

# **RELIGION AND THE JUDICIARY IN MALAYSIA**

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## I. Introduction

### (a) The Malaysian Constitutional Provisions

Article 3(1) of the Malaysian *Federal Constitution* provides:

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

This declaration for freedom of religion is further reinforced by Article 11 which guarantees the following:

#### **11. Freedom of religion**

- (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 and Labuan, federal law may control or restrict the propagation of any religious doctrine or belief among people professing the religion of Islam.
- (5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.<sup>1</sup>

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<sup>1</sup>The proselytizing of Muslims by members of other religions is prohibited by various state law, although proselytizing of non-Muslims faces no legal obstacles. See, e.g. Au Min Wu, *The Malaysian Legal System*, at 156-57.

During the drafting of the constitution, the Reid Commission gave the following recommendation on the question of whether Islam should be elevated to state religion:

We have considered the question whether there should be any statement in the Constitution to the effect that Islam should be State religion. There was universal agreement that if any such provision were inserted it must be made clear that it would in any way affect the civil rights of non-Muslims. In the memorandum submitted by the Alliance it was stated – “the religion of Malaya shall be Islam. The observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religions and shall not imply that the State is not a secular State.”

Article 8 of the *Federal Constitution* also recites that “all persons are equal before the law and entitled to equal protection of the law”<sup>2</sup> and “there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”<sup>3</sup> This general spirit of religious freedom and non-discrimination is extended to the sphere of education by Article 12.

The 1988 *Constitution (Amendment) Act*, added Clause 1(A) to Article 121 which provides that “[t]he courts referred to in Clause (1) [the civil courts, including the High Court] shall have no jurisdiction in respect to any matter within the jurisdiction of the Syariah [Islamic] courts.”<sup>4</sup>

## (b) The Demographics of Malaysia

### (c)

On August 31, 1957, the Federation of Malaya as Malaysia was first known, began nationhood as a multi-racial country with each race embracing its own religious beliefs. Since Merdeka Day (Independence Day), race and religion in Malaysia have traveled a road that is not always the smoothest. Neither was this road when compared with that traveled by other nations the most hazardous. There were frightening moments when some travelers forcefully collided with each other, causing wrecks and injuries. Fortunately, the Federation has been able to clear the road of wreckage, repair the surface, post new road signs, and is generally successful in keeping the road open with comparative safety for its travelers. All travelers now keep a wary road for religious and racial pitfalls with the thought of avoiding future mishaps.

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<sup>2</sup> Article 8(1).

<sup>3</sup> Article 8(2).

<sup>4</sup> Article 121(1A) of the *Federal Constitution*. This clause appears to comport with the holding in Che Omar bin Che Soh v. PP, [1988] 2 MLJ 55, *infra*.

A continual review of letters-to-the editors, popular chat-rooms, and other contemporary signals of the Malaysian mood, especially on the delicate issues of religion and race, shows a low-speed, congenial approach. It appears that many citizens, especially those under 30 want to down-play the significance of religion and race in Malaysian life. Those who are older and who may have experienced first hand the sporadic unpleasantness of conflicts attributable to race or religion may also wish that such events had never occurred and indeed may make a harder effort to prevent another crash in the future. Many people profess the “Malaysian first and Malaysian last” view of self, thereby subordinating their ethnic origins. Nevertheless, tension between the races remains under the surface of calm.

Professional demographers, however, stick to their old ways and continue to compile statistics on nations according to their racial composition. In a July 1999 study, the population of Malaysia estimated to be at 21,376,000 persons with an ethnic composition of 58% Malay and other indigenous, 26% Chinese, 7% Indian, and 9% others.<sup>5</sup> According to Malaysian government census figures in 1991, 59% of the population was Muslim; 18% practiced Buddhism; 8% Christianity; 6% Hinduism; 5% Confucianism, Taoism, or other religions that originated from China; 1% animism; 0.5% other faiths, including the Sikh and the Baha'i faiths. The religious practices of the remainder are not known with certainty.

The religion of the Malays is easy to determine, since Article 160 of the *Federal Constitution* defines Malay as, *inter alia*, “a person who professes the religion of Islam.”<sup>6</sup> The other ethnic groups generally are non-Muslim. Both Chinese and Indians tend to be polytheistic and hence have a more flexible original view on religion.<sup>7</sup> Because of the strategic location of the Malay Peninsula and the Straits of Malacca on the commercial crossroads between Asia and Europe, Malaysia manifests a co-existence of all the major religions of the world. Ecumenical and interfaith organizations of the non-Muslim religions exist and include the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, and Sikhism, the Malaysian Council of Churches, and the Christian Federation of Malaysia. None of these organizations are sponsored by the Government. Muslim organizations generally do not participate in ecumenical bodies, but Muslims reportedly took part in the Selangor State Interreligious Consultative Council which was formed in January 1999.

With respect to Islam, the predominant religion, it was introduced by Arab maritime traders and took root at the latest by the 15<sup>th</sup> century. Throughout the 1400's the Malay kingdom of Malacca rose to become a great trading center and worshipped according to Islam.<sup>8</sup> Various Europeans began arriving starting with the Portuguese in 1511, followed by the Dutch (1641) and English (1795) during the age of colonialism. These

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<sup>5</sup> See, [http://www.asiagateway.com/Malaysia/Country\\_Guide/?c=People](http://www.asiagateway.com/Malaysia/Country_Guide/?c=People)

<sup>6</sup> See also, Jamila Hussain, *Islam*, at p.17.

<sup>7</sup> The religions of China are Buddhism and Taoism and the religion of India is Hinduism. Chinese and Indians who have converted to a Christian faith will have substituted a monotheistic belief for the polytheism of their ancestors.

<sup>8</sup> Hussain at p.1.

Europeans brought with them their particular branches of Christianity. The arrival of Chinese and Indians began in the 1800's and the region witnessed the influx of Buddhist and Hindu practices.<sup>9</sup>

By the end of the 19<sup>th</sup> century the land had already become populated by a polyglot of races and religions. The historical trend of the inhabitants had always been towards segregation. The races kept to themselves with regards to just about all aspects of life. Each group pursued their own occupations and inevitably worshipped according to the religion of their ancestors. By 1888, the British, after beating off the other European colonial powers and under the pretext of maintaining peace and order was able to extract a form of political supremacy from the Malay states of Perak, Selangor, Pahang and Negeri Sembilan. These were formed into the Federated Malay States. The states of Johore, Kelantan, Trengganu, Kedah and Perlis remained autonomous of the British and came to be referred by the British as the Unfederated Malay States.<sup>10</sup> To this day, Kelantan and Trengganu manifest the strongest and more conservative adherence to Islam.

Unlike the people in United States who value the integration of its races into the social fabric, it appears the secret to Malaysian stability and progress has been in the traditional segregation of its racial communities. The British found their niche and power by conveniently providing an umbrella of modern government services under which the other races were left to pursue their own occupations, social life, and religion. After Merdeka, the "social contract" that exists among contemporary Malaysians is that the races are to respect the religion of the others. Each individual is to be left alone when it comes to the practice of his or her own faith. Because Islam forbids marriage outside the faith, there a few interracial marriages between Malays and the other racial groups. As noted *supra*, this understanding that Malays are Muslim is actually written into the *Federal Constitution*. As a matter of everyday life, this deliberate circumscription of another's religion, for obvious reasons, is scrupulously and carefully observed by the vast majority of Malaysians.<sup>11</sup>

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<sup>9</sup> The Chinese initially occupied themselves with tin-mining and the Indians found employment in the rubber plantations.

<sup>10</sup> Because of disputes with Siam, these states accepted British advisors beginning with Kelantan and Trengganu in 1910, Kedah in 1923 and Perlis in 1930. See, Au Min Wu, *The Malaysian Legal System* at pp 22-23

<sup>11</sup> This is not to say that Malaysia is totally free of religious tension; conflicts that derive from differences *between* religion certainly exist but with a very few exceptions violent outbreaks have been avoided by following the principle of voluntary religious segregation. Most of the violence can be attributed more to political and economic rivalries than to a purely inter- religion differences, although when an outbreak does occur, it can also be tainted by religious overtones. Unfortunately this year there has been outbreaks of terrorism perpetuated by *Al-Ma'unah* that appear to be motivated by religious differences *within* the sects of Islam. Members of *Al-Ma'unah* were alleged to have stolen a cache of weapons and ammunition from two military camps by impersonating army officers in the early hours of July 2.at Pos 2, Km 19, Kuala Rui, Jalanraya Timur-Barat, Grik; Batalion 304, Infantri (AW), Kem Grik, Grik; and in Bukit Jenalik, Sauk, all in Perak. Two government soldiers died during a hostage incident following the arms heist.

## II. Judicial Interpretations of the Religion Clauses

Tunku Abdul Rahman Putra, the first prime minister and a lawyer<sup>12</sup>, in the early years in independence during a debate in the Federal Legislative Council had declared:

I would like to make it clear that this country is not an Islamic State as it is generally understood. We merely provide that Islam shall be the official religion of the State.<sup>13</sup>

This statement casts a very illuminating light on the legislative history of the religious clauses in the *Federal Constitution*. The Tunku has restated his vision for Malaysia in his book:

.... I mentioned that this country is a secular state. It means that it is not a Muslim state. Islam is the official religion of the country, but other religions have a right to play their part as far as religion is concerned. This is about it – but it is not absolutely a secular state because if it were so, there would be officially no religion. So it is the state which give freedom to all religions to carry out their worship. The Constitution has more or less set out the point.<sup>14</sup>

The “Islam is the religion of the Federation” clause of the *Federal Constitution*, has been examined by courts. Che Omar bin Che Soh v. PP, [1988] 2 MLJ 55, involved a defense argument that the death penalty for drug trafficking was contrary to Islam. Lord President Salleh Abas agreed that the British during the period of advice had introduced a secular the legal system and the jurisdiction of Islamic law become concerned only with marriage, divorce, and inheritance among Muslims.<sup>15</sup>

This paper will examine the landmark cases that apply and interpret the constitutional principle of freedom of religion in Malaysia.

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<sup>12</sup> The Tunku is remembered to this day as “Bapa Malaysia

<sup>13</sup> 1 May 1958 *Official Report of Legislative Council Debates*.

<sup>14</sup> Tunku Abdul Rahman Putra, *The Role of Religion in Nation Building*, in *Contemporary ‘Issues on Malaysian Religions*, 1984 at p. 25

<sup>15</sup> See, Article 121(1A) of the *Federal Constitution*. See also, Sheridan, *The Religion of the Federation*, [1988] 2 MLJ xiii.

II(a) Teoh Eng Huat v. Kadhi, Pasir Mas & Anor<sup>16</sup>

The facts of this case are emotionally charged as they involve a missing minor female. Apparently, this girl named Susie Teoh Bee Kue was nearing the adult age of 18 and she had two boyfriends. One was known to the father, but she eloped with the other. Then the father who was a Buddhist discovered that she been converted to Islam through the authority of the Kadhi of Pasir Mas, Kelantan, but her whereabouts remained a secret. Mr. Teoh sought an injunction in the High Court in Kota Bahru to uphold his parental right to decide the education, religion and upbringing of his infant daughter. The High Court dismissed the suit and the father appealed to the Supreme Court. During this time in the courts, the daughter reached the age of 18.

The decision was delivered by the Lord President Abdul Hamid. The onus on the court was eased somewhat as it was noted that “[t]he girl has now reached the majority of age and therefore the appeal in so far as this case is concerned is purely of academic interest,”<sup>17</sup> and for this reason the narrow holding of the case is that the court “decline[d] to make such declaration [sought by the father] as the subject is no longer an infant.”<sup>18</sup>

Nevertheless, the court elected to comment on the law that would have applied to the case. While arguably *dicta*, the analysis is important as the court also observed that “the appellant would have been entitled to the declaration he asked for.”<sup>19</sup> The signal importance of this case is that the Court took great pain to explain the procedure used to interpret the Constitution and to decide the case. It reported:

Although normally, in accordance with the usual judicial practice, we base our interpretive function on the printed letters of the legislation alone, in the instant case, we took liberty, as Lord Denning is reported to have done, to ascertain for ourselves what purpose the founding fathers of our Constitution had in mind when our constitutional laws were drafted. The Malaysian Constitution was not the product of overnight thought but the brainchild of constitutional and administrative experts from UK, Australia, India and West Pakistan, known commonly as the Reid Commission following the name of the Rt Hon Lord Reid, LLD, FRSE, a Lord of Appeal in the Ordinary. Prior to the finding of the Commission, there were negotiations, discussions and consensus between the British government, the Malay Rulers and the Alliance party representing various racial and religious groups.

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<sup>16</sup> [1990]2 MLJ 300.

<sup>17</sup> Id. at 301.

<sup>18</sup> Id. at 302.

<sup>19</sup> Id.

The Court, after having weighed Articles 3, 8, 11, and 12 and the provisions of the Guardianship of Infants Act 1961, came to the conclusion that a minor did not have the capacity to choose his or her own religion. For non-Muslims, the parents or guardian normally have the choice of the minor's religion.

II(b) Minister for Home Affairs, Malaysia & Anor v Jamaluddin bin Othman<sup>20</sup>

In this case, the defendant was involved in a group whose purpose was to spread Christianity to the Malays.<sup>21</sup> The Minister of Home Affairs, believing that the defendant had converted six Malays to Christianity and was planning to convert more, issued an affidavit charging that the activities of the defendant “could give rise to tension and enmity between the Muslim community and the Christian community in Malaysia and could affect national security.”<sup>22</sup> In a police sweep code-named Operation Lalang, the defendant along with many others, were detained by the police under section 8(1) of the Internal Security Act. He applied for *habeas corpus* before the High Court and was ordered to be released. The Government appealed. The Supreme Court dismissed the appeal.

The basis of the holding in a nutshell is that the sum total of allegations against the defendant when taken to be true<sup>23</sup> was simply insufficient to constitute a threat to national security. Accordingly, there was no legal reason for the government to invoke the Internal Security Act (ISA). Regarding the freedom to practice one's religion, the court held that Article 11 of the *Federal Constitution* must be given effect unless the actions of a person go well beyond what can normally be regarded as professing and practicing one's religion.<sup>24</sup> The grounds relied on by the Government, that is the defendant was involved in “a plan or programme for the dissemination of Christianity among Malays,” was not within the scope of the ISA.<sup>25</sup>

This case is exemplary of the type of judicial vigilance that should be afforded citizens in the sphere of freedom of religion. Unfortunately, it was a hollow victory for constitutional liberty because shortly after this case as decided (February, 1989), Parliament in a June 1989 amendment removed the jurisdiction of courts to hear *habeas*

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<sup>20</sup> [1989] 1 MLJ 418.

<sup>21</sup> The Government has consistently forbidden the circulation in peninsular Malaysia of Malay-language translations of the Bible and distribution of Christian tapes and printed materials in Malay. Even so, Malay-language Christian materials can be found. Some states have laws that prohibit the use of Malay-language religious terms by Christians.

<sup>22</sup> *Id.* at 418.

<sup>23</sup> Allegations of fact in an affidavit given to the detention of a person under the Internal Security Act is not subject to review. *Minister of Home Affairs, Malaysia, Anor v Karpal Singh*, [1988] 3 MLJ 29.

<sup>24</sup> *Id.* at 418.

<sup>25</sup> As a benchmark for actions prejudicial to public order and national security, the court referred to *Inspector General of Police v Tan Sri Raja Khalid bin Raja Harun*, [1988] 1 MLJ 182.

*corpus* petitions from ISA detainees.<sup>26</sup> The right of the courts to review ISA detentions under the doctrine of *ultra vires* appears to remain intact.<sup>27</sup>

### III. Religious Freedom Within A Faith

The foregoing has discussed religious freedom generally or in the context of inter-religion freedoms. There is the situation of the need for freedom within a faith and this concerns primarily the Muslims as they are personally subject to Islamic law. In Malaysia, Islamic law as administered by *Syariah*<sup>28</sup> courts that are separate from the general civil courts.

As noted in the introduction, the *Constitutional (Amendment) Act* 1988 formalized the separation between the civil courts and the *Syariah* courts. The power of *Syariah* courts to adjudicate certain cases over Muslims is conferred by state law,<sup>29</sup> as distinguished from Malaysian federal law. *Syariah* courts have no jurisdiction in any case where one of the parties is a non-Muslim; in such situations, the case must proceed in a civil court. Islamic law as followed in Malaysia is based primarily on the texts of the *Shafii* school.

The Government vigilantly opposes what it views to be interpretations of Islam that deviate from Sunni orthodoxy. In recent years, the Government has imposed restrictions on certain Islamic sects, primarily the small number of *Shi'a* whose activities continue to be monitored. In September 1998, the Government stated that it was scrutinizing the activities of 55 religious groups believed to be involved in "deviant" Islamic teachings. In May 1999, authorities said that the banned *Al-Arqam* group was attempting to reconstitute itself. In 1997 the Government proposed amending the Constitution to make Sunni Islam the country's official branch of Islam. This would make illegal the practice of other forms of Islam. However, the proposal was no longer being discussed actively by mid-1999.

The Government periodically has detained members of what it considers Islamic "deviant sects" without trial or charge under the Internal Security Act. After release, such detainees are subject to restrictions on their movement and residence. In 1994 several members of the *Al-Arqam* movement, an Islamic sect was detained under the ISA. The leader, Ustaz Ashaari Muhammad, was released after several months after he had made a "voluntary" public renunciation and admission that his version of Islam was deviationist. In November 1997, 10 persons, 2 of whom were over 75 years old, were detained under the ISA for spreading *Shi'a* teachings. Two of the prisoners later were released on a technicality, but were detained again (also under the ISA) just minutes after they left the courtroom. By the middle of 1999, all these detainees had been released.

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<sup>26</sup> Sections 8B & 8C of the Internal Security Act.

<sup>27</sup> See, e.g., Gan Ching Chuan, *Judicial Review of Preventive Detention in Malaysia*, [1994] 1 MLJ cxiii.

<sup>28</sup> This is the Bahasa Malaysia spelling of an Arabic word which is also variously spelled as *Sharia*, *Sha'ria* and *Shariah*.

<sup>29</sup> See, Shaik Zolkaffiky Shaik Natar v Majlis Agama Islam Pulau Pinang [1997] 3 MLJ 281.

The Government also restricts the content of sermons at mosques. In 1998 several Government executives warned against those who deliver sermons in mosques for "political ends." Occasionally state governments ban certain Muslim clergymen from delivering sermons at mosques. In February 1999, the state of Selangor lifted a ban on a former mufti (the highest official Muslim leader) of Selangor. Allegedly, he had called the Prime Minister an apostate.

#### IV. The Question of Apostasy Among Muslims

Beginning in 1998, the issue of Muslim apostasy (*murtad*) emerged as controversy among Malays.<sup>30</sup> Apostasy is the voluntary renouncement of one's faith and it can be viewed as an ultimate act of religious liberty within one's religion.<sup>31</sup> The states of Trengganu, Kelantan, Pahang, and Perlis have enacted laws against apostasy but these remain unenforced. In August 1998, the federal Government stated that apostates would not face government punishment so long as they did not defame Islam after their conversion.

The apostasy controversy resurfaced in September 2000 with a federal bill on apostasy. The Restoration of Faith Bill (*Rang Undang-undang Pemulihan Akidah*) drafted by the United Malays National Organization, which leads the country's ruling coalition, Barisan Nasional (or National Front) was intended to streamline existing *Syariah* laws governing apostasy.<sup>32</sup> Designed as a guideline for Malaysia's states, which administer *Syariah* law, the bill has caused concern that the supposedly secular UMNO is trying to "out-Islamize" the opposition Islamic Party of Malaysia, or PAS, which made big gains in elections in 1999.<sup>33</sup> A group of 29 Muslim individuals filed a complaint on to the newly created Human Rights Commission of Malaysia (*Suhakam*) protesting against the bill, saying it was unconstitutional because the bill infringes upon Article 11(1) of the *Federal Constitution*.<sup>34</sup>

Presently, the case law pertaining to the jurisdiction over petitions to recognize apostasy is divided. In Lim Chan Seng & Satu Lagi v Pengarah Jabatan Agama Islam Pulau

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<sup>30</sup> See, <http://www.iol.ie/~afifi/BICNews/Afaiz/afaiz18.htm>. Ahmad Faiz bin Abdul Rahman, *Malaysian Laws on Apostasy Inadequate* (4 February 1998). This article appears to invite debate of the question within UMNO, the dominant Malay political party and part of the national coalition or *Barisan Nasional*.

<sup>31</sup> Under conservative Islamic legal principles, the punishment for a Muslim apostate is the death penalty.

<sup>32</sup> S. Jayasankaran, Question of Faith Concern grows that the ruling party may seize the Islamic initiative to win votes, *The Far Eastern Economic Review* Issue cover (19th October 2000).

<sup>33</sup> The bill was modeled on legislation adopted in April, with Umno's backing, in the northern state of Perlis. It proposed sweeping powers for religious officials to detain apostates--as well as anyone merely suspected of planning to convert from Islam--for up to a year of "rehabilitation." But in September, amid protests from women's groups and a lively debate in the media, Prime Minister Mahathir Mohamad appeared to back down. At this point, the measure was being checked by the attorney-general prior to being put before parliament. "We have found some weaknesses in it, rendering it quite ineffective, so we have yet to make a decision on it until it can be improved," the prime minister told reporters. "We cannot make hasty decisions," he added, noting that apostasy has been debated since Islam emerged 1,400 years ago.

<sup>34</sup> See, <http://www.thestar.com.my/news/story.asp?file=/2000/9/29/nation/2904odap&sec=nation>.

Pinang [1996] 3 CLJ 231, the High Court held that it had jurisdiction instead of the *Syariah* Court to entertain plaintiff's motion for a declaration in the High Court that they had renounced Islam by deed polls.

In the case of Md. Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur (Original Summons No R1-24-61-96), the plaintiff also alleged that he had established himself as an apostate through a deed poll. The Kuala Lumpur High Court held, per Judge Abdul Kadir Sulaiman on Nov. 5, 1997, that despite the absence of a specific Selangor state legal provision on the matter of apostasy, "the jurisdiction of the *Syariah* Court is much wider than those expressly conferred upon it by the respective state legislature." Simply put, the court was abiding by the spirit of the amendment to Article 121(1A) of the *Federal Constitution* as well as other relevant constitutional provisions when it held that, just because State laws do not confer specific jurisdiction to the *Syariah* court to hear the issues brought by the plaintiff in the case, it does not mean that such issues are to be adjudicated automatically by a civil court.

The Md. Hakim Lee decision was also very much in line with the case of Mohamed Habibullah v. Faridah Datuk Talib [1992] 2 MJL 793, which held that "in determining whether a Muslim has renounced Islam, the only forum qualified to answer the question is the *Syariah* Court."<sup>35</sup> There is accord with the judgment given by Tan Sri Mohamed Yusoff J. in the earlier case of Dalip Kaur v. Bukit Mertajam District Police Officer [1992] 1 MLJ 1 as well as the later decision given by Judge Wan Adnan in the case of Soon Seng v. Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah [1994] 1 MJL 690.

However, the Md. Hakim Lee case shows that the Muslim personal laws of certain States may be far from adequate. In those states without empowering state law, in order to determine the legality of a person's state of apostasy, the *Syariah* court would need to lean on its "inherent jurisdiction" as accorded to it under the broad ambit of the 9th Schedule of the *Federal Constitution* (as per Article 74 of the Constitution), instead of the particular State laws that could have been enacted under the State List.

More confusion arose from the case of Nor Aishah bte Bokhari, a former Citibank worker, who was said to have converted "out of her own free will" to Catholicism. She sought a writ of *habeas corpus* in the High Court to vindicate her freedom of religion under Article 11. She alleged that her parents had kidnapped her to prevent her from pursuing her conversion, but she later escaped before her case could be heard. Her 20-page handwritten letter to the judge of the High Court, a copy of which was sent to Associated Press and was also posted on the internet. Her lawyer was then jailed by a magistrate for 10 days for refusing to reveal her whereabouts. Though subsequently withdrawn, the Nor Aishah case has brought to light yet again other instance of high emotion and great confusion over the law of apostasy.

There exists a considerable amount of uncertainty of the case law on the question of apostasy. This may have given impetus for the Parliament to promulgate a federal statute

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<sup>35</sup> As per Tan Sri Gunn Chit Tuan J. and as concurred by Tan Sri Mohamed Azmi J.

that gives uniformity within the states on jurisdiction over this issue. Even so, the opinions within the Muslim community appear to be divided as to federal legislation of the question of apostasy and the efforts to negotiate and pass a federal law on this issue may be protracted. Those Muslims contemplating conversion to another faith are on notice that they are facing definite sanctions if they sought to carry out such a change of faith.

## V. Conclusion

The extent of religious freedom in Malaysia appears to be broad, especially as it pertains to inter-religion freedoms. The citizens have long acquired a sensitive respect for the religion of others; Malaysians are very careful in circumscribing problematic issues. Because of this “grass-roots” understanding of the delineation of religion amongst the races, the burden on the judiciary is light, especially when compared with the onus brought by cases that involve such political issues as the separation of powers and the powers of the hereditary rulers. The judiciary appears to have risen to the occasion when called upon to adjudicate inter-religion controversies.

With respect to freedoms within the Muslim faith, there are looming controversies and discord as to such issues as apostasy, the rights of members of minority Islamic sects to practice their version of the faith, sporadic outbursts of violent acts and the use of the Internal Security Act by the Government against members of minority Islamic groups. The trial (and subsequent appeals) of the 29 *Al Ma'unah* members in the Kuala Lumpur High Court will be a critical test of the judicial mettle as the case alleges the deliberate use of violence and terror by an Islamic minority sect.<sup>36</sup>

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<sup>36</sup> On October 3, 2000, the Kuala Lumpur High Court ruled that the 1975 Essential Security Cases (Amendment) Regulations (Escar) used in prosecuting the 29 Al-Ma'unah members for "treason" is valid. Justice Zulkefli Ahmad Makinudin said that under Escar, defendants do have a right of appeal to the Federal Court as the Supreme Court is the same as the Federal Court.