



FREEDOM OF RELIGION: INTERNATIONAL AND CONSTITUTIONAL PERSPECTIVES

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INTRODUCTION

Religion is one of the greatest forces of human civilization - sometimes a force for good, sometimes a force for bad. Much depends on how the faithful use or misuse their faith.

- Religion satisfies our innermost needs and reflects our deepest yearnings. It deserves high protection because past and present reality indicates that it is one of the most precarious of human rights. Throughout history some of the greatest and most tragic struggles have been waged over freedom of religion.

CONCEPT OF RELIGION

- There is no easy or universal definition of what constitutes 'religion'. Scholarly studies list over 80 systems of beliefs that could qualify as a 'religion'.
- There is no one concept, there are many conceptions of religion. For example not all religions are centred around God.

- Religions are (i) shared collections of transcendental beliefs (ii) that have been passed on from believers to converts or to other believers. (iii) Such transcendental beliefs are held by adherents to be actively meaningful and serious. (iv) These beliefs are either based on formally documented doctrine (organized religion) or established cultural practices (folk religion).

SCOPE OF FREEDOM OF RELIGION

In many respects freedom of religion is a compendium of many separate but linked freedoms including –

- freedom of speech
- freedom of assembly so that individuals and groups may wish to assemble or to march in processions
- freedom of association so that individuals and groups may set up and administer an association or organization

- freedom to disassociate i.e. to have the right to change one's religion,
- right to buy and administer property for religious purposes, and
- right to religious education.

INTERNATIONAL LAW DIMENSION

Several international documents safeguard freedom of religion including the right to convert from one faith to another. Among them are:

- Article 18 of the Universal Declaration of Human Rights 1948 (UDHR).
- Article 18 of the International Covenant on Civil and Political Rights 1966 (ICCPR)
- Article 1 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

- The right to change one's religion is also mentioned in regional instruments such as the European Convention on Human Rights Art. 9 and the American Convention on Human Rights Art. 12.
- The International Convention on the Protection of All Migrant Workers and Members of their Families (1990) Art. 12 has a wording similar to the ICCPR.

ISLAMIC JURISPRUDENCE AND RELIGIOUS PLURALISM

- Diversity and a pluralist worldview are part of the divine intent in the Holy Qur'an. It is said in Surah 11:118: “Had Allah willed, He would have made mankind one community. But they will not cease to differ”.
- Another exquisite passage (49:13) states that God made mankind into nations and tribes so that they may know one another”. Obviously, tolerance and peaceful social interaction by “knowing one another” was the divine design.

- In relation to freedom of conscience there are clear injunctions to respect diversity. “Unto you your religion, unto me mine” (109:1-6). “There is no compulsion in religion” (2:256).
- Prophet Muhammad (SAW) signed the Treaty of Hudabiyah to allow Muslim apostates to leave in peace and join their adopted community.

- The Prophets of Judaism and Christianity are venerated as predecessors to Prophet Muhammad. The moving story of Isa (Jesus Christ's) birth is narrated in a beautiful chapter in the Qur'an named after Mariam (Mary).

RELIGIOUS PROTECTION: VARYING MODELS

- Religious freedom is almost universally protected and constitutionalized. By December 2012, 192 out of 198 UN member countries possessed legal provisions in one form or another for protecting religious liberty. (The 6 defaulters are: Saudi Arabia, Algeria, Eritrea, Maldives, Mauritania and Yemen).
- However, there are contrasting models of religious autonomy and many variations between government favoritism and government hostility.

1. One official religion model
 2. Religious pluralism is constitutionalised
 3. Non-establishment of religion
 4. Religion is discouraged
- The serious paradox about religious freedom is that though almost universally recognised, nowhere is it completely realised in practice.

- **INDIA:** India is constitutionally a secular state. Hindus constitute 80% of its over one billion population. India is also home to the world's third largest Muslim population (12.7%) and fairly large Sikh (2%), Christian (2.3%) and Zoroastrian populations. Like in the USA there is no state religion.
- Article 25(1) of the Indian Constitution guarantees to every person freedom of conscience and the right to profess, practice and propagate religion.

- In the matter of religious tolerance, however, Indian democracy has failed in several areas. First, there is much religious violence in the form of communal riots that often lead to thousands of murders of Muslims, Christians, Sikhs, low caste people and some Hindus.
- Second, there are well documented cases of minority places of worship e.g. the Ayodhya mosque, being razed to the ground.

- Third, on the issue of mass conversions of low caste Hindus to Christianity, there is much intolerance and resort to violence against the missionaries.
- Fourth, in response to public pressure, legislation has been introduced in many states to require registration of conversions by giving notice to the government or face fines and penalties.

- **USA:** Like India, the United States does not have a state religion.
- In the area of public education, the separation between the church and the state is very pronounced. In 1963 the US Supreme Court in *Abington v Schemp* held that Bible reading exercises in public schools were unconstitutional

- Public funds cannot be used to support any sectarian activity. In *Engel v Vitale* state sponsored prayer in public schools was held to violate the constitutional clause that forbade the state from establishing any religion. A high school principal who allowed a group of students to conduct a prayer meeting in his office was prohibited by the state court from using a public premise for a sectarian purpose. Some have described this as “secular militancy”.

- The US has had to grapple with issues of conscientious objectors to the military draft. (It permits this exception).
- There are really difficult issues about the “personal laws” of the Jehova’s witnesses, Mormons, Moonies and other religious groups. Can religious groups claim exemption and autonomy from constitutional principles like gender equality? Opinions vary.

- **TURKEY AND SINGAPORE:** As in the United States, Turkey maintains a strict divide between religion and politics. In 1998, the Turkish Supreme Constitutional Court banned the electorally popular Islamic Welfare Party. Not too long ago a woman MP who chose to wear a scarf to Parliament was dismissed from Parliament. School girls who defy the ban on head-covering are expelled from schools.
- Similar attitudes exist in Singapore.
- In the guise of neutrality, many secular states adopt an attitude of hostility towards organised religions.

- **Patriotic activities:** In Singapore, freedom of religion does not confer a right to refuse to take part in patriotic activities.

MALAYSIA: CONSTITUTIONAL SUPPORT FOR FREEDOM OF RELIGION

- Muslims make up 61.3 per cent of the Malaysian population, followed by Buddhists at 19.8 per cent, and Christians at 9.2 per cent, according to the latest census data from 2010. In relation to non-Muslim minorities that constitute nearly 39% of the population, the Constitution and the legal system adopt many contemporary values of tolerance and pluralism. In general, the Constitution shows great tenderness for religious liberty. Various aspects of it are protected by the Constitution, though practice doesn't always match the ideals:

- **Article 3(1):** Though Islam is the religion of the Federation, all “other religions may be practised in peace and harmony”: Article 3(1).
- Unlike in Indonesia there is no constitutional list of recognised religions.
- **Article 3(4):** This clause provides that nothing in Article 3 derogates from any other provision of the Constitution.

- **Religious pluralism accepted:** Despite many problems and some regressions, Malaysia has a record of religious tolerance that should be the envy of many plural societies.
- Mosques, temples, churches and Sikh *gurdwaras* dot the landscape.
- Citizens celebrate each other's religious festivals.

- Unlike in some democracies like India where religious riots erupt with painful regularity; where holy places of minority religions are often razed to the ground; and some Western societies where religious minorities are constantly caricatured in the media and their Gods and Prophets are vilified in the name of free speech, in Malaysia there is much inter-religious friendship and tolerance.

- Financial allocations from the treasury are made and tax exemptions are granted to all religions.
- Foreign priests and missionaries are allowed to work in the country.
- Even though Christians constitute less than 9.5% of the total population, most prestigious hotels in the cities carry copies of the Holy Bible in every guest room. At the same time the Muslim *qiblat* (direction in which Muslims offer their prayer) is compulsorily shown in every room.

- Muslim, Buddhist, Christian and Hindu festivals are marked by national holidays.
- Christian and Muslim missionary schools abound. Christian missionary teachers are often retained until age 65 - a historical privilege not enjoyed by other religious teachers who are retired at the compulsory retirement age.

[Malaysia, Ministry of Education Circular KP PPO129/210 dated Feb. 5, 1969]

- Though Islam is the religion of the federation, several laws provide for non-Muslim religious institutions.
- The overall approach to religion in Malaysia is that the state is not indifferent to or neutral towards religions. It permits and promotes religions. It believes that tolerance comes not from the absence of faith but from its living presence.

- **Shariah courts with limited jurisdiction:** It is clearly provided in Sch 9 List II para 1 that the shariah courts “shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph...”
- **Article 8(2):** No discrimination is allowed on ground of religion.

- **Article 11(1):** The Constitution of Malaysia in Article 11(1) grants to all individuals protection in matters of conscience. “Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it”. Under this Clause citizens as well as non-citizens have the right to three things:
 - to profess
 - to practise, and
 - subject to Article 11(4), to propagate their religion.

- **Article 11(2):** There is to be no compulsion to support a religion other than our own.
- **Article 11(3):** Every religious group has the right to manage its own affairs; to establish and maintain institutions for religious or charitable purposes; and to acquire and own property and hold and administer it in accordance with law.

- **Article 12(1):** There is to be no discrimination on the ground of religion in relation to the rights of students to admission or fees in educational institutions maintained by a public authority. Similarly there should be no religious discrimination in public support for educational institutions: Article 12(1).

- **Article 12(2):** Every religious group has the right to establish and maintain institutions for religious education.
- **Article 12(3):** “No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own”: Article 12(3).

- **Article 8(2):** There can be no discrimination on the ground of religion against employees in the public sector; in the acquisition, holding or disposition of property; and in any trade, business or profession: Article 8(2).

- **Limits on Article 149 powers to combat subversion:** A preventive detention order cannot be issued on the ground that a convert out of Islam is involved in a programme for propagation of Christianity amongst Malays: *Minister v Jamaluddin bin Othman* (1989). This decision is a stirring affirmation of the limits of state power and the sanctity of religious freedom.

- **Limits on Article 150 powers:** Even in times of emergency when Parliament's powers are greatly enhanced, Article 150(6A) provides that freedom of religion cannot be restricted by an emergency law under Article 150.
- **Right of non-Muslims to convert from one religion to another is accepted.**

LIMITS ON FREEDOM OF RELIGION

Applicable to all persons

- **Article 3(1):** Under Article 3(1) the practice of religion must not disturb peace and harmony.
- **Articles 10:** The restrictions on freedom of speech, assembly and association in Articles 10(2), (3) and (4) are also relevant because religious freedom is a bundle of many attributes.
- **Article 11(4):** Propagation of one's religion to others is part of the constitutional right under Article 11. However this right is subject to one important limitation. Missionary activity amongst Muslims may be regulated by state law.

- **Article 11(5):** Under Article 11(5) all religious freedom is subject to public order, public health, and morality.
- **Atheism:** The protection offered to a person by Articles 11(2) and 12(3) is only against “a religion other than his own”. These provisions pose problems for the constitutional rights of non-believers, atheists, agnostics, free thinkers and rationalists.

- **ICs:** The national identification card system requires every one to disclose his religious identity. This poses problems for those who wish to keep their religious status secret or who wish to change this status, or who wish to apply for marriage certificates or for privileges often reserved for the indigenous “Bumiputras” (sons of the soil). In international law, no one can be compelled to reveal his thoughts or adherence to a religious belief.

- **Societies Act:** All associations and societies, including religious ones, are required to register with the Registrar of Societies under the Societies Act.
- **Minors and their rights:** Under Article 12(3) the religion of a person under 18 years is to be decided by his parent or guardian: *Teoh Eng Huat* [1990] 2 MLJ 306. In the US, the test is not majority but “age of discretion”.

Matters of Special Concern to Non-Muslims

- **Shariah courts:** There is an explicit provision in Schedule 9, List II Para 1 that shariah courts have jurisdiction only over persons professing the religion of Islam. Yet many shariah courts are dissolving non-Muslim marriages if one party converts to Islam. Shariah courts are issuing custody orders that traumatize non-Muslim mothers.

- **Article 121(1A):** Though enacted for legitimate purposes, the open-ended interpretation of Article 121(1A) by the civil courts has caused much pain and anguish to non-Muslims in some types of civil disputes: e.g. over the religious status of the deceased as in the case of Moorthy, the Everest conqueror. Painful issues arise when one partner in a non-Muslim marriage converts to Islam and goes to the shariah court ex parte to dissolve the non-Muslim marriage, obtain custody and guardianship of infants and seeks to convert the minors to Islam.

- It is submitted that Sch 9 List II Para 1 is crystal clear that shariah courts have no jurisdiction over non-Muslims. As such, the decision by the superior civil courts to hand over such cases to the shariah courts for resolution, is a serious abdication of the judicial oath to preserve, protect and defend the Constitution.

- Further it must be noted that Article 121(1A) immunizes shariah courts within their jurisdiction from interference by the civil courts. Article 121(A) does not give immunity to shariah courts in matters outside their jurisdiction e.g. issues of constitutionality.

- And Article 121(A) does not give immunity to shariah authorities performing administrative functions (like registering an infant's conversion in breach of statutory procedures). This was the courageous but dissenting view in the Indira Gandhi case.

- **Conversion to Islam to avoid liability in a civil marriage:** There is no shortage of such cases.
- **Application of fatwas to non-Muslims:** Recently, the promised amendment to the Non-Muslim Marriage & Divorce Act (Act 164) was taken off the parliamentary schedule because of objections from shariah groups. One objection was that there is a binding fatwa that if in a non-Muslim marriage one party converts to Islam, the children will automatically be regarded as Muslims.

- With all due respect, a fatwa issued by Muslim authorities should not be employed to determine the rights and duties of a non-Muslim. That would be (i) a violation of her freedom of religion and (ii) an excess of jurisdiction by the fatwa issuing authority.

- **Shariah administrative authorities:** Just as with shariah courts, Muslim religious authorities have no jurisdiction over non-Muslims. A glaring departure from this occurred in the JAIS raid against the Bible Society of Malaysia and raid on a Hindu temple to stop a wedding. There have been some cases of interruption of non-Muslim funerals to snatch dead bodies on the suspicion that the deceased had before death converted to Islam. In one case a church was raided on the suspicion that proselytization of Muslims was taking place.
- **The Herald case**

- **Unilateral conversion of minors:** Under Article 12(3) the religion of a person under 18 years is to be decided by his parent or guardian: *Teoh Eng Huat* [1990] 2 MLJ 306. However, painful issues have emerged over several civil court decisions that “parent or guardian” means one parent and not both so that a spouse converting to Islam can go to the shariah court to unilaterally determine the infant’s religion. This view is in flagrant disregard of Article 8(2) (non-discrimination on grounds of gender) as well as the 11th Schedule Section 2(95) which provides that words in the singular include the plural.

- **Inter-religious marriages involving Muslims not allowed**
- **Native courts in SS:** In Negeri Sembilan, conflict between Malay custom and the Shariah is resolved in favour of Malay custom in matters of property. But in Sabah and Sarawak the shariah is supposed to displace adat. In practice, shariah courts and native courts have intense competition.
- **Extremism on the rise**

- **Superior civil courts disregarding Sch 9:** Even though shariah courts have no jurisdiction over non-Muslims some superior court judges are advising non-Muslims to subject themselves to shariah courts. When the non-Muslim refuses, she is left with no remedy.
- **Supremacy of Article 3 over Article 4:** A number of superior court decisions indicate that some judges are subordinating Article 4 (constitutional supremacy) to Article 3 (Islam as the religion of the federation) in total disregard of Art 3(4).

- **Islamic state and hudud:** The polemics about whether Malaysia is or is not an Islamic state flares up periodically (especially before elections!).
- Lately the issue of hudud and RUU355 has split the nation and caused anxiety to most non-Muslims.
- The Hadi Bill appears innocent enough constitutionally. But there is more to it than catches the eye.
- The Bill is driven by the unconstitutional ambition to enhance punishments for criminal offences which are flagrantly outside the jurisdiction of the states.

- RUU355 seeks to put into operation, either in whole or in part, the Hudud laws of the PAS governments in Terengganu and Kelantan which are blatantly unconstitutional, which seriously trespass on federal jurisdiction and which violate the fundamental rights of Muslims and non-Muslims alike. RUU 355 is a backdoor legitimization and putting into operation of unconstitutional legislation in the PAS states.

- Unconstitutionality must not be rewarded. All state syariah laws on crimes, especially the ones from Kelantan and Terengganu, must first be constitutionalized before the jurisdiction of the syariah courts is enhanced. It will be a blight on Parliament's reputation if it enhances punishments for crimes which crimes are clearly outside the jurisdiction of the syariah courts.

- Even some aspects of the (federal) Syariah Courts (Criminal Jurisdiction) Act 1965 are unconstitutional and ultra vires. This is because Sch 9 List II Para 1 requires that shariah courts “shall not have jurisdiction in respect of offences except in so far as conferred by federal law”.
- “Jurisdiction” is about (i) who may be tried, (ii) what offences may be tried and (iii) what punishments may be imposed.

- The federal Parliament has legislated the penalties that may be imposed but has abdicated its responsibility to specify the offences that may be the subject of state legislation and thereby be tried in the shariah courts.
- By conferring virtually unlimited power to the state assemblies to punish offences against the precepts of Islam, Parliament has acted unconstitutionally.

Limitations that are of Special Concern to Muslims

- **Suppression of diversity in Islam.** Muslims who are not mainstream are subject to constant harassment.
- **Freedom of religion in Article 11(1) has been subjected to Article 3:** No Muslim can lay a claim to opt out of *shariah* laws – the constitutional guarantee of freedom of religion in Article 11 notwithstanding.
- Over the years the mandatory jurisdiction of the shariah authorities is expanding to such areas as EPF, Muslim trusts, gambling, betting and homosexuality (which are federal crimes).

- Apostasy, deviationist conduct and any words or actions that insult Islam have become the subject of criminal legislation in many states. (“Insult” should be handled under s298 Penal Code).
- In *Kamariah bt Ali v Kerajaan Negeri Kelantan* [2002] 3 MLJ 657 the judge implied that Article 11 on freedom of religion should not be interpreted so broadly as to vitiate Islamic legislation that imposes duties and prohibitions on Muslims. This means that freedom of religious belief in Article 11(1) is not available to Muslims.

- **Sch 9 List II Para 1 – Offences against Islamic precepts:** Contrary to a liberal attitude towards non-Muslims' personal autonomy, the state acts vigorously to regulate the life of all Muslims. State Assemblies (with the legislative guidance of the federal Parliament) are authorized to create and punish offences against the precepts of Islam.

- **Punishment for “deviationism”**: From time to time there are criminal prosecutions of “deviationists”. Muslims who are not mainstream face severe scrutiny for “deviationist” activities or for speaking without a tauliah
- Such rigid thought control is un-Islamic. Islam permits its adherents to exercise their intellect: Surah Al-Isra 36. “You shall not follow anyone blindly in those matters of which you have no knowledge...”

Does Article 3(1) make all Islamic law immune from judicial review? Can some aspects of the Islamic law be challenged on the touchstone of the Constitution? In the context of Malaysia this is a highly sensitive issue. Article 3(1) gives Islam an exalted position. Does Article 3(1) exempt Islamic law and practices from constitutional scrutiny?

The answer to this has to be in the negative for the following reasons:

- Article 3(4) declares that nothing in Article 3(1) derogates from any provision of the Constitution.
- State Enactments on Islam can be reviewed by the courts by reference to the federal-state division of powers in Sch 9 List II para 1.

- **Extent of exemption from equality:** Personal laws are exempted from Article 8's command of equality before the law. This is provided for in Article 8(5) which explicitly exempts "any provision regulating personal law" from the constitutional requirement of equality before the law.
- Is "personal law" confined to family law matters or is the entire corpus of shariah and fiqh part of "personal law" and therefore immune from scrutiny on the touchstone of Article 8 and the rest of the Constitution?

- **Do Muslims have fundamental rights?** Are Muslims entitled to any constitutionally granted fundamental rights or is the entire field of shariah above the Constitution's chapter on fundamental rights?
- **Article 11(5):** Does Article 11(5) apply to Islamic laws? Can a law purportedly made in the name of Islam be invalidated on the ground of public order, public health and morality?
- **Apostasy by Muslims:** Up to the 70s apostasy was not a punishable offence But since the *Jamaluddin Othman* case apostasy is regarded as taboo, as absolutely abhorrent and as a politically explosive proposition

Civil courts' approach: On issues of conversion out of Islam the civil courts are trying to carve out a middle path.

- They are near unanimous that under our basic charter, a Muslim does have a right to convert.
- But he cannot do it unilaterally. He must first obtain a Shariah Court certificate of renunciation: *Kamariah bte Ali lwn Kerajaan Negeri Kelantan* [2002] 3 MLJ 657.

- Strict affirmative proof is required to show that a Muslim had renounced Islam. Merely showing that he drank alcohol or ate pork did not indicate renunciation: *Dalip Kaur v Pegawai Polis* [1992] 1 MLJ 1; *Re Mohamad Said Nabi Decd* [1965] 1 MLJ 121.
- All matters of apostasy are within the jurisdiction of the syariah court: *Soon Singh v Perkim* [1999] 1 MLJ 489; *Dalip Kaur v Pegawai Polis* [1992] 1 MLJ 1..

OVERVIEW & CONCLUSION

- Compared to many other Asian societies the overall situation of religious tolerance in Malaysia was exemplary till the late eighties. Since then the calm has been broken by a number of legal, political and moral dilemmas that defy easy solution. A dissonance between Islamic theory and Muslim practice has developed in our society for a number of reasons.

- **The policy of Islamisation.** This, by itself was not unconstitutional. But it has led some people (civil servants, civil judges, shariah judges and officials to become intolerant, extremist and totally insensitive to the plight of the non-Muslims.
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- **Some consequences of Islamisation:**
Momentous developments have followed in the wake of Islamisation:
 - There has been tremendous expansion of the shariah establishment in numbers and fiscal allocation;
 - the passage of Article 121(1A);
 - the desire of some Muslim elites to indigenise (i.e. Islamicise) the Malaysian legal system and to free it from colonial dominance. The proposal's potency is assisted due to its link with the religious ideal

- A very large number of Malay graduates are returning from abroad with degrees in shariah related subjects and are seeking jobs and positions locally; and
- the shariah authorities have emerged as a sort of meta-legal fourth branch of the government who are not answerable to the courts or the Constitution.

- **Legal pluralism:** Islamisation has further complicated the challenges of legal pluralism and the existence of competing and multiple normative systems. The inevitable clashes have not been resolved satisfactorily.
- Instead of integration and harmonization as in some other plural legal systems, Malaysia appears to be heading in the opposite direction: of creating parallel legal systems that may result in “one country, two legal systems”.

- **Arabisation of Malay society**
- **Cooperation between religious and political elite**
- **The fusion of race and religion**
- **Abdication by the civil courts**
- **Thought control of Muslims**
- **RUU 355**

RECOMMENDATIONS

- **Reconstruction of religious thought:** Like individuals, religious authorities can go astray and deviate from their original purpose. Religious doctrine can be employed to justify authoritarian rule. Religion can be interpreted to promote an exclusive claim to the truth and to salvation. Religion can be marshaled to foment and to rationalize war and conflict against people who behave and believe differently.
- Regrettably this is happening around the world, not only in the Muslim world but also in Christian, Jewish, Hindu and Buddhist regions.

- If our ecclesiastical leadership fails us, we have no choice but to speak up for our religion and our nation.
- **Open the gates of ijtihad:** The gates of *ijtihad* (independent reasoning) have been closed in the Sunni world. Reason is shunned, not just by the fanatics but the vast majority of Muslims today.

- Suppression of thought characterises many Muslim societies today. Diversity is regarded as deviationism. For example, in Malaysia a public discourse on Islam without prior permission of the syariah authorities through a *tauliah* can be punished. The questioning of a *fatwa*, no matter how respectfully and intellectually, is a crime.

- **Proselytization:** It is submitted that if the exercise of a human right, no matter how sacrosanct, hurts other people or affects society adversely, then some substantive and procedural limits on the exercise of this right are not unreasonable.
- In a multi-ethnic and multi-religious society, the freedom of religion of overzealous proselytizers of all shades can raise inter-communal tensions. Some ground rules are, therefore, needed for Muslim as well as non-Muslim conduct relating to proselytization and apostasy.

- Before any conversion application is registered all affected parties must be notified and must have a legal right to be heard. To implement this proposal some hurdles will have to be overcome about the appropriate forum for the registration. Shariah authorities have no jurisdiction over non-Muslims. Therefore, the matter must be committed to a civil authority.

- Alternatively a third, neutral forum must be found. Perhaps through a constitutional amendment, a Judicial Committee of the Conference of Rulers with a mixed composition can be appointed to advise the Conference of Rulers on conflict of jurisdiction cases referred to the Judicial Committee by the AG.
- As Heads of the Religion of Islam, Their Majesties must take a pro-active role to resolve this issue of unilateral conversions and conflict between civil and syariah courts. Art 38 permits them to deliberate on any matter of policy.

- **Apostasy:** In the special circumstances of Malaysia, as conversions affect marital and economic status, all conversions should be subject to a registration requirement to ensure that there is openness and transparency about the whole exercise.
- The registration authority should be required to ensure that there was no undue influence or improper inducement and that the convert-to-be understands the full legal, economic and social implications of his/her adoption of a new faith.
- This approach is justifiable because status is generally other-determined, not self-determined.

- Before any conversion is allowed to be registered, there should be a prior judicially sanctioned resolution of the status of the marriage, the division of property and the custody and guardianship of children.
- The law applicable to all such matters should be the pre-conversion law i.e. the law under which the relationship was subsisting before the unilateral decision to convert disturbed the status quo.

- **Conflicts between civil and shariah courts:** These need to be resolved, if need be by addition of a new constitutional provision. The ecclesiastical authorities of one religion should not have any jurisdiction over adherents of other faiths.

- **Sabah and Sarawak's special position:** The policies of Islamisation and the quest for the Islamic state must take note of the sensitivities of Sabah and Sarawak.