

February 20<sup>th</sup> 2016

# **Islam In A Constitutional Democracy**

A G25 Public Forum Programme  
Summary of Topics Discussed

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## **Introduction**

This compilation was put together by a team of rapporteurs based on the 19 presentations made by invited speakers at the G25 forum held on December 5 & 6, 2015 at Persatuan Alumni University Malaya (PAUM) club house, Kuala Lumpur.

The summaries, suggestions and notable quotes & phrases by forum presenters are categorised under the following clusters:

- ❖ **The Federal Constitution And Shariah Law**
- ❖ **Issues Of Conflict And Overlap Between Civil Law And Shariah Law**
- ❖ **Islamisation And Its Consequences**
- ❖ **Islam And Politics**
- ❖ **Maqasid Al Shariah And Wasatiyyah**

### **Also Included Are:**

- (1) A summary of the roundtable discussions held at the end of the forum to provide guidelines on the aims, objectives and activities of the proposed Consultative Committee of Constitutional and Shariah Law Experts
- (2) Opening Speech by YBM Tan Sri Tengku Razaleigh Hamzah
- (3) G25 Statement Of Reaffirmation on December 5, 2015



## Speakers by cluster / topics

### The Federal Constitution And Shariah Law

- Shariah Laws, Civil Laws And The Federal Constitution  
By Professor Datuk Dr Shad Saleem Faruqi
- Islam And Human Rights In The Federal Constitution  
By Associate Professor Azmi Sharom
- The Position Of The Shariah Court In The Malaysian Legal System  
By Encik Rosli Dahlan
- Constitutionality Of Islamic Bureaucracy In Malaysia  
By Puan Firdaus Husni

### Issues Of Conflict And Overlap Between Civil Law And Shariah Law

- Judicial Review Of Shariah Matters By Dato' Mohd. Hishamudin Yunus
- Salient Features of Progressive Muslim Thought By Dr Adis Duderija

### Islamisation And Its Consequences

- Family Law: Justice And Equality In The Treatment Of Women  
By Cik Zainah Anwar (Presenter – Puan Suri Kempe)
- Freedom Of Religion And Rights Of Minorities By Mr Lim Heng Seng
- Islamisation Policy And Its Impact At The Governance Level  
By Associate Professor Dr Azizuddin Sani
- The Arbitrariness Of Moral Policing By Puan Ratna Osman

### Islam And Politics

- Islam And The Challenge Of Democratic Commitment  
By Dr Chandra Muzaffar
- Politics Of Moderation By Tan Sri Razali Ismail
- Islam And Secularism In Indonesia By Professor Dr Din Syamsuddin
- Islamic Revivalism And Its Socio-political Impact By Dr Nawab Osman
- The Islamisation Of Politics In Malaysia By Dato' Dr Ahmad Farouk Musa
- Multiculturalism And Political Islam  
By Associate Professor Dr Syed Farid Alatas

### Maqasid Al Shariah And Wasatiyyah

- Maqasid Shari'ah - Towards Moderation In Islam  
By Dr Haji Dzulkefly Ahmad
- The Impact of al-Wasatiyyah Values on Malay Attitude Toward  
Non-Malays in Malaysian Society by Dr Lukman bin Thaib



Cluster A

# **The Federal Constitution And Shariah Law**

Professor Datuk Dr Shad Saleem Faruqi

Associate Professor Azmi Sharom

Encik Rosli Dahlan

Puan Firdaus Husni

## The Federal Constitution And Shariah Law

The Malaysian Constitution of 1957 and modified in 1963 was inspired by compassion and compromise underscoring the importance of co-operation and moderation in ensuring inter-communal tolerance within a multiracial, multicultural and multi-religious society. There is a provision within the Federal Constitution for States to enact Shariah laws. However, these state Shariah laws do not override the Federal Constitution and are limited to 24 or so specified matters of “Islamic law and personal and family law of persons professing the religion of Islam”.

State Shariah laws are basically a mixture of Shafie laws and the Malay *adat* and the power to enact Shariah laws is exercised by the state legislature of each state. The Shariah courts do not exist under the Federal Constitution but under the state Shariah enactments. Their power is limited to family laws, deliberating only on matters pertaining to marriage, divorce, and inheritance and only applicable to Muslims.

Shariah’s criminal law is also limited in its application and confined to offences against the “precepts of Islam”.

Nevertheless the presence of two high courts co-ordinating jurisdiction has led to the belief that there exist two parallel legal systems within the country. This has brought about conflicting jurisdiction issues, such as custody battles and unilateral conversion of children much to the dilemma of those concerned.

Adding to this unhappy state of affairs is the perceived over-zealousness of the Shariah enforcement officers whose actions are threatening the human rights and civil liberties of the citizens of this country.

The current situation is the result of a culmination of the process of Islamisation which has been building up over the years and encouraged by the political elites who championed Islam mainly for the purpose of garnering popular votes. By refraining from defending secularism, these same politicians have given free rein to religious individuals and institutions to establish their version of Islam. These developments have resulted in a situation where ordinary Malaysian Muslims are being constrained from exercising their fundamental rights as enshrined in the Federal Constitution.

## Following are some ideas and suggestions

- To identify the conflicts between Shariah laws, Civil laws and the Federal Constitution.
- To uphold the Federal Constitution which guarantees the fundamental rights of all persons under the law and guard against the violation of these rights by the Shariah authorities.
- To appeal to religious officers that in performing their duties they do not ill treat people in the name of Islam and infringe upon their fundamental rights as enshrined in the Federal Constitution. Some recent examples include state enactments that restrict rights to speech and expression through banning of books, conducting raids against the Bible Society of Malaysia and on a Hindu temple to stop a wedding, and preventing Muslim scholars from other states from giving religious speeches *ceramah* without recognised degrees *tauliah* issued by the host state. Other examples include the prohibition against cross-dressing, and criminalising the questioning of fatwas. All these laws and acts are unconstitutional.
- To remind us that our Constitution – a document of destiny - was inspired by compassion and compromise and that cooperation and courtesy towards other religions are recommended.
- To observe the spirit of moderation *Wasatiyyah* and condemn fanaticism *asbiyah* in interpreting the Shariah in order to preserve inter-communal tolerance and peace in a multicultural society.
- To promote more efforts and initiatives in inter-cultural, inter-religious and inter-regional dialogues to overcome the existing stresses in our body politic.
- To understand the process of Islamisation that has taken place, highlight reasons why secularism of this country has been put aside and be appraised of the reasons why minority sects (Shiahs and Ahmadiyyahs) in Malaysia are persecuted.
- To allow individuals to discuss, debate and give feedback before a fatwa becomes a law to allow for adequate consultation with affected interests. Some fatwas are ultra vires the Constitution or in conflict with federal laws.
- To make comparisons with Indonesia which is more diverse and have broader views on Islam to preserve human rights and civil liberties.
- To understand the definition used by the Shariah court on “*tidak bermoral*” as what is immoral to one might not be immoral to another person. This relates to moral policing by Islamic enforcers and even the public.

- To define Islamic Law in Malaysia for the layperson related to marriage, divorce and inheritance (and other provisions under state list in reference to Article 74 (2) of the Federal Constitution), as they are only applicable to Muslims. Recent cases which have caused some amount of conflict in the Shariah court included:
  - Body snatching: where the deceased is a convert but unknown to the family
  - Child custody: in divorce cases where one parent is a Muslim, converted after marriage and the other is not. The marriage is governed by Civil law and not Shariah, and
  - The Transgender case: where there was a violation of fundamental liberties when the Transgender persons concerned were arrested and charged in the Shariah Court for cross-dressing.
  - Other cases included:
    - (1) Nik Raina of Borders bookstore case, where publication of certain books are banned. The case was dropped after the Court of Appeal ruled in favour of the accused
    - (2) The case of Kassim Ahmad who was wrongly arrested in Kedah by JAWI which has no jurisdiction in that state. This case is still pending and any discussions could be in contempt, and
    - (3) The use of the word Allah as it is in conflict with freedom of religion.
- To correct any misconception of the dual legal system of Islamic and Civil laws.
- To have a better understanding on how Shariah laws and fatwas are being proposed and enacted and in whose interest and to determine the democratic process in enacting Islamic Shariah law.
- The elevation of the Shariah courts to be on par with the Federal court, Civil courts, and High courts. This plan is constitutionally impossible in light of the Federal Court decision in *Latifah v. Rosmawati* (2007), as well as the limited nature of a Shariah court as set out in the Federal Constitution under the Ninth Schedule.
- To resolve problematic ongoing issues revolving on the ongoing debate in Malaysia which include the question of Islamic v secular state, jurisdictional conflict, custody battles, unilateral conversion of children – Article 12(4), Church raid – Article 11(4), Borders bookstore raid – Article 7, State List and Attempt to redefine Article 3(1), banning of the word Allah in weekly Herald publication and plan to set up a Shariah court equivalent to the Federal Court.

## **Notable Quotes & Phrases by Forum Speakers**

**Islam is a mansion with many rooms. Diversity is not unknown in Islam. Allah SWT permits it. Understandably, the Muslim community in Malaysia is divided over such issues as implementation of hudud, moral policing, Kalimah Allah issue and some actions (seen as oppressive) by non-Muslims.**

**Nevertheless, in the overall constitutional scheme, we are neither a full-fledged Islamic nor a secular state. We have legal pluralism.**

**National TV devotes minimum 14 hours a week to Islamic programmes.**

**A uniform Shariah law by the federal Parliament is legally possible under Art. 76 but it will require the consent of all state legislatures plus the consent of the Conference of Rulers.**

**Our Constitution is not ideologically pure. It walks the middle path. The “Islamic State” is aspirational, not a constitutional reality. But the movement towards more Islamisation is gathering steam.**

**There is a silent re-writing of the constitution currently taking place**

**By Shad Saleem Faruqi**

**This conference is 25 years too late; we should have been talking about this before the country gets into this current state**

**By Azmi Sharom**



## Notable Quotes & Phrases by Forum Speakers

However, we have to set aside our personal feelings because the law in this country is still what it is today, secular law, where morality not accepted by the law is not enjoying the status of law. Perhaps that argument should be addressed at other forums or at seminars and, perhaps, to politicians and Parliament. Until the law and the system is changed, we have no choice but to proceed as we are doing today

By Rosli Dahlan

**Donald Horowitz (1994a: 236) describes the trend regarding Shariah laws in Malaysia:**

**“Nowhere . . . in Asia has the Islamisation of law preceded more methodologically than in Malaysia where, in the span of a decade, dozens of new statutes and judicial decisions have clarified, expanded, and reformulated the law applicable to Muslims . . . what has been attempted is the creation of two parallel, relatively autonomous systems, one secular and one Islamic.”**

**These changes are indeed revolutionary but, they are administered by each state authority and are still applicable only to the Muslims of Malaysia, in accordance with the 9th Schedule, List II, Paragraph 1 of the Malaysian Constitution (Miller 2004).**

**Paper by Shad Saleem Faruqi**





Cluster B

# **Issues Of Conflict And Overlap Between Civil Law And Shariah Law**

Dato' Mohd. Hishamudin Yunus

Dr Adis Duderija

## Issues Of Conflict And Overlap Between Civil Law And Shariah Law

While Article 3 of the Federal Constitution clearly states that Islam is the religion of the Federation but other religions may be practiced in peace and harmony, the disputes on the position and application of Islamic laws within Malaysia's constitutional democracy remains unresolved. Issues of conflict and overlap in the plural legal system raises concerns, particularly in terms of implementation and justice.

The Constitution guarantees the right to practice one's own religion. This right is encompassing and constitutes active and participatory aspects of religion. Limitation on religious freedom in Article 11-15 pertains only to compliance with general laws on maintaining public order, public health or morality grounds. These limitations in no way affect the essential secular character of Malaysia's Constitution. Malaysia is not a theocratic state with Shariah as the supreme law. Religious freedom is guaranteed subject to public order, health, morality, control and restriction on propagation of any religious doctrine among Muslims.

State laws may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. There are variations among state laws on this aspect which have raised constitutional concerns, particularly cases of conflict from punitive and rehabilitative laws imposed on professing a religion of choice, laws on restriction on places of worship, literature, teaching of pupil's own religion, teaching of Islam to non-Muslim students, dakwah activities amongst non-Muslim students, the restrictions on non-Muslim students in the practice of their faith and religious societies in schools.

There has been many cases demonstrating conflict and overlap between Civil and State Shariah laws. A prominent case was the transgender case of the three Muslim males with a medical condition called 'Gender Identity Disorder' (or GID) which challenged the validity of section 66 of the Negeri Sembilan Shariah Criminal Enactment, 1992 (which prohibits Muslim males from dressing as women in public, subject to a fine or imprisonment) in that it contravenes the Federal Constitution {Art. 5 (right to life), Art. 8 (equality before the law), Art. 9 (freedom of movement), and Art. 10 (freedom of speech and expression)}. This conflict was the subject of a judicial review in 2013-2014 initiated by the three Muslims, following repeated arrests, detentions and prosecution by the State's religious authority.

Following dismissal by the High Court of Seremban, the three Muslims males appealed to the Court of Appeal (CoA). In allowing the appeal, the CoA declared section 66 of the Shariah Criminal Enactment invalid as being in contravention of the Constitution. The CoA decision was taken up on appeal to the Federal Court and the Negeri Sembilan State argued that the CoA decision was invalid based on the fact that the appellants were wrong in law in bringing the matter for judicial review to the High Court, without leave of a Judge of the Federal Court. (Based on Art. 128 of the Federal Constitution, only the Federal Court has the power to determine such an issue to the exclusion of other Courts).

Court of Appeal Judge Hishamudin, while conceding that the Federal Court should not have allowed the case to be heard, agreed with the arguments that Articles 4(3), 4(4) and 128 were irrelevant since the transgenders were not contending that the State had no power to enact matters pertaining to the Islamic religion, but that there was no legal requirement to apply for leave of a Judge of the Federal Court. The High Court therefore has the power to hear the case and concluded that the Federal Court, instead of allowing the appeal on a mere technicality, should have dealt with the appeal on the merits so that the Court could rule on the constitutionality of section 66.

In addition, these conflicts between the Constitution and Shariah laws were most prevalent in the exercise of the rights of women. After 1984, the progress made in family laws were reversed following subsequent changes in the laws which discriminated more against women. To some extent, this was the result of the Islamisation policy which started during the Mahathir administration with good intentions to inculcate universal Islamic values for good governance, but was hijacked by religious conservatives and political Islamists in government.

In 2005, more amendments to the law further discriminated against Muslim women leading to extensive opposition from women's groups and a revolt in the Senate. Public outcry resulted in the directive by the then Prime Minister for amendments making the laws fairer for women. However, these were never submitted to Parliament reflecting the deepening of conservative Islam in Malaysia. Sisters in Islam continued to lead the public voice to create awareness on Islam and Muslim women's rights in Islam. An understanding of Islam centred on equality and justice and the need for reform of the discriminatory Muslim Family Law of Malaysia is based on the message of the Quran that includes justice *adil*, equality *musawah*, human dignity *karamah* and love and compassion *mawaddah wa rahmah*. The main challenge confronting Muslims in Malaysia is how to reconcile the tenets of the faith to the forces of modernisation, pluralism, changing times and circumstances. Until there is political will and courage by those in power to manage the growing conservatism of religious authorities and support the necessity for change, the idea of gender equality aligned to the basic concepts of justice in Islam will not become a reality.

These conflicts demonstrate a need in general for a progressive Muslim worldview to include a commitment to social and gender justice, centrality of spirituality, principled prophetic ethics of solidarity, strengthening the multifaceted, ethical and dynamic aspects of Islamic tradition, epistemological and methodological openness and fluidity, and rejection of dichotomies ( e.g. religion vs. secularism, tradition vs. modernity, east vs. west). Within this overview, the practice of Islam is emphasised as based on the correctness of action or practice as opposed to being orthodox, embracing ontological uncertainty, ambiguity and religious pluralism, emphasis on rationalist theology and ethics and avoidance of any kind of hierarchy.

## **Following are some ideas and suggestions**

- To set up a Constitutional Court as found in Indonesia, Thailand, Myanmar, South Africa and Uganda to resolve issues of conflict.
- To create awareness on reconciling religion with human rights to bring about justice, equality and compassion.
- To clearly define words which are vague as the Shariah Courts may have difficulties in interpreting words and phrases relating to morality.
- To reconcile the tenets of the faith to the forces of modernisation, pluralism, changing times and circumstances.
- To describe the most salient features of progressive Muslim worldview.





**Cluster C**

# **Islamisation And Its Consequences**

Cik Zainah Anwar (Presenter – Puan Suri Kempe)

Mr Lim Heng Seng

Associate Professor Dr Azizuddin Sani

Puan Ratna Osman



# Islamisation And Its Consequences

Malaysia's Islamic family law was regarded as the most progressive in the Muslim world in the 1980s but since then, changes which are more regressive have emerged gradually arising from the socio-political developments in the country and around the world.

Political parties in the country capitalised on Islam to influence the majority of the population of their ideology. In the process of power play, their perspective on Islam took a turn for a more conservative approach as shown in the absorption of Arabic symbols and rituals in the Malay culture. But the Arab world is far from being a model Islamic nation. They have diverted immensely by what was propagated and intended by Rasullullah SAW through the guidance of the Al Quran, the ways of the Sunnah Wal Jamaah and the development of the Madinah charter, in order to maintain political stability and economic progress, in a community that is made up of diverse tribes.

Islam is already embedded in the Malaysian Constitution. Shariah laws are drafted and enacted in the states. The country should be guided by the principles of Islam that affirms justice, compassion, mercy, equity and aligned with the Constitution. This is to ensure that Malaysia is governed by the rule of law, good governance, and respect for human rights, while upholding the institutions of the country. Every believer needs to understand and practice the Maqasid Al Shariah, which is the well-being of the people intended by the guidance of the Quran and the teachings of Rasullulah SAW.

But what has transpired instead are interpretations that have curtailed many rights of the people, especially of the women, and those who have differing opinions against the established Islamic institution which has perhaps unintentionally but erroneously infringed on these rights. There must be a mechanism in place to ensure that these abuses and selective persecution by these institutions is checked, for that is expected of a Believer to question. Al Hujurat 49:9 "If two parties among the Believers fall into a quarrel, make you peace between them: but if one of them transgresses beyond bounds against each other, then fight you against the one that transgresses until it complies with the command of Allah."

In light of modernity, plurality, changing times and circumstances, there is a need to review and amend certain laws which have trampled on rights in pursuit of the higher order of the Maqasid Al Shariah. Islam is about being just, compassionate, merciful and promotes equality. Man made laws should not be allowed to sully the beauty of the teachings of Rasullulah. Shariah laws are enacted by men and therefore are not beyond question. These laws should not be confused or placed on the same level as God's law, for that in itself is *Syirik*.

Political leaders and their ulamas have to be made accountable and understand that there are repercussions to their rhetoric to win the hearts of the people by leading them down the path of intolerance, hatred and destruction. Our hopes and aspiration are for the progressive future of our country. The negotiations towards a series of new amendments during the tenure of Tun Abdullah Ahmad Badawi needs to be revived and reopened.

## **Following are some ideas and suggestions**

- To create awareness that the politicisation of religion between UMNO and PAS to outdo each other's religious credentials has led to the growing conservatism within society and the increasing discrimination against women in the name of Islam.
- To create a public voice to speak on Islam and Muslim women's rights and raise awareness on rights in Islam, and on differences and diversity in fiqh and theology.
- To ensure men in authority (leaders, policy-makers and civil servants) develop the political will and courage to support the necessity for change and the idea of gender equality as integral to modern conceptions of justice.
- To create awareness on how fatwas are gazetted and the means to make them known to the public.
- To highlight the issues of conflict in a plural legal system and the concerns in terms of implementation and justice.
- To affirm that Islam is the official religion of the Federation and that religious freedom is guaranteed (subject to public order, health and morality and control and restriction on propagation).
- To highlight the discriminatory trends towards Muslim women in Malaysia and that moral policing should be done away with as private sins should not be turned into crimes against the state.
- To insist that our religious fundamentalists refrain from labelling people from the same religion who have different opinions on religious teachings as 'atheist', deviant or 'unbelievers' in their verbal attack (reference to Friday sermons).
- To seek justice in Shariah – where the purpose of Maqasid Al Shariah is to achieve goodness and to ward off harm, injury and loss in religion, life, lineage, intellect and property.
- To ensure the administration of Islam fulfil the values of good governance, transparency and accountability. G25 is not questioning the aqidah of Islam.

# Islam as Religion of the Federation means .....

Islam is the official religion of the country;

Islamic rites may be used for official ceremonies

The essential secular character of the Malaysia is not affected and that Malaysia is not an theocratic state with Syariah as the supreme law.

Religious freedom is guaranteed (subject to public order, health and morality and control and restriction on propagation

## Notable Quotes & Phrases by Forum Speakers

The Committee directed a great deal of attention to the question of Islam as the religion of the Federation. It is satisfied that the acceptance of Islam would not endanger religious freedom within Malaysia nor will it make Malaysia any less secular.

The present Constitution of the Federation of Malaya, which would serve as the basis for the new Federation has adequately guaranteed that other religions may be practised in peace and harmony in any part of the Federation.

Malaysia Solidarity Committee Memo (3.2.1962)

IS  
MALAYSIA  
AN ISLAMIC  
STATE?



*I would like to make it clear that this country is not an Islamic State as it is generally understood, we merely provided that Islam shall be the official religion of the State.*

~ Tunku Abdul Rahman, May 1. 1958

From paper by Lim Heng Seng

Since Independence from the British in 1957, it has always been maintained that Malaysia is a secular state. First Prime Minister, Tunku Abdul Rahman Putra Alhaj once made a political statement declaring Malaya/Malaysia is a secular state

~ Sivaperegasam, 2011

From paper By Mohd Azizuddin Sani

## Notable Quotes & Phrases by Forum Speakers

**In 1984,  
Malaysia's Islamic family law was regarded  
*the most progressive*  
in the  
Muslim world at that time  
BUT  
changes to the law beginning in the 1990s have *reversed*  
many of these gains**

**By Zainah Anwar**

**The fundamentals of the Shariah  
are rooted in wisdom and promotion of the welfare of human  
beings in this life and the Hereafter. Shariah embraces Justice,  
Kindness, the Common Good and Wisdom.  
Any rule that departs from justice to injustice, from kindness to  
harshness, from the common good to harm, or from rationality  
to absurdity cannot be part of Shariah  
~ Ibn Qayyim al-Jawziyyah (14th century Jurist)**

**By Ratna Osman**





**Cluster D**

# **Islam And Politics**

Dr Chandra Muzaffar

Tan Sri Razali Ismail

Professor Dr Din Syamsuddin

Dr Nawab Osman

Dato' Dr Ahmad Farouk Musa

Associate Professor Dr Syed Farid Alatas

## Islam And Politics

Islamic revivalism in Malaysia coincided with the world-wide revival of Islam in the 1970's. It received significant boost in the 1980's when UMNO began its process of Islamisation by pursuing various Islamic policies in an effort to gain Malay Muslim support. The last several years saw Islam being dynamically propelled to the centre stage of politics, culminating in the introduction of a new national policy of Islam called "Islam Hadhari".

Recent developments have shown a growing fundamentalist and doctrinal rigidity in Malaysia adopted by the Wahabi-Salafi school of thought. There are clamours for the establishment of an Islamic state based on Shariah law and dismissal of all other forms of constitution or political system. Additionally, there is a discernible rise of traits of extremism with its over-emphasis on rules and regulations, forbidding what is allowed by others and non-contextual and literal interpretations of the Quran and Hadith, intolerance and exclusivism.

Against this backdrop, G25, predicated on the twin pillars of Maqasid Al Shariah and Wasatiyyah aims to garner the political will to strengthen tolerance and appreciation of our various faiths, our multiculturalism and pluralism. To this end, G25 will directly address all pertinent issues to ensure the supremacy of our constitution and that Islamic laws meet the standards of justice and upholding the rights of its citizens, respect for the rule of law and independence of governing institutions. These salient features are common to both Islam and democracy.

Islam also emphasises on rights with concurrent responsibilities. These fundamental principles need to be promoted within the overarching Islamic worldview of the purpose and value of human life.

There was a time when Malaysia was recognised as a leader in promoting moderation, both internally and abroad. Indeed, the country was admired for its harmonious multicultural and multi-religious relations. However, prevailing conditions indicate the presence of forces bent upon undermining Islam in a constitutional democracy as well as the role of Islam in a democracy. Related to these are the controlling power and privileges of the elites, pervasive corruption and ethnic and religious intolerance.

Under these circumstances, Islam in a democracy need to position itself as a progressive element that can provide the ethical value and leadership. Islamic values in a paradigm shift towards moderation need to be incorporated in government policies and development programmes.



## **Following are some ideas and suggestions**

- To uphold the Federal Constitution that guarantees freedom of speech and rights of minorities.
- To speak for the silent majority of Malaysians who want to see moderation and harmony, social and political stability and professionalism of civil administration.
- To use the Quran and Hadith as reference points as well as the twin pillars of moderation – Maqasid Al Shariah and Wasatiyyah to achieve the higher objectives of Islam.
- To work on governance issues in public institutions by undertaking studies to evaluate the effectiveness and relevance of Islamic institutions of public interest such as JAKIM.
- To set up a Consultative Committee of Shariah and Civil law experts to examine if the Shariah laws are meeting the standards of justice and rights of citizens in a multicultural, multi-religious and multilingual society.
- To find the best way to propagate Islam in a holistic manner in consideration of the larger society based on moderation, transparency and integrity.
- To eradicate the expression of ethnic sentiments, ethnically biased attitudes towards issues of social justice, religious bigotry and communal politics by various actors.
- To use sane and rational voices with an inclusive and broad outlook that is anchored in a universal understanding of Islam as a religion of justice, compassion and is aligned with the values of constitutional democracy.
- To promote religious dialogues and be more inclusive of different views to broaden the democratic space in the country.
- To position Islam as a progressive element that provides the ethical values and leadership in the paradigm change within the ambit of Islam, ethics and welfare.
- To define a Malaysian Brand of Islam that is not a threat to our neighboring countries in the ASEAN region and Asia.

## **Notable Quotes & Phrases by Forum Speakers**

**Bigotry and authoritarianism should be confronted --- and defeated --- by sane, rational voices with an inclusive and universal outlook.**

**Such voices may be anchored in a universal understanding of Islam as a religion of justice and compassion or in a deep commitment to the underlying values of constitutional democracy.**

**As these voices make themselves heard, they will be giving meaning and substance to both Islam and democracy.**

**By Chandra Muzaffar**

**Islam is now dissected on the operating table and political parties are exploiting both religious issues and political issues. GMF welcome views and answer the question why we are not able to do what we do successfully for the past 56 years. If we cannot have religious dialogues then we are taking a regressive stand.**

**By Razali Ismail**

**In Malaysia,  
people are multicultural  
but  
we are not multiculturalists**

**By Syed Farid Alatas**

## **Notable Quotes & Phrases by Forum Speakers**

**The social-political implications of coopting Islamic elements in the 1980's has shown an adoption of insular Islamic policies and practices and the race between PAS and UMNO has led to the bureaucratic Islamisation of Malaysia.**

**We now have a confused Islamic Identity, a Puritan Approach to Islam, a heightened expectations for the implementation of Islamic laws, rise of Non-Violent Extremism, a limitation of the rights of Minority Muslim Sects, strengthening of Religious Identities Amongst Non-Muslim Malaysians, radicalization of small minority of Malaysian Muslims (especially youth) and counter-Puritan Trends (IRF and G 25)**

**By Nawab Osman**

**A major challenge confronting the Muslim societies in particular, and Malaysian societies in general, is the construction of institutions and values based on democracy, social justice and universal humanism.**

**Muslim-based societies have to play an active role in promoting Islam that is qualitatively different from the narrow and inflexible version advocated by literal and *Wahabi*-oriented political parties and organisations.**

**The only way forward to resolve such conflict is to allow a space for intellectual discourse and to respect the rights to dissent and to uphold to the most fundamental aspect of freedom of conscience and freedom of expression.**

**By Farouk Musa**

Islam is based on values of egalitarianism, justice, musawah, independence, justice and prosperity. Change is the very message of Islam and we need to instill Islamic values in our lives. Peace and development are the way forward.

G25 has to go down to the grassroots - an organization to be a civil society to be a leading organization in Malaysia. In Indonesia there are many big Muslim organizations

**By Din Syamsuddin**

Malaysia is homogenising Islam – a mandate to protect Islam. Indonesia has no attempt to Islamise its population





Cluster E

# **Maqasid Al Shariah And Wasatiyyah**

Dr Haji Dzulkefly Ahmad

Dr Lukman Thaib

## Maqasid Al Shariah And Wasatiyyah

Maqasid means objective and Shariah means law. Maqasid Al Shariah is meant to promote well-being of human, recognising the rights and preservation of freedom. It promotes what is good and prevents the bad. It aims to enhance justice, and ensure that people conduct themselves justly, morally, with civility and integrity in order to preserve order and peaceful coexistence in this world. These principles are rooted in the Quran.

Wasatiyyah means moderation, justice and balance, as prescribed for in the Quran.

The concept of Maqasid Al Shariah and Wasatiyyah emphasises the humanitarian aspect and justice. In a pluralistic modern world today, the principles of Maqasid Al Shariah and Wasatiyyah are essential to counter extremism and to live in this world with the best of humanity.

Objective based Islamic law in this modern day and age needs to take precedence over punishments in the form of Hudud. The purpose of the attainment of Maqasid Al Shariah and Wasatiyyah is the pursuit of human excellence through justice, compassion, tolerance, harmony, understanding, cooperation, respect for the rule of law and human rights and good governance. When these are achieved, only then can a country be able to maintain political stability, peace, economic progress and an enlightened population who appreciates all of God's creation. And this is the path of whom Allah will favour, not the path of those who earn His anger or those who have gone astray.

## Following are some ideas and suggestions

- To revive an understanding of Maqasid for the present generation of Muslims and make a clear shift from the narratives of the earlier generation. The three different classifications of Maqasid are based on:
  - (i) Essentials - including life, faith, intellect, lineage and property,
  - (ii) Complementary - which is the removal of hardships and the lessening of obligatory action, and
  - (iii) Desirables in order to attain excellence in all areas of human conduct such as being fair and charitable.
  
- To reflect contemporary reality, the higher objectives of Maqasid Al Shariah would also include social welfare, support, freedom, human dignity and human fraternity.
  
- To apply Maqasid Al Shariah as a mechanism for Islamic governance as the fundamental universal rule of the Shariah is the removal of bad as in corruption, injustice, exploitation and mismanagement and the promotion of what is good as in good governance, justice and fairness. The higher objective of Maqasid is the implementation of justice and the promotion of the well-being of the Ummah.
  
- To review hudud as a form of punishment which requires a contextual perspective. Different methods of the application of penalties acceptable in the present time need to be considered and which could achieve the same objective.
  
- To define Wasatiyyah and its application for those living within a pluralistic and diverse community.
  
- To organise constructive dialogues of understanding and respect for our other communities and to help build a coalition of moderate minds.



**The overall Objective of Maqasid Al-Shariah is to 'Populate and Civilise' the Earth and Preserve the Order of Peaceful Coexistence therein, to ensure the Earth's on-going well-being and usefulness through the virtues-piety of those who have been placed there as God's vicegerents, to ensure that people conduct their affairs JUSTLY, with MORAL civility and with INTEGRITY IN THOUGHT AND ACTION, and they reform that which needs Reform on Earth, and they tap its resources and PLAN FOR THE GOOD AND WELL-BEING OF ALL**  
**By Professor Ahmad Raisuni, 2005**

**The very objective of the Shariah is 'TO PROMOTE THE TOTAL WELL-BEING OF MAN' which lies in safeguarding their Faith (Din), their Self (Nafs), their Intellect (Aql), their posterity-lineage (Nasl), Wealth (Maal) and Honour (Muru'ah). Freedom (Hurriyah) and Justice ('Adalah)**

**Second generation Islamic-oriented political parties whose leaders assert that good governance, economic development, and protecting basic rights and freedoms are Islamic objectives.**

**By Dzulkefly  
Ahmad**





# **Roundtable Discussion On Consultative Committee Of Shariah & Constitutional Experts**

A summary of the roundtable discussions held at the end of the forum to provide guidelines on the aims, objectives and activities of the Consultative Committee of Constitutional and Shariah Law Experts

Led By

Dr Chandra Muzaffar  
Professor Datuk Dr Shad Saleem Faruqi  
Dr Maznah Mohamad

# Dr Chandra Muzaffar

In principle, Dr Chandra supported the idea of setting up the committee and believed that it would receive the support of the larger Malaysian community. He did not want to discuss the modalities, but raised some of the larger questions about the mandate/other possibilities:

1. The Constitution has been challenged in different ways, not just by groups associated with extreme/narrow Islamic views but also by activists, NGOs, political parties, and the greatest challenge is by the ruling elites themselves. This has been happening for a long time. But as far as this particular mandate is concerned, G25 has taken the right step in wanting to bring together Shariah experts, Constitutional law experts, individuals of other backgrounds, and do it scientifically, analyse and draw conclusions. The right approach has to be adopted stating very clearly that G25 is committed to Maqasid and Wasatiyyah as these are supported by the Government as part of their Islamic ideological rationalisation. It will give G25 a degree of legitimacy.
2. Dr Chandra cautioned G25 that he cannot envision how much the committee can achieve and how deep and broad is the coverage of its remit. The grouping makes sense in terms of the situation that confronts us immediately but how much would G25 be able to achieve, and what is its ultimate goal.
3. On Maqasid Shariah (MS) Dr Dzul listed names of persons to be invited as members of the expert group, some of whom could be considered as having controversial views while others might be seen as more acceptable. He suggested names from other countries like Pakistan, especially well known reform oriented individuals, like Khalid Massoud. G25 needs to evaluate each name critically. The litmus test for the effectiveness of the recommendations of the Expert Group will come in the way the general concepts are translated into policy and action, and justified under Maqasid Shariah. The test will be on some of the recommendations which many of us may find difficult to endorse. Would Maqasid Shariah regulate the attire of female athletes? Some theologians say that athletes can wear Shariah compliant attire and still win a tournament like Iran's female futsal team recently. But can we apply Shariah rules to all forms of sports? Is it feasible? Is it desirable? How will the overriding goals of Shariah be defined? Who will define them?
4. The concept of Wasatiyyah is also not as straightforward as it is made out to be. If it is interpreted as "justly balanced" as it should be, it can be applied right across society as a general principle that espouses maintaining an equilibrium in the economy between individual rights and the collective good or in politics between freedom and public order. In this sense, how Wasatiyyah expresses itself would depend on the context. If, on the other hand, Wasatiyyah is equated with "moderation" we should be aware of some of the pitfalls. Should we be moderate in the fight against corruption or crime or drug abuse? Moderation in our eating habits or in our quest for pleasure would make sense. Very often, all this would be interpreted by the ulama based upon their own understanding of Islam rather than by individuals equipped with knowledge about social processes and psychological attitudes.
5. Rather than get trapped in theological debates about Maqasid Shariah and Wasatiyyah, Dr. Chandra would prefer the Values Approach to the application of Islam, i.e. by appreciating the underlying values behind injunctions, prohibitions, rules and practices in our religion. Apply those values in the context of our time and place. The Islamic thinker, who in Chandra's opinion was the most eloquent advocate of this approach was the late Fazlur Rahman. He earnestly believed that a lucid exposition of the underlying, universal, eternal values and principles of the Quran was what the Muslim world really need. He gave the example of the place of slavery in the Quran. The Quran did not ban slavery though there were certain things that it prohibited outright like the consumption of the flesh of the swine. But the freeing of slaves and the elevation of their status is given much emphasis in the Quran and in the Sunnah as freedom is such a cherished value in Islam. Slavery could not be banned in the 7<sup>th</sup> century Mecca because it was an important pillar of the economy. But the spirit of the Quran veers towards freedom. Similarly, though resistance against aggression and oppression in the Quran is linked to arms, what is important is the principle of resistance, not the means. Which is why non-violent resistance is perfectly legitimate in Islam. Another example is modesty -- the modesty of the heart as the Quran puts it --- that Islam values. The form of attire one subscribes to, is secondary.
6. The other advantage of the Values Approach is that in a multi-religious society like Malaysia, it establishes a bridge between Muslims and non-Muslims. Since most of the values embodied in the Quran transcend not only cultural boundaries but also religious borders, everyone will be able to identify with them --- values such as living in harmony with the environment; protecting the family as the fundamental unit of society, respecting one's parents; being ethical in one's work; and not separating means from ends in politics. Of course, there are also values such as love and compassion, honesty and humility, kindness and gratitude which are integral to Islam and also part of the common heritage of humanity.
7. At the national level, Malaysians of different religious backgrounds and political persuasions succeeded to articulate a shared set of principles, values and goals for the nation through the Rukunegara in August 1970. The five Principles and five Goals of the Rukunegara were meant to guide the nation in its journey. Yet after the first decade, the Rukunegara has been sidelined. In the midst of Islamisation and Maqasid Shariah and Wasatiyyah, let us reiterate the significance of the Rukunegara to the challenge of building a Malaysian nation and forging unity among our diverse peoples. Since the Rukunegara constitutes the same guiding principles and goals as in the Quran, it should be incorporated into the Malaysian Constitution as its preamble.

## **Suggestions for the Committee from Dr Chandra's table:**

### 1. The proposed Committee :

- Examines the impact of Shariah law on the Constitution;
- Addresses major concerns and issues including conversion, custody, apostasy, attire, etc;
- Rectifies some of the misconceptions about G25 – dialogue with JAKIM, media, Bar Council, certain individuals (Tun Hamid, Hashim Kamali, - to help frame ToR of this committee) – look at literature, too – documents published by Chandra Muzaffar and Shad Faruqi.

### 2. The Committee members should be experts with Shariah background, but also those with constitutional background, media, non-Muslims, women, youth, etc.

### 3. Identify outcomes for target groups which include executive, legislators, and recommendations to the Conference of Rulers, religious personalities and institutions, media, among others.

# Professor Datuk Dr Shad Saleem Faruqi

Professor Shad believed that the Constitution is indeed a document of compassion and compromise. Until the 1980s it worked very well, and Malaysia was an example of religious harmony very much like colours of the rainbow, separate but not apart. However, we have suffered a regression.

Some of the current problems highlighted by Prof Shad are:

- (i) Shariah authorities are breaking free of Constitutional restraint and many constitutional or transgressions against the Constitution have occurred
- (ii) There is severe thought control by religious authorities, as individuals are not allowed to speak without *tauliah* and one can be labelled a deviant
- (iii) Certain actions in recent cases of treatment of Non-Muslims cannot be justified as exercising justice and fairness as espoused by Quran and hadiths and even common law
- (iv) The importance of the Check and Balance in policy implementation have been ignored.

There is a need to take a second look at how Shariah courts and Civil courts can function effectively. While Shariah courts had good intentions when overturning decisions by Civil courts, but it may not work when one party is Muslim, and the other party is non-Muslim, and when there is a division between Shariah/Civil over inheritance and faraid matters. Habeus Corpus should be under criminal code.

Lawyers in Shariah courts have to be trained in constitutional law. It is permissible to create a council to advise the YDP Agong and the Majlis Raja-Raja. There should be full legality, constitutionality on the way advice is to be given and the Majlis Raja-Raja in this respect, to enable the Agong and the Sultan in the States to perform a role that was assigned to them by the Constitution. As the Constitution auditor, the Majlis Raja-Raja should ensure that some standardisation of Islamic laws should be upheld. They can also reign in on Shariah authorities when appropriate, as they are serving as heads of Islam in their own states. They are well positioned to play this role as the final arbiter in a just practice of Islam.

Some judges also forgot their oaths. On the bench, they should first be Constitutional judges and then Muslim.

In the Herald case, not a single judge on the panel was a Christian. Shad stated that our courts have been a great disappointment as what's happening in this country is name-calling. His suggestion is that if there are disagreement with someone's views, question the views.

As citizens, we all have the same purpose to protect the dignity of our nation, accept the many beautiful views of the garden and do not export the excreta that people put on cyber space. Do not send hate mail as it shows that they have nothing better to do in life. Religion should be about love, building bridges, not wars. All of us are children of Adam. If someone were to say I believe in God, he cannot at the same time show so much hatred.

As for the word Allah in Sabah and Sarawak, he believed that no one has the right to tell them that they cannot use the word that they have been using since their childhood. Besides the Sikhs Gurdwara, Hindus and Arab Christians also used the word in their culture.

## **Suggestions for the Committee from Prof Shad's table:**

1. The Consultative Committee should draft a working paper to restore the constitutional role of Malay monarchs at the national level, and the Sultans at state level, to provide leadership on Islam, justice of Islam and Islamic legislation.
2. The Working paper has to outline the areas of encroachment that are taking place.

# Dr Maznah Mohamad

Dr Maznah was sceptical and questioned the effectiveness and eventual success of the committee if it were to be based on the principles of Maqasid and Wasatiyyah as they are very weak at this moment. They are really process rather than outcomes. You want to be moderate, concerned about the welfare of the society, but to what end?

The crisis of the Nation is to restore the idea of what this nation is built on. It is about living together with differences, not just living together with people who are the same as you. Tolerance is a weak virtue but difference can be an asset to nation building.

Both the concepts of Maqasid and Wasatiyyah need to be strengthened. There is no need to reinvent the nation as the principles of Rukunegara + Vision 2020 are adequate for the country to move forward.

The process of Islamisation has three levels of engagement which include the following:

At Level 1, it should involve political leaders and elected representatives who can give an input in the enactment of Shariah laws. This is because Shariah laws are enacted by the state legislatures and not “approved”. In the State Assemblies, Non-Muslim representatives do not participate in the debate as “Islam” is not in their domain.

At Level 2, it should involve the bureaucracy, the Shariah judiciary, JAKIM, JAIS etc and those salaried personnel who are not subjected to elections and any principles of legitimacy. They have imputed upon themselves this “divine” quality as seen in JAKIM’s reply to being audited. However, to engage those at Level 2 they are not in a constitution mode at the time, and while they have the power and are put there due to the Constitution, they ignore it.

At level 3, which is the bottom level include those at the grassroots and will include the plural Civil Society organisations of which G25 is one of them. There is a need to reduce divisiveness and create more good avenues to discuss religious matters especially over Maqasid and Wasatiyyah, commitment to Jihad, issue of hijab and movement towards extremism.

There is also a need address political Islam and question the financial status of JAKIM. If the whole institution is paid by taxpayers money, there are questions on should gambling money fund JAKIM, and whether enforcement officers should police behaviour to fulfil their KPIs.



## **Suggestions for the Committee from Dr Maznah's table:**

1. Conduct an audit of all Shariah laws, those that overlap with Civil laws, punishments, etc.
2. Build consensus and strive to be inclusive. The Committee should be represented by Muslims, non-Muslims, lawyers, social activists, NGOs, academics, and politicians who must be impartial. There should be representatives from East Malaysia, media agencies and gender mix.
3. Recommend amendments to laws if they violate the Constitution;
4. Use the principles of Maqasid Shariah and Wasatiyyah as a guide to the Consultative Council. They need to be developed, expanded and refined as currently hudud does not fulfil its core values.
5. Organise Focus Group Discussions to get feedback and recommendations for change (50 seminars across the country); and
6. Seek funding.





# **Opening Speech**

**By**

**YBM Tan Sri  
Tengku Razaleigh  
Hamzah**

11.00am 5<sup>th</sup> December 2015

High Commissioners,  
Honourable Members of Parliament,  
Distinguished guests, ladies and gentlemen.

I am singularly honoured to have been invited by the G 25 to deliver the opening remarks of this forum on Islam in a Constitutional Democracy. At the same time I am thankful to be the guest of a group of distinguished personalities that has come together to address various issues relating to the administration and application of temporal and religious laws while maintaining the peace, stability and harmony of our multiracial and multi-religious country. I would, therefore, like to record my sincere appreciation for their having considered me to do the honours.

2. Please allow me to congratulate the G 25 for having taken the initiative to organise this forum. It could not have come sooner, given the intense interest, of late, in things Islam and Islamic, particularly in the social media. I have no doubt that this forum will not only be useful to those who are not informed about the religion but also to everyone else. That it is organised by a group comprising former senior civil servants, academics and professionals will undoubtedly generate sustained public interest in what develops at this forum, today and tomorrow.

3. Given that the group is moderate in its views, no doubt G 25 has the interest of the public at heart whenever it draws the public's attention to any matter. This seemed to be the reaction on social media when the group published an open letter to the Prime Minister to express concern regarding issues of conflict on the position and application of Islamic laws in the country.

4. The group has been principled in taking a public position that calls for an informed and rational discourse on the ways that Islam is used as a source of public law and policy in Malaysia. They have taken the right stance in urging moderate Malays and Muslims to speak out against extreme, immoderate and intolerant views in defending the position of Islam. This is, as it should be; for it is consistent with Malaysia's position as a moderate, tolerant and multi-racial country. Such a position will also go a long way in maintaining the peace, stability and harmony that we have been enjoying thus far.

5. The group's call for an informed and rational dialogue on the ways Islam is used as a source of public law and policy is timely. By the same token, more moderate Malaysians should speak up and contribute to a better informed and rational public discussion on the place of Islam within a constitutional democracy. In effect, there is an urgent need to address the breakdown of federal-state division of powers. This is clearly illustrated by the presence of what could be regarded as the Islamic Affairs portfolio within the Federal Cabinet, Islam having been decided as a state matter by the federal constitution notwithstanding. At the same time, we need to find solutions to the heart-wrenching stories of damaged lives and relationships due to the inability by concerned parties to accept conversions of faiths.

6. More importantly, we need a firm and clear understanding of Article 3(1) on the Religion of the Federation, which states that “Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.” This has to be read in conjunction with Article 11(1) on Freedom of religion and that is, “Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.” If the two Clauses are well understood in the context of what our founding fathers had in mind, I am certain that the sparks and the cracklings regarding Islam and, in particular, its position relative to other religions, would not have arisen in the first instance.

7. In order that we may have a proper perspective regarding the inclusion of Article 3(1) in the Constitution, I should like to point out that a particular member of the Reid Commission that was drafting the Merdeka Constitution was adamant about its inclusion much to the chagrin of the Malay Rulers. Their Royal Highnesses were opposed to it as they felt that such an inclusion amounted to the usurpation of their power as the head of Islam of their respective states. This important subject was discussed and settled when the 1948 Federation of Malaya Agreement was signed.

8. In the years since 1957 and in our struggle to build a multi-ethnic nation, we seemed to have ignored these provisions and taken, as it were, the line of least resistance by putting the position of Islam not quite in the context of what the constitution perceives it to be. In the process a less than ideal situation has set in, in the administration of the religion.

9. One such development is the unbridled mushrooming of unsanctioned fatwas, the authoritative rulings on points of Islamic laws, which are spread out by self-proclaimed ulama. But we do have a mechanism in place, in the form of the National Fatwa Council with representation from all Malaysian states. It bears reasserting that the administration of Islamic affairs is the prerogative of the Malay Rulers, and the Yang di-Pertuan Agong, for those states, without sultans.

10. What is worse is that many among the ordinary people are uncomfortable by the pronouncements of these self-proclaimed experts on Islam. It saddens many among us to note that those recognised as ulama are more often silent rather than clarifying the situation when the need arises. Oftentimes they are not above giving contrary views on an issue; this has the effect of confusing matters further. But yet there are official channels to address and resolve matters pertaining to the issuance of a fatwa, that passes the test of religious rigour.

11. In the same breath it is worthwhile mentioning that the savvier among the public on constitutional matters have been known to observe that JAKIM, the Department of Islamic Development, is not above being hot under the collar when viewpoints the department is uncomfortable with are aired in the open. The practice of the time-honoured, academic discourses where discussions are held disinterestedly do not seem to be the department’s cup of tea. This is sad, tragic even, as an exercise of this nature will create much interest, especially among the younger set such as the Gen Y, in their getting beyond the superficial to know Islam more deeply. Sadder still is the ostensibly perceived notion where people feel and say that there seems to be a self-appointed moral police of sorts marauding around and interfering into the private lives of the people.

12. It is often observed that there are members of the public who become touchy and sensitive when questions arise about the position of Islam in Malaysia. However, we need to be mindful of the sensitivities of the various belief being practised in Malaysia. We most certainly need to be careful not to trample on these sensitivities. To this end, it is perhaps sensible to take a spiritual and constitutional interpretation of Article 3(1) in the context of the totality of our constitution in order for us to continue to preserve national unity. But, in as far as the governance of Muslims is concerned, and being the good Muslims that we are, we follow the fundamentals of Islam.

13. Distinguished guests, ladies and gentlemen, perhaps it is time we took another look at how the Malay states administered Islamic religious affairs in the years prior to 1957 and for several years after that date. Or perhaps we should reflect upon the time when the British colonial power "ISLAM IN A CONSTITUTIONAL DEMOCRACY" Page 4 of 6 made light of the Malay Rulers' traditional function as the de facto political and religious heads of nine of the states. For this purpose, it is worth revisiting that part of our history and remind ourselves that the colonial power had wanted to take over the Sultans' political and administrative power and reduce their role to mere heads of Islam of their respective states as was manifested in the disastrous Malayan Union.

14. Prior to the Malayan independence, there was a dedicated authority for the administration of Islamic religious affairs which was under the purview of the Sultan and styled as Majlis Agama Islam (Islamic Religious Council). This helped to put in place a somewhat systematic administration of Islam which eliminated such inefficiencies as duplicity in religious announcements and contradictory decisions on specific issues. Be that as it may, this Council was eventually usurped by the State Executive Council which, more or less, took over its role and function. This amounted to the wresting of the Sultan's power and function as the religious head of the state.

15. The reality of this situation notwithstanding, the founding fathers, in their wisdom, gave due weightage to the importance of Islam to the major racial group and thus its recognition by the constitution as the religion of the Federation. It necessarily follows that in giving importance to Islam, its administration must be professionally undertaken by religious experts who are well trained in management and administration. That is to say, all Islamic bodies and authorities must be run this way. At the same time, the fact that the Sultans are the heads of Islam in their states must be seen as such; and therefore, the consent of Their Royal Highnesses must be sought before the adoption of a fatwa or a policy pertaining to the administration of the faith.

16. In trying to establish an efficient and professional administration to manage the affairs of Islam, we must not fall into the trap of creating a religious bureaucracy which is what another faith of the Book has got itself into. Such a development would be against the teaching of Islam. In any event a religious bureaucracy would be no more than the mere appropriation of power by vested interests through the application of Islamic laws. In any event, a Muslim prostrates directly to the Almighty without the service of intermediaries which is what a religious bureaucracy would create in the end. We must not fall into this trap for a bureaucracy has the nasty tendency to develop excessively complicated administrative procedures, mindful of the fact that we are multiracial and multi-religious.

17. We also need to stop the mere paying of lip service that the Sultan is the head of Islam. We must stop treating the Sultan as the nominal "ISLAM IN A CONSTITUTIONAL DEMOCRACY" Page 5 of 6 head of the religion. More importantly, the Sultan must be seen to be the ultimate decision maker in the administration of Islam. For this to function in a professional manner, the Sultan must have such wherewithal as adequate funding to provide for the operating expenditure and advisory manpower such as an especially dedicated legal adviser with expertise in, for instance, Islamic jurisprudence who is independent of the state or Federal governments. This will help towards the strengthening of the respective Islamic Religious Council while at the same time allowing for the establishment of a proper and professional administration of Islam.

18. Returning the dignity of the head of Islam to the proper personality and ensuring that the administration of the faith is professional will surely win Islam the respect that it deserves in the first place. This will help to negate the bad name that Islam has been suffering from, especially in the West, due to the actions of extreme elements who are not properly informed of the teachings of the Quran and the Sunnah of the Holy Prophet Muhammad, Peace Be Upon Him. And not least in the resurrection of the just and benevolent administration of Islam overseen by the Ruler is the opportunity to benefit from the collective wisdom of the Conference of Rulers which, for instance, could be applied in expending the riches awarded by The Almighty through, say, the proper collection of zakat for the benefit of the masses.

19. The plural nature of our society means that Islam must be administered in a manner to ensure justice to Muslims and non-Muslims alike. This is crucial for peace and stability to be sustained in our country. In this regard, the G 25, being a civil society organisation, could play a constructive role as the voice of moderation and tolerance on religion. At the same time we must propound the true Islam that is committed to compassionate, forgiving and merciful justice for all as propagated by the Holy Prophet Muhammad, Peace Be Upon Him.

20. Given its breadth, much could be said about the position of Islam in a constitutional democracy. I would rather like to briefly dwell on a subject which has, once too often, been quite ticklish with us Malaysians. Please allow me to draw your attention to our plural legal system that has the tendency to spark off conflicts between Civil and Shariah laws. It should also be noted that public awareness is lacking in regard to the legal jurisdiction and the substantive limits of the powers of the religious authorities and the administration of Islamic laws. But we must, of course, be aware of the need to administer the Shariah laws in tandem with the Federal Constitution. “

21. But emphasis should and must be given to the Shariah principles of economic and social justice, consonant with the notion that Islam is a religion of compassion for the poor, the sick and the aged while, at the same time, encouraging Muslims to practise gender equality. On their part, the authorities must work towards reemphasising Malaysia as a country that practises Islam which enjoins its followers to exercise moderation in living their lives. In pushing Islam to the fore, the government must provide assistance so that those responsible could carry out reforms of the religious administration as well as the overall system of governance spoken of earlier.

22. Distinguished guests, ladies and gentlemen, in the last several minutes I had tried to share with you my thoughts on, and at the same time put into context, the position of Islam in a constitutional democracy. In so doing, I am mindful of the need for Islam to continue to enjoy the prominence that it has always had in our society, without jeopardising the positions of other beliefs. I hope that I have been of use as you focus on the issue at hand. I take this opportunity to wish you a successful forum.

23. Before taking my seat, I would like to offer my congratulations to the G 25 for having published a book entitled “Breaking the Silence: Voices of Moderation” which I have been given the honour to launch. I am particularly impressed by the range of subjects covered by the 21 essays in relation to the position of Islam in a constitutional democracy. I am equally impressed by the diverse backgrounds of the authors. Well done and congratulations again. It is now with much pleasure that I declare open this forum on Islam in a Constitutional Democracy. Thank you and good morning.







# **G25 Statement Of Reaffirmation**

## G25 Statement of Reaffirmation

We, members of G25, at the conclusion of the Forum on Islam in a Constitutional Democracy at PAUM in Kuala Lumpur on 5<sup>th</sup> and 6<sup>th</sup> December, 2015, agree on the following statement of reaffirmation:

Having discussed the role of Islam in a Constitutional Democracy under four themes namely;

- i) The Federal Constitution and Shariah law.
- ii) Issues of Conflict between Shariah law and Civil law, and impact on the Federal/State division of powers in Malaysia's legal system.
- iii) Islamisation and its Consequences.
- iv) Islam and Politics.:

Reaffirming our commitment to upholding the Federal Constitution as the Supreme Law of the Nation;

Reaffirming our commitment to upholding the principles of Rukunegara which articulates the principles and goals that should guide the nation;

Reaffirming our belief that political stability and economic progress in a multi-ethnic, multi-cultural and multi-religious nation like Malaysia can only be achieved when there is racial harmony, tolerance, understanding and co-operation amongst the various communities;

Reaffirming our commitment to a just democratic, peaceful, tolerant and moderate multi-racial Malaysia;

Reaffirming our commitment to the rule of law, good governance, respect for human rights and upholding the Institutions in the country;

Reaffirming our belief in and commitment to the Islamic Principles of Maqasid Shariah and Wasatiyyah;

We do hereby agree to:

Promote the Islamic principles of justice, compassion, mercy, equity and moderation and work towards the realisation of the Quranic principles of Maqasid Shariah and Wasatiyyah;

Promote an informed and rational dialogue on the ways Islam is used as a source of public law and policy in multi-ethnic and multi-religious Malaysia, within the letter and spirit of the Federal Constitution, the Supreme Law of Malaysia;

Work towards making Malaysia as a model to the world for a just, democratic, moderate, tolerant, harmonious and progressive multi-ethnic, multi-cultural and multi-religious nation;

Address the areas of conflict and overlap between Civil law and Shariah law which are inconsistent with the provisions of the Federal Constitution, and which have led to a breakdown in the Federal / State division of powers;

Raise public awareness on the legal jurisdiction and substantive limits of the religious authorities and the administration of Islamic laws in Malaysia;

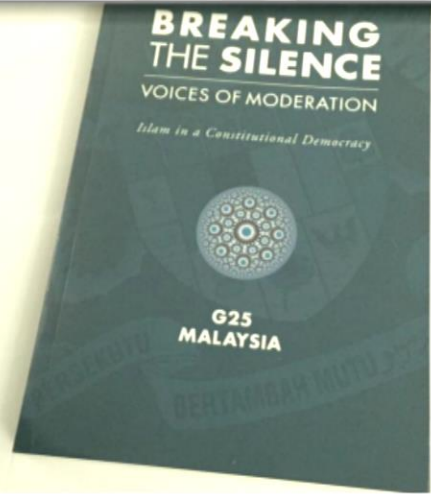
Work towards the creation of an inclusive Consultative Committee of Experts to advise the Government to facilitate amendments to the State Shariah laws to bring them in line with the Federal Constitution and the spirit of the Rukunegara;

Support reforms for good governance practices among public institutions to ensure integrity, transparency and accountability in the government and respect for the rule of law.





*This book is dedicated  
to those who seek a more just, peaceful  
and harmonious Malaysia*



**G25 BOOK COMMITTEE**



*(From left): Ahmad Kamil Jaafar, Noor Farida Ariffin, Latifah Merican-Cheong  
Dr Asma Abdullah, Zainuddin Bahari, Zailah Tun Ismail, Tawfik Ismail*



### Background

The Federal Constitution provides for a single legal system that affords exclusivity in matters of personal law and religious offenses. Although civil law applies to all Malaysians regardless of religious affiliation, Shariah law applies to Muslims as their personal law and covers family law matters, as well as a limited area of offenses "against the precepts of Islam" committed by Muslims.

The continuing and unresolved disputes on the position and application of Islamic laws within our constitutional democracy reflect a lack of clarity and understanding on the place of Islam within our constitutional democracy leading to a serious breakdown of Federal/state division of powers.

### Aims and Objectives

1. To champion rational and informed discourse on the ways Islam is used as a source of public law and policy in Malaysia
2. To address the areas of conflict and overlap between civil law and Shariah law which are inconsistent with the provisions of the Federal Constitution, and which have led to a breakdown in the Federal / State division of powers
3. To raise public awareness on the legal jurisdiction and substantive limits of the religious authorities and administration of Islamic laws in Malaysia
4. To propose the establishment of a consultative process through a Consultative Committee of Islamic and Constitutional Law Experts

Topics	Key Themes
<b>CLUSTER A</b> The Federal Constitution and Shariah Law	<b>Framing the issues of concern within the Constitutional framework</b> <ul style="list-style-type: none"> <li>• The Constitutional scheme and its departures</li> <li>• Islam and human rights in the Federal Constitution</li> <li>• Trends in Judicial Review of Shariah Matters</li> </ul>
<b>CLUSTER B</b> Issues of conflict and overlap between civil law and Shariah law	<b>Analysing the issues of concern in terms of the implementation of law and justice</b> <ul style="list-style-type: none"> <li>• Shariah Criminal Offences Laws</li> <li>• Islamic Family Law: Justice and Equality in the treatment of Women</li> <li>• Freedom of religion and rights of minorities</li> </ul>
<b>CLUSTER C</b> Islamisation and its Consequences	<b>Understanding the context of Islamisation at the political and governance levels</b> <ul style="list-style-type: none"> <li>• Islamisation policy and its impact at the Governance level and Islamic bureaucracy in Malaysia</li> <li>• Facing the challenges of Islamic education in Malaysia</li> <li>• Is Islamic bureaucracy consistent with the provisions of the Federal Constitution?</li> </ul>
<b>CLUSTER D</b> Islam and Politics	<b>Examining the political context which shapes the use of Islam as a political ideology</b> <ul style="list-style-type: none"> <li>• Islamic Revivalism and its Socio-Political Impact</li> <li>• The Islamisation of Politics in Malaysia</li> <li>• Multiculturalism and Political Islam</li> </ul>



Public Forum

## PROGRAMME

# ISLAM IN A CONSTITUTIONAL DEMOCRACY



Persatuan Alumni Universiti Malaya (PAUM)  
Lot 10476, (Jalan Damansara Lama), 50480  
Jalan Susur Damansara, Kuala Lumpur

5 and 6 December 2015  
(Saturday and Sunday)

#IslamandDemocracy  
#G25Malaysia

### Day One Programme: Saturday, 5<sup>th</sup> December, 2015

8.00am - 8.45am	Registration
8.45am - 9.00am	Welcoming Address by Tan Sri Mohd Shariff Kasim
9.00am - 9.20am	KEYNOTE ADDRESS 1 Islam and the Challenge of Democratic Commitment in Malaysia by Dr. Chaminda Muddera
9.20am - 11.00am	Session 1: Panel Discussion Moderator: Dato' Reduan Khatib Speakers: 1. Tan Sri Rosdi Ismail Politico of Moderation 2. Dr. Shuhuffy Ahmad Muqaddim of Shariah- towards moderation in Islam 3. Dr. Aida Duderja Salient Features of Progressive Muslim Thought
11.00am - 11.15am	Morning Break
11.15am - 11.45am: 11.45 am - 12.00 noon	OPENING ADDRESS BY YEM YENGRU RAJALEIGH HANZAH Book Launch: Breaking the Silence: Voices of Moderation - Islam in a Constitutional Democracy
12.00 noon - 1.30pm	Session 2: Panel Discussion Moderator: Dato' Nur Farida Aiffin Paper 1: Shariah Law, Civil Law and the Federal Constitution by Prof. Shad Saleem Faruqi Paper 2: Islam and Human Rights in the Federal Constitution by Assoc. Prof. Azmi Shamon Paper 3: Judicial Review of Shariah Matters by Dato' Mohd. Hishammudin Yusoff
1.30pm-2.45pm	Lunch and Sufat
2.45pm-4.45pm	Session 3: Panel Discussion Moderator: Dato' Dr. Shanon Ahmad Paper 4: The Function of the Shariah Court in the Malaysian Legal System by Enuk Rosli Dahlan Paper 5: Islamic Family Law: Justice and Equality in the treatment of Women by Dr. Enayah Anwar Paper 6: Freedom of Religion and Rights of Minorities by Mr Lim Hong Sang
4.45pm	Tea and End of Day 1

### Day Two Programme: Sunday, 6<sup>th</sup> December, 2015

8.30 - 9.00 am	Morning Coffee and Networking
9.00am - 9.20am	KEYNOTE ADDRESS 2 Islam and Secularism in Indonesia by Prof. Dr. Din Sya'ududdin
9.20am - 11.00am	Session 4: Panel Discussion Moderator: Dato' Zaimuddin A Bahari Islamization Policy and its Impact at the Governance Level by Assoc. Prof. Dr. Adnanudin Sari The Arbitrariness of Moral Policing by Puan Rana Osman Constitutionality of Islamic Bureaucracy in Malaysia by Puan Faridah Husein
11.00am - 11.20am	Morning Break
11.20am - 1.00pm	Session 5: Panel Discussion Moderator: Tan Sri Dato' Dr. Anah Abu Samah Paper 10: Islamic Revivalism and its Socio-Political Impact by Dr. Nawab Osman Paper 11: The Islamisation of Politics in Malaysia by Dato' Dr. Farouk Musa Paper 12: Multiculturalism and Political Islam by Assoc. Prof. Dr. Syed Farid Alatas
1.00pm-2.30pm	Lunch and Sufat
2.30pm - 2.45pm	Speaker on Wasatiyyah by Dr. Luqman bin Yusef
2.45pm - 4.30pm	Session 6: Roundtable Discussion on Consultative Committee of Shariah and Constitutional Law Experts Moderator: Tan Sri Dato' Dr. Rafiq Salim Lead Discussant 1: Dr. Chandry Muzaffar Lead Discussant 2: Prof. Shad Saleem Faruqi Lead Discussant 3: Dr. Maanuk Muhammad
4.30pm - 5.00pm	Roundtable Findings and Recommendations By Tan Sri Dato' Dr. Rafiq Salim
5.00 pm - 5.15pm	Closing Address by Tan Sri Dato' Dr. Anah Abu Samah
5.15pm - 5.30pm	End of Forum and Tea

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