

# Putting things in Perspective

**MP SPEAKS** Our journey towards a fairer, better governed and harmonious society hit another roadblock on Thursday, May 15, 2016 with the reading of Marang MP Abdul Hadi Awang's Private Member's Bill in Parliament. I believe it is a problem that we can navigate without worsening the divisions in our society, but only if we take the effort to understand the issue properly and address it smartly and dispassionately.

I am by no means an expert on syariah law, but have had to read up on it so as to engage with Muslim colleagues in Parliament. I would like to share my understanding.

## **A. Hadi's Private Member's Bill**

The Malaysian Parliament allows ordinary members of parliament to introduce bills to the Parliament. The member desiring to do so has to first submit a notice to the speaker stating that he/she wishes to move a motion introducing this bill [1]. Most often the speaker spikes the initiative at this stage by not allowing it on to the "order paper" of the House. In my past eight years in Parliament I have not seen any Private Member's Bill listed in the order paper. I have myself submitted five and none have survived this first stage.

Once the motion pertaining to the bill is put on the agenda (order paper) the next hurdle is that government matters take precedence over the tabling of the Private Member's Bill. So only when all government matter for the day is finished [2] can the Private Member's Bill be formally tabled by reading the motion pertaining to it (as Hadi did on Thursday). In other words, the government has to cooperate on this. For if the government keeps adding other bills to the agenda the Private Member's Bill will never make it to the floor.

Once the motion presenting the Private Member's Bill is read in Parliament, a vote has to be taken, and this without any debate on the subject matter of the bill. If a simple majority of the House votes for the motion introducing the bill, the Private Member's Bill is deemed to have been read for the first reading, and it will be referred to the minister in charge of that issue to look into it and come up with a report [3]. Only when the minister in charge comes back with a report can the Private Member's Bill go for the "second reading" which involves debate of its provisions.

What happened on Thursday May 25 was that Azalina Othman, the minister in charge of parliamentary affairs, stood down government matters and proposed that Hadi's motion pertaining to the Private Member's Bill which had suddenly appeared as no. 15 of the order paper that morning, vaulted over the other 14 motions listed before it, to be read by Hadi. After reading it, Hadi requested that the vote on it be deferred to another session of Parliament.

## **B. What does Hadi's bill actually say?**

This Private member's bill is brief and has only 2 points which are reproduced in full below:

1. The Syariah Court (Criminal Jurisdiction) Act 1965 is amended in section 2 by substituting section 2 with the following - "*The Syariah Courts shall have jurisdiction over persons professing the religion of Islam in respect of any offences relating to any matter enumerated in item 1 of the state list of the ninth schedule of the federal constitution*".

2. A new subsection is inserted:

"Section 2A. *In exercising the criminal jurisdiction under section 2, the Syariah Court may pass any sentence allowed by Islamic Law in respect of the offences mentioned in section 2 other than the sentence of death*" [4].

### **C. What does this mean?**

Section 2 means that the syariah punishment of amputating a hand for theft is not permissible under this bill because punishment of criminal acts is on the Federal List, and several categories of theft are already listed in the Penal Code. So because theft is not under the state list, it cannot be tried and punished in the syariah court. This also means that robbery, also one of the 5 hudud offences, cannot be tried in the syariah court - for the same reason.

So only actions termed as offences under Islamic Law but which are not listed in the Penal Code can be tried in the syariah court. Of the 5 hudud offences, 3 are not listed in the Penal Code. They are - zina (sex involving a couple who aren't married to each other), alcohol consumption (syurb) and apostasy (irtidad).

Section 2A enhances the powers of the Syariah Court to mete punishment. Under the current system there is a 3-5-6 maximum. The maximum length of a jail sentence that the syariah court can order is 3 years; the maximum fine is RM5,000; and the maximum number of lashes is 6. However with Hadi's bill, these limits are removed, and the 40 to 80 lashes for alcohol consumption as specified in the Kelantan Hudud Enactment [5] can be prescribed!

However the punishment for zina for persons who are married (to others) or have been married is, according to the Kelantan Syariah Criminal Code [6], death by stoning (rejam). However this is not within the power of the Syariah Court to order as the death sentence is not permitted under Section 2A. Similarly, the death sentence for apostasy [7] cannot be ordered by the syariah court.

### **D. What would be a principled response to this Private Member's Bill?**

How do we deal with this in a principled manner? Let me start by asking 2 sets of questions

1. Questions for Non-Muslims:

- Do non-Muslims have a right to object to the way in which Muslims choose to practice their religion?
- Can we tell Muslims how to practice their religion?
- Do we not believe that each religious community has the right to practice their religion freely?

- Don't we recognise that the entire Islamic world is struggling to define what it means to be true to their faith as Muslims in the 21st Century? Do we expect Malaysian Muslims to be unaffected by the ongoing debate/battle?

2. Questions for Muslims:

- Why is it that non-Muslims are so apprehensive of any extension of the powers of the syariah court?

- Is their apprehension without any basis?

- Aren't the following valid reasons for the apprehension of non-Muslims?

- The 'Kalimah Allah' issue which in fact restricts the way that other religions practice their religion in the privacy of their places of worship.
- Unilateral conversions e.g. the case of Indira Gandhi.
- The handling by the syariah court of divorce and custodial matters of a couple married in the civil system, after the conversion of one of the spouses into Islam.
- The difficulties faced by people registered as Muslims but brought up as Hindus or Buddhists since childhood. They have great difficulty getting permission from the syariah system to drop "Islam" from their personal documents.
- Imposition of over-strict dress codes for visitors to government institutions.
  - Would you not agree that the inability (or reluctance) of the syariah authorities, the government and the Islamic party to come to a fair resolution of these issues in a timely manner is another factor that adds to the apprehension?

I would argue that a principled position can only develop if we take the effort to put ourselves in the shoes of the other party and try to understand where they are coming from.

a. Muslims should make serious efforts to push authorities to re-define certain laws so that the (probably unintended) adverse impact on non-Muslims is handled. To do this Muslims should be sensitive to the issues mentioned above. They have to engage sympathetically with those individuals affected most adversely. And they should welcome input from non-Muslim NGOs and individuals dealing with these issues.

b. Non-Muslims should accept the principle that each community has the right to practice their religion in the way they see fit. It would not cause any harm for non-Muslims to learn a bit more about Islam. That would help them understand where their Muslim friends are coming from.

c. We should not be afraid to discuss religious issues, but should take extra care to be respectful to the beliefs of others. This implies a certain acceptance of diversity.

d. Muslims must accept the fact non-Muslims need clarifications regarding the Syariah Court Criminal Jurisdiction Act as well as the Kelantan Syariah Criminal Code 2015. They need to be reassured that these new changes will not affect them adversely in any way, and if there are any unintended unforeseen negative consequences, these will be dealt with expeditiously.

e. We should not allow our politicians to sensationalise these issues in an attempt to show that they are the true defenders of their faith. MCA vs DAP and Umno vs PAS!

### **E. What about Muslims who have objections to DS Hadi's definition of Islam?**

In the course of my discussion with Muslims, I have come across several whose views of Islam differ quite markedly from that of Hadi's. Let me state a few of their arguments here.

1. There are some Muslims who argue that the hudud punishments represent the maximum punishment permissible, and not the mandatory. They argue that in the "Jahiliah" period, a poor person who stole from a rich family might have suffered even greater punishment, and that the cutting of a hand after all other mitigating factors had been looked for, represents a much more humane punishment given that historical circumstance.

2. There are some who question the death sentence for apostasy. They argue that in those times, when there was armed conflict between the new Islamic society and the old tribal society, those who left them often ended up helping the enemy attack them. So the death sentence was for treason and not for the loss in faith. Some Muslims feel that the definition of the offence of irtidad in Section 23 (1) and (2) of the Kelantan Syariah Criminal Code is dangerously imprecise [8].

3. Then there are some who point out that the practice of "rejam" for adultery was the practice in that region for the 500 years or more before the time of the Prophet. It wasn't something new brought by the Prophet. In the fact the extremely high standards of evidence introduced by the Prophet makes it nearly impossible to prove zina. These friends argue that in effect the Prophet was trying to stop the practice of rejam but without saying that openly.

Questions:

- If there are Muslims with a view that is at variance with that of PAS', do these individuals have a right to voice their views?

- Should they voice their views?

- How should differences of opinion be handled by the Muslim community? Persuasion and by example, or in an authoritarian manner?

These are questions that our Muslim friends have to answer for themselves.

#### **F. Is there an 'udang di sebalik batu' here?**

Consider:

- The speaker agreed to include Hadi's motion as item 15 of the order paper on Thursday.
- The minister in charge of parliamentary affairs took the unprecedented step of i) standing down government matters, and ii) promoting item 15 on the agenda to first place.

Neither of them would have acted of their own volition. I have no proof of course, but it seems to me that something as big as this has to come from their number one!

But why?

- Why bolster PAS just prior to by-elections that the PM has to win big to put an end to the Mahathir insurgency?

Could it be that:

- Najib is already quite sure of winning handsomely as he has reliable information that PAS and Amanah are going to three-corner both seats.
- Najib is already setting his sights on winning big in GE14. The purpose of this exercise is to drive a wedge between the Muslims and the non-Muslims in Pakatan Harapan. This, I believe, is the "udang" (ulterior motive).
- Timing it just before the by-elections is to ensure maximum embarrassment. DAP might feel that it has to show its supporters that the DAP is the better "defender" of the "secular constitution" compared to MCA. Amanah cannot afford to say that they are against enhancement of the powers of the syariah courts. Of course, loose language by some leaders or even members of these two parties will aggravate the situation, and with a bit of luck for the BN, result in a public spat between the Harapan parties.

Insertion of Hadi's motion in the order paper in April 2015 was one of the causes of the breakup of Pakatan Rakyat. Someone is obviously hoping that getting Hadi to read it would do the same to the Harapan.

One way of handling this new situation is for the Harapan to give these by-elections a miss. Let PAS take on Umno. This is so Harapan gets some time to handle this new complication away from the spotlight of an election campaign with the press and members of the public asking difficult questions.

As for handling of the issue, I believe the only way is to take a principled approach as I have outlined above and take that first to our own support base to see if we can get a buy-in from them. It might not be

so easy because both coalitions - the BN and opposition - have been grandstanding on this issue - taking diametrically opposite stands depending on the ethnicity of the audience. But I think it can be done, and civil society groups also have a part to play. It cannot be swept under the carpet any more. Our PM has put it on the national agenda and we have to deal with it. We have to trust in the maturity of our people. After all they were smart enough to vote for us in 2008 and 2013.

Race and religion has been used time and again to divide the people so that the elite can stay in power. The British did it to put down the radical nationalists. Our own leaders have kept doing the same. How much longer are we going to fall for the same ploy? That answer is in our hands.

*Notes.*

*1. Section 49 (2) standing orders of the dewan rakyat.*

*2. Section 15 (1) standing orders of the dewan rakyat.*

*3. Section 49 (4) standing orders of the dewan rakyat.*

*4. The words "other than the sentence of death" were not there in the bill that was submitted by Hadi in April 2015.*

*5. Clause 22 of the Kelantan Syariah Criminal Code 2015.*

*6. Clause 13(1) of the Kelantan Syariah Criminal Code 2015*

*7. Clause 23 (4) of the Kelantan Syariah Criminal Code 2015*

*8. Section 23 of the Kelantan Syariah Criminal Code 2015*

*(1) Whoever voluntarily and deliberately does an act or utters a word that affects or is against the faith in Islamic religion is committing irtidad.*

*(2) Subsection (1) refers to any word or act concerning the fundamental aspects which are deemed to be known to all Muslims as part of his general knowledge for being Muslim, such as matters pertaining to Rukun Islam, Rukun Imam and matters of halal and haram.*

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