

Shariah Law Can Be Challenged: The Peril of Democracy

Malaysia: The Kelantan state government recently expressed its readiness to defend the Shariah Criminal Offences (Kelantan) Enactment 2026 should it be challenged in court. This statement was made after lawyer Nik Elin Nik Rashid claimed that there are at least 11 provisions within the new enactment that could potentially be contested.

The Deputy Menteri Besar (Chief Minister) of Kelantan, Datuk Dr. Mohamed Fadzli Hassan, stated, "Anyone can challenge the law. This law is subject to being challenged, and it will be the court's duty to determine whether the petition has any merit."

He further stated that should the court strike down any provision, the state government will review it and return with a better draft. The Kelantan government also emphasized that the enactment was drafted by taking into account the Federal Constitution and the grounds of judgment in the previous Nik Elin case.

Within the legislative context of today's democratic system, the assertion that "laws can be challenged" is indeed true. However, what goes unnoticed is the question of how a "Shariah law" can be challenged in a system that is purportedly considered Islamic. Is democracy not regarded as an Islamic system by many, including the state government itself?

If what is termed "Shariah law" can be challenged by humans, have its validity determined by humans, be annulled by humans, and subsequently redrafted to fit a human-determined framework, then where exactly lies the "Shariah" essence of such laws?

"Shariah" in general terms, refers to the rules or laws ordained by Allah (swt) as the Lawmaker. In Islam, no individual is permitted to challenge the Shariah of Allah (swt). Challenging Allah's Shariah equates to challenging Allah Himself, an act that could lead one to apostasy.

Yet, in a democracy, it has been proven that what is declared as "Shariah law" is subject to contestation. Ironically, the drafters of Shariah law within a democratic system – who believe that the laws they enact are indeed Shariah laws – also hold the view that these very laws can be challenged.

Such is the reality of "Shariah law" in a democratic system, in it of itself proving that these laws are not "Shariah" in the truest sense of the word. They do not originate from Allah (swt) at all; rather, they fundamentally contradict what Allah (swt) has ordained. Their status is entirely identical to that of civil law – drafted by humans, debated by humans, voted upon by humans, passed by humans, subject to amendment and abolition by humans, and open to being challenged by humans at any given time.

In contrast, the Shariah of Allah (swt) cannot be challenged by humans, cannot be amended or abolished by humans, cannot be debated by humans for voting and approval, and cannot even be drafted by humans in the first place. The Shariah of Allah (swt) is a divine decree intended solely for implementation, with absolute submission and obedience. Just as prayers, fasting, zakat, and the pilgrimage are obligatory for humans to perform without undergoing any legislative drafting process, the same applies to the laws of Hudud, Jinayat, Ta'zir, and others – all of which must be executed without the need for legislative enactment.

When the Shariah of Allah (swt) is subordinated to a democratic system, it fundamentally ceases to be Shariah, transforming instead into man-made law whose status is identical to any other civil law, despite being labelled "Shariah" by its human drafters.

"Adapting" Shariah to the Constitution?

The Kelantan government explained that the new enactment was drafted taking into consideration the supremacy of the Federal Constitution, the grounds of judgment in the Nik Elin case, and the legislative competency of the Kelantan State Legislative Assembly. What remains certain is that the Kelantan government is making strenuous efforts to "adapt" Shariah law to the demands of the Constitution.

This matter once again clarifies "what" genuinely resides at the top and what sits at the bottom. That which originates from Lord Reid is evidently placed higher than that which comes from Allah (swt). Although this might not be acknowledged theologically, tragically, what was introduced by Lord Reid continues to be exalted to the point that divine revelations from Allah (swt) must be adapted to suit Lord Reid's "demands."

Every Muslim naturally knows and believes that in Islam, a ruling is determined based on divine revelation and scriptural evidence. When Allah (swt) forbids something, it is Haram, and when He (swt) mandates something, it is obligatory. Full stop. Humans possess no right to determine whether Allah's law can or cannot be applied. When He (swt) decrees that the punishment for an adulterer is 100 lashes, no human can reduce it to six lashes, and anyone who does so commits a sin.

However, this is not the case within a democratic system. Before any "Shariah law" is drafted, the minds of the legislators have already been "conditioned" by the premise that it must not contravene the constitution. Furthermore, it is predetermined that it must fall under the State List; the State Legislative Assembly must have the competency to draft it; it must not overlap with Federal jurisdiction; and they (the lawmakers) must accept the reality that it can and might be challenged. All these factors must be thought through, considered, and adhered to beforehand.

This is a reality that cannot be concealed, even if such law is called "Shariah" and placed under a Shariah Enactment. In truth, all these processes are not Islamic, and what results from them clearly contradicts the Shariah, even if a colonized mind persistently attempts to label it as such.

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In reality, this ongoing issue has nothing to do with Nik Elin. Nik Elin is merely utilizing the avenues inherently provided by the system. Furthermore, this problem is not caused by civil judges who are perceived as being unsupportive of Islam. The judges are merely interpreting the constitution in its correct context. The actual problem is far more fundamental than that.

The root of the problem lies in the democratic system itself, which places sovereignty in the hands of humans – or in other words, grants humans the right to legislate, to determine all types of punishments, to decide what is lawful and unlawful, and to define good and evil. Meanwhile, the rulers within this colonial-inherited system, continue to defend it from one generation to the next. This is the root cause.

A Muslim ought to understand that this issue will not be resolved simply by modifying or enacting increasingly more Shariah Enactments, by incrementally expanding state jurisdiction, or by searching for new terminologies and phrasing to ensure a provision successfully passes constitutional scrutiny. As long as sovereignty remains in the hands of humans, Shariah will continue to be positioned as a law waiting for human permission to be applied, always remaining open to human challenge.

What must be replaced is the system itself. The constitution originating from colonial infidels must be changed to an Islamic system by establishing the Quran as the constitution. In other words, to ensure the comprehensive implementation of Shariah and the complete eradication of colonial legacies, we require a fundamental transformation: overhauling the entire system rather than merely applying minor cosmetic changes.

As long as the democratic system is not replaced by an Islamic system, Islam will perpetually remain subjugated. Regardless of the magnitude of efforts made to elevate Islam, they will inevitably fail as long as they are conducted within a system designed to control Islam itself.

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