MCCBCHST "HUDUD" Law Would Undermine Federal Constitution

The Malaysian Consultative Council for Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) categorically rejects implementation of HUDUD law in Malaysia. This is because implementing HUDUD law would clearly undermine the 1957 Constitution which embodies the understanding between the major races represented by UMNO, MCA and MIC for Malaysia to be a secular State. Islamic law was confined to a very narrow area as stated in List II of the State List (9th Schedule of the Federal Constitution)

HUDUD Law will be discriminatory against Muslim women and against Non-Muslims. The burden of proof in many offences is on the victim especially in rape cases. A woman cannot be a witness. Non-Muslims also cannot be witnesses. In effect, it would mean that three-quarters of the population is disqualified as witnesses.

Our objections as above are explained and justified below and supported by authorities.

[A] **HUDUD Law is against the Federal Constitution**.

The Lord Reid Commission's Report which was the basis of the Federal Constitution, the Alliance Memorandum submitted to the Reid Commission and the White Paper issued by Britain in June 1957 which all went into the making of the Merdeka Constitution clearly show that Malaya was intended to be a secular State and not a theocracy. This is the historical social contract and democratic Constitutionalism, HUDUD Law was never intended or in Contemplation of any of the parties at the time of making the Constitution.

Thus, Malaysia as a Country is founded on Parliamentary democracy where the Federal Constitution reigns Supreme. **Article 4** declares the Constitution "is the Supreme Law of the Federation." Therefore, any attempt to introduce HUDUD Law would be unconstitutional as the HUDUD derives its ultimate authority from the Holy Quran which is only possible under a theocracy and HUDUD would change the basic structure of the Constitution. Therefore, any proposed change of Malaysia from Parliamentary democracy to Islamic theocracy would offend the basic structure of the Constitution and be unconstitutional.

Sabah & Sarawak

Following the report of the Cobbold Commission, Sabah , Sarawak and Singapore joined hands with Malaya to constitute Malaysia in 1963, and the significantly amended Federal Constitution granted them a number of iron-clad guarantees of their autonomy and special position. One such was that there would be no State religion for Sabah and Sarawak. The proposed introduction of Hudud now would impact Sabah and Sarawak gravely as it would change the basic structure of the Formation of Malaysia Agreement which was based on parliamentary democracy and secular laws.

Therefore, Hudud Law would too undermine the Formation of Malaysia Agreement.

(a) <u>Criminal Offences</u>

A reading of the 1957 Constitution shows a clear intention to allocate penal powers to the Federal Government and to confer on the States residual powers over minor Syariah offences. HUDUD offences such as theft, robbery, unlawful carnal intercourse, etc are in the Federal list and therefore States have no power to enact these laws.

A clear exposition of this is provided by **Prof. Shad Faruqi in his article published in the STAR on 5/10/2011,** and we quote:

"……. the Federal Constitution has provided clear guidance 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 dismissed.

Who may legislate crimes?

In Schedule 9 List I Paragraph 4, **<u>criminal law and procedure</u>**, the administration of Justice, official secrets, corrupt practices, creation of offences in respect of any of the matters included in the Federal List or dealt with by Federal Law are in the hands of Parliament.

Under Schedule 9, List II Para 1 the States have a power to create and punish Islamic offences, subject to a number of significant limitations.

First, State Legislative authority in respect of "creation and punishment of offences by persons professing the religion of Islam against precepts of that religion" is limited by the words "except in regard to matters included in the Federal List". Among matters included in the Federal List are Civil and Criminal Law and Procedure.

Second, State authority to legislate on Islamic crimes is further qualified by the words "or dealt with by Federal Law" in Schedule 9 List I paragraph 4 (h) and the Federal Penal Code.

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".

<u>BAR COUNCIL</u>

The BAR COUNCIL's (NEW SUNDAY TIMES dated 30/10/2011) clear stand is that the Law doesn't allow for implementation of HUDUD in States.

We quote from the said article:

"The Bar Council said that it will not be possible for amendments to be made to the Country's Civil Law to allow punishments on criminals to be meted out in the way provided by HUDUD.

With respect to the nature of such offences, these offences cannot include matters within the Legislative powers of the Federal Government.

Thus, there can be no replication of any of the offences within any Federal Law with a different degree of punishment only for Muslims.

Further these laws when enacted must themselves be consistent with fundamental liberties guaranteed to all citizens, including Muslims, under Part II of the Federal Constitution……..

Under Islamic legal system, crimes punishable under HUDUD are essentially crimes against the laws of GOD compared to tazir, which are crimes against society.

Taking this principle, if HUDUD was brought into the criminal justice system, it would result in the importation of Islamic Penal Laws into laws, which ought to be secular."

(b) The Federal and State relationship to make laws is clearly defined in Part VI of the Federal Constitution. It clearly shows that a State can only make laws with matters enumerated in the State list or the concurrent list. The State has no right to make laws of matters included in the Federal List and the HUDUD offences of theft, robbery, unlawful carnal intercourse, etc are included in the Federal List, thus putting these offences beyond the power of a State.

Article 74 (1) provides:-

"without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

Article 74 (2) provides:

"without prejudice to any power to make laws conferred on it by any other Article the Legislative of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the concurrent List.

Thus, it is abundantly clear from the above Constitutional provisions of Article 74 (1) and 74 (2) that a State Legislature cannot make laws over matters included in the Federal List.

© Kelantan Syariah Criminal Enactment (HUDUD) 1993 and Terengganu Syariah Criminal offences (HUDUD and qisas) 2002 are VOID.

In view of the Article 74 (1) and 74 (2) quoted above the Kelantan and State Enactments are void as being inconsistent with the said Constitutional provisions of Art. 74 (1) & (2) and are void to the extent of that inconsistency.

Since offences such as theft, robbery, carnal intercourse, etc are under the Federal List only, the States have no jurisdiction to pass such enactments.

Article 75 puts matters to rest beyond dispute when it provides:

"If any State law is inconsistent with a Federal Law, the Federal Law shall prevail and the State Law shall, to the extent of the inconsistency, be void".

(d) CHE OMAR BI CHE SOH v P.P. [1998] 2 MLJ 55 [S.C]

In the above case, a strong 5 member bench headed by Salleh Abas L.P. had ruled that our Country (Malaysia) was governed by secular law. Therefore it would be incongruous to accept HUDUD, which is Islamic Law in a secular State. From this Supreme Court decision it follows that HUDUD (being Islamic Law) cannot be reconciled with the country being ruled by secular law.

Even if Parliament passes that HUDUD as criminal law is applicable to a State like Kelantan, it would mean Parliament has acted unconstitutionally as the passing of the law would destroy one of the basic structures of a State, that Malaysia was a secular State and ruled by secular law. This is because in Malaysia the Constitution is supreme and not Parliament.

(e) Hudud Law would result in a dual criminal legal system to run side by side with the Federal Penal Code. This would be unconstitutional.

(f) Pengerusi Lajnah Undang-Undang PAS Pusat, **Hanipa Maidin's view** examined and explained.

(i) <u>First View</u>

"kewujudan dua sistem jenayah dalam negara ini telah pun wujud sejak Perlembagaan Persekutuan itu termaktub malah perlembagaan merestui kewujudan dua system jenayah ini iaitu yang dibicarakan di Mahkamah Sivil dan jenayah Syariah yang dibicarakan di Mahkamah Syariah". **(HARAKAH 28 APRIL – 1 MEI, 2014 Pg. N3)**

Answer:

The above statement to the effect that two criminal justice systems are already in existence since the time the Constitution was drafted is not correct.

As explained above and following Prof. Shad Faruqi's expert view as above, it is clear that the clear intention of the 1957 Constitution was to allocate penal powers to the Federal Government and to confer on the States residual powers over minor criminal offences.

In view of the above, the State authority to legislate is only confined to matters in List II and the concurrent List. The offences of theft, robbery, carnal intercourse, etc are already offences under the Federal List. Therefore by virtue of Article 74(1) and 74(2), the State cannot make laws over these matters and the State can only make laws of matters that are not covered by the Federal Law. (See also Article 75).

Further, it is worthwhile noting that in the Supreme Court case of Che Omar bin Che Soh v P.P. (1988) the Court held that although Islam is the religion of the Federation, it is not the basic law of the land and the Article (on Islam's position) does not …. impose any limit on Parliament to legislate.

Therefore, Federal Law took precedent. The Court also held that "the term "Islam" or "Islamic Religion in Article 3 of the Federal Constitution in the context means only such acts as relate to rituals and ceremonies". This means that to implement HUDUD one will have to

significantly alter the Federal Constitution and redefine the basic structure of Federal – State relationship.

Further restriction on State authority:

Under Schedule 9, List II, Para1 the States only have power to create and punish Islamic offences which are of a very minor nature and these do not include the HUDUD offences referred to above. State power is further limited by limiting words appearing in Schedule 9, that is:

(a) It is limited by words "creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List.

(b) Further qualification is that the State authority to legislate on Islamic crimes is qualified by the words "or dealt with by Federal law" in Schedule 9 List I Paragraph 4 (h).

(c) Further limitation is in Schedule 9 "…but shall not have Jurisdiction in respect of offences except in so for as conferred by Federal Law".

Thus, **Hanipa Maidin's view** is too simplicit. The clear intention of the Federal Constitution is that Penal Powers are with the Federal Government. In this sense, there is no real dual criminal Jurisdictions in existence today.

In a case filed by the Kelantan Government on10/9/1963 (i.e. 6 days before the formation of Malaysia) against the Government of Malaya and Tengku Abdul Rahman seeking a declaration that the Malaysia Agreement and the Malaysia Act were null and void and not binding on the State, the Chief Justice Thompson who heard the matter stated:

"In doing these things I cannot see that Parliament went in any way beyond its powers or that it did anything so fundamentally revolutionary as to require fulfilment of a condition which the Constitution itself does not prescribe, that is to say, a condition to the effect that the State of Kelantan or any other State should be consulted".

Thus, this case is authority for proposition that Parliament cannot pass laws which will have effect of changing the basic structure of the Constitution.

The proposed introduction of HUDUD, will have the effect of changing the basic structure of the Constitution which is based on secular laws and thus would be unconstitutional.

(ii) Second view (of Hanipa Maidin):

Islamic law is under the Jurisdiction of a State. The Ninth Schedule states that it is the State's power to enact Islamic law. By virtue of Article 74 (4), the general words in Ninth Schedule such as the term Islamic Law cannot be delimited" (HARAKAH, 28/4/ - 1/5/2014 Pg. N.16)

Answer:

(i) The 9th Schedule itself provides exception regarding application of Islamic law by saying: "except in regard to matters included in the Federal List.

Thus, offences of theft, robbery, etc which are in the Federal List, are therefore excluded from State power.

(ii) Further restriction imposed in 9th Schedule is: "but shall not have jurisdiction in respect of offences except in so far as conferred by Federal Law"

Thus, Article 74 (4) has no relevance to our case, since the proposed HUDUD offences are already offences included in the Federal List I and therefore out of the jurisdiction of States.

(iii) **PAS's claim** that Hudud won't affect Non-Muslims and that there will be no changes required to the Constitution are not true.

PAS should carry out its Hudud debate based on the Constitution. The relevant historical documents to consider are the Alliance Memorandum to the Reid Commission, Lord Reid Commission Report,, the White Paper issued by the British Government in June 1957 and the Cobbold Commission Report. All these Historical Documents confirm that Malaysia was never intended to be an Islamic Country.

PAS's proposed **Bill** to introduce Hudud is going against all these Historical Documents and is a clear case of undermining the basic structure of the Constitution and the Historical Consensus reached by the races. **THUS EVERY CITIZEN HAS A STAKE** in the proposed Bill, as it will affect all the citizens.

We quote **ZAID IBRAHIM** (Former Law Minister – Sunday Star on 18-05-2014, page focus 29) on the matter:

"If PAS is sincere, it will tell Malaysians that the implementation of Islamic Law will require fundamental constitutional changes and a complete tearing down of our existing basic law – democracy, our freedom and way of life as guaranteed by the Constitution will no longer be part of the system.

Dr. Dzulkefly must tell us what the implications are for non-Muslims living in this Islamic State, and for Muslims too.

PAS will have to tell the people of this country that there will be a new legal system and that the civil courts (if they still exist) will be subservient to Islamic Law.

It must tell Malaysians that the Penal Code will be replaced with a new Islamic Code.

It must tell Malaysians that even the judges, and the way we appoint them, will be different.

All judges must be Muslims. In other words, Malaysia will go back in time, from the 21st century to the 7th century"

We also quote **Syafiqah Othman** (People's Parliament on 16-05-2014 under the title 'Implement Hudud? God's or man's? (4):

> "See, a lot of Malaysians, especially the conservative Muslims, misunderstood when some Muslims disagreed with the implementation of the Hudud Law in Malaysia. They think that we disagree with it, or even worse, disbelieve in God's divinity. Most of the time, however, this is not the case. A lot, of Muslims (me included) disagree with the implementation of Hudud Law, not the Law itself, because we don't trust people, not because we don't trust in Islam. We disagree in fear that God's Divine Law will be manipulated by the evil, unjust, corrupted and the tyrannical to achieve their own selfish agenda. We disagree in fear that it will taint the justice that it was supposed to serve. When a Divine Law is being handled by petty human beings like ourselves, injustice is bound to happen"

(iv) **PAS GOVERNMENT'S and FEDERAL GOVERNMENT'S earlier POSITION on HUDUD.**

(a) "On 25th November 1993 when the State Legislature unanimously passed the Bill the Chief Minister of Kelantan made it clear that the Bill "could not be implemented until the Federal Government of Malaysia made changes to the Federal Constitution" (Punishment in Islamic Law by Mohammad Hashim Kamali, Pg 205).
But today PAS is saying that no amendments to the Constitution are necessary.

This position was confirmed again by the Deputy Chief Minister of Kelantan when he announced days before the ratification of the Bill in the State Assembly in 1993 that the "…… State Government would not be able to enforce the proposed Law unless certain provisions of the Federal Constitutions were amended. (Page 207 of the article "Punishment in Islamic Law" by Mohammad Hashim Kamali).

The Prime Minister Dr. Mahathir Muhammad himself stated on 9th September 1994 that "the Government would not sit back and allow PAS to commit cruel acts against the people in Kelantan, including chopping off the hands of criminals". The Prime Minister added that the PAS version of the Hudud Law "punishes victims while actual criminals were often let off with minimum punishment". The Prime Minister declared further that "the Government would take action against the PAS-led Government if it implemented the PAS-created Hudud Laws". He further added that the proposed Law could not be enforced because it was not in line with the Federal Constitution. The Federal Government cannot allow the PAS Government to enforce the laws which are against the Islamic spirit of justice". (From the article by Mohammad Hashim Kamali, Professor of Law at the International Islamic University of Malayasia. Pages 207, 208).

From the above it is clear that (i) the Kelantan Statement Government was clearly aware that for the Hudud Law to be implemented certain provisions of the Constitution need to be amended first and (ii) the Federal Government's stand that it rejected the Hudud Law as being unconstitutional and against the Islamic Justice system.

(b) The Putra Jaya Meeting

The much publicised meeting between the present Menteri Besar of Kelantan and our YAB Prime Minister took place a few months ago at Putra Jaya. About 2 weeks after the meeting the Menteri Besar of Kelantan announced that the Kelantan State would push for the implementation of Hudud Law and would introduce a Private Member's Bill in Parliament to allow Kelantan to implement the Hudud Law. About 2 months ago our YAB Prime Minister announced that UMNO had never been against Hudud (but it is public knowledge that all earlier Prime Ministers did not support the introduction of Hudud Law) and now a joint technical committee between PAS and UMNO has been set-up to look into the implementation of Hudud.

Non-Muslims and many Muslims cannot accept Hudud as it will alter the status quo. Further, as Zaid Ibrahim said above "….. that the implementation of Islamic Law will require fundamental constitutional changes and a complete tearing down of the existing basic Law".

A keen observer can discern that the subtle pattern adopted for implementing the Hudud, includes:

(i) Assurances that it will not affect Non-Muslims.
We know this is not true. Hudud would undermine the Constitution, fundamental liberties and freedom of religion.

(ii) That there will be no amendments to the Constitution.

Again, we know that the introduction of Hudud will create an Islamic theocracy. This cannot exist under a parliamentary democracy. Thus changes to the Federal Constitution would be required.

(iii) It's God's Law. Muslims must accept it.

But the Law is drafted by human beings and to be enforced by human beings who are not perfect. It can be manipulated by those in power to achieve their own aims.

Most Muslim countries in the world have not imposed Hudud.

Per Syafiqah Othman's in her fourth article entitled, "Implement Hudud? God's or man's? posted on 16-05-2014 under People's Parliament:

"The simplest way to test this hypothesis is to look at other Muslim countries that abide by the Islamic Criminal Jurisprudence and ask yourself "How do they treat their women, children and minorities? Are they treated justly and fairly?"

"You'd find the answer to be a resounding "NO". Despite their status as an Islamic country, many States that implement Hudud Law are listed some of the most corrupt States in the world"

(iv) That Muslims desire to be governed by Hudud Law.

No census has been carried out in Kelantan or Malaysia. So, how can one assert this.

In TURKEY the Islamists said the same thing that the Muslims wanted to be governed by an Islamic State. When a survey was carried out in Turkey about 2 years ago amongst religious citizens only, they found only 7% wanted Hudud.

Per Sociologist SYED FARID ALATAS (Speaking at a Forum at Wawasan Open University in Penang last year:

"He gave the example of a large scale survey conducted in Turkey 2 years ago, where the religious citizens (not the secularists) were asked whether they want to live in an Islamic State. Only 7% said "yes", noted Syed Farid , as majority of the Turks did not want the State to administer Islam or decide on religious matters. They wanted the freedom to administer it themselves.

SUMMARY

The following summary of the above discussion can be made:

(i) Introduction of HUDUD would be unconstitutional as it will undermine the basic structure of the 1957 Constitution.

(ii) The understanding between the various races represented by UMNO, MCA, MIC was for Malaya to adopt secular laws and this was also the recommendation of the Lord Reid Commission and the White Paper issued by the British Government in June 1957.

(iii) The 1957 Constitution had allocated penal powers to the Federal Government and conferred residual powers over minor Syariah offences to the States.

(iv) HUDUD offences of theft, robbery, carnal intercourse, etc are already included in the Federal List and States have no power to enact these laws. States can only enact laws as provided in Schedule 9 List II and the concurrent List.

(v) Kelantan Syariah Criminal Enactment (HUDUD) 1993 and Terengganu Syariah Criminal offences (Hudud and Qisas) 2002 are void as having included HUDUD offences which are under the Federal List. Article 75 of the Federal Constitution makes these enactments void.

(vi) The introduction of HUDUD will result in dual criminal jurisdiction which is contrary to the Federal Constitution.

(vii) Parliament cannot pass a law which is fundamentally revolutionary and which would change the basic structure of the Constitution. This is because the Constitution is supreme.

[B] <u>Why Hudud is not suitable for Malaysia</u>.

(i) The conditions for implementing Hudud are not present in Malaysia. There is a huge disparity between the haves and have-nots. The country is facing many socio-economic issues. The bottom 40% of the population are marginalised and some even are too poor to afford proper meals. The gap between the rich and poor is very wide. Corruption is also very rife and public institutions are not dispensing justice as they should.

(ii) Our country is a multi-cultural country. There are many organisations, bodies, associations, NGOs which are multi-racial and they will be gravely affected and be disunited.

(iii) Malaysia is a Parliamentary Democracy. It has no place for Hudud, and Hudud will turn the country into an Islamic theocracy. The first casualty then will be Democracy, Rule of Law, Fundamental Rights and Freedom of Religion.

(iv) In a theocracy, clerics and religious scholars will be in-charge. They would interpret God's Laws. Normally. no different view is tolerated and society becomes very regressive.

An example: The Deputy Chief Minister (Abdul Halim) when asked about the 1993 Syariah Criminal Code (II) Bill, 1993 and whether people had accepted the State Government's plan to implement Hudud had replied "the question did not arise as Muslims in the State who rejected the Laws would be considered murtad (apostate) [Hudud Laws for Muslims only, NST on 19-11-1993.]

Second example: Dr. Mahathir Mohamad (Malaysiakini on 27-02-2014) said that the clerics shouldn't have monopoly on Islam. He added, "Must we simply accept everything that is delivered by an Arab-speaking person who studied religion but has views clearly divergent to Islam as per the Quran and Hadith? Must we acknowledge whoever who claims to be an ulama (scholar)? Are those in the Ulama Associations truly ulama?"

Third example: Raja Petra Kamarudin (Malaysia Today on 12-05-2014). "The Ulamas tell us that the Syariah is mandatory and to oppose it is tantamount to defying God himself. Is this true? Not all renowned Ulama agree with this notion. But the Ulamas have the final say over the interpretation of Islam and what they say goes".

(v) Some argue that the Hudud is necessary in practising their faith. But most Islamic Countries in the world have not adopted Hudud punishments, including the most populous Islamic Country in the world, Indonesia (except the Province of Acheh) which has a population of 250 million people. Zaid Ibrahim (The Malaysian Insider on 14-05-2014): "But if what he says is true, then hundreds of millions of Muslims all over the world must all free similarly deprived because they too are practising their faith without the Hudud".

The Hudud prescribes punishment for offences like theft, robbery, carnal intercourse, etc. and the offenders may be less than 1% of the population. How does chopping or not chopping off their (offenders) hands affect the other people's (i.e. non-offender's) faith?

(vi) "Hudud practising countries show that victims are basically women and the poor. It is never the rich and people of higher authority", Per Dr. Farouk Musa (Malaysiakini on 18-11- 2012).

Dr. Farouk Musa further added, "that Oxford Islamic Scholar Tariq Ramadan had taken up this issue and had urged for a moratorium on Hudud throughout the Muslim world".

(vii) Oxford Islamic Scholar Tariq Ramadan (grandson of Hassan Al-Banna who founded the Muslim Brotherhood (Malaysiakini on 19-07-2012):

"If you want to punish, punish the corrupt. Don't play with Islam. In Malaysia, the Government must be more serious about education, justice, fighting corruption and the manner in which women and migrants are treated".

(viii) "An Islamic State is not good even for Muslims by Syed Farid (expert in the area of sociology of religion). (Lecture at Wawasan Open University in Penang).

"So being against the Islamic State is not to be secular or to be against Islam, Muslims really need to understand that" and "….. most Islamic Governments in Islamic history have been unjust, even those which were in existence during the so-called Golden Age of Islam. They were quite terrible in terms of abuse and torture and corruption".

(ix) During earlier Hudud times conditions were different and society was medieval. Today Hudud will nt be able to tackle offences like massive cheating, embezzlement, criminal breach of trust, corruption (eg. RM250 million NFC borrowing misuse), while someone who steals a bicycle will have his hand chopped off.

(x) The following unfair situations need mentioning:

(a) Is it fair that generally only male Muslims are competent to testify while the testimony of women and non-Muslims is not accepted, or even if accepted has a lower value?

(b) Which jurisdiction will apply if crime involved a Muslim perpetrator and a non-Muslim victim, or vice-versa?

© Syariah Courts have no jurisdiction over non-Muslims (Schedule 9 List II). Will Syariah courts force non-Muslims to come to a Syariah Court which would be clearly unconstitutional and this would create deadlock and chaos?

(xi) Are the Hudud punishments of stoning to death, crucifixion, whipping and amputation of limbs still relevant to this day and age? These punishments are considered as torture under the International Convention and Malaysia is bound by the International Convention against torture.

(xii) Statistics show that the safest countries in the world are Non-Hudud Countries such as Denmark, Japan, New Zealand, Norway, Sweden, Iceland etc. While Hudud Countries fair the worst and are at the bottom of the list.

(xiii) The experience of Pakistan, Nigeria and Sudan shows that things are not in order. "We read about cases of injustice to rape victims who ended being convicted of the offence of adultery, because they could not produce the witnesses and they were pregnant". by Dr. Anwarul Haq (Malaysiakini on 30-04-2014).

A Pakistan page from the website 'A comparative Tour of the world' (Dr. Robert Winslow, San Diego University), dated 2001 said, "Rape is a pervasive problem. The (Human Rights Commission of Pakistan) estimates that at least 8 women, five of them minors, are raped everyday, and more than two-thirds are gang-raped….. It is estimated that less than one-third of all rapes are reported to the police".

(xiv) Some recent headlines, on the implications of Hudud on women:

(a) Saudi women activists demand end to 'absolute' male control (Yahoo.com on 03-03-2014).

(b) Sudan: Woman facing death sentence on grounds of religion must be released.

(xv) Dr. Azly Rahman (Malaysia Today on 10-05-2014) – Why Muslims too, are rejecting the Hudud.

"Seriously speaking…… I have a few questions:

You kidnap innocent girls and sell them in the name of religion.
You shoot girls in the face – those who only wish to go to schools.
You rape women and put them on trial for immodest behaviour.
You spew hatred towards people of other faiths and race.
You ask tose who disagree with you to leave the country.
You do all these – in the name of protecting religion and now you wish to implement the Hudud and force us to agree or you wage war against us?

What cult do you actually belong to?"

(xvi) Per TOMMY THOMAS – Article on "Hudud is revolutionary but unconstitutional" (Malaysiakini on 16-05-2014:

"……. More significantly if it is passed (Bill) Hudud will destroy the basic structure of the Constitution….. But Parliament as a creature of the Constitution, cannot in the guise of constitutional amendment abolish its parent, the Constitution itself. Further, the Courts have imposed a limitation on their amending process. Thus, Parliament cannot destroy the basic structure or architecture of the Constitution……."

(xvii) Non-Muslims rights will be in jeopardy and the basic consensus reached when the Federal Constitution was formulated, would be destroyed.

The above (i) to (xvii) show the serious ramifications of implementing the Hudud. In fact its introduction would be revolutionary and seriously divide the communities. We append below he appeal by our former Law Miniser ZAID IBRAHIM. In his open letter to all Malaysians:

"…….. We live peacefully today because of the present system. Our economic development has been unimpeded because we have had the same system since 1957.

Our democracy, although flawed, and the principle of separation between religion and the affairs of state (a principle now under severe attack) forms the constitutional and legal basis of our country. This must be protected at all costs……"

[C] What is HUDUD and Qisas Law?

HUDUD and Qisas Laws deal with offences and punishments that are interpreted by Muslim Juristic Scholars to be derived from the Holy Quran and Sunnah (of the prophet).

HUDUD literally means limit. Accordingly to some scholars, the word "HUDUD" is not used in the Holy Quran specifically in terms of punishment. However juristic opinion has reduced HUDUD to mean mandatory punishment. Under HUDUD Law, theft, robbery, illicit sex, alcohol consumption and apostasy are considered offences. Punishment for these offences are corporal in nature involving whipping, stoning to death and amputation of the limbs. The Qisas (law of retaliation) refers to offences that involve bodily injury or loss of life. The punishment is death or imprisonment, but compensation in the form of a sum of money or property (diyat and irsy) is accepted if the guardian of the victim forgives the offender. In Malaysia both HUDUD and Qisas offences are contained in the Kelantan and Terengganu State Enactments referred to above.

(i) What is the punishment prescribed for HUDUD offences:

(a) Syurb – is consumption of liquor or other intoxicating drinks. It is punishable with whipping of not less than 40 stripes for first offenders, 80 stripes and imprisonment for repeat offenders.

(b) Sariqah (theft) – is punishable by the amputation of the right hand. For a second offence, amputation of his left leg and for a third and subsequent offence imprisonment as deemed fit by the Court.

(c) Hirabah (armed robbery) – Punishment is death

(d) Zina (illicit intercourse) – Punishment is whipping of 100 stripes and 1 year imprisonment ; and adultery, the punishment of which is stoning until death.

(e) Qazaf – The Quranic injunction against qazaf is to prohibit the accusation of chaste women of zina (illicit intercourse). Under the Enactments, any person who accuses another of illicit intercourse without bringing forth 4 adult male Muslim witnesses, is to be punished with whipping of 80 stripes.

(f) Liwat – (Sodomy by a man). Liwat is to be proven in the same manner as zina.

(g) Intidad or Riddah – The punishment for blasphemy or apostasy by an unrepentant offender is death and forfeiture of property.

(ii) What evidence is needed to prove HUDUD offences?

Every offence except zina must be proven by the testimony of 2 adult principled male Muslim witnesses who have not committed any major sins or continue to commit minor sins. Zina is to be proven by the testimony of 4 adult principled male Muslim witnesses. Zina can also be proven by pregnancy of or birth of a child by a woman not then married unless she brings proof to the contrary. In the event there is insufficient evidence for the purposes of meting out hudud punishments, then the offender may nevertheless be punished by the court with non-hudud punishments. This is known as ta'zir punishment.

(iii) Can Hudud punishment be reduced and adjusted?

Hudud punishment is mandatory. Section 50 of the Terengganu Enactment provides that hudud punishments may not be reduced, substituted, stayed or in any way varied. Nor can the offender be forgiven.

(iv) Is there a chance that Hudud may overstep the legal rights of non-Muslims?

In all likelihood it will. As Malaysia is a plural society and where the concentration of one ethnic community is not necessarily confined to one Region or State there are bound to be clashes and overlaps in application. For example in any crime the victim and perpetrator may be of different religions. If the alleged rapist is a Muslim and victim is a non-Muslim, there will be the question as to under what law the charge would be brought about. Under Hudud the alleged male perpetrator may stand to gain because of the impossibility of getting the testimonies of four Muslim male witnesses. Under Hudud, Muslims who commit robbery of property that is valueless in Islam e.g. liquor or entertainment equipment will have a chance of escaping any prosecution. In another worst-case scenario, such as in an incident of gang-rapes, where there are multiple perpetrators and victims (comprising Muslims and non-Muslims), eye-witness accounts of rapes which may be offered by the victims would not be admissible as evidence as they may not be Muslim and male. In all of these hypothetical cases non-Muslims will stand to see justice taken away from them.

[NOTE: The above discussion under (C) was taken from an Article from Aliran Monthly under the title "Q & A on the Hudud and Qisas Enactment"]

[D] Is HUDUD law discriminatory? Is it just?

(i) It discriminates against women: S I S

"The burden of proof of rape under the Hudud Law is on women. The Terengganu Syariah criminal offences (Hudud and Qisas) of 2002 states under Section 9, that a woman who reports she has been raped could be charged for qazaf (slanderous accusation) and flogged 80 lashes if she is unable to provide proof.

In the Kelantan Syariah Criminal Enactment (Hudud) 1993, an unmarried woman who is pregnant or has delivered a baby is assumed to have committed zina (illicit sex) even though she was raped. The inability of rape victims to produce four male witnesses will result in the presumption of them committing zina while the rapists go free.

A woman cannot be a witness. People of other faiths also cannot be called as witnesses. In effect, three quarters of Malaysia's population will be disqualified as witnesses."

By Ratna Osman, Sisters-In-Islam (Malaysiakini on 8/10/2011.

(ii) PAS's ILL-CONCEIVED HUDUD MOVE (By Dr. Chandra Muzaffar) (Posted by Anas Zubedy on Monday April 21, 2014)

"An Enquiry into the Hudud Bill of Kelantan (Kuala Lumpur: Institut Kajian Dasar, 1995). Kamali; one of the world's leading Islamic jurists, reveals in detail the weaknesses of the Bill, including those pertaining to its categorisation of Hudud offences and how it contradicts the Quranic prescription on punishments and why it conflicts with the Malaysian Constitution and Penal Code……

Most Muslim majority States do not provide for Hudud. The most populous Muslim Nation on earth, Indonesia, has not incorporated such a provision into its legal system though one of its smaller provinces, Acheh, has introduced elements of the Islamic Penal Code while retaining Civil Law in other areas. The change is drawing more and more criticism from within Achenese society itself. Turkey, one of the more prominent Muslim States today, with a leadership rooted in Islamic movement, has stayed away from Hudud laws. Arab States such as Egypt, Jordon, Lebanon and Syria, among others, have not included Hudud in their criminal justice systems……."

Plight of women and Non-Muslims:

"If accountability and justice are still lacking in hudud-based societies, their parlous situation is further exacerbated by the plight of women and non-Muslims. In almost every one of the States that has embraced Hudud Laws, women have been marginalised both in their private sphere and in the public arena. In those countries where there is a Non-Muslim minority, their space for expression and action often shrinks in the wake of Hudud enforcement".

By Dr. Chandra Muzaffar.

(iii) Hudud and the crisis of representation. (By Dr. Azly Rahman. Malaysiakini on 28-04-2014.)

"Syariah Law is fundamentally cultural and the Hudud is a cultural image of dehumanisation and one associated with failed 'Islamic States' that aspire to be models of a "good Islamic State" of which none have ever existed…….

The image of those calling for the implementation of the Hudud in Malaysia is one of intolerance to varying viewpoints, condescendingness, enforcing others to follow this or that fatwa even if these injunctions are merely opinion, subjugating the mind of the gullible especially in school populated by Malay Muslims, inability to sustain arguments on matters requiring nationalistic and humanistic perspectives, and above all, the ability to look at the bigger picture of corruption, abuse of power, and race politics as crime against humanity themselves requiring more than just amputation, public flogging, and stoning to death as

antidote --- and these horrible crimes are carried out by those projecting piousness in public themselves.

The process of 'Islamisation' that began in the 1980s as a political response to the inability of the Malay-Muslim mind o come to terms with the "pains and pitfalls of moderation and next, hyper-modernity" has created the need for fundamentalist Muslims to retreat to a safer zone of religious comfort by finding the renewed power to call for the imposition of such cultural laws as Syariah and its instrument of control i.e. Hudud."

(iv) **Hudud – 'Timid' Malays, where are you? (by Zaid Ibrahim, Malaysiakini on 30-04-2014)**

"I ask this question of the Malays – the timid and false Malays. There had been almost total silence from those in the Malay community who are against Hudud with the exception of former Tenaga Nasional Bhd (TNB) executive chairperson Ani Arope and a few lawyers I know.

What has become of the rest? Do they really want their children's hands and feet to be amputated for theft, for drinking a glass of beer, for illicit sexual intercourse?.....

Does this sound fair and just, when we all know that over the years billions of ringgit have been stolen from the national coffers through other mechanism that do not amount to "theft"? Are these Malays so bereft of compassion? Have they list all sense of fairness? It seems particularly odd because they are now suddenly so God-fearing……..

They will know the full effect of this "perfect justice" when one of their loved ones loses a limb – then they can come and talk to me about justice".

(v) The real objective of PAS's Hudud.
(By K Temockousiders, Malaysiatoday on 29/4/14 i.e. by Y.A. Ariff Sabri, M.P. for Raub).

"As many have written, PAS should be focusing on crimes, corruption, racism and injustice in Malaysia rather than introducing an Islamic Penal Code, Hudud, which is viewed at best with distaste and in the worst case scenario with much fear, because Hudud's punishments would generally be irreversible.

Operate within the paradigm of the setting up of a theocratic state; one that will limit freedom of expression, of assembly, to assemble, to petition, of pass, and to revolt against an unjust state, even if the State has by then evolved into a Talibanistic one shooting helpless little schoolgirls in the face and legalising marriage for nine year olds.

That's how Nazi Germany controlled its people, through threats of painful and/or fatal consequences by its Gestapo and, and how Iran and Saudi Arabia do likewise.

Argue and you can lose more than an arm and a leg (accuse my pun) or as per Qisas, even an eye, or your life ……."

(vi) "No Justice if Hudud is practised".
(The STAR on 1/5/2014 page 10 by Tun Dr. Mahathir Mohamad.)

"There will be no justice in Malaysia if Hudud is implemented as Muslims and non-Muslims will be judged differently, said Tun Dr. Mahathir Mohamad.

If you try to apply Hudud on Muslims and non-Muslims are exempted – you cut the hands of Muslims but the non-Muslim thief gets 2 months in jail, is that justice? It is not justice".

[E] MUSLIM WOMEN'S position under HUDUD.

A woman cannot be a witness. In Hudud offences, the burden of proof for rape is on women. A woman who reports she has been raped and unable to produce 4 male Muslim witnesses, could be charged for Qazaf (slanderous accusation). An unmarried woman who delivers a baby is assumed to have committed zina even though she was raped.

There is no statistical evidence to show that Hudud offences reduce crime. In fact, the safest countries in the world are Non-Hudud countries such as Denmark, Japan, New Zealand, Sweden, Norway, Iceland. In Pakistan, even 12 year old victims of rape have received punishment for zina. There are today hundreds of women in jail on charges of Hudud offences. Due to the difficulty in proving rape offences, majority of the rapes go unreported in Hudud countries.

(i) The burden of proof for rape under the Hudud Law is on women. The Terengganu Syariah criminal offences (Hudud and Qisas) of 2002 states under Section 9, that a woman who reports she has been raped could be charged for qazaf (slanderous accusation) and flogged 80 lashes if she is unable to provide proof.

In the Kelantan Criminal Enactment (HUDUD) 1993, an unmarried woman who is pregnant or has delivered a baby is assumed to have committed zina (illicit sex) even though she was raped. The inability of rape victims to produce four male Muslim witnesses will result in the presumption of them committing zina while the rapists go free.
("A woman cannot be a witness").[Malaysiakini on 8/10/2011 – S.I.S]

(ii) What effect will Hudud have on gender relations? (ALIRAN MONTHLY)

"Like race relations Hudud will also setback the struggle for gender equality in society. Many provisions in Hudud discriminate against women. Women are not accepted as witnesses and women are also most likely to be prosecuted for slander if they are not able to prove rape. In cases of adultery, women on account of them being pregnant will immediately be charged for the offence while it will be impossible to charge the male partner because of the requirement of four male Muslim witnesses.

Evidence for rape is ocular evidence of four adult male witnesses or confession of the accused. The victim's own statement has no testimonial value. Even if medical examination is taken and a sexual act has been proved to have taken place, the accused can still be acquitted. The woman is then convicted of zina. The onus is upon the victim to prove that she was not a consenting party to her rape.

Even minors can be convicted of zina, unlike what is provided in the existing penal code, where consent of a minor is immaterial and statutory rape is applicable. In Pakistan, even twelve-year old victims of rape have received punishment for zina. In Pakistan today, there are hundreds of women in jail on charges of Hudud offences. This number is rapidly increasing and there is even a new jail in Larkana especially built for women".

(iii) "Tight Security at bizarre royal divorce case" (Malaysiakini on 01-04-2014)

"Police personnel and members of the Johor Military Force made their presence felt at the Syariah Court Appeal in Johor Bahru this morning during a bizarre divorce hearing involving the Johor royalty.

Former Sultanah Tuanku Zanariah Tuanku Ahmad is appealing a backdated divorce application that had been filed some months after the death of her husband, Tuanku Mahmud Iskandar on January 22, 2010.

The divorce was backdated to January 23, 2009 after the Johor Fatwa Committee accepted a statutory declaration by Abdul Gani and the Johor Royal Committee chairperson Tengku Osman Tunku Temenggong Ahmad, verifying that the application was genuine."

(iv) "International studies don't show Hudud cuts crime". (Malaysiakini on 30-04-2014)

"From what we read regarding what had happened in Pakistan, Nigeria and Sudan, since the implementation of the laws in question, we are still unable to say that it is going on smoothly and has achieved greater justice.

We read about cases of injustice to rape victims who ended being convicted of the offence of adultery, because they could not produce the witnesses and they were pregnant.

But we know that because there were demonstrations everyday, the offence of rape was removed from the Hudud Ordinance and placed in the penal code and tried by the Civil Court until now". Quotation from Dr. Anwarul Haq (Pakistan).

In an article by Aminu Adamu Bello, from the Faculty of Law, University of Abuja, Nigeria titled "Enforcement of Hudud Punishments under Islamic Law in Nigeria: Implications for a Plural Legal System", the author stated that "……..data does not support an assertion that the enforcement of Hudud penalties had any effect on the nature of anti-social behaviour, especially armed robbery, in these states.

"For those who want to point to Saudi Arabia as a successful example of how the implementation of Hudud has decreased the crime rate, the following evidence points a cautionary tale.

The low number of reported rapes may be due to the harsh sentences meted out to rape victims in the past, which may have discouraged other rape victims from reporting the cases.

A court may view a woman's charge of rape as an admission of extra marital sexual relations unless she can prove, by strict evidentiary standards, that this contact was legal and the intercourse was non-consensual.

In 2006, a 19 year old known as the 'girl of Qatif' was sentenced to 90 lashes for being alone in a car with a man to whom she was not married considered a crime – at the time she was allegedly attacked and raped by a group of seven other men.

In 2007, the court of Saudi Arabia doubled its sentences of lashings for the 'girl of Qatif' who had spoken out in public about her case and her efforts to seek justice.

An official of the General Court of Qatif, which handed down the sentence because of "her attempt to aggravate and influence the judiciary through the media".

The Court sentenced the rape victim to six months in prison and 200 lashes, more than double its October 2006 sentence after its earlier verdict was reviewed by Saudi Arabia's highest Court, the Supreme Council of the Judiciary."

- **SEVERE CONSEQUENCES**:

"In Pakistan, the consequences of the Hudud Laws have been even more severe.

According to the Pakistan Bureau of Police Research and Development, Pakistan Economic Survey data, crime per thousand of population in the Country was as follows: 226(1951), 185(1961), 206(1971), 215(1981), 257(1991), 278(2000) and 335(2009).

Various news reports have portrayed general crime rates as increasing alarmingly in the last five to ten years.

On the subject of Hudud, according to the 'Pakistan page from the website 'A Comparative Criminology Tour of the World' (Dr. Robert Winslow, San Diego State University), dated 2001 said:

"……..Rape is a pervasive problem. The (Human Rights Commission of Pakistan) estimates that at least eight women, five of them minors, are raped every day, and more than two-thirds of those are gang-raped. The law provides for the death penalty for persons convicted of gang rape.

"No executions have been carried out under this law and conviction rates remain low because rape, and gang rape in particular, commonly is used by landlords and criminal bosses to humiliate and terrorise local residents.

"It is estimated that less than one-third of all rapes are reported to the police. Police rarely respond to and sometimes are implicated in these attacks".

"A sixteen-year old blind girl, Safia Bibi, was raped by her landlord and his son in Sahiwal, eight kilometres away from the Punjab capital of Lahore in 1983. A case was registered against the culprits in July 1983, and the court asked the blind girl to identify the rapists. As she failed to indentify them, Bibi's consequent pregnancy was treated as

evidence of fornication (as its pregnancy can only result from consensual sex and therefore she was sentenced to three years in prison, fifteen lashes, and a fine of 1,000 rupees. The judge said the sentence was light because she was blind and disabled."

The evidence from Pakistan shows that rather than dispensing justice, Hudud has been used to punish rape victims, who for various reasons, cannot prove that they were raped and end up being charged for adultery or fornication.

According to the Council for Islamic Ideology's 2006 report, pertaining to its findings and recommendations about the Hudud Laws, the council itself noted that:

"Statistics show that Hudud Ordinance has not been effective in reducing the crimes in Pakistan. Although the number of registered cases is not a proper indication of crime statistics, but even that shows the rate of Hudud crimes has not decreased.

"The total number of cases registered under Hudud Ordinance arose from 75,493 in 2001 to 82,545 in 2002, and from 76,063 in 2003 to 77,420 in 2004. The increase in the rate of crimes is despite the fact that the rate of conviction has been higher that the acquittals." (Malaysiakini on 30-04-2014 under the heading "International Studies don't show Hudud cuts crime)

(v) Let's not be hoodwinked into Hudud. (by Zainah Anwar – THE STAR on 4/5/2014)

"……certainly Saudi Arabia is not a model for them. Neither are Pakistan, Nigeria or Sudan, where their record of Hudud enforcement showed those persecuted were mostly women and the poor.

In Pakistan, public outcry of injustice and repeated calls for repeal forced the government to dilute its Hudud Ordinance through the protection of Women Act in 2006. Research done by the National Commission on Women in Pakistan showed that 80% of the women in prison were there for offences under zina (illicit sex) laws. Another earlier research showed that over 1,000 women were in prison for zina, compared to only two men. The gross discrimination and injustice against women in the end made the law unenforceable".

(vi) "Citizens have right to criticise" (by Tan Sri Mohd Sheriff Bin Mohd Kassim, The STAR on 6/05/2014, Page 34)

"I refer to Zainah Anwar's article, "Let's not be hoodwinked into Hudud" (Sunday Star, May 4) and would like to complement her thoughts by saying Hudud is not what Malaysia needs, particularly at this juncture when the country is already facing a number of challenges to its image as a tolerant Muslim Country.

A major legislation like Hudud requires a consensus among all races to give it legitimacy.

All citizens, including the non-Malays, have a right to comment or criticise its details because we all have a stake in the integrity and credibility of the justice system.

It's not democratic to ask non-Muslims to mind their own business because justice and fairness are every Malaysian's business.

In Malaysia, where Islam is highly politicised, religious legislation is even more worrying than a bad secular law because any matter that involves religion is not open to challenge by civil society. Therein lies the fear about Hudud.

Our neighbours and trading partners are also watching this political Hudud because their citizens travel to Malaysia for work and pleasure daily and they have investments here.

Should any of their citizens get caught, they will be concerned about the punishment.

No foreign country, especially from the West, which initiated the international conventions on justice, will tolerate any of their citizens, irrespective of their religion, being subjected to such degrading punishments.

As Malaysia is also a signatory, they will question our integrity and sincerity in upholding the basic principles of justice and punishment and our claim to be a moderate Muslim country.

Our own people, especially the middle class and the new generation of the educated young, who are very concerned with human rights issues and are very international in their outlook, will join the foreigners in criticising Malaysia, as they are already doing now on many issues, especially in the social media.

These new-generation youths and intellectuals are highly motivated movers and shakers of society and they are liberals. When they talk and march, the world listens.

[F] HUDUD will affect NON-MUSLIMS ADVERSELY

(i) It has been pointed above that HUDUD law would undermine the basic structure of the Constitution. It would also result in a dual system of criminal Jurisdiction. The principles upon which Malaya (and now Malaysia) was formed in 1957 will be uprooted. Fundamental liberties, Rule of law and Freedom of Religion will suffer. These alone are reasons enough for assertion that the Hudud would affect Non-Muslims. In fact it would affect all Malaysians, and the Malaysia we know today, would slowly cease to exist.

PRE-HUDUD (PRESENT POSITION)

Even today, when HUDUD is not part of our Law, the Non-Muslims are being oppressed and the many Institutions are turning a blind eye to their plight.

A few examples will make this clear:

(a) **Moorthy** (first Malaysian to scale Mount Everest), when lying unconscious and in a coma, the wife was told by Jabatan Agama that Moorthy had converted to Islam. The wife protested and stated that only a month earlier they had celebrated Deepavali according to Hindu custom and that a few months earlier Moorthy had climbed the steps of Batu Caves, to perform a vow. This all was to no avail. The wife then applied to the civil court for declaration that Moorthy was a Hindu. The High Court declined jurisdiction saying that Jurisdiction was with Syariah Court. And Non-Muslims cannot go to Syariah Court. Thus, Moorthy's body was forcibly taken away by the Muslim

authorities.

(b) **Indira Ghandi** (Ipoh case) had undergone a Civil Marriage with her husband. They were blessed with 3 children. The Husband converted to Islam in April, 2009 and forcibly took away their 11 month old breast-feeding daughter and converted her. Their other 2 children (aged 3 and 5 then) were also converted by the Husband without Indira's knowledge or consent. The Syariah Court immediately gave custody of children to the husband, although the marriage was under civil law. The wife appealed to the High Court and in 2011, the High Court gave custody to the wife. When the child was not surrendered by the husband to Indira Ghandi, she made many police reports and pleaded to police to help trace her child, but all to no avail.

(c) In **Deepa**'s case (Seremban), the marriage was under Civil Law. They were blessed with 2 children. The husband converted to Islam somewhere around August last year, and then also took the two children from school and converted them. The husband again obtained custody of the children from the Syariah Court.

The Civil High Court only heard the case in March/April, 2014 and gave custody to the mother. In the Civil Court, the husband, wife and children, all appeared before the High Court Judge, unlike the Syariah Court, where only the husband had appeared.

The I.G.P. refused to enforce the Civil High Court Order saying that there was also a Syariah Court order to the contrary. The I.G.P. failed to understand that the Police have a duty to enforce Civil Laws. Surprisingly the Minister of Home Affairs had supported the I.G.P.

(d) **Subashini Rajasingam** (had married Saravanan & they had 2 children. The husband converted to Islam and converted the 2 children) is another similar case.

In fact, there are numerous other such cases, and facing the same fate. They involve Chinese, Indians, Eurasians and other minorities in Malaysia.

The entire Non-Muslim community have been put in a position of fear and uncertainty as to the sanctity of their family lives and their protections under the law given the numerous abuses of the Syariah system that the authorities have allowed.

(e) Numerous minors have been converted without both parent's consent.

Most children converted were between 1 year to 10 years of age.
Islamic authorities say young children cannot be converted as they do not have the proper understanding of the Oath. But conversions of minors are going on unabated with the Religious Department aiding in these conversions.

(f) A few months ago about 69 Christians were converted to Islam purportedly by deception. Until today they have been unable to revert back to Christianity.

(g) **Halimah,** a Catholic migrant worker was convicted by a Syariah Court of khalwat about 2 years ago although there was no evidence at all that she was a Muslim. Until today she has not been able to get her conviction set aside.

(h) The **Jabatan Agama Islam Selangor (JAIS)** had raided in January, 2014 the office of the Bible Society of Malaysia and confiscated more than 300 copies of the Christian Bibles in Bahasa Malaysia. Hitherto there had never been such attempt in Malaysian History. Religious places were sacrosanct and off limit to other religions. The JAIS raid means a Muslim religious body is trying to regulate other religions and Article 11(3) clearly gives right for each religion to regulate its own affairs. Until today this matter has not been resolved.

(i) The word **"Allah"** is a Pre-Arabic and Pre-Abrahamic religious word. Arab Christians had used word Allah at least 7 centuries prior to the founding of Islam. Yet, only in Malaysia, Christians and Non-Muslims are forbidden to use this word.

(j) **3 Boxes** of publications containing word "Allah" which were imported by Sidang Injil Borneo (SIB) were confiscated by the authorities. The SIB filed lawsuit in 2007 for return of the publication. The matter was not heard for about 7 years. It was now heard on 5/5/2014 and the High Court dismissed the challenge by the SIB regarding confiscation of its publications. The High Court said it was bound by the Court of Appeal's decision in the "Allah" case (which was delivered towards end of 2013), which held "Allah" was not an integral part of the faith and practises of Christianity.

The Court of Appeal on this was heavily criticised earlier by many quarters, especially regarding the Judge's knowledge obtained from internet research on this point which was from dubious sources and was wrong.

This decision shows that the 10 point solution guaranteed for Sabah and Sarawak by the Federal Government was political expediency.

The above (a) to (j) show that even now when HUDUD is not in place, serious transgressions and injustices are occurring aided by Non-functioning Institutions. Clearly matters can only get worse if HUDUD is introduced.

PRIORITY: HUDUD or SOCIAL JUSTICE:

USM Associate Professor in Islamic Studies Mohd Asri Zainal Abidin says that "PAS should be pursuing social justice instead of Hudud".Asri further stated that social justice was the essence of an Islamic state, not Hudud. He further said that the environment was not conducive to implement Hudud even in Kelantan. "If someone pollutes a clean river, we implement Hudud. What's the point of implementing Hudud if someone pollutes a dirty river" said Asri.
[FMT on 05/2014]

(ii) Under HUDUD (The Non-Muslim Position) :

Hudud will undermine non-Muslims rights as the following show:

(a) Under an Islamic theocracy, God's law is supreme. Therefore the Federal Constitution and rule of law will suffer. This will undermine the fundamental rights guaranteed to citizens under the Constitution.

(b) A non-Muslim cannot be a witness under Syariah Law. In most Hudud offences, the victim must produce four male Muslim witnesses of good character to give evidence on his or her behalf.

© In our multi-cultural country, people of different faiths live side by side. When crime is committed, involving Muslims and non-Muslims, then which court will have jurisdiction? Even now, tussles are going on in conversion cases.

(d) In rape cases, the burden is on the rape victim (the woman) to produce four adult male witnesses which in most cases will be impossible. Thus, the victim can be punished for zina while the perpetrators of crime go free.

(e) In Hudud practising countries, the non-Muslims do not have equal rights and religious freedom is curtailed. In Saudi Arabia, non-Muslim places of worship is allowed to be built. Even now, with Hudud not being in force in Malaysia, we hear cases of the conversion of children, children being taken away from their mothers, the snatching of babies, the snatching of bodies and so on.

(f) Some Hudud proponents say, it will not affect non-Muslims. This cannot be true. The first thing is that the Hudud will undermine the basic structure of the Federal Constitution and our fundamental liberties will be over-ridden. These will definitely affect everybody, including non-Muslims and their freedom of religion.

The Kelantan Syariah Criminal Enactment (Hudud) 1993 seems to recognise this, for it provides in Section 56(2) that a non-Muslim can elect to come under the Syariah Enanctment. This "choice" given by this enactment is unconstitutional as jurisdiction is given by law. It cannot be obtained by submission or acceptance. There can be an abuse here, as the non-Muslim may be coerced into going to the Syariah Court, while the authority maintaining publicly that person had made voluntary choice.

(vii) What happens if a non-Muslim is falsely accused of defaming Islam. (of blasphemy)

Example: The case of a Christian school girl (aged about 15 years) reported in 2012 who rejected advances of a Muslim clergy (aged about 45 years) in Pakistan who falsely accused the Christian girl of defiling the holy Koran by burning. The case made international headlines and pressure from the American Embassy led to a thorough investigation which revealed that the Muslim clergyman had put the burnt Koran in the Christian girl's school bag. The Christian girl who was immediately put in jail earlier was then released. If not for International pressure what would have happened to this poor blameless girl?

[G] Is the proposed enforcement of the "Kelantan Syariah Criminal Enactment (Hudud) 1993 constitutional?

(a) Schedule 9 List II – State List specifically states that "the Constitution, organisation and procedure of Syariah Courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph …….". The clear established position is that the Syariah Courts have no jurisdiction over Non-Muslims.

Yet Seksyen 56(2) of the Kelantan Syariah Criminal Enactment (Hudud) 1993 provides:-

"(2) Tidak ada apa-apa dalam Enakmen ini yang menghalang seseorang yang bukan Islam daripada membuat pilihan supaya Enakmen ini terpakai keatasnya mengenai apa-apa kesalahan yang dilakukan olehnya dalam Negeri Kelantan dan sekiranya seseorang bukan Islam itu membuat pilihan sedemikian, maka peruntukan Enakmen ini, hendaklah mutatis mutandis terpakai keatasnya seperti juga peruntukan-peruntukan tersebut terpakai keatas seorang Islam"

The choice given by Section 56(2) above to a non-Muslim to agree to come under this Enactment relating to the Hudud offences mentioned therein is unconstitutional. Furthermore, in practice there can be abuse in that a non-Muslim involved in an offence in Kelantan may be forced to accept to go under the Hudud Enactment and the official version given would be had voluntarily so submitted to the Jurisdiction.

It is trite Law that Jurisdiction is a matter of law and even if a Non-Muslim agrees to be bound by it, this cannot confer Jurisdiction on the Syariah Courts over him.

We quote (Prof. Shad Faruqi – The Star on 1/5/2014):

"This means that the Syariah Courts have no power to apply the Hudud Laws on Non-Muslims even if the Non-Muslims consent to be so subject. Jurisdiction is a matter of law and not of submission or acquiescence."

Thus, the PAS Government of Kelantan's assurance that the Kelantan State Enactment (HUDUD) 1993 will not apply to Non-Muslims is a deception because it has included a contrary unconstitutional provision in the Enactment that Non-Muslims can choose to be bound by Hudud. Jurisdiction is a matter of law and not by submission. Thus this choice for Non-Muslims to elect to come under the Hudud is unconstitutional.

(b) The Kelantan Syariah Criminal Enactment (Hudud) 1993 would be <u>unconstitutional and void</u> for the following reasons:

(i) The 1957 Constitution has clearly allocated penal powers to the Federal Government and conferred on the State residual powers over minor Syariah offences. HUDUD was never envisaged to be part of the offences that violate Islamic precepts. The "Alliance Memorandum", the Lord Reid Commission Report and the White Paper issued by the British Government in 1957, all confirm that Malaya was clearly intended to be a secular country governed by Secular Laws.

The introduction of HUDUD would destroy the basic structure and fabric of this Constitution and therefore would be void.

Even if 100% of the Parliamentarians vote for it, it would still be unconstitutional, as the Constitution is supreme and not Parliament.

In the case of Kelantan Government v. Federal Government of Malaya and Tunku Abdul Rahman (1963), C.J. Thompson stated :

> "In doing these things I cannot see that Parliament went in any way beyond its powers or that it did anything so fundamentally revolutionary as to require fulfilment of a condition which the Constitution itself does not prescribe, that is to say, a condition to the effect that the state of Kelantan or any other state should be consulted".

This statement by C.J. Thompson lays the basic-structure doctrine of constitutionalism. What this statement means is that notwithstanding the powers of Parliament to amend the Constitution, it can never amend the Constitution in such-manner which is so fundamentally revolutionary as to change the structure of the Constitution.

In the Indian Supreme Court case of Kesavananda Bharati v. the State of Kerala, the Court held that in any country where the Constitution is supreme, there must be an implied restriction of the power of Parliament to change the basic structure of the Constitution.

(ii) Under Schedule 9, List II, Para I, a State has only authority relating to "creation and punishment of offences by persons professing the religion of Islam, except in regard to matters included in the Federal List.

Criminal Law and procedure, administration of justice, jurisdiction and powers of all Courts, creation of offences in respect of any of the matters in the Federal List are in the Federal hands. Theft, robbery, rape, murder, incest and unnatural sex are all dealt with by the Federal Penal Code. Therefore, these offences are out of bounds for the States even though they are also serious wrongs in Islamic criminal Jurisdiction.

(iii) "Schedule 9, List II, Para I clearly provides that Syariah Courts have jurisdiction only over persons professing the religion of Islam.

This means that Syariah Courts have no power to apply the Hudud Law to Non-Muslims even if the non-Muslims consent to be so subject. Jurisdiction is a matter of law and not of submission or acquiescence". **(By Prof. Shad Faruqi (Star of 1/5/2014)**

(iv) "The constitution is Schedule 9 List II Para 1 says that Syariah Courts 'shall not have jurisdiction in respect of offences except in so far as conferred by Federal law'.

The relevant Federal Law is the Syariah Courts (Criminal Jurisdiction Act) Act 1965. It imposes limits on penalties that the Syariah Court can impose. These are maximum three years jail, RM5,000.00 fine and six lashes. Death by stoning, amputations and life imprisonments are outside the powers of the States."
(By Prof. Shad Faruqi (Star 1/5/2014).

(v) HUDUD Law if implemented will create a dual criminal legal system to run side by side with the Federal Penal Code. This would be unconstitutional. It would also undermine the following Constitutional Provisions:

Article 8 (1) – Equality before the Law.

You cannot have for the same offence, people being judged differently and sentence meted out differently.

Article 5 - Right to life or personal Liberty.

Right to life would include the right not to be subject to torture, inhumane or degrading treatment or punishment.

(vi) Article 76A. The Kelantan state Government appears to wanting to rely on this Article 76A which permits the Federal Parliament to extend the legislative power of the States to enact law on matters in the Federal List.

Surely this general provision cannot be used to over-ride Specific provision of law in the Federal Constitution, such as (i) Schedule 9, List 1 (ii) Schedule 9 List II, (iii) Article 8 (1), (iv) Article 5(1), (v) Article 74(1), (vi) Article 74(2), and (vii) Article 75 (If any State Law is inconsistent with Federal Law then the Federal Law shall prevail.

Thus, PAS's intention to table a Private Member's Bill in Parliament, should be reconsidered in view of the above Constitutional provisions. In addition, no law can be passed which would affect the basic structure of the Constitution. Even if the proposed Bills by Kelantan are passed under Article 76A they would face challenges since the above stated provisions have not been amended. The Bills will also offend the basic structure of the Constitution and would certainly be unconstitutional.

In conclusion, we note that Khalid Abdul Samad (M.P. for Shah Alam) had suggested that Kelantan be allowed to introduce Hudud since the majority want Hudud. (M. Today – 5/5/2014). With respect we disagree. The majority cannot be allowed to impose their will on the minority and if allowed it will lead to tyranny. Can we say that since Buddhist form 95% of the population in Thailand, then they can impose their religious laws on others. Similarly can the Philippines (85% Christians), Singapore (80% Chinese) and other race majority countries impose their will on the population. In a democracy a single citizen is able to challenge to enforce his rights under the Constitution. Moreover in our Country we have a supreme Constitution.

Further, in a Federal system like Malaysia even if one State adopts HUDUD it would have severe ramifications for other States.

Therefore Khalid and PAS should argue based on the Constitution. We hear religious leaders saying that Hudud is divine law, Muslims are obliged to accept and cannot question it. This will clearly lead to authoritarian rule and tyranny.

Since, the introduction of Hudud Law will destroy the basic structure of the Constitution from Parliamentary Democracy to Theocracy, Kelantan should desist from tabling the Hudud Bills in Parliament**.**

[H] Is a new PERVERSE reading of the Constitution being promoted?

It is of concern that at a Forum at UKM titled "HUDUD" in Malaysia: opportunities, challenges and obstacles, the following two revolutionary viewpoints were promoted:

(i) Retired Chief Justice Tun Hamid Mohamad said, "Former Lord President Tun Salleh Abbas' 1988 Court ruling may have set a wrong precedent that led to the country being labelled secular".

(ii) International Islamic University of Malaysia Law lecturer Dr. Shamarhayu Abdul Aziz said, "that the Federal Constitution has never rejected religion, and that it was never stated within any of the laws that it was secular in nature……. Islam is the religion of the Federation and its basis is the Quran and Sunnah. The Constitution does not reject this".
(From Malaysiatoday.net on 30-05-2014.)

Their ideas are revolutionary because it had been accepted by Law Academics in the past that the Malaysian Constitution is based on secular laws and none had stated that it is an Islamic based Constitution where the Quran and Sunnah are the sources.

Professor Shad Faruqi, noted expert on Constitutional Law, stated in his book titled "Document of Destiny" at page 123:

"Secular history: Malaysia's Document of Destiny does notcontain a preamble. The word 'secular' does not appear anywhere in the Constitution. However, there is historical evidence in the **Reid Commission** papers that the country was meant to be secular and the intention in making Islam the official religion of the Federation was primarily for ceremonial purposes. In the White Paper dealing with the 1957 constitutional oral proposals it is stated "There has been included in the proposed Federal Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a seular state'

Dr. Shamarhayu's contention that 'Islam is the religion of the Federation' is correct. But her further contention that its basis is the Quran and Sunnah is seriously flawed.

The following Historical Evidence and the Historical Documents reject both the above contentions of Tun Hamid Mohamad and Dr. Shamarhayu as listed above; that all evidence points to the Federation intended to be a secular state.

(i) The Alliance Party of UMNO, MCA and MIC had submitted a **MEMORANDUM** to the Reid Commission and had stated their position as:

"The religion of Malaya shall be Islam. The observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religion, and shall not imply that the state is not a secular state".

(ii) The Lord Reid Commission Report which stated that a secular state was intended.

(iii) The White Paper issued by the British Government in June 1957, that Malaya was intended to be a secular Country.

(iv) The leading case on the matter is the CHE OMAR BIN CHE SOH v the PUBLIC PROSECUTOR [1988] 2 MLJ55, which was presided by 5 Eminent Judges, that is L.P. Salleh Abbas, Wan Sulaiman, Seah, Hashim Yeop A. Sani and Syed Agil Barakbah S.C.J.J. The Supreme Court after reviewing the Historical Evidence as above, stated:

"Thus, it can be seen that during the British colonial period, through their system of indirect rule and establishment of secular institutions, Islamic Law was rendered isolated in a narrow confinement of the law of marriage, divorce, and inheritance only……..

In our view, it is in this sense of dichotomy that the framers of the Constitution understood the meaning of the word 'Islam' in the context of Article 3. If it had been otherwise, there would have been another provision in the Constituion which would have the effect that any law contrary to the injunction of Islam will be void. Far from making such provision, Article 162, on the other hand, purposely preserved the continuity of secular law prior to the Constitution, unless such law is contrary to the latter"

(v) Article 4 declares the Constitution to be the supreme law. That is all other laws are to be tested by this yardstick. Thus, this rules out the Quran or Sunnah being the basis of "Islam" in the Constitution, as was suggested by Dr. Shamarhayu.

(vi) The existence of the Fundamental Liberties Provision in Part II of the Constitution goes to making the Constitution a secular one. The Freedom of Religion is enshrined in Article 11 which is inconsistent with an Islamic Theocracy.

(vii) The contents of the Constitution as a whole show it to be based on secular laws.

The New Doctrine

Clive Kessler (Professor Emeritus of Sociology and Anthropology at the University of New South Wales, Sydney) noted expert on political developments in Malaysia, says in his article titled "Almost there: The end of democratic constitutionalism in Malaysia? That a "radical new doctrine is being promoted and projected subliminally". The Professor writes:

"First, it came to be suggested that Article 3, affirming the status of Islam as the "official religion", meaning the symbolic and emblematic religion of the state, somehow entitled ---- and had always been intended to imply – that Islam was constitutionally entitled and even destined to exercise a kind of "religious over Lordship" in Malaysian Public, including religious life, and for all its citizens, non-Muslims and Muslims alike.

No such thing . That idea was repudiated not only by the UMNO's Alliance Party Counterparts in the pre-Independence negotiations, the MCA and MIC but forthrightly by UMNO itself, through TUN RAZAK's explicit affirmation of the "Secular" (his word) nature of the new nation-to-be……"

Yet, even further, for some, notably those of the Syariah Lawyers Association, Article 3 now also means, or is taken to mean, that Islamic Law is entitled and even destined to be and had always been prospectively and legitimately – the basis of the national legal system, holding ascendency over the so-called "common Law' tradition".

The New Doctrine referred to by Prof. Clive Kessler will easily fly when confronted with the Historical Evidence as above.

But, the worry is that persons like Retired Chief Justice Tun Hamid Mohamad may be part of the agenda, and due to their Stature; some respectability may be given to the perverse reading. Tun Hamid is also now elected as the Chairman of the newly formed National Unity Front by Perkasa to rival the NUCC set-up by the Government. NUF comprises of various Muslim NGOs. (FMT on 15-03-2014).

Tun Hamid Mohamad had also made a controversial statement that "the Christian Claim Over "Allah", was a strategy to put the Malays against the Bumiputera Community in Sabah and Sarawak. (Malaysian Digest on 27-01-2014)

Similarly of concern is the statement by former Chief Justice Tun Ahmad Fairuz Sheik Abdul Halim that the " use of the word "Allah" by non-Muslims does not arise as the use of "Allah" is for Muslims only. (Malaysian Insider of 31-01-2013).

In view of the above utterances by the Retired Chief Justice Tun Hamid Mohamad, Dr. Shamrahayu Abd Aziz and former Chief Justice Tun Ahmad Fairuz, their comments are a cause of concern as they seem to be promoting new readings of the Constitution. We hope that all will protect our document of destiny that is the Federal Constitution and promote the Historical Consensus reached in 1957.

(I) FORM COALITION to defend the CONSTITUTION

The former Law Minister ZAID IBRAHIM has called for the formation of a coalition between East Malaysian Parties, MCA, DAP, MIC, etc. and Malays to protect democracy and Rule of Law. (Malaysiakini on 15/4/2014)

This suggestion was in response to PAS and UMNO's move to look into imposing Hudud Law in Malaysia and they have set-up a joint secretariat to achieve this aim.

It has been shown above, that introduction of Hudud would :-

(i) Undermine the basic structure of the constitution and the understanding reached by the major races when 1957 Constitution was formulated. The clear intention was to have Parliamentary democracy and secular laws.

(ii) Undermine the Rule of Law, Fundamental Liberties and would also undermine Non-Muslims Rights.

(iii) Undermine the Rights of women, especially when women in this country have all the time enjoyed equal rights.

(iv) Hudud will affect our Country's economy as there will be pulling out of investments and new investments dwindling. The people will become poorer.

(v) Hudud has never been part of Malaysian Law. Why must it be introduced now? Islam has flourished in Malaysia without Hudud.

(vi) Even newly emerging Islamic Countries have rejected Hudud. These include TUNISIA, MOROCCO, EGYPT.

(vii) Hudud countries today are mostly failed States.

(viii) **SABAH & SARAWAK**

When Sabah & Sarawak together with Malay and Singapore formed Malaysia in 1963 (following the Cobbold Commission Repor) Sabah and Sarawak were guaranteed the 20 and 18 points in the Agreement. The 1st point of the Agreement stated that there shall be no State religion for Sabah and Sarawak.

Thus, the Hudud introduction would clearly undermine Sabah & Sarawak's right for forming Malaysia.

We are surprised by Sabah BN's State Secretary's statement [Malaysia Today on 4/5/2014] that Sabah BN. will only decide on the Hudud after studying the PAS Bill. This is surprising because one does not have to study the Bill to know about the Hudud. Hudud as generally understood is unconstitutional and would be against the 18 and 20 point Agreement, on which basis Sabah and Sarawak joined Malaysia.

Zaid Ibrahim (Malaysiakini on 14-05-2014)

"Amid Putra Jaya's tweeting on the issue -- a move Zaid believes is political – he said that Sabah and Sarawak needed to assert themselves against what is "Peninsular politicking".

"This (Hudud) was not a matter when they (Sabah and Sarawak) joined the Federation, they joined a secular Malaysia….. it can affect them in a fundamental way and they should be concerned and put their feet down", he said. "Likewise, the middle class should also need to speak up"

In Sabah and Sarawak there are a lot of intermarriages and the same family may have members of different faiths living peacefully together. With Hudud coming in, these families will suffer vhe most. If Hudud starts in Kelantan, then within 15 to 20 years it will spread to other States.

Therefore, MCCBCHST supports the call for the formation of a coalition to protect the Constitution and Rule of Law. Hudud should be rejected as being unconstitutional. Hudud will also be against Rukunegara which envisages a liberal and united society and Supremacy of the Constitution. The people who would be in charge of Hudud's enforcement will be Ulamas and to them only God's law is supreme and the secular Constitution, Rule of Law and Fundamental rights are inapplicable. Principles like democracy, good governance, excellence, propriety, accountability, competency, top class education, sound economic management, creation of jobs, modernisation and advancement is never the priority of this enforcers of Hudud Law. Their main concern is with observance of religious laws such as attending Friday prayers, fasting during Ramadan, tutup aurat, khalwat, no intoxication, no publicly holding of hands, Halal foods, etc.

NOTE

We are concerned of the warning by the Prime Minister regarding covert threats against Islam and stating "we will not tolerate any demands or right to apostasy by Muslims, or deny Muslims their right to be governed by Syariah Courts…." (Malaysiakini on 14-05-2014).
The underlined words appear to refer to Hudud Law. But Hudud Law has been shown to be against the basic structure of the Constitution and be unconstitutional. The Constitution should be respected and any religion's purported rights must be tested against the Constitution – whether they are permitted by the Constiution or fall outside it, in which case such actions would be unlawful.

[J] RUKUNEGARA – OUR NATIONAL IDEOLOGY

RUKUNEGARA was formulated as a National Ideology with the purpose of serving as a guideline in the country's nation building efforts. It was proclaimed as such by the Yang di-Pertuan Agong on 31st August 1970

The pledge contained in the Rukunegara is as follows:

"Our Nation, Malaysia. is dedicated to: Achieving a greater unity for all her people, maintaining a democratic way of life; creating a just society in which the wealth of the nation shall be equally distributed ensuring a liberal approach to her rich and diverse cultural tradition, and building a progressive society which shall be oriented to modern science and technology."

"We, the people of Malaysia pledge our united efforts to attain these ends, guided by these principles:

- Belief in God. (Kepercayaan kepada Tuhan)
- Loyalty to King and Country. (Kesetiaan kepada Raja dan Negera)
- Upholding the Constitution. (Keluruhan Perlembagaan)
- Soverignty of the Law. (Kedaulatan Undang-Undang)
- Good behaviour and Morality. (Kesopanan dan Kesusilaan)

It will be observed that the word "liberal" is mentioned in the Rukunegara. But today many NGOs and JAKIM say that 'liberal' is not an acceptable word.

Rukunegara recognised the rich and cultural diversity in Malaysia and a liberal approach to it. But this ideology provided by the Rukunegara is being questioned even by JAKIM when JAKIM says it is against multi-culturalism.

The Rukunegara also guarantees a democratic way of life. As such any move towards Hudud is going against this entrenched guarantee.

The detractors, therefore, should come to the right path and conduct themselves in accordance witth the Rukunegara and the Constitution.

[K] THE OATH BY MEMBERS OF PARLIAMENT

We have seen that the 1957 Malaya Constitution was a product of the consensus reached between the communities. The Historical Documents leading to it are (i) the Alliance Memorandum, (ii) the Lord Reid Commission Report and (iii) the White Paper issued by the British Government in June 1957. Further, when Malaysia was formed in 1963, it was based on the Cobbold Commission Report. All these Documents reiterate Malaysia to be a secular country.

The introduction of Hudud would change the character of the country from Parliamentary Democracy to an Islamic Theocracy. This change would undermine the basic structure of the Constitution and would be unconstitutional.

The Members of Parliament upon being elected have to swear an Oath to protect the Federal Constitution.

Therefore, Members of Parliament must bear this sacred oath in mind and thus vote against the Hudud Bill, if ever it is introduced in Parliament. The Bill may not carry the name "Hudud" but if its contents show it is intended to provide for Hudud offences and thus create a dual criminal system it must be voted against.

CONCLUSION

In view of the above, it is the duty of every Malaysian to protect the Federal Constitution and the Rule of Law. Hudud is unsuitable in the Malaysian context where the conditions are not conducive. PAS itself has in the past accused Government Institutions of not dispensing Justice. The MCCBCHST therefore categorically resolves to protect the Constitution and rejects HUDUD.

Sardar Jagir Singh
President

Venerable Dato Seri Jit Heng
Deputy President

Daozhang Tan Hoe Cheow
Vice=President

Elder Kong Yeng Phooi
Vice-President

Datuk R. S. Mohan Shan
Vice-President

Mr. Prematilaka KD Serisena
Hon. Secretary General