

Persuasion, not compulsion

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P. Gunasegaram When federal laws unambiguously prohibit whipping or caning of women, religious laws must not be allowed to do the opposite.

ONE of the small things that I am grateful for is that I cannot be legally whipped or caned for any offence any more. Yes, there are criminal penalties which can specify whipping, but not for those over 50, I am told. Sometimes being old(er) is an advantage.

The other reason that I won't be legally whipped is that I am not a Muslim and therefore my personal behaviour is not subject to syariah courts, which can hold me liable for offences such as drinking alcohol and have me caned.

For me and for millions of Malaysians of all races and religions, Feb 9, 2010, was a sad, black day in the history of our country. On that day, three women were caned legally for the first time ever in this country. They, all Muslims, were caned for engaging in illicit sex, an offence under syariah law, it was announced.

It is shocking that such sentences are being meted out for such offences. While religious laws may allow for such sentences, it is possible for judges to mete out lower sentences, especially when such "offences" are of a very personal nature and harm no one else.

When there are loopholes in religious laws which allow such punishment out of all proportion to the "crime" committed, and which go against the sensibilities of most Malaysians, then it is incumbent upon the Government of the day to use the legislature to do the needful. Otherwise it abdicates its responsibility.

Illicit sex means sex out of wedlock and if we are all not hypocrites, we will admit that it happens all the time, among both Muslims and non-Muslims. To prescribe caning for such an offence is something that most Malaysians are likely to consider just too much.

It also opens the door for caning for more minor offences in the eyes of religious officials, such as drinking alcohol. In fact one Muslim woman, who has refused to appeal her case, is currently awaiting a caning sentence to be carried out after she was found guilty of drinking alcohol.

That case attracted international attention and made it to the front page of two international financial dailies – The Wall Street Journal and The Financial Times – on the same day last year. The current case, announced on Wednesday, is already beginning to attract world attention.

With three women already having been caned for illicit sex, the way has been paved for more caning of women in the future. That will not endear Malaysia to Malaysians, let alone foreigners who are inevitably going to equate us with the Taliban. And who can blame them?

And are we going to go further down the slippery road and cane women for dressing immodestly too, as has been done in some countries?

There are already indications that Malays, especially women, are migrating and leaving their homeland, not because they don't have opportunities here but because as Muslims, their personal freedom is restricted – and there is danger that it will be curtailed even more.

Yes, it has been said the three women did not suffer any cuts or bruises following the caning but that is scant consolation to those who have to undergo such humiliating punishment on top of the intrusion into their personal affairs.

As if the caning was not bad enough, alarmingly they spent months in prison. One of them is still serving her jail sentence and will be released only in June.

All three were found guilty of committing illicit sex by the Federal Territory Syariah High Court, which issued the caning order between December last year and last month. Perplexingly, they were not made public at that point of time. The public had no idea of the caning before it was done.

Also, it was not clear if the women had exercised their full rights under syariah law by appealing the court's decision.

These are behaviours which should not be treated as if they were criminal offences; but they have been. The offenders have not only been caned but also jailed, which is rather harsh punishment for something which did not harm anyone else and was done in privacy and behind closed doors.

This is clear indication that there are laws in our statute books – both syariah as well as civil – which are outdated and need

to be revised in keeping with the times and the recognition that individuals have personal rights.

Personal behaviour between consenting adults that do no physical harm to them and to others should not be legislated. This is in keeping with the development of personal rights throughout the world, and anything that takes away these rights is a step backwards.

Religion is open to interpretation, man interprets it and man can – and does – make mistakes.

Even if religious rules are flouted, we should have a system which does not mete out punishment for offences, and focus instead on rehabilitation and counselling. That will be in keeping with the universal tenet that there is no compulsion when it comes to religion.

Custodial and punitive sentences by religious courts should be limited via statutes because personal behaviour of adults is often involved and there is no hurt or harm to any others arising from such behaviour.

Religion is about persuasion not compulsion, about faith not certainty, and that is the way we should keep it. Otherwise, bigotry is going to get in the way and we won't be following the tenets of religion but of those who choose to interpret it the way they want to.

We have all seen what happens when religion – no matter what religion – is carried to extremes and hijacked by bigots. We don't want public flogging, we don't want arms chopped off, we don't want people to be stoned to death, and we don't want people to be burned at the stake.

We have already moved way past that. Let's not allow a small number of religious bigots to take us back into the dark ages. And for that, we all need to stand up and speak up when our individual rights are trampled upon.

Managing editor P. Gunasegaram is appalled by the number of sins committed in the name of God.