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THE JUXTAPOSITION OF APOSTASY & ABSOLUTE RIGHTS OF FREEDOM OF RELIGION: THE QUANDARY OF APOSTATE.

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Abstract

Article 11 of the Federal Constitution of Malaysia grants everyone the right to profess and practice his religion. However, Article 11(4) stipulates that federal law may control or restrict the propagation of any religious doctrine or belief among those who practice Islam. Past studies have identified that freedom of religion exists in Malaysia but not absolute. Nonetheless, there is a lack of research on safeguarding the freedom of religion pertaining to the issue of apostasy. This paper aims to explore the scope of freedom of religion pertinent to apostasy. This study employed doctrinal qualitative research using both primary and secondary data such as legislation, cases, articles, and other relevant documents. Researchers found that Malaysia should establish a clear legal framework to settle the issue of apostasy as the freedom of religion is not absolute as it appears. This study is also significant in aiding the legislators to review and revise the law accordingly and thus, will correspond to meet the needs of the citizens of Malaysia especially on the right to apostate.

Keywords: freedom of religion, apostasy, Universal Declaration of Human Rights, Federal Constitution.

1. INTRODUCTION

Article 11 of the Federal Constitution of Malaysia states, "Every individual has the right to profess and exercise his religion, and, subject to Article 11(4), to propagate it," which is a provision that is used to guarantee the freedom of religion in Malaysia. This provision clearly mentions that everyone fundamentally has the right to profess and exercise their religion and may propagate it. This freedom of religion has been given core and central protection as its application extends to every person as stated by Thoma (2004), while restriction provided in Art. 11(4) reflects the delicate balance between Muslim, minority Chinese, Indian and other races who belong to other religions whose understanding of conversion of Muslims is a sensitive matter in Malaysia. Furthermore, Article 11(1) confers personal freedom to every person in Malaysia to choose whichever religion he wishes, change their religion or relinquish religious belief without interference from government or any authority except for Muslims and those rights are absolute, entrenched and alienable.

2. LITERATURE REVIEW

Malaysia Federal Constitution demonstrates great tenderness for religious liberty, even in times of Emergency, Article 150(6A) forbids Parliament from encroaching on religious freedom. The Constitution further strengthens this notion of religious freedom in every aspect such as protection of religious freedom according to Article 3 (1) which confer that Islam is the religion of federation however any other religions may be practiced in peace and harmony.

According to Article 18 of Universal Declaration of Human Right hereinafter refer as “UDHR” which have been accepted by United Nations General Assembly on 10 December 1948 reads:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

Article 18 manifests the right to freedom of religions in the utmost universal intrinsic manner that any human being should deserve and to deny one existence would become a monstrosity violation of human rights, apparently the right of religious belief also includes the rights to change one belief in any manner of their chosen.

Freedom of religion in Islam can be viewed in two ways, either it is not absolute or absolute regarding apostasy issues. Apostasy or *Al- Riddah* means the rejection of Islam by a Muslim in favor of any other religion either through his actions or words of mouth in which it involves an act by someone whom disbelieving the religion of Islam turned for another religion as per discussed by Marican and Adil (2004). Further, Peters and De Vries (1976) viewed that an apostate is understood as a Muslim by birth or by conversion, who renounces his religion irrespective of whether he subsequently embraces another faith.

Article 11(1) and (4) was examined by Marican and Adil (2004) and the role of Islam as a faith and as law are intertwined due to requirements imposed by the Federal Constitution in dealing with the issue of apostasy. Further, the court opined as in the case of *Majlis Agama Islam Negeri Sembilan lwn Hun Mun Weng*, that a Muslim or a convert who has converted to Islam, and later decides to renounce or decided to leave the religion of Islam shall report to the Registrar of Converts in accordance to section 90(3) of Enactment No.1 of 1991 Administration of Islamic Law (Negeri Sembilan) Enactment 1991, hereinafter refer as Enactment 1991. Additionally, the Registrar of Converts shall register the decision of which until the said decision is reported and registered, that person still be treated as a Muslim. The honorable judge, Faiza Tamby Chik decided that the applicant in this case, Miss Nurul Ain Hun is still a Muslim and civil courts have no authority over matters that fall under the purview of Syariah courts.

Human Rights Commission of Malaysia also known as SUHAKAM is the national human rights institution of Malaysia. It was established by Parliament under the Human Rights Commission of Malaysia Act 1999. SUHAKAM made its official statement in 2022, stated that clause (4) of Article 11 empowers state laws and federal laws to control and restrict the propagation of any religious doctrine among persons professing religion of Islam which is deemed to be in line with Schedule 9, List II, Item 1 of Federal Constitution. Mariam Rawan Abdulla (2018) stated that freedom of religion is related to cultural expression and serves as interaction developed from religious motivation manifested in the form of arts and artifacts, which enhances the religious expression. Thus, this becomes the focus of the study as to explore the extent of freedom of religion applicable within the context of apostasy.

3. METHODOLOGY

In this study, a doctrinal research technique is utilized, and secondary sources such as journal articles are reviewed. It is a qualitative work that relies largely on information that is readily available to the public, such as reports, research, publications, case studies, and legal reports. Each source that was received was subjected to in-depth analysis to provide an authentic and accurate evaluation, which was necessary to achieve the goal of the research. Through an analysis of Malaysian Federal Constitution and Syariah law on apostasy, as well as a comparison of these two bodies of law to the Universal Declaration of Human Rights. Secondary sources for this study include reference to books, articles, online journals and newspapers.

4. RESULTS AND DISCUSSION

Article 11 gives constitutional protection of freedom of religion for every person in Malaysia. Propagation of one religion to others is part of the constitutional right guaranteed in the Constitution, however, Muslims are bound to follow the rules that they cannot simply be apostate from the religion of Islam. Such restriction derives from the jurisdiction of the state to control and restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. According to Adil (2007), The nine state legislatures in Malaysia have passed laws in relation to apostasy which are under the exclusive jurisdiction of the Syariah Courts. Apostates are subject to punishments such as fine, imprisonment and whipping. The states have inherent jurisdiction to control Muslim person faith according to Islamic religious doctrine which held apostasy is an offense known under the Shariah hudud offense as stated by Ong and Zuhair Rosli (2021). The power to control suggested direct involvement by the state authority to control Muslim faith, which would theoretically prevent a Muslim from changing their religion based on their own free will and penalize them for acting contrary to their faith. This is a blatant violation of Article 18 of the 1948 Universal Declaration of Human Rights, which permits anybody who professes a religion to change their faith at any time, place, or under any circumstances. Article 4(1) of the Federal Constitution of Malaysia clearly states that the Constitution is the supreme law of the land, and that any law that is inconsistent with the Constitution is null and void to the extent of the inconsistency. Consequently, the position of Article 18 of UDHR cannot be reconciled with the complexity of Malaysian law, which recognises the supremacy of the Constitution. In the case of a violation of the sovereignty and sanctity of the Federal Constitution, the doctrine of ultra vires shall be applied. Foreign law has no chance against the supreme law of the nation, which has become the heart and soul of the Malaysian legal system. The practise and expression of religion determine the restriction, for what are we if we do not have restrictions? As a result, Article 18 of the 1948 Universal Declaration of Human Rights, which allows anyone who professes a religion to change their faith at any time, place, or under any circumstances, cannot be applied in Malaysia because the Federal Constitution clearly states that those rights are not intended to allow you to do whatever you want. Further, Ong and Zuhair Rosli (2021) stated that some experts believe that the murtad regulations contradict the Universal Declaration of Human Rights (UDHR) of the United Nations, but they do not believe that the UDHR has been effectively incorporated into Malaysia's Federal Constitution. Thus, it is crucial to examine the provision of section 4(4) of the Human Rights Commission of Malaysia Act 1999 [Act597], which states that the 1948 Universal Declaration of Human Rights shall be considered for the purposes of this law to the extent that it does not conflict with the Federal Constitution.

This ultimately supports the main jurisdiction of Article 11(4) to control propagation among Muslim within state authority by virtue of List II, Ninth Schedule of the Federal Constitution of Malaysia that empower the State to legislate any matter in relation with Islamic Law and apostasy subject fall within the subject matter, List II which became the Legislative List of the State, further stated the jurisdiction of Syariah court as the main Islamic Institutions set up by the state shall have the control of propagating doctrines and beliefs among persons professing the religion of Islam. Article 11(4) also mentions restriction and it is broadly interpreted to cover all proselytizing activities that are directed at Muslim whether by non-Muslim or unauthorized Muslims. Harding (1996) believes that the restriction on proselytism intended to preserve public order and social harmony in Malaysia, which in fact majority Muslim live and socialize with other religions.

For instance, in the case of *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah* (1999), the appellants application has been dismissed and in delivering the said judgment, fatwa has been relied on and it showed that Syariah court has the exclusive jurisdiction to determine whether or not a person has ceased to be a Muslim. The Federal Court affirmed with such a decision as there is no declaration has been made to the effect that appellant is still a Muslim so such infringement to Article 11(1) has not arisen. In this case, the judge highlighted that Syariah court derives its jurisdiction under a state law and specially for apostasy matters, it is vested in Syariah court jurisdiction which already decided in 1992 through the case of *Majlis Agama Islam Negeri Sembilan Vs Hun Mun Weng* (1992), where the court held that the civil courts have no authority over matters that fall under the purview of Syariah courts.

A steely determination is evident and maintained throughout the case of *Lina Joy Vs Majlis Agama Islam Wilayah Persekutuan & Yang Lain* (2007) where the court decided that apostasy is a matter Islamic Law and civil court shall not interfere with such jurisdiction.

In 2018, Federal court in the case of *Indira Gandhi v Pengarah Jabatan Agama Islam Perak & Other Appeals* (2018) stated that jurisdiction of Syariah court is limited in three situations including limitation on judicial review, confined to persons and subject matters listed in the State List and from provisions under relevant state legislation. So, Clause 1A in Article 121(1A) does not remove the jurisdiction of civil courts concerning the constitutional interpretation. Therefore, the case was decided strictly based on relevant laws, case authorities of both the State and Federal Constitution. This case is in contrast with the case of *Syarifah Noraffyza Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors* (2017) the judge stated that Malaysia has unique pluralism for dual system of court; Civil court jurisdiction applies civil law for non-Muslim and Syariah Court applies Shariah Law to Muslim. In dismissing the judicial review, the court agreed with the previous decisions that the matter of apostasy is within the exclusive jurisdiction of Syariah Court, not the civil court.

For the current case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* (2021), in which she was raised as a Buddhist by her Buddhist mother and wants to prove that she is not a Muslim. Article 11(1) guarantees the right to "profess and practice" one's religion, but it is more than just "professing" because it entails identifying with a particular religion and one's level of devotion to his or her belief. The court decided that the plaintiff's request for a declaration that she is no longer a Muslim fall under the Syariah Court's jurisdiction.

Based on the above cases, it is evident that the court concentrates solely on jurisdiction and does not investigate or discuss Article 11 of Federal Constitution: Freedom of religion, the right to apostate. Further, the Court does not specify any procedure or process that a person must follow if they wish to renounce from Islam. We can clearly distinguish that both civil and syariah courts did not deal with the right of freedom to apostate. It is recognised that there is no standard and consistent legal provision governing apostasy or leaving the religion (Abdullah, 2007; Adil, 2007; Hasan and Ali, 2007; Hamayotsu, 2012; Zainal and Jamal, 2013; Nasir and Ismail, 2016). This circumstance has led to the view that issues regarding religious conversion applications have not been adequately addressed to as so far. (Masum, 2009). In the state of Selangor, for instance, it is difficult to convert to a different faith because there are no laws forbidding it. The Islamic Religious Administration Enactment (Selangor State) of 2003 makes the assessment of a person's religious status one of the exclusive jurisdictions of the Syariah High Court. Although the Selangor Syariah High Court has the authority to determine a Muslim's religious status, no procedures or criteria exist for making such a declaration to apostate. According to Abdullah and Salim (2014), it is not written in any of the regulations, thus certain situations of requests to apostate are decided based on "discretion" and state authority. Mohamed Shapik (2011) found that instances of petitions for renunciation of religion in Selangor have not yet been processed due to the absence of clear legal guidelines dealing with this issue. Hence, this shows that there is lack of research on freedom of religion and the avenue for potential apostates to practice the said right.

Everyone in Malaysia has the constitutionally guaranteed right to worship according to Article 11 of the Federal Constitution. However, despite such rights, they are not unfettered and are subject to the limitations set forth by statutes and judicial decisions by Article 11(4) of the Federal Constitution, which states that the federal government has the right to regulate and limit the dissemination of non-Muslim religious teachings to Muslims. Since apostasy is forbidden in Islam, such a clause would serve to safeguard the Muslim's faith. It is in accordance with Malaysia's Shariah laws, which forbid apostasy among Muslims. Further, if apostasy is considered an absolute human right, Muslims and those who have rejected Islam could commit an unforgivable sin. Certainly, it contradicts the teachings of Islam. Although Islam is tolerant of religious liberty, yet it does not tolerate apostasy, or leaving Islam. Recognising apostasy as a Muslim's human right could harm the religion of the ummah (Sulaiman et al., 2020). Even though everyone in Malaysia has the right to openly declare and practice their religion of choice, yet delicate issues such as apostasy demand the use of Syariah law to maintain the jurisdiction of the Syariah Court. To preserve the exclusivity of Syariah Court jurisdiction, it would be beneficial to form a

commission to update the Islamic legal framework of apostasy in the country. This is crucial because until there is a clear framework and method for potential apostates to follow, this issue will not be resolved, and only the civil and sharia court jurisdictions will be discussed in depth as happened in previous case studies. Ong and Zuhair Rosli (2021) proposed that other states shall codify a set of clear procedures like those introduced by the Negeri Sembilan State Legislature. Additionally, mandatory detention at a rehabilitation center should also be substituted with a series of counseling sessions aimed at persuading apostates to return to Islam.

In addition, Ghani and Razali (2017) opined that the issue of Islamic legislation in each Malaysian state, that restricts the jurisdiction of Syariah courts demands the establishment of a commission that must include all relevant parties and propose an equitable resolution. Moreover, Husain (2022) is of the opinion that the State Legislature is permitted to enact laws affecting the personal offenses of Muslims. This is because the Federation and Syariah courts are forums to implement and equally enforce Islamic law and its legal principles according to their respective jurisdictions. Even though apostasy is one of the criminal jurisdictions, Husain (2022) believes that the State Legislature is permitted to do so. The relevant authorities have no compelling reason to allow apostasy. It defies logic for a state with Islam as its official religion to allow its citizens to renounce their official religion. This suggests that the laws are in conflict. It is the Federation's duty to safeguard, defend, and to propagate Islam (Ong & Zuhair Rosli, 2021).

5. CONCLUSION

By referring to the above discussions and to answer the question of the extent to which freedom of religion applies in the context of apostasy, the findings indicate that it is difficult to renounce Islam once one has become a Muslim, and that the various rules and regulations in Malaysia do not provide apostates with the proper means to do so. Further, Shariffuddin et al. (2022) added that the court did not dismiss the potential for a Muslim to renounce their faith, but emphasized the importance of adhering to the appropriate procedures before granting an application for apostasy. The circumstances surrounding the renunciation of a converted Muslim differ significantly, as an apostate may potentially be subject to detention at an Islamic Education Centre for a maximum duration of 36 months. This detention serves the objective of providing education to the apostates and requesting them to repent in accordance with Syariah Law. The aforementioned practice has been implemented by the state of Sabah (Nasri & Shiddeq, 2016).

Although Article 11 guarantees the freedom to profess and practice a religion, this right is not absolute, and apostasy is perceived as a complex process. Researchers are of the opinion that Malaysia should establish a clear legal framework to settle the issue of apostasy since the freedom of religion provided under the Federal Constitution is not absolute as it appears. The establishment of a well-defined legislative framework in Malaysia is recommended by researchers to address the matter of apostasy, as it has been determined that the freedom of religion is not an absolute right. This study holds considerable importance in assisting legislators in reviewing and revising the law in a manner that aligns with the demands of Malaysian citizens, particularly in relation to the right to apostasy.

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