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Shiite Resistance to Malaysian Religious Orthodoxy

By Mohamed Nawab Osman and Iulia Lumina

Synopsis

A closer analysis of the dynamics within the Shiite community in Malaysia would suggest that its failure to present a united front in dealing with the discrimination towards the community is an important factor that continues to negatively affect the position of Shiites.

Commentary

IN OCTOBER 2017, more than 200 Iraqi nationals were arrested in Selangor for taking part in the Ashura mourning. The Iraqis, most of them postgraduate students and diplomats from the Iraqi embassy were attending a 10th Muharram ceremony, a major date in the Islamic calendar which, among others, marks the martyrdom of the grandson of the Prophet, Imam Hussain.

The persecution of the Shiites in Malaysia has been extensively discussed by close observers of Malaysian affairs such as Ahmad Fauzi, Farid Alatas and Faizal Musa. However, little has been said about the ways in which Shiites are using the legal space provided by the Malaysian constitution to resist the attempts by the state religious bureaucracy to curtail their rights.

Current Legal Frameworks Restricting Shiites

Even though the federal constitution guarantees religious freedom, the dual track legal system whereby state Islamic courts regulate religious affairs can severely restrict the liberties of non-Muslims and Muslim minorities to practise their religion. The increasing state-led Islamisation and expansion of state religious bureaucracies following Dr Mahathir Mohamad's premiership resulted in the standardisation of Islamic practice to

the point that Muslim minorities, such as the Ahmaddiya sect and the Shiites, were proscribed and declared deviant.

In this context, religious freedom became highly contested within a legal framework that adopted both the secular constitutional law and Islamic law. A significant legal development was the 1988 constitutional amendment of Article 121, which thereby denied the federal government's civil courts jurisdiction over matters pertaining to the Shariah courts. Even though federal courts can review the decisions of religious authorities that might call into question constitutional rights, the process is rather lengthy and ineffective.

This strengthened the autonomy of Islamic courts, which have reinforced orthodox Sunni Islam (*Ahl al-Sunnah wa al-Jama'ah*) through the enactment of several fatwas by state Muftis. Islamic teachings that fell outside of the Sunni orthodoxy were banned and even criminalised under the Shariah Criminal Offences Act.

In 1996, the National Fatwa Council issued a fatwa or religious edict that defined the anti-Shiite stance in Malaysia, prohibiting the practice of Shiite Islam and denounced the possession and distribution of Shiite literature as a crime. In addition to this, the federal government made use of the 1960 Internal Security Act (ISA) to arrest and detain Shiite Muslims. As a consequence, several anti-Shiite crackdowns followed and anti-Shiite sentiments and discrimination heightened.

Intra-Shiite Contestation

Since 2012, a group of Shiites headed by Mohd Kamil Zuhairi Abdul Aziz, leader of the Malaysian Shiite Association (MSA), and its secretary Mohd Nasir Sahari, have encouraged members of their community to make a Statutory Declaration professing to be Muslims of the Shiite denomination. The association believes that there is little that the state religious bureaucrats can do to prosecute these individuals after the statutory declaration has been made as the state Islamic ordinances could not supersede the civil law in Malaysia.

As such, regardless of any fatwa stating that the Shiites are deviant, they cannot be persecuted as they can exercise their right to religious freedom. A case in point is a group of 13 men from the Hussainiah Darul Mustafa community centre in Johor Bahru who made such a declaration and submitted them to the Prime Minister's Office.

They were subsequently summoned by the Johor State Religious Department and questioned under Section 9 and 12 of the state Shariah Criminal Act of 1997 for contempt or defiance of religious authorities and expressing an opinion contrary to an Islamic edict. While they have been made to wait indefinitely for the outcome of this investigation, there is little that the state authorities can do to challenge this.

This new posturing by the Shiite leadership is not necessarily welcomed by a group of Shiite leaders in the country. In an interview with the authors, Hassan Alatas, a key Shiite community figure, felt that the attempt by the MSA to challenge the state religious authorities is not necessarily a wise move as it is likely to exacerbate the conflict between the community and the government. Such attempts will also increase the gulf between the Sunni and Shiite communities in Malaysia.

He prefers that the community adopt the traditional *taqiyyah* approach where community members conceal their beliefs and forego ordinary religious duties due to the persecution they faced in Malaysia. This failure on the part of the Shiite community to present a united front to the authorities has in fact impacted its ability to deal effectively to protect the interests of the Shiites in Malaysia.

Lack of Unified Approach

At the moment, the ban on Shiite Islam is enforced in 11 out of the 14 states in Malaysia. The number of Shiite Muslims in Malaysia is contested and fluid, given the influx of students and professionals from countries like Iran, Pakistan and Iraq. Shiite communities are inclusive and embrace the cultural diversity evident in their ritualistic practice.

Nonetheless, their clandestine celebrations become a target for crackdown. The arrests are even more problematic since the anti-Shiite legislation seems to apply indiscriminately to non-citizens as well as Malaysians who are bound by the Shariah courts. Not only does the ban on Shiite Islam violate the federal constitution of Malaysia; it also contravenes several international agreements.

Whereas the distinction between civil and Islamic law in Malaysia provides a legitimate space for contestation and resistance against Shiite persecution, the apparent lack of a unified approach among Shiite community leaders remains a factor of weakness in combating anti-Shiite discrimination in Malaysia.

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