

# Majlis Perundingan Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Tao

Malaysian Consultative Council of Buddhism  
Christianity, Hinduism, Sikhism and Taoism

---

123 ,Jalan Berhala, Brickfields, 50470 Kuala Lumpur. Tel: 03-2273 9304 Fax : 03- 2273 9307 Email : mccbchst@yahoo.com Website:<http://harmonymalaysia.wordpress.com>

---

## **MCCBCHST MEDIA STATEMENT 11.10.2011**

### **MCCBCHST: HUDUD IS IN CONFLICT WITH FEDERAL CONSTITUTION**

The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) believes that the Hudud debate on the matter should be carried out rationally and within the Constitutional Scheme of things. It cannot be carried out in disregard of the Federal Constitution.

It is not in dispute that Syariah Courts have jurisdiction only over matters as mentioned in **9<sup>th</sup> Schedule LIST II** and the **concurrent List (LIST II)**. It does not have jurisdiction in respect of offences **except in so far as conferred by Federal Law**. Matters under LIST II are mainly dealing with the Marriage, divorce, inheritance, adoption, guardianship, etc.. Further, Syariah Courts have only jurisdiction over persons professing the religion of Islam.

It must be noted that the State Legislative's authority to legislate under List II is **LIMITED** by the words **"except in regard to matters included in the Federal List"**. And included in the Federal List are civil and criminal law and procedure and offences like murder, rape, theft, robbery, unnatural sex or incest. Most of these are also prohibited by the Hudud, but since they are included in the Federal list, the Syariah Courts have no Jurisdiction over them.

If Syariah Courts were also to be given jurisdiction over these Criminal offences, then this would create a parallel system which is against the General structure of the Constitution.

On this issue, **Profesor Shad Saleem Faruqi** states: (STAR (Wednesday) – 5/10/11):

"Actually the Federal Constitution has provided clear guidelines about who may legislate for crimes, who may prosecute criminal offences, which courts may try offenders, who is the subject of the law and what penalties may be imposed. The Constitution is supreme and its imperative cannot be lightly disregarded..

The clear intention of the 1957 Constitution was to allocate almost all penal powers to the federation and to confer on the states only residual powers over Syariah offences like khalwat, zina, skipping of Friday prayers and failure to observe the compulsory fasts during Ramadan.....

In sum, attempts by some states to legislate hudud laws and to impose hudud penalties will bring forth embarrassing constitutional law issues pitting the constitution against religion..”

The **MALAYSIAN BAR CONSTITUTIONAL LAW** committee member Nizam Bashir Abdul Kariem Bashir (NST- (3/10/2011) stated:

"The Federal Constitution cannot simply be amended to allow for the implementation of hudud even if the amendment was proposed to be passed with a two-third's majority. This is because the constitution's basic founding structure was based on secularism and not theocracy”.

Former law minister **Datuk Seri Zaid Ibrahim** was of the view that (NST- 28/9/2011):

“It is impossible to have two sets of laws for Muslims in the country. People must understand that Hudud is a criminal Law and for it to be implemented, the Federal Constitution Need to be amended”.

A human rights lawyer **MALIK IMTIAZ** has asserted that Hudud law debate is a non-issue “..... the Federal Constitution does not allow two parallel criminal systems to exist.....” (STAR – 27/9/2011)

The **MCCBCHST** therefore calls upon all parties to respect our Federal Constitution. Imposition of Hudud would require an amendment to the Federal Constitution and would



affect Non-Muslim rights that are guaranteed in the Constitution. The legal fabric of the constitution should not be disturbed.

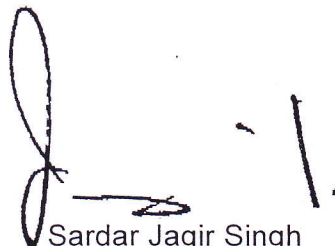
Any argument that if the majority of people in a State are in favour of Hudud, and therefore people must accept this change is fallacious. A constitution cannot be overthrown because of the popular opinion. The fundamental rights guaranteed in the constitution cannot be changed by the majority. A single citizen shall be entitled to challenge to uphold his rights.

Changing fundamental character of a constitution because of majority will is dangerous. Can the Buddhists in Thailand (who form 95% of the Population) say they want to be governed by the Buddhist principles and want the constitution amended. Again, can the Christians who form the majority in our neighbouring Philipines be allowed to say they want to be ruled according to their personal religious beliefs.

Thus, all religions must respect the sensitivities and rights of other religious communities and strive to live in peace and harmony. Any changes to be done must be done in accordance with and not in disregard of our constitution.



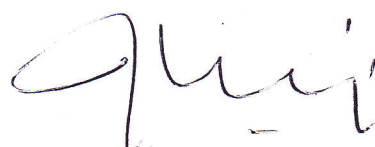
Daozhang Tan Hoe Chieow, AMS  
President  
MCCBCHST



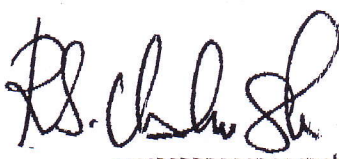
Sardar Jagir Singh  
Deputy President  
MCCBCHST



Venerable Sing Kan  
Vice President  
MCCBCHST



Reverend Dr. Thomas Philips  
Vice President  
MCCBCHST



Mr. RS. Mohan Shan, JMW, AMK, BKM, PJK  
Vice President  
MCCBCHST



Mr. Prematilakā KD Serisena  
Hon. Secretary General  
MCCBCHST