is special because it not only demands substantive equality for women within the private and public spheres but it also encompasses the rights of women within the civil and political as well as the social, cultural and economic spheres. It demands equality for women to be recognised and exercised through a rights-based approach.

Countries that have ratified CEDAW (also referred to as States parties) have the obligation to implement the Convention; they have the obligation to respect, protect and fulfil the rights of women according to the normative standards that have been set by CEDAW. States parties are called upon to take every possible measure to remove obstacles and to create enabling conditions so that women's rights become a lived reality.

The effective implementation of the CEDAW Convention by the States parties is monitored by the CEDAW Committee, which comprises 23 independent experts. They meet twice yearly to review the reports submitted by States parties on how far they have fulfilled their obligations to implement the Convention.

The CEDAW Convention was adopted by the United Nations General Assembly on December 19, 1979 and has been ratified by 185 countries, making it the second-most ratified human rights convention, after the Convention on the Rights of the Child. This is a formal recognition that there is a universal norm and standard of rights that women can claim and exercise. Despite this universal formal recognition and States parties' legally binding commitments to ensure and implement the norms and standards for women's rights, the challenge remains as women still experience difficulty in claiming and exercising those rights.

### Reservations

Article 28 of the CEDAW Convention allows States to make

formal declarations or place reservations to not accept as binding certain parts of the treaty. While allowing such actions, Article 28 (2) also places a limit to this process, as States cannot make reservations that may be incompatible with the objectives and purpose of CEDAW. It is important to stress that the nature of reservations under CEDAW is meant to be temporary and the States should uplift these reservations in due course.

Whilst it is not always easy to distinguish a declaration from a reservation, the CEDAW Committee had stated that "any statement which seeks to modify the legal effect of the Convention in respect of a State party will be considered as a reservation<sup>a</sup>."

Despite the legally-binding commitment made to uphold the rights of women through the principles of equality and non-discrimination, many States parties fall short of this as they place reservations on substantive articles of CEDAW and this gives the effect of limiting the extent to which States parties are obliged to implement the Convention.

Most of the reservations made in the substantive articles are on Article 2 (legal and policy measures to be undertaken to eliminate discrimination) and Article 16 (marriage and family law). Such reservations are incompatible as they go against the spirit and intent of the CEDAW Convention which is to uphold the principle of equality and non-discrimination and the States parties' obligation to uphold these principles.

The CEDAW Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of Article 16, especially when a reservation has also been entered to Article 2, claiming that compliance may conflict with a commonly-held vision of the family, based on cultural or religious beliefs or on a country's economic or political status<sup>b</sup>.

Most of the countries that have placed reservations on either of the articles or both are Muslim-majority countries. The elaboration given for placing the reservations is in reference to where the provisions in CEDAW are in conflict with Islamic Shariah, the justification being that Shariah laws must prevail. This gives the notion that the two are incompatible and that one is superior to the other.

Many of the countries that have placed these reservations – regardless of their respective religious composition – hold a patriarchal belief in the structure of a family. In some countries where extremist views have encouraged a return to patriarchal values, women's place in the family has deteriorated<sup>c</sup>.

### States without Reservations

Not all States parties with significant Muslim populations have placed reservations on CEDAW or they have only placed reservations on its administration in relation to Article 29 (1) that provides for international arbitration on disputes.

This reflects that these countries have not regarded CEDAW to be contrary to Shariah. Furthermore, there have also been developments by these States to implement CEDAW through law and policy reforms.

Indonesia is one of the few Muslim countries which has not placed reservations on Articles 2 and 16. In October 2004, a task force set up by Indonesia's Ministry of Religious Affairs produced an alternative draft to the country's *Kompilasi Hukum Islam* (Compilation of Islamic Laws) that embraces gender equality including provisions to ban polygamy and ensure equal inheritance for men and women. However, this draft was suspended due to the need to raise public awareness that these provisions are not incompatible with Shariah.

Two other countries which have not placed any reservations are Senegal and Nigeria. Whilst family laws in Senegal reflect the spirit of CEDAW, in Nigeria, however, the Northern states have extended Muslim laws to criminal offences (hudud in particular), with very grave consequences on women's rights.

Other Muslim-majority countries which have not placed substantive reservations include Yemen, Mali, Albania and Tajikistan.

Despite the reservations made under the banner of Islam and the Shariah, the fact that many different Muslim-majority countries enter different reservations on different articles of CEDAW and there are also many countries which do not enter any reservation at all, demonstrates that there is no single fixed notion on what Islam and the Shariah is and that it is open to discussion, debate and dialogue.

#### Why are States parties not fulfilling their obligations to implement CEDAW?

The challenge for States parties to fulfil their obligations to CEDAW may be hindered by technicalities. Whilst most countries have ratified various international human rights instruments, it is unclear with most countries whether the

treaties ratified can be immediately applied upon ratification (in other words whether treaty law is recognised as part of domestic law) or whether it needs an enabling legislation to make the treaties applicable. Domestication of international treaties has an impact on domestic laws as they can be cited in court and this can have a profound impact on the cases concerned, vis-à-vis judgments that fulfil the rights set out in those treaties.

Besides enabling treaties to become applicable domestically, the fact remains that, in general, where human rights and women's rights are concerned, there is strong resistance by individuals within government bodies and institutions<sup>d</sup>. Even if there are government officials who believe in rights, they are still cautious and are only willing to support programmes or reform if the word "rights" is excluded because they fear that they will lose all that has been accomplished so far<sup>e</sup>.

There is also a lack of conceptual clarity regarding what substantive equality is all about. Government officials are so inundated with motley campaigns on various issues which render understanding of women's rights and agendas for women's advancement confused and diluted<sup>f</sup>, especially with a government that is promoting religious stands and perspectives in all areas of a citizen's life while at the same time struggling to deal with the demands and effects of globalisation.

The hierarchies that exist within the government also contribute to women's rights being dealt with incoherently. Ministries that deal with "hard issues" such as sovereignty and security have more resources and power, and negotiations around human security have led to human rights and women's rights being regarded as "soft issues"<sup>g</sup> that often become the casualty in any kind of negotiations.

Despite these factors at the legal and government machinery level, religion remains a highly emotive issue and one that invokes a fiery response wherever the status quo is being challenged. Perhaps one of the questions that needs to be put forward is: how do Muslims visualise seeing their country being developed when 50% of the population is not given

"I think that feminism is a social justice movement; that's the way I see it. And potentially every woman and every man should be interested in women being able to take equal part in every aspect of our society. [Right now] there's a funny combination of women advancing in certain areas and their progress being blocked in others."

Katha Pollitt, Jewish-American feminist writer

the recognition to contribute their God-given potential in either the private or public sphere or both? On what basis do governments decide to fully accelerate their economic policies to ensure that Muslim countries are not left behind in this global era, thus safeguarding the honour of Islam that can ride the globalisation wave and remain a way of life that is for all times, yet at the same time still be unwilling and unbending to honour Islam by recognising that Muslim women have rights in all spheres?

### The way forward

The resurgence of patriarchal values may be related to the increasing politicisation of Islam and the misconception that those values form an integral aspect of Islam, rather than to pre-existing cultural norms in pre-Islamic Arabia. The Prophet (s.a.w.) introduced radical changes to improve the status of women, unfortunately “the thick curtain of counter-revolutionary darkness, which subsequently began to descend on the Umma at large and on the women whom Islam had firmly set on the road to emancipation, first made itself felt within a few decades after the departure of the Prophet”.<sup>h</sup>

Contrary to the myth that Muslim women are passive and accepting or redha with their circumstances, many Muslim women, as individuals and as a collective, have been pushing the boundaries encircling them in order to claim what they believe to be their rights as stipulated in Islam. Despite the half-hearted implementation of binding commitments, many Muslim women have embarked on various activities and projects at many different levels in order to have their rights recognised and exercised.

These efforts and initiatives have not gone unnoticed and without reckoning. They bring comfort to women all around that the feelings and experiences of subjugation are not isolated, at the same time empowering and inspiring all of us to believe that change is possible.

“Human rights are compatible with Islam. I’ve spent 20 years researching this and studying the theory of this. The problem is that if some Islamic countries don’t implement human rights law, it’s because of their misinterpretation of Islam; you see, you can be a good Muslim and follow the human rights charter. It’s all about the right interpretation. For instance, before the [1979] revolution I was a judge. When the revolution happened, they said that women could not be judges because Islam forbids it, and so they dismissed me from my post, and the rest of the female judges. Because of this, we all spent a lot of time investigating whether this was really true. We read, researched, and wrote articles about it. Finally, after 15 years, I’m happy to say that they have accepted that women can be judges. At the moment, we have two female judges in the Appeal Courts. So you see, when they said women couldn’t be judges, they said it was because Islam had said so. But now they say Islam allows female judges, so my point is that with time, interpretations differ.”

Shirin Ebadi, Iranian Nobel Peace Prize winner

### Endnotes

- a) Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women by the Committee on the Elimination of All Forms of Discrimination against Women (A/53/38/Rev.1), p. 47
- b) Ibid, p. 48
- c) Ibid.
- d) IRAW Asia Pacific, Report of the Consultation on Updating of Skills on the Application of CEDAW, September 18-21, 2004 Kuala Lumpur, Malaysia
- e) Ibid.
- f) Ibid.
- g) Ibid.
- h) Muddathir ‘Abd. al-Rahim, The Islamic Tradition, Vol. 3 of Human Rights and the World’s Major Religions, Praeger Perspectives, Westport, Connecticut, London, 2005, p.69.

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Nik Noriani Nik Badlishah is a member of Sisters in Islam and has published several books on issues related to Islamic Family Law. She holds a Master’s in Comparative Law and is now a PhD candidate at the International Islamic University. She has also served as Assistant Parliamentary Draftsman and Deputy Commissioner for Law Revision. From 2005 to 2006, Nik Noriani was a member of the Shariah Technical Committee, which oversees the drafting of Shariah laws in Malaysia.



Participatory workshop on “Women for Women - Know your Legal Rights” at Quality Hotel, Kuala Lumpur on 18 November 2006.



# Is CEDAW incompatible with Shariah?

In placing reservations, States parties had argued that articles of CEDAW should not contradict the provisions of Shariah, existing family code or the Constitution of the country. To reiterate, it is of great concern that many reservations placed on CEDAW are on the basis of incompatibility with Shariah law. The fact is that, in referring to “Shariah” or “Islamic law”, little attempt is made to distinguish sources of authority – whether it is the Qur’an, or authentic sunnah or from various juristic opinions (fiqh) which form the bulk of classical Islamic jurisprudence.

## Understanding “Shariah” and “fiqh”

Too often, the terms Shariah and fiqh are used interchangeably. However fiqh is based upon human endeavours to understand the Shariah. Muslims believe that the principles of Shariah are eternal and universal, but human understandings (fiqh) are not infallible and are open to reinterpretation to reflect the principles of justice enshrined in the Shariah.

The Islamic legal system evolved gradually and reached full maturity in five centuries. Imam al-Ghazali (d. 1111 CE) appears to suggest that there are three sources of fiqh<sup>a</sup>:

- wahy or divine revelation
- aql or reason
- experience, customs (urf) and the public interest (maslahah)

In family law, rules of fiqh pertaining especially to polygamy and divorce developed by the schools of law should, and indeed have already, come under scrutiny in modern times. The classical jurists have had their reasons but those rules were the product of fiqh on which evidence in the sources was open to interpretation.<sup>b</sup>

The four famous schools of law (Hanafi, Maliki, Shafi’i and Hanbali) are not the only schools in the history of Muslim jurisprudence. None of them was established during the lifetime of the jurist with whose name they later became identified respectively, which reveals that the early jurists did not mean to establish schools of law.

Most of the rules which discriminate against women are the result of fiqh rulings by the jurists of several hundred years ago who never claimed finality for their reasonings. They did their best in the context of the social-cultural milieu of their societies in an era where discrimination between men and women was an almost universal norm in practically all civilisations. They also often differed among themselves on various important issues of law including guardianship, conditions in marriage contracts, inheritance and bequests, thus showing the diversity of views existing within the structure of Islamic law.

## Understanding Equality

### • Is equality incompatible with Shariah?

The justification for reservations also includes the notion that equality of women and men is incompatible with Shariah, which guarantees to each of the spouses the rights

“To paint all of Islam as synonymous with terror is a huge disservice. But I think this crisis has also become an opportunity, because it’s the first time that Muslim liberals all over the world have realised that it is time for them to make a conscious effort to make a separation between the fundamentalist and the liberal, and to say Islam gives us that space. [In the] film Anjuman-that – I don’t think people are even aware that Islam gives the woman the right to reject a marriage if she doesn’t want it.”

Shabana Azmi, Indian actress

and responsibilities within a framework of just balance, complementarity and equilibrium. However, the concept of equality in CEDAW is not of formal equality but substantive equality, which encompasses the concept of just balance, complementarity and equilibrium.

In Malaysia, the custom of matrimonial property (harta sepencarian) is an example of substantive equality. In the early 1800s, the Chief Kadi of the state of Kedah directed kadis to be fair in handling the division of property to avoid discrimination against women, when he observed that women worked harder than men. His directions in the name of Islamic teachings stated clearly that it is sinful for kadis to be biased.<sup>c</sup>

### • Equality and gender neutrality

Even though Malaysia has amended the Federal Constitution to prohibit discrimination on the basis of gender, many laws still exist with gender specific provisions that allow legal discrimination against Muslim women (e.g. polygamy, divorce and guardianship).

Recent amendments to the Islamic Family law also included selective gender neutral provisions e.g. husbands could also bring a claim for harta sepencarian on gender neutral terms when, originally, it was intended to protect the wife’s interest. The effect of such provisions is discriminatory against women when the understanding of equality is limited to formal equality. This is further compounded when gender neutrality is applied selectively and not throughout all provisions. An example of the effect of gender neutral language is a case in the state of Johor whereby a husband had obtained a court injunction to prevent the wife from disposing of her property in order to protect his financial claim. Her intent on disposing of the property was to sustain herself and her children as the husband was no longer providing maintenance to them.

## Endnotes

a) Taha Jabir al Alwani Usul al fiqh al Islami Source Methodology in Islamic Jurisprudence International Institute of Islamic Thought, London, 1990, p. 66.

b) Muhammad Hashim Kamali, Freedom, Equality and Justice in Islam, Ilmiah Publishers, 1999, p. 106.

c) Mahani Musa “Malay Women’s Involvement in Land Ownership, the Accumulation of Wealth and Indebtedness in Kedah”, JMBRAS, Vol. LXXVII, Part 1 (2004), p. 3.

# Sisters Doing It For Themselves

## Examples of Muslim Women Advocating for the Application of CEDAW

- UNIFEM Round Table Workshop on CEDAW and Islam, Amman Jordan, 1999: A workshop discussing the compatibility of CEDAW with Islam verified that there is a lack of understanding of both Islamic doctrine and of international human rights law, and that it is essential to increase awareness and understanding of the provisions of CEDAW. It also concluded that there is "significant compatibility and similarity between the rights of women in Islamic law and the CEDAW" and that there is a "need to develop and update laws, particularly personal status laws, to allow for legal protection of the rights granted to women". Report available online at: <[www.arabwomenconnect.org/docs/ASRO\\_HR\\_round\\_report.doc](http://www.arabwomenconnect.org/docs/ASRO_HR_round_report.doc)>.
- Morocco, March 2006: The Ministry of Justice announced the withdrawal as well as the substitution of declarations and interpretations of Morocco's reservations to some of the articles of the CEDAW Convention. This includes the right of every child born to a Moroccan mother, within Morocco or abroad, to be entitled to acquire his or her mother's nationality. This development is a direct result of successful campaigning by Moroccan women's groups.
- CEDAW Campaign on "Equality without Reservations", Morocco, June 2006: Women's groups from the Middle East and North Africa (MENA) region call for governments to lift the reservations made on CEDAW and to harmonise national legislations with CEDAW provisions. The campaign also calls for the ratification of the Optional Protocol to CEDAW, as a tool for addressing individual and collective violations of women's rights.
- Beirut, Lebanon, June 2006: Activists from 11 Arab countries gathered to discuss the necessity of establishing a law on domestic violence. This included the call upon governments to lift reservations to CEDAW and act to amend their national laws according to international human rights treaties.
- Nigeria, November 2006: BAOBAB held a conference called "The Challenges of Religious Fundamentalisms and Globalisation to Women's Human Rights" in Lagos, Nigeria. One of the main recommendations of the conference was for the adoption and domestication of CEDAW and other human rights instruments.
- Maghreb countries: Collectif 95 Maghreb-Egalite, a coalition of NGOs in Algeria, Morocco and Tunisia, uses a "strategy of knowledge" that successfully brought significant reform to the Code for Personal Status of Morocco (Moudawana) and the personal laws in Algeria. The reform in Morocco marked a wonderful and radical achievement as it not only removed all derogatory terms, which exist in the relationship between men and women, but it also changed the definition of marriage as understood in classical fiqh and introduced the principle of gender equality throughout the code.
- Bangladesh: Respondents of a recent study conducted "to explore possibilities of full ratification of CEDAW by helping to create an enabling environment for the government to completely withdraw its reservations" "generally agreed that there is no substantive or ideological conflict between Shariah laws and CEDAW with respect to concern for equality and equal rights of women with men". The majority of respondents recommended withdrawal of reservations to CEDAW. Report available online at: <<http://www.unifem.org.in/complete%20study.pdf>>.
- Widescale submission of shadow/alternative reports: Women's NGOs from countries with significant Muslim populations submitted – shadow/alternative reports to the CEDAW Committee and attended the CEDAW Session when their countries reported on their implementation of the Convention in 2006: Algeria, Azerbaijan, Bangladesh, Benin, Egypt, Fiji, Gambia, India, Indonesia, Israel and the Occupied Palestinian Territories, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Malaysia, Maldives, Mali, Morocco, Nigeria, Singapore, Sri Lanka, Tajikistan, Turkey, Uzbekistan and Yemen. In May 2007, NGOs from Indonesia, Mauritania, Pakistan and Syria will be part of the process.

"I think that the feminist movement is of God, because it says that you are diminishing half of the human race by acting as if women are not equal to men in any area of life."

Bishop John Shelby Spong, former Episcopal Bishop of Newark, New Jersey  
(Interview with John Cleary for the Australian Broadcasting Corporation, June 17, 2001  
– <http://www.abc.net.au/sundaynights/stories/s815368.htm>)

## SIS Activities Update



SIS Study Tour Programme: Our chief trainer Ms Zaitun Mohamed Kasim with participants from Iraq and Pakistan.

### The SIS Legal Unit needs your help – wherever in the country you may be!

For the last eight years, Maria (not her real name) has had two struggles on her hands. First, she has had to raise her five children single-handedly and struggles to put the kids through school right to this day. Her ex-husband refuses to pay up – he claims he is a gardener but has surprisingly managed to buy a Mercedes Benz in cash.

Her second battle has been with the justice system – for the last eight years, Maria has been battling to prove to the judge that her ex-husband has not been supporting her children. Recently, she approached the SIS Legal Unit. We are doing all we can to see her case through.

Demand for our legal advice service continues to grow. This is great – because it is an indication that more and more women are pro-actively seeking legal information. However, keeping up with the demand is becoming a growing challenge for us.

In 2006 alone, we received 602 calls from women around the country for advice.

There is also a growing need for us to identify specific problems faced by women in court. It will help us make concrete recommendations to the authorities as to how the system can be improved so as to deliver justice in the best possible way.

You can help make a difference – no matter which part of the country you live in!

- e-Lawyers – help us respond to queries we receive via e-mail – even if you assist with one or two cases a month via e-mail you will be making a huge difference.
- CourtWatch – this is a new initiative at SIS where we try to monitor what happens in court so that we can give feedback to the authorities regarding problems faced by women. Let us know if you can help to monitor one or two hearings a month.
- Women to Women – be a part of our support network for other women. This can range from

letter-writing, accompanying women to court, etc.

- Funds – make a donation towards the work of the Legal Unit. Either by cash, cheque or through your credit card.

Contact Lin or Raz at 03-7785-6121 if you would like to help. We'd love to hear from you!

### Public Education

Sisters in Islam continued to explore exciting and crucial areas in our series of public education programmes during the past few months.

To kick off our series of public talks in 2007, we organised a forum called "Know Your Rights: Property Management in Marriage" where we invited such renowned speakers as Nia Dinata (director of the internationally-acclaimed Indonesian film *Berbagi Suami*), the Mufti of Terengganu Dato' Hj Ismail Yahya, Shireen Muhiudeen and Sisters in Islam's own Hjh Nik Noriani Nik Badlishah, Prof Dr Norani Othman and Razlinawati Razali. The talk was received with much enthusiasm by the more than 200 women who were present, and they left energised and committed to helping SIS stamp out gender-based discrimination in marriage.

Our training and workshops also went from strength to strength in 2006. We conducted grassroots training for various groups such as young people interested in writing letters to the editor on social justice issues, single mothers and grassroots women's groups. In fact, the Mufti of Terengganu was also there to lend his support in one of our training sessions for the traditional women's groups.

SIS also played host to visiting groups from overseas who were interested in learning about Islam, gender and human rights in Southeast Asia. We hosted community and religious leaders from South Asia, Iraq and Zanzibar, respectively, who were very impressed by our work. We also continued to become pivotal resource persons and trainers for international workshops on Islam and human rights, the most notable being the Rights at Home workshop for Muslim human rights defenders, held in Bellagio, Italy in mid-2006.

Our study sessions in past months have also tackled varying subject matter. SIS associate member Dr Farish A. Noor conducted two sessions for us in the past six months: "Who



Speaks for Islam? Power, Politics and Representation" in August 2006 and "Understanding the Nature of Religious Hate Discourse: Why Context Matters in the Working of Conspiracy Theories" in January 2007. Khalid Jaafar shared his thoughts on whether the Islamic state project is based on fact or fiction, while Adnan Huskic and Gulmina Bilal engaged us in a session comparing perspectives from Bosnia & Herzegovina and Pakistan, respectively. Scholar Dr Patricia Martinez shared the findings of her most recently-completed research project on Muslim identities, issues and concerns in the Malaysian context. Last but not least, SIS chief trainer Zaitun Mohamed Kasim, assisted by SIS associate member Shanon Shah bin Mohd. Sidik, also led an advanced discussion on gender, human rights and Shariah law for interested students, activists, legal practitioners and researchers.

For updates on these and more activities, visit the "Public Education" section at [www.sistersinislam.org.my](http://www.sistersinislam.org.my).

## Research and Advocacy

### Research into Islamic Family Law Reform

SIS is initiating an international advocacy movement for reform of Islamic Family Laws within a framework of justice and equality. This movement to end discrimination against women in Muslim personal status codes will bring together individuals and groups from Muslim countries and Muslim-minority communities to share experiences, advocacy strategies and scholarship on Islamic Family Law reform. It is hoped that this meeting will launch a high-profile international-level campaign to support the advocacy of national and regional women's groups pushing Muslim governments and building public awareness on the necessity for reform of Islamic Family Laws to end discrimination against women.

A planning committee made up of 12 activists and scholars from Malaysia, Indonesia, Pakistan, Egypt, Morocco, Qatar, Nigeria, Gambia and Britain met in Istanbul on March 10-11 to design the programme for the first international conference to be held in 2008.

### Polygamy Research

Sisters In Islam's nationwide research on the impact of polygamy on the family institution was successfully launched after the fundraising charity premiere of *Berbagi Suami*. We have received very encouraging support on this endeavour. At the moment, we are calling for respondents – including husband, first wife, subsequent wife and children – who have experienced living in a polygamous family, whether in the past or at the moment. If you are interested to participate in this research, or know of anyone who might be interested, please e-mail us: [research@sistersinislam.org.my](mailto:research@sistersinislam.org.my). Please be assured that all information will be kept strictly confidential.



Norani Othman makes a point during the Press conference for the 'Berbagi Suami' charity fundraising premiere.

"I am not convinced that women's situation, in terms of the respect they receive, has improved that much in the last 10 years. But my feeling is that the less respect you get from others, the more you should treat yourself with respect. The less you have, the more you must try to take control of what you have."

Frances Kissling,  
former president of Catholics for a Free Choice

## Other SIS Campaigns to end Gender-based Discrimination

### 16 Days of Activism Against Gender Violence 2006

SIS, Women's Aid Organisation, Amnesty International, and the Malaysian AIDS Council came together once again for the 16 Days of Activism to raise public awareness about issues related to Violence Against Women (VAW). In conjunction with the 2006 theme of "Learn, Speak Out and Take Action", there were numerous TV and radio interviews where we and other NGOs spoke about the need to address issues of VAW. SIS also organised a campaign booth at the KL Sentral station to reach out to the public and gauge their response to VAW.

International Human Rights Day, which marked the culmination of the 16 Days, saw civil society groups, including SIS, march side-by-side with members of the public from Dataran Merdeka to Parliament House and then on to Taman Tasik Perdana, demanding human rights for all.

### Raising Funds, Raising Awareness, Sharing Knowledge

What do you get when you put together a brilliant movie, tremendous support and an overwhelming response from the public?

A brilliant start to 2007!

Our fund-raising premiere of the highly-acclaimed Indonesian movie *Berbagi Suami* (Love for Share) on January 4 raised a much needed RM182,000 for our research project. Both the movie and our research share a common theme – polygamy – and in addition to the funds raised, the numerous media appearances of the actors and SIS members brought a significant amount of attention to the issue of polygamy.

We also held a public forum "Know Your Rights – Managing Finances in your Marriage" in conjunction with the fundraiser. Our panel speakers, who included the Mufti of Terengganu and the director of *Berbagi Suami*, Nia Dinata, attracted 200 women from different backgrounds who left the forum energised and eager to support SIS in a variety of ways.

We would like to extend our most sincere thanks to all those who made these two events possible – our sponsors, donors, supporters who gave their money, time and effort, and most of all to our staff and members who put their energy and passion into making 2007 start with a bang.

"Whatever their beliefs, I think actors should make it a point to say 'no' to films that promote communal disharmony. Over the last few years I was offered films made in India that were very anti-Pakistan, but I didn't do them because the bad guy was always Pakistani."

Shah Rukh Khan, Indian actor