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The woman who decides if men can take a second wife

By Heather Chen

BBC (20.11.2018) - <https://bbc.in/2TxRDwE> - Islamic law, also known as Sharia, is often associated by critics with harsh punishments and hardline attitudes. But one of Malaysia's first female Sharia high court judges says her role gives her an opportunity to protect women in the Muslim-majority nation.

Judge Nenny Shushaidah presides over five trials a day and can hear up to 80 cases a week.

Malaysia practises a moderate form of Islam but conservative attitudes have been on the rise and the use of Sharia is growing as well. Under a dual-track legal system, thousands of Muslims use it to settle moral and family matters. Non-Muslims are required to follow secular laws that deal with the same matters.

She passes judgment on everything from financial cases to those involving the Sharia concept of Khalwat [unmarried Muslim couples being caught in compromising situations]. But her expertise lies in child custody and cases of polygamy - the Muslim concept of allowing men to marry up to four wives, which is legal in Malaysia.

Judge Shushaidah says there are many factors she considers before, for example, allowing a polygamous union.

"Every case is complex and different," she explained. "You can't generalise Islamic law and say it favours men and treats women badly... I want to correct that misconception." All those involved in a proposed polygamous marriage are required to be physically present in Judge Shushaidah's court.

"I want to hear from everyone, not just [the] men," she said. "I make it a point to speak with women to find out if they are on board with the arrangement. It is important that they agree to it because if I see any signs that say otherwise then I won't grant permission."

"I am female and I can understand most women would not like the idea. But it is allowed under Islam, and our Malaysian courts have enacted strict laws to govern this."

"A man has to have very strong reasons for wanting another marriage," she said.

"He must show he can look after the welfare of his first wife as well as the women who come after. He is not allowed to neglect the needs of anyone."

Judge Shushaidah added that some wives can be supportive of the idea.

She recalls, for example, a case which involved a seriously ill woman who could no longer bear children.

"She loved her husband and wanted me to grant him permission to marry a second wife. So I did."

She defends her religion's reputation for strict laws by arguing that it is capable of fairness.

But critics and rights groups argue Sharia is often misused.

"We have no objection to Sharia law that doesn't discriminate against women, gay people or social and religious minorities," Asia deputy director of Human Rights Watch Phil Robertson told BBC 100 Women.

"But the problem with Sharia law in Malaysia is that too often it does precisely that.

"Religion is never an acceptable reason to violate international human rights standards of equality and non-discrimination."

For example rights activists were outraged by the recent caning of two Malaysian women convicted of attempting to have lesbian sex, and say Sharia law was misused in this case.

Judge Shushaidah would not address the case, but said: "Caning under Sharia law serves to educate offenders so as not to repeat the act again."

Judge Shushaidah also argues that Sharia does not always rule in favour of men.

"Our law exists to protect women's rights. It looks at their welfare and safeguards their livelihoods," she said.

"Islam holds women in high regard and as judges, we must return to its teachings and maintain worthiness using Sharia."

Her greatest concern lies with Muslim men bypassing strict Sharia court procedures by marrying overseas.

"He wouldn't be bound by Malaysian law if he marries abroad. Some wives actually consent to this to protect their husbands but they don't realise how it works against them," she said. "Our Sharia laws are in place to protect the interests of women and hold men accountable."

Women's groups like Sisters in Islam highlighted a "severe shortage of female representation" in the courts and a "strong sense of patriarchy" in the overall system.

"The Sharia legal context in Malaysia not only selectively discriminates against women, it vilifies them as the cause of social immoralities," said spokeswoman Majidah Hashim.

"State Islamic institutions... have done little to ensure women are accorded due justice. In fact, the recent prosecution of women under Sharia law clearly shows that their voices are alarmingly silenced and access to justice is worryingly stifled."

This makes Judge Shushaidah's appointment a particularly significant one.

"Back in my day, most Sharia judges were men who questioned the need for women in the practice," said Judge Shushaidah.

"I never dreamed of becoming a judge," she admitted. "As a lawyer, I didn't know if I could take on such a senior role that dealt with complicated cases. And as a woman, I felt doubt and fear."

"Sometimes I do feel uneasy. As a woman, I must feel, and I'd be lying if I said I felt nothing. But I am a judge and I have to make sure I am always clear and objective. So in my judgment, I try and address this. I make do with the best evidence I get in court."

Female circumcision: Culture and religion in Malaysia see millions of girls undergo cut

Fa Abdul was nine years old when she found out she had been circumcised when she was just a baby.

By Erin Renaldi

ABC News (13.11.2018) - <https://ab.co/2PpijRT> - She was among the millions of girls across Malaysia whose families believe that female circumcision protects young girls from committing "sins".

"Many Muslims in Malaysia will tell you that circumcision will protect girls from growing up and becoming wild," Ms Abdul said.

Ms Abdul spoke to the ABC about her experience after a new documentary — titled *The Hidden Cut* — was released last week.

Chen Yih Wen, a senior producer from the group behind the documentary *R.AGE*, said the team started making the documentary after Malaysia was criticised at a United Nations forum in February.

The UN's Convention on the Elimination of All Forms of Discrimination Against Women, held in Switzerland, slammed the country over continuing to practice female circumcision, or female genital mutilation.

The documentary makers discovered that the procedures are widely performed in private clinics and are not regulated.

"The Government said they were developing guidelines in 2012, but none of the medical practitioners that we interviewed said they received it," Ms Wen said.

Ms Abdul — who is a journalist and works at online news publication *Malaysiakini* — gave birth to her first child, a girl, at the age of 20.

Due to religious and family pressure, her daughter was subjected to female circumcision.

"The doctor pulled away the labia and used something that looked like a needle to slit the clitoral hood," she said.

"A [flow] of blood came out and then my daughter started crying."

A decade later, Ms Abdul's viewpoint on female circumcision changed dramatically, after she found out that there was no medical benefit and that it was simply a religious ordain.

"We were already born into the culture and that society expected us to do it," she said.

"Doing it becomes automatic, you just follow and stop asking questions.

"I was young and naive and I actually didn't know what I was doing — the question I asked myself was: 'if it's pointless, then why do we do it?'"

'We are confusing it with Islam'

A women's rights group based in Kuala Lumpur — called Sisters of Islam — told the ABC that female circumcision is widely accepted in Malaysia because of a rising conservative movement.

In countries where Islam is the majority religion, according to Sisters of Islam, there is a tendency to "Islamise everything".

"People have fear to question the practice, as if they are questioning God," Syarifatul Adibah, a senior program officer from Sisters of Islam, said.

"[Female circumcision] is not prescribed by the Koran or the Hadiths [a collection of Prophet Muhammad's sayings]," Ms Adibah added.

"But when they consider something as a religious ordain or fatwa, then it's hard for people to really challenge and debate the issue."

In 2009, the National Council of Islamic Religious Affairs (JAKIM) in Malaysia ruled that female circumcision became obligatory, moving from recommended, but if harmful must be avoided.

As result, three years later, a study conducted by Dr Maznah Dahlui from Department of Social and Preventive Medicine University of Malaya discovered that 93 per cent of Muslim women surveyed had been circumcised.

More than 80 per cent of respondents said religious obligations were behind the reason, while 16 per cent said to control sexual drives.

Ms Abdul said that society often does a lot of things that copies behaviours from African and Arab countries and defend it as having a religious origin.

"We are confusing it with Islam and we think whatever they do is Islamic," she said.

She also said regardless religion or cultural tradition, parents have no rights to do whatever they wish to do to their children.

"Not only women, but every human being has the right to their own body," she said.

The ABC contacted Malaysia's Ministry of Health, Islamic Medical Association of Malaysia, and Penang Medical College, but they did not respond to requests for comment.

Single mother guilty of prostitution in Malaysia to be jailed, caned

The man, said to be the woman's client, was reportedly released without charge

UCA news (28.09.2018) - <https://bit.ly/2QRsVVE> - Another Muslim woman in Malaysia is set to be caned and jailed after being found guilty of immoral activities by a state Sharia court.

The 30-year-old single mother was sentenced to six months in jail and six strokes of the cane on Sept. 27 by an Islamic court judge in the state of Terengganu, a bastion of Islamic conservatism in the north east of Malaysia.

The woman, who has not been identified, confessed to offering sexual services in a hotel, reported the media.

The harsh sentence comes on the heels of another case in the same state that caused an outcry when two young women, found guilty of engaging in a lesbian relationship, were ordered to be publicly caned earlier this month.

In the latest case, Islamic court judge Rosdi Harun said the sentence was in accordance with state Islamic laws, which provides a maximum fine of RM5,000 (US \$1,208) or imprisonment for up to three years, and/or six strokes of the cane, upon conviction.

The woman, arrested on Sept. 17 by state Islamic officials while with a man in a room, was not represented by a lawyer.

Her failure to show remorse throughout the proceedings is believed to have angered the judge in the state which is governed by the hard-line Malaysian Islamic Party (PAS).

Sisters in Islam (SIS), a Malaysian civil society organisation fighting to promote the rights of women within the frameworks of Islam and universal human rights, slammed the ruling as cruel and contradictory to Islamic principles.

The group pointed to mitigating circumstances reported by local media, including her abandonment by her former husband and that she was trying to support a child.

SIS also noted that the woman had not received any financial support from her ex-husband, and was given the maximum punishment despite being a first-time offender.

"The zeal with which the punishment was meted out ignores these circumstances that previously would have mitigated sentencing. Where is the compassion that lies at the heart of Islamic teachings?" the group asked in a statement on Sept. 27.

State Islamic laws used in the proceedings explicitly targets women, making them disproportionately vulnerable to and affected by this law, SIS said.

The man who was said to be the woman's client had reportedly been released without any charge.

Civil groups, alarmed by the recent incidents of Islamic authorities promoting unusual and cruel punishments for offenses under Islamic law, have urged the government to call for a moratorium on corporal punishment.

"Today's case clearly demonstrates that the humiliation experienced by women before, during and after the whipping is not considered a relevant factor of their pain, when in

fact humiliation is a key aspect of the punishment and causes lasting psychological trauma," SIS said.

"We strongly reiterate that whipping does little, if anything at all, to 'educate'. In fact, such a punishment, which is void of compassion and mercy, only tarnishes Islam and reinforces Islamophobic stereotypes that Islam discriminates against women."

Days after the uproar over the public caning of the two women, witnessed by more than 100 people earlier this month, Malaysian politicians including Prime Minister Mahathir Mohammad questioned the need for public canings.

Anwar Ibrahim, who is projected to be Malaysia's prime minister when Mahathir steps down and who once helmed the Muslim Youth Movement of Malaysia, told reporters in Manila, Philippines that he was against such punishments.

International coalition of rights groups across Muslim societies condemns whipping of two women in Malaysia

International coalition of civil society groups across Muslim societies—from Algeria, Indonesia, Kazakhstan, Kyrgyzstan, Malaysia, Mali, Pakistan, Palestine, Turkey and beyond—condemn the whipping of two women for "attempted sexual relations" which was carried out on 3rd September 2018 by the Sharia High Court in Terengganu, Malaysia.

CSBR (04.09.2018) - <http://www.csbronline.org/?p=2224> - The [Coalition for Sexual and Bodily Rights in Muslim Societies \(CSBR\)](#), and the undersigned organizations and individuals from across Muslim societies, condemn in no uncertain terms the public whipping of two women for "attempted sexual relations", which was carried out on 3 September 2018 by the Terengganu Shariah High Court in Malaysia.

The two women, aged 22 and 32, pleaded guilty on 12 August 2018 to attempted "musahaqah" (sexual relations between women) under Section 30 of the Shariah Criminal Offences (Takzir) (Terengganu) Enactment 2001. They were sentenced to RM3,300 in fines and given the maximum sentence of six strokes of caning.

By taking no action to condemn this violence or prevent the whipping, the Malaysian Federal government is complicit in the violation of its citizens rights as guaranteed under its own Federal Constitution, national laws, as well as its obligations under international human rights law.

From the beginning, the women were denied a fair trial, as they had no representation at the time of their sentencing. It is abhorrent that the whipping was carried out at all, and that it was done in direct violation of Section 289 of the Criminal Procedures Code that prohibits corporal punishment for female prisoners of any age.^[1] Further, the women were subject to this humiliating and degrading punishment in public, in front of a crowd of approximately 100 witnesses.^[2] These violations of dignity threaten the constitutional rights and human rights of all Malaysians. The public whipping is a clear tactic by the court adding fuel to the escalating intimidation, harassment and violence against LGBT people in Malaysia over the last month.^[3] If state shariah courts are permitted to target one community in this way, then other individuals and groups in Malaysia are also at risk of the same kind of inhuman treatment.

We believe that state-imposed violence against women cannot ever be condoned, and that there can never be any justification for such inhuman and degrading punishments. Whipping is a clear form of cruel, inhuman and degrading treatment or punishment, which is prohibited under international law in Article 7 of the ICCPR. Accordingly, *"It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity"*.^[4] Allowing the discriminatory treatment and punishment of these women by a sharia court is also a violation of Malaysia's obligations under CEDAW.

Further, there is no consensus at all on the punishment of whipping under Muslim jurisprudence, and many Muslim countries across the world forbid whipping as a fundamental violation of human dignity. We believe that all forms of penalisation and criminalisation of consensual same-sex relationships are in contradiction to Islamic principles of justice and equality.

We amplify the call made by the **Joint Action Group on Gender Equality (JAG) Malaysia** that the government *"conduct a comprehensive review of the Shariah Criminal Offences laws of this country, with a view to repeal such laws, thus enabling all Malaysians to be governed by a single Penal Code under federal administration"*, and that the *"Shariah Criminal Offences laws to be repealed on the grounds that they have no basis in Islamic legal theory and practice"*.^[5]

We amplify the call made by **Coalition of Malaysian NGOs in the UPR Process (COMANGO)**, endorsed by 52 Malaysian NGOs, that the government *"eliminate all forms of cruel, inhuman or degrading treatment or punishment in the criminal justice system including the practice of whipping and caning"*, and ratify and accede to the UN Convention Against Torture as part of this commitment.^[6]

We stand in unequivocal support of LGBT people in Malaysia, and their fundamental rights to live with dignity and free from persecution and violence.

We call on the Prime Minister Mahathir Mohamad and the Pakatan Harapan government to take immediate action to end the escalating persecution of LGBT communities in Malaysia, and to uphold their own manifesto *"to make [Malaysia's] human rights record respected by the world"* (Promise 26), as well as the PM's Independence Day speech that guaranteed *"justice for all the people, irrespective of race or religion"* and promised *"Malaysia will remain strong and progressive whatever the differences, contradictions and suspicions that may arise."* ^[7]

SIGNED

1. Coalition for Sexual and Bodily Rights in Muslim Societies (International)
2. Association Femmes Leadership et Développement Durable-AFELDD (Mali)
3. Association of Women Lawyers (Malaysia)
4. Bebaak Collective (India)
5. Beyond the Hijab (Singapore)
6. Bishkek Feminist Initiative (Kyrgyzstan)
7. Canadian Council of Muslim Women (Canada)
8. ESITIZ–Equality Watch Women's Group (Turkey)
9. Fethiye Women's Solidarity Association (Turkey)
10. Forum for Dignity Initiatives-FDI (Pakistan)
11. GAYa Nusantara Foundation (Indonesia)
12. Indian Muslims for Secular Democracy (India)
13. Indonesian Women's Association for Justice-APIK (Indonesia)
14. International Women's Rights Action Watch-Asia Pacific (International)

15. KAOS-GL (Turkey)
16. Kazakhstan Feminist Initiative-'Feminita' (Kazakhstan)
17. Kirmizi Biber Association (Turkey)
18. Malaysian Atheists and Secular Humanists (Malaysia)
19. Maruf Foundation (Netherlands)
20. Muntada—The Arab forum on Sexuality, Health and Education (Palestine)
21. Muslims for Progressive Values (International)
22. PELANGI Campaign (Malaysia)
23. Persatuan Kesedaran Komuniti Selangor-EMPOWER (Malaysia)
24. Projek Dialog (Malaysia)
25. Rural Women's Association-Alga (Kyrgyzstan)
26. Sayoni (Singapore)
27. Transmen of Malaysia (Malaysia)
28. Women Against Violence (Palestine)
29. Women for Women's Human Rights–New Ways (Turkey)
30. Women Living Under Muslim Laws (International)
31. Women's Aid Organisation (Malaysia)
32. Women's Initiative for Citizenship and Universal Rights (Algeria/France)
33. Women's Party (Turkey)
34. Anissa Helie, Professor (Algeria/US)
35. Cynthia El Khoury, independent feminist (Lebanon)
36. Evelyne Accad, Professeur Emerite (Lebanon/US)
37. Khawar Mumtaz, Women's Rights Advocate (Pakistan)
38. Marieme Helie Lucas, Secularism Is A Women's Issue (Algeria/France)
39. Meerim Ilyas, Urgent Action Fund for Women's Human Rights (Kyrgyzstan/US)
40. Pragna Patel, Director-Southall Black Sisters (UK)
41. Sabina Faiz Rashid, Dean-BRAC University School of Public Health (Bangladesh)
42. Sabra Zahid, Attorney at Law (Sri Lanka)
43. Samia Allalou, Mediterranean Women's Fund (Algeria/France)
44. Sheena Baharuddin, Performance Artist (Malaysia)
45. Yasmin Rehman, Women's Rights Activist (UK)
46. WUNRN - Women's UN Report Network

Malaysian women caned for 'illicit sex' under Shariah

Two women were each caned six times in front of a Shariah court judge and in full view of about 100 onlookers

UCA news (03.09.2018) - <https://bit.ly/2pXrbit> - Two women found guilty of attempting sexual relations were caned in public by Islamic authorities in a Malaysian state on Sept. 3.

The caning took place at the Shariah Court building in Terengganu, a northern state in Malaysia recently taken over and ruled by the Malaysian Islamic Party (PAS).

Satiful Bahri Mamat — the state official in charge of the implementation of Shariah — said the public caning served as a warning to Muslims against committing zina, or illicit sex, reported Malaya Mail.

He labelled the offence as a "cancer that can spread in society."

The two women, who pleaded guilty to attempting to engage in sexual relations, were caned six times each in front of a Shariah court judge and in full view of about 100

onlookers including government agency representatives and NGO members, a Muslim Lawyers Association representatives told the media.

Aged 22 and 32, the women had been detained by state Islamic officials in April after they were found in a car allegedly engaged in a sexual act.

The court also fined them 3,300 ringgit (around US\$830) each. Homosexual sex is a criminal offense in Malaysia.

Abdul Rahim Sinwan, a lawyer with the Muslim Lawyers Association, which held a watching brief over the case, was quoted by the Malay Mail as saying that though the caning was open to the public, there was no intention to humiliate.

"Humiliation is out of the question. To hurt the person is out of the question," said Sinwan.

"They were brought through different doors, they were taken out through different doors, as the purpose is not to humiliate the person. The caning [under Shariah] is not meant to hurt the person. It is to educate the person. Therefore it's not painful, it's not harsh."

He insisted that Shariah caning is different from the caning punishment that is applied under Malaysian criminal law for serious offenses.

Meanwhile, in an immediate response, rights group Sisters in Islam declared the caning illegal. The NGO said the punishment contravened Malaysia's Criminal Procedure Code which prohibits corporal punishment against females.

They said that while Shariah allows women to be caned, the country's dual (civil and Islamic) justice systems create inconsistencies in the jurisdiction of the Prisons Department, directly affecting the rights of women in Malaysia protected by the federal constitution against gender discrimination.

Malaysia's civil laws stipulate that caning can only be carried out against prisoners. Sisters in Islam pointed out that the two caned women were not prisoners when the sentence was carried out.

The Malaysian Prison Act 1995 defined those who could be caned "as a person, whether convicted or not, under confinement in a prison and in relation to a convicted prisoner, includes a prisoner released on parole."

Sisters in Islam said the caning raises questions as to who authorized and carried it out and whether the federal government, which oversees the prisons department, had consented to it.

According to reports, officers from the prisons department carried out the caning. Civil groups in Malaysia say whipping as a form of punishment should end as it violates international human rights principles which regard whipping and other forms of corporal punishment as cruel, inhumane and degrading treatment.