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No. 103/2014 dated 30 May 2014

Hudud and Inter-Religious Relations

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Synopsis

The implementation of hudud laws has ramifications on inter-religious relations due to misperceptions that may arise about Islam. It is also potentially divisive. Hudud punishments are only practicable if onerous preconditions are fulfilled to ensure that tolerance, justice and clemency which are central to Islamic laws will not be sacrificed.

Commentary

THERE IS a raging debate on the implementation of hudud or the Islamic criminal code in the region. One issue that has received much attention is the impact on non-Muslims. Will they be subjected to hudud laws? Even if they are not, will such laws apply to a non-Muslim who is an accomplice in a crime by a Muslim?

Social media is rife with emotionally charged opinions. The pressure group, *Ikatan Muslimin Malaysia* (ISMA or Muslim Fellowship of Malaysia), has questioned the citizenship status of non-Muslims who are unhappy with hudud laws. Senior clerics, like the former Mufti of Perlis, Dr Asri Zainal Abidin, have taken the position that non-Muslims should be included. Social activists lament the injustice if a non-Muslim receives a lighter sentence under civil laws compared with a heavier one for the Muslim under hudud laws for the same offence.

Hard to apply hudud

Non-Muslims are generally anxious. The issue of hudud has profound impact on inter-religious relations. As a religiously diverse society, Singapore's inter-faith harmony can be affected by the spill-over effects if the hudud issue gives rise to gross misperceptions about Islam and becomes a wedge in relations between Muslims and non-Muslims in the affected societies.

One critical point that needs to be appreciated is that it is not easy to apply hudud laws. There are onerous preconditions which are very difficult to fulfil. This is to ensure that the implementation of such laws does not violate the principles of justice and clemency, which are central to the spirit of Islamic laws. Otherwise it can give rise to a merciless and harsh dispensation. It is therefore prudent for the purpose of good inter-religious relations for one to discern between the potentially careless implementation of hudud and the tolerant as well as merciful nature of Islamic laws.

During times when emotions run high, it is helpful to listen to voices of reason. Many scholars on Islam have discussed hudud in contemporary society, advocated re-thinking on its implementation and suggested alternative ways at maintaining public order and security that conform to the spirit of Islam. One such scholar is

Muhammad Sa'id Al-Ashmawy, the former chief judge of the High Court of Appeals in Egypt. He was deeply involved in the debate on the alignment of civil laws with Islamic laws in Egypt and his thoughts were published in a book "Political Islam" in 1987.

Ashmawy clarified in his book that there are strictly four penalties under hudud that are specifically mentioned in the Quran. They are for theft, calumnious accusation of fornication, adultery and brigandage. Contrary to popular belief, the penalties for apostasy and drinking alcohol, according to Ashmawy, are not found in the Quran.

More preventive than punitive

Notwithstanding the mention of hudud in the Holy Book, many stringent conditions must be met before punishment can be meted out. For example, in the case of theft where the punishment is amputation of the hand, the court will have to ascertain that the object of theft must be marked by the owner; it must be in a well-guarded place; it must have money value; the thief must not be in great need of the object and that he must not have any "quasi-ownership" of the object. The above conditions mean that pilfering, plundering, pick-pocketing and theft of public goods cannot be classified as theft under hudud laws.

Another example is the hudud punishment for fornication. Before it is meted out, the court must hear the evidence of four reliable witnesses who have seen the crime with their own eyes and who can swear that "a thread could not have passed between the man and the woman"!

The above are just a sampling of the demanding conditions that are practically near-impossible to fulfil, thus rendering the application of hudud punishments virtually impracticable, or more preventive than punitive. The conditions are made onerous, as reflected in the Prophet's tradition to avoid hudud punishments in case of doubt as to the facts, witnesses, victims or the accused.

Finally, hudud punishment cannot be applied on a criminal who repents after the crime and before its execution. In short, Muslims are enjoined to show tolerance as well as clemency; every time they show mercy and avoid the application of hudud punishments, they are acting in the good spirit of Islam.

Right social conditions before hudud

How then will public order and security be ensured if hudud punishments are practically impossible to apply given the tough pre-conditions? Some scholars on Islam have argued that it is not against Islamic doctrine to rely on the system of punishments provided for under civil laws in lieu of hudud punishments. These civil laws are indeed conforming to the spirit of Islamic laws or *shariah* because they dispense justice and re-affirm values as well as principles that are also held dear in Islam.

Some examples are civil laws that punish those who harm the weak in society, damage the environment or are involved in acts of corruption. These are laws that Singapore is known for. It is noteworthy that religious scholars from conservative Islamic countries who visited Singapore remarked that its civil laws exude the spirit of the *shariah*, even though it is a non-Islamic state.

There is always a concern that legal judgements made in the name of religion may be abused by an unjust government for reasons of expediency or by a harsh judiciary on the basis of arbitrary arrests or false witnesses. This is why scholars like Ashmawy take the strong position that Muslims should only consider implementing hudud laws if their societies consist of pious as well as honourable people and leaders of high moral integrity who do not abuse power so that political, social and economic justice prevails.

It is therefore judicious for Muslims and their leaders to focus on building a just and moral society governed by trustworthy leaders rather than treading the path of implementing hudud laws without fulfilling the deliberately onerous preconditions - and violating the principle of justice found in the Quran.

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