

Freedom of Religion in Malaysia

By

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“A Muslim in Malaysia is not only subjected to the general laws enacted by Parliament but also to the State laws of religious nature enacted by Legislature of a State. This is because the Federal Constitution allows the Legislature of a State to legislate and enact offences against the precepts of Islam. Taking the Federal Constitution as a whole, it is clear that it was the intention of the framers of our Constitution to allow Muslims in this country to be also governed by Islamic personal law.” (Zi Publications Sdn Bhd & Anor v Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervenors) [2015])

1. Being a multi-racial country with citizens who hold various religious beliefs, the freedom of religion forms part of the fundamental rights enshrined under the Federal Constitution (FC). Article 11¹ states that “every person has the right to profess and practice his religion”. However, there are two restrictions placed on the freedom of religion, firstly, the propagation of any religious doctrine or belief among persons professing the religion of Islam may be controlled or restricted by the individual states in Malaysia and secondly, the freedom to profess and practice ones religion must not result in an act contrary to any general law relating to public order, public health or morality.

¹ Article 11 of the Federal Constitution:

- (1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.
- (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.
- (3) Every religious group has the right—
 - (a) to manage its own religious affairs;
 - (b) to establish and maintain institutions for religious or charitable purposes; and
 - (c) to acquire and own property and hold and administer it in accordance with law.
- (4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
- (5) This Article does not authorize any act contrary to any general law relating to public order, public health or morality.

2. Nevertheless, the freedom of religion under Article 11 is bolstered by other constitutional provisions. First, to combat subversion, Article 149 permits the enactment of laws which would otherwise be inconsistent with selected fundamental rights such as freedom of speech or personal liberty. However, it does not permit any encroachments on religious freedom. Second, even if a state of emergency is declared, any emergency laws enacted thereafter cannot curtail freedom of religion. Third, Article 8 prohibits discrimination on the grounds of religion against public sector employees; in the acquisition or holding of property; and in any trade, business or profession.²

3. It must also be noted that Islam is established as the religion of the Federation under Article 3 of the FC³. This however does not affect the right of non-Muslims to practice and profess their own religion, as the wording of Article 3(4) states that nothing in Article 3 derogates from any other provision of the FC.

4. From 2015-2016, Suhakam received a total of 9 complaints pertaining to the issue of freedom of religion. Among the issues that were raised to the Commission included, the right of Sikh students to keep their facial hair as part of their religious beliefs; the freedom of Ahmadiyya Muslims and Shia Muslims to practice their beliefs; cases concerning the renouncing of Islam; and the unilateral conversion of minors into Islam.

5. With regard to the courts in Malaysia, there is a dual system in place, whereby the civil and criminal courts have jurisdiction over most matters, while the Shariah courts adjudicate on a limited number of matters such as marriage, divorce and inheritance.⁴

6. This dual system has had a number of jurisdictional problems especially with regard to the fundamental rights of Muslims in Malaysia. The jurisdictional divide between the Civil and Sharia Courts has in recent years been blurred, with conflicting decisions on

² Freedom of Religion in Malaysia: A Tangled Web of Legal, Political, and Social Issues, Dian Abdul Hamed Shah and Mohd Azizuddin Mohd Sani, N.C. J. INT'L L. & COM. REG. [Vol. XXXVI 2011], page 662

³ Article 3(1) of the Federal Constitution:

(1) *Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.*

⁴ *Che Omar bin Che Soh v. Public Prosecutor*, 2 MLJ 55 [1988]

the same matter being issued by both courts. For example, there have been numerous cases where unilateral conversion (into Islam) of children by a former spouse who has converted to Islam was done and the custody of the child was granted through the Shariah courts, even though the marriage was a civil marriage. This can be seen in two recent cases; *Viran a/l Nagapan v Deepa a/p Subramaniam (Peguam Negara Malaysia & Anor, Intervener)*⁵ and *Indira Gandhi a/p Mutho v Inspector General Police*.⁶

7. While the Civil Courts in both the above-mentioned cases had granted the custody of the child back to the non-Muslim mother and declared that the children remain in the religion of their mothers, both husbands in those cases failed to deliver the child; and the police on the other hand failed to locate their whereabouts. In this regard, the government has made positive strides to introduce new amendments to Law Reform (Marriages & Divorce) Act 1976 to address the said issue. The first reading of the amendment Bill was held on 21 April 2016.
8. Another issue that has cause problems is the issue of apostasy amongst Muslims in Malaysia. In the case of *Lina Joy*⁷, the applicant sought to remove the word “Islam” in her national identification card as she had converted to Christianity and argued that the requirement that she obtain a confirmation of her conversion from the Syariah Court violated her constitutional right to freedom of religion. The Apex court of Malaysia decided by majority that, although she could renounce Islam, she was still required to follow the Islamic procedure to do so. The decision in this case suggests that in Malaysia, the freedom of religion under Article 11 of the FC has to be read with Article 3. However, this is problematic as Article 3(4) of the FC clearly states that the religion of the Federation does not affects other provisions under the FC, which presumably would include Article 11 on the freedom of religion.
9. To add to this problem, most of the Islamic State Enactments are not consistent with the notion of religious freedom, and there is no clear legislative enactment on how to

⁵ [2015] 1 MLJ 583

⁶ Judgement of the Federal Court: [http://www.kehakiman.gov.my/directory/judgment/file/01\(f\)-32-05-2015\(A\).pdf](http://www.kehakiman.gov.my/directory/judgment/file/01(f)-32-05-2015(A).pdf)

⁷ *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan & Another*, 4 M.L.J. 585 (2007)

deal with apostates or those who seek to convert.⁸ In the case of *Soon Singh*⁹ the Federal Court of Malaysia held that, from the analysis of the Islamic State Enactments in Malaysia, it was clear that all State Enactments and the Federal Territories Act contained express provisions vesting the Syariah courts with jurisdiction to deal with conversion to Islam. On the other hand, only some State Enactments expressly conferred jurisdiction on the Syariah courts to deal with conversion out of Islam. Be that as it may, the jurisdiction of the Syariah courts to deal with the conversion out of Islam, although not expressly provided in the State Enactments could be read into them by implication derived from the provisions concerning conversion into Islam. Therefore, there appears to be an uncertainty when it comes to the religious freedom of Muslims in Malaysia.

10. In reality, it is unlikely that individuals would voluntarily go to the Shariah courts to convert because they may be subject to scrutiny, punishment and/or counselling sessions. For example, under Sections 119 of the Administration of Islam Enactment (Negeri Sembilan) (2003), the application to renounce the religion of Islam involves advising a person to repent or subjecting them to attend counselling sessions for a period of 90 days, before they are allowed to renounce the religion of Islam.

11. In the case of *Nyonya Tahir*¹⁰ the Islamic Religious Authority of the State had made an ex-parte request to review the status of the deceased who was born and registered as a Muslim. Upon reviewing the oral and documentary evidence that had shown that the deceased had led a non-Muslim lifestyle since she was a child and had openly declared that she did not consider herself a Muslim, the Shariah Court declared that the deceased was not a Muslim at the time of her death.

12. The case of *Nyonya Tahir* has shown that with proper supporting evidence, it is possible to remove a person's status as a Muslim. Yet, it must be noted that in *Nyonya Tahir* the individual was deceased. If the application was made by a living individual,

⁸ Freedom of Religion in Malaysia: A Tangled Web of Legal, Political, and Social Issues, Dian Abdul Hamed Shah and Mohd Azizuddin Mohd Sani, N.C. J. INT'L L. & COM. REG. [Vol. XXXVI 2011], pages 666-667

⁹ *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (perkim) Kedah & Anor* [1999] 1 MLRA 115

¹⁰ *Dalam Perkara Nyonya Tahir, Exp Majlis Agama Islam Negeri Sembilan & Yang Lain* [2006] 1 MLRS 25

then they mostly likely would be subjected to counselling sessions and requests to repent, or even punishment, especially in instances, where the State Islamic Enactments were silent on conversion out of Islam.

13. The strict adherence to the prohibition on apostasy has led to situations where individuals who were registered as Muslims, but not practicing the religion for a various reasons, faced difficulty in removing their status as Muslims. For example, in the ongoing case of *Rosliza Binti Ibrahim*¹¹, the applicant, who had been registered as a Muslim but not practising the religion, faced difficulty as her application to declare that the Islamic State laws did not apply to her were opposed by the State Religious authorities.

14. For Muslims in Malaysia, the freedom to practice one's religion is limited to following the practice of Islam based on a specific Islamic teaching, namely the Shafie school of thought. Hence, the practice of other Islamic teachings such as Shia and Ahmadiyya are prohibited in Malaysia based on edicts or *Fatwa's* issued by the Fatwa Council in Malaysia.

15. With the current dichotomy between the freedom of religion and the application of Islamic State Enactments in Malaysia, individuals who were registered as Muslims, would be subjected to the State Islamic laws and the Shariah Courts when it comes to their freedom of religion, even though they were not practising or professing the religion of Islam.

¹¹ *Rosliza Binti Ismail v Government of Selangor* (CIVIL APPEAL NO: B-01-(A)-130-14/2016); (HIGH COURT SHAH ALAM ORIGINATING SUMMONS NO: 24-1314-11/2015)