

FREEDOM OF RELIGION IN MALAYSIA – AN OVERVIEW

Freedom of religion in Malaysia is enshrined in the Federal Constitution. Article 11 guarantees the right of every citizen to profess, practice and propagate his or her religion, subject to applicable state laws restricting the propagation of other religions to Muslims. In addition, Article 3 of the Federal Constitution provides that Islam is the religion of the Federation, but other religions may be practiced in peace and harmony. However, in recent times, there have been a number of issues and incidents which have tested, and in some ways, limited these constitutional freedoms.

The “Allah” and Alkitab controversies

On 31 December 2009, a landmark ruling was made in the case of Titular Roman Catholic Archbishop of Kuala Lumpur vs. Menteri Dalam Negeri, where the High Court lifted the Home Minister’s 3-year ban against the Roman Catholic church’s use of the word “Allah” to refer to God in its weekly publication, The Herald. The Ministry of Home Affairs had prohibited the usage of word claiming that it would confuse the Malay/Muslim majority in Malaysia. It claims that the word is exclusive to Islam and cannot be used by any other religion.

As an immediate aftermath, a series of arson attacks on several houses of worship occurred around the country. The Ministry of Home Affairs has appealed against the decision, despite calls from various quarters not to do so. Notwithstanding administrative improvements in the efficiency of the court system, the Court of Appeal has yet to fix a date for the hearing of the appeal. In the meantime, a stay of the decision, which was agreed by both parties to the dispute, remains in effect.

The Government did not stop public protests against the High Court’s decision, a stark contrast to their usual stand of not allowing public protests of any sort. Some mosques in the Federal Territory of Kuala Lumpur and the state of Selangor also prominently displayed banners exhorting Muslims to protect the sanctity of the word ‘Allah’. The Deputy Prime Minister, Muhyiddin Yassin, went as far as to publicly chide the Malaysian Chinese Association (MCA), a political party within the ruling Barisan Nasional coalition government, which called on the government to drop the appeal.

There are still 2 pending court cases on the same issue. One involves the importation of Sunday School material in Bahasa Malaysia by an indigenous denomination, and another the importation of Christian material in Bahasa Malaysia on CD by an individual. Both cases have yet to progress significantly because of the delay in the appeal.

With the appeal on hold, the government decided in April 2011 to release 35,000 copies of the Bible in Bahasa Malaysia (known as the Alkitab) which had been stopped at 2 points of entry into Malaysia from 2 years of detention. 30,000 copies were brought in by Gideons International through the Port of Kuching, and 5,000 by the Bible Society of Malaysia through Port Klang. However as part of the release the government proceeded to stamp each copy of the Alkitab with a cross, the phrase “Christian Publication” and a serial number. This was opposed by the Christian community but to no avail. The government apologised for stamping the Alkitab, but some within government questioned the fuss, arguing that copies of the Qur’an are also stamped and serialised. The government also issued a 10-point plan to prevent this problem from recurring, which has not been fully accepted by the Christian

community as it entrenches the principle that the Bible in Bahasa Malaysia is a dangerous and subversive document whose circulation needs to be monitored. The 10-point plan also differentiates the treatment between Peninsular Malaysia on the one hand and Sabah and Sarawak on the other.

Increasing religious intolerance by those acting on behalf of the majority

In September 2010, a controversy surrounding opposition MP Teo Nie Ching erupted when she was criticised by the main political party in the ruling coalition government, UMNO, and a Malay rights pressure group known as PERKASA, for entering a mosque. PERKASA called for Syariah laws to be created to bar non-Muslims from entering Muslim houses of worship. She was issued a warning by the Selangor Islamic Affairs Council after the religious body claimed her visit to the mosque had displeased the Sultan, who is the head of the religion of Islam in the state.

In October 2010, Basil anak Baginda, a 10-year old schoolboy, was caned 10 times by the Senior Assistant of SK St. Thomas (a government-assisted primary school in the state of Sarawak) for bringing pork sausages for lunch to the school. This case has highlighted the growing trend of enforcing Islamic precepts on non-Muslims.

Conversion issues

An increasing number of disputes over the religion of persons who had purportedly converted into Islam without the knowledge of their non-Muslim families have surfaced in recent years.

In most of these cases, the civil courts have declined to question decisions made by the Syariah courts, citing Article 121(1A) of the Federal Constitution which states that civil courts have “no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.” Article 121(1A) was inserted into the Federal Constitution in 1988 to prevent the overlapping jurisdiction and conflicting decisions by the civil and Syariah courts.

On 20 August 2010, the Court of Appeal ruled that the civil High Court had no jurisdiction to determine the religious status of the late M. Moorthy (who had come to fame as being the first Malaysian to climb Mt. Everest), whose conversion to Islam has been disputed by his family, thus dismissing the appeal brought by Moorthy's widow S. Kaliammal. The Court of Appeal held that the Syariah court was the competent authority to determine any matter relating to the conversion to, or renouncement of, Islam. Kaliammal had appealed against the High Court's ruling in December 2005, which refused to determine the religious status of her late husband on grounds that a matter of this nature was under the exclusive jurisdiction of the Syariah Court.

Cases of unilateral conversions of children in marriages where one spouse has converted to Islam also continue to be an issue in Malaysia. In 2009, the government pledged that the law would be changed so that children's conversions would not be allowed without the consent of both parents. This pledge came in the wake of the highly publicised case of M Indira Gandhi, whose estranged husband embraced Islam and then had both of their children converted to Islam. However the proposed reform in this area has stalled due to objections from the Council of Rulers, which has said that any amendments to legislation

pertaining to matters of conversion and religion must first go through the respective state religious authorities. Needless to say, this is not being pursued with any haste.

This impasse led to the continuing controversy surrounding the case of Shamala Sathiyaseelan vs Dr. Jeyaganesh C. Mogarajah. On 12 November 2010, the Federal Court allowed the objection to Shamala bringing her case to court on the grounds of the contempt of court case pending against her for not attending a court hearing. Shamala has been out of the country since 2004, presumably in Australia, with her two sons. Dr. Jeyaganesh, now known as Muhammad Ridzwan Mogarajah, converted to Islam sometime in November 2002. He and Shamala were married in 1998 according to Hindu rites, with their marriage registered under the Law Reform (Marriage and Divorce) Act 1976. He subsequently converted their two underage sons (then aged four and two) to Islam without Shamala's knowledge or consent.

The Federal Court chose the easy route of sidestepping the entire question by allowing a preliminary objection brought by Dr. Jeyaganesh, and held that Shamala must return to the country if she wanted the court's protection. The court's decision received criticism from various quarters, including the Bar Council, who said "By side-stepping these significant issues, the Federal Court failed to be decisive, and abdicated its role as the ultimate arbiter in disputes involving constitutional questions and jurisdictional conflict.

Damansara Utama Methodist Church

Related to the issue of conversion, a celebration dinner held in August 2011 by a Christian-based community help organisation held in premises rented out to a church group was raided and interrupted by officers of the Selangor Islamic Affairs Department on grounds of possible conversion of Muslims. 12 Muslims who attended the dinner had their details recorded and were subsequently requested to give statements to the Department. One had his house searched.

An investigation into the activities of the community organisation was launched, and it (and Christians in general) were criticised for attempting to provide financial and other needs-based assistance as an indirect form of proselytisation. The investigation itself was found to be inconclusive in that no specific evidence was found. However the State Religious Council, in a statement issued by the Sultan, concluded that the raid itself was justified.

Racial and religious stereotyping

Racial stereotyping is still prevalent in mainstream Malaysian media as was seen in November 2010, when an advertisement showing a Muslim convert returning home to celebrate Deepavali with his estranged family raised the ire of the Hindu Defence Forum (Hindform) and was seen as an "insult" to Hindus and their faith.

The advertisement, produced by the National Film Development Corporation (FINAS), also showed the covert's Malay spouse's hesitance to eat the food at her in-law's house, fearing that it might not be halal. A Hindform spokesman pointed out that the advertisement went against the Malaysian Code of Advertisements which states that advertisements must showcase a Malaysian identity, and not typecast racial groups. Hindform has lodged police reports against Finas, and two television networks which had aired the clip.

A similar incident took place in August 2011 when local television station 8tv broadcast several public service announcements. All three announcements, which run for 30 seconds respectively, show a Chinese girl in different situations at a Ramadan bazaar. They depict her as being rude, greedy and dressing inappropriately in a public space. The announcements are then followed by public service messages that urge the viewers to act “appropriately”. The announcements were subsequently withdrawn and the television station offered a philosophical apology that itself attracted criticism.

A Christian state?

In August 2011 a local newspaper front-paged a story alleging a conspiracy to create a Christian state in Malaysia. It spoke of “the objectives of the Christian Movement” as being the takeover of Malaysia and the establishment of a Christian-based government. It also alleged underhanded methods were being used to bring this about, including the procuring of sexual favours. The newspaper subsequently admitted that the information published in the article was inaccurate and in error. However there was no expression of remorse.

This came hot on the heels of an earlier claim in the press in May 2011 that politicians from a federal opposition party had been working with local church leaders to bring about a Christian state. It relied for its source a Malay/Muslim aide to a local politician who had attended a private dinner with some local Christian leaders in the state of Penang. The source said that hands were raised and some form of oath was taken to bring about a Christian-based government in Malaysia. Police reports were made, and investigations were carried out. The story was denied by those who attended the dinner. NO public results of the investigation were released.

Islam overrides the Federal Constitution?

The latest concern which has recently arisen was yet another attempt to restate the position of Islam within the Federal Constitution. The immediate cause for this was the cancelling by the police of events organised in November 2011 in connection with Seksualiti Merdeka, an annual programme organised for the benefit of the lesbian, gay, bisexual and transgender (LGBT) community in Malaysia. All events were declared illegal and prohibited.

The government variously claimed that the organisers had not sought police permission to hold such events (which had already been going on for 3 years without incident), and that homosexuality was illegal. One government minister, in charge of Islamic affairs, was quoted as saying that homosexuality was unconstitutional, but this was subsequently denied. The minister clarified that homosexuality was illegal as it was contrary to the Penal Code, and cited several sections therein as support. However the minister in charge of law went on to agree that anything that was contrary to Islam was unconstitutional, since Islam was the religion of the Federation. There has been no request for the media to correct any reporting of this statement.

If this is the case, then gambling, the selling of pork in the market, the charging of interest, the making and selling of alcohol, and the practice of non-Muslim religions, are all unconstitutional. That would significantly alter the way of life in Malaysia.