

# Sharia Politics in Nigeria and Malaysia: Governance, Islamization and Human Rights

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## Abstract

Despite being federal secular states, the scope of Islamic law application and Islamic bureaucracy in both Nigeria and Malaysia has expanded tremendously under the influence of Islamist movements. Ideologically, Islamism aims to establish a political system based on Islamic tradition and the full implementation of Sharia law. Islamist activists in both countries have been working and pushing for the full implementation and enforcement of Islamic law including its criminal code which is also known as Hudud. Situating our analysis within a framework of the differentiated context of governance, this study expounds a comparative analysis of the processes of sharia implementation and the varying natures of human rights violation. Our analysis illustrates that the state failure in Nigeria cannot be resolved by replacing the secular political system with an Islamic one as the problem lies elsewhere. In Malaysia whereby state capacity in governance is much more effective, problems peculiar to the contemporary Islamic doctrine such as the theological interpretation of apostasy from the perspective of human rights are aggravated by a strong state capacity in regulating individual Muslims' private lives. The tendency of seeing harsh punishment as an effective means of weeding out vices and associating it with the seriousness of the state in enforcing Islamic belief leads to the loss of a sense of jurisprudential proportionality, and a zero-sum-game mentality vis-à-vis the respect for human dignity and liberty for both Muslims and non-Muslims alike.

**Keywords:** human rights, Hudud, Islamization, political Islam, Sharia politics

## 1. Historical and Political Background

Nigeria and Malaysia are both federal secular states based on constitutional supremacy, even though the term secular state does not appear in the respective federal constitutions. Historical study of the origins and drafting process of the Malaysian federal constitution indicates that the Malaysian federation was founded based on political secularism (Fernando, 2006). The constitutional provision which states that Islam is the "religion of the federation" was conventionally regarded as serving symbolic and ceremonial functions. Section 10 of the 1999 Nigerian constitution, on the other hand, prohibits explicitly the adoption of any religion as the state religion.

Just prior to British colonialism, Hausaland which became northern Nigeria was part of a Sokoto Caliphate that was on the decline. Islamic principles and legal system were applied widely in various spheres of the society which is quite exceptional when compared to other British colonies. Even though the Islamic penal code was not abolished under British indirect rule, severe capital punishment like amputation, death by crucifixion or lapidation appeared uncommon (Anderson, 2010). Only caning was the more regularly enforced punishments (Christelow, 2002). The traditional use of Islamic jurisprudence and penal code was only officially replaced with a new, uniform criminal procedural and penal codes based on English jurisprudence and integrated with some elements of Islamic legal provisions at independence in 1960.

The peninsular region of Malaysia, known previously as British Malaya, consisted of patches of Malay sultanates. As the political organization and authority of the Malay states were not centralized, Islamic principles were embedded syncretically as social practices and hardly institutionalized or bureaucratized (Roff, 1994). The era of British indirect rule saw the establishment of modern form of bureaucracy, and sharia family laws were adopted in the form of statutes and backed up by early forms of Islamic bureaucracy. As in Southern Nigeria, Bornean region of Malaysia has a predominantly non-Muslim population and was never under any substantial Islamic rule.

At independence, both countries have inherited the common law system from British colonialism but have maintained parallel sharia and customary legal systems on specific matters. The scope of application of sharia law in both countries was mainly confined to personal laws involving family matters of Muslims such as marriage, divorce and inheritance.

The worldwide phenomenon of Islamic resurgence since 1970s had seen a rise in Muslim activism to reform Islam in conformity with what is perceived as the more authentic religious practices and beliefs. Without exception, Northern Nigeria and Malaysia have also seen the emergence of increased religiosity and piety among Muslims. Islamists persist in promoting what they believe to be the “properly Islamic society” or “social Islam” (Mandaville, 2014) and pressing for an extended application of Sharia law. Islamists assert that Islam is the panacea for all societal challenges with an imagined future where everything is done in accordance with Islamic concepts and precepts (Ayoob, 2004). Islamist organisations mushroomed in both countries over the decades, working diligently to establish schools, small discussion groups, seminars and lobbies to spread their Islamic understanding and ideology. They have managed to expand their support base over time. As the educated middle class formed the main milieu of action, some of these fresh graduates managed to penetrate the state institutions or become influential academics. The movement has brought about a sea change in the popular religious mentality among Muslims in tune with their ideology. Malaysia is described by a scholar as having undergone “extensive salafization” (Ahmad Fauzi, 2016). Even non-religious Muslim politicians found it expedient to peddle Islamization agenda to gain popular support while others refrained from taking any stands which could be construed as “anti-Islam”.

The labor of Islamist activists bore fruits in Nigeria at the turn of the century. Clamour for the implementation of sharia in Nigeria yielded successful results as within a year, 12 states in northern Nigeria had legislated full Islamic criminal legal systems despite the fact that only half a dozen of them consist of a majority of Muslims (Ottuh, 2008). On the other hand, Islamic resurgence in Malaysia has led to the strategic adoption of an incremental and uninterrupted Islamization policy since 1980s. The Malay-dominated government co-opted leaders of Islamist movement to neutralize rival Islamic party PAS and undertook gradual expansion of the reach of sharia judiciary and Islamic bureaucracy. In both countries, Islam is under the purview of the states, though the Malaysian government also set up federal agencies to coordinate Islamization policy. During the 1990s, many state assemblies in Malaysia legislated that the fatwa of state mufti, once gazetted, shall have the force of law, and those who criticize the fatwa are liable to be prosecuted. This state monopoly over religious interpretation is deemed “the most striking feature of Malaysian law” (Moustafa, 2018, p. 31). The Islamic party PAS, while in power in two state governments in Malaysia, had enacted their versions of Islamic criminal laws even though they are held in abeyance as they are deemed unconstitutional.

## 2. Research Method

This study compares the impact of sharia politics and Islamization in Malaysia and Nigeria on the state of human rights. It uses qualitative approach to gather, compare and analyse data related to the processes and dynamics of Islamization and the implementation of sharia. Islamism is defined by many scholars as the instrumentalization of Islam as a political ideology (Roy, 1994; Ayoob, 2004; Ahmad Fauzi, 2017), aiming to establish a political system based on the full implementation of sharia which consists of Islamic tradition and Islamic legal system. Islamist movement aims at what we termed “Islamization”, which includes not just the full implementation of the Islamic legal system, but also the regulation of way of life in the social realm in accordance with what they view and interpret as “Islamic”.

According to the Worldwide Governance Indicators constructed by World Bank, state institutions in Malaysia are perceived as substantially stronger and more effective in terms of regulation, political stability, control of corruption and rule of law when compared with Nigeria. These differences in the quality of state institutions no doubt influenced how Islamization and Sharia politics exerted their impacts on human rights in both countries. We will first identify a couple of the major trends in the nature of human rights violation in both countries related to the politics of Islamization and Sharia law implementation. Based on the convergence and divergence of patterns between the two countries we have identified, we argue that some of the qualitative differences are due to the state of rule of law and state capacity for law enforcement.

Data related to incidents of human rights violation are gathered from human rights organizations’ reports, news reports, stakeholders’ inputs during the Universal Periodic Review (UPR) held by the United Nations Human Rights Council and legal judgments issued by the judiciary. It should be noted that it is not our intention to provide an exhaustive list of human rights violations, but to selectively discuss some salient issues of relevance to our

concern, namely how differences in the state capacity in governance and the maintenance of rule of law have brought about different manifestations of human rights violations.

### 3. Analysis and Discussions

#### 3.1 Sharia Implementation in Nigeria

The return of Nigeria to civilian rule in 1999 marked a turning point in sharia politics not only in the north, but for the whole of Nigeria. In January 2000, the then state governor of Zamfara, Ahmed Yerima, legislated to establish a comprehensive sharia legal and judicial system including the controversial Islamic criminal penal code known commonly as hudud, arguing that it did not contravene the federal constitution. This had exerted pressure on or provided inspiration to the governors of eleven other northern states, who subsequently followed suit, adopting full Islamic legal and judicial systems with some variations in details (Ostien, 2007). Islamic bureaucracies and agencies were set up in each state to provide institutional means to carry out its Islamization programs. Harnischfeger (2004) has argued persuasively that the sizeable non-Muslim minorities in some of the states in the Middle Belt such as Kano, Kaduna and Gombe felt marginalized and threatened by the interreligious dynamics beneath the push which exacts “a kind of symbolic tribute that expresses their subordinate position” (p. 432). The segregation of sexes in public places such as hotels, restaurants, buses and taxis, even schools, affected the daily lives of Muslims and non-Muslims alike.

In 2000, 11 states (Gombe passed the legislation but never implemented it) established three-tiered Sharia courts by converting Area Courts (civil courts) infrastructures into sharia courts, with existing staff such as the bailiffs, clerks, registrars and messengers being retained. Similarly, the judges of the Area Courts were mostly re-employed to sit in sharia courts after going through the formalities of screening and reassignment. Existing Islamic departments were restructured and upgraded. Sharia police (Hisbah) was established in these states to enforce sharia law, and Councils of Ulama were formed with the mandate to frame, expound, oversee and supervise the implementation of Sharia law. Zakat taxes were imposed on Muslims, and the sale and consumption of alcohol were either banned totally or restricted. Censorship boards were established to monitor public entertainment events and films projected in cinemas, and gambling and prostitution were outlawed (Ostien, 2007).

Even though harsh punishments were legally prescribed, including death by stoning and amputation, no stoning was eventually executed and less than a handful of sentences of amputation were carried out (Ostien et al, 2017). It appeared that both domestic and international criticisms and pressure against the litany of problems which surfaced during its implementation had led to the authorities toning down on the imposition of harsh penalties. In addition, subsequent judicial appeals of the sharia court decisions at the high court and federal court of appeal have led to numerous rulings which deem the expansion of the jurisdiction of the sharia courts of appeal beyond Islamic personal law as unconstitutional (Ostien et al, 2017). There appears however to be no political will to reverse the legal provisions even though, as explained, most states have since exercised self-restraint by scaling back its full implementation. Compensations was eventually paid by Zamfara state to the two amputees. The other offenders sentenced to stoning or amputation were imprisoned while waiting for the execution of their sentences, but most were subsequently released without execution. A study made in early 2016 found that except for the state of Bauchi, most of these prisoners were released quietly through the exercise of governors’ prerogative to grant pardon (Ostien et al, 2017). Apparently, in in-house trainings and workshops, judges were “counselled against ‘excesses’” (p. 45) and complainants who filed for *qisas* (retributive justice) were encouraged to accept monetary compensation rather than *qisas*. While the imposition of the most extreme penalties appears to be restrained in most states at the moment, the system remains in operation, and its impacts on the common people continue to be felt.

#### 3.2 Sharia Implementation in Malaysia

In Malaysia, the phenomenon of political Islam made its appearance from the end of 1970s. Upon assuming office in 1981, Prime Minister Mahathir declared his intent to embark on Islamization policy. One of the key planks of his early programs was the introduction of courses to instil the so-called Islamic norms and values among civil servants and measures to Islamize the bureaucracy. Extended lunch break hour on Fridays was introduced to allow Muslims to attend mosques. The plan also included setting up a string of what are conceived to be “sharia-compliant” institutions (banking system, insurance schemes, pawnshops, medical centre, and so forth) and a system of state accreditation of halal status of food and other commercial products. The International Islamic University was set up to provide intellectual backing, research and training for the furtherance of the goals.

State assemblies multiplied the enactment of sharia legislation, criminalizing non-compliance to the performance of various religious acts such as non-attendance of the mosque on Friday or eating during daytime in the fasting month, or offences deemed as going against Islamic precepts such as cross-dressing, homosexual acts, deviant religious practices and other offences. More significantly, Sharia court was upgraded to a three-tier legal system

with its jurisdiction in terms of impossible penalties enhanced. Constitutional amendment which inserted Article 121(1A) in 1988 also prevents civil court from deliberating on subjects which fall within the exclusive jurisdiction of Sharia judiciary. This should in principle not impede the civil court from deliberating on subject matters pertaining to the interpretation of the federal constitution and the administration of law. However, subsequent legal judgments especially on matters involving non-Muslims and religious conversion had seemingly eroded the role of civil courts as the ultimate adjudicator of inter-religious litigations and expanded the jurisdiction of sharia courts, leading to a legal expert describing the trend as the “silent re-writing of the federal constitution” (Ting, 2009).

The progressive growth in the bureaucratic work and personnel administering Islamic affairs over the decades may be gauged from the formation of the Department of Islamic Development Malaysia (JAKIM) in 1997. The origin of JAKIM could be traced back to its initial role serving as the secretariat of the Malaysia National Council for Islamic Affairs established in 1968 under the Conference of Rulers. As Islam remains as a state matter, JAKIM as a federal agency is given the mission to coordinate Islamic administration in different states, develop Islamic education, as well as formulate and streamline Islamic legislation. JAKIM also oversees the accreditation of halal status. A Department of Sharia Judiciary of Malaysia (Jabatan Kehakiman Syariah Malaysia, JKSM) was also set up in 1998 to provide support and training for the operation of Sharia courts in all states, and to upgrade Sharia infrastructure, procedure and quality of service (Najibah, 2012).

#### **4. Human Right Issues Arising from Sharia Politics**

Human rights groups have been speaking up against incidences of human rights violation in both countries, including those related to Islamization to be discussed shortly in this article. They had also submitted their accounts of human rights violations to the United Nations Human Rights Council during successive UPR sessions. Beyond pervasive discrimination against non-Muslims, the 2018 summary of UPR stakeholders’ submissions on Nigeria reports that “sectarian intolerance and violence against religious minorities had increased and perpetrators had rarely been apprehended or punished” (Human Rights Council 2018b, 4). Human rights defenders were targeted not only by armed groups but also by the authorities (p. 6). While the state of law and order in Malaysia is in a much better condition, increased Islamic fundamentalism and extremism, criminalization of apostasy and unilateral conversion of minor children remain concerning issues (Human Rights Council, 2018a).

##### *4.1 (Northern) Nigeria*

###### *4.1.1 Inhuman and Degrading Punishment /Humiliation*

The United Nations Universal Declaration of Human Rights states that corporal punishments, torture, death penalty, and other cruel, inhuman treatments are against basic human rights. Sharia judicial corporal punishment such as amputation and flogging for various offenses in the Sharia penal code are categorized as inhuman, degrading punishment, torture or cruel treatment under Article 7 of the International Covenant on Civil and Political Rights of 1973, of which Nigeria became a signatory in 1993.

Since the introduction and adoption of full Sharia law including its penal code by twelve northern states in Nigeria, there were a few instances whereby the harshest of these corporal punishments were carried out. However, criticisms and condemnations from around the world had led to an adjustment in the administration of Sharia law in the northern states. Serious punishments such as amputations and stoning to death are now rarely imposed – and where they were imposed, have not been executed. Nonetheless, it is worth examining briefly a few cases which had occurred at the initial stage to get a sense of the conditions under which it was implemented.

The first and only capital punishment imposed by the sharia court that had been executed was in Katsina state which was a death by hanging verdict sentenced in 2002. The 21-year-old man, Sani Yakubu was convicted without legal representation at all stages of his trial. Initially pleaded not guilty, he subsequently changed to a guilty plea and was sentenced to death and did not even appeal his sentence due to the lack of legal representation (Human Rights Watch, 2002). The several cases deliberated in 2000 and 2001 whereby the sentences of amputation for theft were executed also took place without proper legal representation. The case of Altine Mohammad in Kebbi state who allegedly stole a bicycle was tried by a sharia judge who owned the missing bicycle and got the case transferred from a civil court to his sharia court (Ottuh, 2008). Lawal Buzu from the Zamfara state similarly got his hand amputated for the theft of a bicycle (United States Commission on International Religious Freedom [USCIRF], 2001); Ottuh, 2008) without proper legal representation nor appeal. In other instances, corporal punishments such as flogging, or caning had been executed in public on offenders. In January 2001, Zamfara State Sharia official flogged Bariya Magazu, a 14-year-old girl (a minor and a rape victim), 100 lashes for allegedly committing fornication and having a child out of wedlock and another 80 for purportedly bearing false witness (USCIRF, 2005; Ottuh, 2008).

The circumstantial indications of how those verdicts were arrived at are rather unsettling indeed from the point of view of the respect for due process and the sense of proportionality between the severity of the crime and punishment. Access to legal counsel and assistance by the accused was often not realized due to ignorance, poverty or unavailability of lawyers. Hence those who suffered the wrath of sharia implementation were mostly the poor who could not afford legal representation, unaware of such possibility, or were ignorant of their rights (Oxford Department of International Development [ODID], 2015). Saleh Dabo, an 18-year-old man, claimed that he was told by the police to admit (guilty plea) to rape, then in turn would be set free; instead, a Sharia court handed the man a sentence to be stoned to death for crime of adultery, even though he was a bachelor (USCIRF, 2005). Those offenders whose sentences were not executed could find themselves imprisoned indefinitely or for an indefinite period of time before being released (Ostien et al, 2017). A young aspiring Islamic singer, Yahaya Sharif-Aminu was sentenced to death for blasphemy because he circulated his song via a WhatsApp voice message which praised a Sufi imam above Prophet Muhammad (*British Broadcasting Corporation [BBC]*, 2020). Upon appeal, a retrial was ordered, but a trial date has only been fixed lately after waiting in detention for almost one and a half years (Amnesty International, 2022).

#### 4.1.2 Moral Policing and Hisbah High-Handedness

The Sharia law enforcement police known as Hisbah though not extensively active in all the 11 northern “sharia states”, gained notoriety in states where they are active such as Kano, Kaduna, Zamfara, Kebbi and Jigawa. They have been negatively associated with carrying out controversial coercive activities in enforcing public morality such as forcibly preventing the mixing of the sexes on public transport system; enforcing dress codes especially on women in educational institutions; preventing the performance of music and films; confiscation and destruction of alcoholic beverages; putting pressure on “deviant” youth, prostitutes, homosexuals, and lesbians. The activities of Hisbah remain a source of anxiety for Muslims and non-Muslims alike (ODID, 2016). There seems to be little or no structured training program for the hisbah corps as most of them are groups of organized volunteers which the state governments adopted, formalized and funded (Human Rights Watch, 2004; ODID, 2016). According to Human Rights Watch, there were numerous reports of abuses by Hisbah especially in the first two years after Sharia was introduced but since 2003, reported cases of Hisbah abuse had significantly decreased.

Unfortunately, this appears to have changed since 2015 when the current president Muhammad Buhari came into power. Buhari is known to be a strong proponent of Sharia law. While delivering a speech at an Islamic seminar in 2001, he said, “I will continue to show openly and inside me the total commitment to the Sharia movement that is sweeping all over Nigeria”. He added that, “God willing, we will not stop the agitation for the total implementation of the Sharia in the country” (News24, 2001). Having a president with a professed Islamist commitment has apparently motivated and re-activated the fervour of the Hisbah Corps in view of a rise in reported incidences of their highhandedness and human right violation as well as prosecution of blasphemy since president Buhari was elected.

A study on Hisbah in the states of Kano, Sokoto and Zamfara between 2017 and 2019 undertaken by the United States Commission in International Religious Freedom stated that the Islamic police in all three states exceeded their mandate by arresting non-Muslims, using excessive force and locking people up in total disregard for people’s rights and freedom, especially in Kano State. In addition, they appear to target working-class residents but not the elites (International Centre for Investigative Reporting [ICIR], 2022). This double standard and hypocrisy were particularly blatant when the hisbah corps failed to act against the bride of Yusuf Buhari, the son of the president, whose dressing during their wedding ceremony defied what is regarded as modest dressing for Muslim ladies as has been enforced by the former on other commoners. A video clip of the wedding which took place in Kano surfaced on the internet where secular musicians performed and people in attendance had various hairstyles which the Kano State Hisbah board had tagged “UnIslamic” and insulting to Islam. Similar hairstyles, music and dancing have gotten numerous commoners arrested, incarcerated and prosecuted, including non-Muslim hair-stylists (*Sahara Reporters*, 2022; ICIR, 2022).

### 4.2 Malaysia

#### 4.2.1 Conversion out of Islam and Criminalization of Apostasy

While the problem of lawlessness in Malaysia is not as severe as in Nigeria, the peculiar impact of Islamization has taken a different form, associated with the effective reach and control of a strong state. As mentioned, decades of Islamization in Malaysia have strengthened the Islamic bureaucratic machineries and the widening of sharia court jurisdiction, including the exclusive jurisdiction to determine the religious status of a person as a Muslim or otherwise. This is a significant development subsequent to the amendment of Article 121(1A) in 1988 which gives sharia courts an exclusive jurisdiction over Islamic matters as listed in the Ninth Schedule, List II, Section 1. Prior

to the amendment, this was not the case, and civil court regularly reviewed and overturned the decisions made by sharia courts even if the matters fell under the Ninth Schedule, List II, Section 1 (Azahar Mohamed, 2021, p. 6). In addition, religious conversion for Muslims used to simply required a statutory declaration. In 2000, the National Registration Department (NRD) implemented a policy – backdated to October 1999 – to indicate the religion of a Muslim on the national identity card. The policy requires henceforth formal documentation from the relevant Islamic authorities certifying the renunciation of Islamic faith to remove “Islam” from the identity card of an apostate (Malaysian Court of Appeal, 2005). It appeared to have been formulated in response to the landmark case of Lina Joy, a Malay woman who had pursued legal channels to oblige the NRD to recognize her conversion to Christianity. In view of the increased criminalization of various acts deemed as religious offences for a Muslim, this non-recognition of conversion out of Islam could land the person in a lot of trouble. More importantly, Lina Joy could not get married to her Christian boyfriend as a Muslim can only get married to a Muslim for the marriage to be officially recognized. Lina Joy subsequently failed to get the NRD to change her religious status on her identity card as she was instructed to apply for the documentation from a sharia court (*Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585).

There are cases whereby citizens found that their religion was wrongly recorded in their identity card. This does not have any serious consequences except when the NRD mistakenly recorded as Muslims many Christian or animist indigenous peoples with Muslim sounding names. The affected parties had trouble when they planned to get married to a non-Muslim only to find that they were mistakenly registered as a Muslim. As obtaining sharia court documentation involves costs and time, it becomes a problem for those from the lower socio-economic and educational background and a serious hassle for those who can afford it as it could take many years for the process to get through. Their children would face trouble to be registered officially too without a marriage certificate.

As Islam is a state matter, different states have enacted different legislation to regulate apostasy. There are broadly speaking three approaches taken by the states on the matter: make apostasy an offence and offenders are handed punishment such as fine, public caning (in Pahang), detention in Islamic rehabilitation centre (Melaka), and imprisonment; stipulate legal avenues for a Muslim to go through remedial procedure before being allowed to leave Islam; and lastly, no penalty prescribed for apostasy. Though differs by states, the practical implementation of state regulations in many instances ultimately prevents a Muslim from leaving Islam as the sharia court refused to grant the permission (Kuek, 2008; Mohd Al-Adib, 2016; International Commission of Jurists, 2019).

A high-profile case was that of Revathi Masoosai, a 29-years woman in 2007, who despite being registered at birth as a Muslim by her ethnic Indian convert parents, was raised as a Hindu by her grandmother. She applied to the Melaka Syariah court to change her religious status to Hindu, without success, and was subject to six months’ detention in a faith rehabilitation centre in 2007. At the end of the process, she was ordered to live with her mother and continue receiving “Islamic” counselling, and her baby was removed from the Hindu husband and the custody given to her Muslim parents (*Al Jazeera*, 2007; *Reuters India*, 2007). Revathi also complaint that authorities at the centre attempted to compel her to pray as a Muslim, eat beef and wear a head scarf which contradicted her Hindu beliefs (*The Star*, 2007; USCIRF, 2007; 2008; 2009), allegations denied by the authority.

A recent case of a 32-year-old Malay woman (name withheld by order of court) replicates the experience of Revathi. She has exhausted her avenue to renounce Islam through sharia judiciary, without success. The woman said her first attempt was in August 2018 when she filed an application at the Sharia Court seeking to renounce Islam on the basis that even though she was born a Muslim, she never practised the religion of Islam and neither her divorced Muslim parents. She declared that on her own freewill she has chosen to practise Buddhism and Confucianism by which she hopes to achieve a state of enlightenment (nirvana). The Sharia court ordered her to go for 12 Islamic counselling sessions between January and June of 2019 while her trial was pending. During her trial she testified before the sharia court that she has been consuming what is deemed *haram* (pork and alcohol) in Islam, which her mother and a close friend confirmed orally before the sharia court. Nevertheless, the Sharia Court rejected her application in July 2020, further instructing her to attend more Islamic counselling sessions.

Consequently, she filed a civil suit seeking judicial review against religious authorities and the federal government of Malaysia in her attempt to get officially recognized as a Buddhist-Confucianist. In the cause papers she has filed for her civil suit, the woman claimed that Sharia Court rejected her application on the grounds that the constitutional provision in Article 11 which guarantee freedom of religion is not applicable to Muslims and that her consumption of foods and beverages that are *haram* and not adhering to the principles of Islam is an issue of sin and reward and does not invalidate her faith as a Muslim. Her counsel allegedly told her that sharia courts would not approve her renunciation of Islam as it is against the religious precepts that they are entrusted to uphold and seen as an affront to Islam’s dignity and position in Malaysia (*Malaysiakini*, 2022). The woman’s lawyer said the case is a test of religious freedom in Malaysia as his client sought redress in the civil court after exhausting

avenues in the sharia system that is not interested in granting her request to leave Islam. The lawyer was quoted saying “I hope this is the case that nails the fact that there’s freedom of religion for Muslims too.” (*The Vibes*, 2022).

#### 4.2.2 Impact of Moral Policing Enforcement

The raids conducted by officers of state religious departments have received negative press reports from time to time. There were tragic incidents whereby suspected offenders fell to their death while escaping the Islamic officers’ raids. A Christian Indonesian woman who worked as a masseur was wrongly convicted for close proximity and contact with opposite sex (*khalwat*) while she carried out her professional job. Some years ago, a married couple who were foreign tourists staying in a hotel were reportedly awakened in the middle of the night by Islamic officers asking to see their marriage certificate. Time and again, religious authorities have been criticized for breaking into hotel room to conduct raids based on unverified assumptions, tip-offs and reports (*Malaymail*, 2018). Prominent figures like the Penang Mufti had called for better regulation of the ways and manners *khalwat* raids are conducted to avoid projecting a wrong image of Islam (*The Malaysian Insight*, 2018; *Malaymail*, 2018).

One of the high-profile raids by the religious authorities which provoked controversies was the incident of the Selangor religious authorities raiding the home of a Malaysian actress Faye Kusairi in the early hours of the morning. Media reports stated that the religious authorities were apparently tipped by suspicious neighbours who believed the actress was committing *khalwat* in the privacy of her family home. Upon their arrival, the religious officers cut open the grill door and broke down the fireproof door, only to find Faye’s mother, father and brother in the house. It turned out that Faye was not even at home as she was staying overnight with a female friend (*Huffpost*, 2016; *The Diplomat*, 2017).

In another similarly farcical performance, the Federal Territories Religious Department (JAWI) officers forcefully entered a hotel room lodged by a married Muslim couple of three years. They refused to believe in the photographed marriage certificate stored in the husband’s handphone or the original certificate subsequently brought by the husband’s mother to JAWI’s office. One of the officers took pictures and video while the scantily dressed wife were ordered to put on her clothes in front of the people present. The couple were not released until they signed a bond acknowledging that they were arrested for committing *khalwat* (*Malaymail*, 2017). The couple subsequently sued JAWI and the government for wrongful arrest and detentions, bodily injuries as well as exposing the half-clad wife to male officers of the religious police, demanding RM10,000 as compensation and an apology from the defendants (*The Independent*, 2017; *Malaymail*, 2017; *Malaysiakini*, 2018). However, the couple later withdrew their suit on the grounds of costly legal charges (*Malaysiakini*, 2018). This was not the first wrongful raid of innocent married couple. A similar incident took place in 2000 when the Perak religious officers knocked down the door of a rented homestay room, wrongfully accusing a Muslim couple who were married for 22 years staying there for committing *khalwat*. The couple file a suit against the religious department in 2002 after waiting endlessly for an apology from the religious authority of the state (*The Independent*, 2017).

Transgender people are another frequent target of the religious officers even if they did not commit any crimes. Islamic legislation in some states criminalize even cross-dressing, which was subsequently declared by a court of appeal judge as an infringement of their civil liberty. One of such controversial raids that made national headlines and attracted global criticisms was conducted on 3 April 2016 at a charity dinner organized by the Malaysian transgender community. JAWI Officers came with the media, gate-crashed the event to conduct a raid without obtaining any warrant and company of regular police, in disregard for their own SOP and legal requirements. The event was alleged to have violated a 1996 fatwa that prohibits beauty pageantry for Muslim women. The organiser of the event Ira Sophia alongside Siti Kasim, a lawyer turned rights activist, were forcefully arrested. The former was detained for 24 hours and was told by the religious department that she would be charged for “encouraging vice” and “contempt or defiance of religious authorities”. When the latter demanded to see a warrant from the religious police, she was arrested and investigated for “criminal intimidation” and allegedly “obstructing a public servant” (*Malaysiakini*, 2016; *Malaymail*, 2016; *Huffpost*, 2016; Amnesty International, 2017). Siti Kasim was subsequently acquitted as the magistrate ruled that the prosecution failed to establish a prima facie case against her (*Malaymail*, 2020).

## 5. Conclusion

Islamization generally involves a greater influence of Islamic norms in governance, legal inputs and bureaucratic regulation. Scholars of political Islam have noted that the outcomes of Islamization projects in different Muslim countries differ in their manifestations due to varying social and political factors (see e.g., Ayoob, 2004). The infusion of religious doctrines in governance is compounded by the inevitable diversity among the different schools of Islamic thoughts and theological doctrines, leading to violations of religious freedom, harassment and

persecution of Islamic religious minorities or sufi sects by the state. In this article, we argue that the structural and legal frameworks as well as conditions of state capacity in the maintenance of rule of law influence how human rights violations have taken place, and the extent to which common citizens have access to legal remedies. Instead of providing an exhaustive list of human rights violations in both countries, we have selected a couple of the salient issues which could provide relevant elements for our comparison.

In both countries, there are states which have enacted sharia legislation providing for the full implementation of sharia legal system, including the most controversial hudud punishments such as amputation and death by stoning. Nonetheless, only in Nigeria had the sharia courts in the eleven northern Nigerian states applied the law, even executed a handful of the harsh punishments known to be associated with hudud, such as amputation. Despite so, after intense international campaigns and domestic pressure, most of these state authorities seem to have voluntarily toned down and exercised self-restraint in imposing the most controversial punishments. In Malaysia, current limits on penalties imposable by sharia judiciary means that it does not have the power to authorise the type of punishments associated with the hudud penal code. On top of that, they are clearly unconstitutional even if the sharia judges are authorized to issue them. This is because capital punishment and other hudud offences such as robbery are not within the legislative list of state assemblies. Nonetheless, there was a cliff-hanging attempt at amending the federal law to expand the jurisdiction of sharia courts in Malaysia in 2016, which eventually did not materialize (Ting, 2016). Should the Islamic Party succeed in getting it through, it is not inconceivable that the domino effects as witnessed in northern Nigeria may happen in Malaysia as Muslim leaders of other states would be put under great pressure to follow suit. Religious offences such as drinking and adultery are already legislated, but the penalties imposable on offenders are lighter than what are prescribed under hudud. There is always pressure to impose harsher punishments which are intuitively associated with the “seriousness” of the authorities to weed out “vices”, at times losing the sense of jurisprudential proportionality or even uncritically believing in its effectiveness.

A peculiar pattern of human rights violation in Malaysia inadvertently perpetuated by the state is over the freedom of religion of Muslims and those officially designated as “Muslims”. As mentioned, from 2000, official recognition of the renunciation of Islam requires the applicant to present a sharia court document as proof. This administrative change obliges any Muslims who wish to convert out of Islam to apply to a sharia court, hence posing oftentimes insurmountable obstacles for such change. It is also burdensome for those who are erroneously classified as Muslims. More seriously, we have also discussed a number of high-profile cases of aggrieved individuals whose application have been rejected after going through the lengthy and tedious legal and counselling processes, leaving them without further recourse. This problem is also at the origin of other interreligious disputes between estranged couples whereby one spouse has converted to Islam. Unilateral conversion of children to Islam appears to be instrumentalized by some parents to strengthen their chances of gaining custody over the children, or even simply as a revenge against the other parent.

In Nigeria, on the other hand, there is no legal obstacle for a Muslim to convert out of Islam, as freedom of religion is affirmed as a constitutional right. The person may nonetheless experience backlash and violence exacted by angry mobs, especially if he or she resides in a Muslim-majority state or area. The plight of a Nigerian Muslim, Mubarak Bala, who was forcibly interned in a psychiatric institution after renouncing Islam and proclaiming himself to be an atheist is a case in point (BBC, 2022).

Moral policing in both countries have also brought out different issues. Religious officers in both countries have been accused of acting in a highhanded and aggressive manner or even in violation of rule of law, or using excessive force, perhaps to a slightly graver and greater extent in Nigeria than in Malaysia. These religious officers are assisted by or consist mostly of groups of organised volunteers who have received little or no structured training.

Even though advocates of Islamization always claim that sharia legislation would only affect Muslims, and that it is the right of Muslims to implement sharia upon their believers, there is ample evidence to show that not only are non-Muslim citizens affected, Muslims have also inadvertently become victims of some instances of grave miscarriage of justice due to sheer religious ignorance or lack of access to due legal process. In addition, Muslims who disagree with the direction of the Islamization project or even wish to be freed from state regulation of their private lives are left with no options.

Decades of military dictatorship in Nigeria and the apprehension of the perceived inability of the state to curb deepening social decadence, deep inequality, widespread corruption as well as rise in crime and insecurity lent credibility to the assertion by critics that the “alien” political establishment and system left behind by the British was a significant part of problems confronting the country (Ostien & Fwatshak, 2007). This had contributed to the success of advocates of full sharia implementation in effectuating the change at the turn of the century. More than



two decades have passed since, and it is clear that the crux of the problem is not a difference between secular and Islamic legal systems but lawlessness. Even advocates of Islamization recognized that something was amiss upon the full implementation of harsh punishment dubbed as “Islamic” and they had to scale it back selectively soon enough. Nonetheless, more critical self-reflexivity is needed to reform a traditional system which had operated in a very different historical context and social sensibility. In addition, the perspective continues to be trapped in the binary logic between the assertion of an Islamic system as the answer to what are perceived to be the evils of secularism and heritage of westernization. Admittedly, the lack of due process and human rights violations are not the preserve of sharia legal system but harsh punishment in the hands of an incompetent sharia judge puts Islam in bad light and goes against Islam’s own principle of compassion and justice. Frequent occurrences of miscarriage of justice echo similar dynamics among the failed examples of democracy in selected countries under Islamist governments which discredit Islamism (Roy, 1994).

In the case of Malaysia, as described, Islamization has been progressing systematically and continually in all aspects of the society and state structure, and has become entrenched in the political system, provoking periodic tension and division in interreligious relations. Just as the case made by Harnischfeger (2004) on the indigenous peoples’ resentment in the Middle Belt states of Nigeria who recall historical memories of Muslim oppression under the Sokoto caliphate, similar sentiment has grown stronger among non-Muslims in Malaysia as well as the Christian indigenous peoples in the states of Sabah and Sarawak. In a similar way as in Nigeria, bureaucratic missteps in the name of Islam had polarized responses in the form of Muslim-versus-non-Muslim communities. The occasional judicial correction of illegal overreach of sharia power is unfortunately perceived by Islamization advocates as an attack on Islam in a zero-sum-game manner rather than the protection of basic liberties of individual citizens within the context of rule of law.

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