The Status of Islam of Federal Constitution of Malaysia in comparison to IRI: An Analysis from the viewpoint of Islamic Thought

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Abstract

To understand the constitution of each country is the easiest way to understand the need and aspiration of its people. Thus every nations have their own constitutions for their countries to represent their needs and aspirations. In the context of Islam of Malaysia constitution in comparison to Islamic Republic of Iran, a study is to be conducted to understand and identify the status and position of the federal constitution, whether Islamic or non-Islamic. The debate on this issue is warmly discussed and hotly debated especially after the declaration by the Prime Minister of Malaysia, Dr Mahathir Mohamad in 2009 that Malaysia is an Islamic state. This study aims to look at the three questions as outlined in the objective of the study. The Federal Constitution of Malaysia in terms of its Islamic status will try to see the fundamental differences with the IRI's constitution. Method used to analyze the data based on library research, with primary data is the main source of references, followed by secondary data in support of the analysis. Findings show that the constitution of IRI is a collective ideas of the assembly of clergies (ulama) based on Islamic principles, Islamic thought and Islamic laws and agreeable by majority of Iranian Muslim and non-Muslim people. On the other hand, the constitution of Malaysia is a collective ideas by muslim and non-Muslim especially the British, who basically relied on secular principles, non-Islamic thought and ideas but agreeable by majority of Malaysian Muslim and non-Muslim. To conclude this article, research shows that though these two countries choose Islam as religion of the state, but there are differences on several fundamental basis i.e source of reference and its interpretation, role and function, aim and objective, importance and significance of constitution towards the development and building of society, country, nation and religion, and finally to show the belief and reliance on God [Allah].

Introduction:

Every nations have their own constitutions to represent their aspirations. It is the manifestation of the cultural, social, political and economic institutions of each society. The basis rely on principles and precepts to reflect the true aspiration of its community. Malaysia and Iran have

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a constitution with their distinctions and uniqueness. It is interesting to examine the position and status of Islam in their respective constitution as it reflects the status and position of the country concerned whether it is an Islamic or non-Islamic state (secular).

The Significance of Research:

Studies have been made by researchers and analysts on constitution, and in the end, they argued that the Malaysian constitution is partly secular and another art is still not fully Islamized, whereas Iran and its constitution are Islamic. Many of their views stated that Iran, though the name used is The Islamic Republic of Iran is not an Islamic state, while the view of Malaysia in general can be divided into two, some say Malaysia is an Islamic state while others say Malaysia is not an Islamic state but secular.

Hence, this study attempts to examine the supreme laws, and in the context of this article, referring to the Malaysian constitution and the Iranian constitution, and to see how far these two constitutions fulfill the features and characteristics of an Islamic constitution such as the Sahifah of Medina or Medina Constitution created by the Prophet Muhammad s.a.w.

The research problem in this article is arising from the following three questions:
Firstly: Are the constitutions of Malaysia and IRI Islamic or non-Islamic (secular)?
Secondly: What are the main and fundamental characteristics of Islamic or non-Islamic (secular) of Malaysia and IRI constitutions?
Thirdly: What are the main issues to be focused and highlighted in comparison between Islamic or non-Islamic of Malaysia and IRI constitutions?

The objectives of the study are as follows:
Firstly: To elaborate the issue of Islamic or non-Islamic (secular) Malaysia and Iran based on the constitution as the highest laws of their respective countries.
Secondly: To review the most important and fundamental aspects of the Islamic or non-Islamic (secular) constitution of each country.
Thirdly: To analyze comparatively the main and fundamental issues of Islamic or non-Islamic (secular) of Malaysia and IRI constitutions.

Part I

The Federal Constitution of Malaysia:

Every Malaysians dan Malaysian people did involved to show and represent their aspirations through the constitution of the Malaysia through their Malay rulers, the Alliance or Parti Perikatan, the representatives of UMNO. The constitution is to represent the need and aspiration of the Malaysian people regardless of races either Malay, Chinese, Indian or Eurasian before Independence 1957. As usual the constitution is mainly the manifestation of the cultural, social, political and economic institutions of Malaysian society. The basis of constitution rely on principles and precepts to reflect the true aspiration of its community.
The interesting question about Malaysia, which is often discussed is the issue of Islamic or non-Islamic (secular) state. Generally, there are divided into three groups on the issue. The first group said Malaysia was an Islamic state (Dar al-Islam), the second group said Malaysia was a non-Muslim (secular) state and the third group said Malaysia was an Islamic state but secular.

To understand the position and status of the country between Islam and secular, the main focus is to investigate the supreme or the highest law of the country, and in this context, it refers to the Federal Constitution of Malaysia.

Before the British, Malaysia or Malaya was seen as an Islamic state. After the British, the scenario began to change from 1956 to 1957. The secular idea began to be propagated and eventually applied throughout Malaysia. From 1957 to the reign of the 6th Prime Minister of Malaysia, Dr. Mahathir Muhammad, Malaysia remains known as a secular state.

The issue of Islamic or secular state began to spark and debated broadly after Dr. Mahathir Mohamad during his tenure as Prime Minister of Malaysia on 29 September 2001 made a declaration that “Malaysia was an Islamic state.” This announcement was not followed by any amendment to the Federal Constitution. It is the mother of all debatable and hotly discussed issue among politicians of various parties, academicians, thinkers and this is also the reason, why the paper is prepare to talk about.

Part II (Group I)

For the first group of people who believe that Malaysia is an Islamic state (Dar al-Islam), it is of the opinion that the Federal Constitution of Malaysia is Islamic, or in other words conforms to the will of Islam. The interesting arguments presented as proof that Malaysia is an Islamic state is to refer to the historical evidence about the arrival of Islam and its transformation, Malay weltanschauung and others.

Islam is said to have been the "official religion" of the states in Malaya (before the arrival of the British). Derived from historical data, Islam officially dominates Malaya from the 7th / 13th century. The fact that some scholars such as S.M.Naquib al-Attas and H.Kern point out that the influence of Islam has become so dominant at the time. Islam yang mereka akui sebagai asas kepada keislaman Malaysia merujuk kepada pengislaman Melaka (1204 – 1409 A.D).

In addition, the evidence of Islam's influence can strengthen the fact that Malaya or Malaysia has been Islamized through Batu Bersurat Terengganu 702/1303 A.D, the establishment of Melaka 1403 A.D, Parameswara conversion to Islam 1414 A.D, the implementation of laws such as the

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Hukum Kanun Melaka, Undang-undang Pahang, Undang-undang Johor, Undang-undang Perak, Risalah Sultan Ghafur (1614 A.D), the State of Johor Constitution 1895 A.D – art. LVII (57) which became the first written constitution in Malaya which declared Islam as its “official religion”, followed by the State of Terengganu through the Constitution of Terengganu 1911 A.D.

There is plenty of evidence to show that Malaysia was Islamic, long before the arrival of the British. However, after the colonization of Malaya, all these laws were gradually changed to English laws through courts’ judgements where English judges preferred to refer to the English laws. Simultaneously, they introduced English laws like the Contract Act, Penal Code, Criminal Procedure Code into the mainstream. Malay weltanschauung itself also reinforces that Islam is holistic in nature without the separation of religion from the country.

Among the supporters that Constitution of Malaysia is not secular are as follows:

- Judges and lawmakers who opined that Malaysia’s constitution is not secular but Islamic are Judge Hashim Yeop Sani. He argues that Islam in the constitution, is not merely a form of religion, but a state religion.
- Politicians such as Dr. Mahathir Mohamad, Abdullah Ahmad Badawi and UMNO, who made a declaration that Malaysia is an Islamic state.
- Academicians such as Prof. Dr. Ahmad Ibrahim who supported this idea. Interesting to know his argument, where he made the difference between “Islam” and “Islamic Religion.” According to him, Islam as al-Din, the way of life is general and wide-ranging, compared to the smaller and focused “Islamic Religion.”
  - He made his decision by looking at the subject matter from Malaysia perspective, which has been independent, and no longer under the British colonial power. He said that Malaysia, if considered as secular state is not absolute. Secular characteristics are canceled with provision @ Art. 3(1).
- The reasons according to those who claimed that Malaysia is Islamic, and therefore Malaysian Constitution does not need to be amended are as follows:
  - “Muslims constitute the majority of the population. The constitutional monarchs at federal and state levels are Muslims. The political executive, the civil service, the pólce, the army, the judiciary and the legislative are under the control of Muslims. The federal and state constitutions are replete with Islamic features. Islamic practices are gaining ground. Islamic economic and religious institutions thrive with state support.” As they said, the difference is attributable only to semantics.

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6 Semantics means different meaning to the same word or interpretation. It is clearly a misunderstanding on their parts when they regards it as the issue of semantics. It also shows a lack of understanding on Islamic issue from real Islamic interpretation. To make it easier for them, they call it diversity in Islam. Is there really any diversity in fundamental principles, theological and jurisprudence issue? They said that this diversity in accepted in Islamic jurisprudence because “we accept all sects to be Islamic and because of that we have to
Part II (Group II)

The second group believes Malaysia is not an Islamic state but secular, and they argue that the Federal Constitution of Malaysia shows itself clearly that it is not Islamic in nature. Arguments that reinforce this view are based on the fact as follows:

- "Secular" from a literal and terminological perspectives
- "Secular" from a historical background perspective, beginning with the arrival of the British to Malaya on the basis of colonization.
- "Secular" from a political perspective, emerged when the Alliance party provided a mutually agreed memorandum before being sent to the Reid Commission for the preparation of a constitutional report:
- "Secular" from a legal perspective, especially those who drafted the constitution as they are said to be ignorant of history especially about:
  - the history of Malaya's Islamicization before the arrival of the British,
  - the bargaining factor among the races in the negotiation process of independence, and also
  - taking into account the data between 1956 and 1957 alone regarding the Islamic status, and not long before.
- “Secular” is seen from the perspective of the method, especially the method of interpretation.
  - The interpretation of political figures from the Alliance party and lawmakers who understand that Malaya is not an Islamic state, including Tunku Abdul Rahman, the first Prime Minister of Malaysia, although he is said to have changed his thinking and his stand
  - Tunku Abdul Rahman and UMNO party consider Malaysia the secular state on the basis of maslahah and taking into account the political scenario at that particular time. It also aims to prevent the divisions of the parties without mentioning the "Islamic state."
  - For PAS, the constitution is totally not Islamic as it has no fundamental elements required by Islam in its provision.
- "Secular" is seen from Tun Salleh Abas's interpretation and judgment, and Malaysian constitutional historian such as Joseph M. Fernando, based on reports from Reid Commission:
  - As for Tun Salleh Abas’s arguments, he is only guided by constitutional legislators, and not by Islam itself. Religion, seen from a British perspective, is divided into two, personal and public. Personal is considered to be Islam, and it is accepted by the British, but public is considered secular, and the British wants it to remain that way.

accept it as diversity. If we do not accept all sects as Islamic, and judge them based on its true Islamic criterias, than the idea of diversity is different.” [See: Shad Saleem Faruqi. Is Malaysia an Islamic state?, p.14-15.]
Thus, Tun Salleh Abas made his stand and judgment by looking at British perspective.

Historical evidence in the Reid Commission papers says that the country was meant to be “secular” and the intention in making Islam the official religion of the Federation was primarily for ceremonial purposes.

In the White Paper dealing with the 1957 constitutional proposals, it is stated: “There has been included in the proposed Federal Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as “a secular state.”

“Secular” from the viewpoint of socio-religion:

It was originally envisioned to be mostly the purview of Sultan of each state. Hence the Sultans did not want Islam as the official religion of the state that would usurp their power to control it. The truth is Islam was adopted by the Sultans as a political tool not necessarily about the religion. There was an agreement that the country was suppose to be secular but its more because the retreating colonial masters and elite founders saw it intellectually while the rulers saw it politically for their own self-interest reasons.

That the phrase was put in as part of the constitution reflects that there was a segment in Malay society, likely more proletariat, that wanted things different and needed to be placated. The word ‘innocuous’ by Hamid, shows that it was not an entirely intellectual argument but an emotional one. The founding document of a nation should not have any trivial matters but rather as much of it as fundamental and serious as possible. That it was included on an excuse and has resulted in the dilemma the Malaysian people have today, shows that our constitution was flawed from the start.

Part II (Group III)

The third group believes that Malaysia as a state is not a secular and also not an Islamic. They argue that the Federal Constitution of Malaysia itself also clearly shows that it is indeed a secular constitution but Islamic state.

Malaysia can be described as a constitutionally secular country with a state religion. The Islamic aspects of the constitution appreciate the cultural and historical context of the nation and its people. The implied secularity of the Federal Constitution does not at all mean that the state is valueless or unislamic. The values that a secular, progressive state would commit to, such as justice, incorruptibility, compassion, reason, fairness and respect for diversity are all underlying values found in Islam and other belief systems.

The concept of “secular” held by certain group of thinkers should not be narrowly understood. It might be inaccurate to label this secular as strictly understood from literal or terminological perspectives. Accordingly, being secular is about striving to treat citizens equally regardless of religion and avoiding preferential treatment for a citizen from a particular religion or
belief system over other religions or belief systems. The diversity of religions is accepted and may sometimes be celebrated.

The secular-versus-Islamic conflict surrounding the Federal Constitution is a mirage rather than there being any actual constitutional problem.

The argument put forward by this group is something to ponder. According to them, the reluctance and resistance towards accepting the secular nature of the constitution is really due to the rise and influence of political Islam in the last 30 years. This has become embodied in competitive party politics, a growing religious bureaucracy flexing its authority, and heightened feelings of religious exclusivity and religious supremacy in society.

PAS as political party declared that the constitution of Malaysia is secular, and they implied that all the federated states of Malaysia have Islam as their official religion because they belong to the Federation whose religion is Islam. In brief, on the issue of religion of Malaysia, it is Islam, but on the issue of constitution, it is secular.

The General Principles of Constitution of Islamic Republic of Iran:

Every Iranians and the Iranian people whole heartedly show and represent their aspirations through the constitution of the Islamic Republic of Iran. The new constitution is the highest manifestation of the need and aspiration of the Iranian people after revolution 1979. The constitution is mainly the manifestation of the cultural, social, political and economic institutions of Iranian society. The basis of constitution rely on principles and precepts to reflect the true aspiration of its community.\(^7\)

With regards to the issue of fundamental characteristics, the constitution with its fundamental characteristic is Islamic in nature as it bases its main ideas on Al-Qur’an and Al-Hadith. It is very different from other constitutions in the world except Sahifah Madinah or the Constitution of Medina by the Holy Prophet Muhammad (s.a.w). This constitution is fundamentally reliance on Islam as a religion of Allah, and as a way of life, and it has developed out of a school of thought. As it is an aspiration of the Iranian Muslim people after going through the anti-despotic constitution movement and anti-colonialistic oil nationalization movement, whereby they learned from those costly experiences that the fundamental reason for their failure was the fact they had not developed out of a school of thought (maktab). In other words, the distance between the people and the genuine Islamic thought failed them in their movement towards achieving their aims and objectives.

Under the leadership of Ayatu’l-Lah al-‘Uzma Imam Khomeini, they are awakened from their unconsciousness and realized that they have to follow the genuine Islamic thought to be successful.\(^8\)


\(^8\) Abdolrahim Gavahi. *Ibid*, p.22.
As stated that the constitution of Iran is Islamic, than the Government of Iran is also considered Islamic and fulfilled all requirements to be an Islamic Government.

In Islamic political theory, it is known as theocracy which means the rule of God. The scheme of the Islamic government of Iran based on “Wilayatu’l-faqih” (guardian or sanctity of the theologians) as proposed by Imam Khomeini at the peak of Pahlavi regime. The nature of the constitution is totally dependance on the outcome of revolution, means to understand constitution itself is to understand the revolution of Iranian people in general. It is said that the seeds of revolution, watered by more than sixty thousands martyrs and hundred thousands invalids and billions of dollars of damages. Iran political system is based on 1979 constitution which combines elements of a parliamentary democracy with a theocracy governed by Islamic Jurists, under the concept of a Supreme leadership.

The general principles of Iranian Constitution is elaborated in the first part of the constitution under fourteen articles. It clearly demonstrates the presence of Islamic Thoughts and beliefs in the constitution. As already know that the people of Iran have decided to make the government of Iran as Islamic Republic as stated in Article 1, which is approved in a referéndum on March 30-31, 1979 with the majority of 98.2% of votes.

Article 2 is about the basis of Islamic Republic on a system based on belief of monotheism and the sovereignty of Allah and His legislation, Divine revelation and its fundamental role in the formulation of laws, resurrection and its pivotal role in the man’s journey towards Allah, Allah’s justice in the cosmos and in divine legislation, Imamate and continued leadership and its fundamental role in the continued presence of the Islamic Revolution and dignity and exalted value of the mankind and its freedom, coupled with its responsibility against Allah.

Article 3 and 4 are concerned about the responsibilities of the Government of the Islamic Republic of Iran and also the rules and regulations of the Islamic Government of Iran. Article 5 mentions about the position of highest (supreme) leadership on Wilayatu’l-Faqih. It is closely related to the belief on Imamate especially during the occultation of twelfth Imam (al-Mahdi), mentioned that the leadership and guidance of the community is in the hands of a just and pious faqih (jurisprudent) who is aware of time, courageous, and managerial capability, whom the majority of the people have accepted as the leader.

Article 7 is about formation of different councils based on Al-Qur’an. Article 8 discusses the public responsibility based on “Amr bi al-Ma’ruf wa Nahy ‘an al-Munkar,” whereas Article 11

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9 In Iranian context, the temporal ruler is subject to the final direction of the theological head because the spiritual power is deemed to be higher than the temporal, and the temporal is to be judged by the spiritual. [See: Shad, Saleem Faruqi, op.cit, p.18.
10 Abdolrahim Gavahi, op.cit, p.23.
11 Abdolrahim Gavahi, op.cit, p.27.
13 See: Al-Qur’an, surah al-Tawbah (9): 71.
is concerned about the Government of Islamic Republic general foreign policy based on the
unification and solidarity of all Islamic countries and its efforts to realize the political, economic, and
cultural unity of the Muslim world.”

Article 12 is about the declaration that the official religion of Iran is Ja'fari branch of Islam. It is
related to Article 13 that discussed about the declaration that Zoroastrians, Jews and Christians are
the only officially recognized minority groups of Iran who are entitled to perform their religious
practice and rituals according to their own traditions.

Article 14 based on Al-Qur'an, lays the ground for one of the most important principles of
the foreign policy of Iran, that the Government of the Islamic Republic of Iran and all Muslims are
obliged to demonstrate moderation, justice, and equity towards non-Muslims and fully observe their
rights.

Part III

An analysis of the Constitutions of Malaysia in comparison to IRI

I. The nature of Malaysian Constitution, is it Islamic or non-Islamic (secular) in nature?

  o C-M is Islamic and non-Islamic (secular) in nature as agreed by researchers, scholars dan law experts.
    ▪ There is no mention of the basis of al-Qur’an and al-Hadith within and without
      the constitution. Neither the text, sources nor the references are made to these
two in any parts of it.
    ▪ C-M does not involved the participation and contribution of religious scholar
      (‘ulama’). It did not consult the Islamic legal experts. The appointees and the
      appointed were not from among ulama’. The visión and misión of C-M is not
      for uplifting Islam. The committee members who appointed to draft the
      constitution were not among the best brain and the well-trained in Islamic law
      and not Islamic legal experts. It is also without the consensus (ijma’) of
      religious scholars.
    ▪ Although the word secular is not found anywhere in the constitution, but the
      basis of C-M to be secular constitution and Malaysia as secular state
      depending on the historical data while in the process of drafting. It is a secular
      constitution, which separates the state from religion. State is for mundane
      matters whereas religion is for religious establishments.
    ▪ C-M fulfilled the criteria for secular state even though there is official state
      religion, religion establishment, special patronage upon any particular religion

14 Abdolrahim Gavahi, op.cit, p.29.
15 Al-Qur’an, surah al-Mumtahanah (60): 8.
16 Abdolrahim Gavahi, op.cit, p.29.
in theory and in practice. The attitude of law towards religion is of not purely on neutrality and impartiality.\(^{17}\)

- C-IRI is Islamic in nature, as it bases its main ideas on Al-Qur’an and Al-Hadith. Al-Qur’an and al-Hadith are two most important sources in Islam. Al-Qur’an is Allah's Word, while al-Hadith, is the words and deeds of the Prophet Muhammad saw. Without reference to both, it is considered to be incompatible with Islam.
  - C-IRI is very different from other constitutions in the world except Sahifah Madinah or the Constitution of Medina by the Holy Prophet Muhammad (s.a.w).
  - C-IRI is fundamentally reliance on Islam as a religion of Allah, and as a way of life, and it has developed out of a school of thought.

II. The system of government of Malaysia and IRI, what kind of form and system applied, democracy or theocracy?

- C-M is basically democratic that is a parliamentary democratic system.
  - The parliamentary system refers to the Parliament of Malaysia as the national legislature of Malaysia, based on the Westminster system. The bicameral parliament consists of the Dewan Rakyat (House of Representatives) and the Dewan Negara (Senate). The Yang di-Pertuan Agong (King) as the Head of State is the third component of Parliament.
  - Democracy is not an Islamic political term as nothing about it highlighted in the al-Qur’an and al-Hadith.
  - Democratic government refers to government ruled by the people, and is a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system. Thus, it is all about the people, to the people and for the people.
  - Allah as Supreme Being and Supreme Ruler has no connection or relation with C-M, which is considered the highest authority and the supreme law.
  - Allah’s rights are not rightfully protected. No one is in charged to take care of His rights as nothing is stated in the C-M.

- C-IRI is basically theocratic, or the rule of Allah. It is an Islamic Republic system.\(^{18}\)
  - Theocracy or theocratic government refers to a form of government in which God is recognized as the supreme civil ruler, the God’s laws being interpreted by the ecclesiastical authorities, or a form of government in which a country is ruled by religious leaders.

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\(^{17}\) Shad Saleem Faruqi, *op.cit.*, p.16.

\(^{18}\) Article 1 [Form of Government] – The form of government of Iran is that of an Islamic Republic.
Republic refers to a state in which supreme power is held by the people and their elected representatives, and which has an elected or nominated president rather than a monarch.

III. The leadership system of Malaysia and IRI, how is the selection of leader implemented in constitution?

- **C-M** is the rule of mankind, the rule of the people, by the people and to the people, so the highest leader selected based on non-Islamic or secular criteria.
  - In Malaysia, King and the kings at the Federal and state levels, are just a symbol of sovereignty and has no administritive power. They are the supreme leader and look as “the caliph of Allah on earth,” (Khalifatu’l-Llah ‘ala al-Ard).
  - They are not the policy-maker and totally do not involved in making any decision concerning the people.
  - Before the coming of the British, they are in power and rule their own people independently.
  - Nowadays, the leader is selected among those elected as people representative through General Election held every 5 years.
  - They are a part of political party members either BN as the ruling party and the opposition parties. The winner takes all and rules the country for 5 years.
  - The criteria described in al-Qur’an and al-Hadith is not applicable to appoint the King, ruler and leader in Malaysia.

- **C-IRI** is the rule of Allah, so the highest leader selected based on the Islamic criteria.
  - The leader to be chosen among the people must be the high ranking religious scholar.
  - He must fulfilled all criteria as leader, among them are knowledgeable19 (al-'ilm),20 courage (al-syaja’ah),21 generous (askha’al-nas),22 preserved from sin and wrong,23 perfect morals (al-akhlaq) and jihad in the way of Allah (al-jihad).24
  - In IRI, they have various levels of ulama’, the highest in ranking is known as Ayatollah Uzma, followed by Ayatollah and Hujjatu’l-Islam. Thus, to represent the rule of Allah is the one known as Wilayatu’l-Faqih who is responsible to all, appointed through election by the council of religious scholars (ulama).

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They are not just ulama’, but ulama’ of high calibre with all the qualities as leader of the ummah.

To follow is the duty of the people and to lead is the duty of ulama’. Thus, al-‘Awwam and al-Khawwas between these two are separated by knowledge base, the most knowledgeable leads, the less knowledgeable follows.

IV. The sources of Malaysian and IRI Constitution, what are the main references as the basic sources of constitution?

- Sources of references of C-M is on non-Islamic sources.
  - Mainly it relies on the British as sources of law, administrative and governance.
  - Provision in laws, rules and regulations are basically dependent on the British.
  - The council of Rulers as representative of the Malays and the people in general, and Malay customs and traditions.
  - Islamic values related to Malay culture and tradition is taken into consideration.

- Sources of reference of C-IRI is solely on Divine revelation (al-wahy).\(^{25}\)
  - It comprises of Al-Qur’an, the Word of Allah as the highest authority in all aspect. The first, the primary and the supreme, and none is at par and none is above the Book of Allah. Any source that contradicts al-Qur’an will totally be rejected. In this way, al-Qur’an is uplifted and above all sources.
  - The same goes to al-Hadith of the Holy Prophet Muhammad (saw). The second primary source after al-Qur’an. Al-Hadith is in parallel with al-Qur’an, and it does not contradict any of the Qur’anic text. After al-Qur’an, nothing overrule the al-Hadith.
  - The sayings of Ahlu’l-Bayt [as] is considered a part of the revealed sources. This is in line with the belief of the madhhab, in which they choose to follow that is Ja’fari or The Twelver Shi’ite Imam.

V. The religión of Islam in the Malaysian and IRI constitution, is it stated that Islam is the religión of Malaysia and its impact?

- In C-M, Islam is the religión of the Federation of Malaya, as stated in Article 3 (1).
- Islam is also mentioned many times anywhere in the constitution.
- The word “official” is not found and never at any time be related to Islam as the official religion in the constitution.
- Islam is truly the official religion of Malaysia, but never in the constitution.
- Islam is for ceremonials, to be observed at a formal or religious occasion.

- In C-IRI, Islam is stated as the official religión of Iran.
- The word “official” is clearly stated to show the status and position of Islam.

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\(^{25}\) Article 2 [Foundational Principles] – 2) Divine revelation and its fundamental role in setting forth the laws.
It is the official religion of IRI, of the Iranian people and of all including the constitution.
Islam is not only in theory but practise, not only in idealities but realities, not only theoretical but applicable.
All important concepts in Islam are truly implemented in life.

VI. The idea of belief in Malaysia and IRI constitution, is there anything that show the idea of belief or faith?
- In C-M, the idea of belief is not stated, as it is generally rely on non-Islamic idea and ideology.
- The visión and mission of Islam is not applicable. Thus the idea of belief is not found.
- Nothing is highlighted in relation to the Islamic belief either Arkan al-Iman or Arkan al-Islam.

- In C-IRI, the idea of belief is the basis of all.
  - The stress is on Monotheism, Prophethood, the Books, the Day of Resurrection and the Imamate.26
  - They are 5 Arkan al-Iman of the Ja’fari Twelver sect.

VII. The religion other than Islam in the constitution, what does it say about other religión?
- In C-M, it is stated that other religions without mentioning any of them are able to be practised freely.
  - On the condition, that it is not allowed to spread among Muslims. It means that to believe and to practise religions other than Islam is acceptable and allowable in Malaysia and guaranteed by the constitution.

- In C-IRI, it is stated that Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonials, and to act according to their own canon in matters of personal affairs and religious education.27
  - It means that religions or a system of belief other than those three, will not be accepted and regarded as religion, or does not fulfilled the criteria as religion.
  - The reason to allow them is that, they are mentioned in al-Qur’an and al-Hadith as al-Majus, al-Nasara and al-Yahud.
  - Hinduism, Buddhism, Sikhism and the likes are not in the list, and do not consider the revealed religion. Therefore, they are not acceptable and allowable.

VIII. The idea of madhhab in Islam, what does it say about madhhab?

26 Article 2 [Foundational Principles]
27 Article 13 [Recognized Religious Minorities] – Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities.
In C-M, it is declared that Islam is the religion of Federation but, no mention about the sect (madhhab) is made.

- In Islamic Enactment of each and every states made a declaration saying that they follow the Ash'arite in 'Aqidah and Shafi'ite in Shari'ah. Both are the sub-sects of Ahl al-Sunnah wa al-Jama'ah or ASWJ or Sunni Islam.
- In Malaysia, there are 6 sub-madhhab of ASWJ accepted, two related to 'aqidah and four concerning shari'ah. The two sub-sects are Ash'arites and Maturidites, whereas the four sub-sects are Hanafites, Malikites, Shafi'ites and Hanbalites.
- Malaysia has as many as 14 states, and out of 14, one is exceptional because the official sub-sects for them is Salafite-Hanbalite, though it is not mentioned in their state constitution as in Perlis.

In C-IRI, it is declared that the Twelver Ja'fari school.

- As stated before, C-IRI is Islam as official religion, and the sub-sect they declare officially as madhhab is the Twelver Ja'fari school, or known best as The Shi'ite of Ja'fari.
- The basis of this sub-sect depends on Ahlu'l-Bayt of the Holy Prophet Muhammad saw, comprising of 'Ali ibn Abi Talib, Fatimah bint Muhammad, al-Hasan ibn 'Ali, al-Husayn ibn 'Ali, and together with the Holy Prophet saw himself. Thus, the followers are known as the Shi'a or Shi'ite Islam.

IX. The role and responsibility of 'ulama' (clergymen), do they actively participate in the process of making and implementing the constitution?

- In C-M, the clergymen (al-'ulama') were not involved in the whole process.
  - As already mentioned that the C-M is Islamic and non-Islamic (secular). Although, Islam is a part of constitution, but the clergymen were never playing any role, and their role is considered not significant.
  - The involvement and participation of al-'ulama' does not really matter, as their existence is not so important.

- In C-IRI, the clergymen (al-'ulama') were actively involved in the whole process from the very beginning.

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29 Article 12 [official religion] – Islam is the official religion and the Twelver Ja'fari school.

30 Example of their participation can be seen in choosing “the Guardian Council” composed of 12 members with six of them are qualified mujtahids and fiqaha’ and are nominated by the leader of the Islamic Revolution.
They played a very significant role on every departments, so as every departments have to rely on them to exist, from the top to the bottom.

X. The metode of interpretation of the word “secular”:

- In C-M, the metode of interpretation on the word “secular” depends on the constitutional law judges, the law experts, scholars and academicians who are well-trained in civil and Islamic laws.
  - The metode of interpretation are varied from one another as the references they use, the sources they refer to and the tools they use to support their ideas and arguments are different.
  - Muslim and non-Muslim law experts have different perception based on the religious view and perspective.
  - So at the end, they come out with different judgement and conclusion, some considers the constitution as Islamic and some as non-Islamic (secular). But, the majority agreed that the Malaysian constitution is secular.

- In C-IRI, the metode of interpretation is solely on the clergymen to make a decisión.
  - It is not everybody’s interpretation, and no one is arguably having more understanding than the clergymen (‘ulama’).
  - As far as the word “secular” is concerned, C-IRI has no relation whatsoever with secular, secularization or secularism.
  - As C-IRI is Islamic, all that comes out it is Islamic.

Summary and Conclusion:

- To conclude this article, the data shows that though these two countries rely on Islam as religion of the state, but it is different on several basis i.e the definition, system, source of reference and its interpretation, role and function, aim and objective, importance and significance of constitution towards the development and building of society, country, nation and religion, and finally to show the belief and reliance on God [Allah].

- Unlike Malaysian constitution, the constitution of the Islamic Republic of Iran is full of references to the Holy al-Qur’an, al-Hadith, the Islamic precepts and commandments, and key religious and revolutionary concepts. These key concepts are as follows – Islam, Islamic, Muslim (46 cases); Islamic Republic of Iran (32 cases); Islamic Revolution (Movement) (18 cases); Revolutionary, Maktabi (based on a school of thought) (10 cases); Imam (Khomeini) (10 cases); Muslim People (Nation) of Iran (8 cases); Islamic Government (8 cases); Wilayatu’l-Faqih (7 cases); Islamic Ummah (community) (5 cases) and clergy (‘ulama’) (4 cases). Other keywords which are equally important – Allah, Imamah, Leader (Rahbar), Revolution, Mujtahid, Mustad’af (oppressed), Mustakbar (Oppressor), domination etc. In terms of sources in the constitution, there are direct quotations with 18 references to al-
Qur’an and 2 references to al-Hadith, whereas there are many times more to the indirect quotations.31

- Malaysia is known to the world as an Islamic country, and Islam is considered the religion of the majority. The majorities are Muslims, whereas the minorities are non-Muslims.
- The constitution itself does not show that it is Islamic. Thus to claim Malaysia is Islamic state do not have any significant if the constitution is not Islamic.
- The constitution states that Islam is the religion of the Federation.

Bibliography:


