

FREEDOM OF RELIGION: A COMPARATIVE STUDY
BETWEEN ISLAMIC AND MALAYSIAN
PERSPECTIVE

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FREEDOM OF RELIGION: A COMPARATIVE STUDY BETWEEN
ISLAMIC AND MALAYSIAN PERSPECTIVE.

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DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledge.

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In the Name of Allah, the Most Gracious, the Most Merciful. All praise is to Allah who is Most Praiseworthy, Most High. May His peace and blessings be upon our beloved Prophet Muhammad and upon his family, his companions and his entire sincere follower after them. Amin.

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ABSTRAK

Projek Ilmiah ini merupakan satu kajian perbandingan diantara perspektif Islam dan Malaysia mengenai kebebasan beragama. Sebagaimana yang kita tahu, Perlembagaan Persekutuan Malaysia merupakan kuasa tertinggi dan menentukan undang-undang lain dalam menyeimbangkannya samada ia sah atau tidak. Perlembagaan merupakan dokumen yang terpenting dan mengandungi pelbagai peruntukkan di dalamnya. Fungsinya adalah untuk menentukan dasar pemerintahan kepada pemerintah agar menjamin hak keadilan dan kebebasan termasuk kebebasan beragama. Disamping sifatnya yang merupakan ketertinggian perlembagaan yang mana akan menjadi pelindung kepada rakyat daripada berlakunya pepecahan atau terlucutnya hak kebebasan rakyat daripada apa yang sepatutnya. Selain itu, tujuan utama kajian ini adalah untuk menfokuskan kefahaman secara lebih mendalam mengenai kebebasan beragama di dalam perspektif Malaysia dan Islam dengan merujuk kepada Perlembagaan Persekutuan dan Perlembagaan Madinah.

ABSTRACT

This academic project is a comparative study focuses on the issue freedom of religion of by comparing between Islamic law and the Malaysian law perspective. As we know, Federal Constitution is the Supreme law of to other laws. Federal Constitution is the important document and numerous provisions, such as to governs the administration of the country as well as matters concerning guarantees of right and freedom of its citizen includes the right and freedom of religion. Besides, the main point in this research to understanding about freedom of religion between Islamic and Malaysian Perspective refers by Federal Constitution and Charter of Medina.

ملخص البحث

هذا البحث يبين لنا عن الحرية الدينية في موقف الإسلام وماليزي. كما عرفنا دستور التحالف لماليزيا هو أعلى سلطة التي تعين النظام أخرى. هذا دستور مهم التي تعين أساس الدولة لكي العدل والحرية الدينية. وتشمل هذا التي جاءت بما لتحرير الديني البشري من الأوهام ووضع المنهج الصحيح الآمن في المجتمع والدولة. هذا الدستور لذلك فـدستور ستحفظ المجتمع من حقوقهم . هذا الدستور الذي يختص بالفصل بين الناس في خصوصاً تم ورد الحقوق إلى أهلها وتطبيق العدالة بين المجتمع. أهداف أو كتمهيد لهذا البحث لبيان الفرق بين التفاهم العميق عن الحرية الدينية في موقف الإسلام وماليزي ويرجع إلى دستور في ماليزيا ودستور في مدينه.

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ABBREVIATION

Dr	Doctor
Ed	Edition
MLJ	Malayan Law Journal
No	Number
n.a	No author
n.d	No date / without year
n.pb	No / without publisher
n.pl	No/ without place of publication
p	Page
pp	Pages
P.b.u.h	Peace be upon him
v	Versus
Vol	Volume

CHAPTER 1

FREEDOM OF RELIGION: A COMPARATIVE STUDY BETWEEN ISLAMIC AND MALAYSIAN PERSPECTIVE.

INTRODUCTION

1.1 BACKGROUND OF RESEARCH

Freedom of religion is considered to be the personal right of among person. Malaysia is a multi-racial and multi-religious nation, Islam is declared as the religion of the Federation by the Federal Constitution. According to Article 3 of Federal Constitution, Islam is the religion of the Federation however according to Article 11 of Federal Constitution discusses about freedom of religion is guaranteed in Malaysia. However, Muslim does not necessarily enjoyed a complete ' freedom of religion' as what has been defined in some western countries.

It is undeniable in such multi-racial country like Malaysia the differences of opinions among Muslim scholars, legal views and various points of law and jurisprudence would be an interesting area of study.

Hence, we can be more tolerate to each other beliefs of any religion and ideology as understanding is very important because a person must be capable of managing their life. In fact, Allah S.W.T always reminds us to follow the true religion (Islam) to succeed now and here - after. Prophet Muhammad (p.b.u.h) has been sent to bring to us the teaching of Islam.

Islamic law is a universal in character and its scope. It applies to all mankind Muslims or non-Muslims. The practising of other minority religions is recognized in our country so long as it does not interfere or provoke other beliefs. Mutual understanding among the believers from different religions would contribute to a harmony society.

1.2 AIM OF RESEARCH

The aim of this academic project is to provide a comprehensive study from the Malaysian and Islamic perspective on the issue of freedom of religion. Besides, whenever necessary it provides a comparative study on the issue of freedom of religion from both perspectives.

1.3 OBJECTIVE OF RESEARCH

The study is to explore the concept of freedom of religion, which is practiced in Malaysia. It explores the concept of freedom of religion from the early Islamic days led by Prophet Muhammad (p.b.u.h), the practice Islam of during *Khulafa' al-Rasyidin* era and the theories from the Muslim scholars related to this principle.

On the other hand, the discussion on the issue of freedom of religion would delve into the history of the Malacca Sultanate, Dutch and Portuguese Administration, British Colonial and after Independence.

Freedom of religion is one of the fundamental liberties provided in our Malaysian Federal Constitution. Hence, the study undertaken would look at the existing laws in Malaysia, which are related to freedom of religion. Besides that, the study attempts to compare the existing laws with the theories underlying in Islam.

The study also will look into the issue of *mualaf* in Malaysia. It is hoped that the study would provide us a clear picture of the issue of freedom of religion in Malaysia and from the theories of Islam.

1.4 SCOPE OF RESEARCH

The study is limited to the discussion of freedom of religion as provided in Article 3 and 11 of the Federal Constitution. Article 3 provides that Islam is the religion of the Federation. Article 11 guarantees freedom of religion. In this study, the writer tends to discuss the issue of freedom of religion based on the Charter of Medina, which is considered as in the history of mankind the first Constitution. The writer compares the freedom of religion from both aspects, Islamic perspective as well as the Federal Constitution.

1.5 RESEARCH METHODOLOGY

In undertaking this academic research, the writer has employed one method of research only, which is obtaining information from secondary data. Secondary data, in question are available in the library. Several libraries have been visited to collect the information. The libraries are as follows, Islamic College University of Malaysia's (ICUM) library, Islamic International University of Malaysia's (IIUM) library, National University of Malaysia, Islamic Centre and the National Library.

1.6 LITERATURE REVIEW

Professor Ahmad Ibrahim (1965), in his book entitled *Islamic Law In Malaysia* stated that freedom of religion is provided in Article 11 (1) of the Federal Constitution, every person has the right to profess and practices his own religion but subject to Clause (4) of the Federal Constitution. The discussion of the word *Shariah* is the name given to the whole system of the law of Islam, the totality of Allah commandments. Each one of such commandments is called *hukm* (pl.ahkam). The *Shariah* is defined as that which would not be known had there not been a divine revelation. This definition is wide enough to include all the divine revelations,

including those made by the Hebrew prophets and Jesus. The scope of explanation as to include the *Shariah* as a freedom of religion. The word *Shariah* is sometimes confined to the divine law lay down in the Quran and through the Prophet. The author view is the Quran and the Sunnah of the Prophet Muhammad (p.b.u.h) the *Shariah* of the Muslims but when the Muslims seek to understand the *Shariah* and apply their understanding of the *Shariah* to any particular matter their conclusion become the human interpretation of the *Shariah*, namely *fiqh*.

According to Wu Min Aun (1999), in his book entitled *Public Law In Contemporary Malaysia (Malaysian Law Series)*, says Islam is a supremely tolerant religion. While there is general agreement among the scholars that this prohibits the forcible conversion of non-Muslim to Islam, there is disagreement about as whether it permits freedom of religion belief to Muslims. It is true enough that Islam promotes harmony through the freedom of religion. However, the writer disagrees with the statement of the author on freedom of religion to the Muslims. This is because as a divine religion, once a person becomes a Muslim, he is bounded to protect his faith.

Md. Akhir Hj. Yaacob (1986), in his book entitled *Hak Asasi Manusia Menurut Islam (Suatu Pendekatan Perbandingan)* stated that to compel Islam as compulsory, it must derives from a sincere heart. According to *surah* al-Baqarah, 2:256:

"لا إكراه في الدين"

Means: "Let there be no force (or compulsion) in religion."¹

It means, that Allah does not force the mankind to embrace Islam. If we refer to the provision in Article 12 (3) of the Federal Constitution, it states that, "No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own". It is understood that the Federal Constitution provides that it is not compulsory for other believers to follow the religion of others.

¹ All translations are taken from Abdullah Yusuf Ali. 1994. *The holy Quran*. Kuala Lumpur: Islamic Book Trust. p.37.

Dr. Abdul Rahman Awang (1994), in his book entitled *The Status of Dhimmi in Islamic Laws*, the author explains that the entitlement of freedom of religion such as Humanism, universal revelation and Islam identities itself with much of the historical revelation of Judaism and Christianity. It acknowledges the prophets of the two religions as genuine prophets of God, who accept Islam. The author discussed in detail about the status of *Dhimmi* from various aspects such as legislative, place of worship and offences committed by *Dhimmi*.

According Mohd Salleh Abas (1988), the author of *Kewarganegaraan dan Hak Asasi*, provides a general discussion on about freedom of religion as provided in Article 11 and 12 in the Federal Constitution. To understand the intention of the drafters of the Federal Constitution, some decided cases are referred by the author as reference to the practicality of freedom of religion.

Hence, the study provides new suggestions and comments on this concept of freedom of religion practised in Malaysia. Although the Constitution is the Supreme law of the land, it is still questionable as to the position of other law such as Islamic law in handling the issue of freedom of religion.

CHAPTER 2

FREEDOM OF RELIGION ACCORDING TO ISLAMIC PERSPECTIVE.

2.0 Introduction.

Every person has a religion or beliefs in their life. Religion is an important element, which allow an individual to attain inner peace. It is hoped that, we will have a peaceful society. Furthermore, Islam declares the freedom of practicing other religions.

This chapter, highlights the concept of freedom of religion based on the Islamic perspective evident the early from empire of Islam. In this case we may refer to period of Prophet Muhammad (p.b.u.h) in Medina, on how justice and tolerance were used in his government, in order to solve problems in the society. The Prophet has developed the basic features of a government, which can be seen in the Constitution of Medina.

The following verse address to the Prophet Muhammad (p.b.u.h) and his nation. Allah advised us in Al-Quran, *surah al-Nahl* , *ayah* 125:

"ادع إلى سبيل ربك بالحكمة و المو عظمة الحسنة و جاد لهم بالتي هي أحسن، إن ربك هو

أعلم. عن ضلّ عن سبيله وهو أعلم بالمهتدين."

Means: " Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious; for thy Lord knoweth best, who have strayed from His path and who receive guidance". In such a manner did Islam appeal to the people of all other religions to adopt this faith and believe in its messenger, who was referred to in the Torah and the Gosal.

2.1 Definition of Freedom of Religion from Islamic Perspective.

Divine Legislation is what commonly known as religion. A religion is known to form the basis of worship and dictates the rules for proper human conduct. It also, represents an acute human need that transcends the need for food and drink. Religion is important since men cannot answer certain questions and men cannot solve certain problems. We need God's Law to solve it. Hence, religion may be defined as a belief, which naturally holds up beliefs in the higher power².

Islam is a religion of tolerance and peace. It guarantees the freedom of religion of the non-Muslim to practice their religion freely. The freedom of religion has been practiced since the Prophet of Adam when Allah sent him and his wife, Siti Hawa, to the world after was pardon by Allah for eating the prohibited fruit.³ The initial position of a Muslim to other faiths is thus one of tolerance. Besides, to protect of the of freedom of belief and worship for the followers of other religions have been made a sacred duty of the Muslims.

Based on Quranic verses we can understand that Allah S.W.T do not force to embrace Islam. Most of the verses provide on the Holy Quran discussion about how become the earth your couch,⁴ and the heavens your canopy,⁵ made the sun to be a shining glory and the moon to be light (of beauty) and measured out stages to know the number of years and the count (of time),⁶ thou causes the night to gain on the day,⁷ sent down rain from the heavens to produce every kind of harvest there with.⁸

As we know, Islam teaches us that we need not despise our sensual urges or other forms of feeling, as it is a *fitrah* of the human by in order to achieve spiritual

²Kamus Dewan Bahasa dan Pustaka. 1989. Kuala Lumpur: Dewan Bahasa dan Pustaka. New Ed. p. 11.

³Abdullah Yusuf Ali. 1994. Kuala Lumpur: Islamic Book Trust. Al-Quran .Taha 20: 122-124.

⁴Al-Quran . al-Baqarah 2:22, al-Naziat 79:30, al-Raad 13:3-4, al-Anbiya' 21:31.

⁵Al-Quran. al-Baqarah 2:22.

⁶Al-Quran. al-Baqarah 2:189, Yunus10:5, Yasin 36:39.

⁷Al-Quran. az-Zumar 39: 67, al-Imran 3: 27.

fulfillment. The religion of Islam is the religion of Allah. It is a way of life based upon a Code of Law that Allah decreed for mankind whom He created. In Islam, there is no force or compulsion in religion.⁹

Humans need religion to establish life. It is compulsory to know how God delivers His messages to people. In His infinite wisdom, God chooses to deliver His message through one individual from amongst the community for whom the message is intended. Thus, God reveals to such an individual, through the angels, that specific message and charges him with the mission of teaching, promising, correcting and destroying evil to the extent possible. Such an individual is known either as a Prophet or as a messenger.

The word messenger in Arabic is derived from “ sending a message”. The word Prophet is derived from “news”. The word Prophet in Arabic also suggests the idea of the way, such as the Prophet is a vehicle via which man can reach God. The messenger is full of wisdom in preaching and debating with the non-Muslim in ways that are best and most gracious.¹⁰ Allah has power for his slave.¹¹

Philosophers from West such as Dr. Phillip Hitti¹², Thomas Arrol¹³ and Albert Hourani¹⁴ say Islam was spread by ferocious such as war and apprehensive means. The opinion is prejudicial towards the concept of war in Islam. War during the Prophet Muhammad (p.b.u.h) period was permissible on grounds to defend Islam from the state of oppression and abuse.¹⁵

⁸Al-Quran. al-Rum 30: 48, al-A'raf 7:57, al-Nur 24:43.

⁹Al-Quran. al-Baqarah 2: 256.

¹⁰Al-Quran. al-Nahl 16:125.

¹¹Al-Quran. al-Yunus 10:99, al-Maidah 5: 51, al-Ana'am 6: 107.

¹²1958. *History of the Arabs*. New York: Mc Millan & Ltd. p. 143.

¹³1968. *The Preaching of Islam*. Lahore: Ashraf Aress. p. 46.

¹⁴1991. *A History of The Arab People*. London: Faber & Faber. p. 8.

¹⁵Al-Quran. al-Hajj 22:39-40.

2.2 Historical Development on Freedom of Practices of Religion.

The Charter of Medina was introduced by the Prophet Muhammad (p.b.u.h) in Medina. It was the first ever Constitution which guaranteed the fundamental rights of human. The Constitution is related to duties of government, relationship of government-community, duties of individual towards the country and other duties mentioned in the Constitution. The Charter of Medina consists of forty-seven provisions.

This Charter treat everybody equally regardless of religion, the colour of the skin, the language he speak, or the place of his birth, thus, the Charter confess the same obligation or every member of the society. This is not only because of narrow self-interests and need but stems from the moral duty to strive to be “ the best community commands the good, forbid the evil and believe in God”, as described by the Quran. Any community which has sufficient resource but where people face poverty, starvation and eventual loss of life will not be fulfilling its purpose to protect life and will be considered blameworthy.

The Islamic community is committed to and governed by a number of prime values. Some of these are submission to God alone, freedom governed by responsibility and discipline, justice and kindness, equality strengthened by brotherhood and mutual consultation.

The guarantee of freedom of religion can be seen in Article 25, which clearly mentioned Jews live according to their ways and Muslims according to me, similar to the position in *surah al- Kafirun ayah 6*.

Besides that, Article 45 of Charter prohibited at the people of Medina to be on war with each other.¹⁶ For instance, the Prophet made an agreement with the Najran community. The Najrans are required to as obey the rulers and customs practised in the Muslim society. They must pay two thousand (2,000) every year to Islamic government

¹⁶Md.Akhir Hj. Yaacob.1986.*Hak Asasi Manusia Menurut Islam (satu pendekatan perbandingan)*
Selangor : Dewan Pustaka Fajar (DPF).p.54.

“ You can live wherever you like, but with a condition that there should be no war.”
 In another report, he said: “ We will not declare war against you except if you disrupt peace”.¹⁸

The freedom of religion in Islam are as follow¹⁹:

- i) Every person has the right to profess and practise his religion and live peacefully.²⁰
- ii) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of other religion.²¹
- iii) No person shall be compelled to work gives contribution to other religion²².
- iv) Every religious group has the right to establish and maintain institutions for religious or charitable purpose.
- v) Every person has the right to appoint members in the government, except appointing Head of country, which is an exclusive right of the Muslim²³.
- vi) Every religious group has the right to establish a Court, which try cases involving personal law, and other matters, such power is delegated by the ‘ *Majlis Syura* ’.
- vii) The Muslim has the right to propagate Islam to non-Muslim.

The restrictions to the freedom of religion can be summarized as follow: ²⁴

- i) If there is any act which is contrary to any general law relating to public order, public health or morality such act *Majlis Syura* may control or restrict.

.p. 57.

¹⁸Md.Akhir Hj. Yaacob. 1986. *Hak Asasi Manusia Menurut Islam (satu pendekatan perbandingan)* .p.65.

¹⁹ibid. p.66

²⁰Al-Quran. al-Kafirun 109:6.

²¹Al-Quran. Yunus 10: 99.

²²Charter of Medina. Article 45(a).

²³Non-Muslim also does not have place leader in Country (Imam), army and Judges to Muslim.

²⁴Md.Akhir Hj. Yaacob. 1986. *Hak Asasi Manusia Menurut Islam (satu pendekatan perbandingan)* .p.67.

- ii) The non-Muslim is not allowed to propagate their teachings to Muslim.
- iii) No Muslim is allowed to convert to other religion. This prohibition is absolute. Whoever that converts is called a 'Murtad' and shall be sentenced to death.

According to Article 2 of Charter of Medina, every person has equal right regardless any situation and of such right may not be differed by status, language, religion and other factors. In Article 18 of Charter of Medina, every person has the freedom to think, embrace or practice the religion of their choice either individually or with group.

According to Article 13 of Charter of Medina, every person has the right or freedom of religion. Allah says:

”لكم دينكم ولي دين“

Means: “ To You be your way, and to me (be) mine.”

(al-Kafirun 109:6)

According to Article 14 of Charter of Medina the declaration, every person has the right to propagate or embrace the Islam religion²⁵.

Every person has the right to profess and practice the religion, social values, political beliefs or culture by existing in the society. Every person has the right to establish and manage institutions as. Allah says:

” قل هذه، سبيلي أدعو إلى الله، عل بصيرة أنا ومن اتبعني، وسبحن الله وما أنا من المشركين“

Means: “ You tell (them): “This is my Way: I invite to Allah, On evidence clear as the sight of one’s eyes, I and those who follow me (invite you), Glory to Allah! And never will I join Gods with Allah!”.

(Yusuf 12 : 108).

²⁵Md.Akhir Hj. Yaacob. 1986. *Hak Asasi Manusia Menurut Islam (satu pendekatan perbandingan)*. p.110.

Every person has the obligation to ensure the best for their community, their institutions and achieved the objectives with 'taqwa'. Allah says:

" والتكن منكم أمة يدعون إلى الخير ويأمرون بالمعروف وينهون عن المنكر، وأولئك هم
المفلحون "

Means: " Let there arise from among you a group of people inviting to all that is good, Bringing together what is right, and forbidding what is wrong: They are the ones to reach ultimate felicity".

(Al- Imran 3 : 104)

In another verse at *surah* al-Maidah 5:2.

" وتعاونوا على البر والتقوى "

Means: "Help ye not one another in righteousness and piety"

The Prophet Muhammad (p.b.u.h) had conceptually as well as in practise showed such great design of example to human kind with no other instrument than himself, and no other aid, except his fellow 'Sahabat'. As we know, Medina is a multiracial community consisting of Jews and Nasrani thus the basis of the Constitution is ideally to guarantee the right and safety of any individual. The *ahl al-dhimah*²⁶ as the Jews and Nasrani are known, practiced their beliefs freely under the Islamic ruling. The 'Constitution of Medina' supports the concept of peace and justice, the concept freedom of religion such as responsibility of the government to words their community or 'Ummah',²⁷.

Article 16 of Charter of Medina promotes discussions and duty to all 'ahl al-dhimah' and *ahli kitab*. The Prophet Muhammad (p.b.u.h) himself has visited the *ahl-dhimah*²⁸ and made agreement with the Najran²⁹ community to ensure that their safety, property, religion and place for worship are protected³⁰.

²⁶Member of Kitabiyyah (race of Jew and Nasrani, make agreement with government of Islam guarantee for safety property, religion and lived). Refer to Ibrahim Mustafa. 1970. *Mu'jam al-Wasit*. Turki: Maktabah al-Islamiyyah. p. 315.

²⁷Charter of Medina. Article 13.

²⁸Yusuf al-Qardawiyy. 1992. *Ghayr al-Muslimin fi al-Mujtama' al-Islamiyy*. Beirut : Mu'assat al-Risalah. p. 44.

The freedom of religion is the can way to a peaceful life. For example, in life of *ahl al-dhimah*, there have eating pork and drinking liquor. As we know, all harmful food and drink are prohibited. We know the harmful effects of alcohol consumption on the body and the mind ad its destructive impact on home and society. In Islam and some scholars also regard smoking tobacco as '*haram*' because of its harmful effects on the lungs and on health.

Strategies used by the Prophet in solving problem are evidence of freedom of religion. An intense God-consciousness underlined all that he said and did and none the less, he participated fully in the worldly events within, or touching upon, his environment. At the same time he was able to enjoy, as husband and father, the simple, intimate pleasures of family life. He was a practical statesman, an incomparable, incontestable leader of his community in peace and in war. The Prophet not makes a penalty and no forces them (captive) embrace Islamic religion. For example, in battle of Badr, then, along with his companions, the Prophet Muhammad (p.b.u.h) returned to Medina bringing with them the unbeliever prisoners. He proposed to them that they could gain their freedom in one of two ways: One was for those able to do so, to ransom themselves, and those unable to, could instead engage themselves in teaching reading and writing to ten Muslim each, so their can freedom the self. This particular incident demonstrates clearly the desire of Muslims to acquire knowledge.³¹ Nasrani and Jews are among the nation who lives during the Prophet's government. Prophet Muhammad (p.b.u.h) permits the officers of the church to practice their religion and seek help from the Muslims.

As a pioneer of the Islamic administration, Caliph of *al-Rasyiddin* continued to uphold Prophet Muhammad (p.b.u.h) concepts of Islamic doctrines and purifying human souls and spreading the spirit of forgiveness and brotherhood, freedom and equality, power and justice. Every person has the right to freedom of religion than his own. Caliph of Umar al-Khattab after success inviting Baitulmaqdis promised to awake

²⁹Map al-Sharqal al-Awsat.1967. *Qamus al-Munjid* .Beirut: Maktabat al-Sharqiyyah.

³⁰Abd. Al-Latif al-Tayawiyy. 1982. *Muhadarat fi Tarikh al-Arab wa al-Islam*. Beirut: Dar Andalus. Vol.3. p.192.

³¹Muhammad Said Ramadan al-Butiyy.1980. *Fiqh al-Sirah*. n.pl: Dar al-Fikr. pp.228-229.

safety of community their religion and church. Have one instruction discharge of prohibit to take of power or change the all church. The agreement has between Khalid bin al-Walid with community of Damsyik, the guarantee to himself safety and church of them if their pay '*Jizyah*' to governance of Islam.³²

The Prophet Muhammad (p.b.u.h) himself emphasized the need to treat the non-Muslims with tolerance. The Caliphs Abu Bakr and Omar followed the same tradition and insisted the society to uphold this practice. It is important to those enemies of Islam who maintain that force and the use of the sword spread. Suffice it so say that the record and the history of Islam are there to testify to the truth. True Muslims have never used warfare as a method for the propagation of Islam. For had they done so, they would have gone against the very divine instruction of the Lord. For example, during the period of *Bani Umayyah* and *Abbasiyyah* government, they were guarantee freedom of religion and may propagate their religion. For instance, the Christian can have a church for place of worship.

Thus, the use of force is ethical and justified in circumstances where the Muslim community in physically threatened or the missionary work of Islam is inhibited by force.

³²Abd. Al-Latif al-Tayawiyy.1982. *Muhadarat fi tarikh al-Arab wa al-Islam*.p.139.

2.3 Restrictions on Freedom of Religion.

The initial position of a Muslim to other faiths is thus one of tolerance. More than this, the protection of freedom of belief and worship for followers of other religions has been made a sacred duty of Muslims. According to the Charter of Medina, it is the right of all non-Muslims who live in an Islamic country to pay *jizyah* and to obey the requirements agreed in the agreement. The Jews, for example were discharged from Medina because they failed to follow the agreement.

2.3.1 To Show Practices of Religion.

In regards to how the religion is practised is determined by the Scholars who make the law in that certain place:

The areas have not the Muslim. In this case, Scholars of School of Shafiiy³³, Hanafiy³⁴, and Hambaliy³⁵ agreed that they could practice and celebrate their religion. Even at public places such as at the street and market if there is a majority number of non-Muslim at the place.

The majority number of Muslims at that place. Scholars of School of Hanafiy³⁶ and Hanbaliy³⁷ agreed that the *ahl- adhimah* can practice their religion only in their house or place of worship. They cannot practice at public places, because certain actions such as sound of bell at place of worship, build a pageant of crucifix and eat or drink at public during the Day Ramadhan month may displease Muslims. Scholars of

³³Shaykh Shams al-Din Muhammad al-Khatib al-Sharbiniyy. 1997. *Mughni al-Muntaj*. Beirut: Dar al-Ma'rif. Vol.4. p. 341.

³⁴Abu Bakar Ibn Masud al-Kasaniyy. 1910. *Badai al-Sanai an Tartib al-Sharai*. Mesir: Maktabat al-Jamaliyyah. Vol.7.p.113.

³⁵Mansur Ibn Yusuf al-Buhutiyy. n.d. *Kashaf al-Qina' an Matn al-Qina*. Riyad: Maktabat al-Nasr al-Hadith. Vol.3. p.113.

³⁶Abu Bakr Ibn Masud al-Kasani.1910. *Bada al-Sani an tartib al-Sharai*.Vol.7.p.113.

³⁷Mansur Ibn yusuf al-Nuti . n.d . *Kashaf al-Qina' an matn al-Qina'*. Vol 3 .p.133.

School of Shafiiy also agreed with the opinion, but, they may make the practices religion when their lived dealing in one of place.³⁸

In Islam, the other religions has the freedom to build their own worship places as this is important in order to secure '*Maslahah ammah*'³⁹ or the good of the society. Furthermore, Islam requires the Muslims to understand and to be tolerance towards the *ahl-dhimah* especially in matters pertaining their religion. Now days, at Islamic States, the government have tolerance with *ahl-adhimah* to show practices of their religion in place of Muslim.

³⁸Shaykh Shams al-Din Muhammad al-Khatib al-Sharbiniyy.1997.*Mughni al-Muntaj*. Vol .4 .p. 341.

2.3.2 The Place of Worship.

In regards to the issue of where should the worship places be located, the Fuqaha's opinion can be divided to 3 different views⁴⁰:

A place established by Muslim, such as town of Kufah, Basrah, Baghdad and Kaherah. According to the School of Shafiiy⁴¹, Hanafiyy⁴² and Hanbaliyy⁴³, worship places cannot be build on lands which an totally Muslims.

A place established by Muslim as a result of War, such as Egypt and Asbahan. According to School of Shafiiy, worship places cannot be build on lands because had no permitted established of church⁴⁴. The school of Hanbaliyy gives the permission to set the worship⁴⁵, but a worship places cannot be build on lands which an totally Muslims, where the area as a pray pilgrim, Raya Day and make the *hudud* cases⁴⁶.

In regards to territories occupied by Muslims via agreement. The School of Shafiiy⁴⁷, Hanbaliyy⁴⁸ and Hanafiyy⁴⁹, agreed, if the land in question is party of the agreement and they (*ahl-adhimah*) pay *kharaj* to government, they can establish their own church. But if in accord to the agreement the land belongs to the State then they must pay the *jizyah* were allowed to build their worship places.

³⁹ Abd al-Karim Zaydan. 1976. *Ahkam al-Dhimiyyin wa al-Musta'min fi Dar al-Islam*. Mesir: Jamiat al-Qahirah .p. 100.

⁴⁰ Abd al-Karim Zaydan. 1976. *Ahkam al-dhimiyyin wa al-musta'min fi dr al-Islam*. pp.96-97.

⁴¹ Shaykh Shams al-Din Muhammad al-Khatib al-Sharbiniyy. 1997. *Mughni al-Muntaj*. Vol.4 .p. 336.

⁴² Muhamad Amin al-Shahid Ibn Abidin. 1995. *Hashiyat radd al-Mukhtar*. Beirut: Dar al-fikr. Vol. 4. p.203.

⁴³ Mansur Ibn yusuf al-Nuti. n.d. *Kashaf al-Qina' an matn al-Qina'*. Vol. 3. p.133.

⁴⁴ Shaykh Shams al-Din Muhammad al-Khatib al-Sharbiniyy. 1997. *Mughni al-Muntaj*. Vol. 4. p. 336.

⁴⁵ Muhamad Amin al-Shahid Ibn Abidin. 1995. *Hashiyat radd al-Mukhtar*. Vol .4. p.203.

⁴⁶ Shaykh Shams al-Din Muhammad al-Khatib al-Sharbiniyy. 1997. *Mughni al-Muntaj*. Vol.4. p. 337.

⁴⁷ Mansur Ibn yusuf al-Nuti. n.d. *Kashaf al-Qina' an matn al-Qina'*. Vol. 3.p.133.

⁴⁸ Muhamad Amin al-Shahid Ibn Abidin. 1995. *Hashiyat radd al-Mukhtar*. Vol . 4. p.203.

2.3.3 Practices of Personal Law.

Ahl al-dhimi has the freedom of religion and the right to practice his personal law. For example, in cases of marriage, divorce, properties, business of liquor, eating meat of *khinzir* and economic matters. However, if they become a Muslim, they must stop above action. The School of Hanbaliyy says, that there is an obligation to impose the *hudud* law on them, in offences of adultery and theft because both acts are also considered serious offences in their religion.

2.4 The Religious Basis of Jurisprudence.

Islam literally means submissions to the will of God and the will of God is that we should pursue *husn*, that is beauty of life and character and avoid *qubh*, that is ugliness of life and character. What is *husn* or morally beautiful and what is *qubh* or morally ugly, can only be discovered from the divine revelation. The value of each human action must be considered in the sight of God; its earthly consequences are incidental. What is morally beautiful must be done; what is morally ugly must not be done. That is the path to be pursued according to the *Shariah* law.⁵⁰

The word *Shariah* is the name given to the whole system of the law of Islam, the totality of Allah commandments. Each of the commandments is called *hukm* (pl.ahkm). The *Shariah* is defined as “ that which world not be known had there not been a divine revelation”. This definition is wide enough to include all the divine relations, including those made by the Hebrew Prophets and Jesus, but the divine relations through Muhammad are the prime revelations which overrides the earlier by God, and therefore constitute the *Shariah* in its purest and final form. Only what is expressly stated in the divine revelations or may be inferred from them properly comes under the *Shariah*. The

⁵⁰Ahmad Ibrahim (Professor) .1965. *Islamic Law in Malaya*. Kuala Lumpur: Polygraphic Press Sendirian Berhad. Vol.1. p.1.

Shariah embraces all human actions , it is therefore, strictly not law in the modern sense but might be regarded as a guide to ethics.⁵¹

Muslim term, which corresponds more closely to law, is *fiqh*. *Fiqh* is defined as “the deduction of the *Shariah* values relating to conduct from their respective interprets from (tafsili)”⁵².

Islam is an Arabic word whose literal translation means peace and submission (to the will of god). Islam derives from two words with the same root; *salaam* and *salm*. Professor Khurshed Ahmad explained the basic principles of Islam in this way: Islam stands for a commitment to surrender one’s will to the will of God and thus to be at peace with the Creator and with all that has been created by him. It is through submission to the will and the will of God leads to the harmonization of different spheres of life under all-embracing ideals. He adds that Islam is a worldview and an outlook on life. It is based on the recognition of unity of God. In it, he concludes, is embodied a framework for the conduct of the whole of human life.

Sayyid Abul A’la Mawdudi pointed out that in Islam man’s entire individual and social life is an exercise in developing and strengthening his relationship with God. *Iman*, the starting point of Islam, Mawdudi continues, consists of acceptance of this relationship by man’s intellect and will. All those persons, he further added, ‘who thus surrender themselves are welded into a community and that is how the Muslim society, radically different from those which are founded on the basis of race, colour or territory.

⁵¹ibid. p.1.

⁵²ibid. p.1.

2.4.1 The Islamic Theory of International Relations.

Islam is universal, an international system based on Universal brotherhood and on the moral values and principles as laid down in the Quran. Like many other aspects of Islam, the Islamic theory of international relations is grossly misunderstood and misrepresented. Islam is depicted as the 'religion of the sword' which enjoins *jihad* (holy war) against non-believers. The world, according to a narrow and traditional interpretation of the classic Islamic theory of International relations, is divided into two parts: (1) *Dar al-Islam*, areas where Muslims are rulers and free and where the *Shariah* prevails; (2) *Dar al-Harb*, those parts of the world which are beyond the jurisdiction of *Dar al-Islam*. It is alleged that Islam enjoins its believers to carry out *jihad* until the *Dar al-Harb* is integrated into *Dar al-Islam*⁵³.

The Islamic theory of international relations centers on the Quranic concept of *ummah*. The word *ummah* appears sixty-four times in the Quran. The primary meaning of the word, as Muhammad Asad states, is a group of living beings having certain characteristic or circumstances in common. The word *ummah* is used in the Quran in more than one way: to connote excellence way, length of time, a group and a people. Islam envisages an international order which is a commonwealth of nations and which accepts racial diversity and ever-changing geographical demarcations only for facility of reference and not to limit the social horizon of its members⁵⁴.

In accordance with Islamic fundamental principles as we may call a follower or *mu'min* a (genuine) Muslim is one a person who believer and practices unconditionally and unequivocally 'The Five Pillars of Islam': faith in one God: Allah; five daily prayers; almsgiving (*zakat*); fasting in the month of Ramadhan; and the pilgrimage, once in a life time, to Makkah⁵⁵.

⁵³Golam W.Houdhury. 1993. *Islam and the Modern Muslim World*. n.pl: WHS publication Sdn.Bhd. p.171.

⁵⁴:ibid. p. 172.

⁵⁵:ibid. p. 218.

2.4.2 Basis of Religious Freedom

According to Muslim's scholars, Islam has divide to three levels of non-believers:

1. *Humanism*. Islam introduced the concept of *din al-fitrah (religio naturalis)* which is that God endows all men at birth with a religion that is true, genuine and valid for all time. Without this natural endowment, man would not be man at all. Islam promotes universal humanism on this basis of *religio naturalis*. All men are ontologically the creatures of God, and all of them are equal in their natural ability to other creatures of God and His Law. Nobody can be excused from not knowing God, his Creator, for each and every one has being born with the natural need to religion. To this end, the Prophet Muhammad (p.b.u.h) has said: “ all men are virtually born Muslims (in the sense of endowed with *religio naturalis*). It is their parents (tradition, history, and culture as opposed to nature) that turn them into Christians and Jews. On this level of nature, Islam holds that the believers and non-believer are equal partakers of the religion of God;⁵⁶

2. *Universal Revelation*. Islam holds that “God had sent to the people a Prophet or Warner”; and that “ no Prophet was sent but to convey the same divine message, namely to teach that God is god and that man ought to serve him”⁵⁷.

Based on the history, the community has been sent a messenger to teach them in their own language so that he may convey the message clearly to them. The first of their teaching are basically similar the God recognition of Him as God, i.e. the Creator, Lord, Master and Judge, and to service Him with obedience and administration. All men, therefore, are recognized as possessors of divine revelations, each fitting its context of history and language, but all identical in their essential religious context.

⁵⁶Abdul Rahman Awang (Dr). 1994. *The Status of the Dhimmi in Islamic Law*. n.pl: International Law Book Services. p.180.

⁵⁷ibid. p .181.

Hence, Muslims and non-Muslims are equal in their having once been objects of divine communications; and⁵⁸

3. *Islam identified itself with much of the historical revelation of Judaism and Christianity.* It acknowledges the Prophets of the two religions as genuine Prophets of God, and accepted them, as Islam's own. It taught its adherents to honor their names and memories. With its acceptance of the Jewish Prophet and of Jesus Christ, it reduced every difference between itself and these religions to a domestic variation, which may be due to human understanding, rather than to God or the religion of God. It thus narrowed the gap between the Muslims and the adherents of the two religions⁵⁹. It means, The Judaism and Christianity also comes from Allah.

2.4.3 The *Dhimmi's* Judicial in Islamic States.

In theory, Islamic law is universal in character and its scope. It appeals to all mankind, Muslims and non-Muslims, and governs the Islamic states and non-Islamic matters. Based on the School of thought Abu Hanifah, Abu Yusuf, Maliki's Syafiee, Imam Ahmad bin Hanbal about offences in criminal and civil cases, Abu Hanifah says Islamic law applies only to crimes which occur in *Dar al-Islam* regardless of whether it is committed by the Muslim or *dhimmi*. No other law, in this matter should apply including the *dhimmis*⁶⁰.

It is the positions of Malik, Shafiee, and Ahmad bin Hanbal express the opinion that the Islamic law is applicable over every crime committed in *Dar al-Islam* by any person; Muslim or *dhimmi* in terms of criminal responsibility. If the *musta'min* flees after he has committed a crime, he remains liable to be punished whenever possible. Up to this point this theory seems to be in harmony with that of Abu Yusuf. But the majority argues further that the Islamic law is also applicable on a crime committed by

⁵⁸ibid.p.181.

⁵⁹ibid.p.181.

the Muslim or *dhimmi* abroad; but not on *harbi* who has become a *musta'min*. It is precisely because prior to becoming a *musta'min*, he is not abide by the Islamic law during his stay abroad. In the case of a Muslim or *dhimmi* the concept of different domicile (Dar) has no effect over their liability for a criminal act. Therefore, the punishment will be the same no matter where the crime has been committed. So the criterion is whether the act is lawful or forbidden according to the Islamic law and not according to the law where he resides (during the commission of the crime). For example, the Muslim or *dhimmi* is liable to punishment if he concludes a *riba* contract abroad even though such a contract is lawful in that country. The same rule would be applied if he committed any other criminal act.

If the *dhimmi* had left *Dar-Islam* for good because he would be considered as *harbi* and no longer *dhimmi*, by the act of leaving *Dar al-Islam*. The same rule applies to a Muslim who had apostate and left *Dar al-Islam* even if he returns as a Muslim.

⁶⁰ Abdul Rahman Awang (Dr). 1994. *The Status of The Dhimmi In Islamic Law*. p. 88.

2.4.4 Freedom of Religious according to *Shariah*.

According to Muslim of belief, Quran is the word of God. On the literal reading of the verse quoted at the beginning of this chapter, God has prohibited compulsion in religion and proclaimed the right of a person to choose their religion. From this, it might be deduced that Islam is a supremely tolerant religion. While there is general agreement among the scholars that this verse prohibits the forcible conversion of non-Muslims to Islam, there is disagreement about whether it permits freedom of religious belief to Muslims.

The Quran is the first primary source of Islamic law; whereas the Quran sayings and practices of the Prophet, which were brought down to us through, the secondary source, are Hadith. The secondary sources of Islamic law are the teachings and rulings of the great Muslim scholars throughout the ages, contained in their many volumes of writings, mostly from the “Golden Age” of Islamic civilization, the period roughly between the eight and the twelfth centuries.

CHAPTER 3

FREEDOM OF RELIGION FROM TO THE MALAYSIAN PERSPECTIVE.

3.1 Definition of Freedom of Religion From the Malaysian Perspective.

According to Professor Muhammad Imam⁶¹, in his comment on Article 11 of the Federal Constitution the definition of beliefs or religion in this Article may be referred from the decision of the Australia case, **Faith v Commission**. In this case, the Dear Judge outlined the criterias of what is meant by religion and only two criteria are suitable to Article 11(1) of Federal Constitution.

Group of idea and practices according believed to any power but out power of human (Supernatural Being). Relation idea by human of nature and in world and power out of them. The received of idea by follower want to encouragement follow the all instruction or joined the practices especially ‘ Supernatural’.

Manor Judge in the same case makes the conclusion to objective of Islamic laws,

- ❖ Belief to any power out of human, thing and Principe of power.
- ❖ Principe Principe in effort gives the effectively to the believed.

According to the above of definitions the other religions practiced by Hindu and Chinese is basically supernatural but still remain as religion defined under article 11. For example, in case of **In Re The Will Of Yap Kwn Seng** “ Sin Chew” (an event to celebrate the spirit of the deceased).

Religions in Malaysia can be divided into two, Islam and non-Islam religions. According to the Judge of the Supreme Court, Tun Salleh Abbas in the case of **Che**

⁶¹Muhammad Imam (Professor). (1994) 2 C.L.J. *Federal Constitution Of Malaysian: A Reappraisal*. n.pl: n.pb. p. Ivii.

Omar Bin Che Soh v Public Prosecutor⁶² perceived as Islam a complete lifestyle or '*syumul*'. This means Islam covers up all fields of human activities, private or public, legal, political, economic, social, cultural, moral or judicial.

The counsels for Defendant submitted that the mandatory death sentence for the drug trafficking offence and for the offence under the Fire Arms (Increased Penalties) Act is against the injunctions of Islam and therefore void. It is argued that since Islam is the religion of the Federation via Article 3 (1) and since the Constitution is the Supreme Law of the Federation the imposition of death penalty on these offences, is not in accordance with a *huddud* or *qisas* as prescribed by the thus, the death sentence is contrary to the Islamic law and is therefore unconstitutional.⁶³

The first point to consider here is the meaning, which could be given to the expression of Islam order Islamic religion under Article 3 of the Constitution. If the religion of Islam in that context means acts relate to personal law, rituals and ceremonies, then, the argument has no basis whatsoever. On the other hand, if the religion of Islam itself is an all-embracing concept, as is normally understood, which consists not only of the ritualistic aspect but also a comprehensive system of life, including the jurisprudence and moral standard of the society then the submission has a great impact in that every law has to be tested according to this yardstick.⁶⁴

⁶²[1988] 2 MLJ. p.55.

⁶³Wu Min Aun.1990. *The Malaysian Legal System*. Kuala Lumpur: Longman.p.153.

⁶⁴ibid. p .154.

3.2 The History of Freedom of Religion in Malaysia.

Starting from the period of Prophet Adam until now, religion cannot be separated from human life. History has shown that of freedom of religion in Malaysia started before Independence Day, such during the period of setting the Malacca Sultanate and period of English at state of Malaya after Independence Day.

3.2.1 Freedom of Religion before Independence Day.

Malaya is one of the Muslim countries located in South- East Asia. In the early fifteenth century, Malaya received the Islamic influence, from the Muslim traders who came from India and Arab. Before the colonialization of British, Islamic law plays an important rule as the law of the land.

The implementation of Islamic law was widely recognized. However, this changed when the British came to Malaya. The implementation of English law and its intervention, even in personal law, affected the position of Islam as the law of the land.

3.2.2 Before the Colonial time.

Before the British came to Malaya, which was then known as Tanah Melayu, the Sultans in each of their respective states were the heads not only the religion matters but also as the political leaders of their states.

Before the coming of Islam, the community in Nusantara practiced Animism, Hindu and Buddha⁶⁵ in their life. This is evident from the artifacts found such as appliances,

⁶⁵Haron Daud. 1989. *Sejarah Melayu; Satu Kajian Daripada Aspek Persejarahan Budaya*. Hulu Kelang: Dewan Bahasa dan Pustaka. pp. 26-27.

religious writings and engravings of Hinduism teachings and characters on stones.⁶⁶ Islam is believed to reach the Malaya States during the 14th century. According to *Sulalatus Salatin* there were evidences that explain how Malacca was declared as a state governed by religion Sultan Muhammad Syah or known as Raja Kecil Besar, among others⁶⁷.

According to Malacca laws and other digests, it can be seen that the Islamic marriage law, criminal law, sale and evidence (procedures) in the respective codes were the earliest evidence of the implementation of Islamic law. Malacca Laws provide that once a Muslim change his or her believe, he would be asked to repeat his answer three times, if he or she still chose to change his or her belief will be murdered. The punishment was severe in order to protect the dignity of Islam.⁶⁸

3.2.3 After the Arrival of British.

When British came, there were series of treaties made between them and the Malay Sultans beginning with the Treaty of Pangkor on 1874. As the result, the implementation of Islam became separated into two aspects, the public aspect and the private aspect. This is because in the treaties made with the Malay Rulers, the rulers were compelled to accept a British Resident or advisor whose advice must be asked and acted upon in all administrative matters except in Malay customs and religion⁶⁹.

⁶⁶ Aziz Deraman. 1975. *Masyarakat Dan Kebudayaan*. Kuala Lumpur: Kementerian Kebudayaan, Belia dan Sukan Malaysia. p.45.

⁶⁷ A. Samad Ahmad. 1986 . *Sulalatus Salatin (Sejarah Melayu)*. Kuala Lumpur: Dewan Bahasa dan Pustaka. p. 79.

⁶⁸ Undang-undang Melaka, Article 36. The punishment to once a Muslim change his or her believe. Liaw Yock Fang. 1976. *Undang-undang Melaka*. Singapura: The Haque- Martinus Nijhoff. pp. 148-149.

⁶⁹ W.G.Maxwell & Gibson.1924. *Treaties and Engagements Affecting the Malay States & Borneo*. London: n.pb. Vol .1. pp. 28-104.

However, the Sultans of the Federated States did not enter into such agreement with the British.⁷⁰

The Freedom of religion during British administration can be seen from the fact of Law the local people are allowed to practise personal laws such as in cases of marriage, divorce, heirs⁷¹ and other aspects of family matters. This can be seen from the case **Chulas v Kalsom**⁷². The English Law cannot be applied to the community since the society had their own personal law and customs. It would then be on just and oppressive to impose the English Law on them, especially in personal matters pertaining to their beliefs and custom⁷³.

The Charter of justice in 1807⁷⁴ stated the features of the admin of justice system and did not restrict on the practise for the religion and custom Malays, Chinese and India community in each state⁷⁵. The status of Islamic was discussed in the civil courts presided by judges trained in English Law and Legal System.

The findings in the following cases would provide the basic proposition on the application of Islamic Law. In case **Ramah v Laton**⁷⁶, the Appellant in this case is one of the widows and the administratrix of the estate of one Mat Dawi bin Suroh who was the deceased. The Respondent is another widow who sued the Appellant as the administrate or and sought for a declaration that all the movable and immovable property of the deceased a the time of his death was *Harta Syarikat* according to the Shafiiy School of Mohammedan Law, and that the Respondent was entitled to one half of share in that property. The learned Chief Justice gave judgment for the Respondent declaring that all the immovable property of the deceased at the time of his death was

⁷⁰ibid. pp. 28-104.

⁷¹Sheikh Abdul Latif v Shaikh Elias Bux (1915) 1 FMSLR. p. 204.

⁷²Chulas v Kalsom (1867) Leic. A marriage according to Islamic Law. p. 462.

⁷³Same in Karper Tandil v Tandil case (1985) 3 SSLR. p. 58.

⁷⁴The Charter of Justice introduce in thirdly, Firstly (1807), Secondly (1862), Thirdly (1855).

⁷⁵Refer to Ong Cheng Neo v Yeap Cheah Neo & Ors (1872), Kyshe's Report. pp. 326-343.

⁷⁶[1927] 6 FMSR. p. 128.

Harta Syarikat , and as such the Respondent was entitled to one half of the share therein subject to the rights of a third person, and he further declared that the Respondent was also entitled to the share in the deceased's estate as one of the widows of the deceased in accordance to Mohammedan Law. The Appellant than appealed.

The main issue in this case was whether the principle of Mohammedan Law, in regards to '*Harta Syarikat*' applied in this case and if so, whether in the circumstances, the Respondent was entitled to the declaration she sought. The Mohammedan law is not foreign but local law, that is the law of the land, and the implementation of local law is a matter of which the court must take judicial notice. The court held that they must propound the law and it is not competent for the court to allow evidence to be led as to what is the local law.

This authority was cited with approval in the Johore case of **Patimah binti Harris v Haji Ismail bin Tasmin**⁷⁷ , where Mills J held that Mohammedan law at that time is the law applicable in Johore. In the Malacca case of **Nafsiah v Abdul Majid**⁷⁸ it involved against an action breach of promise to marry between two parties. The parties a challenged the High Court to hear the suit. Thus a conflict was created between the Islamic law administered in the Shariah courts and the civil law administered in the civil courts.

In the case of **Ainan bin Mahamud v Syed Abu Bakar**⁷⁹. The Plaintiff, and the second, third, fourth and fifth defendants are the acknowledged children of an old and rich Malay gentleman called Mahamud bin Wahid. The first defendant is married to the third defendant, and thus son-in-law of Mahmud. The sixth defendant is the son and only child of a former wife of Mahmud named Long Raayah binti Lias, whom he divorced on 12 September 1910. Mahmud denies, and Long Raayah asserts, that he is the father of Mat Sah. The claim itself is dated 29 September 1937, that is, only seven

⁷⁷[1939] MLJ. p.134.

⁷⁸[1969] 2 MLJ. p.174.

⁷⁹[1939] MLJ. To confirm status of child birth 4 month after marriage his mother. p. 209.

days after the execution of the deed of settlement set out above, and the material allegations therein may be stated concisely as follows:

- 1) The Plaintiff and the second, third, fourth and fifth Defendants are Mahmud's natural and lawful children;
- 2) Mahmud was married to Long Raayah at Kampung Tualang Tujoh in the Kinta District on or about 9 May 1910;
- 3) At the time of such marriage Long Raayah was in a state of pregnancy, but Mahmud was unaware of that fact;
- 4) In or about the month of August 1910, Long Raayah was delivered of a child who is the sixth Defendant Mat Sah;
- 5) On or about 12 September 1910, Mahmud pronounced a divorce of one degree over Long Raayah, and the marriage between them was dissolved;
- 6) On 22 September 1937, Mahmud and the first Defendant executed the deed of settlement set out above, after the plot of land therein mentioned had been transferred by Mahmud to the first Defendant;
- 7) The sixth Defendant Mat Sah claims that he is a natural and lawful son of Mahmud, and a beneficiary under the said deed of settlement.

Upon these allegations the Plaintiff prayed for:

- a) A declaration that he and the second, third, fourth and fifth Defendants are the only natural and lawful children of Mahmud;
- b) A declaration that the sixth Defendant Mat Sah is not a natural and lawful son of Mahmud, and not a beneficiary under the said deed of settlement;
- c) Any further or other relief that the Court might think fit to grant; and
- d) Costs.

The sixth Defendant Mat Sah filed a real defence with a counter-claim added thereto. Finally he pleaded that the Plaintiff is not entitled to obtain the declarations asked for .

In the cases like those dealt with above, it would appear that the effect of the amendment to Article 121 of the Federal Constitution would be to prevent for the future any conflict between the decisions of the civil courts and the Syariah Courts, as if the matters involved Muslims it can only be brought to the Syariah Courts and the High Courts will no longer have the jurisdiction to deal with such cases. Although this seems to be the result, it would seem to be advisable to remove all doubt and to amend or repeal certain laws, which would seem to give jurisdiction to the High Court.⁸⁰

3.2.4 Freedom of Religion after Independence Day.

When Malaysia obtained its Independence on 31st August 1957, Islam was not granted as a prominent role in the country. The need to address the move pressing issue of nation building also resulted in government policies, which did not pay much attention to Islamic principle, or to the development of Islamic socio-economic infrastructure and institutions. This can be seen from the extent to which Islamic principles were incorporated in the Federal Constitution. The Constitution was reflected the plural composition of the country, and was not meant to be guided by Islamic principles only.

In Malaysia, nationalism became a force to be reckoned with after the end of the Second War, and led to the Independence of our country in 1957 from the British. In the early years of the Independence, the country was led by British educated Malay nationalists, who regarded Islam as part of the national identity, and expected it to remain as a matter of theoretical and ceremonial aspects rather than a system for the nation. Article 3 of the Federal Constitution, which declare Islam to be the religion of the Federation and Ruler as the Head of the religion of Islam in his state is a provision which narrows the definition of Islam as an effect of the historical background of the nation.

⁸⁰Federal Constitution . 2001. Kuala Lumpur :International Law Book Services.p.143.

After several meetings between the British government and the Alliance party of Malaya, Malaya eventually got her Independence on August 31, 1957. A Constitution Commission was formed to draft the Federation of Malaya's Constitution. The Constitution Commission was led by Reid which eventually agreed to allocate a provision of Islam in the Federal Constitution.

3.3 Freedom of Religion in the Constitution.

The Constitution Commission's proposal was accepted to be the Federal Constitution of Malaya and later Malaysia. The position of Islam is laid down in Article 3(1) which provides that Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation. In order to assure that the non-Muslim civil rights are not affected, clause (4) of Article 3 provides that nothing in this Article derogates the other provisions of this Constitution.

In regards to the position of Islam in the States, the constitutions of the various States has provided that their religion shall be Islam, except in Penang, Malacca and Sarawak. There is also no provision in the Federal Constitution, which provides that Islam shall be the religion of these States. The only provision, which can be found, is clause (3) of Article 3 of Federal Constitution states that the Constitution of the States of Malacca, Penang, Sabah and Sarawak shall each makes a provision which confers the power on the *Yang di-Pertuan Agong* to be the Head of the religion of Islam in that State. In some of the states for example Penang, Malacca, Perak , Negeri Sembilan, Kedah, Kelantan and Sabah there is a restrict on the law which prohibits propagation by any person of any other religious doctrine or belief other than the religious doctrine or beliefs of the Muslim religion to any persons professing Islam .

According to Article 3 Federal Constitution, provides that the religion of the Federation⁸¹ is Islam but the others religion can be practiced in peace and harmony.

⁸¹Federal Constitution. 2001. Kuala Lumpur : International Law Book Services .p . 20.

Freedom of religion under Article 11 is still restricted by other acts, do these restriction contradict with the fact that Islam is the official religion of the Federation.⁸²

According to Article 3(1), it clear Islam is the official religion of the Federation it can be referred to historical development of the coming of Islam since 5th century. In Federal Constitution, as logic if party of Federation have responsibility for to convert and give the facility and encouragement the Muslim in embraces the Islam. In given the freedom of religion to citizen, the right and the important Muslim and can not asked.

In the other hand, Article 149 provides that the Parliament has the power to control or restrict any act, which may threaten the Muslim.

Eventhough Article 1(1) clearly states that everybody has the right to practise their religion, however the freedom is not absolute for Muslims as stated under Clause 4. According to Article 11(4), Federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. It means, law of the federation can control and make a restriction on the propagation of any religion.

In addition Article 11(5), provides that the law does not authorize any act contrary to any general law relating to public order, public health or morality.

In respect to the administrative aspect of one's religion. Article 3(1) must read with by allocate 11:

1. Every person has to right to profess and practices his religion.
2. No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purpose of a religion other than his own.
3. Every religious group is entitled:
 - a) To manage its own religious affairs;

⁸²Federal Constitution. 2001.p.28.

- b) To establish and maintain institutions for religious or charitable purpose; and
- c) To acquire and own property and hold and administer it in accordance with law.

Similarly, Article 12 (1) prevents discrimination based on religious grounds in the administration of public education and scholarships. Article 12 (2) gives every religious group the right to establish and maintain institution for the education of children which profess its religion; the same clause adds that the States or the Federation may establish or maintain institution which issue or provide rules, instruction of *fatwa* in Islam providing instruction in Islam. Article 12(3), also states that no person shall be required to received instruction in or to take part in any ceremony or act of worship of a religion other than his own.

The instructions to freedom have done in Article 11, “ Law of State and Wilayah Persekutuan”, law federation can control or restrictions embrace what the believed religion Muslim. According to this provision, states have power to restrict the embrace of religion of Muslim.

Article 11(5) prohibit practices the religion have the pernicious to community and different by the law. The provisions is “ This matter have not permit what different by relating law to public order, public health or morality. The provision religions have not got different in freedom. If have group belief their religion distance kill person is bad action so, must can not freedom because not get the peace of public.”

In the case of **Jamaluddin bin Othman v Minister of Home Affairs**⁸³. The court held that the authorized body in question must prove that the acts of propagating one’s religion create dispute or threaten the National security.

In this case, Jamaluddin was detained to prevent him “ from acting manner” which is prejudicial to national security for allegedly converting 6 Malays to Christianity in a security. However, he was ordered to be released by the court on an application for

habeas corpus. The Supreme Court took the view that the grounds of his detention when read in the proper context were insufficient to fall within the scope of the Internal Security Act. The court ruled that the guarantee under Article 11 of the Federal Constitution prevails over the ISA unless actions of the person goes well beyond what could normally be regard as professing and practising one's religion. Though only a single case of due to propagation of religion detention has come before the superior court, there have been several other cases of similar issues.

Furthermore, the Court asserted that the legislative powers of the States in regards to Islamic law may not be overrode by Rules during Emergency sanctioned by Article 150 nor the power to enact Law against subversion under Article 149. Freedom of religion under Article 11 of the Federal Constitution primarily even the considered security of the state itself is at risk. The primacy of has in effect been endorsed by the Supreme Court in Jamaluddin b. Othman's case, in which freedom of religion under Article 11 was held to override the power of preventive detention under the Internal Security Act.

Annuar J. reinstated the principle that Article 11(1) of the constitution gives the right to a person to profess and practise his own religion. He further explained that State law might, however, control or restrict propagation of any religious doctrine or belief among Muslim.

On Appeal, the he reaffirmed the lower court's decision and allowed the application for habeas corpus. Although the Appellant claimed that the court's decision in the first instant breached the executive power, the High court explained that the issue before the court should be determined in accordance with Article 11 and within the scope of Article 149.

The government of Malaysia, being the Appellant further argued that application for habeas corpus not be allowed as the detainee's act of propagating Christianity would create tension between the Muslims and Christians. In respond to this Supreme Court, the Chief Judge of Malaya Hasyim Yeop A. Sani held that the act of the 6 Malays to convert is not a threat to National Security.

⁸³[1989] 1 MLJ. p. 418.

3.3.1 Religious and Culture Rights.

Article 11 (1) says that every person has the right to profess and practice his religion and, subject to clause (4), to propagate it. Article 11 (4) allows the States to legislate law which control or restrict the propagation of any religious doctrine among persons professing Islam. Thus, Article 11, safeguard freedom of religion by drawing a distinction between the practice and propagation of religion. The States have in fact enact restrictive laws are envisaged by Article 11(4); The States include Penang and Malacca, where Islam is not even official religion of the state. It seems that the restriction of proselytism has more to do with the preservation of public order than with religious priority⁸⁴.

Article 11(5) creates a further restriction on freedom of religion by providing that Article 11 does not authorize any act contrary to any general law relating to public order, public health or morality.

Freedom of religion is, however, bolstered by other provisions. Article 11(2) says ‘ No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of religion other than his own’.

Article 11(3) says; Every religious group has the right (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purpose; and hold and administer it in accordance with Law.

Malaysia is a classical example of cultural as well as religious pluralism, therefore the rights to equality and rights of language and education are as great importance as those relating to religion.

⁸⁴Federal Constitution . 2001. p.28.

The restriction of propagation of non-Islamic religions among Muslims and the State control over the propagation of Islamic doctrine may also serve the purpose of maintaining social stability. The problem with these principles is that they are contrary to the spirit of freedom of religion, and place the adherents of other religions (and Muslims who hold to unorthodox religious tenets) at a disadvantage compared with Muslims (or orthodox Muslims). Thus in the long term the maintenance of these restrictions may have the effect of under mining the over arching principle of religious freedom. An acute example of this problem is that of conversion, which is discussed in the next section.

‘Dasar Kebudayaan Kebangsaan’ as recognized the multi cultural aspect of the society regardless of the fact that Islam is the official religion of the Federation. The Malaysian Constitution does not recognize explicitly the concept of cultural rights. Nonetheless, these rights are implicit in the Constitution in various ways.

3.3.2 Freedom to Embrace.

The definition of embrace is received, or conversion of any teaching, belief which they hold in their life. Besides that, freedom to embraces means freedom to choose embraces any religion or beliefs, which are believed to bring peace in life. for peace in life.

The word embrace according Shorter Oxford Dictionary is defined as an 'action embrace from any body to other person to others place for make the believed or practices'. Normally the word embrace can be categorized into two different forms oral or written. Embrace is the objective to give the knowledge and get patterns confirm any body at religion. The result is, we can see when their confirm to want embrace Islam.

3.3.3 Conversion and Freedom of Religion.

In the issue of conversion and freedom of religion, the author referred to the case, **In re Susie Teoh, Teoh Eng Huat v Kadhi of Pasir Mas Kelantan.**

The issues raised as explored and explained this case in which was decided by the Syariah Court in 1990. This case illustrates the extent and rationale of, religious freedom in Malaysia.

The facts of the case was pertaining to a Chinese girl, Susie Teoh, was converted to Islam, apparently on her own free will, at the age of 17 years and 3 month. Her father had brought her up as a Buddhist, and sued the Kadhi who had converted her to Islam. He applied for a declaration from the court that he as a parent had the right to decide Susies's upbringing and education, and that her conversion was void.

The Plaintiff (the father) further alleged that his daughter was converted to Muslim without his prior permission and such act breached his right to decide on his child's religion and education until she reached the age of majority, which is 18 years old.

Abd. Malik J referred to section 3 of the Child Guardianship Act, which defines 'custody' as to cover, the responsibility of health and education of the child.

Nothing in that section state custody as to cover the responsibility of determining the child's religion. Thus, the court referred to Article 11 instead of Article 12 of the Federal Constitution.

The question of conversion then was argued on the basis of Article 11(1) and the issue of age arose since Article 11 was the law in question, the rule of the age of majority under Article 12(3) is inapplicable. It was held by Abdul Malek J held in the High Court, irrelevant provided the person was of sound mind and in a position to decide. The prohibition contained in Article 12(3), against requiring a person to receive instruction in or to take part in any ceremony or act of worship a religion other than his own, is followed by this clarification in Article 12 (4): for the purpose of clause (3) the religion of a person under the age of eighteen years shall be decided by his parent guardians. He therefore held the age of majority under Article 12 had no application to Article 11, and applied the age of majority in Islam; he also noted that, in any case, Article 12 (2) did not apply to voluntary as opposed to compulsory participation in religious activities. Accordingly, the declaration sought by Teoh that he had the right to decide his daughter's religion was refused; he could only decide on her upbringing and her education until she attained the age of majority, but only so far as this right did not conflict with her choice of religion.

The decision of the Supreme Court overturned this decision, saying that "as the law applicable to the infants at the time of conversion is the civil law, the right of religious practice of a person under 18 years of age should be exercised by his or her guardian until she attained the age of majority.

In another case, **Ng Wan Chan v Majlis Ugama Islam, Wilayah Persekutuan & Anor**⁸⁵. She made a conversion impress conference to renounce from Islam and wanted to be a Buddhist, her original religion. Their also used the lawyers for declare there is *Murtad*. The High Court had to decide whether a Buddhist who had purportedly converted to Islam was in fact a Muslim. The court concluded that he did not conformed to the conduct reasonably expected of a Muslim, and as there were irregularities associated with the formalities of his apparent conversion, it was held to void.

3.3.4 Freedom of Practice.

Restriction the Freedom of Religion.

Halimatussaadiah v Public Service Commission.⁸⁶

The way in which Muslim women should be able to dress up has also been litigated. In this case, the plaintiff sought a declaration that a circular issued by the Defendant forbidding the wearing of *purdah* by female public servants at work contravened her constitutional right under Article 11(1) that is to practise her religion as a Muslim. The Court held that the Commission's circular did not contravene either Article 11(1) or 11(5), even though it restricted the religious practices of some employees to some extent. The Court referred to "security reason" in support of the prohibition on wearing *purdah* but stopped short of finding that wearing *purdah* was likely to be a threat to public order.

⁸⁵[1991] 3 MLJ 174 .p.157.

3.3.5 Normal Legislative of Restriction.

In Malaysia, the propagation of Islam among Muslims themselves is strictly controlled in the sense that only the approved orthodox version is allowed. This is largely achieved by making it an offence to teach Islamic doctrine publicly without the written permission from the religious council called *Majlis*. From time of time, the officials from the *Majlis* would interview teachers, check teaching notes and attend religious classes. The official view is that these laws are directed towards ensuring public order.

According to Dr Harding (1991) “ It is a good question whether law which restrict the propagation of religious doctrine will, ultimately, ensure or endanger public security”. He then offers the opinion that although it is an infringement of certain basic right, it does not interfere with the freedom to profess or practise religious belief, and may well contribute to a climate in which this freedom can still be enjoyed.⁸⁷

In 1994, several members of the *Al-Arqam* movement, an Islamic sect, including their leader were detained under the Internal Security Act 1963. He was released several months later, but only after he had made a “voluntary” public renunciation stating that his teachings actually departed from the ‘real’ teachings of Islam.

This organization was established in 1973 following the teaching of ‘*Aurad Muhammadiyah*’, this teaching instill some fear and confusion among Muslim community at this country. Many offer the opinion that severe action must be taken action for eradicate false in this religion.

Majlis Fatwa Kebangsaan then, makes the decision to ban the Al-Arqam group. The *fatwa* issued this group is considered as a threat mentioned the fact that after to the society the Communist resurgence in the 40 Century.

⁸⁶[1992]1 MLJ 513 .p.158.

⁸⁷A J Harding, “*Islam and Public Law in Malaysia*” [1991] 1 MLJ xci.

The Former Deputy Prime Minister of Malaysia, Dato' Seri Anwar Ibrahim, during a Forum on Human and Religious Right stated, "Freedom of religion does not confer on anyone the a license to promote fanatic or to spread deviating teachings which could threat social stability and leaned to discord and even create violence."

3.3.6 Freedom to Manage Islamic affairs.

The Federal Constitution provider that Muslim law and the personal and family law of persons professing the Muslim religion are matters in the State list, that is, they are the concern of the state government and legislatures. As such, each of the State of Malaya has its own enactment relating to the Administration of the Muslim Law. Since 1952 there has been an attempt to follow a model form of legislation, the first of such being the administration of Muslim Law Enactment of Selangor, 1952. The current Enactments, dealing with the administration of Islamic Law in West Malaysia, are as follows;

- a) The Administration of Muslim Law Enactment of Selangor, 1952.
- b) The Administration of Islamic Law Enactment of Trengganu, 1955.
- c) The Administration of the Law of the Religion of Islam Enactment of Pahang, 1956.
- d) The Administration of Muslim Law Enactment of Malacca, 1959.
- e) The Shariah Court and Matrimonial cases Enactment, and the Council of Religion and Malay custom Enactment of Kelantan, 1966.
- f) The Muhammad and Marriage Enactment of Johore.

These Enactment's⁸⁸ provide the guidelines on the administration of Islamic Law and for the registration of Muslim marriages and divorces. No attempt has been made to codify the Islamic Law or effect legislative changes in this law.

⁸⁸MB. Hooker. n.d. *The Personal Law Of Malaysia (An Introduction)* . n.pl: East Asian Historical Monographs.p.24.

For each of the administration of Muslim Law Enactment a Council of Religion or Council of Religion and Malay Custom is established. This is part of the Government's plan to provide efficient and systematic administration of Islamic affairs.

The Administration of Muslim Law Enactment also defines the jurisdiction of the Courts of Kadhi Besar (Chief Kadhi) and Kadhi. Generally, the following matters fall within the jurisdiction of the court of the Kadhi Besar; betrothal, marriage, divorce, nullity of marriage judicial separation, dispositions of or claims to property arising out of marriage or divorce, maintenance of marriage or divorce.

CHAPTER 4

CONCLUSION

Malaysia's annual population growth rate was 2.6 per cent during 1980-1999. Future increases are expected to be 1.6 percent during 1999-2015. Nearly 70 per cent of population is under 30 years of age. Malaysia is a multi-racial country, comparing of Malay (50 per cent), Chinese (27 per cent, and Indian (9 per cent). The official religion is Islam (55 per cent). Buddhism, Taoism, Confucianism, Hinduism, Christianity and Sikhs are also practiced by its citizens. The constitution guarantees the freedom of religion, but in response to the electoral gain by support the fundamental Islamists, the government denied that Malaysia is a secular state⁸⁹.

In this chapter the writer would like to emphasize on the comparative study made between that the Federal of Constitution and Charter of Medina during the Prophet Muhammad (p.b.u.h) in regards to the restriction on the right to propagate. Theses include rights related to freedom of religion.

The second chapter discusses on freedom of religion from the Islamic perspective. In this chapter, the author refers to the period of Prophet Muhammad (p.b.u.h) and the four Caliphs who had implement the rules of practicing the other freely religions without sacrificing the Islamic values.

In the third chapter, the writer discusses the structure and declaration freedom of religion according to the Malaysian perspective. Before Independence Day, the Sultans in each of their domains were the leaders of the Muslim Community, not only were they the head of the religion of Islam but also the political leaders. They were Muslims, their people were Muslims and the law applicable in their states was Islamic Law.

However, during the British administration, the Sultan's power had been largely confined to ceremonial and religious role, their original power was usurped by British "advisers". During Independence it has been agreed that the function of the rulers

should continue. Except in the Federal Territories, and in those states, which do have not a Sultan, the Yang di-Pertuan Agong is appointed to fulfill the role, as the head of the religion of Islam.

The Shariah Court has power in both civil and criminal jurisdiction. In its civil jurisdiction the Shariah High Court may hear and determine all matters relating to marriage, legitimacy of child, maintenance custody of child and other family law matters, wills and inheritance and similar matters of personal law of Muslims residing in the Federation. The Ninth Schedule, List II- State List of the Federal constitution sets out the following matters as falling within the state jurisdiction.

Law is basic of pattern and relation by freedom of religion. It also must relation by peaceful, healthy and moral of community. The important is have done restriction according to Article 11 (5). In Federal Constitution Malaysia clears their gets guarantee and in study of Islamic perspective restriction about place for worship and propagate to the religion.

From the decision of the cases, we can see that their party in regards to think right freedom of religion is molested and the Constitution was regarded as their armor. It's referred in case "**Halimatussaadiah v Public Service⁹⁰ and Susie Teoh & Teoh Eng Huat v Kadhi Pasir Mas & Anor⁹¹**".

Freedom of religion according to Islamic perspective during period of Prophet Muhammad (p.b.u.h), the four Caliph and the golden age of an Islam. Bernard Lewis (Professor), English historian agreed that freedom of religion is not just a mere the declaration, but it is proven from the tolerant attitude of the Muslims towards in the community.

This study explores the practical laws of Islam in context freedom of religion before power colonialization of English, from the any aspect custom law. Freedom of

⁸⁹ www.State.gov/g/drl/rls/irf/2002/13899.htm, 25 February, 2003.

⁹⁰ [1982] 2 MLJ. p. 513.

religion is not in question during that era since the Sultan and its people embraced and practised Islam. The provisions in the Federal Constitution refer Article 11.

However, the freedom to practise religion in the Federal Constitution may also be restricted by laws passed by the Parliament in order to ensure peace, and public order. However in State level have function to control way of activity practices Islamic religion.

According to the information and statement by *Jabatan Agama Islam Negeri-Negeri* the current cases of Murtaf is also part of the problems related to freed of religion.

Refer to development of legislation at Malaysia, the implication embrace the Islam in contexts freedom of religion such as many judgement make the relation issue religion, about conversion, the result according the place the Islam as the ceremonial religion country by reason for guarantee belongs of civil non-Muslims.

Lastly, based on the explanation above, the situation during the period of Prophet Muhammad (p.b.u.h) is totally differs from the current circumstances.

⁹¹[1990] 2 MLJ. p. 300.

COMMENT AND OPINION.

The writer understands that the position of the administration of Islamic (or Muslim) Law is under State Authority. Each Ruler has his own privilege of monitoring the administration of Islamic law. Therefore, each state has its own different form of administration. For example, when an offender stays outside the State, which he committed the offences. Hence, of the Kadhi's Shariah Courts power is limited to its own jurisdiction only and is inapplicable in the other state. However, in matters pertaining if the marriage has been registered in Kedah and subsequently the parties reside in Pahang, if either of them seeks divorce, he or she will be advised to go back to Kedah to settle it. Obviously this difficulty prevents an attempt to streamline the efficiency of administration of Muslim law in Malaysia.

In comparison to the period of Prophet Muhammad the establishment of Shariah Courts in each state, which differ in system, and administration matters create more conflicts and problems. Among its major problem is it prevents any attempt to streamline and standardize the enforcement of Islamic Law in each State.

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