

NOTES & COMMENTS

Freedom of Religion and Apostasy under International Law: With Special Reference to Article 11 of the Malaysian Federal Constitution

Ahmad Masum* & Nehaluddin Ahmad**

The right to freedom of religion is one of the fundamental rights guaranteed in many international and regional human rights instruments. Several international documents safeguard freedom of religion including the right to convert from one faith to another. In Malaysia, the safeguard of this fundamental right is provided under Article 11(1) of the Federal Constitution with some limitations. The right to convert out of one's faith is not mentioned explicitly. However, for the non-Muslims, this right to opt out of one's faith and choose another has been regarded as an implicit part of religious liberty guaranteed by Article 11. In relation to the Muslims, the issue of apostasy is regarded as a taboo as well as a politically explosive proposition. This paper aims to examine the concept of freedom of religion under international law focusing mainly on the issue of apostasy in the context of the Malaysian Federal Constitution. The paper concludes that the position of Muslims especially in the context of embracing a new religion remains unsettled.

* Senior Lecturer, College of Law, Government and International Studies, Universiti Utara Malaysia LL.B., MCL, Ph.D. (Int'l Islamic Univ. Malaysia). He may be contacted at: asmad@uum.edu.my / Address: Universiti Utara Malaysia, 06010 UUM Sintok, Kedah Darul Aman, Malaysia.

** Professor at the College of Law, Government and International Studies, Universiti Utara Malaysia, LL.M., LL.D. (Luck. India), LL.M. (Strathclyde, UK). He may be contacted at: ahmadnehal@yahoo.com / Address: 06010 UUM Sintok, Kedah, Malaysia.

Keywords

Declaration of Religion, Freedom of Religion, Muslim, Apostasy, UDHR, ICCPR, Malaysian Constitution.

1. Introduction

The definition of religion has not been provided in international law. The Universal Declaration of Human Rights of 1948 (“UDHR”)¹ only provides for the “freedom of religion.”² This fundamental credo of human rights has been incorporated in the International Covenant on Civil and Political Rights of 1966 (“ICCPR”)³ and has been reaffirmed by the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981 (hereinafter the Declaration on Religion).⁴ However, the Declaration on Religion is silent on the right to change religion, though it is arguable that this right is implicit in the freedom of religion.⁵

The phrase “religion or belief” is particularly important for our reflections. Both words are related to the notion of freedom of thought and freedom of conscience. Therefore, although international law does not define religion, it does identify religion with conscience. There are a number of manifestations of religion that are to be protected under international law.⁶ Religion may involve teaching, practice, worship, and observance.⁷ It also clearly states that the right to freedom of religion or belief is an individual right that may be exercised alone, as well as in community with others.

As mentioned earlier, under international law, freedom of religion may include the right to change one’s religion or belief. This approach, however, has been strongly contested by some Muslim countries in the UN, which asserts that no Muslim has the right to abandon Islam.⁸ Looking at the definitional aspects of the term ‘religion’

¹ G.A. Res. 217 (III), U.N. GAOR, 3rd Sess., Supp. No. 13, at 74, U.N. Doc. A/810 (1948).

² UDHR art. 18.

³ Signed on Dec. 16, 1966. 6 I.L.M. 368, 374 (1967), 993 U.N.T.S. 14531:3, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (last visited on Oct. 30, 2013).

⁴ G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. 51, at 171, U.N. Doc. A/36/684 (Nov. 25, 1981). See R. Traer, *Religion and Human Rights: “Religion” in International Law*, Religion and Human Rights, available at <http://religionhumanrights.com/Research/religion.intlaw.htm> (last visited on Jul. 16, 2013).

⁵ SHAD FARUQI, DOCUMENT OF DESTINY- THE CONSTITUTION OF MALAYSIA 352 (2008).

⁶ Traer, *supra* note 4.

⁷ UDHR art. 18; ICCPR art 18.

⁸ Traer, *supra* note 4.