

Q&A on the Proposed Amendments to the Syariah Court (Criminal Jurisdiction) Act 1965 (Act 355)

PAS President Dato' Seri Abdul Hadi Awang caused a controversy when he tabled a Private Member's Bill to amend the Syariah Court (Criminal Jurisdiction) Act 1965 (Act 355) in Parliament. Many fear that once passed, this Bill will open the floodgates for Hudud implementation nationwide. MCA is strongly against the Bill and pledges to defend the spirit of the Federal Constitution.

MCA's firm stand on this issue has attracted mixed reactions including deliberate distortions by certain people. There are racial and religious remarks accusing MCA of being "anti-Islam" in opposing the proposed amendments to Act 355; On the other hand, MCA's political opponents accuse MCA of not standing firm on its position against the implementation of Hudud in the country.

MCA has discussed the related issues with lawyers from various Chinese guilds and associations and have jointly taken a common stand against the Bill as reflected in the Q&A below (the list of participating guilds and associations enclosed)

What is Act 355?

What is Hadi's Bill?

What are Hudud offences?

What is the stand of MCA?

We hope this Q&A will provide answers at a glance.

(1) Q: Is MCA anti-Islam?

MCA is one of the founding political partners of our nation's Independence and participated in drafting of the Federal Constitution. Article 3 (1) of the Federal Constitution also states that Islam is the religion of the Federation. It is therefore baseless to allege that MCA is anti-Islam.

(2) Q: Is MCA against Syariah law?

No. Syariah law has long been established in Malaysia like the law on Islamic banking, Takaful, Ar-Rahnu, etc. These are the laws on the commercial sector's operations based on Syariah principles and MCA is not against them either.

(3) Q: Then, what exactly is MCA opposing?

MCA's stand is that Hudud is against the Federal Constitution and its implementation is not suitable in a multi-racial and multi-religious country like Malaysia. Hence, MCA is opposing the implementation of Hudud in the country.

(4) Q: What amounts to Hudud offences?

We can get the answers from the Kelantan Syariah Criminal Code Enactment (II) (1993) (Amended 2015) passed by the Kelantan State Legislative Assembly. There are six specific Hudud offences and their respective penalties are as follows:-

Theft	Amputation of limbs (subject to certain provisions)
Robbery	Amputation of limbs (subject to certain provisions)
False accusation of adultery	Whipping of 80 strokes
Adultery	Death by stoning or whipping of 100 strokes (depending on circumstances)
Liquor Consumption	Whipping of 40 - 80 strokes
Apostasy	Imprisonment for an indefinite period until the offender is deemed to have repented

(5) Q: Why do they insist on Hudud?

PAS wants to turn Malaysia into an Islamic theocratic state and that is the reason why PAS is trying hard to bring in Hudud implementation in this country.

(6) Q: What is Act 355?

The full title of Act 355 is “Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355)”. It gives power to the Syariah Courts to impose punishments for Syariah offences.

(7) Q: What is Hadi’s Bill?

This is the Bill proposed in Parliament by YB Dato' Seri Hadi Awang to amend the existing provisions of Act 355. The contents of this Bill are the source of the entire controversy.

(8) Q: What are the features of Act 355?

Under the existing provisions of Act 355, the jurisdiction of the Syariah Court to impose punishments on Muslims is limited to a maximum of 3 years' imprisonment, 6 strokes of whipping or RM5,000 fine, or a combination thereof. In short, the "3-6-5 Safeguards".

(9) Q: Is MCA against Act 355?

No. MCA is not against Act 355 itself which was enacted since 1965. As explained earlier, MCA is against Hadi's Bill which was tabled with the view to amend Act 355.

(10) Q: What then is the main objective of Hadi's Bill?

His main objective is to remove the "3-6-5 Safeguards" and increase the maximum punishment, i.e. from 3 years to 30 years imprisonment; whipping from 6 strokes to 100 strokes and fine from RM5,000.00 to RM100,000.00 in order to comply with Hudud implementation mentioned earlier. Once the Bill is passed, the Hudud offences which are most likely to be implemented are: false accusation of adultery (whipping of 80 strokes), adultery (whipping of 100 strokes), liquor consumption (whipping of 40 - 80 strokes) and apostasy (30 years imprisonment).

(11) Q: Any problems with Hadi's Bill?

Yes. The implementation of Hudud is a precursor to PAS' ultimate objective of turning Malaysia into an Islamic theocratic state. Once the Bill is passed, the "3-6-5 Safeguards" will be removed. The maximum criminal punishment that could be imposed by Syariah Courts will then increase from 3 years to 30 years imprisonment; whipping of 6 strokes to 100 strokes and a fine from RM5,000 to RM 100,000. Once this power is increased, it will enable the States of Kelantan and Terengganu to implement Hudud-related punishments and other States may follow which clearly violates the spirit and intent of the Federal Constitution.

(12) Q: But PM said, “this Bill has nothing to do with Hudud”

MCA and the Chinese guilds and associations fear that once the Bill is passed, Hadi Awang will implement Hudud-related punishments and gradually make our country more Islamist than ever.

(13) Q: On 1 December 2016, PM Dato’ Sri Najib bin Tun Abdul Razak said that when Parliament resumes in March 2017, the Government will take over Hadi’s Bill. What is MCA’s stand on this?

MCA President Dato’ Sri Liow Tiong Lai has made it clear: Even assuming that the Government were to take over Hadi’s Bill, MCA will still insist that the Bill must not contravene the Federal Constitution. Otherwise, MCA will oppose it at all levels.

Post script : The BN Supreme Council meeting on 30 March 2017 has decided that the Government will not table Hadi’s Bill.

(14) Q: How does Hadi’s Bill contravene the Federal Constitution?

The Bill contravenes the following provisions of the Federal Constitution:-

Article 8 - all persons are equal before the law and are entitled to equal protection of the law. There shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in administration of any law etc.

However, with the introduction of Hudud-related punishments, it will make the discrepancy and unequal treatment between Muslims and non-Muslims even more obvious. For example: on liquor consumption, non-Muslims will not be punished but Muslims will face punishment of whipping. For the same behaviour but which produces two different consequences - surely this is against the principle of equal treatment.

Furthermore, with regard to the punishment of whipping, if Hadi's Bill is passed, non-Muslim offenders will be whipped under the normal criminal procedures whereas Muslims are subject to whipping according to Syariah procedures. Imposition of different procedures in terms of whipping based on religion is again, the violation of the principle of equal treatment under the Federal Constitution.

Hadi says he only wants to implement the proposed amendments in Kelantan. However, again this will lead to discrepancy in terms of criminal punishments among the States in Malaysia. The reason is simple. Kelantan will adopt the increased punishments like 30

years imprisonment but other States may or may not remain with the “3-6-5 Safeguards.” Even among the Muslims, there is unequal treatment and therefore a violation of Article 8 of the Federal Constitution.

Article 11 - on freedom of religion stating that every person has the right to profess and practise his religion. The degree of commitment to one’s religion is the choice of that individual. Also, an individual should not be subject to religion or laws outside his religious faith. As such, the offence of apostasy is technically a violation of Article 11 of the Federal Constitution.

If Hadi’s Bill is passed, the punishment of whipping according to Syariah procedures will be carried out for the first time ever in the country unlike the current whipping conducted in prison, it will be carried out in public. This will entail two different types of whipping procedures; one for Muslims and the other for non-Muslims in Malaysia. Furthermore, Muslim female offenders will also face public whipping (our Criminal Procedure Code prohibits whipping of female offenders) which is again, a violation of the secular nature of the Federal Constitution.

Article 38(4) - No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers. Islamic matters are clearly under the purview and privileges of the Conference of Rulers.

(15) Q: How will the proposed amendments to Act 355 pave the way for implementation of Hudud?

From past parliamentary records in particular during debates in respect of Act 355 in 1965 and 1984, the government had stated that the status of the Syariah Court is equivalent to that of a Magistrates Court. According to Hadi's Bill, the maximum punishment given shall respectively be increased to 30 years imprisonment, RM100,000 fine and whipping of 100 strokes, thus well exceeding the power of the Magistrates Court. This proposal, once passed, will obviously provide the space for implementation of Hudud. Furthermore, the maximum punishment of 30 years imprisonment, RM100,000 fine and whipping of 100 strokes would also exceed the powers currently given to the Civil Courts, thus another violation of the Federal Constitution.

(16) Q: What are the consequences if Hadi’s Bill is passed?

1. The secular nature of the Federal Constitution will be greatly affected. Once Hudud is implemented in Kelantan, it will open the floodgates for increasing Islamisation in this

country and we are afraid that Malaysia ultimately will become an Islamic theocratic State.

2. Society will be clearly be divided into two: Muslims on one hand and non-Muslims on the other. Similarly, justice will also be administered differently based upon the different faith of individuals. This is a clear contravention of Article 8 of the Federal Constitution which is secular in nature.

3. The conflict of powers of law enforcement units like the police and Islamic religious departments will become more serious and cause confusion. At the moment, the case of Indira Gandhi is already a bad precedent, not to mention the future, if the Bill is passed as law. As we are all aware in the case of Indira Gandhi, the police was confronted with two conflicting court orders, one obtained from the Syariah Court and the other one granted by the Civil Court. This jurisdictional conflict resulted in the mother not being able to see her infant daughter for years. Of course, this confusion originates from the insertion of Article 121(1A) of the Federal Constitution.

4. Creating a chaotic situation of "one country, two legal systems." For example:

A. If a non-Muslim male and a married Muslim female were caught in close proximity, the non-Muslim male may be prosecuted in the civil court for enticing a married woman that carries the maximum punishment of 2 years imprisonment. However, the Muslim female in theory can be prosecuted in the Syariah Court for an offence that carries up to 30 years imprisonment and/or whipping of 100 strokes. Obviously, different treatment imposed on individuals based on their different religious faith is a clear breach of Article 8 of the Federal Constitution.

B. Under the current Penal Code and except in certain prohibited categories, sexual intercourse between unmarried adult couples is not an offence. However, if the Bill is passed, the non-Muslim adult will not be prosecuted for any offence but his or her Muslim partner will be prosecuted for a Hudud offence that carries whipping of 100 strokes in the Syariah Court. Again, this is a violation of the principle of equal treatment and it contravenes Article 8 of the Federal Constitution. This is made worse with the increase of punishments to 30 years, 100 strokes and RM100,000 fine. Of course, we must emphasise that we do not agree with pre-marital sex.

5. Once this Bill is passed, it will affect the national image of Malaysia and erode the confidence of foreign investors.

(17) Q: Will the proposed amendments to Act 355 affect non-Muslims?

It will. The following examples will illustrate this point:-

1. Sale of liquor

Under the Penal Code, it is an offence to abet others to commit a crime. So, technically non-Muslims who sell liquor to Muslims could be charged under this provision.

2. Apostasy

In cases where an individual or his family members insist that the individual is a non-Muslim, he nevertheless will have to prove his non-Muslim status in a Syariah Court. This is unfair to him because he has to be subjected to the Syariah Court procedure in the process of proving otherwise. Of course, non-Muslims will be clearly affected in this situation.

(18) Q: Hudud is only implemented on Muslims, why should MCA want to object?

MCA is against it because it will affect non-Muslims. MCA respects all religions and the right of Muslims to practise their religious faith, but all practices must be done in accordance with the spirit of the Federal Constitution because the Federal Constitution belongs to all Malaysians. It is the right of every citizen to speak out on issues where there is a violation of the Federal Constitution.

(19) Q: If Hadi's Bill becomes law, will it overlap with the Penal Code?

Yes, it will. At the moment, we can see the overlapping effect of these two Courts. There are already cases brought to the Syariah Courts whereas by right, they should have been brought to the Civil Courts like offences involving homosexuality and incest etc. Unfortunately, the Civil Court is merely a silent observer on this phenomenon. If the Bill is passed, the situation will only get worse.

(20) Q: Any examples of Islamisation?

1. Rape or adultery

For instance, a non-Muslim female is raped by a Muslim male but the latter denies it and insists that it is adultery instead. Whether intended by the Muslim male, the Syariah Court may seize jurisdiction and charge the Muslim male for an offence of adultery under

its jurisdiction. Further, for sexual offences involving a female victim in Syariah Courts, she will have to produce 4 Muslim male witnesses who are of good character to prove her case. More often than not, the offender in sexual offences will be let off due to lack of evidence.

2. Deprivation of legal rights of women, children and non-Muslims

According to the State Hudud Enactments of Kelantan and Terengganu, the evidence of non-Muslims and females will not be accepted in the trial of sexual offences. Furthermore, a victim of sexual offences is required to provide 4 Muslim males who are of good character to be her witnesses.

3. Local governments are starting to restrict the location and time of the sale of alcohol at 7-Eleven outlets through by-laws.

4. The State Islamic Affairs Departments undertake the role of moral police and go around enforcing moral offences like intimacy in public places or prohibiting riders of motorcycles who are not relatives to each other to share a motorcycle in Terengganu.

5. Fast food chains like McDonald's started to prohibit non-halal cake to be brought into their outlets.

6. Compliance of female dress code with Islamic values at certain government departments.

7. Hudud law in Brunei:-

Brunei with a Muslim majority population has implemented Hudud law since April 2014. A former British protectorate, the Sultan is the head of State. After its independence, Brunei adopted a dual legal system, one based on English common law for the civil courts and the other on Syariah law mostly on personal and family matters.

With a population of 400,000, 15% are Chinese. Muslims account for 70% of the total population; 12% are Buddhists and 10% are Christians. After the implementation of Hudud law in Brunei, non-Muslims are obviously affected.

- Propagation of other religions is prohibited.
- It is an offence to insult the Prophet Mohamad, the Quran and the implementation of Hudud law.

- Publication or making insulting remarks or actions against the Sultan, the government's religious institutions, or officials are prohibited.
- Prohibited: Any comment or rumours regarding Islam and Hudud law through the Internet, including micro-blog, WeChat, Whatsapp and other forms of social media.
- Avoid idolising celebrities, people or animal statues.
- Restriction of the use of several phrases in Islamic wordings including greetings.
- Alcohol consumption whether in public, at home or abroad is prohibited.
- Prohibition on the supply, soliciting or sale of alcohol to Muslims.
- Prohibition of eating, drinking, smoking, sale transactions in public places during the month of Ramadan.
- All Muslims to pray in mosques every Friday from 12pm to 2pm while all restaurants and shops will have to be temporarily shut down.
- Employers should not limit the praying rights of Muslim employees.
- Prohibited: Pre-marital or extra marital affairs with Muslim females or enticing Muslim women to elope.
- Avoid being alone or living with unmarried men or women.
- Keep a distance in public and avoid intimacy such as hugging and kissing.
- Avoid wearing clothes of the opposite sex or imitating the opposite sex.
- Avoid revealing clothes in public. (Women are advised to wear long sleeve garments).
- Theft, robbery, rape, adultery, murder and other offences will be tried according to Syariah criminal codes that entails amputation of limbs (stoning to death for adultery offenders, limb amputation for theft offenders and whipping for abortion and liquor consumption)

The following are the Chinese guilds and associations who participated in the discussion with MCA:

The Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM)
 The Federation of Chinese Associations Malaysia (Huazong)
 The Federation of Hokkien Associations Malaysia
 The Federal Teochew Association of Malaysia
 Young Buddhist Association of Malaysia
 Malaysia-China Chamber of Commerce
 United Commerce of Women Association
 Federation of Taoist Associations Malaysia

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