

Not easy to use laws against black magic

Published in: New Straits Times Monday, 29 November, 2010

Difficulties in differentiating the black from 'white' magic, and in obtaining proof of wrongdoing, will make it difficult to enforce legislation to ban sorcery and black magic, says MOHAMAD HASHIM KAMALI

A SYARIAH High Court judge suggested at a seminar in Kuantan early last month that Malaysia should criminalise black magic and introduce a law to that effect, adding that the practice of black magic was becoming rampant, especially among the Malay community. This was not the first time such a proposal was made as a similar suggestion was advanced by the mufti of Selangor last December.

The practice of recourse to bomohs, faith healers and psychic agents is, of course, widespread in Malaysia as it is indeed in most other countries and communities, Muslim and non-Muslim alike. A former lecturer at the Islamic Studies Academy of Universiti Malaya and a faith healer with 20 years' experience said in his paper at the Kuantan seminar that he daily faced the challenge of helping people who fell victim to black magic, and that the culprits responsible were often family members and people known to their victims.

Magic is often used to create rifts among families, spouses and business partners due mainly to jealousy, anger and festering hostility. People from all walks of life often complain about being possessed by spirits and djinns through black magic. Previously, such practices were encountered mainly in rural communities and more privately but nowadays the practice is spreading, through the Internet, newspapers and media advertisements, and the issue is no longer private.

No country or community has actually been able to eradicate sorcery and black magic, with or without government intervention and legislation. This is because legislation on black magic presents difficulties of differentiating the black from the "white" magic. The latter purportedly seeks to help and heal afflicted persons, whereas the former does the opposite by inflicting harm and disease, often on innocent persons with or without a known cause. It is a heinous activity as it seeks to harm individuals without their knowledge and with no opportunity to defend themselves. It is the black variety that constitutes a social mischief and the question is over its ban through legislation.

The second hurdle that legislation on black magic presents is that it is almost impossible to enforce due to the difficulty of obtaining hard evidence and proof of wrongdoing. This is partly because a person does not need to be at the scene to carry out a crime involving black magic. Hearsay evidence is not admissible in the syariah or civil courts and can certainly not be used in crime and punishment litigation.

Legislation and law-making typically proceed over the externalities of conduct and its provable manifestations. The hidden intent and state of mind of the accused need to be proven for the law to come into operation. This also differentiates the law from religion, as the latter extends to issues of accountability before God, matters of morality and conscience -- hence the inherent subjectivity of sorcery as it dwells in the thoughts and mind of individuals. Questions thus arise as to how one receives or conceives the concept and effectiveness of black magic.

Briefly, in England, the Anti-Witchcraft Act 1542 made witchcraft a crime punishable by death. Scotland also passed its own Witchcraft Act in 1563. Then in 1735, England repealed its earlier law and replaced it with a new Witchcraft Act, which abolished the death penalty but stipulated fines and imprisonment for persons "who pretended to have the power to call up spirits, or foretell the future, or cast spells, or discover the whereabouts of stolen goods". Then in 1951, the Witchcraft Act was repealed altogether with the introduction of the Fraudulent Mediums Act.

India has a bigger problem with superstitions and black magic and has gone through similar phases of attempted legislation. An Anti-Superstition Bill was tabled in the state of Maharashtra in 2003 but was met with stiff resistance as the definition of superstitions was considered to be too wide. It was eventually passed but never implemented. In 2005, a new bill, dubbed the Maharashtra Black Magic, Evil and Aghori Practices Bill, was again tabled, but in June last year, the Times of India reported that it had yet to be passed.

In Islam, sorcery (sihr) constitutes a grave violation of the faith, and believing in it is viewed as tantamount to associating other deities with God and ultimately the denial of Islam itself. Sihr is forbidden and the public must be protected against its harm. Sihr has an aspect in common with religion in that both subscribe to the belief in the existence of a supernatural power.

Issues are often conflated, however, when sihr is practised, as it usually is, by men of religion relying on religious sources, and it becomes difficult to differentiate religiosity from sihr. The most one can say perhaps is that a law, or a policy initiative, may be introduced to criminalise on pain of a deterrent (ta'zir) punishment the open practice of black magic on a commercial scale, where evidence of instruments used for the purpose can be found and presented before the court.

Legislation of this kind can perhaps be justified under the syariah principle of sadd al-dhara'i', or obstructing the means to anticipated evil. Although a recognised principle and basis of judgment, a liberal recourse to sadd al-dhara'i' is, nevertheless, not recommended -- lest it opens the door to abuse. Under normal conditions, the law is enforced when an actual crime is committed, not one merely anticipated. Yet when proof of wrongdoing is difficult to obtain and those in charge of community affairs are convinced that deterrent measures are called for to protect the society against misguidance and evil, then such measures may be taken under sadd al-dhara'i'.

This will mitigate to some extent the burden of evidence and proof and bring the issue under the discretionary umbrella also of siyasah shar'iyah (syhariah-oriented policy) that authorises the ruler and judge to issue a deterrent punishment deemed necessary to curb anticipated evil from spreading further.

Mohammad Hashim Kamali is founding chairman and CEO of the International Institute of Advanced Islamic Studies (IAIS) Malaysia.