

THE IMPACT OF ART. 121 (1A) 1988 ON ART. 11 - THE FREEDOM OF RELIGION IN THE FEDERAL CONSTITUTION OF MALAYSIA: THE APOSTASY CASE OF LINA JOY

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Abstract

Methodologically, this paper revolves around a qualitative discussion on the apostasy case involving Lina Joy and its impact in Malaysian law and society. After 1988, the judiciary was made subservient to Parliament and has no jurisdiction in respect of any matter within the purview of the Syariah Courts. An analysis on the details pertaining to the continuing dilemma over whether the civil or the syariah was the correct avenue to decide apostasy cases will be specifically highlighted. People wanting to renounce Islam argue that they should not be subject to the Syariah courts that only recognize Muslims, given that they no longer profess the faith. With the state-led Islamisation under the Mahathir administration previously (1981-2003), state Islamic laws were being promulgated and streamlined among the thirteen states in Malaysia to include specific state laws criminalizing apostasy and several others. Apostates were required under several state Islamic laws to go through a period of “rehabilitation”. Hence, a contestation of jurisdiction began under Art. 121(1A) in 1988 of the Malaysian Federal Constitution. A curious situation had arisen at this time where freedom of religion may be denied or side-stepped as a constitutionally protected freedom, once a case is perceived to have come under the purview of the Syariah courts. The civil courts (High Court and Federal Court) had upheld the principle that in a case of conversion out of Islam, the jurisdiction belongs to the state Syariah court. Only the state Syariah court is empowered to deliberate and declare on apostasy. Until such a time the application for conversion out of Islam has been made, heard and disposed of in the Syariah court, the plaintiff is to all intent and purposes, a Muslim. The High Court decided that it has no jurisdiction over such a Muslim who is seeking a declaration as to a change in status. The affected Muslims in these cases claim that they are entitled to renounce Islam under Art. 11 (Freedom of Religion). Connectively, this paper aims to scrutinize and understand further the selected apostasy case involving Lina Joy, which will enable us to use this case point as an important term of reference in highlighting the issue on the freedom of religion as guaranteed under Art. 11 and the cognisance of it with Art.121 (1A). In this said case of Lina Joy, the court ruled that the freedom of religion in Art. 11 (1) (over Muslims), does not give the plaintiff the freedom of choice to practice the religion of her choice. Conclusively, this paper affirms the fact that the so-called right is subject to Art. 11 (4) and Art.11 (5), as the issue of a person’s religion is directly connected to the rights and obligations of that person as determined under state Islamic law.

Introduction

The Federal Constitution of Malaysia says that the Syariah courts can only have jurisdictions over persons professing the religion of Islam and in respect of only certain specific matters of Islamic Law. The main issue to be focused here was whether the Syariah Court or the Civil Court had jurisdiction in apostasy cases. In cases involving apostates, it is claimed that the Syariah Court has no jurisdiction over them. However, there was a ruling at this time which stated that in

cases involving applicants who were no longer Muslims, as sworn in their statutory declarations, it is claimed that the Syariah Court has no jurisdiction over them. However, it was ruled that the question whether the appellants are now apostates (*'murtad'*) should be decided by the Syariah Court. Hence, this paper discusses the continuing dilemma over whether the civil or syariah – was the correct venue to decide such cases. In this respect, the case of Lina Joy is specifically highlighted in this paper as a point of reference. Art. 121 (1A) 1988 separated the jurisdiction between the powers of the civil courts and the Syariah courts in Malaysia, and henceforth after 1988, the Judiciary was made subservient to Parliament and has no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts. Logically, matters of Muslim faith must be decided in the Syariah courts. People wanting to renounce Islam argue that they should not be subject to the Syariah courts that only recognize Muslims, given that they no longer profess the faith.

1988 Amendments to the Federal Constitution

In 1998, two very significant amendments were made to the Federal Constitution. Clause (1) Art.121 used to say: "...the judicial power of the Federation shall be vested in the High Court". After 1988, Art. 121 (1) said that the High Court "shall have such jurisdiction and powers as may be conferred by or under federal law". Thus, before 1988 the courts derived their powers from the Constitution. Now, the courts are only meant to have those powers which Parliament decides to give them. The Judiciary was in this way made subservient to Parliament, and hence in our realpolitik the ruling government of the day.

The second significant amendment in 1998 was the inclusion of new clause (1A) into Art. 121 that stated: "The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts." Syariah courts are the courts created by State Assemblies to administer certain Islamic laws. The Constitution says Syariah courts can only have jurisdiction "over persons professing the religion of Islam" and in respect only of certain specific matters of Islamic law, listed in the Constitution.¹ Nothing in the Constitution says that the Syariah courts is of equal standing to the civil courts, nor does it say that the civil courts cannot maintain their traditional supervisory role over the Syariah courts when they act outside their boundaries.²

On another note, there exists a substantial number of Malaysians who thinks that the government has no business determining a person's religion. They claim that religion should be a matter of individual's faith, and not for the bureaucracy to decide. Freedom to profess a religion of one's own choosing was protected under the Federal Constitution, and this was particularly crucial to recognize in the case of Sarawak where Islam was not the official religion. The main issue to be focused here was whether the Syariah Court or the civil court had jurisdiction in apostasy cases. In cases involving applicants who were no longer Muslims, as sworn in their statutory declarations, it is claimed that the Syariah Court has no jurisdiction over them. However, it was ruled that the question of whether the appellants are now "*murtad*" should be decided by the Syariah Court. The continuing dilemma over whether the civil or syariah – was the correct avenue to decide such cases must be resolved with finality. Hence, it was suggested that the Courts of Judicature Act be amended and remove all ambiguity. This included making the Federal Court the ultimate power to decide such issues – it had previously referred to the Syariah courts on Islamic matters – and to allow petitioners to go straight to Federal Court instead of forcing them to go through the hurdles of the lower courts. The two changes would

remedy the country's perennial problem with interfaith tussles as well as the legal limbo of apostasy.

The subsequent Court of Appeal's ruling allowed previous rulings that matters of Muslim faith must be decided in the Syariah courts. People wanting to renounce Islam regularly argue that they should not be subject to the Syariah courts that only recognize Muslims, given that they no longer profess the faith. The position that only the Syariah courts have the standing to determine a Muslim's faith has also affected cases of interfaith custody battles in which a spouse – usually the father – unilaterally converts the minor children to Islam.

It was a practice for converts out of Islam to affirm a statutory declaration before a commissioner of oaths that the person has apostatized. This may be accompanied by a Deed Poll of a change of name, which is registered with the civil court registry. With both documents, the person may apply for a new identity card with a name change. The situation was far from satisfactory as there were no clear official procedures to facilitate and recognize the change in status. In the past, state Islamic law may provide for a mechanism for conversion and a registry of conversions. State law may also provide for penalties such as a fine or imprisonment or both for leaving Islam. Imprisonment was hardly heard of even if there was an enabling law. Some states do not have any legislation on the matter at all, so there was no consistency in terms of law, procedure and practice. In view of the situation at state level, cases on the change of status (by way of declarations under the Rules of Court) were brought in the High Court.

Converts out of Islam seek to confirm their status as non-Muslim for various reasons, including marriage to a non-Muslim, for purposes of inheritance and burial upon death. Last but not least, confirmation of status is proof of their changed status as non-Muslims in the face of arrests and charges for *ta'azir* offences that Muslims are subject to, such as eating at daylight hours in Ramadan, failure to attend Friday prayers, being in close proximity with a person of the opposite sex who is not related within the prohibited degrees (an offence termed '*khalwat*' and consumption of alcohol among others. With the state-led Islamisation under the Mahathir administration previously, state Islamic laws were being promulgated and streamlined among the thirteen states to include specific state laws criminalizing apostasy, deviationism and offenses categorized as "insulting Islam". Deviants and apostates are required under several state Islamic laws to go through a period of "rehabilitation".

It became more challenging to bring a case or to seek declarations as to a change of status in the (civil) High Court with the promulgation of state laws on specific offenses on apostasy. A renewed contestation of jurisdiction began under Art. 121(1A). A curious situation has arisen where freedom of religion may be denied once a case is perceived to have come under the purview of the state Syariah courts. Only the federal civil courts (High Court and the superior courts) are empowered to adjudicate on fundamental liberty issues, (the chapter on fundamental liberties being contained in the Federal Constitution). The High Court by focusing on the issue of jurisdiction is sidestepping the issue of freedom of religion as a constitutionally protected freedom. The civil courts (High Court and Federal Court) have so far upheld the principle that in a case of conversion out of Islam, the jurisdiction belongs to the state Syariah court. This is even so if there is no express provision or legislation as that power is so implied under the State List of the Ninth Schedule to the Constitution.

The position is the same, even in cases where the plaintiff has a statutory declaration to indicate that he is no longer a Muslim and thereby seeking a declaration or any remedy as a non-Muslim in the High Court. In that event, as only the state Syariah court is empowered to deliberate and declare on the apostasy, until such a time the application for conversion out of

Islam has been made, heard and disposed of in the state Syariah court, the plaintiff is to all intent and purposes, a Muslim. In such a case, the High Court has decided that it has no jurisdiction over such a Muslim who is seeking a declaration as to a change in status. In *Daud Mamat*, the plaintiff and three other applicants *inter alia* sought relief that they are entitled to renounce Islam under Art. 11. Art. 11 (1) reads “Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.” Clause Art. 11 (4) reads, “State Law...may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.”

All four plaintiffs were born Malays and raised as Muslims. In 1992, they were convicted by the state Islamic court of Kelantan on a charge of conducting customs or matters contrary to (state) Islamic law and were sentenced to 2 years’ imprisonment. On appeal to the state Syariah court of appeal, sentence was reduced to one year. They were to post bail for good behavior between 3 to 5 years in the relevant period of each and they had to present themselves every month to the state Syariah judge to profess repentance and seek forgiveness. They reported twice and stopped reporting when the repentance classes were not convened. They were charged for contempt of court.

At the date of hearing in November 2000, the four informed the court that they had in fact apostatized in August 1998. They were convicted for the first charge for 3 years. They were also charged for apostasy. They did not appeal the first conviction and the second charges were still pending when they went to the civil High Court claiming the protection of freedom of religion. Eight years had elapsed since 1992 when they went to the High Court. In the meantime, they served their three-year sentence on the charge of contempt. The High Court disposed of the matter on lack of jurisdiction on the basis of a Federal Court decision of *Soon Singh*. In that case, the Federal Court disposed the matter on lack of jurisdiction and did not deal with Art. 11. As the High Court did not rule on the change in status for lack of jurisdiction, “the question of Art. 11 of the Constitution does not arise.” *Soon Singh* and *Mamat Daud* were the first two cases where Art. 11 was relied upon. The earlier cases merely sought declarations of a change of status.

After disposing of the case for lack of jurisdiction, the High Court in the case of *Mamat Daud*, proceeded to interpret Art. 11. As the provision did not spell out the right of renunciation, “the action to resort to that Article is surely misdirected and misconceived.” Further, civil court judges appear ambivalent in their ability to adjudicate on apostasy. The judge said, “The jurists in the Syariah court, apart from being conversant with religious matters, will also be in a more elevated position to make a sound judgment of the status of any would-be apostate, bearing in mind their constant interaction with the Muslim populace. If they are legally qualified that would be a plus factor.” The judge cited with approval the statement of another High Court judge in an earlier case on the same point. In that case the High Court judge said, “Such a serious question (apostasy) would to my mind need consideration by eminent jurists who are properly qualified in the field of Islamic jurisprudence. On this view, it is imperative that the determination of the question in issue requires substantial consideration of the Islamic law by relevant jurists qualified to do so. The only forum to do so is the Syariah court.”

These two instances reflect a situation that it may be more than the issue of jurisdiction involved in refusing to decide on religious freedom to convert out of Islam in Malaysia. With due respect, both civil and Syariah court judges are in “constant interaction with the Muslim populace.” In any case, it is unclear how a constant interaction per se is any indication of the wisdom of Syariah judges over civil judges. These statements of ambivalence suggest that the senior civil court judges may have not been exposed to Islamic jurisprudence, the contemporary

debates on Islamic law, workings of a codified Syariah in a legal system where it is the legislature and not jurists which promulgate the law to be applied. All Syariah judges are legally trained like civil court judges. The more junior Syariah judges in the late 80s are trained in both civil and the Syariah law. State Islamic law is codified for easy access. State Syariah judges and lawyers are expected to apply the principles as enshrined in the positive legislation. Judges in both systems may rely on expert evidence, the *amicus curiae* or counsel to inform the court on law applicable.

The Court of Appeal in *Mamat Daud* affirmed the decision of the High Court. It however added a new twist to the issue on Islam. It held that Art. 11 was not applicable as Islam is the religion of the Federation. That means that the state legislature is constitutionally empowered to make law on any matter in the State List which includes the law sought to be impugned. It further states that state law does not prevent renunciation of Islam; it merely requires that leave of the state Syariah court to be first obtained. These provisions are to prevent confusion of whether at law one is a Muslim or otherwise. The court further said that there is nothing in Art. 11 to say that the High Court has the power to determine whether a person is a Muslim or otherwise. These are matters within the purview of the state Syariah court and the state Islamic law. Art. 11 cannot be read so widely as to impugn any state law which requires a Muslim to observe his duties as a Muslim. The Federal Court affirmed the decision of the Court of Appeal.

In the case of *Lina Joy*, a case decided several months after the High Court decision of *Mamat Daud*, the High Court ruled that the freedom of religion in Art. 11 (1) (over Muslims), does not give the plaintiff the freedom of choice to profess and practice the religion of her choice. The right is subject to Art. 11 (4) and Art.11 (5). The issue of a person's religion is directly connected to the rights and obligations of that person as determined under state Islamic law. The right to *murtad* requires compliance to the relevant Syariah laws on apostasy under Art. 74 (powers of the state legislature) and the State List. In other words, the freedom of religion of Muslims is circumscribed by state Islamic law.

It would appear that the issue remains one of jurisdiction as whatever it is the plaintiffs would have no recourse to Art. 11. The insistence on jurisdiction by the civil court appear to foreclose a challenge to any state Islamic law as an infringement of the freedom of religion clause in the Federal Constitution. As long as the state Islamic law has complied with the constitutional requirements laid out in the State List, that state law is 'constitutional' and will be upheld. This reasoning offers a very wide protection to state legislatures. The cases highlight the point that Muslims may be subjected to a *fiqh* principle adopted/selected in the state Islamic law which may be contrary to (alternative) traditional *fiqh* literature or human rights principles. In other words, the legislated *fiqh* principle fails to recognize that freedom of religion means freedom from coercion to become Muslim or to leave Islam. While noting that the state law does not prevent any person from renouncing Islam nor punishes apostasy by death, there is still coercion as apostasy is punishable by rehabilitation. It might be noted for the record, that before Art. 121 (1A) came into being, the High Court in Susie Teoh's case said that the freedom of religion in Art. 11 (1) means the freedom to choose of one's free will to be Muslim, Christian or Hindu. In Jamaluddin Othman's case, it was held Art. 11 guarantee a person the right to profess and practice his religion and any act to deprive any person of this right is inconsistent with Art. 11.

Though there exists a number of relevant cases on apostasy, I shall focus and examine in this paper only on a detailed discussion and analysis on the case involving Lina Joy and the judgement she received in detail so as to enable us to use this case point as an important term of

our reference in highlighting the issue on the freedom of religion as guaranteed under Art. 11 and how does this come into play with Art. 121 (1A) of the Malaysian Constitution. It must be understood that deciding on the position whether the Syariah Court is the sole authority to decide on the issue of conversion out of Islam is indeed a very contentious one, much as it may be perceived as contravening the provisions of the Art. 121 (1A) amended in 1988.³

On another note, the Coalition of Article 11⁴ is gaining momentum at around this time with an equally potent opposition force. This *Article 11* coalition was formed to organize social and political activism when lawyers and activists realized that the erosion of liberties brought about by Islamization was not a problem that could be remedied by action within the courtroom alone. It was a socio-political problem that could only be countervailed if accompanied by socio-political engagement. Many in Malaysia saw Syariah law's unwarranted intrusion into the lives of non-Muslims, of its poor regard for women's rights, and the conflict into which it can come with civil law and the Constitution.

Historically, we are reminded of the many intervention and trespasses prior to 1988 of the High Court over the Syariah Court, where decisions were overturned or reversed by the former. Art. 121 (1A) has the limited purpose of preventing the High Court from 'exercising its power of judicial review over decisions of a Syariah Court. It is not a power conferring clause but a settlement clause (1997) 3 MLJ 281). The Art. 121 (1A) saves, as it were, the High Court from trespassing on the Syariah Court's jurisdiction. Admittedly, Art. 121 (1A) however, does not override the inherent and original jurisdiction of the Federal Court.

Lina Joy

Lina Joy was born to Muslim parents in 1964 and named Azlina bte Jailani.⁵ When she was twenty-six years old she began practicing the Christian faith and was baptized in 1998.⁶ Since being a Muslim in Malaysia carries with it obligations that are legally enforceable as well as a different set of personal laws, Lina Joy no longer wished to be considered a Muslim. On 21 February 1997, when she was 33 years old, she applied to the National Registration Department (NRD)⁷ in Malaysia to have her name changed from Azlina bte Jailani to Lina Lelani. This was intended to indicate her conversion from Islam. She had also stated in an affidavit that she had converted to Christianity and had been baptized in a church. She also intended to marry a Christian man. After her application was rejected by the NRD she applied again to have her name changed to Lina Joy. She also applied to have the word "Islam" removed from her identity card (known as a MyKad).⁸

Her applications for a change of name from a Muslim name to a non-Muslim name and for the removal of the word "Islam" from her MyKad were rejected by the NRD because these would have indicated that she had left Islam. The NRD deemed that because she is a Muslim, she required a letter from the Syariah court⁹ to affirm or declare that she was no longer a Muslim.¹⁰ Lina Joy commenced legal proceedings at the High Court in May 2000 to seek declarations that would establish her status as a Christian. Dr. Dzulkifli Ahmad¹¹ opines that Lina Joy's counsel Datuk Dr. Cyrus Das's argument that the NRD had acted beyond its jurisdiction and its 'unwillingness' to delete the word 'Islam' as 'unreasonable' was indeed baffling. His assertion that renunciation of Islam was a matter of constitutional right was even more bizarre. As to the issue of the NRD, the Senior federal counsel Datuk Umi Kalthum Abdul Majid¹² who was representing the NRD and the government rebutted by asserting that the NRD could not simply change the status of an applicant's religion. If it does, then it would be officially pronouncing the applicant an apostate which even the august court cannot do for obvious reasons.¹³

Haji Sulaiman Abdullah,¹⁴ counsel for the Federal Territory Religious Counsel had told the court not to allow apostates to abuse the NRD in order to avoid facing the punishment from the Syariah Court. His using of the word “back-door” method for people trying to escape facing the Syariah Court by going to the NRD is indeed amusing and revealing.

Lina Joy’s series of hearings from the High Court¹⁵ through to the highest court of the land attracted a great deal of (often heated) public attention and spawned the freedom of religion movement in Malaysia. Lina Joy appealed against the decision by the NRD in the High Court, arguing that she should not be subject to Syariah law, having converted to Christianity.¹⁶ Her case crystallized the debate over whether Malaysia was fundamentally guided by a liberal interpretation of the Constitution or by Islamic orthodoxy. If Lina Joy was to be given the right to convert to Christianity without hindrance, as her counsel argued she ought to be, Malaysia could be seen as secular. If she was prevented from so doing, or required the consent of the Syariah courts, Islam could be regarded as forming the framework of Malaysian politics and law.

After the High Court dismissed the suit in April 2001, Lina Joy subsequently appealed her case to the next higher court, the Court of Appeal in May 2001.¹⁷ Four years later, on 19 September 2005, this court ruled with a 2-1 majority decision against Lina Joy. Justice Abdul Aziz and Justice Arifin Zakaria agreed¹⁸ that the NRD was correct in rejecting Lina Joy’s application and said it was up to the Syariah Court to settle the issue.¹⁹

Lina Joy further appealed to the Federal Court of Malaysia, the highest court and the court of last resort in Malaysia.²⁰ The Federal Court heard the appeal in July 2006, and it was presided by the Chief Justice of Malaysia Ahmad Fairuz Abdul Halim, Chief Judge of Sabah and Sarawak Richard Malanjum, and Federal Court Judge Alauddin Shariff. While she lost²¹ her final hearing in the Federal Court on 30 May 2007,²² and with more than 100 Muslims holding a vigil outside the court, the discourses deployed during her case tell us a great deal about the legal and political climate in contemporary Malaysia. The Federal Court delivered its decision in upholding the Court of Appeal decision by a majority of two to one. Thus, the final stage of Lina Joy’s appeal to remove the word “Islam” from her identity card was dismissed by this court. In the public eye, it was confirmed that this case “establishes the syariah court as the sole judicial institution in the country in regard to all things Islam”.²³ The renunciation of Islam by Muslims cannot now be decided by any other court except the religious court. Even though Malaysia is a signatory to the United Nations Universal Declaration on Human Rights (one provision of which is the freedom of religion), this does not deter the national courts from pronouncing such a decision, as it has been argued that such international conventions merely serve as “persuasive authority” and are only used where there is a lacuna in national laws.²⁴

Art. 11 of the Federal Constitution

An example to be noted is when on one particular day of a hearing in the Court of Appeal. A point of interest here is the response of this woman’s counsel when the broader constitutional approach, in which a liberal interpretation of Art. 11²⁵ was defended, was coldly received by the judges. When this occurred, her counsel turned to a technical argument founded on a legal loophole.

Lina Joy’s applications were made in the territory of Kuala Lumpur which is subject to the Syariah Criminal Offences Act 1997. Although this Act does not list apostasy as an offence, one who wished to convert from Islam would be regarded as committing the offence of *takfir*. *Takfir* is the making of an accusation that a person or group of persons is either (1) a non-Muslim, (2) has ceased to profess Islam, (3) should not or cannot be accepted as professing the Islamic

religion, or (4) does not believe, follow, profess or belong to the Islamic religion.²⁶ Lina Joy's lawyers argued that she should be able to change her religion without hindrance as per her right as a Malaysian under Art. 11 of the Constitution. Hence, we shall pursue our discussion in examining the legal and social contest over the meaning of this Art. 11, in particular by lawyers who, on the one side, advocate for a liberal interpretation, and on the other, by those who argue for a more restrictive interpretation that is in closer accord with Islamic orthodoxy.

Although the NRD demanded a letter from the Syariah court, Lina Joy refused to apply there because she no longer considered herself a Muslim and thus had no standing in the Malaysian Syariah courts which only have jurisdiction over Muslims. As importantly perhaps, she had engaged in activities that she could not be construed by the courts as bringing Islam into disrepute. She therefore made an application to the High Court of Kuala Lumpur for a number of declaratory orders. The effect of these orders was to affirm her right to freedom of religion under Art. 11 and to declare Syariah laws that limited this freedom as null and void.²⁷

Lina Joy lost her case in the High Court. Of interest, however, is the judge's interpretation of Art. 11, because, in this case and others, it is apparent that the Syariah law is becoming increasingly powerful and arguably more so than the Constitution. In essence, Lina Joy's applications were dismissed because she was deemed by the court to still be a Muslim regardless of any action intended to indicate otherwise. Although Art. 11 states that, "every person has the right to profess and practice his religion", the judge found that this does not mean that Lina Joy "was to be given the freedom of choice to profess and practice the religion of her choice".²⁸ In other words, the judge decided that Art. 22 confers upon citizens the right to profess their religion, but not necessary the right to choose which religion is theirs to profess.

Lina Joy's counsel compared Art. 11 of Malaysia's Constitution with the comparable article in the Indian Constitution.²⁹ These provisions were deemed by the court to indicate that the Malaysian Constitution is not secular and are seen by those who construe Malaysia as an Islamic State as affirming that Malaysia is not a secular state. These articles also affirm for them that Islamically oriented interpretations of the Constitution and lesser laws are legitimate. Indeed, whereas the Indian Constitution specifically states in its preamble that India is secular, the Malaysian Constitution accords Islam a recognized position.

In the past, however, the courts have found that Islam plays no role in the interpretation of ordinary law. In the 1986 case of *Che Omar bin Che Soh vs Public Prosecutor*, the plaintiff submitted that because Art. 3 states that Islam is the religion of the federation, and because the death penalty for drug trafficking and for fire arms offences is not Islamic, the death penalty was thus unconstitutional. The court agreed and asserted that Art. 3 meant that Islam was the religion of the federation only with regard to rituals and ceremonies of State.³⁰

More recently, the courts have not construed Malaysia in a secular fashion. In the High Court judgement of Lina Joy in 2001, the judge noted that Malaysia is neither secular like Singapore or India, nor theocratic like Saudi Arabia or Iran, but a hybrid. The judge was of the view that "by looking at the constitution as a whole, it is the general tenor of the constitution that Islam is given a special position and status".³¹ This position consequently influences the interpretation of its articles, such as Art. 11 in this case.

Lina Joy appealed the High Court's dismissal of her applications. On 14 October 2004, Lina Joy's counsel, headed by Cyrus Das, argued for his client's freedom to convert out of Islam by taking two distinct approaches. The first approach that

Das presented was based on the appellant's right to freedom of religion as guaranteed under Art. 11. As opposed to the "technical approach", (which will be examined later), this

approach is referred to as the “constitutional approach”. Das argued that Art. 11 does not prevent a person from changing religion or having no religion and that the restrictions that are found in Clause 4 of Art. 11 refer only to the *propagation* of religion to Muslims. Referring to the previous judgement in Lina Joy’s High Court hearing – that one can profess one’s religion but not choose it – Das said that Art. 11 should not be read in a literal manner as one would read a statute, but rather with its spirit in mind. The Reid Commission, which drafted the Constitution, made it clear that Art. 3 does not change the character of Malaysia as a secular state.

In response to Das’s arguments, Judge Gopal Sri Ram said that there is freedom of religion in Malaysia, but Art. 11 did not mean what Das took it to mean. Judge Gopal Sri Ram suggested that it was active discrimination against and abuse of non-Muslims that Art. 11 was drafted to avert. Furthermore, said Judge Ram, Art. 11 must be subject to the personal laws of Muslims.

Das replied that personal law must be invalid if it is contrary to the Constitution. Art. 11 should be read with Art. 8 which states that all citizens are equal before the law and entitled to equal protection by the law. Furthermore, Art. 10 ensures freedom to belong to an association as well as the freedom not to belong to an association. Art. 10 should be read with Art. 11 to mean that the right to be a member of a religion should include the right to not be a member of a religion. Any procedure that impedes the liberty to join, or resign, must be invalid. Constitutional rights can only be weakened by referring to another part of the Constitution, not to law external to it.

Hence, it can be observed here that Judge Ram’s general tenor was not encouraging for Lina Joy’s counsel. Das, reading Judge Ram’s resistance to his constitutional approach, then took what is referred to as the “technical approach”. This approach relied on relatively minor legal points relating to the NRD’s unwillingness to change Lina Joy’s name and to remove the word “Islam” from her MyKad. Das pointed out that changes of name usually must be accompanied by an explanation for the change. This necessity for an explanation, however is not necessary when the name change is for religious reasons.

On the issue of how to determine whether one has in fact converted out of Islam, Judge Ram stated that the proof required is a declaration from a Syariah court. Das disagreed and said that one must look to Art. 11 which guarantees freedom of religion. To this Judge Ram responded by saying that personal law is related to matters of the state and that the procedure for converting out is the “*Soon Singh* procedure”. Das then made his technical point. In the case of *Soon Singh* which occurred in the state of Kedah, the courts found that the body that registers conversion into Islam was to be the body that registers conversions out of Islam. In Kedah, this body was the Syariah court. Das pointed out that his client’s case occurred, however, in the territory of Kuala Lumpur and that the administration of converts into Islam is not done by the Syariah court there, but by another body, the Majlis Agama Islam Wilayah Persekutuan (Islamic Council of the Federal Territory, hereafter referred to as the Council). The *Soon Singh* procedure relies on the State List of the Constitution which confers jurisdiction to the Syariah court. The State List is a list in the Ninth Schedule of the Constitution that outlines those matters on which state parliaments may legislate. But because jurisdiction in *Soon Singh* is conferred to the Syariah court and not to the Council, and because the Council registers conversions to Islam in the federal territory of Kuala Lumpur, the *Soon Singh* procedure does not apply in Lina Joy’s case. There is no law to confer authority to either the Council or the Syariah court in Kuala Lumpur. Thus, neither the Syariah court nor the Council has jurisdiction on the matter. This is a

technical point for which Judge Ram remarked, “So Soon Singh seems to be working in your favour now!”

Haji Sulaiman Abdullah represented the Council in Lina Joy’s case. Sulaiman began by saying that he had only one point of reply. That point was that when the Constitution was written there was a clear division of the population with Malays and Muslims on the one side and, non-Muslims on the other. All references to other countries fail because the Malaysian Constitution specifically refers to Islam and defines Malays as being Muslim. Judge Ram surprised Sulaiman by interrupting. “Not relevant!” he said. “His client went to the registration department and wants Islam taken off and they wouldn’t do it.” Sulaiman replied that Lina Joy must go to the Syariah court for a declaration. Sulaiman raised a case known as *Zolkaffily*.³² In *Zolkaffily* the court decided that Art. 121 (1A) of the Constitution gives exclusive jurisdiction to the Syariah court for matters listed in the State List in the Ninth Schedule. It was decided that jurisdiction was conferred to the Syariah court even if no positive law had been created by the state legislature on the given matter in the State List. Sulaiman then argued that following judicial precedent in *Zolkaffily*, the civil court loses jurisdiction on matters in the State List. Judge Ram then responded to Sulaiman by alluding to the famous case in English common law of *Liversidge v Anderson* in 1941. In response, Sulaiman brought up another case in which it had been decided that the State List was a jurisdictional list. Judge Ram told Sulaiman that the case was wrongly decided and repeated that the State List empowers the state to make laws but it does not confer jurisdiction.

Lawyer-activist Malik Imtiaz Sarwar, who held a watching brief for the Malaysian Bar Council on the day discussed above along with Haris bin Mohamad Ibrahim, a high-profile lawyer, activist, and blogger and who has been long involved in freedom of religion cases. Both Haris and Malik are also a significant voice in the *Article 11* coalition. Both Malik and Haris explained that Lina Joy’s case could not be won either by compelling the relevant state institution to permit the change of name or religion. Lina Joy needed an order from a (civil law) federal-level court because as soon as she travelled into the next state, the religious authorities could well pick her up as a Muslim. Furthermore, Haris noted, the Council does not have the power to issue any document averring a conversion of a person from Islam. “In fact,” he said, “we’ve written to them and they’ve written back to say they can’t do that: “That’s not in our power.” As for the technical approach, Malik admitted that Lina Joy’s particular situation may well mean that the NRD will have to change her name and remove the word “Islam” from her MyKad. This, however would not make her, legally and administratively, a non-Muslim. The effect would be merely cosmetic, and as Malik put it, a “non-solution” to her problems. In his view, Das would have to address the constitutional issues despite the trend for civil court judges to find themselves as having no jurisdiction. He went on to explain why he felt this trend was in legal error. First, he explained, with regard to Malays who wish to convert from Islam, it is sometimes argued that because the Constitution defines a Malay person as among other things a Muslim, a person regarded as a Malay cannot as a consequence then convert to any other faith. Malik explained that the definition of a Malay in the Constitution describes such a person for legal and administrative purposes, such as for according special privileges. There is nothing to say that a person cannot be ethnically Malay and a non-Muslim. Haris added that the definition of a Malay in the Constitution is only provided so that the use of “Malay” is clear in those parts of the Constitution where it is used and that “Malay” is not used in Art. 11. Referring to the conflation of ethnic, administrative, and legal definitions, Malik opined, “They’ve confused the lot!”

More broadly and importantly, Malik explained that laws impeding or criminalizing apostasy are illegitimate. A law can only be made by a body competent to make that law. Competency in turn, can only be conferred by a positive law, such as one might find in a Constitution. The Syariah court cannot make laws or decide on apostasy because, firstly, Art. 11 protects freedom of religion, and secondly, Syariah law as described in the State List applies only to people professing Islam and nowhere in the Constitution does it say that apostasy is regulated and administered by the Syariah courts. However, Malik went on to say that the civil courts are now finding that the Syariah courts do have jurisdiction and that regulations that were designed for administering one thing, conversion into Islam, are now deemed to function for something quite different, conversion from Islam.

Lawyer and activist Salbiah Ahmad takes a different view of the issues of the conflict of jurisdiction between the Syariah and civil courts. Salbiah argues that the purpose of Art. 121 (1A) of the Constitution, which gives precedence to the Syariah courts where there is a conflict of jurisdiction, should be looked at differently. In her opinion, the purpose of it was not to determine jurisdiction at all. Art. 121 (1A) was introduced to prevent “forum-shopping”; that is, it is to stop someone who received an unfavourable judgement from the Syariah court seeking a better judgement in a civil court. The practice of forum-shopping would bring the legal system in Malaysia to disrepute.

However, Salbiah wrote: “the cases on Art. 121 (1A) have evolved in a direction which may have lost sight of its original rationale”. In Soon Singh, she writes that the Federal Court’s finding sets precedents to the effect that: (1) In a jurisdictional challenge on conversions out of Islam, the proper court which has the power to hear the matter is the Syariah court, (2) freedom of religion in Art 11 (1) includes the freedom not to be compelled to convert to another religion be it Islam, Hinduism or Christianity. She goes on to write that point number (2) is problematic “as if we are averse to compulsion in converting a person to another faith, surely we would find it similarly reprehensible to compel a person to remain in the religion. The point to be served in religious freedom is protection from coercion.”

Hence, anybody who was coerced into declaring oneself as a believer of a particular religion – and accusations of coercion and deception exist – should not be compelled to adhere to and be bound by the tenets of that religion. Equally so, a person who was once of a particular religion – or at least was regarded as being of that religion – should not be compelled to remain in a religion in which he had no faith.

Conclusion

Apostasy is a serious offence under classical Islamic law and the leading school of fiqh has adopted as standard law the ruling of the hadith which declares simply that “one who changes his religion shall be killed”. But the issue of death punishment for apostasy is controversial, especially in view of the Qur’anic declaration that “there shall be no compulsion in religion” (*al-Baqarah*, 2:256), and this is endorsed in a number of other places in the Qur’an i.e. *al-Nisa*, 4:137; *Yunus*, 10:99; *al-Kahf*, 18:29; *al-Kafirun*, 109:6 and *al-Tawbah*, 9:6. The Qur’an obviously maintains that faith must be through conviction and that religion which is induced by compulsion is meaningless. It is evidently difficult to uphold the normative Qur’anic principle on freedom of religion and the provision, and at the same time, of death punishment for apostasy, nor has the Prophet s.a.w. sentenced anyone to death for it. Instances of death punishment that have been recorded in some cases were cases of blasphemy and treason and not of apostasy through belief and conviction. In an attempt to reconcile these positions, it may be said that the

hadith in question envisaged only a hostile renunciation of the faith which was, in the early days of Islam, equivalent to high treason. The punishment was, in other words, meant, not for apostasy that emanated from conviction and belief, but for blasphemy and rebellion against the community and its legitimate leadership.³³ Muslim jurists have, however, ignored the circumstantial aspect of apostasy, and the Qur'anic evidence quoted above, and made apostasy punishable by death. Some jurists have also acknowledged that apostasy may be punished by the discretionary *ta'azir* punishment, which may consist of imprisonment, flogging, public disclosure, admonition and fines.³⁴

In Malaysia, it may be noted, that the death sentence can only be passed by the High Court. The Syariah Court has no such powers. Since apostasy normally comes under Syariah Court jurisdiction, death punishment for apostasy cannot apply in Malaysia. The Syariah Court cannot proceed on the matter without an enabling law either, simply because of the constitutional clause on freedom of religion. There is, in other words, a need for legislation to address these matters and determine whether or not apostasy is a punishable offence at all, and if so, what sort of sanctions and procedures may be invoked. Notwithstanding the clear constitutional guarantee on freedom of religion, the pressure of public opinion strongly discourages apostasy among Muslims in Malaysia.³⁵

As shared by Dr. Dzulkifli Ahmad, the Federal Court gave leave in April 2006 for Lina Joy to appeal after she was dismissed by the Court of Appeal on the question of whether she needed to prove apostasy on her part, before the word 'Islam' could be deleted from her Identity Card. The Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim together with Federal Court judges, Justices Richard Malanjum and S. Augustine Paul also allowed the question of whether the NTD had correctly construed its power to impose the requirement on Lina Joy while it was allegedly not provided for under the National Registry Regulations.

The then Chief Justice Tun Ahmad Fairuz Shaikh Abdul Halim, delivered the majority decision³⁶ and held that matters pertaining to conversions to Islam were within the jurisdiction of the syariah courts and by implication, conversions from Islam were similarly within the same jurisdiction. Thus, the NRD's policy in requiring an Islamic religious authority to confirm Lina Joy's renunciation of Islam was correct, according to the highest court of the land. It was only Chief Justice of Sabah and Sarawak Richard Malanjum who dissented from the other two judges. In his dissenting judgement he quoted with approval the dicta from another 1988 Supreme Court case in which, "we have to set aside our personal feelings because the law of this country is still what it is today, secular law". Although the question appears to be substantially an administrative question, "beneath it lurks fundamental constitutional issues involving fundamental liberties". Furthermore, he saw the Lina Joy application as touching on constitutional matters.³⁷

All these arguments were to have wide-ranging implications on the status of human rights in Malaysia and formed the basis of heated public debates, setting the stage for the ever widening divide between those supporting regulated or restricted freedom of religion and those supporting unfettered freedom of religion as a constitutional right. This also intensified the already existing arguments on Malaysia's status as a secular or an Islamic state.

Notes

¹ If two Muslims have a problem involving their personal law (e.g a divorce between a Muslim couple), then this is a “matter within the jurisdiction of the Syariah courts”. The civil courts should not interfere when one party comes to the civil court after losing a case in the Syariah courts. This was all that was intended with the inclusion of Art. 121 (1A).

² We see this in 1991 when the civil High Court decided that the late Ng Wan Chan was a Buddhist despite his purported conversion to Islam. The Court looked at the evidence, heard both parties and decided that the documents allegedly proving Ng’s conversion to Islam were not credible. The Judge also found that the so-called conversion had been superseded by Ng professing and practicing Buddhism thereafter. Although this was after 1988, nobody said the High Court had no jurisdiction to make this determination.

³ We need no reminders of the anxiety and debate it has generated across the nation from time immemorial. The debate stretches back to as far back as Natrah (1951) to Susie Teoh (1968) and numerous others, invoking, inter alia, Art. 11 of the Constitution of Malaysia and Art.18 of the Universal Declaration of Human Rights 1948. Other cases that can be referred to as well is the late Mohammad Moorthy, which saw the infamous memorandum of the 9 non-Muslim members of the Cabinet to the Prime Minister.

⁴ *Article 11* is an example of social activism in response to the failure of legal challenges to Islamically founded restrictions on freedom of religion. This is a formation of a coalition of lawyers and activists called *Article 11*. On 26 June 2004, a coalition of more than ten NGO’s conducted a day-long public forum in the auditorium of the Malaysian Bar Council. This coalition was named *Article 11* after the article in the Constitution that articulates freedom of religion. The forum drew an audience of some two hundred people made up of lawyers, interested lay people, and social activists. *Article 11* coalition members had been concerned with the erosion of constitutionally enshrined fundamental liberties. This erosion is the result of the increase in the social and political legitimacy of Islam – the influence of Islam in civil law and the deference of the civil courts to the Syariah courts on some matters had adversely affected the rights of those who belong to religions other than Islam, of those who are Muslim but do not wish to follow State sanctioned interpretations of Islam, and of women, both Muslim and non-Muslim. See Julian C.H. Lee, *Islamization and Activism in Malaysia*, Petaling Jaya: Strategic Information and Research Development Centre (SIRD); Singapore: Malaysia & Institute of Southeast Asian Studies (ISEAS), 2010, p. 83-84.

⁵ Lina Joy, who was born Azalina bte Jailani, converted from Islam to Christianity, arguing that it came under her right to freedom of religion under Art.11 of the Constitution of Malaysia.

⁶ 6 MLJ 193 (2005).

⁷ The NRD insisted that she had to prove her apostasy before the word ‘Islam’ could be dropped or changed to Christianity. She is understandably all too eager to get this stumbling block off her way, so that she may have a legitimate marriage or offspring and get on with her life.

⁸ Faiza Tamby Chik J., “Lina Joy vs Majlis Agama Islam Wilayah &Anor”, *Malaysian Law Journal*, no. 2 (2004), p. 119.

⁹ The application was rejected in August, 1997 on the grounds that the Syariah Court had not granted permission for her to renounce Islam. In 1998, the NRD allowed the name change, but refused to change the religious status on her identity card. The NRD felt that it had no jurisdiction to remove the entry of her religion, Islam, on the identity card without confirmation from the Syariah Court or an appropriate Islamic authority that she had renounced Islam. This was stated during the court proceedings.

¹⁰ It is worth noting briefly here that the Syariah court is a state and territory level court because the administration of the affairs of Muslims in Malaysia is controlled by the state and territory level. Each state and territory has a different set of Syariah laws which are legislated by the relevant parliaments.

¹¹ See Dr. Dzulkifli Ahmad, “Blind Spot: The Islamic State debate, NEP and other issues”, *HARAKAH*, Farhus Enterprise, Kuala Lumpur, 2007, p. 163

¹² See Datuk Umi Kalthum Abdul Majid’s comments in Dr. Dzulkifli Ahmad, *Blind Spot: The Islamic State debate, NEP and other issues*, p. 163.

¹³ The NRD had not imposed any new condition but was merely complying with the law of the land, which authorized the Syariah Court to deal with matters involving conversion and apostasy.

¹⁴ See Haji Sulaiman Abdullah’s comments in Dr. Dzulkifli Ahmad, *Blind Spot: The Islamic State debate, NEP and other issues*, p. 63.

¹⁵ The case entered the legal arena of April 23, 2001 when the High Court refused to decide on her application to renounce Islam on the ground that the issue should be decided by the Syariah Court.

¹⁶ In April 2001, Judge Datuk Faiza Tamby Chik ruled that she could not change her religious identity, because ethnic Malays are defined as Muslims under the Constitution. Lina Joy then took her case to the Court of Appeal.

¹⁷ The Court of Appeal ruled that the NRD's Director General was right in not allowing the application on the grounds that the issue should be decided by the Syariah Court and other Islamic religious authorities did not confirm Lina Joy's renunciation of Islam.

¹⁸ The dissenting opinion was that of Justice Gopal Sri Ram. He said that since the reason for the NRD's questioning of Lina Joy's change of religion was to ascertain the truthfulness of that assertion, it should be her baptism certificate, and not a Syariah Court order that should be considered the relevant documentary evidence. Justice Gopal Sri Ram mentioned that the form Lina Joy attempted to submit on January 3, 2000 makes it clear in column 31 that she no longer wished to be a Muslim. In these circumstances, an order from the Syariah Court does nothing to support the accuracy of the particular that the appellant is a Christian. However, the baptismal certificate dated May 11, 1998 produced by the appellant in evidence amply supports the accuracy of the particular that the appellant is a Christian. In the appellant's case, she stated that the reason for the change of name was that she was now a Christian. Accordingly, there is nothing in Regulation 4 (cc) (xiii) that supports the action of the Director General in this case. As has been said thus far by Justice Gopal Sri Ram, that an order or certificate from the Syariah Court is not a relevant document or the processing of the appellant's application. It is not a document prescribed by the 1990 Regulations. MLJU 345 (2005).

¹⁹ Justice Gopal Sri Ram said that it was null and void.

²⁰ Lina Joy's case: "Court Will Give Decision as Fast as Possible", *Bernama*, 4 July 2006.

²¹ "Lina Joy Loses Appeal", *The Star Online*, 30 May, 2007.

²² The Federal Court, in a 2-1 decision, dismissed Lina Joy's appeal, The Court's panel ruled that only the Syariah Court had the power to allow Lina Joy to remove her religious designation of Islam in her national identity card. Chief Justice Ahmad Fairuz Sheikh Abdul Halim and Federal Court Judge Alauddin Mohd. Shariff delivered the majority decision dismissing the appeal. Chief Justice of Sabah and Sarawak Justice Richard Malanjum dissented.

²³ News titled, "Syariah Court Sole Authority on Islam", see *New Straits Times*, 7 June 2007.

²⁴ MLJ 197 (2005).

²⁵ The Supreme Court has, in a leading case, upheld the constitutional clause on religious freedom. In *Minister of Home Affairs v. Jamaluddin Othman*, a Malay Muslim, converted to Christianity, and after studying at the far Eastern Bible College in Singapore proselytized Christianity among the Malays. He was detained under the Internal Security Act (ISA) 1987 for "acting in a manner prejudicial to the security of Malaysia". He was arrested under the ISA simply because it is not a crime for a Malay to convert out of Islam under Malaysian law. But his plea for release on a *habeas corpus* application was eventually granted by the High Court of Kuala Lumpur. The trial judge, Justice Anuar, held that the Minister of Home Affairs had detained the defendant contrary to Art. 11 of the Constitution, and ordered the defendant's release. The Minister appealed to the Supreme Court, which dismissed the appeal.

²⁶ Kairos, *Doing the Right Thing: A Practical Guide on Legal Matters for Churches in Malaysia*, Petaling Jaya: Kairos Research Centre, 2004, p. 42.

²⁷ Art. 11 of the Constitution is found in the section that addresses the fundamental liberties of the individual. Art. 11 reads:

11. (1) Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.
- (2) No person shall be compelled to pay any tax the proceeds of which are specifically allocated in whole or in part for the purposes of a religion other than his own.
- (3) Every religious group has the right – (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes; and (c) to acquire and own property and hold and administer it in accordance with law.
- (4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
- (5) This article does not authorize any act contrary to any general law relating to public order, public health or morality.

²⁸ Faiza Tamby Chik J., "Lina Joy v Majlis Agama Islam Wilayah & Anor", *Malaysian law Journal*, no. 2 (2004), p. 120.

²⁹ Art. 25 of the Indian Constitution is explicit about citizens' freedom to choose their religion. Art. 25 (1) of the Indian Constitution states that "...all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion". Freedom of conscience, this Constitution tells us, refers to the "absolute

inner freedom of the citizen to mould his own relation with God in whatever manner he pleases". The court noted that the phrase "freedom of conscience" and "freely profess" were absent in the Malaysian Constitution and were not implied. Furthermore, the equivalency of the Malaysian Constitution with the Indian Constitution could not be sustained because the Indian Constitution did not contain provisions equivalent to Articles 3(1), 12, 121(A) and 160.

³⁰ Fernando, Joseph M., *The Making of the Malaysian Constitution*, Kuala Lumpur: The Malaysian Branch of the Royal Asiatic Society, 2002, p. 250.

³¹ Faiza Tambi Chik J., "Lina Joy v Majlis Agama Islam Wilayah & Anor", *Malaysian Law Journal*, no. 2 (2004), p. 127.

³² Faiza Tamby Chik J. "Majlis Agama Islam Pulau Pinang dan Seberang Perai lwn Shaik Zolkaffily bin Shaik Natar dan lain-lain", *Malaysian Law Journal*, no. 4 (2002), p. 130.

³³ For details see the chapter on blasphemy in M.H. Kamali, *Freedom of Expression in Islam*, Cambridge: The Islamic Texts Society, 1997, pp. 212-250.

³⁴ If one takes the latter view, it would mean that the legislative power of the Muslim community may enact a law and determine the legal position concerning apostasy.

³⁵ The Islamic Party of Malaysia (PAS), in its controversial Hudud Bill (1993), has included apostasy among the prescribed (*hudud*) offences and assigned the death punishment to it. As noted, the Hudud Bill was passed by the States Legislature of Kelantan but the Federal Government refused to ratify it and it has consequently remained in abeyance.

³⁶ Chief Justice Tun Ahmad Fairuz Shaikh Abdul Halim decided that the federal court is of the opinion that it is appropriate and legal that the Syariah Court which has been given the powers to decide on conversions into Islam, would also by implication have the powers to decide on matters concerning the conversion of Muslims out of Islam or apostasy. He added that he does not see any flaws in the judicial decision of the federal court. As such, he says that he does not have any other choice but to answer to question three by stating that the Soon Singh case had been decided correctly. See Gavin W. Jones, Chee Heng Leng and Maznah Mohamad (ed.), *Muslim-Non Muslim Marriage: Political and Cultural Contestations in Southeast Asia*, Singapore: Institute of Southeast Asian Studies Singapore (ISEAS), 2009, p. 80.

³⁷ Chief Justice Sabah and Sarawak Richard Malanjum further reiterated that since constitutional issues are involved especially on the question of fundamental rights as enshrined in the Constitution it is of critical importance that the civil superior courts should not decline jurisdiction by merely citing Art. 121 (1A). The article only protects the Syariah Court in matters within their jurisdiction which does not include the interpretation of the provisions of the Constitution. Hence, when jurisdictional issues arise civil courts are not required to abdicate their constitutional function. Legislations criminalizing apostasy or limiting the scope of the provisions of the fundamental liberties as enshrined in the Constitution are constitutional issues in nature which only the civil courts have jurisdiction to determine. 4 MLJ 585 at 59 (2007).