Majlis Perundingan Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Tao

Malaysian Consultative Council of Buddhism Christianity, Hinduism, Sikhism and Taoism

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PRESS STATEMENT

MCCBCHST: CABINET should consider The Constitutionality of Section 9 of State Enactments banning usage of certain words.

The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) refers to the statement by YAB Prime Minister Anwar Ibrahim that the cabinet "respects, acknowledges and adheres" to the state enactments and the Yang Di-Pertuan Agong's decree on Feb 7. Most of the states have passed enactments which are all made under Article 11(4) of the Federal Constitution and by Section 9 of their respective state enactments prohibit use of between 20 to 40 words by Non-Muslims. The MCCBCHST further notes that the YAB Prime Minister is to submit a Cabinet proposal on "Allah" issue to Conference of Rulers. Thus, this is an opportune time to look at Section 9 of the State Enactments.

2. Article 11(4) of the Federal Constitution provides "State law and in respect of the Federal Territory, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam". Thus, the state enactments passed under Article 11(4) cannot go beyond the scope of it. Article 11(4) only allows "control or restrict the propagation" of any religious doctrine or belief among persons professing the religion of Islam. Therefore, there has to be "propagation of any religious doctrine" to Muslims to come within ambit of prohibition. Mere usage of words without Propagation to Muslims cannot come within Ambit of Article 11(4) of the Federal Constitution.

3. In view of the above the mere use of words for own learning without any propagation to Muslims cannot come within scope of Article 11(4). This, prima facie would mean that Section 9 of State Enactments which bans certain words even when there is no propagation involved will be unconstitutional and is beyond the power given by Article 11(4).

4. For example, the Selangor State Government by Enactment 1 of 1988 dated 28th June 1988 has passed the "Non-Islamic Religious (Control of Propagation against Muslims) Enactment 1988 banning non-Muslims from using 25 words, they being "Allah, Firman Allah, Ulama, Hadith, Ibadah, Kaabah, Kadi, Illahi, Wahyu, Mubaligh, Syariah, Qiblat, Haj, Mufti, Rasul, Iman, Dakwah, Injil, Salat, Khalifah, Wali, Fatwa, Imam, Nabi and Sheikh". Some of these words banned are in everyday use and it defies reasonableness test for prohibiting their use.

5. In a viral video the Perlis Mufti Mohd Asri Zainul Abidin said that word “Allah” predates Islam and it does not have religious connotations and has been politicised. Moreover, no other country in the world has so banned the usage of word Allah by others. The Constitutionality of Section 9 of State Enactments providing for its prohibition is in doubt.

6. In the Federal Court case of Titular Roman Catholic Archbishop of KUALA LUMPUR V Menteri Dalam Negeri & ORS [2014]6 CLJ 541, the Federal Court was of the view that the “net effect of the finding of the High Court was that the impugned provision (Section 9 of State Enactments) was invalid, null and void and unconstitutional and that the respective state’s Legislature’s had no power to enact the impugned provision”. However, the Federal Court held that the learned High Court Judge ought not to have entertained the challenge on the validity and constitutionality of the impugned provision as such a constitutional challenge can only be made pursuant to Article 4 and 128 of The Federal Court. Thus, this being procedural non-compliance by the High Court, the Federal Court did not discuss the merits of the High Court decision on the point of Section 9.

7. The MCCBCHST therefore appeals to the YAB Prime Minister and the Cabinet to consider the constitutionality of Section 9 of the State enactments which have been shown above to be outside the scope of Article 11(4) and thus ultra-vires. The MCCBCHST firmly upholds the Federal Constitution and the Rukun Negara including the principle “Keluhuran Perlembagaan”. We further appeal to the Honourable Prime Minister and the Cabinet to protect the rights of all in line with the Federal Constitution and to maintain that Section 9 of the State Enactments are unconstitutional. This will also be in line with Malaysia Madani which we as a nation aspire for.

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Statement Signed by:

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