Kelantan's newly enforced Syariah Laws

WHAT CHANGED & HOW DOES IT AFFECT YOU?
01/11/2021

THE KELANTAN STATE LEGISLATIVE ASSEMBLY PASSED THE KELANTAN SYARIAH CRIMINAL CODE (I) ENACTMENT 2019


The enactment challenges fundamental liberties guaranteed by the Federal Constitution & international human rights law.

'Analysis of the Kelantan Syariah Criminal Offences Enactment' Report

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NEW SECTIONS ADDED, MAKING UP 68 SECTIONS IN TOTAL

They made the punishments more severe and expanded the power of the Syariah Court to replace/add 'alternative' punishments such as community service and/or rehabilitation (e.g. Islamic counselling).

At least 19 sections in the Enactment allows caning as a form of punishment that can be meted out, including against children* and women.

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*Only children who have not reached puberty are exempted from the enactment
Women
Children & youth
LGBTIQ+ people
Human rights defenders & groups
People who use drugs
Businesses & service providers
Healthcare providers

Even though it only applies to Muslim persons, it impacts all persons in Kelantan. It will make existing vulnerable groups especially, people who use drugs & LGBTIQ+ persons, even more vulnerable to state prosecution.

*The enactment reinforces a narrow brand of Islam on its citizens.*

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THE ENACTMENT WIDENS THE SCOPE OF CRIMINALISATION

S14. Liwat / Sodomy*
S15. Musahaqah**
S16. Sexual intercourse w/ corpse
S17. Sexual intercourse w/ non-human
S35. Intoxicating drinks
S36. Anything intoxicating
S46. Zina / Adultery***
S47. Act of incest

New sections criminalises attempt of consensual sexual relations between persons of all genders & consumption of substances. This violates principles of equality, non-discrimination, and privacy under international human rights law.

*Anal sex between man & person of any gender
**Sexual acts between women
***Sexual intercourse between a man & woman outside a valid marriage

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THE ENACTMENT ALLOWS FOR UNREASONABLE STATE REGULATION & INTERVENTION OF A PERSON’S LIFE IN BOTH PHYSICAL & ONLINE SPACES.

31 new areas of criminality, most fall outside of state jurisdiction & infringes on rights* guaranteed under the Federal Constitution

EXAMPLES
S23: Exposing aurat in public places
S19: Change of gender
S36: Anything intoxicating
S35: Intoxicating drinks
S33: Disobedience to parents
S40: Executing transactions contrary to hukum syarik
S41: Executing transactions via usury etc.

*Self expression & speech, bodily autonomy, consensual relationships between adults, 'indecent' act & speech, severing ties with family members
SOME SECTIONS ARE BROAD & VAGUE, CREATING BLANKET BANS & RESTRICTIONS OF FREEDOMS.

S4. Sorcery
S7. Distorting teachings & precepts of Islam
S9. Insulting or deriding laws
S12. Encouraging mungkar*
S13. Selling or giving away child to non-Muslim or 'morally reprehensible Muslim'
S19/20. Male person posing as female & female person posing as male respectively
S21. Indecent act or speech
S24. Causing disruption to other people's cohabitation.
S26. Instigating husband or wife to divorce or to neglect obligations
S48. Muncikari**

*Bad, condemned, despised and forbidden acts under hukum syarak
** Anyone who acts as intermediary between woman and man and persons of the same gender for any purpose violating offences relating to protection of property.
THE ENACTMENT HAS SHORT TERM POLITICAL GAIN, BUT WIDENS LONG TERM ADVERSE SOCIO-ECONOMIC INEQUALITIES

1. Counterproductive to our goals & commitments (e.g. Sustainable Development Goals (SDG), zero HIV by 2030)

2. Raise concerns over misuse of religion by the state & further increases Malaysia's negative attention for human rights violations.

3. Increases the state's economic burden to manage the implementation & enforcement of the Enactment, as well as the managing the social & human impact and costs of the human rights violations.

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Guided by the Federal Constitution and international human rights law, both the state and federal governments should:

**Review**
Review the 2019 Enactment.

**Pause**
Pause the enforcement until concerns surrounding its legality are meaningfully addressed and resolved.

**Engage**
All relevant stakeholders must be meaningfully engaged and consulted without prejudice in this process to ensure protection of human rights for all.

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