

CONVERSION OUT OF ISLAM AND ITS LEGAL IMPLICATIONS UNDER THE LAWS OF MALAYSIA

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Abstract

The freedom to profess and practice religion is one of the basic rights in Malaysia that often catalysis legal issues and discussions. The provision in Article 11 of the Federal Constitution of Malaysia generally guarantees the said right to a person to practice his religion of choice; however, Muslims or practitioners of Islam are not as free as the non-Muslims in the matter of their conversion or reconversion to another religion. This article focuses on the actions or process for a Muslim's conversion to other religion and the legal ramifications of such actions. This discussion identifies several actions of apostasy, such as issuing a declaration of conversion *via* a Deed Poll, requesting a Muslim name to be changed to a non-Muslim's, and renouncing Islam altogether and reverting to a previously held religion (reconversion). There are legal implications for these said actions, such as fines and detention at *Aqidah Rehabilitation Centres*, which clearly shows that the freedom to practice religion or conversion to other religions as found in Article 11 of the Federal Constitution of Malaysia applies to non-Muslims only. In cases relating to determination of the status of Islam as a religion, the Shariah Court have been given exclusive jurisdiction to hear those cases, as mentioned in the amendment to Article 121(1A) of the Federal Constitution.

Keywords: *freedom, religion, apostasy, conversion, shariah court, federal constitution of malaysia.*

A. INTRODUCTION

Freedom of religion is enshrined in the Federal Constitution of Malaysia. Keeping this in mind, however, Islam is the official religion of Malaysia and must be respected as such; thus, there are consequently a number of legal restrictions upon non-Muslims that prohibit them from proselytizing to Muslims in Malaysia. Despite this, there are also Muslims in Malaysia that have attempted to convert to other religions such as Buddhism, Hinduism and Christianity. These Muslims use variety of means and ways to demonstrate their apostasy – by intention, verbal, and physical methods. However, no matter what action is been taken, it does not and will not result

in any legal consequences, i.e. that person will still be presumed to be a Muslim for as long as his actions of apostasy are not confirmed and declared by any Shariah Courts in Malaysia. The Shariah Court's jurisdiction has been recognized by Malaysian legal bodies in hearing cases of Muslim apostasies in Malaysia. Such cases, especially those determined after the amendment of Article 121(1A) of the Federal Constitution of Malaysia, clearly shows exclusive recognition given to the Shariah Courts in deciding a Muslims' religious status (if his status as a Muslim is doubted). Although state enactments only provide that the Shariah Courts' jurisdiction apply to the confirmation of one's status as a Muslim, cases of apostasy from Islam also fall under these courts' jurisdiction based on legal implication. There are a number of legal implications if an act of apostasy from Islam, regardless of whether it is confirm or not, is presented to the Shariah Courts. If the action is successfully proven in a Shariah Court, the respective state enactments provide for a variety of sentences for the offender in the form of detention and fines. In contrast, if an attempt of apostasy is not brought before the Shariah Court for confirmation, the would-be apostate will continue to be a Muslim, and is therefore legally bound to Islamic law. Furthermore, his identity as a Muslim in his identification card will also remain because before he can have that status removed at the National Registration Department, the NRD must first acquire confirmation to do so by the relevant authority – which, in this case, is the Shariah Court.

Based on the statement above, the question thus arises: does the freedom of religion guaranteed in Article 11 of the Federal Constitution of Malaysia applies to Muslims as it does to non-Muslims in Malaysia? If the said freedom is to be construed as also applicable to Muslims, what then is the need for Article 11(4) that grants jurisdiction to state governments to have enactments that control proselytization of other religions among Muslims in Malaysia? Moreover, what then would be the justification for the provisions in the various states' Shariah Criminal Enactments that have sentences to punish apostates from Islam? Last but not least, why should an act of apostasy from Islam be confirmed in a Shariah Court, since if it is indeed an act performed under the guarantee of freedom of religion, there should therefore be no need for such confirmation. These questions must be subjected to legal explanation in order to clarify the difference between freedom of religion for

Muslims and freedom of religion for non-Muslims in Malaysia. This article will attempt to provide the required explanation for the above mentioned issues by discussing the concept of freedom of religion, the practice of apostasy in Malaysia, the jurisdiction of the Shariah Courts in deciding cases of apostasy, and the legal implications of becoming an apostate of Islam.

B. RIGHT TO FREEDOM OF RELIGION IN MALAYSIA

Religions in Malaysia are generally categorized as follows: Islam and “not Islam” (other religions). The definition of the religion of Islam itself was given by the (then) Supreme Court Judge, Tun Salleh Abas in the case of *Che Omar Bin Che Soh* ((1988) 2 *Malayan Law Journal*, 56, where he defined it as a *syumul* (comprehensive) way of life that encompasses all aspects of life, be it private or public, legal, political, economic, social, cultural, moral or judicial. According to Section 2 of the Selangor Non-Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988, religions ‘other than Islam’ means Christianity, Hinduism, Buddhism, Sikhism, Judaism or any variation or form or branch of the aforementioned religions, and includes any belief, ideology, philosophy, group, or practical system;

1. Whereby one of the characteristics (of that religion) is the worship of a particular existence or spiritual power or magic, whether real or presumed to be real; or
2. That which admits its purpose or one of its objectives is the attainment of spiritual enlightenment or spiritual presence, i.e. a belief, philosophy, ideology or group or practical system that is not acknowledged in Islam as possessing Islamic elements.

Based on the above legal provision, it is understood that the rights to freedom of certain groups of people to take control of his religious affairs shall be put on trial in the event that the court agrees that the matter being addressed in the court falls into the definition of religion, as intended by the Constitution.

The right to freedom of religion is included as one of the categories of basic rights specifically provided for in Article 11 of the Federal Constitution. A more general view on freedom of religion can be seen by reading Article 3(1) with Articles 10, 8 and 12 of the Federal Constitution. Article 11 states that the right of an individual to profess, practice and propagate his religion is subject to general laws

concerning public order, safety, health and morals. Article 11(4) on the other hand states the authority of the state governments and Federal Territory to control and prevent the proliferation of religions other than Islam among Muslims. On the Federal level, the rights to freedom of religion are overseen and controlled by the National Harmony Act 2013, Peaceful Assembly Act 2012 (Act 736), Printing Presses and Publications Act 1984 (Amendment), Societies Act 1966, and the Penal Code. Furthermore, by virtue of the state Islamic Affairs Administrative Enactments, state governments are granted the power to control any sort of Muslim religious activity, specified under the Shariah Administrative Enactment and the Shariah Criminal Offences Enactment. For example Section 14(1) of the Shariah Criminal Enactment (Selangor) 1995, states that the state government *via* the Islamic Religious Council has the power to give credential to an individual to teach Islam among Muslims who are not his family members. If such person teaches Islam to members of the general public without the necessary credential from the Religious Council and is found guilty of doing so, he may be fined up to not more than three thousand *ringgit* or imprisoned for not more than two years or both. Section 97 of the Administration of Islamic Religious Affairs (State of Selangor) Enactment 2003 states that Friday prayers are also not allowed to be offered in any place which has not received permission in writing from the State Islamic Religious Council.

Article 3(1) of the Federal Constitution states that Islam is the religion of the Federation, but other religions may be practiced peacefully in any part of the Federation. This provision explains the acknowledgment of Islam as the official religion of the Federation while also considering the rights of people of other faiths to practice their respective religions in peace and harmony. This is further proven by the provision of Article 11(2) (3) of the Federal Constitution that gives freedom to all religious groups to maintain their respective religious affairs, institutions and property for the purpose of their religion and its welfare. They also cannot be forced to pay any form of taxation if the income from such tax, whether as a whole or in part, is specifically intended for a religion other than the one they profess. The guarantee to the right of freedom of religion is evidenced by the existence of a provision regarding emergency in Article 150(6A), which prevents the powers of

Parliament from being expanded, even during a state of emergency, to matters relating to religion.

Article 10 (1) concerns the rights to freedom of speech, freedom to assemble and freedom to form societies, all of which are subject to clauses (2), (3) and (4). Freedom of speech in the Constitution is limited to speech that is not accusatory, seditious, does not encourage criminal acts or propagate political instability, does not attack the dignity of the courts, or violate the rights of Parliament and the State Senate. In the context of freedom of religion, any kind of celebration, lecture or written material, including those of a religious nature, falls under the purview of the Home Ministry. The freedom of assembly provided in Article 10(1) (b) is subject to Peaceful Assembly Act 2012 (Act 736), which states that all processions, assemblies or meetings can only be held if they have obtained the necessary permit or license to do so from the police beforehand, and that the police have the authority to abstain from issuing the said permit or license if the procession, assembly or meeting in question is thought to pose a threat to the nation's security. Therefore, any form of assembly, even those that are religious in nature and formed with the intention of discussing religious matters, whether held in a public place or a mosque or a prayer room, will only be approved after the necessary permission has been obtained from the relevant authorities.

Moving on to the subject of societies, the Home Minister has the authority to declare a society as being illegal if he so thinks that the purpose of the society is to threaten the security of the Federation and cause public disorder as provided in Section 5 of the Societies Act 1966 (Revised 1987) (Act 335). For example, the formation of the *al-Arqam* community was deemed as illegal following the discovery of the teachings of that society contained in the book "Aurad Muhammadiiah Pegangan Darul Arqam," in a fatwa issued by the *Muzakarah* Fatwa Committee, Religious Affairs Council in 1986. By the year 1988, all of the state fatwa committees had issued fatwas condemning and outlawing this book. Later, in the same year, the Home Ministry also deemed the book to be illegal (Ahmad Fauzi Abdul Hamid, 2005).

Article 8 of the Federal Constitution concerns the right to equality before the law without discrimination due to differing religions and creeds. However, the

exception to this provision is found in clause (3) that states that this right does not apply to personal laws and any other provision that limits promotion or employment due to matters relating to religion. Therefore, based on the aforementioned provision, the actions of a Muslim who enters a polygamous marriage will not be tried for the offence of bigamy. Similarly, the hiring of all-Muslim employees in any state religious department cannot be regarded as an act of discrimination. The guarantee of no discrimination on the basis of religion, creed, or place of birth in the administration of any education foundation and of providing financial aid to any institution of learning, whether public or private, is stated in Article 12 of the Federal Constitution. However, taking into consideration the status of Islam as the religion of the Federation, Article 12(2) explains that the actions of the Federal government or a state government to form or maintain Islamic institutions or assist in Islamic teachings and provide financial aid is not presumed to be in opposition to the Article 12.

Articles 12 (3) and (4) of the Federal Constitution also stress on the age limit of a person to enable him to convert to another religion, which is eighteen years of age if he doesn't have the permission of his parents or guardian. This was decided by the Supreme Court Judge in the cases of *Teoh Eng Huat v. Kadi of Pasir Mas & Anor* ((1990) 2 *Malayan Law Journal*, 300) , *Hun Mun Meng v. Negeri Sembilan Islamic Religious Council* ((1982) 2 *Malayan Law Journal*, 676). In the case of religious conversion for someone below 18 years, such as in the case of a child who has embraced Islam, whenever there is a change regarding their Islamic status, permission from the parents or guardian is required to verify the conversion, such as in the case of *Nedunchelian a/l V. Uthiradam v. Nurshafiqah Binti Mah Singai Annal @ Valarmathy a/p Mah Singai Annal & Ors* ((2005) 2 *All Malayan Report*, 711). If they do not give their permission, it means that the conversion is unofficial. Furthermore, in cases where it's just the mother or the father who converts to Islam, their children who are of eighteen years of age or below will automatically follow the new religion of his or her mother or father i.e. Islam as in the case of *Viswalingam v. Viswalingam*, ((1988) 1 *Malayan Law Journal*, 300). However, in the recent case of *Shamala Sathiyaseelan v. Dr Jayaranesh C. Mogarajah & Anor* ((2004) 2 *Malayan Law Journal*, 648) it was decided that the child will not automatically be

converted to Islam even if his or her parents have done so. In this particular case, the defendant embraced Islam on 19 November 2002 and both the defendant's children who were aged 3 and 1 years old respectively were registered as Muslims by the defendant on 25 November 2002. In addition, in another recent case (*Indira Ghandi a/p Mutho lwn. Pengajar Jabatan Agama Islam Perak & Ors* [2013] 5 Malayan Law Journal, 555), it was decided that any child who has either one of his parents convert to another religion shall be raised according to the religion of his parents at the time he was born. In this case, it was decided that the children were still Hindus until they were capable of choosing their own religions.

C. ACTIONS / CONDUCT THAT AMOUNTS TO APOSTASY IN MALAYSIA

Based on the reported cases, there are numerous ways and means used by individuals to prove that they have renounced Islam, such as by making an admission of conversion from Islam accompanied by a Deed Poll or Statutory Declaration announcing the renunciation, followed by changing their name to a non-Muslim name at the National Registration Department (NRD). In cases of reconversion, an individual may prove his renunciation of Islam by practicing the teachings of his former religion or indulging in a non-Muslim lifestyle; he may also make a confession that he had never believed or practiced the teachings of Islam and so on. In short, such individuals will resort to speech, actions or written confessions – anything to show their intention to renounce Islam. These actions of apostasy may also occur as a group if an individual participates and practices teachings that have been legally ruled via fatwa as opposed to Islam; for example, the teachings of *Qadiyani*, *Ayah Pin*, *Rasul Melayu*, and many others that mislead people away from *aqidah* Islam. Apostasy has also been reported to occur among youth occultists who worship the devil and join certain groups such as *Jangan Ikut Tuhan* (JIT) (Zainur Rijal Abu Bakar, 2012).

The act of declaring ones' renunciation of Islam is akin to the act of a new convert to Islam who has yet to change his or her original name to a Muslim one. They have only declared themselves to have renounced Islam or become apostates. The action of maintaining a non-Muslim name (in the case of converts to Islam) may be related to issues such as inheritance or reconversion. Apostates have also been known to acquire the services of a lawyer to confirm their apostasy, up to and

including announcing it in local newspapers, such as what took place in the case of *Islamic Religious Council v. Hun Mun Meng* ((1922) 2 *Malayan Law Journal*, 676). In this case, the defendant had made a statement at a press conference regarding his intention to renounce Islam and reconvert to his original religion, Buddhism. Another case example is that of *Kamariah Ali v. the Government of Kelantan* ([2004] 3 *Current Law Journal*, 409), where the apostates signed two letters of declaration dated 24 August 1998 and 28 August 1998, stating that they had willingly and voluntarily renounced Islam. Other cases in which new brothers and sisters in Islam declared themselves to be apostates *via* an application to renounce Islam through a Deed Poll in High Court are, to name a few, *Soon Singh v. Malaysia Islamic Welfare Organisation (PERKIM) Kedah and others* ((1994) 1 *Malayan Law Journal*, 670), *Md Hakim Lee v. Federal Territory Islamic Religious Council* ((1998) 1 *Malayan Law Journal*, 681) and *Lim Chan Seng v. Director of Penang Islamic Religious Department & others* ((1996) 3 *Current Law Journal*, 231).

Another step taken by apostates to renounce Islam is by requesting a name-change (from Malay to non-Malay) at the National Registration Department; such examples are from ‘Johan’ to ‘John’, ‘Aliza’ to ‘Elizabeth’, and so on. One such actual case was that of *Lina Joy* ([2007] 3 *Current Law Journal*, 557) who had requested that her name be changed from Azlina Jailani to Lina Joy. However, her attempt at removing the status of her religion as “Islam” on her identity card was unsuccessful because her application failed to produce a declaration from the Shariah Court regarding her renouncement of Islam. In cases of name-changes such as this one, it must be noted that the actual role of the National Registration Department is to approve of the process of adding to the name already printed on the identity card of the applicant with an ‘alias’ (for example: Aini @ Ann), and is not in any way involved in the process of changing the status of his religion. However, individuals who have wished to completely rid themselves of their original Muslim identities have produced summons in civil courts supported by a letter from a Commissioner of Oaths or a Deed Poll from a church or other religious groups. The National Registration Department will then approve of the now-complete application based on a court order (Zuliza Mohd Kusrin, 1999). Yet another argument used by would-be apostates who have attempted to validate their apostasy is the assumption that they

too possess the right to freedom of religion and to practice as they wish, as is the case for religions other than Islam. For example, in the case of *Md. Hakim Lee v. Federal Territory Islamic Religious Council, Kuala Lumpur* ((1998) 1 *Malayan Law Journal*, 681), the respondent claimed that his action in renouncing Islam and reconvertng to his original religion is parallel with the concept of freedom of religion as guaranteed in Article 11 of the Federal Constitution, and that no one, including the Federal Territory Islamic Council, had the power to exercise that right. However, the Kuala Lumpur High Court decided that only the Syariah Court possessed the jurisdiction to determine whether a person is an apostate or otherwise.

There have also been cases of Muslims cohabiting with non-Muslims to the point where their relationship has produced offspring; these individuals also practice the teachings of religions other than Islam that veer away from *aqidah*. One such case example of a case is that of *Priyathaseney & Ors v. Religious Enforcement Officer of Perak Islamic Religious Affairs Department & Ors* ([2003] 2 *Current Law Journal*, 221). The first plaintiff in this case was a Muslim who had renounced Islam and was at the time a practicing Hindu. She had married the second plaintiff, a man of Indian ethnicity and a Hindu himself. As a result of their marriage, they produced two children. The first plaintiff was arrested and charged with a number of offences under the Perak Islamic Law Administration Enactment 1992, convicted and fined.

In another case, *Wong Chun Chiak @ Kenny Abdullah v. Federal Territory Religious Affairs Council*, the Syariah High Court set aside the plaintiff's application to renounce Islam. In this case, Kenny, a new brother in Islam, filed an application to renounce Islam so that he could marry a non-Muslim and reconvert to his original faith, Catholicism (31 August 2006). Similarly, in the case of *Majlis Agama Islam Pulau Pinang v. Siti Fatimah Tan Bt Abdullah* (*Jurnal Hukum* 27, Part II, 1430, 192), the plaintiff confessed that she had never believed in Islam and that she had been praying according to Buddhist rites and rituals as she had before her conversion, even though she had converted to Islam and even married a Muslim man. *Pertra Pek Chong Le @ Nur Shafiqah v. Director of Jabatan Agama Islam Sarawak & Ors* [2014] 3 Shl. R, 32, the plaintiff has converted to the Islamic faith in June 2003 when she married a Muslim man, and the registration was done by the Registration Department of Sabah. Her identity card issued by the National Registration

Department contained her new Muslim's name and religion. The plaintiff then claimed to have been abandoned by her Muslim husband and she had since, not only returned to her Christian faith but also married a Nigerian man in Singapore and had a daughter born out of wedlock with him. The plaintiff had applied to change her Muslim name and religion in her identity card but was rejected by the third defendant.

The act of 'informally' renouncing Islam, i.e. without any form of documentation to validate the status of the apostate or a declaration in a Shariah Court, has often caused a 'tug-of-war' between the deceased informal apostate's non-Muslim kin and the State Islamic Religious Council. For example, in the case of *Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan* (No 2) [1991] 3 MLJ 487, the Muslim at the time of his death, and had a copy of his certified application to embrace the Islamic faith which he had made on 24 December 1973. The conversion-to-Islam ceremony was said to have been conducted by one Haji Adam KC Chao, but no evidence was forwarded regarding the date and place of the ceremony, nor was there any proof that Haji Adam KC Chao was an 'officer' as mentioned in the application form. Despite it being mentioned that the ceremony was held on 24 December 1973, the report on the ceremony was only received two months later by the Islamic Religious Council, which was on 2 February 1974. Conversely, the plaintiff had evidence to show that the deceased had continued to live with her as a practicing Buddhist right up to the day he died. The main question that arose in this case was:

1. Whether or not the deceased, a Buddhist, had wholly and unquestionably converted to Islam in the year 1973;
2. Whether or not the deceased was a practicing Muslim at the time of his death; and
3. If the deceased had wholly converted to Islam, whether or not he had renounced it and turned apostate before he died.

In this case, the court had allowed the plaintiff's application on the basis of the lack of evidence to show the deceased's conversion to Islam was made according to the requirements of Islamic law. Furthermore, the actions of the deceased during his life clearly show that his way of life was not that of one who could be reasonably expected to be a Muslim. In situations such as this where there is still a possibility that the deceased had converted to Islam for all intents and purposes during his

lifetime, the onus is on the Islamic Religious Council to present evidence proving that, despite that the deceased did not live his life in the way of a Muslim and that he was an apostate, he had repented (*taubat*) for his sins before his death. In this case, there was no such evidence to present, thus causing the court to decide that a declaration should have been made stating that the deceased was a Buddhist, both during his lifetime and at the time of his death.

In the case of *Nyonya Tahir or Ex-Parte Application of Islamic Religious Council of the State of Negeri Sembilan and 2 others* (2 *Jurnal Hukum* xxi/ii, 2006) Whatever the efforts made to renounce Islam, only the Shariah Court has the jurisdiction to decide and to declare whether a person has become an apostate or otherwise, as determined in the previous cases. It is also clear that, for Muslims, the act of renouncing Islam is not an absolute right to choose or to change religions, but is on the contrary regarded as a sin and a punishable offence (Zainur Rijal Abu Bakar, 2012). Therefore, the deed of changing religions cannot be performed directly, unlike a non-Muslim who wishes to embrace Islam, where the latter may do so openly and without legal constraints; nor will he punished by the Shariah Court for doing so, unless he is declared to be an apostate by the Shariah Court. Furthermore, if a person has the intention of renouncing Islam, they must first undergo detention at an *Aqidah* Rehabilitation Centre, and they will be fined if they still intend to renounce Islam post-rehabilitation. Section 66 of the Shariah Criminal Offences (State of Malacca) Enactment 1991 regarding Attempted Apostasy:

1. In the event that a Muslim purposely admits to his intention to renounce Islam or declare himself a non-Muslim, either with actions or words or by any means necessary, the Court must, if it is satisfied that the individual has committed an act that may be interpreted as an attempt to change his *ikhtikad* and belief in Islam through his own confession or conduct, order that individual to be detained at an Islamic Guidance Centre for a period of not more than six months for the purpose of education, and that person will be requested to repent according to Islamic requirements.
2. If a person who has been ordered to be detained under subsection (1) - (a) repent immediately, the Court shall, after certifying his repentance, release him from detention; or (b) if that person repents at any time during his detention, the

Guardian Officer must report the matter to the Court, and the Court shall summon that person, whereby after verifying his repentance, shall give an order for his release.

3. The Guardian Officer must provide a weekly progress report relating to the person in detention to the Court.
4. The Islamic Rehabilitation Centre must be gazetted as a Detention Centre in the Gazette.

It is thus clear that the special position of Islam as the official religion of the Federation indirectly imposes certain restrictions on individuals who intend to renounce Islam, in order to preserve the sanctity of the religion. This therefore clarifies the existence of a relation between the special status of Islam and the conditional right to apostasy.

In the case of *Kamariah Ali v. the State of Kelantan* [2002] 3 *Current Law Journal*, 766), Abdul Hamid Mohamad HMR stated:

“...if the meaning of Article 11 of the Federal Constitution is to allow one the freedom to enter and leave a religion with impunity and no law requires him to follow certain rules on whether to embrace or renounce a religion. Effectively not only the laws prescribe the manner for a person to embrace Islam and renounce Islam is illegal, but the law that makes it an offense for a Muslim to commit adultery, close proximity, not paying tithes and act illegal, too. Therefore, I am of the view that, any specific matter relating to the religion of Islam, Article 11 of the Federal Constitution cannot be too widely interpreted. To the extent, it will nullify all the laws requiring a Muslim to perform a certain obligation in Islam or prohibit something that is against by Islam or stipulating any event relating to Islam.”

D. LEGAL IMPLICATIONS ON RENOUNCING ISLAM

There are two implications and effects on renouncing Islam - its effects on the person renouncing Islam and the jurisdiction of the rightful court to hear the cases.

1. Legal Implications on The Applicants

In the issue of application of renouncing Islam the submission is supposed to be submitted to the Shariah Court, even though there have been cases of applications submitted to the Civil Court. Where upon review, the Civil Court, following the procedures will accord the Shariah Court the jurisdiction to hear

those cases. The act of renouncing Islam, either through official application to the Shariah Court, or unofficially i.e. without going through the Shariah Court, both of which have important legal implications. For a case of making the application to the Shariah High Court, the application will be heard and when the court is satisfied, the applicant will be declared as renouncing Islam. The effect is that, the applicant is liable to a sentence, subject to the provisions of the States' Shariah Criminal Offences Enactment. In Kelantan and Terengganu, the punishment is according to the Hudud law. However, the *Hudud* law sentence is not enforceable due to constraints of the Shariah Court's jurisdiction, which is inferior to the punishment of apostasy offense. Existing penalties for apostasy offences are in the form of fines and remands. The existence of legal provisions on renouncing Islam directly proves that the act is against the laws in Malaysia. It is necessary to distinguish the cases of an invalid conversion into Islam, which the Shariah Courts also have jurisdiction to decide, as in the case of *Fatimah Tan or Islamic Religious Council of the State of Penang v. Siti Fatimah Tan Bt Abdullah*, (*Jurnal Hukum* 27, Part II, 1430, 192). In the case of *Fatimah Tan*, the court held that the conversion to Islam of *Fatimah Tan* was invalid even though her conversion was registered. This was because *Fatimah* had never admitted or believed in Islam as her new religion and her Islamic conversion registration procedure was merely to enable her to marry a Muslim man.

According to the State Islamic Law Administration Enactment in Malaysia, a person who converts to Islam is subject to the Islamic law, known as new converts, the Personal/Family law of the Civil Laws switches to Islamic Laws. Nevertheless, this does not mean annulments of previous marriages. It only qualifies one to be married (to a Muslim), even though the civil marriage is still valid. This is to prevent him/her from being prosecuted for bigamy offences, because civil marriages and any customary marriage is subject to sections 4 and 8 of the Civil Law / Law Reform (Marriage and Divorce) Act 1976 (*Zuliza Mohd Kusrin*, 2006).

The next effect is the legality on the action of renouncing Islam, which is misconstrued as providing a legal way out of Islam. However, an observation made on the provision clearly shows that it only briefly outlines procedures for

those who intend to leave Islam, and who is adamant to leave Islam, to follow these procedures as an administrative control to certify cases of apostasy or renouncing Islam in Negeri Sembilan. The provision regarding the declaration of renouncing Islam in Negeri Sembilan clearly gives rooms to the court to ascertain that the applicant had not wanted to repent before the declaration of his religious status is announced. The grace period given by the court is to give ample time to the applicant to do profound thinking about the matter (Zulkifli Hasan and Norfadhilah Mohd Ali, 2007). Although such provision is not explicitly stated in other States' Islamic Law Administration Enactment, in terms of administration, all the states will follow the same course of actions – advice, remand and fines in dealing with cases of apostasy, as stated in Section 119 of the Religious Administration of Negeri Sembilan.

- a. A Muslim can not renounce Islam or be deemed to have left Islam as his religion unless and until he has obtained a declaration for that purpose from the Syariah High Court.
- b. An ex parte application for a declaration under subsection (1) shall submit it to the Syariah High Court judge, in an open court by the person who wishes to leave Islam as his religion.
- c. An application under subsection (2) shall state the grounds upon which the applicant wishes to leave Islam as a religion and must be supported by an affidavit stating all the facts supporting the grounds of the application.
- d. Upon receipt of an application under subsection (2), the Syariah High Court judge who hears the application shall —
 - 1) advise the person to repent, and if the Judge is satisfied that person has repented according to the Syariah law, shall make records of that person's repentant; or
 - 2) if the person refuses to repent, before making any order against the person, adjourn the hearing of the application for a period of 90 days and at the same time require the applicant to undergo counseling and guidance sessions for the purpose of advising the applicant to reconsider Islam as his religion.

- e. If at any time, the person required to undergo counseling and guidance sessions have repented, the officer in charge shall immediately prepare a report and bring the person before the Syariah High Court.
- f. If the Judge is satisfied that the person brought before him under subsection (5) has repented according to the Syariah law, the Judge shall record the repentant.
- g. If on the expiration of 90 days referred to in paragraph (4)(b), that person still refuses to repent, then the officer responsible for it shall immediately prepare a report and bring the person before the Syariah High Court.
- h. If, after receipt of the report referred to in subsection (7), the Court considers that there is still hope for him to repent, the Court may adjourn the hearing of the application under subsection (2) and at the same time order the person to undergo a counseling session and further guidance for a period not exceeding one year.
- i. If after an order under subsection (8) is made, the person repents, subsection (5) and (6) applies.
- j. If after expiration of the period ordered under subsection (8) and the person still refuses to repent, the officer responsible for it shall prepare a report and bring the person before the Syariah High Court and the Court may decide to declare that person has relinquish his faith of Islam into apostasy.

In the case of Lina Joy, the manner of a person in renouncing a religion must follow a prescribed approach, the laws and practices of the religion. Meanwhile, an appellant is not prevented from entering into a marriage. However, the freedom of religion under Article 11 of the Federal Constitution requires an appellant to comply with the practices or the Islamic laws particularly on a conversion out of a religion. Only when the provisions are in compliances with the Islamic laws and the Islamic religious authorities have certified that an applicant has left the religion of Islam, then the appellant may profess Christianity. For someone who has left Islam, from the administration aspect, he is still subject to the Islamic laws so long as the status as a Muslim is still on his identity card. Thus so, they cannot solemnize and register a civil marriage as civil laws do not apply to Muslims. Similarly with property inheritance, they are

precluded from bequeathing or giving out inheritance to non-Muslims because a non-Muslim cannot inherit from a Muslim. That was a point that Lina Joy had championed in the case of *Lina Joy v. Federal Territory Islamic Religious Council & Others* ([2007] 3*Current Law Journal*, 557), where the appellant who was originally a Muslim, left Islam and converted to Christianity. On January 8, 1997, the appellant applied to the National Registration Department (NRD) to change the name Azlina Bt. Jailani as stated in her identity card (IC) to Lina Lelani on the ground, as shown in her statutory declaration that she had converted to Christianity and wished to marry a Christian man. The NRD rejected the appellant's application. On March 15, 1999, the appellant once again applied to change her name on the same ground, but this time to Lina Joy. However, for this second application, on the advice of an NRD officer, the appellant made an additional statutory declaration in which the reason for the name change was deliberate and not because due to change of religion. The appellant's application was approved by the NRD, and in November 1999 the appellant was given her new IC (her formal application for a new IC was made on October 25, 1999). However, the new IC still bears the word "Islam" as her religious status.

Based on the case of Lina Joy, the Shariah Court's decision is vital to support any application for the removal of the status Islam from a person's IC. Even though, a person whether purposely by verbal, action or confession clearly indicates his conversion out of Islam, confirmation from the Shariah Court is required. The NRD has no authority to treat cases of removing the status of Islam from any person's IC unless it has received a verified confirmation from the Shariah Court of that person's apostasy. The NRD can only entertain applications to change the names on the identity card from the name of a Muslim to a non-Muslim, such as Azlina Jailani to Lina Joy. This was proved once again when the appellant (*Lina Joy v. Federal Territory Islamic Religious Council & Others* (Jurnal Hukum 24/1. 1428H. 61)) submitted an application to remove the word "Islam" from the religious status. The judge who heard the case once again stressed that the application would only be considered if it was verified by a Shariah Court order stating that appellant was indeed an apostate, and on that

ground had directed that an order or such certificate to be submitted to him. His directive was not complied with and consequently the Director General of the NRD rejected the appellant's application based on provision r. 14 Rules 1990. These rules require the appellant to submit documentary evidence supporting the accuracy of her contention that she was no longer a Muslim. The Court of Appeal stated that the question of whether or not a person was no longer a Muslim was a question related to the Islamic laws. Therefore, as NRD was not qualified to decide on the matter, and to avoid risk of wrongly deleting the word "Islam", it was only fair and reasonable for NRD to adopt a policy that required a confirmation from the religious authorities before going ahead with the decision to delete the word "Islam" from a Muslim's identity card.

In the aspect of death when it occurs, the issue raised was the tussle over the remains of the deceased whether to be buried according to Muslim rites, or otherwise. The matter that needs to be resolved is the determination of the religious status of the deceased before the commencement of the funeral rites. Which courts has the jurisdiction? In the case of *Kaliammal Sinnasamy v. Director of the Federal Territory Islamic Religious Department* ([2006] 1 *Current Law Journal*, 753), there was a tussle over Moorthy's remains between the Federal Territory Islamic Religious Council and the family of the deceased. The deceased's wife had filed an application in the Civil Court to review the decision of the Shariah Court that the deceased was a Muslim on his passing. In this case, the deceased was a convert registered with JAWI, and his identity card had shown Islam as his religious status. However, after his death, his wife, through her application to the Civil High Court of Kuala Lumpur, demanded for a Hindu customary burial on the ground that the deceased was a Hindu and had practiced Hindu religious customs and rites at all time. High Court Judge in this case decided as follows:

"I'm also of the opinion that even if the applicant through her affidavit attempted to show that the deceased took part in Hindu religious ceremonies. Or did things contrary to Islam, or did not perform things that should be done by a Muslim during the stated period of his conversion to Islam, it is once again, for

the Syariah Court to determine such matters because it remains under its jurisdiction”.

The case of Nyonya Tahir or *Ex-Parte Application of Islamic Religious Council of the State of Negeri Sembilan and 2 others*, (2 *Jurnal Hukum* xxi/ii, 2006) is also similar to the Moorthy’s case in the sense that a Muslim religious status was on her identity card. However, this was an easy case to solve because the subpoenaed victim's family had attended the Syariah Court hearing and to testify in the Syariah Court. The Syariah Court decided based on strong evidences that the deceased was a Buddhist at her death, although the status of her religion of Islam was on her identity card. The Syariah High Court had decided to hand over Nyonya Tahir’s remains to her beneficiaries for burial according to Buddhist rites due to the decision that she was not a Muslim on her passing. This was the decision made by Judge Mohd Shukor Sabudin after hearing an ex parte application of Islamic declaration submitted by the Negeri Sembilan Islamic Religious Council (MAINS), Negeri Sembilan Department of Islamic Affairs (JHEAINS) and JHEAINS’s Director. This was also decided based on the affidavit submitted by Nyonya’s youngest son, Chiang Ah Fatt together with a joint testimony with his sister, Chiang Kwang Ying, 43, in court.

The problem arised when a family refused to attend a Syariah Court hearing to give evidence on the ground that they were non-Muslims, as in the case of Rayappan. However, section 83 of the Syariah Court Evidence (Selangor) Enactment 2003 clearly states that "A non-Muslim is competent to vouch (*bayyinah*) for Muslims if the evidence is admissible according to the Syariah law". Therefore, it is a non-issue for a non-Muslim not to testify in a Syariah Court.

In determining the religious status of the deceased, there is a Civil Court intervention in the dispute of determining the status of religion of a person. For example, in the case of Moorthy ([2006] 1 *Current Law Journal* 753) and Rayappan, the family of the deceased who were not satisfied with the decision of the Syariah Court had made a claim in a Civil Court to obtain a declaration that the deceased was not a Muslim at his death. This at once raised a redundancy in the jurisdiction i.e. in determining which court’s jurisdiction to hear such

dispute that involves religion. In the case of Rayyapan, uproar broke out in the mortuary of Kuala Lumpur Hospital (HKL) over disagreement between the Selangor Islamic Religious Council (MAIS) and Rayappan's family where Rayappan had allegedly converted to Islam but it was claimed that he had returned to his original religion of Christianity in 1999 (Florance A. Samy, 2012). The dispute involved the issue of whether Rayappan's burial ceremony was in accordance to the Islamic or Christian rites after he died on November 29 2006, due to diabetes and breathing difficulties. However, on Dec 7 2006, MAIS decided to withdraw the claim on Rayappan's remains due to lack of new evidence that could support the claims and the Shariah High Court had granted MAIS's application to withdraw their claims. Following that, Rayappan's remain was cremated at a cremation centre and was given a proper Christian burial (Florance A. Samy, 2012).

Finally, in the case of Amir Gan (*Ex Parte Application of The Islamic Religious Council of Negeri Sembilan* (Civil case no. 05100- 099-0037-2008)) , the Shariah High Court declared that a man, Gan Eng Gor or Amir Gan, 74 years was a Muslim. The Sharie Judge, Mohd. Nadzri Abdul Rahman, had made the order directing the parties in charge of Amir's remains to hand the remains over to the applicant for an immediate proper burial according to Islam and the Shariah law. The Court issued a directive allowing an ex-parte application by the Negeri Sembilan Islamic Religious Council (MAINS), Negeri Sembilan Islamic Religious Department (JAINS), the Registrar of Converts and one of Amir's sons, Abdul Rahman Gan, 47 years. Mohd Nadzri made the decision after hearing an ex parte application filed for an order that Amir was a Muslim. The affidavit stated that Amir, though incapacitated on his death bed, was sane and sober and had nodded his head when asked if he wanted to convert to Islam.

2. Legal Implications Against Jurisdiction Of The Courts

In the context of religious freedom in Malaysia, the jurisdictional conflict between the Shariah and Civil Courts is mainly in deciding the rightful court to hear cases of apostasy. Question that is often in dispute is whether the case of apostasy falls under jurisdiction of the Shariah Court. What is the legal justification of allowing the Court to hear such cases? To clarify those questions,

several High Court decisions need to be given due consideration and attention. In the case of *Ng Wan Chan v. Federal Territory Islamic Religious Council* (No. 2) [1991] 3 *Malayan Law Journal*, 487) and *Lim Chan Seng v. Director of the Islamic Religious Department* ([1996] 3 *Current Law Journal*, 231), it was clearly decided that without clear jurisdiction granted to the Shariah Court on such matter, the Civil Court shall retain its jurisdiction over the matter. Then the case of *Md. Hakim Lee v. the Religious Council* ([1998] *Current Law Journal*, 681), the question before him was the jurisdiction of the Shariah Court under Article 121 (1A) of the Constitution. He acknowledged that no specific provision in Kedah Enactment relating to jurisdiction of the Shariah Court in addressing the issue of apostasy. However, taking into consideration of item 1, List 2 of the Ninth Schedule of the Federal Constitution, to be read together with the case of *Daliph Kaur* ([1991] 3 *Current Law Journal*, 2768), which referred to apostasy issue as under the jurisdiction of the Shariah Court. It also had to take into consideration "Craises on Statute Law" and the case of *Albon v. Pyke* in which Tindal J. which also used the word "necessary implication" – hence, the Federal Court concluded that it was in line with the logic for the Syariah Court, given clear indication of its jurisdiction to adjudicate matters relating to the conversion into Islam, by implications necessary, had the jurisdiction to adjudicate matter associated with a Muslim renouncing the religion of Islam, thus setting aside the Civil Courts jurisdiction over such matters. The verdict of this case set the precedence over the case of *Tongiah Jumali & Ors v. The State Government of Johor & Ors* [2003] 2 *Current Law Journal*, 280, where the Syariah Court has the jurisdiction to hear an application concerning conversion out of Islam whenever the relevant state enactment contains provisions regarding conversion into Islam.

In addition, Act 505 contains provisions on matters relating to conversion to Islam that fall under the jurisdiction of the Federal Territory Syariah Court (ss. 87 and 91 to be read together with s. 46(2)(b) of the Act). Thus, by implication, the matters of apostasy or renouncing Islam also fall within the jurisdiction of the Shariah Court.

In the case of *Dalip Kaur vs. District Police Officer, the District Police of Bukit Mertajam & Anor* ([1991] 3 Current Law Journal, 2768); that the answer to the question of whether a person is a Muslim or a convert out of Islam before he died is included in the spectrum of the Shariah laws that requires serious considerations and appropriate interpretation of the laws. Finally, in the case of *Kamariah Ali* ([2004] 3 Current Law Journal, 409); Ahmad Fairuz, Federal Court Judge, which has taken the purposive approach in determining the real time of whether the appellants were Muslims while committing an offense under the Kelantan Council of Religion and Malay Custom Enactment 1966. In this case, although the appellants had declared their apostasy in 1988, they were still subject to the Islamic law and were compelled, in year 2000, for those cases to be brought to the Shariah Court because the prosecution was in respect of an offense that was committed while the appellants were still Muslims. By ignoring this purposive approach, the Muslims facing charges in the Shariah Court could, with impunity, raise the defense of no longer professing Islamic faith.

E. EXCLUSIVE JURISDICTION OF THE SYARIAH COURT IN CASES OF CONVERSION OUT OF ISLAM

There had been discussions regarding issues of jurisdictional conflicts between the Shariah court and the civil court and finally Article 121 (1A) amended to resolve these issues. A new clause (1A) amended by Act 704 of 1988, effective January 10, 1988, has revoked the jurisdiction of the High Court in respect of matters falling within jurisdiction of the Shariah Court. This article provides from January 10, 1988 that, the High Court in Malaya and Borneo shall have no jurisdiction in respect of any matter that falls within the jurisdiction of the Shariah Court as defined in the Ninth Schedule. List II – the State List of the Constitution states that it has jurisdiction in respect of the Islamic Law and Personal status and the Family Law of person professing the religion of Islam (Ahmad Ibrahim, 2 Malayan Law Journal, xvii). In the case of *Md. Hakim Lee v. Federal Territory Islamic Religious Council, Kuala Lumpur* ([1997] 4 Current Law Journal, 419), pertaining to the same issue, Abdul Kadir Sulaiman J (at that time) had decided:

“This matter of the plaintiff which involves the determination of his status upon his purported renunciation of the Islamic faith by the deed poll and the statutory

declaration is outside the jurisdiction of this court to determine, on account of the ouster of the jurisdiction by art 121 (1A) of the Federal Constitution. By virtue of para 1 in List 11 of the Ninth Schedule to the Federal Constitution, the jurisdiction lies with the syariah court on its wider jurisdiction over a person professing the religion of Islam even if no express provisions are provided in the Administration of Islam Law (Federal Territories) Act 1993 ("the Act") because under art 74 of the Constitution, it is within the competency of the legislative to legislate on the matter. It's absent from the express provision in Act would not confirm the jurisdiction in the civil court. To my mind, the language of art 121(1A) used by the legislative is clear and without any ambiguity. The civil courts, in this case, the High Court, has no jurisdiction in respect of any matter that is within the jurisdiction of the syariah court".

Based on the results of previous cases clearly show that the Shariah Court has exclusive jurisdiction to hear cases related to Islamic affairs as provided in List II of the Ninth Schedule of the Federal Constitution. The Judge in the case of *Zubeydah bt Shaikh Mohd v. Kalaichelvan a/l Alagapan and others* ([2003] 2 Malayan Law Journal 471) had concluded that:

(i) Civil Court has no jurisdiction to determine whether a

Muslim has renounced his faith in Islam or into apostasy. It is under the jurisdiction of the Syariah Court. This is so because the question of whether a Muslim has renounced his faith in Islam or into apostasy is a serious issue that only the qualified experts in the field of Islamic law could determine.

(ii) A person who declares that he has converted out of Islam should seek confirmation from the Syariah Court. A declaration or profession of apostasy through a letter is not sufficient to confirm of his apostasy or otherwise.

Court of Appeal in the case of *Lina Joy v. Federal Territory Islamic Religious Council & Ors* ([2005] 4 Current Law Journal, 666), among others had decided that anyone who wanted to leave Islam is required to do so through the Islamic religious authorities. Abdul Aziz Mohamed JCA had stated:

"One might be tempted to think that the fact a person affirms in a statutory declaration that he is no longer a Muslim, or the fact the he has been participating in a Christian form of worship. Alternatively, the fact that he is been baptized is

sufficient according to Islamic Law to warrant others to consider him as having been apostatized and as being no longer a Muslim. However, is that so in the Islamic Law? It may be that according to the Islamic Law that no Muslim may be treated as having apostatized, no matter what he may have done or fail to do, unless and until he has been declared an apostate by some proper authority.”

The power is within the jurisdiction of the Shariah Court. Based on the verdicts of those cases clearly show that a person who renounces the faith of Islam should be first be heard in the Syariah Court to ascertain of his or her profession of apostasy. Thus, the forum or qualified and skilled body to decide is the Syariah Court. That should be the course of action in the matter of determination of the religion of the deceased as is similar to the case of Ng Wan Chan, Daliph Kaur and Nyonya Tahir. In the case of *Daliph Kaur v. District Police Officer, the District Police of Bukit Mertajam & Anor* (1992] 1 *Malayan Law Journal*, 7), stated as follows:

“It is apparent from the observation made by the learned judicial commissioner that the determination of the question whether a person was a Muslim or had renounced the faith of Islam before death, transgressed into the realm of Syariah Law which needs serious considerations and proper interpretation of such law. Without proper authority to support his contention, it is not sufficient to say whether there is not a condition precedent for a person to become a Muslim; or that if the deceased were proved at a Sikh temple he was definitely an apostate.”

F. CONCLUSION

Freedom of Religion in Article 11 of the Federal Constitution is not subject to Muslims as a Muslim who converts out of Islam is subject to legal actions. However, this provision is incapable in preventing a conversion of a Muslim out of Islam as evidenced by many who have professed their intention to leave Islam through declarations of apostasy, change of names through the National Registration Department, practicing non-Muslim religions such as performing prayers at temples, married to a Hindu at a Hindu temple and many more. However, these actions do not automatically confirm their profession out of Islam, for Article 121 (1A) of the Shariah Court has exclusive jurisdiction to determine whether a person remains a Muslim or an apostate. The punishments, in the form of reminders, warnings, years of solitary at rehabilitation centers and fines, clearly show that apostasy is an offense,

albeit the fundamental right defined in Article 11 of the Federal Constitution. There are several legal implications toward the renouncement of Islam either made officially or unofficially. The act of unofficial or informal renouncement, i.e. without recording it with the Islamic Religious Council and the Shariah Court, raises issues of civil marriage registrations, determination of religious status of the deceased, inheritance of estates and so on. The authorities need to monitor and enforce the laws and legislations so that all actions involving conversion out of Islam have updated records of the religious status of parties involved. This is to facilitate administration and to avoid disputes between Muslims and non-Muslims in Malaysia.

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