

PERSPECTIVE

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Singapore's Muslim Law versus Syariah Revivalism

*By Noor Aisha Abdul Rahman**

EXECUTIVE SUMMARY

- The Administration of Muslim Law Act 1968 (AMLA) binds Singaporean Muslims in matters concerning marriage and domestic relations. Although Muslim law has demonstrated syncretism in assimilating indigenous customary laws and civil law, it needs to be reformed in specific areas to meet the changing needs of contemporary Muslim families.
- This structural rethinking and reform have been relatively slow for two reasons: Firstly, because of rigidity in the mode in which the Muslim law is conceived; and secondly, the challenge posed by the emergence of religious revivalism (dakwah) since the 1970s. For Syariah revivalists who have emerged from the dakwah movement, the Syariah is a system of laws legislated by God which they select and define to be pristine and authentic.
- For many Syariah revivalists, the legitimate Islamic law-making authority is the Syura which they maintain differs from Parliament. They believe that the latter makes law based simply on the endorsement of the majority, while the former is preferred because it can only enact laws that have not been legislated by God and which must conform to the principles laid in the Koran and the Hadith (Traditions).
- While Syariah revivalists in Singapore maintain that the Parliamentary system does not oppress the rights of Muslims to practice their faith, they still harbour an understanding of a pristine Syariah which they believe must be upheld and implemented. They deploy the concept of rukhsah (exemption from this pristine Syariah) as they lack political power to implement the Syariah. Such concern and justification were hitherto absent in the thought and understanding of the local Muslim religious elite.
- In the final analysis, Syariah revivalism fails to discern and evaluate the strengths and contributions of the Muslim law that already exists. It defies intellectual engagement with problems of that law in operation and instead promotes vague rhetoric. Serious studies on the Muslim law, its development and reform do not feature in their discourse. Their discourse is also disconnected from the historical experience of Muslims in Singapore and departs radically from Muslims' understanding and attitude towards the general law and legal institutions.

** Noor Aisha Abdul Rahman is Associate Professor and Head of the Department of Malay Studies, National University of Singapore; and member of the Board of Trustees of ISEAS-Yusof Ishak Institute.*

INTRODUCTION

Singaporean Muslims are regulated by the Administration of Muslim Law Act 1968 (AMLA) in matters concerning marriage and domestic relations. Their non-Muslim fellow citizens, meanwhile, adhere to the Women's Charter regarding the same matters. AMLA administers Muslim law based largely on the tenets of the Shafie school which the majority of Malays adhere to. In the process of interaction with the local condition, the Muslim law has assimilated aspects of indigenous customary laws (adat) as well as civil law on the basis of their strengths, relevance and commonality of principles. Industrialisation and modernisation, particularly after independence in 1965, have impacted basic social institutions such as the family. While Muslim law has not remained static, the lag in its adjustment to the changing needs of contemporary Muslim families has had adverse implications for the rights and well-being of individuals and families.

In addition, this lag has been complicated by the emergence of religious revivalism or dakwah since the 1970s. This revivalism ushered in a discourse on "Syariah" which has had profound influence on the relationship between Muslims and their wider community. Led by Islamists such as Hassan al-Banna, Mawdudi, Syed Qutb and others, adherents of dakwah call for a puritan version of Islam (ad-deen). Integral to this is an imagination of a socio-political system deemed to be pristine but which is alien to the legal history and institutions that have evolved for the Malay/Muslim community in Singapore. Though revivalist discourse does not directly challenge the status quo or reject existing laws and the legal system, it nonetheless creates a negative binary between Muslims and the national law and institutions, and creates ambivalence within the community towards the latter.

AMLA: PLURALIST AND SYNCRETIC

AMLA binds Muslims in matters of personal law regardless of their choice. It reflects the system of legal pluralism in the area of marriage originating from the early 19th century with colonialism.¹ The Act, as its title stipulates, does not codify Muslim personal law but administers it. References made to the substantive law is couched in the phrase "in accordance with the Muslim law". The sources of the Muslim law that are applied in the Syariah Court reflect syncretic elements. Essentially it is based on the tenets of the Shafie school of law established in the region since the arrival of Islam in the 14th century.² Sensitive to local conditions, the Muslim law has assimilated many aspects of Malay customs based on its strength, practical utility and commonality of principles.³ This

¹ Refer to Ahmad Mohamed Ibrahim, *The Legal Status of the Muslims in Singapore* (Singapore: Malaya Law Journal Ltd., 1965) 10

² While the directive to apply the tenets of the Shafie school of law (unless it opposes public interest) in S33 AMLA is specifically addressed to the Legal Committee or the Majlis Ugama in the matter of fatwa making, the same school of law is referred to by the SYC unless parties belong to different jurisprudential schools.

³ See for example S112 AMLA on the matter of the distribution of property of a Muslim dying intestate.

syncretism is not a novelty but is characteristic of Muslim law since the inception of Islam.⁴ Legal ideas grounded in other Muslim legal traditions, particularly those concerning the rights of wives in marriage and divorce are also reflected in some of the provisions of the AMLA. In addition, aspects of civil law and principles where relevant have also been woven into the Muslim law over time.

Pertinently, AMLA has accommodated the views and representations of major groups and personalities within the Muslim community who have provided written and oral representations to the Select Committee on the Bill. Amongst the 18 representations made were the Religious Teachers Association (PERGAS), Angkatan Islam (AI) led by the prominent theologian Sheikh Fadhullah Suhaimi, Singapore UMNO, the Muslim missionary Society (Jamiyah), the South Indian Jamiatul Ulama (SIJU) Permusi and other significant groups.⁵ While they registered differences in opinions over specific provisions of the Bill which extended beyond issues of the power and jurisdiction of the major religious institutions – the Religious Council (MUIS), the Registry of Muslim Marriages (ROMM) and the Syariah Court (SYC), these were articulated based on the fundamental principle of Parliamentary sovereignty.

Arbitration in disputes over marriage and divorce as well as issues ancillary to divorce where the marriage could no longer be salvaged were more effectively regulated by AMLA. Since the inception of the SYC, there had been some degree of interaction with the civil court. These included disputes pertaining to maintenance of wives during marriage and that of children. Issues over custody and the division and distribution of matrimonial property by Muslim petitioners had also been heard in the High Court while their divorce proceedings were pending in the SYC without objections from SYC judges despite legislation that provided for the exclusive jurisdiction of the SYC in these matters. The amendments to AMLA and the corresponding relevant civil law since 1999 have legitimised and expanded the scope of these interactions.

While some Muslim groups expressed reservations against the amendment for “concurrent” jurisdiction over custody and division matrimonial property, these dissenting views were less articulated as a problem of conflict over principles between the Muslim and civil law but more as concerns that the amendments would limit the SYC’s powers. Furthermore ex-wives can now seek claims for nafkah eddah and mutaah as maintenance from the Family Court. It is also pertinent to note that the inclusion of guiding principles in determining the division of matrimonial property in 2000 closely mirrored relevant provisions in the Women’s Charter. The SYC has also assimilated principles of the civil law evident in joint custody orders. Generally these developments have not been met with objections by litigants or the Muslim public. The process can be said to reflect the inclusive orientation of the

⁴ On the development of the Muslim law and its interaction with customs, read MM Sharif, *Ethical Teachings of Islam in A History of Muslim Philosophy* V 1, (Itto Harrowsowitz, Weisbaden, 1963)155-177.

⁵ Refer to Singapore Parliamentary Debates, Official Reports, (December 1965 V. 24, 17 August 1966, V. 25).

judicial officers in the Appeal Board and Syariah Court, many of whom have received their training in civil law and have had long years of practical experience.

STRUCTURAL RESISTANCE TO CHANGE

Nevertheless, reforming Muslim law in Singapore to keep up with modernity has been relatively slow. This goes to the heart of a broader global discourse on how Muslim law can be adjusted to meet the needs of contemporary Muslim families. After all, much of Muslim law had been formulated in the context of traditional, pre-modern, pre-industrial societies in which social change is slow. Such societies had communities which were less diverse, and the rights of individuals were determined by affiliation to tribe or kin. Today technological advancement has induced unprecedented social change impacting traditional basic social institutions, resulting in greater access to education, participation in the public sphere and social mobility, irrespective of gender. It has also facilitated the incredible exponential production and dissemination of information through new and traditional media, leaving few communities isolated. Greater significance accorded to individual rights and accountability based on citizenship is also evident. These, coupled with developments in human rights discourse and conventions, have further influenced changes in conceptions and basis of marriage and laws governing gender relations. They, in turn, impose pressures at reevaluation of the Muslim law.⁶ While discord between Muslim law and social change has, to a large extent, been the result of rigid thinking on the part of stakeholders who believe that the law is supra-temporal and beyond modification, the problem has unfortunately been attributed to the stereotype of Islam as an authoritarian patriarchal religion that opposes gender equality.

While the slow pace of legal revision in Singapore has been criticised, such views have had little impact.⁷ For instance, it took more than three decades after the introduction of AMLA for the age of marriage for Muslim girls to be raised from 16 to 18 years of age. Meanwhile, the law on talak (divorce) without cause has persisted. Reluctance to re-evaluate the law is at times justified by the assertion that husbands who abuse their power of divorce will meet punishment in the hereafter.

⁶ For an excellent critical study of the problem of Muslim legal thought in the midst of change, refer to El Fadl, Khaled Abou, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: One World, 2001). Read also An-Naim, Abdullah A., *Islamic Family Law in a Changing World: A Global Resource Book*, (London, UK: Zed Books, 2002)

⁷ See for example the views of Ahmad Ibrahim, Singapore's first Attorney general who offered a critique of Muslim law in Singapore in the 1960s and its discordance with Women's Charter 1960. Ahmad Ibrahim, *The Legal Status of Muslims in Singapore* (Singapore: Malayan Law Journal, 1965). Select committee Reports on the AMLA also reveal voices of discontent on the proposal to bind Muslims to the Islamic law of inheritance in testate cases without choice. *Singapore Legislative Assembly, Report of the Select Committee on the Muslims Bill* (Singapore: AG Banfield, Govt. Printer, 1957).

There is also a strong tendency to appeal to the morality of the individual rather than to proactively change the law. It is clearly manifested in the lack of effort to review the fatwa that outlaws inheritance for non-Muslim spouse and children. Instead, efforts in resolving potential disputes are made by appealing to the compassion and mercy of the Muslim kin so that the non-Muslim spouse and/or children are not deprived of their inheritance. It is also clearly illustrated in appeals to the conscience of beneficiaries not to coerce survivors of joint tenancy to sell the property upon the death of the joint tenant while, at the same time, rejecting joint tenancy as being alien to Islam. Such actions and modes of thought resist constructive re-evaluation of the law.

Furthermore, there has been little discussion of the implications human rights discourses hold for Muslim law. These include matters relating to the sacramental conception of marriage; the law prohibiting marriage to a kitabiyah and a kitabi (a female or male Person of the Book); unrestricted right of husbands to talak (go through the process of divorce) as opposed to that at the insistence of wives; reluctance to allow for divorce by judicial decree irrespective of gender; the issue of paternity (in cases where the child is conceived out of wedlock) on maintenance of children, and many others. Such issues have become the subject of acute contestations which Singapore's Muslim community are not isolated from.⁸

SYARIAH REVIVALISTS AND DAKWAH

While rethinking the law is pressing, the emergence of religious revivalism since the 1970s has made it imperative. For revivalists, the meaning ascribed to Syariah departs radically from the Muslim law that is actually in operation.⁹ In fact the latter does not feature in their discourse. While Muslim law has evolved historically within the local context and is regulated by AMLA (a creature of Parliament), Syariah as expressed in revivalist rhetoric has no such historical or legal context. Furthermore, while the law in operation can be traced to a lineage of ideas expounded by Muslim legal scholars in the classical period, the Syariah in revivalist thought is devoid of these connections. Instead, Syariah is taken to refer to a

⁸Read Wahid Marzuki. "Pembaharuan Hukum Keluarga Islam Pasca Ode Baru dalam Pendekatan Politik; Studi Kasus CLD-KHI" in Marzuki Wahid and Naqiyah Mukhtar (eds.) *Generasi Baru Peneliti Muslim. Indonesia. Kajian Islam Dalam Ragam Pendekatan* (Purwokerto: Australian Indonesia Institute, STAINPress, 2010); Zainah Anwar. Justice and Equality in Muslim Family Laws: Challenges, Possibilities and Strategies for Reform, in *Washington & Lee Law Review*, (2007) V. 64, pp1529-1549.

⁹ Many of these Syariah revivalists may see themselves as promoters of "moderate" Islam. They have diverse backgrounds and training, and not all are trained in religious studies. Those who have pursued their religious studies do so both in traditional centres of religious learning abroad as well as new ones that include those from Egypt, Medina, Jordan, Kuwait and Malaysia. Amongst these revivalists are also the traditional religious elite whose religious concerns have largely centred on cultivating morally upright individuals with emphasis on matters of faith and piety, "haram and halal", sin and damnation, rituals and ceremonies and other related aspects. Given the lack of homogeneity in the group, I have sought to focus on the dominant traits in the revivalists' mode of thinking based on materials they have published, highlighting at the same time the pervasiveness of their views conditioned by the global religious revivalist phenomenon in the Muslim world.

selective system of laws perceived to be pristine and authentic as legislated by God. The Syariah, proponents assert, cannot be separated from the belief in the totality and completeness of Islam or ad-deen (a way of life).

While ordinary Muslims do not deny that Islam has provided a comprehensive body of values and principles for mankind, Syariah revivalists believe that Islam refers to a fixed system of rules governing and binding society which cannot be compromised or modified as it is central to the faith. The famous dictum of Hassan al-Banna which they consistently refer to illustrates the point:

Islam is a comprehensive system that touches on all aspects of life. It is the state and the land, the government and the people, morals and strengths, mercy and justice, civilisation and law, knowledge and judgement, natural resources, production and wealth, jihad and preaching, a team and an ideology as much as it is a straight path and true aqidah no more, no less.¹⁰

More importantly, this slogan of Islam as ad-deen is accompanied by the single-minded rejection of secularism which is presumed to be the product of relativism and atheism. As PERGAS, for instance, asserts: “Islam differs from secularism”— while secularism segregates the role of religion from matters of society and state, “Islam has guidelines for all aspects of life and demands its believers’ commitment to all teachings.” Hence “whatever form of secularism whether it be one which totally rejects religion in society or which limits it to just the moral aspects of society or with the purpose of eliminating religion from society or one which accepts religion to secure harmonious living, it is in principle conflicting with our understanding of religion.”¹¹ Based on this, revivalists perceive the national legal system and laws as secular and thus incongruent with Islam in principle.

Intertwined with this discourse on secularism and law is their call for dakwah. While Muslims generally understand dakwah as a call to do good and avoid evil in the ethical sense of the word, Syariah revivalists not only deem it to be fundamental to a Muslim’s faith and identity but also weave into it a political motif¹² – one that obliges Muslims to implement Islam’s teachings (as presumed by them) without question. Absolutist claims attributed to Syed Qutb argue that Muslims have only two choices – either to accept all the teachings of Islam for this world and the afterlife, or abandon them completely.

As far as Syariah revivalists are concerned, the legitimate Islamic law-making authority is the Syura which they maintain differs from Parliament.¹³ In their imagination, the latter

¹⁰ PERGAS, *Moderation in Islam: in the Context of Muslim Community in Singapore* (Singapore:Pergas,2004)107

¹¹ PERGAS, (ibid) pp.108-109.

¹² For an account of early revivalists’ centrality on dakwah, refer to Fajar islam 1981; 83 (1); 84 (3).

¹³ An earlier reference to the Syura is discussed in an article by Maarof Salleh, Kepimpinan: Beberapa Ciri Asas dipandang dari Kaca Mata Islam, *Fajar Islam* (1983 (1). While it did not have the same binary implications as evident in later revivalist discourse, its usage though deemed Islamic, was contextually alien to the general understanding of leadership in the community.

allows for any law to be legislated simply based on endorsement of the majority whereas the former can only enact laws that have not been legislated by God.¹⁴ Even as they establish this unbridgeable polarity they also call upon Muslims to accept secularism (as defined by them) and the Parliamentary institution for the pragmatic reason of the local Muslim community's minority status: "While we believe in the comprehensiveness of Islam, the socio-political realities of the Muslim community here indicate that the possibility of practicing the comprehensive Islam in the Singapore context, is remote. Due to the remoteness of this possibility, we need to choose more appropriate and beneficial priorities."¹⁵

Syariah revivalists in Singapore maintain that the Parliamentary system does not oppress the rights of Muslims to practice their faith. However, given their understanding of a pristine Syariah which they believe must be upheld and implemented, these revivalists find themselves having to articulate rukhsah (exemption from the pristine Syariah) in order to accept the irreconcilable. This methodology does not feature in traditional religious/legal discourse – an indication of the divergent attitude and sentiment of the religious elite of the past towards the national law and legal institution.¹⁶ Furthermore, though they abstain from defining hudud, they nevertheless assert that it is "compulsory" for Muslims to believe in its "sanctity". Doubting and disputing it would, in their mind, lead to apostasy.¹⁷ Without recourse to any authority, they invoke the Koranic verse 5:44. "And if any fail to judge by (the light of) what Allah has revealed, they are (no better than) Unbelievers" to justify their rhetoric. Their view departs radically from that of local Muslim scholars who generally view forms of punishment mentioned in the Koran as secondary and not binding on Muslims.

Conditioned by the views of Islamists such as al-Banna, Qardhawi and Ganouchi, revivalists assert that political Islam cannot be separated from belief in the faith and that establishing the "Islamic state" is therefore "part of the demands of the religion".¹⁸ As for what the 'Islamic state' actually is, little is explicated except that it "has little difference from the modern system of governance prevalent today", that "its existence will not destroy the current system and that it can function viably within the existing system."¹⁹ In the absence of the Syura and the Islamic state, revivalists advocate that Muslim minorities participate and share power with the government. The overriding aim is not dependent on common values and principles of citizenship and is to lobby and negotiate for policies in favour of the community's rights and for its interests to be legally protected.²⁰

¹⁴ PERGAS, (ibid), 120

¹⁵ PERGAS, (ibid), 111

¹⁶ PERGAS, (ibid), 113

¹⁷ PERGAS, (ibid) 129

¹⁸ PERGAS, (ibid) 117; Refer also to Muhammad Haniff Hassan, *Contextualizing Political Islam for Minority Muslims*. RSIS Working Paper, (No 138)

¹⁹ PERGAS, (ibid) 118; Refer also to Muhammad Haniff Bin Hassan, *Negara Islam: Satu Pandangan in Al-Risalah*, PERGAS, (April-June 2003).

²⁰ Rachid Ghannouch, *The Participation of Islamists In A Non-Islamic Government in PERGAS, Al-Risalah*, (April-June 2003).

An important feature in Islamic revivalism is the discourse on minority fikh. Developed by Qardhawi in response to Muslim immigrants in the West grappling with the problems of assimilation into their host countries, minority fikh rulings cover a host of issues. They were devised with the overriding aim of ensuring that Muslims safeguard their identity in a predominantly non-Muslim society. That revivalists, indigenous to Singapore, have latched on such a discourse is revealing of their disconnect with their own history and tradition. The phenomenon may also stem from their own insecurity over their religious identity in the midst of change and their minority status in Singapore. Qardhawi's fikh for minority is promoted even though many of the views he expounded can impede pluralism and social integration. For example, his views on marriage between non-Muslims and Muslims, inheritance, and social interaction are littered with negative presumptions and stereotypes of non-Muslims. Some of his fatwas support the views of theologians who advocate death or imprisonment for apostasy which reflect little regard for human judgement and freedom of conscience.²¹ Revivalists' call for them to be propagated and introduced in the curriculum of madrasah and in mosques with the support of the Malay media and religious institutions do not consider the adverse ramifications on the well-being of our plural society. To expose Singaporean Muslims to these teachings would only aggravate dichotomies and segregate Muslims from national institutions.²²

CONCLUSIONS

The Syariah revivalist mode of thought fails to discern and evaluate the strengths and contributions of the Muslim law that already exists. It defies intellectual engagement with problems of the actual Muslim law in operation and promotes vague rhetoric. Serious studies on the Muslim law, its development and reform do not feature in their discourse. Their discourse is also disconnected from the historical experience of Muslims in Singapore and departs radically from Muslims' understanding and attitude towards law and legal institutions.

Whereas the polarity between the Muslim law and legal civil institutions was absent in religious discourses in the past, it recurs as a central feature in revivalist rhetoric. Instead of contributing towards the development of good law relevant for Muslims and facilitating the assimilation of progressive law on grounds of principles, the Syariah revivalists' puritanical understanding of the law and the dichotomies between Islamic and secular law and institutions breed exclusivism and alienation of Muslims from their own legal tradition. It also impedes Muslims from partaking and contributing effectively to the development of national law and the legal system for the good of all.

²¹ Sheikh Yusuf al-Qaradawi, *Fiqh of Muslim Minorities: Contentious Issues & Recommended Solutions*. (Cairo: Al-Falah Foundation, 2003)

²² See for instance the strong support expressed for the propagation of minority fikh in Islam & Realiti Semasa, *At-Takwin*, (Nov-Dec 1997)

The utopian version of Islamic law, with little emphasis on reasoning and intellectual engagement, stifles the progress of Muslims. While such a discourse does not aim at actively renouncing existing law and legal system, it negatively influences and conditions the thought, ideas and responses of Singaporean Muslims. Relevant stakeholders within the community cannot avoid the task of facilitating and developing alternative discourses on the Muslim law, one that is not only grounded in progressive legal thought and tradition within the Muslim world but which also constructively assimilates relevant legal ideas and principles from the modern world.

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