Criminalising Offences Against Religion of Islam and its Punishment: A Particular Reference to Malaysia

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Abstract

Many argue in the past that the shariah criminal offence is in an awkward position because the “criminal” nature of the provisions is not “violent” enough and does not in any particular way victimize any substantial party. Being a victimless offences, some people belittle the law and the authority. The latest case involving Abdul Kahar Ahmad the “Rasul Melayu” decided before the Federal Court confirms the validity of the law that seeks to protect Muslim from the ill-influence of deviant teaching. It also establishes that whoever tends to challenge the constitutionality of the state law, would be doomed to fail. Many actions ranging from changing one’s religion to upholding deviant teaching have been brought before the court – shariah and civil court alike. All these are technically offences against religion. The highly-publicized issue of religious freedom and apostacy with all its legal and social implications is a never-ending story. This paper will discuss the position and suitability of all these offences and examine the importance and predictability of these laws – as well as its deficiencies - in curbing serious offences against the religion of Islam. Cases concerning those offences together with punishments will also be highlighted in order to examine its suitability. Despite all that, the author is in the view that some laws need to be improved to stay relevant.

Introduction

The judgement in the Kuala Lumpur Federal Court in the case of Sulaiman Takrib v. The Government of Terengganu and Abdul Kahar Ahmad v. The Government of Selangor confirm that the sections under Syariah enactments challenged by the four men were valid laws. The judge in this case hold that "State legislatures may create offences and punishment of offences on persons professing Islam and offences going against the precepts of Islam. Arguments that laws controlling the propagation of doctrines and beliefs was unconstitutional on the grounds that it was inconsistent with Article 11 of the Federal Constitution on the freedom to profess any religion cannot stand because state legislatures can make laws to control propagation of doctrines and beliefs."

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