

The Impact of Parallel Legal Systems on Fundamental Liberties in Multi-religious Societies

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Introduction

[1] The focus of this paper is the right to freedom of religion in multi-religious societies. In particular it looks at some of the legal issues of the impact of parallel legal systems on the fundamental right to enjoy individual religious freedom and to lead varied lives as well as the responsibility to respect the rights of others to live as they choose according to their faiths. My aim is to explain and create a deeper understanding of some of the important legal issues and the growing challenges of legal pluralism and religious diversity in contemporary Malaysia and Britain.

[2] Even though the constitutional history, the religious demography and the legal setting of both countries are very different yet to a certain extent they both face similar challenges in the quest to build a more just and cohesive society in a multi-racial and multi-faith democracy. Life in both of the countries is based on common core values, which include rule of law, respect, and tolerance of different faiths. It is beyond the scope of this paper, however, to examine comprehensively at all legal issues that arise in a multi-religious society. However it is hoped that this paper may shed some light of some of the broader issues around religious freedom within a multi-religious societies.

[3] In the domestic setting as well as at the international level religious freedom has always been one of the most contentious of fundamental liberties. We live in a world today where religious diversity is a reality that many contemporary societies are forced to deal with. When multiple religious views exist side by side, differences are bound to occur and it can be the root causes of disharmony. One of the root causes of disharmony is discrimination as well as marginalization in its many forms and facets.

[4] It is against this background that the following questions are always being asked: How can a society effectively accommodate multiple and sometimes competing worldviews within its midst, while at the same time upholding social cohesion and harmony? Is it possible to allow religious groups the complete freedom to reaffirm their identity and practice their diverse rituals and traditions, without leading to resentment and conflict within the society? To what extent is the religious freedom of minorities protected in multi-religious societies? These are some of the challenges confronting a multi-faith democracy. At the heart of this is the need in a democratic society to reconcile the interests and respect the beliefs of the population as a whole. Balancing the diverse interests in such a multi-faith democracy can be enormously challenging. And so one of the biggest challenges facing multi-societies is how to deal with diversity.

Malaysia: A Multi-religious Society

[5] Let me first explain these challenges by reference to my own jurisdiction of Malaysia, which is a multi-cultural and multi-religious society. As of 1.1.2015, the population was estimated to be 30

million people, the majority of whom are Muslims (60%) with the remainder being Buddhists (19%), Christians (9%), Hindus (6.3%) and others living side by side. We have a parallel legal system in which the sharia legal system exists alongside the civil legal system.

[6] Malaysia as a nation has always been able to showcase itself as a living thriving role model founded on the experience of moderation and pluralism among the people of various races and religion. It is a land where many faiths and ethnicities freely prosper and thrive.¹ Diversity has always been its way of life. As a nation, we have attempted to embrace a more pluralistic approach in our treatment of cultural and religious groups, rather than the assimilation methodology.

[7] Although it has been said that religion has been a divisive force in society, peaceful co-existence has always been its way of life. But the reality is that Malaysia's diversity brings obvious challenges and inherent difficulties. Although there has been religious harmony and tolerance for a very long time, a number of controversial issues have emerged which undermined religious ties between the different religious groups during recent years and raises difficult practical issues and challenge of legal pluralism. Over the years, the country has seen incidents of intolerance.

[8] Our courts are also on a regular basis confronted with the questions of how to deal with religiously related disputes. In particular, there was a long and protracted legal tussle between religious authorities and a Catholic's organization over the word "Allah". More recently, the issues of constitutionality of criminalization of conduct on the basis of religion and legislation

governing faith have generated much intense debate. There is then the recurring case surrounding the unilateral conversion of a child by one parent who has converted to Islam. And the ensuing tussle over the custody of the child between the disputing parents in the civil court and the sharia court cannot have passed unnoticed. Some of these strictly legal issues have, unfortunately, been much politicized and dominated the political scene. Events and issues like this have pushed the question to the sharp end of the debate.

[9] Against a backdrop of these controversies, Malaysia's identity has become a topic of much debate in recent years. The complexity of a parallel sharia legal system that exists alongside the civil justice system loomed large when clashing jurisdictions every now and then left disputing parties with no straightforward answers to their sensitive legal disputes.

[10] As we shall see, overlaps and inherent conflicts not only occurred in a parallel court system but also on multi-legislature arrangement. I would venture to say that when the makers of the Federal Constitution provide a parallel system of law, no one could have foreseen that it would result in these controversies. Little did the makers envisage those caught in between the civil and sharia dichotomy.

[11] Let me give you a brief historical background and the legal setting that have led to the present-day position so that you can understand its distinctiveness.

Constitutional Position

[12] Malaysia is a federation and has a written constitution, which is the supreme law of the land. The doctrine of the supremacy of Parliament does not apply and the power of the federal parliament and of state legislatures is limited by the Federal Constitution.² Any action or decision of government or any law passed by any legislatures, which is inconsistent with the Federal Constitution, is void to the extent of such inconsistency. Azlan Shah FJ (as His Royal Highness then was) when delivering the judgment of the Federal Court in **Loh Kooi Choon v Government of Malaysia [1977] 2 M.L.J. 187** said:

“The Constitution is not a mere collection of pious platitudes. It is the supreme law of the land embodying three basic concepts: One of them is that the individual has certain fundamental rights upon which not even the power of the State may encroach. The second is the distribution of sovereign power between the States and the Federation, that the 13 States shall exercise sovereign power in local matters and the nation in matters affecting the country at large. The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among the Executive, Legislative and Judicial branches of Government, compendiously expressed in modern terms that we are a government of laws, not of men.”

[13] It is the corner stone of our social order and the symbol of national unity.³ Despite its colonial origins and its continually disputed interpretation and relevance, the Federal Constitution has achieved, due to its longevity and in spite of its colonial origins, a

status quite rare in the contemporary world – that of an autochthonous constitution.⁴ The Federal Constitution exemplifies clear essential values that were held dearly by the founding fathers. The social contract is a salient characteristic of the Malaysian Constitution. It forms the substratum of the Constitution, which provides strength to the country. On this, in 2003 Sultan Azlan Shah stated:

“We embarked on a journey as a constitutional democracy with the full realization that we were a multi-racial people with different languages, cultures and religion. Our inherent differences had to be accommodated into a constitutional framework that recognized the traditional features of Malay society with the Sultanate system at the apex as a distinct feature of the Malaysian Constitution. Thus there was produced in August 1957 a unique document without any parallel anywhere. It adopted the essential features of the Westminster model and built into it the traditional features of Malay society. This Constitution reflected a social contract between the multi-racial peoples of our country.”

“It is fundamental in this regard that the Federal Constitution is the supreme law of the land and constitutes the grundnorm to which all other laws are subject. This essential feature of the Federal Constitution ensures that the social contract between the various races of our country embodied in the independence Constitution of 1957 is safeguarded and forever enures to the Malaysian people as a whole, for their benefit.”⁵

[14] The Constitution adopts a federal character that stipulates for a federal system. The system establishes duality of government

consisting of a strong federal government at the center and state governments at the state level enjoying a measure of autonomy.

[15] The crucial element in this system is the division of legislative and executive powers between the federal and state governments. The Constitution outlines the scope of the legislative powers of the federal and state governments by referring to three lists, the Federal List, the State List and the Concurrent List.⁶

[16] The division of federal and state executive powers follows the division of legislative powers; the executive authority of the federal government extends to all matters where the parliament may make laws and the executive authority of a state extends to all matters where the state legislature may make laws.

[17] The Constitution also outlines the scope of the judicial powers. Though a federation, Malaysia's court system is principally federal in nature. Among others, civil and criminal law along with the administration of justice are placed under the jurisdiction of the federal government while Islamic law and the administration of sharia courts under the jurisdiction of the respective state governments.

[18] Indeed, legal pluralism in Malaysia is mirrored by the dual parallel courts system of civil and sharia that co-exists side by side. It is somewhat a unique and complicated arrangement because two different but unequal levels of government are administering the two systems separately.

[19] As a matter of broad general rule, the civil courts being courts of general jurisdiction administer laws, which are of general

application, namely legislature passed by the federal parliament and the common laws and rules of equity. Whereas, the sharia courts, which operates outside the civil system administer the sharia family and sharia criminal enactments passed by the respective state legislatures. The sharia courts, which predated the civil court system, do not have jurisdiction where one of the parties involved is a non-Muslim.

[20] Prior to 1988, the sharia courts did not have exclusive jurisdiction as the civil courts had power to review and quite regularly reviewed, the decisions of the sharia courts by certiorari, which in the process had overturned the decisions of the sharia courts. There were instances where civil courts entertained applications that sought to re-adjudicate matters that sharia court had determined.⁷ There was also a case where the civil court had applied laws of general application, which are contrary to Islamic law.⁸

[21] In 1988, a new clause was added to the Constitution, which provides that the civil courts shall have no jurisdiction with respect to matters within the jurisdiction of the sharia courts. The amendment was made in order to avoid the conflict between the decisions of the sharia courts and civil courts, to give the sharia courts exclusive jurisdiction over matters relating to Islamic law, to protect the integrity and enhance the status of the sharia courts and to free the sharia courts from interference by the civil courts.

[22] The amendment was to prevent the civil court from exercising its powers of judicial review over decisions of the sharia court.⁹ It would appear that the amendment is clear-cut but in reality nothing

is straightforward. In fact, the very question whether a matter is within the jurisdiction of the sharia courts can be a contested issue thus giving rise to the issue of jurisdiction and casting doubt on the efficacy of the new clause in ensuring that the sharia courts enjoy exclusive jurisdiction over sharia matters.¹⁰

[23] Despite its obvious challenges and inherent practical difficulties, the existence of a dual legal system has no doubt enriched the legal jurisprudence of the country.¹¹

Place and Role of Religion

[24] Malaysian legal history can be traced back to the beginning of the 15th century. Historically, religion played a significant role in the development of the nation's legal system. Sharia law was generally applied and in fact practiced in the Malay States.¹²

[25] In the later part of the 18th century, the British came and ever since the colonial rule has had a most important impact on the legal development of this country with the introduction of common law, rules of equity and their legal as well as judicial system. The attitude of the British towards Islam and local customs was one of extreme caution and not to intervene in all matters related to Islam or even local customs and traditions. The British judges recognized sharia law, as the law of the land.¹³ Interestingly, legislations on sharia criminal law were introduced during the British administration. This is very evident in the numerous legislations enacted that contained matrimonial offences as well as offences relating to religious belief and faith, including apostasy and conversion to Islam.¹⁴

[26] It can be said that during the period of colonization, Muslims were not deprived of practicing sharia laws although it had resulted in its marginalization. During the colonial period, sharia law was applicable only as family law. However, some aspect of sharia criminal law operated side by side with the English style of administration of criminal justice. Thus, Malaysia's dual judicial system of civil and religious is a product of colonialism, which introduced a secular order, substantively restricting sharia law to personal or private law.¹⁵ There can be no doubt that sharia law would have ended by becoming the law of Malaya had British law not stepped in to check, as the British relegated sharia law primarily to personal matters.¹⁶ Concerning the place and role of religion, the Constitution essentially entrenched the position that had applied under British rule.¹⁷ As a result, Islam remained influential in the public life and the administration of justice in Malaysia. The Constitution treatment of religion is a fundamental defining element in Malaysia's multicultural and multi-religious environment. In 1976 Parliament amended the Constitution. It substituted, *inter-alia*, the expression "Muslim", "Muslim religion" and "Muslim court" wherever it appears in the Constitution, with the word "Islamic", "religion of Islam" and "Sharia courts".¹⁸

[27] There has been included in the Federal Constitution a declaration that Islam is the religion of the Federation but other religions may be practiced in peace and harmony in any part of the Federation. Every person has the right to profess and practice his own religion and the right to propagate his religion, though this last right is subject to any restrictions imposed by state law relating to

the propagation of any religious doctrine or belief among persons professing the Muslim religion.

[28] The position of Islam as the religion of the Federation imposes certain obligation on the government to promote and defend Islam as well to protect its sanctity.¹⁹ The recognition of state religion in the supreme law of the land upholds the significant position of religion in the legal realm and the religious character of this nation. Islam, a religion that embraces diversity, is recognized as one of the basic features of the Constitution but at the same time it does not establish the nation as a theocratic country.²⁰ So for more than fifty years, secular and Islamic traditions have shared a co-existence that permitted Malaysia to modernize and democratize.²¹

[29] The Supreme Court in the case of **Che Omar bin Che Soh v Public Prosecutor [1988] 2 MLJ 55** took the position that it was the intention of the framers of the Federal Constitution that the word 'Islam' in article 3(1) be given a restrictive meaning, substantively restricting sharia law to personal or private law. The Supreme Court said:

“There can be no doubt that Islam is not just a mere collection of dogmas and rituals but it is a complete way of life covering all fields of human activities, may they be private or public, legal, political, economic, social, cultural, moral or judicial. This way of ordering the life with all the precepts and moral standards is based on divine guidance through his prophets and the last of such guidance is the Quran and the last messenger is Mohammad S.A.W. whose conduct and utterances are revered. (See S. Abdul A’laMaududi, The Islamic Law and Constitution, 7th Ed.,

March 1980). The question here is this: Was this the meaning intended by the framers of the Constitution? For this purpose, it is necessary to trace the history of Islam in this country after the British intervention in the affairs of the Malay States at the close of the last century.”

The Supreme Court added:

“...it can be seen that during the British colonial period, through their system of indirect rule and establishment of secular institutions, Islamic law was rendered isolated in a narrow confinement of the law of marriage, divorce, and inheritance only. (See M.B. Hooker, Islamic Law in South-east Asia, 1984.)

In our view, it is in this sense of dichotomy that the framers of the Constitution understood the meaning of the word ‘Islam’ in the context of art 3. If it had been otherwise, there would have been another provision in the Constitution which would have the effect that any law contrary to the injunction of Islam will be void. Far from making such provision, Article 162, on the other hand, purposely preserves the continuity of secular law prior to the Constitution, unless such law is contrary to the latter.”

Fundamental Liberties

[30] Next I want to turn to say something about human rights. The Federal Constitution, which provides for specific provisions on human rights, is one of the earliest document safeguarding and protecting human rights of the people. Part II of the Constitution guarantees all those rights and freedom that are inherent in every human being. Consisting of articles 5-13, it is the Malaysian bill of

rights, which is referred to as fundamental liberties. These are, among others, the right to life and personal liberty; equality before the law; freedom of speech and expression; the right to assemble peaceably and the right to form associations; freedom of religion; rights of property and to be compensated on expropriation. But at the same time, the Constitution also recognizes the federal legislature's power to legislate restrictions to these fundamental liberties.

[31] The parallel legal system and human rights challenges have resulted in a complicated overlapping web of jurisdictions. May I illustrate this by reference to **Berjaya Books Sdn Bhd & Ors v Jabatan Agama Islam Wilayah Persekutuan & Ors [2014] 1 MLJ 138**. There, the first applicant owned the Borders Bookstore (Borders). The second applicant, a non-Muslim, was its general manager and the third applicant, a Muslim, was a store manager at a branch of Borders, which was raided by religious enforcement officers. Several copies of books were seized. The officers questioned both the Muslim and non-Muslim staff and ordered some of them to attend at first respondent's office for further questioning and to provide written statements. At the time of the raid and seizure, the Home Ministry had not banned the publications. The third applicant was prosecuted in the sharia court under the relevant sharia criminal offence for selling publications deemed contrary to sharia law. In their judicial review application, the applicants sought to quash the various decisions made and actions taken by the religious authority.

[32] In allowing the application, the High Court held it had jurisdiction to hear the application, which involved the interpretation

of laws concerning fundamental liberties as enshrined in the Federal Constitution. The prosecution of the third applicant in the sharia court infringed article 7 of the Federal Constitution as she was being punished for an act, which was not punishable by law at the time it was allegedly committed.

[33] In affirming the decision of the High Court, the Court of Appeal held that the High Court exercising its supervisory civil jurisdiction is at liberty to interpret laws on fundamental liberties and to adjudicate on unconstitutional conduct by public authorities; the civil court has the jurisdiction and power to judicially review the improper institution of criminal proceedings when the impugned conduct is in fact not criminal in nature. It is the duty of the court to ‘uphold, protect and to ensure that justice is administered in a regular and effective manner according to law’. On 25.8.2015, the Federal Court dismissed the religious authority application to appeal against the decision of the Court of Appeal. In the context of the civil and sharia dichotomy, such a clear pronouncement by the Court of Appeal underlined the duty and powers of the civil courts in protecting the fundamental liberties of the citizens.

[34] I now turn to a very important case, which had resonated at home and internationally. I have mentioned it earlier in my opening. The case concerns the right of a catholic publication to use the word “Allah” as the word for the Christian God in its Malay language version, with the opposite side asserting that the word “Allah” is exclusive to Islam. It is the landmark constitutional law case of **Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors [2014] 4 MLJ 765**. In that case, the Archbishop was granted a publication permit by the Federal Minister

of Home Affairs to publish the 'Herald', the Catholic Weekly, subject to the condition he was prohibited from using the word "Allah" in the publication, which was circulated online. The applicant applied for judicial review in the High Court to quash the decision of the Minister, questioning whether the decision was reasonable, constitutional and accordance with the law. In opposing the judicial review application, the Minister had also taken into consideration various state enactments, which seeks to control and restrict the propagation of non-Islamic religious doctrines and belief amongst Muslims. The Minister declared that he had imposed such a ban in the interests of security. These provisions provide for an offence relating to the use of certain words and expressions, which includes the word "Allah".

[35] The High Court upheld the challenge. The High Court granted an order of certiorari to quash the Minister's decision, and granted declarations to the effect that the Archbishop constitutional right to use the word "Allah" in the Herald. What was essentially a matter of security turned into a constitutional issue of freedom of religion. The Court of Appeal set this decision aside when it upheld the right of the state legislature to enact laws, to ensure the protection and sanctity of Islam. The decision of the Court of Appeal meant that the Catholic Church was effectively prohibited from producing publications for circulation online with words "Allah" as the word for the Christian God in its Malay language version. The Federal Court rejected leave to appeal as the case was on an issue of judicial review of administrative action rather on the issue of freedom of religion. The Court held that the central issue was whether the Minister was acting within the powers under the legislation and the

concern as always in judicial review cases, not with the merits of the decision but with the manner in which the decision was made.

[36] These cases show the fundamental challenge that affects all Malaysian is how to reconcile a liberal democratic constitution that protects all citizens and people within Malaysia and yet grants recognition to the status of Islam.²²

Multi-legislature Conflicts

[37] I should now move on to another aspect of the subject. I mentioned at the outset that the Constitution demarcates the extent of the legislative powers of the federal and state governments. Let me turn to this again and explain in a little more detail about what I shall call multi-legislature conflicts that has a profound impact on the protection of fundamental liberties. The federal parliament may make laws only on federal subjects and a state legislature only on state subjects. If there is any inconsistency between federal law and state law, federal law prevails.

[38] This may appear at first sight to be a straightforward distribution of powers. However, a little careful observation reveals that the situation is in fact more complicated than this. In particular, the state legislature may make laws, among others, on creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the federal list. The law governing the Islamic faith is enacted pursuant to this provision of the Federal Constitution, which regulates day-to-day practices of Malaysian Muslims; such as conversion and apostasy, false doctrine, propagation of religious

doctrine, sanctity of the religion of Islam and its institution, offences relating to decency and others miscellaneous offences.

[39] There is no definition of the word 'precepts' in the Federal Constitution. What offences and punishment that can be enacted by the state legislatures was duly considered by Federal Court in **Sulaiman Takrib v Kerajaan Negeri Terengganu; Kerajaan Malaysia (intervener) & Other cases [2009] 2 CLJ 54**. In that case, the court was asked to consider the issue of whether the non-compliance of a fatwa (religious edicts) issued by the religious authority is an offence against the precepts of Islam. The Federal Court in addressing the issue held that the term 'the precepts of Islam' is very wide covering the three main domains i.e. creed or belief (aqidah), law (sharia) and ethics or morality (akhlak) and included the teachings in the Qur'an and Sunnah. It was also held that it would not be correct to conclude that only the five pillars of Islam form the precepts of Islam.

[40] In **Fathul Bari bin Mat Jahya & Anor v Majlis Agama Islam Negeri Sembilan & Ors [2012] 4 MLJ 281**, the first petitioner was arrested by the religious enforcement officers for conducting a religious talk without a tauliah, an offence under the state sharia enactment and he was accordingly charged for the said offence at the sharia court. The petitioners filed a petition in the Federal Court contending that the sharia offence is invalid on the ground the sharia offence is not against precepts of that religion. The Federal Court dismissed the petition. Arifin Zakaria CJ in delivering judgment of the court held that the state legislative had acted within its legislative power; the purpose of that provision was clear, that is, to protect the integrity of the aqidah (belief), sharia (law) and akhlak

(morality) which constituted the precepts of Islam; the requirement of tauliah was necessary to ensure only a person qualified to teach the religion was allowed to do so. It was held that the term 'precepts of Islam' must be accorded a wide and liberal meaning.

[41] Therefore under the Malaysian federal system, sharia criminal law has been placed under state jurisdiction by which all the states are given a degree of independent and autonomy although a federal law limits punishment by sharia courts. It is to be noted that under Syariah Courts (Criminal Jurisdiction) Act 1965 [Act 355], the sharia court could only impose a maximum RM5,000 fine, six strokes of whipping and three years of jail for committing sharia offences. The Federal Constitution guarantees the states with legislative powers over offences and punishments against the precepts of Islam. The case of **Mamat bin Daud & Ors v Government of Malaysia [1988] 1 M.L.J. 119**, affirmed the exclusive right of the State to enact sharia-based criminal law. There, the plaintiffs were charged with doing an act likely to prejudice unity amongst Muslims; they acted as unauthorized mosque officials at Friday prayers. The charge against them were framed under section 298A of the Penal Code, which was enacted by the Federal legislature, an offence of doing an act on the ground of religion which was likely to cause disunity or prejudice harmony between people professing the same or different religion. The Supreme Court by a majority held that section 298A was ultra vires Article 74 of the Federal Constitution because in pith and substance it dealt directly with religion and not public order, a state matter, which was outside the power of parliament to legislate.

[42] In recent years, criminalization of conduct on the basis of religion has given rise to much debate and at times tensed

emotions in a largely secular environment. The question is much deeper and more complex one than meets the eye. Opinions are deeply divided on this issue and are signs of things to come. Some would argue that Islamic law should not be used to regulate private lives of Muslims in areas like praying, drinking, dressing and reading.²³ It is argued that the Constitution never meant to confer powers to the States to make all sins in Islam criminal offences. According to these views, faith does not need a regulatory authority.

[43] But there are others who offer an alternative view. They would point out that in Islam, the central view is that the state has a clear-cut duty to foster morality and to promote all that is right and forbid all that is wrong and the criterion is objective, impersonal and external.²⁴ According to this view, states enactments contain provisions restricting and/or limiting any acts and conducts of any individual Muslim professing the religion of Islam which is contrary to the precept and injunction of Islam, based on the Quran and Sunnah, being the main sources of the Islamic principles. The proponents of this view would argue that the Islamic philosophy of sharia law is that an act may be criminalized if it has negative implication on the public or the religion and the victimless argument is not acceptable because the public is the true victim of such crimes as the act affects others in a society.

[44] The rising challenge in court in recent times has raised major constitutional issues concerning the power and role of the civil courts in safeguarding fundamental liberties. Questions have now been raised whether state legislatures can enact laws to deprive Malaysian Muslims of fundamental liberties embodied in the Constitution; or whether sharia criminal laws must be consistent

with the clauses that guarantees the fundamental liberties of all Malaysians, irrespective of their faiths.

[45] It was against the backdrop of this uncharted water, these issues were put before the court. In early 2014, a challenge was mounted to question the constitutionality of a sharia enactment that criminalized cross-dressing. In **State Government of Negeri Sembilan & Ors v Muhammad Juzaili bin Mohd Khamis & Ors [2015] 6 AMR 248**, the appellants are Muslim men. Medically they are not normal males; they have a medical condition called ‘Gender Identity Disorder’ (GID), where the desire to dress as a female and be recognized as a female is in keeping with the said medical condition. Cross-dressing is intrinsic to their nature. In 1992, the state legislature enacted a law that provides any male person who, in any public place wears a woman’s attire or poses, as a woman shall be guilty of an offence. Pursuant to this provision, the transgender women have been prosecuted in the sharia court for cross-dressing.

[46] They then applied for a judicial review in the High Court for a declaration that the impugned provision violated their fundamental rights. The application was dismissed in the High Court. They appealed to the Court of Appeal. The Court of Appeal ruled in their favor. The Court of Appeal struck down the impugned provision as unconstitutional and void, noting that it contravened their personal liberty, freedom of movement and freedom of expression. The court held that the law in question was discriminatory as it failed to recognize transgender women diagnosed with GID. However, on 8.10.2015, the Federal Court had reversed and set aside the decision of the Court of Appeal on the sole ground that the legal

challenge against the impugned provision was void from the very beginning it was filed. The Federal Court has reiterated the important point that constitutional challenge of this nature should have been filed straight to the Federal Court. Hence, the conflict in this contentious issue remains.

[47] My next example is a case that challenged the constitutionality of a sharia enactment that criminalized the selling of books deemed unislamic. In **ZI Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervener) [2015] 8 CLJ 621**, the first petitioner published a Malay translation of a book written by a Canadian author. The religious enforcement officers raided the first petitioner's office and confiscated copies of the book on the basis that they were contrary to the state sharia law. The second petitioner was charged before the sharia court with offences for his involvement in the publication of the book under the impugned provision. The petitioners then filed a petition in the Federal Court seeking for a declaration that the impugned provision is invalid on the ground that it restricts freedom of expression enshrined in the Constitution, a matter upon which only the federal parliament has the power to legislate.

[48] On 28.9.2015, the Federal Court held that it was within the power of the state legislature to legislate the impugned provision because it was an offence against the precept of Islam. Applying the principle of harmonious interpretation, it was held that that no one provision of the Constitution can be considered in isolation and that the impugned provision must be considered with all the other provisions bearing upon that particular subject.

[49] The Federal Court declared in no uncertain term that Muslims in Malaysia were not only subjected to the general laws enacted by parliament but also to state laws of religious nature enacted by the state legislature. This is a truly landmark decision; it signifies that fundamental liberties for Malaysian Muslims are not simply to be judged in accordance with the entrenched clauses but must also be considered from the Islamic perspective as a consequence of the constitutional provisions enacted exclusively for the Muslims.

Freedom to Live Under Sharia Law

[50] As we have seen, the parallel legal system essentially means Muslims have the right to be governed by sharia law as allowed under the Federal Constitution. It is the legitimate expectation of Muslims to be governed by their own laws.²⁵ The right to practice Islamic law for Muslims is a contentious issue in Malaysia and at times is a source of so much anxiety. It was said that the disputes are rooted in the tension created by the marginalization of Islamic law and administration in the Federal Constitution as state matters with very limited jurisdiction which goes against the wishes of Muslims, who constitutes the majority in Malaysia, to live under sharia law.²⁶ According to these views, the Muslims in Malaysia have been deprived of the right to follow and practice their religion and their laws and all they are asking is that they be given the right to profess and practice their religion and their way of life.²⁷ It was said that just as the Muslims would like the non-Muslims to be free to follow their own religions and customary laws, so too the Muslims would like to have the freedom to follow their religion and law. It was observed that the recent trend towards Islamization in Malaysia is only an attempt to restore to the Muslims the right to profess and

practice their religion, from which they have for long been deprived.²⁸

[51] It was against this background and in such an atmosphere that in March 2015, the Kelantan State Legislative Assembly passed amendments to the Syariah Criminal Code (II) Enactment 1993 (Amendment 2015) to pave the way for the state to implement the sharia law which now has, among others, provisions, such as death penalty by stoning for adultery with married partners, whipping of between 40 and 80 lashes for consumption of alcohol, and amputation of limbs for theft. To this end, the state government is planning to table a private member's bill to amend the Syariah Courts (Criminal Jurisdiction) Act 1965. As noted earlier, under the legislation, the sharia court could only impose a maximum RM5,000 fine, six strokes of whipping and three years of jail for committing sharia offences. The private bill seeks to widen the scope of punishments meted out by the sharia court in order to facilitate the implementation of the Islamic penal law or hudud in the state of Kelantan. In the meanwhile four litigants filed an action in the High Court seeking a declaration that the private's bill in the Federal Legislature is against the Federal Constitution. At the same time a petition was filed by three individuals pursuant to art 4(4) of the Federal Constitution for a declaration that Amendment 2015 is null and void as being contrary to the Federal Constitution. Opinions have been given that Amendment 2015 is null and void because it is unconstitutional as it creates hudud offences, including offences, which are under the federal jurisdiction, besides legislating on other federal criminal law offences. Views have also been advanced that for offences which are within the jurisdiction of the State, it is also

null and void because it conflicts with federal law, that is, the Syari'ah Courts (Criminal Jurisdiction) Act 1965.²⁹

Jurisdictional Conflicts Between The Civil and Sharia Courts

[52] The next topic to which I turn is jurisdictional conflicts between the civil and sharia courts that I have already made passing reference. Although the administration of justice by the sharia court is confined to personal law for Muslims and certain offences against the precepts of Islam, which constitute a small proportion of the entire legal system, nevertheless they raise issues which concerns public interest and on fundamental liberties that affect not only the Muslims but the non-Muslims as well.

[53] In recent years, difficult issues have arisen which sparked jurisdictional conflicts between the sharia court and the civil court. Many issues are involved in this thorny state of affairs. In such cases, the jurisdictional demarcation between civil and sharia courts becomes blurring. There have been a number of instances, where the same subject matter was brought before both the sharia and civil courts, resulting in increased costs, conflicting interpretation and painful uncertainty.

[54] Difficult questions arise when there is a change of personal status, in cases of conversion into Islam or conversion out of Islam. In a multi-religious society as in Malaysia, conversion from one religion to another is not a new occurrence. The issues involved are multifaceted: whether a deceased died a Muslim and application by Muslim to leave Islam. The issue of conversion involving a Muslim and non-Muslim always involves the jurisdictional conflict between the sharia courts and the civil courts. When a dispute arises over

the person's faith or more specifically whether a person has become a Muslim convert, often questions are raised on whether the sharia courts have exclusive jurisdiction to hear it. As Islamic matters belong to the state jurisdictions, Muslims who intend to leave the Islamic faith are subject to provisions in relation to apostasy that are under the exclusive jurisdiction of the sharia courts, which human rights advocates argue violate the liberty clause of the Federal Constitution. A number of Muslims look to the civil courts to uphold their right to religious freedom. When a dispute arises over the person's faith or more specifically whether a Muslim has left Islam, often questions are raised on which courts have exclusive jurisdiction to hear it. The case of **Lina Joy v Majlis Agama Islam Wilayah & Anor [2004] 2 MLJ 119** upheld the proposition that only sharia court can decide if a person is apostasied from Islam even though the Constitution guarantees for all citizens freedom of choice of religion. It was held that the issue of an act of conversion out of Islam must be subject to the relevant sharia law to be determined by the sharia courts.

[55] My next example on jurisdictional conflicts concerned the issue of a child's religious rights and the subsequent bitter tussle over the custody of the child that of late ignited controversy. The case of **Shamala a/p Sathiyaseelan v Dr Jeyaganesh a/l C Mogarajah (also known as Muhammad Ridzwan bin Mogarajah) & Anor [2011] 2 MLJ 281**, is one of the most high profile and long drawn-out child custody case. It involved an ethnic couple that was married in a Hindu ceremony. The couple separated and the father converted to Islam. Then he secretly converted his two children to Islam, without the mother's consent and obtained custody through

the sharia court. The father then filed for child custody and obtained custody through the sharia court. The Hindu mother was also granted guardianship, but through the civil courts. This is a recurring family disputes although it is well settled law that civil courts continue to have exclusive jurisdiction in respect of divorce as well as custody of the children notwithstanding the conversion of one of the party to a non-Muslim marriage to the religion of Islam (see **Subashini a/p Rajasingam v Saravanan a/l Thangatoray [2008] 2 MLJ 147** and **Tan Sung Mooi v Too Miew Kin [1994] 3 MLJ 117**).

[56] Those cases highlight a growing practical problem with Malaysia's dual parallel legal system and those caught in between. Sharia law on offences against the precepts of Islam as well as personal matters like marriage and custody rights binds Muslims, while members of other faiths follow civil law. Some would argue that cases of this nature show that non-Muslims may be obliquely subjected to sharia court.

Britain, A Multi-religious Society

[57] I now turn to the position in Britain. Contemporary Britain is a pluralistic and multi-faith society than ever before in its history. According to the 2001 census, the population of Britain was estimated to be 57 million people, the majority of whom identified itself as Christian, with the remainder being Muslim (2.8%), Hindu (1.0), Sikh (0.6%), Jewish (0.5%), Buddhist (0.3%) and others. The fact that the population is increasingly religiously diverse is described by Munby LJ in **Singh v Entry Clearance Officer New Delhi [2004] EWCA Civ 1075** in the following words:

“There have been enormous changes in the social and religious life of our country. The fact is that we live in a secular and pluralistic society. But we also live in a multi-cultural community of many faiths. One of the paradoxes of our lives is that we live in a society which is at one and the same time becoming both increasingly secular but also increasingly diverse religious affiliation. Our society includes men and women from every corner of the globe and of every creed and color under the sun.”

[58] There is a strong association at the state level between national identity and the Church of England. The head of state, Her Majesty the Queen is the head of the Church and 26 of its bishops have seats in the House of Lords. No representatives from other religious organizations have a right to membership of the House of Lords. The Queen’s coronation oath, in which she promised to maintain in the country the Protestant religion, mirrors the unique constitutional position of Christianity in Britain. Anglican prayers are said at the start of each day in both the House of Lords and the House of Commons. The judiciary of England and Wales begin each legal year with a spectacular service in Westminster Abbey. In 2004, the Prime Minister stated that ‘we are a Christian country’.³⁰ Blasphemy, later narrowed to scurrilous vilification is an offence restricted to attacks on Christian religion. In **R v Chief Metropolitan Stipendiary Magistrate, Ex Parte Choudhury [1991] 1 QB, 429**, the court rejected the right of a person to bring criminal action against the author and publisher of “The Satanic Verses” for “a blasphemous libel concerning Allah, the common deity to all religions of the world”. Historically, the significance relationship between Christianity and the application of law can be

seen in **Taylor's case [1675] 1 Vent 293, 86 ER 189** where Hale CJ in convicting the accused of blasphemy said:

“to say religion is a cheat is to dissolve all those obligations whereby the civil societies are preserved, and that Christianity is parcel of the laws of England: and therefore to reproach the Christian religion is to speak in subversion of the law.”

[59] English law is treated as a legal system that applies to everybody equally irrespective of his or her faith or religion. Those who come to this country must take its law as they find them.³¹ So far as the law is concerned, those who live in this country are governed by English law and subject to the jurisdiction of the English courts. According to this notion of 'legal centralism', law is and should be the law of the state, uniform for all purposes, exclusive of all other law, and administered by a single set of state institutions.³² While the predominant view is that different legal systems cannot exist within the one-nation-state structure, common values of tolerance of religious differences and diversity is a characteristic that is frequently cited as British values; other faiths are allowed to co-exist alongside the Church of England. Indeed tolerance is the most important aspiration of pluralism; it accepts genuine difference, including deep moral and faith disagreement. People are free to practice their religion and differing religious laws and practices are free to operate unless restrained by the law.³³ The lack of formal prohibitions and disabilities now means that people are in general free to worship in churches, synagogues, mosques and temples when, where and how they please.³⁴

[60] There is nothing in the English law that prevents people abiding by the sharia law if they wish to, provide it does not conflict with English law. The court here generally recognizes that in a tolerant society of contemporary times there is need to guard against the tyranny, which the majority opinion may impose on the minority.³⁵ Concerning the role of the judiciary in a pluralistic society, Munby LJ in **Sulaiman v Juffali [2002] 1 FLR 479**, said:

“Although historically this country is part of the Christian west, and although it has an established church which is Christian, I sit as a secular judge serving a multi-cultural community of many faiths in which all of us can now take pride, sworn to do justice ‘to all manner of people’. Religion—whatever the particular believer’s faith—is no doubt something to be encouraged but it is not the business of government or of the secular courts. So the starting point of the law is an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity. A secular judge must be wary of straying across the well-recognized divide between church and state. It is not for a judge to weigh one religion against another. All are entitled to equal respect, whether in times of peace or, as at present, amidst the clash of arms.”

[61] In 2004, the Home Office stated that ‘integration’ is not about assimilation into a single homogenous culture and there is space within the concept of “British” for people to express their religious and cultural beliefs.³⁶ In its ‘**Counter-Extremism Strategy**’ released in October 2015, the British Government noted:

“1. Life in our country is based on fundamental values that have evolved over centuries, values that are supported and shared by the overwhelming majority of the population and are underpinned by our most important local and national institutions. These values include the rule of law, democracy, individual liberty, and the mutual respect, tolerance and understanding of different faiths and beliefs.

2. All people living in Britain are free to practise a faith or to decide not to follow any faith at all. We are free to build our own churches, synagogues, temples and mosques and to worship freely. We are free to establish our own faith schools and give our children – boys and girls alike – the best education possible.”

[62] In 2013, the Woolf Institute (an academic institute in Cambridge that specializes in interfaith relations) convened an independent commission, namely Commission on Religion and Belief in British Public Life to undertake the first systematic review of the role of religion and belief in Britain today. The objectives of the commission are to:

- (a) Consider the place and role of religion and belief in contemporary Britain, and the significance of emerging trends and identities;
- (b) Examine how ideas of Britishness and national identity may be inclusive of a range of religions and beliefs, and may in turn influence people’s self-understanding;

- (c) Explore how shared understandings of the common good may contribute to greater levels of mutual trust and collective action, and to a more harmonious society; and
- (d) Make recommendations for public life and policy.

[63] The Commission was chaired by the Rt. Hon. Baroness Elizabeth Butler-Sloss of Marsh Green GBE (the first female Lord Justice of the Court of Appeal) and has taken two years to prepare its 104 - page report entitled “Living with Difference” which has been released on 7 December 2015. The Commission included Christian, Muslim, Sikh and Hindu representatives as theological experts. The report called for a change to public policy on religion and belief to take account of the increasing impact of religion around the world and the more diverse nature of society in Britain. Its aim was to suggest practical ways for government and people to respond to social change to ensure a shared understanding of the fundamental values underlying public life that guarantee religious freedom while protecting the liberties and values of non-believers.

[64] According to the report, Britain has seen a general decline in its Christian affiliation. Only two in five British people now identify as Christian. The report noted that Islam, Hinduism and Sikhism have overtaken Judaism as the largest non-Christians faiths in Britain. The proportion of people who do not follow a religion has risen from just under a third in 1983 to almost half in 2014. The report recommended that the time has come for public life to take on more ‘pluralist character’. It said that the pluralist character of modern society should be reflected in national forums such as the House of Lords, so that they include a wider range of worldviews

and religious traditions, and of Christian denominations other than the Church of England. The report noted that major state occasions such as coronation should be changed to be more inclusive, while the number of bishops in the House of Lords should be reduced to make way for leaders of other religions. The report recommended scrapping the law requiring schools to hold acts of collective worship and reducing the number of children given places at schools based on religion. It recommended for new protections for women in sharia courts and other religious tribunals including a call for the government to consider requiring couples who have a non-legally binding religious marriage also to have a civil registration.

The Recognition of Religious Law

[65] As a matter of general rule, the courts are by and large reluctant to become involved in judging internal disputes within religious group regarding religious law.³⁷ Lord Hope in the Supreme Court in **R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and others; R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and others (United Synagogue intervening) [2009] UKSC 15** said, ‘it has long been understood that it is not the business of the courts to intervene in matters of religion’ but he emphasized that this important exception, ‘It is just as well understood, however, that the divide is crossed when the parties to the dispute have deliberately left the sphere of matters spiritual over which the religious body has exclusive jurisdiction and engaged in matters that are regulated by the civil courts. This was underlined by the Court of Appeal decision in **C and another v City of Westminster Social and Community Services Department**

and another [2008] EWCA Civ 198 concerning a purported marriage by telephone link between England and Bangladesh and a lack of mental capacity of one party. The Court of Appeal held that while this was a valid marriage under Islamic law and Bangladeshi law it was not valid under English law: the circumstances made the marriage sufficiently offensive to the conscience of the English court that it should refuse to recognize it.

The Impact of Human Rights Act 1998

[66] Britain does not have a written constitution protecting fundamental rights. There is no constitutional clause guaranteeing religious freedom. In 1998 the Human Rights Act was passed paving the way for the incorporation of the European Convention on Human Rights. Under the Human Rights Act 1998 (HRA 1998), everyone in Britain has the right to freedom of thought, conscience and religion. The HRA 1998 created a new legal regime and represents a significant change in the legal system. It undoubtedly has an important impact on the fundamental rights of the individual because it is the first time that legislation recognized a general positive legal right to religious freedom, enforceable in domestic courts. This development is of particular interest as European jurisprudence as well as national law affects the individual. Article 9.1 of the European Convention on Human Rights, which is made part of the HRA 1998, provides that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom of thought is absolute and unqualified: anyone can believe what he or she like.

[67] But article 9.2 provides that the freedom to manifest one's religion or beliefs can be subject to limitations, though only to those which are "prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". Article 14 of the European Convention also provides that the enjoyment of the rights protected by the Convention, such as the right to liberty or the right to freedom of expression, must be secured without unjustified discrimination on a wide variety of grounds, including religion or belief. In **Kokkinakis v Greece (App no 14307/88) [1993] ECHR 14307/88**, the European Court of Human Rights said:

'As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements, that go to make up the identity of believers and their conception of life, but it is also a precious asset to atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.'

[68] On the right to freedom of religion, the Research Division of the European Court of Human Rights in its updated document on 31 October 2013 entitled '**Overview of the court's case-law on freedom of religion**' stated:

“14. In a democratic society, in which several religions or branches of the same religion coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected. However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. What is at stake here is the preservation of pluralism and the proper functioning of democracy (Metropolitan Church of Bessarabia and Others v. Moldova, no. 45701/99, §§ 115-16, ECHR 2001-XII).

15. In this sensitive area involving the establishment of relations between the religious communities and the State, the latter in theory enjoys a wide margin of appreciation (Cha’are Shalom VeTsedek v. France [GC], no. 27417/95, § 84, ECHR 2000-VII). In order to determine the scope of the margin of appreciation the Court must take into account what is at stake, namely the need to maintain true religious pluralism, which is inherent in the concept of a democratic society. Moreover, in exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole (Metropolitan Church of Bessarabia and Others, cited above, § 119).”

[69] In Young, James and Webster (applicants) v. The United Kingdom (respondents) [1981] IRLR 408, the European Court of Human Rights said:

“Pluralism, tolerance and broadmindedness are the hallmarks of a ‘democratic society’. Although individual

interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.”

[70] Domestic case law on freedom of religion is developing as a result of the implementation of the HRA 1998. In cases brought under Article 9, the court has to consider whether there has been an interference with the right to manifest a religion or belief and, if so, whether the interference is justified. In **Ahmad v. the United Kingdom [1981] 4 EHRR 126**, a teacher felt forced to resign because the school refused him permission to leave work 45 minutes early to attend a mosque during work hours. The European Commission on Human Rights found that his Article 9 rights had not been interfered with because he had freely entered into his contract. Moreover, he had not notified his employer of his religious observance needs at the time of his recruitment, or for the following six years. The Commission ruled that Mr. Ahmad had been free to resign and find employment elsewhere on terms that reflected his religious needs.

[71] A similar approach was adopted in **Stedman v. the United Kingdom [1997] 23 EHRR CD 168**, in which an employer required the Christian applicant to work on Sundays sometime after she had been in the job. The Commission dismissed her Article 9 complaint, ruling that she ‘was dismissed for failing to agree to work certain hours rather than for her religious belief as such and was free to resign and did in effect resign from her employment’.

[72] As noted by **Samantha Knights, Freedom of Religion, Minorities, And the Law**, the European Court of Human Rights on a number of occasions has made reference to the particular need protect minorities. In **Connors v United Kingdom [2005] 40 EHRR 9**, the court made reference to the vulnerable position of Gypsies as a minority which meant that some special consideration should be given to their needs and their different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases. In **Chapman v United Kingdom [2001] 33 EHRR 18**, the court noted that there was an emerging international consensus recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle, although it was not persuaded that the consensus was sufficiently concrete for it to derive any guidance as to the conduct or standards which contracting states considered desirable in any particular situation.

[73] The domestic courts have tended to follow this approach. For example, in **Copsey v. W.W.B. Devon Clays Ltd [2005] I CR 1789**, the Court of Appeal found that the claimant's rights had not been interfered with when his employer changed his working days to include Sunday, as he could find another job, which would enable him to attend Sunday religious services. Similarly, in **R. (S.B.) v. Governors of Denbigh High School [2007] 1 AC 100**, in which the House of Lords found that the application of a school's uniform policy did not breach the Article 9 rights of the Muslim claimant, a majority of the Court took the view that there was no interference with the claimant's rights. Shabina Begum, a 16-year-old Muslim girl, was sent home from her school in Luton, Bedfordshire, for wearing a full-length 'jilbab' rather than the school uniform which the school

had introduced following consultation with local mosques, community leaders and parents. Ms. Begum remained out of education for two years before she began to attend another school, which allowed her to wear the jilbab. A majority of the House of Lords found that the school's uniform policy did not constitute an interference with her Article 9 rights. Following the approach of the European Court of Human Rights, the majority stated that a rule does not infringe the right of an individual to manifest his or her religion 'merely because the rule does not conform to the religious beliefs of that individual. And in particular this is so where the individual has a choice whether or not to avail himself or herself of the services of that institution' or 'other public institutions offering similar services, and whose rules do not include the objectionable rule in question'.

Towards A Broader Recognition of Plurality

[74] In its treatment of ethnic and religious groups, one approach employed is the rule and exemption model, which is a form of pluralist recognition to reflect the multi-religious realities. On this basis generally applicable laws are passed to accommodate the cultural and religious value systems of the minorities. For instance, the law has granted exemptions to turbaned Sikhs from wearing motorcycle helmets. Chapter 62 of the Motor-Cycle Crash Helmets (Religious Exemption) Act 1976 states that s. 32(2A) of the Road Traffic Act, 1972 shall not apply to Sikh motorcyclists, provided they are wearing turbans while riding motorcycles. This approach is reaffirmed by section 139 of the Criminal Justice Act, 1988 under which Sikhs are now allowed to carry knives and daggers (kirpans) in public places for religious purposes. Similarly, the law has

granted Jews and Muslims from being subject to rules requiring the stunning of animals before slaughter for food in recognizing of their religious needs regarding halal and kosher meat. The Slaughter of Poultry Act, 1967 and the Slaughterhouses Act, 1974 recognized the right of Muslims and Jews to slaughter animals according to their religious practices without stunning them first.

Place of Religion in Public Life in An Increasingly Plural Society

[75] Against the background of increasingly plural society of modern Britain, in recent years, there has been a revival of interest on the place and role of religion. There are ongoing debate in Britain related to parallel legal system and legal pluralism and the main issue in this debate revolved around the question to what extent the personal law of religious minorities might be accommodated in the domestic legal system?

[76] On 7 February 2008, the Archbishop of Canterbury, Dr. Rowan Williams, gave a lecture in the Great Hall of the Royal Courts of Justice entitled '**Civil and Religious Law in England: A Religious Perspective**' which largely dealt on the relationship between religious law and civil law in England and Wales. In that lecture, which was to be a reflection to all religious groups, the Archbishop sought to bring to a higher level of public debate to the question of 'what it is like to live under more than one (legal) jurisdiction' and how far the civil law of the land should recognize or accommodate a legal pluralism based on religious adherence.

[77] The Archbishop presented his idea that the state should consider moving beyond the present legally positivist system, which

he characterized as an ‘unqualified secular legal monopoly’ to a system in which there would be some form of accommodation of religious or cultural norms. He saw individuals in modern society as having multiple and sometimes overlapping allegiances. By this accommodation, individuals would be able to choose whether they wanted certain limited matters to be dealt with by secular or by religious principles. He pointed out that it was possible for individuals to conduct their lives in accordance with sharia principles without this being in conflict with the rights guaranteed by English law.

[78] The subjects the Archbishop stipulated as possibly able for this accommodation were some features of marital law, the regulation of financial transactions and authorized structures of mediation and conflict resolution. Controversy flared up when the Archbishop implied that the British commitments to pluralism might necessitate the legal system to recognize certain aspect of Islamic law. It was his discussion of Islam that attracted much attention. This idea was acknowledged as very controversial. It triggered a storm of protest when he suggested that some accommodation between British law and Islam’s sharia was ‘inevitable’, even though he did not call for its accommodation as some kind of parallel jurisdiction to the civil law.

[79] This debate was later intensified when Lord Phillips (the then Lord Chief Justice of England and Wales) in a lecture entitled “**Equality before the Law**”, delivered at the East London Muslim Centre, 3 July 2008 reiterated the English law principle that every citizen has a right to do what he likes unless restrained by the common law or by statute. It was this freedom, Lord Phillips stated,

that allowed people to exercise their religions freely; and concomitantly there could be, and indeed there already is, some accommodation for dispute resolution in accordance with religious principles based upon the consent of the parties. Based on this he added, “There is no reason why principles of Sharia Law, or any other religious code should not be the basis for mediation or other forms of alternative dispute resolution”, however any sanctions for a failure to comply with the agreed terms of the mediation would be drawn from English law. He suggested that there should be some accommodation made to religious communities within the existing legal framework and supported by legislation. Lord Phillips, however, did not advocate that the sharia or indeed any other religious system of law, should apply in the UK as a separate system of legal rules with its own officially sanctioned courts and tribunals.

Emerging Parallel Legal System

[80] It is worthy of note that religious courts have already operate in this country for over a period of time alongside civil courts in England and Wales. There are a number of separate religious courts, which have jurisdiction over a variety of matters relating to religious law. In the Church of England a series of ecclesiastical courts have jurisdiction over matters dealing with the rights and obligations of church members, church doctrine, and ceremony or ritual. The ecclesiastical courts are part of the English court system.³⁸

[81] A number of other religious communities also have their own network of adjudicating mechanism, which the community may choose to call ‘courts’. These are informal religious courts systems

or forums for dispute resolution. They do not have the legal status of courts. Many, mostly unofficial, sharia courts have emerged and currently operating, mainly on a voluntary basis in Muslim communities to help deal and resolve family and family disputes using Islamic law instead of local or formal court system.³⁹ As far as civil law is concerned the council's decision have little binding power. The councils have no official jurisdiction over divorce settlements, involving properties, cases involving custody of children, or any criminal matters. These informal courts, often based in mosques or Muslim schools across the country, deal with marital disputes and even child custody as well as financial matters in line with religious teaching and applied Islamic principles within the British legal system. They offer mediation and reconciliation rather than adjudication but the proceedings are conducted like courts with religious scholars or legal experts sitting in a manner more akin to judges rather than counsellors. The parties abide by the decisions, which they accept as obligatory but which are not enforced by the civil courts.

[82] There is a perception that this is a parallel justice system that discriminates women. Critics say that the unacceptable and arbitrary religious courts are treating large numbers of Muslim women as second-class citizens. Its defenders, however, claim Muslim women are better off with the sharia courts than with a vacuum.

[83] The religious communities have also made use of private arbitration for the resolution of intra-communal family disputes in accordance with their understanding of their respective religious laws. The UK is broadly accommodating of ADR processes such as

conciliation and arbitration, whether of commercial or private disputes and allows parties to choose the law that they wish to apply to their agreements. For example, the activities of London Beth Din deals with vast and covers all areas of Jewish law encompassing marriage, divorces, conversions, adoption and resolving civil disputes. In Jewish law, civil disputes between Jewish parties are required to be adjudicated by a Beth Din adopting Jewish law to be applied to the dispute. The London Beth Din sits as an arbitral tribunal in respect of civil disputes. The parties to any such disputes are required to sign an Arbitration Agreement prior to a hearing-taking place. The effect of this is that the award given by the Beth Din has the full force of an Arbitration Award and may be enforced (with the prior permission of the Beth Din) by the civil courts. At a hearing before the Dayanim, the parties do not require legal representation though they are allowed to have legal or their representation.

[84] A number of Muslim Arbitration Tribunals, which is a form of alternative dispute resolution for the Muslim community have also been set up by private individuals to resolve civil and commercial disputes as well personal religious law (other than divorce, child custody and criminal matters) in accordance with sharia laws. These so-called tribunals are not authorized under the Arbitration Act 1996 to give legally binding rulings but they may operate under the Act which provides that parties are free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest.

[85] There are no special provisions for the awards of religious tribunals in general or for sharia tribunals in particular. Some of

their decisions, such as arbitration award may be enforced through the English court system in the same way and subject to the same defences and challenges as an ordinary arbitral award.⁴⁰ In this respect, a court has a general duty to consider that an arbitral award complies with public policy and is in the public interest. The requirements of public policy would mean that the civil court would not enforce any arbitral award that failed to comply with the provisions of the Human Rights Act 1998 and the European Convention on Human Rights.

[86] It is a point of debate whether these religious courts and tribunals create a parallel legal system in UK and operates within the framework of UK law. In June 2011, Cardiff University published a report of a research study on '**Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts**'. The aim of the research was to collect information on the role and practice of religious courts in England and Wales in order to contribute to debate concerning the extent to which English law should accommodate religious legal systems. The report examines the existence of religious courts in the UK, with special reference to Judaism, Islam and Christianity. It is an important research, which contributed greatly to public debates about the absorption of plural approaches into the English legal system. Some of the findings are as follows:

- (i) There is no monolithic community representing the entire body within any of the three faiths we studied.
- (ii) There is a multiplicity of religious tribunals within the different communities in terms of the basis of their

authority and adherence by those using these tribunals. Different communities within these faiths may have their own religious tribunals ruling on matters relevant to their adherents.

- (iii) There is no hierarchy of tribunals within the Jewish and Muslim communities, and no appeal structure. This has led to an interesting element of 'forum shopping' by litigants. The absence of a hierarchy in the Muslim and Jewish communities means that litigants can, to some extent, choose which tribunal they go to according to the way in which (they think) the law will be applied to them or by what they perceive will be the extent of recognition of the tribunal's decision across their community.
- (iv) A commonality between all the tribunals in relation to staffing is the degree to which their operation rests upon volunteers and the services of those who usually have other professional religious roles within their communities. There is clearly a fusion of religious and legal roles.
- (v) None of the tribunals studied has a legal status in the sense of "recognition" by the state. They derive their authority from their religious affiliation, not from the state, and that authority extends only to those who choose to submit to them.

- (vi) Process and procedure vary as between the three tribunals, reflecting the different approach to the role that each takes.
- (vii) None of the tribunals has any legal status afforded to them by the state or the civil law, and their rulings and determinations in relation to marital status have no civil recognition either. They derive their authority from their religious affiliation, not from the state, and that authority extends only to those who choose to submit to them.
- (viii) All of the institutions studied see their work as a religious duty. They regard themselves as providing important mechanisms for the organization of community affairs and the fulfillment of community need. The structural framework, organization, resourcing and staffing of each of the tribunals in many ways reflect the history, economic resources and social development of the communities they serve.

[87] The research by Cardiff University did not cover how the Kurdish community developed and practiced continues alternative dispute resolution when they migrate to London. Dr Latif Tas in his book '**Legal Pluralism in Action: Dispute Resolution and the Kurdish Community**' investigated the Kurdish diaspora's system method to resolve conflict in London from a legal pluralism point of view which he called the Kurdish Peace Committee (KPC) Model, a more secular alternative system which was founded in 2001. According to Dr Latif, the Kurds have adapted their customary legal practices to create unofficial legal courts and other forms of legal

hybridization. The research highlighted that the Kurdish Community opted to follow their own customary legal practices while at the same time adapting to the new conditions rather than just simply recognizing the British legal system.

[88] The Model proved to be a reliable mechanism to resolve inter- and intra-community disputes among Kurds as well as in disputes with other groups such as Turks and Iranians. The services of the KPC are not only used by members of the community who cannot afford to use state-based legal system or lack of education but also by well-educated members of the Kurdish diaspora. It is interesting to note that the Kurdish community's own ways of dealing with disputes have been accorded recognition by the authorities. In some cases, members of the Police force took part in meetings held by the KPC and the Home Office granted some funding to covers its expenses.

[89] In another relevant noteworthy development, the Law Society in March 2004, which represents solicitors in England and Wales, had written a guide on sharia succession rules that will be used in British courts. This guidance detailed how will should be drafted to fit Islamic traditions while being valid under British law. The President of the Law Society was quoted to have said that the "sharia compliant" guidance would promote 'good practice' in applying Islamic principles in the British legal system. One effect of the guide is that children born outside of marriage and adopted children could be denied of their share as that are not sharia heirs. It has been said that the groundbreaking guideline has made Islam to effectively enshrine in the British legal system for the first time. To some the guidance represented a major step on the road to a

parallel legal system for Britain's Muslim communities. The Law Society guideline represents the first time that an official legal body has recognized the legitimacy of some sharia principles.

[90] Recently, however, concerns have been raised over the rise of religious tribunals and their unfettered and unregulated activities, particularly about sharia courts on the allegations that the courts discriminate against women and fail to protect them from violent husbands. Baroness Cox, a member of the House of Lords has been a leading voice over the years speaking out against certain aspects of the sharia courts. On 1 June 2015, she introduced her Private Members' Arbitration and Mediation Services Equality Bill into the House of Lords for the fifth consecutive year, which is intended to tackle religiously, sanctioned gender discrimination in arbitration proceedings and informal mediations. Among others, the Bill sought to state expressly that any criminal or family matter cannot be the subject of arbitration proceedings. The Bill, according to Baroness Cox, seeks to address the unacceptable position of a parallel quasi-legal system, which threatens the fundamental principle of democracy: one law for all.

[91] At present the debate gained momentum when the British Government released its 'Counter-Extremism Strategy' on 19 October 2015, which sets out strategy to defeat extremism in all its forms across the country. The government has ordered an independent inquiry into sharia councils amid concerns that they operate a parallel system of justice that discriminates against women. The Strategy said, "Sharia is being misused and applied in a way which is incompatible with the law". It went on to state:

“Alternative systems of law

17. Many people in this country of different faiths follow religious codes and practices, and benefit from the guidance they offer. Religious communities also operate arbitration councils and boards to resolve disputes. The overriding principle is that these rules, practices and bodies must operate within the rule of law in the UK. However, there is evidence some Sharia councils may not follow this principle and that Sharia is being misused and applied in a way, which is incompatible with the law.

18. There are reports of men and women being charged different fees for using the same service, and women facing lengthier processes for divorce than men. Most concerning of all, women are unaware of their legal rights to leave violent husbands and are being pressurized to attend reconciliation sessions with their husbands despite legal injunctions in place to protect them from violence. There is only one rule of law in our country, which provides rights and security for every citizen. We will never countenance allowing an alternative, informal system of law, informed by religious principles, to operate in competition with it.”

The strategy added:

“48. In some cases there is evidence of a problem, but we have an inadequate understanding of all the issues involved. As set out in paragraph 17, one example of this involves the application of Sharia law. We will therefore commission an independent review to understand the extent to which Sharia is being misused or applied in a way, which is incompatible with the law. This is expected to provide an initial report to the Home Secretary in 2016.”

Concluding Comments

[92] This paper has attempted to show that it is the dichotomy between the private and public aspect of the religious freedom, which has always give rise to practical and legal complications. While the freedom privately to hold particular religious views is unlikely to give rise to practical difficulties, it is the position of religion in the public sphere and the extent of the right to express and manifest religious views that always create considerable challenges for any contemporary multi-religious societies.⁴¹ It is this dichotomy between the private and public aspects of religion that is likely to give rise to legal difficulties.

[93] In Britain, the individual freedom to privately hold and profess particular religious views is not likely to give rise to legal problems. There is a concern, however, that a parallel legal system, which applies religious law and traditions in the public sphere, would lead to serious undermining of national cohesion. Parallel laws, which result in different law for different group, are thought to foster the growth of separate societies within society. It demonstrates an on-going tension between the appearance of tolerance and the maintenance of values deemed to be British.⁴²

[94] There is particularly an overall disquiet surrounding the application of sharia law, as it is perceived not to be substantially comparable and equal to the applicable rule of the common law, especially in the light of the majority judgment of the European Court of Human Rights in **Refah Partisi (Welfare Party) and others v Turkey (App nos 41340/98, 41442/98, 41343/98 and 41344/98) [2003] ECHR 41340/98** where it was held that “it is

difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes spheres of private and public life in accordance with religious precepts". It is perceived that certain aspects of the implementation of sharia law would violate gender equality within the family. The sharia law and the English law often differ irreconcilably in substantive law, procedural law, concept of justice, and worldviews.

[95] The presence of different interpretations of sharia principles and prevalence of divergent religious beliefs and practices among Muslims further exacerbates the problem of family law pluralism within the Muslim community because it reinforces the gap between the norms of an objective legal system (whether or not nominally Islamic) and the subjective norms of individual Muslims.⁴³

[96] However, there is no evidence to suggest that Muslims in Britain are asking for a wholesale introduction of the application of sharia law. The work of the sharia councils suggest that are asking for a formal recognition of aspects of sharia relating to Islamic personal law in aspects of marital law. A formal recognition of such institutions would facilitate their regulation, which would ensure, among other things, the adoption and maintenance of good practices and alternative access to justice for many Muslim women in the UK who might prefer an Islamic settlement of their disputes to litigation in the civil courts.⁴⁴

[97] The rise and increasing importance of religious courts, alongside English law, represents an effectively emerging legal system within the British's minority's communities running in parallel or interlocked with British justice system. The minorities have a keen interest in preserving and structure their family life within their own family law regime. To have to forgo a traditional or religious practice may be portrayed as tantamount to the surrender of cultural identity and ultimately to the denial of a human right.⁴⁵ Although they are unregulated and unauthorized with little accountability, these courts have been touted as the minorities right to religious freedom and to be governed by their own religious beliefs and practices that would reflect the changing religious composition of the British population today.

[98] The limitations of these religious courts are due to their private nature operating outside of public view and meaningful independent oversight. Their rulings have ignited an apprehension for duality of law, which arises from concern that their decisions might be inconsistent with English law and family law practice.⁴⁶

[99] There remains a great deal of uncertainty about what degree of accommodation the law of the land can and should give to minority communities with their own strongly entrenched legal and moral codes.⁴⁷ The debates continue to what extent a more pluralist legal system can be accommodated in which people can choose which law they wish to comply with, religious or English one.

[100] In Malaysia, the position and application of Islam in the public sphere is embedded in the Federal Constitution. As decided by the Federal Court in the case of **ZI Publications Sdn Bhd (supra)**,

Muslims in Malaysia are not only subjected to the general laws enacted by parliament but also to state laws of religious nature enacted by the state legislature. As far as the Malaysian Muslims are concerned the private realm of faith is being regulated by sharia criminal legislations. However, there is no uniformity as these enactments are passed by the respective state legislatures.

[101] The legal demarcation of jurisdiction between the sharia courts and civil courts has seen an interaction between sharia and civil law and in the process firmly establish what we see today a parallel system of justice. It is within this dual system people of various races and religion live side by side in harmony. But as the country continues to modernize and democratize and in a more secular environment, the limitations and practical difficulties of the dual system have at times arisen.

[102] The judicial decisions highlighted in this paper have recognized that the sharia courts have jurisdiction in matters relating to Islam but the decisions have also revealed inadequacies and shortcomings not only in the state enactments but also federal law. At times the issue of jurisdiction of the sharia courts involves jurisdictional conflict between the sharia courts and the civil courts. This is especially true on the difficult and challenging issue of conversion into Islam or conversion out of Islam. This issue can be sensitive and controversial as the disputes involve one's faith, status, family and parties of different faiths. The problem is further compounded by the fact that Islam and the constitution, organization and procedure of sharia courts are state matters, which make any enactment of legislation and exercise of executive authority on the same outside the purview of the federal legislative

and executive authorities respectively. There are undoubtedly limitations within the system. Through judicial pronouncements, improvement in the law either by way of amendments or enactment of new legislation as well as effective enforcement thereof the system can be strengthened and improved further.

[103] In a dispute over a person's faith especially when he dies often one party who is not a Muslim is involved thus raising the question whether the sharia courts have jurisdiction to hear the matter. The non-Muslims may not feel comfortable to appear before the sharia courts even as witnesses. On the other hand, the determination of the matter before the civil courts is governed by strict rules of evidence and procedure, which may prolong the proceedings hence a delay in burial of the deceased person. Taking into account the fact that apostasy and the issue of a person's faith are sensitive to Muslims and non-Muslims a solution has to be found. It is now an appropriate time to consider forming a consultative body as an alternative to the sharia courts and civil courts to determine the religious status of a deceased person. The consultation process shall take the form of private mediation route in which a neutral and independent person helps the parties to reach a negotiated settlement.

[104] It is to be noted that all state enactments relating to the administration of sharia law contain provisions on conversion including requirement of newly convert to register his conversion and the issuance of a certificate to him. To avoid any future dispute on the status of his religion especially when the convert dies, a provision requiring the convert or the religious authority to notify the family of the family of the convert should also be added to these

enactments.

[105] Generally, there are no provisions on conversion out of Islam in state enactments, neither are there any provisions on remedies or relief such as injunction and declaration therein. In order to avoid any challenge in the future on the ground of lack of jurisdiction on the part of the sharia courts to determine the question of conversion, clear and adequate provisions should be incorporated into the state enactments to confer jurisdiction on the sharia courts.

[106] Custody of children and inheritance can be a contentious issue in conversion cases involving a spouse of a non-Muslim marriage. One possible solution to this problem is by way of a requirement in the law for the converting spouse to fulfill at the time of his conversion all his or her obligations and responsibilities under the non-Muslim marriage in accordance with the law governing such marriage.

[107] Our constitutional arrangements have worked well in practise but as Malaysia continues to modernize and democratize, more practical problems will undoubtedly appear that could cause societal tension and threaten to disturb the prevailing harmony between the various religious groups. As a majority-Muslim country, it is necessary that Malaysian Muslims should fully understand that sharia law is for Muslims only; there's no legal basis of imposing sharia law and Islamic morality on non-Muslim. For the non-Muslim, it is also essential they should appreciate of the Muslim rights to be governed by sharia law as permissible under the Federal Constitution.

Endnotes

This paper was based on a research during my visit as an Inns of Courts Fellow, Institute of Advanced Legal Studies, University of London on 9th October to 31st December 2015. As part of my research, I have had useful conversations with many people as well as received a considerable amount of help, to all of whom I should like to express my gratitude. In particular, I owe a special debt to Rt Hon Lord Justice Underhill, Desmond Browne QC (Treasurer of Gray's Inn), Stephen Hockman QC (Treasurer of Middle Temple), Judge Donald Cryan (Reader of Inner Temple), Patrick Maddams (sub-treasurer of Inner Temple), David Frei of the London Beth Din, Rt Hon Baroness Butler-Sloss of Marsh (Chairperson of the Commission on Religion and belief in British Public Life), Professor Avrom Sherr, Jules Winterton (director of IALS), Robin Griffith-Jones (Master of the Temple), Mizan Abdulrouf of Church Court Chamber (Vice Chairman of the UK Board of sharia council).

¹ See the Statement by Najib Razak, Prime Minister of Malaysia at the General Debate of the 70th Sessions of the UN General Assembly, New York, 1 October 2015, <http://gadebate.un.org/70/malaysia>.

² Ah Thian v Government of Malaysia [1976] 2 M.L.J. 112.

³ See Tan Sri Abdul Gani Patail, Attorney-General of Malaysia in a speech '*Upholding Sovereignty Respecting Diversity*' on 9.4.2015 at the Intan Public Policy Insights Series 2015, <http://www.agc.gov.my/pdf/speech/intan>.

⁴ See Andrew Harding, '*The Constitution of Malaysia, A Contextual Analysis*', at 2.

⁵ See Evolving a Malaysian Nation. 10 December 2003. Published in Constitutional Monarchy, Rule of Law and Good Governance [2004] at 330-331.

⁶ See JC Fong, '*Constitutional Federalism in Malaysia*', Sweet & Maxwell, 2008 and Sheridan and Groves, '*The Constitution of Malaysia*', 5th Edition.

⁷ Myriam v Mohamed Ariff [1971] 1 M.L.J. 265, Commissioner For Religious Affairs, Terengganu & Ors v. Tengku Mariam (1969) 1 M.L.J. 110.

⁸ Ainan bin Mahamud v Syed Abu Bakar bin Habib Yusoff and Others [1939] 8 MLJ (F.M.S.R.) 209.

⁹ Sukma Darmawan Sasmitaat Madja & Anor v. Ketua Pengarah Penjara Malaysia [1999] 1 CLJ 481.

¹⁰ Shahamin Faizul Kung Bin Abdullah v Asma Bte Haji Junus [1991] 3 MLJ 327, Mohamed Habibullah Bin Mahmood v Faridah Bte Dato Talib [1992] 2 MLJ 793.

¹¹ See Asian Courts In Context, Cambridge Press edited by Jiunn-RongYeh and Wen-Chen Chang, at 382.

¹² See Professor Ahmad Ibrahim, '*Towards A History of Law in Malaysia and Singapore*', Dewan Bahasa dan Pustaka 2011.

¹³ Ramah bte Taat v. Laton bte Malim Sutan [1927] 6 FMSLR 128, Shaik Abdul Latif & Ord v Shaik Elias Bux [1915] 1 FMSLR 204, Mohammed Imam, '*Making Laws Islamic in Malaysia: A Constitutional Perspective*' [1994] 2 CLJ vii).

¹⁴ Abd Aziz, Shamrahayu '*Islamic criminal law in the Malaysian federal structure: a constitutional perspective*', 2007, IIUM Law Journal, 15(1), at 101-120. ISSN 0128-2530

¹⁵ See further Thio Li-ann, "*Jurisdictional Imbroglia: Civil and Religious Courts, Turf Wars and Article 121(1A) of the Federal Constitution*" in Andrew Harding and H.P. Lee (eds.) *Constitutional Landmarks in Malaysia: The First 50 years 1957-2007* (Kuala Lumpur: LexisNexis 2007)

¹⁶ See R. J Wilkinson (ed), papers on Malay subjects as cited by Constance Chevallier-Gowers in *Sharia and Legal Pluralism in Malaysia*, International Institute of Advanced Islamic Studies Malaysia, at 6.

¹⁷ *Supra*, n. 4, at 229.

¹⁸ See commentary on this amendment by Professor Tamir Moustafa of Simon Fraser University, Canada in "*Judging in God's Name: State Power, Secularism, and the Politics of Islamic law in Malaysia*", Oxford Journal of Law and Religion, Vol. 3 No 1 (2014) 152.

¹⁹ See Abdul Aziz Ab Rahim JCA in *Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 6 MLJ 468.

²⁰ See Tun Mohamed Suffian, '*An Introduction to the Legal System of Malaysia*', 2nd edition, at 10.

²¹ See Alima Joned, '*Modernity, Democracy, and Secularism: Reflections on the Malaysian Experience*', Journal of Malaysian and Comparative Law, Volume 35, 2008 at 158.

²² See Plea for a Rethink over The Herald case: The Courts and Democracy by Philip TN Koh in PRAXIS Oct-Dec 2013.

²³ See Zaid Ibrahim, “*The hypocrisy of leaders: Malaysia, Islam and Fundamentalism*”, Commonwealth Lawyers’ Association and Contributors 2012.

²⁴ See Dr Shad Saleem Faruqi, ‘*Beauty Contests and Syariah Law in Selangor*’ [1997] 4 CLJ i.

²⁵ See Farid Sufian Shuaib, ‘Constitutional Restatement of Parallel Jurisdiction between Civil Courts and Syariah Courts in Malaysia: Twenty Years on (1988-2008)’, 2008 *Malayan Law Journal* 5 xxxiii.

²⁶ See Response to the 25 prominent Malay figures on position of Syariah Law - 31 Muslim Scholars - See more at: <http://www.themalaymailonline.com/what-you-think/article/response-to-the-25-prominent-malay-figures-on-position-of-syariah-law-31>, December 16, 2014.

²⁷ Ahmad Ibrahim, ‘*Towards an Islamic Law for Muslims in Malaysia*’ [1985] 12 *JMCL* 37, at 50.

²⁸ *Ibid*, at 52.

²⁹ Tun Abdul Hamid Mohamad, ‘*Implementation of the Islamic Criminal Law (Hudud, Qisas, Ta’zir) in Malaysia – Prospects and Challenges*’, [2015] 3 *CLJ* ix.

³⁰ See *Church Times*, 16 April 2014. Reiterated in his 2015 Christmas message.

³¹ See Nicholas Phillips, ‘*Equal before the law, Islam and English Law*’, edited by Robin Griffith-Jones.

³² See J. Griffiths, ‘*What is Legal Pluralism?*’ (1986) 24 *Journal of Legal Pluralism* 1.

³³ *AG v Guardian Newspapers Ltd (no 2)* [1990] 1 *AC* 109.

³⁴ See Tom Bingham, ‘*The Business of Judging, Selected Essays and Speeches, Law in a Pluralist Society*’, page 111.

³⁵ *Singh v Entry Clearance Officer New Delhi* (supra), *Matadeen v Pointu* [1999] 1 *AC* 98 and *Ghaidan v Godin Mendoza* [2001] *EWCA Civ* 1533.

³⁶See Home Office Communication Directorate June 2004, '*Strength in Diversity: Towards a Community Cohesion and Race Equality Strategy*'.

³⁷Blake v Associated Newspapers Limited [2003] EWHC 1960 (QB), His Holiness Sant Baba Jeet Singh Ji Maharaj v Eastern Media Group Ltd and another [2010] EWHC 1294 (QB).

³⁸ See Moore's Introduction to English Canon law, 4th Edition and Mark Hill, Ecclesiastical Law 3rd Edition.

³⁹ See Mohamed Keshavjee, '*Alternative Dispute Resolution in a Diasporic Muslim Community in Britain, Law and Ethnic Plurality, Socio-Legal Perspectives*', Edited by Prakash Shah.

⁴⁰ Cohen v Baram [1994] 2 Lloyd's Rep 138, Kastner v Jason [2004] EWCA Civ 1599, Bhatti v Bhatti [2009] EWHC 3506 (Ch), Al-Midani v Al-Midani [1999] 1 Lloyd's Rep 923.

⁴¹ See Samantha Knights, '*Freedom of Religion, Minorities, and the Law*', page 19.

⁴² See Cerian Charlotte Griffiths, '*Sharia and Beth Din Courts in the UK: Is legal pluralism nothing more than a necessary political fiction?*' Studialuridica Toruniensia TOM XV p 39.

⁴³ See Mohammad Fadel, '*Political Liberalism, Islamic Family Law and Family Law Pluralism: Lessons from New York on Family Law Arbitration*'.

⁴⁴ See Mashood A Baderin, '*An analysis of the relationship between sharia and secular democracy and the compatibility of Islamic law with the European Convention on Human Rights*', page 92.

⁴⁵ See Sebastian.M.Poulter, '*English Law and Ethnic Minority Custom*', 1986 p v.

⁴⁶ See Ashley Nickel, '*Abusing The System: Domestic Violence Judgments From Sharia Arbitration Tribunals Create Parallel Legal Structures in the United Kingdom*', Arbitration Brief 2014, Volume 4 Issue I Article 6.

⁴⁷ See Rowan Williams, '*Islam and English Law*', page 21.