

Freedom of religion

Contributed by Angeline Cheah Yin Leng
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Hot off the heels of the Lina Joy decision and the debate of whether Malaysia is a secular or Islamic country, Day 2 of the Malaysian Law Conference chose to address the topic of "Freedom of Religion". Moderated by Rangunath Kesavan, the panel comprised an eminent panel of speakers, well-known in their respective fields.

The first speaker was Lee Min Choon who is an advocate and solicitor and currently the Legal Adviser of the Christian Foundation of Malaysia. Mr Lee opened his speech by introducing us to the changing trends in litigation over the years. Up to the 1970s, the focus was on rights relating to the liberty of the person, freedom of movement and equality. During the 1970s, the courts had to deal with detentions and prosecutions under the Internal Security Act 1960. In the 1980s, the focus was on rights of freedom of speech, assembly and association. As such, at the close of the 1980s, the last remaining frontier was the issue of religion and religious rights. In Malaysia, Mr Lee termed it as "trans-cultural movements", meaning moving from one religion to another. For a person to move from one non-Muslim religion to another non-Muslim religion hardly sets the sparks on fire, but detractions from the Muslim faith has serious repercussions.

Mr Lee also touched on Article 18 of the Universal Declaration of Human Rights, 1948 ("UNHDR") which recognises freedom of religion and belief as part of the inalienable rights of human beings whereas freedom of religion in Malaysia is contained in Article 11 of the Federal Constitution. Comparing it to Article 18 of the UNHDR, Article 11 contains limitations in sub-section (4) wherein there is a restriction of propagating any religions doctrine or belief to Muslims. This can be concluded that there are qualifications on the freedom of religion in Malaysia.

Mr Lee concluded that the long term solution to the problem of protecting and promoting freedom of religion lies in education.

The second speaker for this session was Yusri Mohamed who is the President of the Malaysian Islamic Youth Movement and also a lecturer at the International Islamic University. Encik Yusri spoke on the Muslim perspective of freedom of religion in Malaysia as he feels that this is a important component in the discourse of the topic. He also wished to highlight the unique circumstances of Islam in the Malaysian setting.

Encik Yusri referred to the conceptual aspects of the topic, firstly saying that freedom of religion is something which is not too problematic or unidentifiable. Firstly, as long as we can acknowledge the established discipline of knowledge, we can safely define the parameters of freedom of religion in Islam. The word "ikhtiar" in Malay is used meaning to have freedom to choose what is good. Encik Yusri said that that is why it is called freedom of religion and not freedom from religion.

Secondly, freedom of religion is not only a private matter but it also steps into the public sphere. It is a Muslim's personal duty to conform to Muslim

syariah law. He also added that the religion of Islam is very established, comprehensively received and applied in Malaysia. This is one of the reasons why during the British colonial rule, they avoided to interfere with this aspect of society.

Encik Yusri concluded by saying that Malaysia is not a secular state in the original philosophical sense. However, there needs to be a better approach towards reform with regards to this issue.

The third speaker was Mr Yeo Yang Poh of M/s Yeo Tan Hoon & Tee, and he is also the Immediate Past President of the Malaysian Bar. Mr Yeo presented a paper entitled "Freedom of Belief: The Final Thunder, or A Rainbow of Pluralism?" He began his talk by asking this question, "Is Malaysia a model nation in terms of freedom of belief?". He said that this same question would draw a hundred different answers, exemplifying the problem at hand.

Mr Yeo's view is that neither the law nor any religion and its prominence stands in the way of freedom of belief. Religion has been politicised. Quoting from his paper, he states that "It is seldom (if not never) about religion, or race. It is about power and politics (the kind that is not limited to politicians but also includes religious and communal leaders), vis-a-vis the competition for limited resources."

He is also a fervent believer in interfaith dialogue which is essential for addressing this problem. However, he feels that the current method employed is ineffective as cross-signals of respective claims of superiority impede horizontal discourse. Also, there is often a competitive or even antagonistic debate. Therefore, new methods and new techniques are needed for interfaith dialogues to be productive. What is urgently needed is to establish common ground rules among dialogue partners, such as stressing the importance of how this is not a contest among religions, to have communication rather than debate, listening with humility and compassion and to agree not to ridicule another's view.

Mr Yeo also stated that freedom of religion is about freedom and not about religion. He added that secularism is a misunderstood concept whereby he said that secularism is not associated with the absence of religion, but rather, quoting Gandhi, a provision of space for the growth of all religions. He concluded that the problems which arise from this issue neither have their roots in religion or in law. As such, there must be a change in the thinking of Malaysians regarding interfaith issues for this problem to be effectively addressed.

The fourth speaker on this topic was Dr. Mohamed Azam Mohamed Adil, from the Centre for Islamic Thought and Understanding (CITU) of Universiti Teknologi MARA. His paper was titled "Freedom of Religion versus Freedom to Renounce Islam in Malaysia".

Dr. Mohamed Azam began by exploring Article 11 of the Federal Constitution but went on to say that the Malay race and the Islamic faith cannot be separated. This was clearly seen in the earlier case of *Lina Joy v Majlis Agama Islam*

Wilayah Persekutuan & Anor [2004] 2 MLJ 119. By virtue of Article 160 (2) of the Federal Constitution, Malays cannot renounce Islam. If a Malay renounces Islam, he or she cannot be regarded as a Malay since the two are attached. He also went on to touch briefly on other such similar cases, one of them being Re Maria Hertogh (Natrah) [1951] MLJ 164.

Dr. Mohamed Azam then went on to say that as regards apostasy, five states in Malaysia practise deterrent punishment for apostates, namely Pahang, Perak, Melaka, Sabah and Terengganu. This is contra to what is practised in Negeri Sembilan, whereby those who renounce Islam are subjected to counseling and education sessions for repentance purposes. Commenting on the recent Lina Joy decision, he stated that the notion of freedom of religion in Malaysia is there, but it is important to apply to the right platform in cases of apostasy. He concluded by advocating the Negeri Sembilan method of dealing with apostates, rather than by punishing them.

The fifth and final speaker for this topic was Dr. Azmi Sharom of University Malaya. He is also a regular columnist in The Star newspaper. Dr. Azmi started off his talk by saying that freedom of religion is about Islam i.e. the freedom to leave Islam. There is no issue when a person of any religion but Islam wishes to leave his respective religion, but only when that person is of the Islamic faith, therefore this issue is all about Islam. He also asked the question of whether there should be restrictions on freedom of religion, and answered in the affirmative. However, he said that the restrictions were already provided for under Article 11 of the Federal Constitution as there are limitations in the said Article.

On the face value, it appears that anyone can choose his or her religion but this is not the case as apostasy is a serious matter and even a crime in some states. Also speaking on the recent Lina Joy decision, he mentioned that Article 11 was never raised in the majority decision. Instead the judges chose to leave it to the syariah court's jurisdiction. He firmly stressed that constitutional issues such as this should be dealt with in the civil courts and not the syariah courts.

He also stated that we cannot comprehensively understand the freedom of religion unless we ask what sort of country we are living in. Are we a secular country or an Islamic theocracy of some sort?

Amidst loud applause, Dr. Azmi submitted that Malaysia is a secular state. He concluded that we need a secular system to protect all of us.