

THE IMPACT OF GLOBALIZATION ON ISLAMIC LAW IN MALAYSIA

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Abstract

The implementation of Islamic law in Malaysia has many times been questioned and challenged. The Islamic authorities and scholars are not only faced with criticisms with regards to its implementation and enforcement locally but also internationally. There are two clear examples whereby the implementation of Islamic law through Shariah court has been negatively criticized by the public namely the case of Lina Joy and the recent case of Indira Gandhi. It is pointed out that globalization has played a major role in causing an uproar relating to Islamic law in a secular state. The purpose of this paper is to understand the relationship between globalization and Malaysia. In doing so, the paper will highlight the consequences of globalization focusing on the issues of migration, education, culture and human rights groups. This paper will highlight that these issues (amongst many) are the cause of tension between the non-muslims and the Islamic authorities. By understanding the root of the problem, this paper will seek to propose solutions in clearing the negative perceptions on Islamic law.

Keywords: Globalization, Islamic law, Migration, Education, Culture, Human Rights, Conversion.

Introduction

“Globalization is the closer integration of the countries and peoples around the world ... brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and people across borders.”

Joseph E. Stiglitz¹

Globalization is not a novel concept as it has continually evolved since time immemorial. Looking back through history; from wars to conquer lands, revolution and advancement of computer technology, all of these antecedences are examples of the advent of globalization. It is undeniable that globalisation has brought plethora of benefits to the world but one must bear in mind that changes caused by globalization has a domino effect on all aspect of life. As globalization continues to evolve, so does the needs of the society which demands more from the government in order to adapt with the social changes.

With respect to Malaysia, it is interesting to note that the relationship between Malaysia and globalization has somewhat been paradoxical. Malaysia has been perceived to embrace, redefine

¹ Joseph E. Stiglitz is a winner of the 2001 Nobel Prize in Economic Sciences. See: Shahdad Naghsour and Joseph J. St. Marie, *Globalization Discontent: The Effects of Globalization on Ethnic Protest* (2008) 14 (3) Peace Economics, Peace Science and Public Policy 1 at 1.

and reject globalization throughout time². These contradictory approaches are manifest particularly in relation to development of the Islamic jurisprudence. The issue of conversion of Lina Joy and the children on Indira Gandhi's will serve as illustrations for this paper. These matters encourage Shariah and Civil courts to expand its jurisdiction in relation to conversion. Nevertheless, despite such intention, globalization has presented Shariah courts with many challenges with regards to the adaptation of Islamic jurisprudence in the 21st century. Due to various controversies and criticisms brought against Shariah courts domestically, it has attracted the attention of human rights activists at an international level. Whilst the long term consequences of globalization in relation to the development in Islamic jurisprudence are not clear, the events that took place in the recent years indicate that Islamic law will continue to develop regardless whatever impacts that globalization may have on its progression.

This article begins by introducing the decisions of the courts in relation to Lina Joy's conversion and the unilateral conversion of Indira Gandhi's children which drew wide-reaching attention in relation to the development of Islamic law. This article will focus on the relationship between globalization and Malaysia in an attempt to discover the social problems associated with globalization. The issues pertaining to migration, education and culture will be examined in this article. In addition to that, this article will touch upon criticisms presented by the human rights groups which generated heated arguments amongst the Islamic scholars. Lastly, this article will also examine the implication of Lina Joy and Indira Gandhi's case in relation to globalization and the society as a whole.

The Lina Joy case³

Azlina binti Jailani was born a Muslim but she subsequently converted her religion to Christianity in 1997. She applied to the Malaysian National Registration Department (NRD) to change her Muslim name in her identity card to a Christian name, namely Lina Joy, so that she could wed her ethnic Indian Catholic fiancé⁴. Her application to change her Muslim name was approved but the word 'Islam' was inserted in her identity card even though her application form stated that she is a Christian⁵. This is because during that period of time, there were some amendments made to the National Regulations which requires the identity cards of Muslims to state the word 'Islam' as their religion⁶.

The amendments have defeated her purpose of changing her name and therefore, it presented another obstacle to her marriage. This is because in Malaysia, a Muslim woman cannot marry a non-Muslim man unless he converts to Islam⁷. In her case, since her fiancé refused to convert to Islam, she then applied to NRD to have the word 'Islam' to be deleted from her identity card. The

² Bridget Welsh, 'Malaysia and Globalization: Contradictory Currents', in Samuel S. Kim, *East Asia and Globalization*, Rowman & Littlefield Publishers, Inc, USA, 2000, p. 233

³ *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* [2007] 4 MLJ 585

⁴ *Ibid* at 593

⁵ *Ibid* at 560

⁶ *Ibid* at 560

⁷ Yusuf Al-Qaradawi and Muhammad Ali Al-Hanooti, 'Why a Muslim Women is not allowed to marry a Non-Muslim Man' (2003) World Fatwa Management and Research Institute, Malaysia Islamic Science University, <<http://infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=10576>> accessed on 31st December 2015

NRD contested her application on grounds that she failed to produce a certificate of apostasy from Shariah court which will certify that she is no longer a Muslim. As a result, Lina Joy has brought her matter to the High Court and subsequently to the Court of Appeal on the grounds that her right to freedom of religion based on Article 11(1) Federal Constitution of Malaysia has been infringed. However, in both hearing stages, the courts rejected her application. She fought for her religious freedom in the Federal Court, which is the highest court in Malaysia, but only to find herself a similar judgment rejecting her application. It was held that the issue of removing the word 'Islam' in her identity card falls under the jurisdiction of Shariah courts. Furthermore, Article 121 (1A) of the Federal Constitution of Malaysia states that the civil court does not have jurisdiction to hear matter in relation to Islamic law hence she has no choice but to seek recourse at Shariah court.

The decision was not unanimous as there was one non-Muslim judge on the panel whom sided with Lina Joy. Richard Malanjum CJ in his dissenting noted that the sole reason as to why Lina Joy did not apply for a certificate of apostasy from Shariah Court is because she could face criminal prosecution for renouncing Islam⁸. This case is said to relate to globalization as it involves the element of migration, culture and education which has resulted in the judgment given. This case differs from Azmi Mohamed Azam, Roneey's case whom has received a court declaration from the High Court of Sabah and Sarawak compelling the National Registration Department to change his name to Roneey Rebit and his religion from Islam to Christianity in his identity card⁹. In this case, the applicant was initially a Christian before he converted to Islam by virtue of his parents' conversion when he was a minor¹⁰. The High Court judge, Datuk Yew Jen Kie, a non-Muslim has held that Azmi@Roneey's case deals with his constitutional right to freedom of religion even though same principles should be afforded to Lina Joy. It remains to be seen whether the case will remain as a good law or will be challenged in the future.

The conversion of Indira Gandhi's children

There is also another controversy case involving Islamic law pertaining to the conversion of Indira Gandhi's children. Indira Gandhi a/p Mutho underwent a Hindu marriage ceremony with Pathmanathan a/l Krishnan and had their marriage registered under the civil law in 1993. Her husband subsequently embraced Islam in 2009 and has unilaterally converted their three children without her knowledge and consent. When she discovered that her husband has converted the children, she applied to the High Court for an order of certiorari to quash the certificates of conversion for non-compliance with ss99, 100 and 101 of the Administration of the Religion of Islam (Perak) Enactment 2004. Her application was successful on grounds that the children were not present before the *Pendaftar Muallaf* to utter the clauses of the Affirmation of Faith and that the act of her husband to convert the children without her consent was unconstitutional, illegal, null and void¹¹. The matter was then brought to Court of Appeal whereby

⁸ *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* [2007] 4 MLJ 585 at 632

⁹ Sharon Ling, 'Court Declares 41-year-old Muslim can be a Christian again' *The Star* (Kuala Lumpur, 2016) 3

¹⁰ *Ibid*

¹¹ *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors* [2013] 5 MLJ 552 at 561, 565, 582 and 583 per Lee Swee Seng JC

the three-judge panel had in a majority judgment reinstated the children's conversion to Islam¹². Justices Balia Yusof Wahi and Badariah Sahamid held that Syariah court has the exclusive jurisdiction to hear matters concerning Muslims conversions¹³.

The issue of children conversion to Islam without the consent of other spouse has a domino effect on other matter as well, for example, the custody of the children. It was explained in great detail by Lee Swee Seng J that the matter pertaining to custody does not fall under the purview of Syariah Court as one of the parent is a non-Muslim¹⁴. This is explicitly stated under section 45 of the Islamic Family Law (Perak) Enactment 2004 which gives authorization to the Syariah Court to hear divorce cases only if the marriage satisfies the criteria under the provision¹⁵. In a similar vein, Syariah Court has no jurisdiction to hear custody matter where the children were not born to Muslim parents in a Muslim marriage, or at least whose parents are both converted to Muslim¹⁶. Based on these provisions, Indira Gandhi was lawfully granted by the civil High Court with a full custody of all her three children.

It is worth noting that the custody issue contended in the Indira Gandhi's case is not novel and has been previously heard before the court¹⁷. Not long after the Court of Appeal judgment on Indira Gandhi's case, there was one comparable case which similarly concern with custody and conversion of the children. In *Viran a/l Nagapan v Deepa a/p Subramaniam*, the Federal Court held that the civil High Court has the jurisdiction to hear matter concerning divorce, custody of the children and other ancillary matters provided that the ex-husband and ex-wife had underwent a civil law marriage¹⁸. Similar point was reiterated that Syariah Court has no jurisdiction to hear application for divorce cases where the marriage was not solemnized under hukum syarak¹⁹. Nonetheless, in the circumstances where Syariah Court has somewhat given an

¹² Nurbaitu Hamdam, 'Ministers to look into court's decision on Muslim conversion'

<<http://www.thestar.com.my/news/nation/2016/01/10/ministers-to-look-into-courts-decision-on-muslim-conversion/>> accessed on 1st February 2016

¹³ Recently, the Court of Appeal has ruled that the issues regarding Muslim conversion are exclusively within the jurisdiction of the Syariah Court. See: Qishin Tariq, 'Muslim conversion issues exclusively Syariah Court's jurisdiction' <<http://www.thestar.com.my/news/nation/2015/12/30/muslim-conversion-issues-exclusively-syariah-court-jurisdiction/>> accessed on 1st January 2016

¹⁴ *Indira Gandhi a/p Mutho v Patmanathan a/l Krishnan* [2015] 7 MLJ 153 at para 30 - 41

¹⁵ Section 45 of the Islamic Family (Perak) Enactment provides that "*nothing in the Enactment shall authorise the Shariah Court to make an order of divorce or an order pertaining to a divorce or to permit a husband to pronounce a talaq except:*

(a) where the marriage has been registered or is deemed to be registered under the Enactment; or

(b) where the marriage was solemnised in accordance with hukum syarak; and

(c) where the residence of either of the parties to the marriage at the time when the application is presented is in the State of Perak Darul Ridzuan.

¹⁶ *Indira Gandhi a/p Mutho v Patmanathan a/l Krishnan* [2015] 7 MLJ 153 at para 44. See also: section 50 (3)(b)(iii) of the Perak Enactment.

¹⁷ *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147 (FC), *Tey Siew Choo v Teo Eng Hua* [1999] 6 CLJ 308 and *Tang Sung Moi v Too Miew Kim* [1994] 3 MLJ 117 (amongst many others.)

¹⁸ *Viran a/l Nagapan v Deepa a/p Subramaniam* [2016] MLJU 05

¹⁹ Section 45 of the Islamic Family Law (Negeri Sembilan) Enactment 2003 (Enactment 2003) provides that "*Save as is otherwise expressly provided, nothing in this Enactment shall authorize the Court to make an order of divorce or an order shall authorize the Court make an order of divorce or an order pertaining to a divorce (SIC) or to permit a husband to pronounce a talaq except:*

(a) where the marriage has been registered or is deemed to be registered under this Enactment;

order with respect to divorce or custody case, the order is a valid order but it has to be set aside before the party aggrieved can bring an action to the civil High Court²⁰.

The ensuing legal battles have captured worldwide attention which brought many negative perceptions towards the so-called intolerant Malaysian court's decision towards other faiths²¹. There have been many calls for the government to amend the current statutes and state enactments in order to provide permanent solution to these conflict of jurisdictions²². It is pointed out that globalization plays a role in the development of Islamic law. Globalization can either create hostility amongst the people in a multi-cultural society or it could bring the people together²³. This relates to the issue of migration which has an impact on the development of Islamic law in relation to conversion and apostasy.

Migration

One aspect that should be looked into in Lina Joy's decision is migration. History has shown that migration to Malaysia has occurred since 14th century primarily either because to search for a better livelihood or was brought by the British colonies to work in Malaysia²⁴. Given the fact that international migration is a global phenomenon, it has become the subject of many sophisticated studies to determine if it brings more harm than good. The nations around the globe encouraged migration as it promotes the nations' economy, diversity and multiculturalism. Despite the many benefits of migration, there is a fear of transculturation between the Islam and other religions around the world. The migrants relocating to Malaysia bringing not only themselves but also carrying together with them their unique philosophies, ideologies and values.

Before the establishment of independence in 1957, Malaysia was predominantly consisted of the native Malays or commonly known as *Bumiputras*. Malay is a person who was born locally, professes the religion of Islam, habitually speaks Malay and conforms to Malay custom²⁵. However, as a result of invasion by the British, Portuguese, Dutch and Japanese colonial power during 18th – 19th century, it has subsequently led to the escalation of other ethnicities due to migration. The Malay ethnic structure has changed dramatically when these colonial rules imported foreign labour from China and India to work at tin mines, rubber plantations and

(b) *where the marriage was solemnized in accordance with Hukum Syarak; or*
(c) *where the residence of either of the parties to the marriage at the time when the application is presented is in the State of Negeri Sembilan.*”

²⁰ *Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals* [2016] MLJU 05 at para 55

²¹ See: Wong Chun Wai, 'Can Malaysia's Indira Gandhi expect justice?' <<http://www.straitstimes.com/asia/se-asia/can-malaysias-indira-gandhi-expect-justice-the-star-columnist>> accessed on 1st February 2016 and 'Malaysia's Sharia Law Keeps Non-Muslim Mothers From Their Kids' <<http://www.foxnews.com/world/2014/11/10/malaysian-mothers-win-custody-but-dont-get-kids-thanks-to-separate-legal-system.html>> accessed on 1st February 2016

²² See: 'Bar: Both parents must consent to child's change of religion' <<http://www.thestar.com.my/news/nation/2016/01/14/bar-both-parents-must-consent-to-childs-change-of-religion/>> accessed on 1st February 2016 and Joseph Kaos Jr, 'Conversion laws to be amended' <<http://www.thestar.com.my/news/nation/2016/01/14/conversion-laws-to-be-amended-govt-seeking-permanent-solution-to-unilateral-child-conversions/>> accessed on 1st February 2016

²³ Shahdad Naghspour and Joseph J. St. Marie (no 1) 4.

²⁴ Wang Gungwu, 'Migration Patterns in History: Malaysia and the Region' (1985) 58 (1) 43 at 43-57

²⁵ Article 160 (2) of the Federal Constitution of Malaysia (1957)

construction sectors in order to meet the needs of the colonial economy in the Malay Peninsula²⁶. These migrations have inadvertently led Malaysia to become a multi-racial country with a mix of people from different races namely the Malays, Chinese, Indians and many others. Although migration was recognized as one of the factors that infuse foreign investment resulting in high employment and economic growth, nonetheless in today's modern world, it has attracted many negative perspectives towards Malaysia's governance especially in relation to Islamic law.

The study conducted by Vlieland indicates that the population growth in Malaysia between the year 1931 to 1947 have increased more than 65 per cent that is approximately 940 000 immigrants came from India or China²⁷. It is acknowledged that the dominant factor which led to the growth of more than half of the increase in the populations is not births but immigration²⁸. Ten years later, after the census was conducted and when Malaysia achieved its independence, the founding fathers of the independence drew Federal Constitution of Malaysia which acknowledges the rights of the migrants to citizenship²⁹ as well as their rights to profess their religion³⁰. However, no one at that time could foresee the problem arising today in relation to apostasy and conversion as seen in the Lina Joy and Indira Gandhi's case.

The ambiguities and lacuna in the Malaysian Constitution particularly with respect to freedom of religion has been subjected to many controversies and scrutiny. According to the tenets of Islam, an individual may profess any religion of his or her choice but with respect to an apostate, there is a penalty for a Muslim who converted from Islam³¹. It has been argued that since Islam is the religion of the Federation, the founding fathers should have included the text in the Al-Quran regarding the consequences of leaving Islam³². Nevertheless, upon closer examination of the Constitution as a whole, it can be seen that the intention of the founding fathers laying down the Constitution is to instil notions of pluralistic and equal rights in a society. The Constitution acknowledged the rights to freedom of religion and it is made out of respect to the Chinese and Indian migrants who came to Malaysia. The Constitution recognized the rights of the migrants to profess their religion such as Buddhism, Christianity and Hinduism but it implicitly does not allow for a Muslim to become an apostate given the fact that Islam is the official religion in Malaysia.

A prominent retired judge, Dato' Faiza Tamby Chik also recognized that the concept of religious freedom does not apply to Muslims in Malaysia³³. His Honour voiced out his opinion that the

²⁶ Tiffany Trimmer, 'Bring in Outsiders Who Will Do the Work: Migration and British Malaya's Imperial Labor Hierarchy 1900 – 1930' <http://worldhistoryconnected.press.illinois.edu/11.3/forum_trimmer.html> accessed on 30th December 2015 and Yusuf Abdulazeez, Ismail Bab and Sundramoorthy Pathmanathan, 'Migrant Workers' Lives and Experiences Amidst Malaysian Transformations' (2011) 6 (5) Social Sciences 332 at 332 - 343

²⁷ C.A. Vlieland, 'The 1947 Census of Malaya' (1949) 22 (1) Pacific Affairs, University of British Columbia at 59-63

²⁸ *ibid*

²⁹ Part III Chapter 1 of the Federal Constitution of Malaysia (1957)

³⁰ Article 11 of the Federal Constitution of Malaysia (1957)

³¹ Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Ashgate Publishing Ltd, UK, 2004) at 51 and Ambiga Sreenevasan, 'Bar Council: Federal Constitution Must Remain Supreme', The Malaysian Bar Online, 31st May 2007, <<http://www.malaysianbar.org.my>> accessed on 30th December 2015

³² Article 3(1) of the Federal Constitution of Malaysia (1957)

³³ 'Religious Freedom does not apply to Muslims here' The Malaysian Bar Online, 19th November 2008, <http://www.malaysianbar.org.my/legal/general_news/religious_freedom_does_not_apply_to_muslims_here_says_retired_judge.html> accessed on 1st January 2016

clause towards freedom of religion in the Constitution is merely to provide a balancing clause so that other religions might practice in peace and harmony within any part of the Federation³⁴. From these statements, it has been perceived that Islam is treated with utmost dignity to the extent that the renouncement of Islam is made impossible. The averment was made on the basis that the reason that the Constitution was rightly made after Malaysia gained its independence was to protect the rights of its citizen. There are many Chinese and Indian migrants that have already obtained citizenship hence their rights to live in Malaysia are also protected and enshrined in the Constitution³⁵. It is emphasized that it was the result of globalization that rendered the founding fathers to acknowledge the rights of the immigrants. The existence of globalization has rendered Malaysia not to be an Islamic state but a state that recognizes Islam as the official religion of the country³⁶.

Culture

As a result of globalization, the combinations of migration and mixed cultures have attracted many intensive debates amongst Islamic scholars regarding the cultures of Indian and Chinese on Islamic society. In today's modern world, there are many aspects of Islamic culture that has been affected by the external influences and hence, it has raised a lot of concerns whether the Muslim will depart from its Islamic tenets. From the way Muslims dress to the opinions that they present, it has brought significant changes to the way Muslims think. There are more Muslims becoming more liberal in their daily lives. One of the Islamic scholars in Malaysia, Datuk Sheikh Azmi Ahmad feared that the concept of an open-minded society in a young Muslims' thinking, for example Lina Joy, would gradually deteriorates their religious sentiments and enthusiasm³⁷. As globalization continues to evolve, the Islamic scholars acknowledged that there is an urgent need to enhance the dynamism of jurisprudence in Islamic law in order to keep up with the rapid modernization in the human civilization.

Despite such intention, it is pertinent to note that it is not an easy task to develop the jurisprudence of Islamic law in Malaysia. The Shariah courts as well as the government of Malaysia have encountered many criticisms from the society criticising that the government are not sensitive towards other religions and cultures. For example, the practices of yoga were banned for Muslims as it comprises physical movements and religious element of Hinduism which is inappropriate for Muslims' faith³⁸. Although the proscription does not affect non-Muslims in general, it has eroded the perception of Islam by other faiths around the globe. As a multi-racial and multi-cultural country, the prohibition has somewhat offended the Indian society in

³⁴ Ibid

³⁵ Part III Chapter 1 of the Federal Constitution of Malaysia (1957)

³⁶ 'Malaysia not Islamic or secular, says Dr.M' The Star online, 19th June 2014 <<http://www.thestar.com.my/news/nation/2014/06/19/malaysia-not-islamic-or-secular-says-dr-m/>> accessed on 30th December 2015

³⁷ Fauwaz Abdul Aziz, '10 000 Muslims Attend Forum on Apostasy', 24th July 2006, <<http://myislamnetwork.net/component/content/article/2-e-akhbar/27-malaysiakini.com-10000-muslims-attend-forum-on-apostasy.html>> accessed on 20th October 2015

³⁸ 'Islamic Leader in Malaysia Ban Yoga for Muslims' Fox News Online, 21st November 2008, <<http://www.foxnews.com/story/2008/11/21/islamic-leaders-in-malaysia-ban-yoga-for-muslims.html>> accessed on 1st January 2016

particular and as such, it has caused resentment towards the Malaysian government for indirectly portraying a negative image towards Indian practices³⁹.

Another recent banning by the National Fatwa Council is the prohibition of e-cigarettes or famously known as 'vaping'⁴⁰. Since the majority of Malaysia population consists of 60.4% of Muslim⁴¹, the religious minorities are concerned whether the growth in the Muslim population would promote the Islamization process⁴². There have been many concerns that the emergent of Islamic law in the legal system would encourage Malaysia to deviate from a system of secular government into becoming an Islamic state⁴³. Such solicitude has been said to be the result of globalization that has caused the world to be a competing place for cultures in order to enlarge their sphere of influence⁴⁴.

By reason of globalization, it has also been perceived that the variety of cultures have produced much tension and friction⁴⁵. The globalization process has created difficult relations between the non-Muslims and Shariah courts particularly in relation to conversion. The non-Muslims often opt to challenge the decision of Shariah courts without considering the rationale behind such determination. It is examined that one of the underlying principles following the Federal Court's decision is that the courts want to prevent Lina Joy from removing her cultural specificity; that is being a Malay Muslim. This is the result of the active inter-penetration and combination of cultural element promulgated by globalization. These elements have inadvertently led Lina Joy to abandon her belief and Islamic tenets in order to adopt a more cosmopolitan worldview. This view is supported by the argument presented by Dr. Mahathir Mohamad, the former Prime Minister of Malaysia, whom acknowledges that cultural changes are the result of global interconnectedness⁴⁶.

Although globalization promotes harmonization and multiculturalism, many academicians argued that globalization presented a negative impact on the expansion on Islamic law. It is established that Malaysian government which is predominantly controlled by Muslims will continue to preserve traditional values even though it carries different notions of principles for the non-Muslims. For instance, the former Prime Minister Tun Abdullah Badawi who often promoted Islam Hadhari as a model for development in Malaysia has raised conflicting ideology

³⁹ 'Yoga Fatwa: Use *Silat* Approach' Malaysia Kini Online, 26th November 2008, <<http://www.malaysiakini.com/news/93747>> accessed on 1st January 2016

⁴⁰ Adam Boulton, 'E-cigarettes forbidden in Islam: says Fatwa Council' The Telegraph, 23rd December 2015, <<http://www.telegraph.co.uk/news/worldnews/asia/malaysia/12065912/E-cigarettes-forbidden-in-Islam-says-Fatwa-Council.html>> accessed on 1st January 2016

⁴¹ '**Population Distribution and Basic Demographic Characteristics**' Department of Statistics Malaysia, July 2010, <http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=54%3Apopulation-updated-31072009&catid=35%3Akey-statistics&Itemid=53&lang=en> accessed on 30th December 2015

⁴² Albert Sundararaj Walters, 'Issues in Christian-Muslim Relations: A Malaysian Christian Perspective' (2007) 18 (1) *Islam and Christian-Muslim Relations* 67 at 68

⁴³ Joshua Neoh, 'Islamic State and the Common Law in Malaysia: A Case Study of Lina Joy' (2008) 8 (2) *Global Jurist*, Article 4

⁴⁴ David Held and Anthony McGrew, *The Global Transformation Reader: An Introduction to the Globalization Debate* (Polity Press, Great Britain, 2008) at 235

⁴⁵ Kevin Robins, 'Encountering Globalization' in David Held and Anthony McGrew, *The Global Transformation Reader: An Introduction to the Globalization Debate* (Polity Press, Great Britain, 2008) at 240

⁴⁶ Bridget Welsh, 'Malaysia and Globalization: Contradictory Currents' in Samuel S. Kim, *East Asia and Globalization* (Rowman & Littlefield Publishers, Inc, USA, 2000) at 235

between the Muslims and non-Muslims political leaders⁴⁷. The intensity of global cultural confrontations has decreased the confidence in the non-Muslims society as to whether the Malaysian government are capable of administering the country without taking into account Islamic principles. Such thinking would disrupt the positive development in Islamic law as the Shariah courts will often need to reassure the society of its recognition towards non-Muslims' right in relation to Islamic law. Where there is a failure to do so, it will generate abhorrence to some of the non-Muslims whom will create an uproar in order to show their discontent towards court's decision. An illustration can be seen in Lina Joy's case. The court's decision had an adverse social repercussion creating racial tensions between Muslims and non-Muslims whereby some 40 000 Malaysian rallied in the capital to demand political and judicial reform⁴⁸. It is observed that these social changes were induced by globalization. It promotes citizens to think liberally and encourages citizen to fight for their rights. This has resulted Malaysia to be socially and politically unstable at that point in time.

Despite the uproar that occurred in Malaysia, its experience towards public discontent has encouraged Shariah courts to be more sensitive and responsive towards other religious cultures in developing its jurisprudence especially when the matter involves non-Muslim. In 2010, a significant decision by a civil court calling for a clearer divide between Malaysian secular and religious courts was seen to be a positive development in law⁴⁹. Reflecting on Lina Joy's case, even though she had not obtained State's approval to renounce Islam but she has admitted and declared herself to be a non-Muslim. As such, she faces a quandary towards her rights to be heard in court whether she should bring her matter in secular court or Shariah court. Since she already admitted that she is a non-Muslim, she contended that she should be heard in the civil court. However, in the eyes of law she is still a Muslim therefore she must resolve her issue in Shariah court. Such a matter indicates that the society in a multicultural country is still confused towards the dual court structure in Malaysia. The perplexity on the jurisdiction of the courts to hear matter pertaining to apostasy came to light due to the hybrid state of Malaysia, that is being in-between the secular state and the theocratic state⁵⁰. It has been perceived that hybridity is a product of global and local interactions which recognizes that transcultural relations are indeed complex and intricate⁵¹. Hence there is an urgent need for the government ministers to find a balance in the law by looking into the matter of conversion to Islam and also renouncing Islam. These changes would then facilitate Shariah courts to be more sensitive towards other religions and embrace the concept of freedom of religion.

Education

⁴⁷ Mohamed Sherif Bashir, 'Islam Hadhari: Concept and Prospect,' Islam Online, 2 March 2005, <http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-Living_Shariah/LSELayout&cid=1158658521384> accessed on 22nd October 2015

⁴⁸ 'Freedom in the World 2008 – Malaysia,' The UN Refugee Agency, 2 July 2008, <<http://www.unhcr.org/refworld/docid/487ca22482.html>> accessed on 30th December 2015

⁴⁹ Sylvia Looi, 'Muslim convert's wife wins custody of toddler' The Star Online, 12th March 2010, <<http://thestar.com.my/news/story.asp?file=/2010/3/12/courts/5850157&sec=courts>> accessed on 30th December 2015

⁵⁰ Lee Min Choon, 'Freedom of Religion in Malaysia' in Paul W. Chilcote (ed), *Making Disciples in a World Parish: Global Perspectives on Mission and Evangelism* (Pickwick Publications, Oregon, 2011)

⁵¹ Marwan M. Kraidy, 'Hybridity in Cultural Globalization' (2002) 12 (3) International Communication Association 317 at 317

Another factor to be considered in relation to globalization is the evolving nature of the education system. The emergence of secular institutions in Malaysia which was introduced by the British has presented an overwhelming impact on Malaysian education system. The invasion by the British colonial is one form of globalization which contains numerous implications as to how the education system has changed and will continue to change, in response to the demand of the society. Burbules and Torres have observed that the implications of the educational process have become a public concern as it goes beyond the aim of developing the knowledge of an individual⁵².

There are few types of education institutions established in Malaysia namely secular schools, vernacular schools, Islamic religious schools and international schools. These institutions have diverse education policy whereby the instructors in vernacular schools teaches in Tamil or Mandarin medium with curricula from India and China respectively, English medium in international schools or Malay language in the national schools. There are currently 10,154 national schools, 1296 Chinese schools and 523 Tamil schools in Malaysia⁵³. The numbers of Chinese and Tamils schools have increased since 2010 and extensive efforts have been made by the government to recruit more Chinese and Tamil language teachers in primary schools nationwide⁵⁴. The problem with the diversity in the education system is that it detrimentally promotes ethnics segregation and racial polarisation⁵⁵. It was found that the enrolment choices and preferential policies have contributed significantly to the current state of ethnic segregation in Malaysia's educational system⁵⁶. In the absence of ethnic interaction, the individuals have been deprived of the opportunity to integrate, understand and appreciate the custom and values of other ethnicity.

Such nature and complexity of globalization that have impacted upon Malaysian education system raises fundamental issues whether the government should abolish the vernacular schools. The removal of religion based schools would encourage students to escape from their comfort zone; that is being able to interact and integrate amongst other ethnicities. It is emphasized that since the official religion of the Federation is Islam, it is suggested that the curriculum of Islamic studies should also be compulsory to non-Muslim students to undertake Islamic studies. The proposal is not intended to persuade the non-Muslims students to convert to Islam but it is anticipated that the field of Islamic study would encourage the young Malaysians to understand better about the Islamic tenets and practices. In doing so, it is envisioned that in a globalized world, individuals with better knowledge in Islamic principle will call a halt to racial stereotyping. Furthermore, in advocating this notion of teaching, it will also enable Islamic law to be appreciated by the society. Such methodologies will restore the originality of Islamic law and

⁵² Nicholas C. Burbules and Carlos Alberto Torres, *Globalization and Education: Critical Perspective* (Routledge, USA, 2000) at 3

⁵³ Statistics were obtained from the Ministry of Education. See: 'Number of Schools according to Groups, Types and States' 31st March 2015 <<http://www.moe.gov.my/en/statistik-sekolah>> accessed on 30th December 2015

⁵⁴ Richard Lim, 'More Chinese and Tamil language teacher to be recruited next year', *The Star Online*, 1st July 2010 <<http://thestar.com.my/news/story.asp?file=/2010/7/1/nation/6581416&sec=nation>> accessed on 30th October 2015

⁵⁵ *Ibid* at p. 124

⁵⁶ *Supra* note 41

also able to make Islamic legal system acceptable by the non-Muslims society⁵⁷. As such, it will stimulate a significant shift in the process of interconnections in order for Malaysian to move forward in appreciating globalization.

This is because, in the current national education system, there is a low level of Islamic studies undertaken by the non-Muslims. Therefore they are unable to comprehend the basis rule of a decision made by Islamic authorities. The case of Lina Joy serves an illustration whereby the non-Muslims are constantly undermining the decision made by the Shariah court; claiming that the institutions are not being sensitive towards the rights of a person to profess other religions. In fact, Shariah court is merely carrying out its duty based on the tenets of Islam and the decree pronounced by the law. All of the judgments made by the Islamic authority are based on the main text of the Al-Quran and since Lina Joy was born as a Muslim, she must adhere to the principles laid down by the Islamic law in renouncing Islam⁵⁸.

It is further said that the current problem relating to Islamic law and education has somewhat been exacerbated by the government when it encourages students to pursue their education overseas. The encouragement has indirectly eroded the confidence in the national education system in a sense that the society is undermining the capability of the local authority to develop its literature in Malaysia. This has raised fundamental concerns whether globalization poses a threat to the continuity of cultural diversity. The advent of globalization has driven young Malaysians to forgo its nationality in exchange for foreign educations which is seen to be more advanced and developed. There is an apprehension that failing to adopt the trend towards globalization could run the risk of being excluded from the transnational world economy⁵⁹. The merit of the argument has been further supported by academic scholars criticising globalization as a foreign invasion towards cultural values, destroying the rich diversity of human civilizations⁶⁰. Despite such criticisms, it has been argued that someone has to pay the price of the obliteration of the cultural mixture in order to develop a better Islamic law for the benefit of future mankind. It is emphasized that education play a very important role in educating the society on Islamic principles as well as in developing the Islamic law system in Malaysia.

Human Rights

Another significant effect of globalization is the existence of the human rights which provides a major challenge to the traditional administration in the Shariah courts system. There were ten non-governmental organizations (NGOs) that participated in Lina Joy's case in order to give pressure to the Federal Court judges⁶¹. This indicates that the impact of globalization on one's

⁵⁷ Mohammad Tahir Mohammad, *Rights and Duties in Shariah and Common Law* (Ilmiah Publisher, Kuala Lumpur, 2003) at 334-335

⁵⁸ Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor [2007] 3 CLJ 557 at 579 per Tun Dato' Sri Ahmad Fairuz CJ

⁵⁹ 'Education and Globalization', International Institute for Educational Planning, April/June 1998, <<http://www.unesco.org/iiep/eng/newsletter/1998/apre198.htm>> accessed on 22nd October 2015

⁶⁰ Louis Hebron and John F. Stack Jr, *The Globalization Process: Debunking the Myths* (International Studies Association, Chicago, 2001)

⁶¹ Namely the (1) Malaysian Bar Council, (2) Malaysian Women Power Organization, (3) Consultative Council of Religious Hindu, Christian, Buddhist and Sikh, (4) National Council of Women Organization, (5) All Women Action Society, (6) Sister in Islam,

country is so potent and influential to the fact that it has caused a number of participation of organizations to be involved in the development of Islamic law.

Most of the arguments presented by the human rights organizations is based on one point - that Lina Joy's right to choose her religion which is enshrined in Article 18 of the Universal Declaration of Human Rights (UDHR) has been violated. Similarly in Indira Gandhi's case, her decisions towards the children's religion, welfare and education must be fully upheld and protected as reflected under UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC)⁶². These external pressures have placed the lawmakers in a dilemma, to determine whether the international human rights declaration has a place in Islamic law development and if so, is it compatible with Islamic principles? Malaysia has chose to preserve the Islamic practices and values in its governance and such decision is argued to be respected. The proliferation of human rights in international relations has been argued to be merely one of the globalization mechanisms in interfering with state sovereignty in handling its affairs⁶³. The active promotion of individual rights without understanding the essence of Malaysia Constitution; being that Muslims are bound by Islamic law is just plainly ignorant and unacceptable. It is explicitly stipulated in Clause 1A of Article 121 of the Federal Constitution of Malaya (1957) that Shariah courts have exclusive jurisdiction to hear Shariah matters. The conceptions of human rights which are clearly based on hegemonic Western culture are therefore incompatible with the ideology of Islamic laws⁶⁴. It is noted that the practice of human rights in claiming to all sorts of human dignity entitlement has somewhat influenced the process of globalization. Brysk perceived that where a cosmopolitan system liberalizing individuals to pursue their rights, it will caused large number of people to suffer from both long-standing state repression and new denial of rights linked to transnational forces⁶⁵. In order to avoid such event from occurring, there is a need for the non-Muslims society to embrace a broader perspective towards Islamic law and be tolerance with Shariah courts' decision making. In the absence of intention to foster globalization, the human rights movement will hinder the ability of Shariah courts to develop on its jurisprudence. This can be seen in Lina Joy's case where such movements have caused a various contradictory effects on the development of Islamic law.

The involvements of NGOs have definitely encouraged many opposition politicians to condemn the government and the judicial organization. One of the opposition leader, Lim Kit Siang said that the courts' decision on Lina Joy's case have caused a major blow and a grievous setback to Malaysia as a secular nation⁶⁶. Even the political analysts observed that the rapid growth of Shariah court system would undermine the country's reputation as a tolerant and progressive

(7) Women Health Organization, (8) Women Council of Change, (9) Women Development for Change and the (10) Movement of Basic Needs of Malaysian citizens.

⁶² Ivy Josiah, Kuthubul Zaman Bukhari & A. Vaithilingam, 'Rights of Indira Gandhi and her children were overlooked', 12 January 2016 <<https://www.malaysiakini.com/letters/326430>> accessed on 1st February 2016

⁶³ Jean-Marc Coicaud, Michael W. Doyle, and Anne-Marie Gardner, *The Globalization of Human Rights* (United Nations University Press, Tokyo, 2003) at 2

⁶⁴ Francis Loh Kok Wah and Joakim Öjendal, *Southeast Asian Responses to Globalization: Restructuring Governance and Deepening Democracy* (Nordic Institute of Asian Studies, Singapore, 2005) at 112

⁶⁵ Alison Brysk, *Globalization and Human Rights* (The Regents of the University of California, USA, 2002) at 1

⁶⁶ 'Malaysia rejects Muslim convert's bid to be recognized as Christian' The Associated Press, 29th May 2007, <<http://iht.com/articles/ap/2007/05/30/asia/AS-GEN-Malaysia-Religious-Rights.php>> accessed on 19th October 2015

Muslim nation⁶⁷. Notwithstanding such contentions, it has been revealed that main components of globalization such as freedom of speech and social movements have reinforced the administration in the Shariah courts. It has encouraged Shariah courts to take into account the laws and administration in other countries in order to ascertain how other secular countries would decide in such situation.

As such, the trepidation shown by the political analysts with regards to the inefficiency of Shariah courts is not entirely true. The Lina Joy's case has encouraged Shariah courts to develop Islamic laws towards adopting international standards in other areas as well. For instance, in relation to banking, where Malaysia has been successful in attracting foreign financial institutions to conduct Islamic banking business in which the banking system is regulated according to Shariah laws⁶⁸. According to Tan Sri Dato' Dr. Zeti Akhtar Aziz, the Governor of Central Bank of Malaysia, the ability of the Islamic banking industry to adapt to international standards has led to more than 300 Islamic financial institutions to be launched worldwide across 75 countries⁶⁹. The capacity of non-Muslims countries to engage and accept the intricacies of Islamic principles shows that the global dominant phenomenon of globalization has astoundingly allowed Islamic law to develop not only domestically but internationally as well. Undoubtedly, it is clear that globalisation has far-reaching effects and is embedded within the daily administration of the Shariah courts.

Conclusion and Suggestion

In conclusion, it is undeniable that various problems have arisen in relation to Islamic law as a result of globalization. From migration to the movements of human rights organizations, this article has uncovered the complex challenges that the globalization presents to the development of Islamic law. Many of the obstructions in the growth of Islamic literatures emerged by the non-Muslims locally but subsequently have expanded worldwide. The negative criticisms brought against Islamic laws are one of the implications of globalization. Globalization has indeed changed the meaning and importance of culture and national identity in world affairs⁷⁰. In addition to that, even the former Prime Minister of Malaysia, Dr. Mahathir Mohamed have acknowledged that the new thinking of liberalization caused by globalization has obliterated the Islamic traditional methods in administering Muslims' way of life⁷¹. Such sentiments are undoubtedly true as the thoughts of the non-Muslims society are heavily influenced by western culture promoted by globalization. In the absence of understanding how Islamic law works, their disparagements towards Malaysia's administration would impair Malaysia's identity as a progressive nation.

Nevertheless, it is noted that one cannot simply blame globalization for the plights suffered in the progress of developing better laws. Globalization has allowed Malaysia to develop a strong

⁶⁷ ibid

⁶⁸ 'Islamic Banking & Takaful' Central Bank of Malaysia, <http://www.bnm.gov.my/index.php?ch=fs_mfs&pg=fs_mfs_bank> accessed on 1st January 2016

⁶⁹ ibid

⁷⁰ Jan Aart Scholte, 'Beyond the Buzzword: Towards a Critical Theory of Globalization' in Eleonore Kofman and Gillians Young (eds.), *Globalization: Theory and Practice* (London, Pinter, 1996)

⁷¹ Bridget Welsh, 'Malaysia and Globalization: Contradictory Currents' in Samuel S. Kim., *East Asia and Globalization* (Rowman & Littlefield Publishers, Inc, USA, 2000) at 233

positive relationship with other countries such as India and China; being that the Malaysian government recognizes the Chinese and Indian immigrants' rights to adopt a better livelihood in Malaysia. Furthermore, the historical evidence of British endorsing common law principles into Malaysia civil law system and acknowledging the application of Islamic law to Muslims indicates that Malaysia are open-minded towards globalization⁷².

These consequences are just few examples that have highlighted the enormous benefits brought by migration to Malaysia as a whole. In an effort to develop a better Islamic jurisprudence, the Ministry of Education should consider to restructure the syllabus of the Islamic education in the national schools to include the current social issues pertaining to Islam at the primary level. By introducing the history and principles of Islamic law to both Muslim and non-Muslim students at primary school level, it would embed cultural sensitivity and understanding at a young age. Apart from that, the suggestion of preparing non-Muslim students with Islamic literature from a young age will allow them to keep abreast with the Islamic tenets and principles. It is nevertheless acknowledged that this recommendation may receive criticisms given the fact that many people would not agree with the notion to instill Islamic principles to the non-Muslims. It is argued that it is desirable for every individual regardless their race and religion to divest themselves from cultural stagnation. In an increasingly globalized world, individuals should be encouraged to adopt a more judicious and moderate facets in order to understand Islamic jurisprudence.

It is submitted that the impact of globalization on Islamic law is two-fold; being that it has presented both positive and negative implications. Globalization has contributed to Islamic scholars to revising and updating Islamic jurisprudence in order to suit the current needs of the society. Nevertheless, globalization has also affronted the good name of Islam when it provides a window for the media to spread unpleasant news regarding Shariah courts' decision. It is noted that globalization will often presents changes and challenges to society especially when the world evolves on a daily basis. As such, whatever outcome of globalization will be at the end of the day, every individuals need to retrieve information with an open mind in order to integrate with other religions and faiths around the globe.

⁷² Section 3(1) and section 5(1) of the Civil Law Act 1956 are known as the 'saving provisions' whereby English common law and equity is applicable in the absence of written law in force.