

THE ANTITHESIS BETWEEN CIVIL LAW AND ISLAMIC LAW IN A PLURALISTIC SOCIETY

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ABSTRACT

Malaysia is known for its pluralistic society. This is because of its multi-racial, multi-cultural and multi-religious society. Thus, the Federal Constitution has been drafted to reflect this spirit. Essentially, one of the Articles of the Federal Constitution provides that Islam is the religion of the Federation and that Islamic law is under the purview of the State. Therefore, State Legislature is responsible for laying down Islamic principles in order to govern the Muslim community. However, there have been occasions where legal issues do arise if one of the contending parties in the courts is not a Muslim. In such a case, the dichotomy is which law should be applied, i.e. Civil Law or Islamic Law. The courts have faced this issue repeatedly in recent years. On such occasions, there have been calls made by various parties to amend the current legal framework to pave the way for the application of Civil Law if one of the contending parties is not a Muslim. However, the government, which is the guardian of the society in totality, has constantly voiced its opinion that these issues will be resolved soon. The purpose of this study is to investigate where the problem lies. The study then proceeds to

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explore whether there is a way to resolve these issues concerning the application of Civil Law and Islamic Law. Ultimately, society must feel that the outcome takes into account its legal rights and interests for a meaningful pluralistic society.

Keywords: *Civil Law, Islamic Law, harmonisation*

BACKGROUND OF STUDY

Malaysia consists of a multi-ethnic, multi-cultural and multi-religious society. The major ethnic communities comprise Malays, Chinese and Indians. The Malays constitute 67%, the Chinese constitute 24.3%, the Indians constitute 7.4% and the other races make up approximately 9.8%.¹ In East Malaysia, ethnic communities are even more diverse, namely, Dayak, Kadazan and Murut. They are further divided into Iban, Bidayuh, Melanau, Orang Ulu, Kelabit, Kayan, Kenyah, Berawan, Kadazan, Murut, Bajau, Dusun, Lumbawang, Sulok, etc.

According to a census carried out in 2000, 60.4% of the Malaysian population are Muslim, 19.2% are Buddhists, 9.1% are Christians, 6.3% are Hindus and 2.6% are Confucianist/Taoist.² Noticeably, Muslims constitute the largest religious community. This is because the majority of the population in Malaysia is made up of the Malay Community. Thus, it can be said that religion is identifiable with race³ in respect of the Malay Community.

The term ‘Malay’ is defined in Article 160 of the Federal Constitution, which provides that Malay means a person who professes the religion of Islam, habitually speaks the Malay language and conforms to Malay custom. However, there is no definition or interpretation given in the Federal Constitution concerning the Chinese, Indian, Dayak, Kadazan or Murut. Furthermore, Article 152 provides that the national language is the Malay language. Article 153 of the Federal Constitution provides for the special position and rights of the Malays. Thus, it can be seen that the Malay language and rights are protected by the Federal Constitution.

¹ Population and Housing Census of Malaysia (2006), *General Report of the Population Census*. Putrajaya: Department of Statistics.

² *Ibid.*

³ Aziz, S.A. (2007), “Muslim’s Right to Freedom of Religion in Malaysia: Piercing Through the Confusion and Contradictions”, *Malayan LJ* 7: cxxvi.

Therefore, any person who is a Chinese, Indian, Dayak, Kadazan or Murut could be a member of any religion, *i.e.* Islam, Buddhism, Christianity, Hinduism, Sikhism, Confucianism or Taoism. Furthermore, he could speak any language, *i.e.* Malay, Mandarin, Cantonese, Hakka, Teochew, Hainan, Foochow, Hokkien, Tamil, Malayalam, Telegu, Punjabi, Bengali, Gujarati, Dayak, Kadazan, Murut, etc. Additionally, they could be conforming to any cultural practices, *i.e.* Malay, Chinese, Indian, Dayak, Kadazan or Murut. The fact that there is no definition or interpretation in the constitution would mean that flexibility is afforded to an individual who is Chinese, Indian, Dayak, Kadazan or Murut as to the religion, language and culture to be practiced. However, the languages are not accorded constitutional recognition.

Be that as it may, due to the diversified ethnic-cultural landscape, Malaysia is not only unique in the South-east Asian region but internationally as well and has attracted millions of tourists into the country to witness the magnificent pluralism. Nonetheless, in light of regionalization, internationalization and globalization of businesses there is increasing movement of people from one country to another in search of better prospects in terms of employment and the standard of living. Thus, more and more countries have begun to accommodate a more multi-ethnic, multi-cultural and multi-religious society. Therefore, the concept of multi-ethnic, multi-cultural and multi-religious is not just a national issue but a regional, international and global issue.

As such, countries have to ensure that a fair balance of rights is achieved to ensure there is no marginalization of any segment of the society on the grounds of ethnicity, culture and religion. If there is marginalization of any segment of the society, the country has to address it accordingly. Otherwise, it does not do justice to the term multi-ethnic, multi-cultural and multi-religious society.

RELIGIOUS RIGHTS

Article 3(1) of the Federal Constitution provides that Islam is the religion of the Federation, however, other religions may be practised in peace and harmony in any part of the Federation. The constitution expressly provides that other religions can be practiced. Although Article 3(1) of the Federal Constitution did not expressly stipulate what the religions are, the fact that it stipulates that other religions can be practiced shows that the Federal Constitution acknowledges the existence of other religions besides Islam. Hence, applying the *ejusdem generis* rule, the other religions include Buddhism, Christianity, Hinduism, Sikhism, Taoism and Confucianism. Hence, the fact that Article 3(1) of the Federal Constitution did not expressly state the name of the other

religions is not an issue. However, the list of the religions aforementioned is not exhaustive and, thus, Article 3(1) of the Federal Constitution does allow for the possibility of new religions being practised.

Since Article 3(1) of the Federal Constitution enables the practice of other religions, this means that religious ceremonies, festivals and observances can be carried out by any person professing any of the aforementioned religions. This right is guaranteed by the highest law of the country since it is embedded in the Federal Constitution. Hence, the right to practice the religion has a constitutional footing and the right should not be denied, as it would be against the constitution.

Article 160 of the Federal Constitution interprets the term ‘The Federation’ as the Federation established under the Federation of Malaya Agreement 1957. Thus, the Federation refers to the fourteen states in Malaysia. When Article 3(1) of the Federal Constitution provides that Islam is the religion of the Federation, it means that Islam is the religion being practiced in the fourteen states. In such a case, it could mean that other religions are not allowed to be practiced. However, reference should be made to Article 3(1) of the Federal Constitution, which states that “...but other religions may be practised in peace and harmony in any part of the Federation”. This means that Islam and other religions can be practiced in any part of Malaysia.

Moreover, Article 11(1) of the Federal Constitution provides that every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it. However, Article 11(4) of the Federal Constitution restricts the propagation of any religious doctrine or belief among persons professing the religion of Islam.

FUNDAMENTAL LIBERTIES

Since the Federal Constitution allows the religious practices to be carried out, the concern is whether the right to carry out religious practices can be restricted or prohibited. The articles of the Federal Constitution concerning religious rights fall under the purview of Part II of the Federal Constitution, titled ‘fundamental liberties’. The court, in *Tan Hoon Seng v Minister of Home Affairs, Malaysia, and Anor and Another Appeal*,⁴ remarked that any law governing fundamental liberties must be interpreted liberally and broadly. Thus, the manner in which ordinary legislation is interpreted should not be adopted in interpreting the Federal Constitution.

⁴ [1990] 1 MLJ 171.

In the decision of *Dewan Undangan Negeri Kelantan v Nordin*,⁵ the court declared that the fundamental rights, as enshrined in Part II of the Federal Constitution, enjoy precedence and primacy. If that is the case, then the religious practices cannot be restricted or prohibited.

Fundamentally, Article 5(1) of the Federal Constitution provides that no person shall be deprived of his life or personal liberty save in accordance with the law. The concern is the meaning of the terms life and personal liberty in Article 5(1) of the Federal Constitution. The Court of Appeal in *Tan Tek Seng v Suruhanjaya Perkhidmatan & Anor*⁶ eloquently interpreted that the term life does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters that go to form the quality of life.

The decision does not concern conversion to another religion. Nevertheless, the principle of the law expounded is sound and appropriate to the issue at hand. This is because the right to practice religious observances is an important part of a human life. Such observances will mould and shape a person to be spiritual and religious. If a person does not have religious freedom, the right to practice religious observances has been taken away. The effect can even be drastic, especially to young minds and children who need a strong foundation in religion.

Concerning the concept of equality in the eyes of the law, it is imperative in any country that adopts democratic ideals.⁷ The idea of equality before the law was initiated in the seventeenth and eighteenth century in the United Kingdom.⁸ The idea then spread to Europe and the United States of America. Thus, the idea of equality was imported into the Federal Constitution.

Article 8(1) of the Federal Constitution provides that all persons are equal before the law and entitled to equal protection under the law. This means that regardless of whether a person is a Muslim, Buddhist, Christian, Hindu, Sikh, Tao or Confucianist, they should be accorded equal protection under the law. Article 8(2) of the Federal Constitution provides that except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the grounds of religion only. Thus, in the case of *Public Prosecutor v Su*

⁵ [1992] 1 MLJ 197.

⁶ [1996] 2 AMR 1617.

⁷ Buruma, I. (1996), "Is Democracy an Asian Value?" *Time*, Oct-Dec 1996

⁸ Tan, Y. L. K. (1997), *Constitutional Law in Malaysia and Singapore*. Kuala Lumpur: Malayan Law Journal, p. 596.

*Liang Yu*⁹ the court expounded that the objective of Article 8 is to bestow equal justice to everyone. This is regardless of the religion a person professes.

However, the decision of his Lordship Gopal Sri Ram was given a knock by the Federal Court. The Federal Court in *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd*¹⁰ rejected the decision of the Court of Appeal. Furthermore, the Federal Court stated that perhaps the Court of Appeal was not aware of the recent and clear reminder of the law by the highest court in the land. The Federal Court also found that the conclusion of the Court of Appeal was a total deviation from the law regulating Articles 5 and 8 of the Federal Constitution. Thus, the interpretation given by the court in *Tan Tek Seng v Suruhanjaya Perkhidmatan & Anor* concerning Articles 5 and 8 of the Federal Constitution cannot be applied because of the Federal Court decision in *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd*.

The constitution of any country is the body of rules that deal with the fundamental and far-reaching principles governing the structure of a country.¹¹ In a liberal society, one of the main purposes of the constitution is to restrain the exercise of political power.¹² This is the reason the forefathers of the country drew up the Federal Constitution. The constitution is the antecedent to the government.¹³ The framers of the constitution intended the government to be bound by the constitution. However, the rights under constitutional law depend very much on the political-social environment.¹⁴ Thus, it is important to consider the thinking behind the constitution, which is known as ‘constitutionalism’.¹⁵ The spirit of the constitution must be examined, coupled with the intention of the framers of the constitution.

Thus, it is important for the judge to look into the spirit of the law and not stick strictly to the letter of the law.¹⁶ This is because the Articles of

⁹ [1976] 2 MLJ 128.

¹⁰ [2004] 1 CLJ 701.

¹¹ David, M. (1996), *Legal Theory*. Allahabad: Allahabad Law Agency, p. 15.

¹² Alder, J. (1989), *Constitutional and Administrative Law*. London: MacMillan, p. 39.

¹³ McIlwain, C. H. (1947), *Constitutionalism Ancient and Modern*. New York: Cornell University Press, p. 8.

¹⁴ Jackson, V.C. & Tushnet, M. V. (1999), *Comparative Constitutional Law*. New York: Foundation Press, p. 18.

¹⁵ Harding, A. (2006), “New Asian Constitutionalism: Myth or Reality”, *IJUM Law Journal*, 14 (2), p. 153.

¹⁶ Denning (1975), *Giving Life to the Law*. 6th Braddell Memorial Lecture, University of Malaya, Kuala Lumpur.

the Federal Constitution are fundamental to the meaning and effect of the constitution.¹⁷ If the Articles of the Federal Constitution are misunderstood, it is akin to misunderstanding the whole constitution.¹⁸ Ultimately, the validity of the laws are determined by whether they produce just or unjust results.¹⁹ Furthermore, every law is said to have an expressive function.²⁰ As for the Federal Constitution, one of its functions is to protect the rights of the citizens of Malaysia, as rightly pointed out by his Lordship Raja Azlan Shah F.J (as he then was) in *Loh Kooi Chon v Government of Malaysia*.²¹

THE ISSUE OF CONVERSION TO ANOTHER RELIGION

There have been cases reported in the media concerning the issue of conversion to another religion. The cases involve non-Muslims who convert to Islam and the issue is the status of the religion of the children in the event that they are minors, where one of the parents converts to Islam.

Religion is an identity of a particular ethnic community. The ethnic community will gather and carry out their religious observances. The moment a baby is born, the parents will indicate their religion in the birth certificate. Thus, the baby follows the religion of the parents. When he reaches a certain age, depending on which religion, he will learn the Holy Scriptures. When he begets a child, the procedure will be repeated for his child. One day, when the person departs, his next of kin will carry out the necessary religious observances on behalf of the deceased person. The whole process will continue without a break in the continuity. Thus, when a conversion to another religion takes place, there is a break in the continuity. This is because the religious observances vary from one religion to another.

Hence, the Civil Laws and Islamic Laws have to be examined to determine the effect on the minors where one of the parents converts to the religion of Islam. Most importantly, the laws must be able to provide certainty and justice

¹⁷ Das, C. V. (1983), "Constitutional Supremacy, Emergency Powers and Judicial Attitudes", *Journal of Malaysian and Comparative Law*, 10 (1) & (2), p. 69.

¹⁸ Hickling, R.H. (1978), "An Overview of Constitutional Changes in Malaysia 1957-77", in Suffian, H.P.Lee, F.Trinidad (eds), *The Constitution of Malaysia: Its Development 1957-77*. Kuala Lumpur: Oxford University Press, p. 5.

¹⁹ Hart, H.L.A. (1961), *The Concept of Law*. Oxford: Clarendon, p. 153.

²⁰ Mullender, R. (1998), "Racial Harassment, Sexual Harassment and the Expressive Function of Law", *Modern Law Review*, 61 (2), p. 240.

²¹ [1977] 2 MLJ 187.

in this rapidly changing environment.²² Otherwise, the law has failed in its aim, objective, purpose and goals.

The approaches taken under Civil law and Islamic law can result in different conclusions. This may cause uneasiness among the various races. The interracial relationship may cause political instability depending on the gravity of the situation. Furthermore, the interrelationship among the various races will be strained. In fact, interracial and interreligious conflicts are a serious threat to the country.²³ Thus, it is important that in a land, which is rich in ethnicity, culture and religion, that the interrelationship among the various ethnic communities is preserved and well guarded. This is because the religion of a particular ethnic community is their identity.

If this ethnic conflict is not prevented, it can result in undesirable consequences. The whole nation can be paralysed if such a state of affairs persists. It can affect the economic development of the country and destroy whatever was built by the forefathers and is being built by the present generation.

Observably, since independence, the country has witnessed racial conflicts, which have contributed to the political-social-economic direction of the country. Nevertheless, such conflicts can be avoided if the principles of tolerance and understanding are practiced by the various races and ethnic communities. Although, the racial riot of 13 May 1969 does not concern conversion to another religion, it is a good example of how ethnic conflict can lead to undesirable consequences.

Malaysia is racing to achieve developed nation status. It is taking drastic steps to develop the country and the society at large. This is because, as a progressive nation, the government shoulders the responsibility in achieving developed nation status. Hence, the government crafted the vision that in the year 2020, Malaysia will be a fully developed nation. In order to achieve this vision, the government has planned several strategies to ensure that it achieves its mission. One of the main concerns of the government is building racial integration

Hence, the issue of conversion to another religion and the effect on minors should be handled with utmost care. The sensitivity of all the communities must be taken into account. In such a case the concern is whether any act taken

²² Nolan, L. (1999), "Certainty and Justice: The Demands on the Law in a Changing Environment", *Journal of Malaysian and Comparative Law*, 26 (1).

²³ Hwang, I. (2003), *Personalised Politics, The Malaysian State Under Mahathir*. Singapore: Silk Worm Books.

is legal and just. If the act is for the general welfare of the country, the fact that it affects the rights or interests of a particular ethnic community is not an issue.²⁴ However, that approach is not suitable considering Malaysia consists of a multi-ethnic, multi-religious and multi-cultural society.

The government has to strike an appropriate balance among the interests of the various ethnic communities. The government has to ponder how it will reconcile the rights of the ethnic communities to exercise their religious rights.

Thus, the concern is whether the rights of the respective ethnic community are a pawn in the hands of the government.²⁵ Notably, the government must bear in mind that it is 'a government of laws and not of men'.²⁶ The government must be bounded by and act in accordance with the law. The decisions made cannot be solely based on what the decision maker has in mind. The decision made must be inclusive in nature. The government must include the affected ethnic communities as part of its decision making.

However, the respective ethnic community has to realize that this is a difficult issue. The respective ethnic community should not consider that the issue was intentional, deliberate and flavoured with racism and hatred. Thus, the biggest challenge is to not look at any matter with a racial element. If such is the approach, the matter can be resolved amicably. In order for this to materialize, there is a need for a system of mutual forbearance and compromise, which is the base of both legal and moral obligation.²⁷ Otherwise, there will be a continuing uphill task for the government and there will be a constant conflict among the various ethnic communities.

The various ethnic communities expect a liberal approach in dealing with this issue. In fact liberalists argue that the best approach in any conflict is to have a government with less power.²⁸ However, that is not the case in most countries. This is because in most countries the government is becoming more

²⁴ Shabbir, M. (1999), "Approaches to Understanding the Nature of Social Justice: Jurisprudential Discourse", *Current Law Journal*, 5, p. i.

²⁵ Wade, E. C. S. & Bradley, A. W. (1986), *Constitutional and Administrative Law*. London: Longman, p. 1.

²⁶ Wade, E. C. S. & Bradley, A. W. (1985), *Constitutional and Administrative Law*. London: Longman, p. 92.

²⁷ Hart, H.L.A. (1990), *The Concept of Law*. Oxford: Clarendon Law Series, p. 191.

²⁸ Afsaid, D. (1990), "Democracy the Worst, Except for All Others", *Current Law Journal*, 2, p. xi.

and more powerful.²⁹ This is particularly because the government is pressured by the public to develop the nation to greater heights.

Nevertheless, the decision of the government must be fair and there must be justice imbibed in the decision. Essentially justice has many meanings as there are moral and social philosophies attached to the concept.³⁰ Justice is the ultimate ideal social ordering of a community.³¹ In a multi-ethnic-cultural-religious landscape this is vital. Most importantly, there must be a minimum machinery of justice.³² This is to ensure that the various ethnic communities are given what is due to their community.

Case One - *Subashini Rajasingam v Saravanan Thangathoray*³³

The decision was made on 27 December 2007. The Federal Court held that the husband who had embraced Islam could lawfully, following his conversion, have the right to convert his child who is below 18 years old without the consent of his non-Muslim spouse. The Federal Court held that based on Article 12(4) of the Federal Constitution, the religion of a person under the age of eighteen years shall be decided by his parent or guardian. The court interpreted the term parent in a singular sense.

Nonetheless, according to the Eleventh Schedule of the Federal Constitution, words in the singular include the plural, and words in the plural include the singular. Thus, although the term parent is used in Article 12(4) of the Federal Constitution, rightfully, the court should have declared that the consent of both the parents is required. In that case, the consent of both the parents would be required. In the event that consent is not given, it means that the minor will remain in the religion of the parents before one of them converted.

This is because both the parents are responsible for the child. They both begot the child. The decision of one parent cannot become insignificant or irrelevant merely because the other parent has converted to another religion. Furthermore, if the decision of one parent supersedes the other by reason of

²⁹ Hailsham, L. (1978), *The Dilemma of Democracy: Diagnosis and Prescription*. London: Collins, p. 125.

³⁰ Bodenheimer, E. (1967), "Treatise on Justice", in C. Friedrich C & J. Chapman J (eds.), *Justice Nomos VI*. New York: Philosophical Library.

³¹ Hall, J. (1982), *Law, Social Science and Criminal Theory*. Littleton: Rothman.

³² Friedman, W. (1967), *Legal Theory*, 5th Edition. New York: Columbia University Press.

³³ [2008] 2 CLJ 1.

the religion of the other parent, it shows that one religion has overshadowed the other religion. In such a case, one parent is not afforded equal protection by the law. This will run contrary to Article 8 of the Federal Constitution that everyone is equal in the eyes of the law and, thus, require equal protection of the law.

Furthermore, S. 5(1) of the Guardianship of Infants Act 1961 provides that in relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal. This is in line with the 11th Schedule of the Federal Constitution, which requires the consent of both the parents.

However, in Islam, when the father or mother is a Muslim, the child automatically becomes a Muslim unless the child is above the age of 15 and can choose his or her own religion. It can be observed that the approaches under the Islamic Law and Civil Law are different on this point. This is because the decision rests on a single parent. Furthermore, the legal age for choosing a religion under Islam is 15 years. This is in contrast with Civil Law where the age of majority is 18 years by virtue of S. 2 of the Age of Majority Act 1971.

Case Two - *Shamala and Muhammad Ridzwan Mogarajah (Dr Jeyaganesh)*³⁴

Shamala's husband named Dr Jeyaganesh converted to the religion of Islam. She is fighting for the custody of their children. The matter has been fixed for hearing at the Federal Court to answer several constitutional questions. The issue relevant to this study is the different approaches governing conversion and family matters under Civil Law and Islamic Law; whether the Administration of the Islamic Law (Federal Territories) Act 1993 runs contrary to the Federal Constitution when a parent converts a minor and where would the non-Muslim parent seek remedy when the Muslim spouse had converted their child from a civil marriage.

It should be noted that on 22 April 2009 the Cabinet decided that the religion of children born to non-Muslims must be the common religion of the parents when they were married. This means that Muhammad Ridzwan Mogarajah has no right to convert the minor. It also means that the minor will follow the religion at the time of the civil marriage, *i.e.* Hinduism. Although such a

³⁴ [2004] 2 CLJ 416; *New Straits Times*, "Shamala Seeks 9-Man Bench in Custody Battle", May 27, 2009, p. 13.

decision is welcomed by one particular community, it may not be welcomed by another community. This can be seen in the reaction of PAS concerning the issue and the reaction of the non-Muslim over the reaction of PAS.³⁵ It should be noted that when the government made the decision, the Cabinet did not only consist of persons belonging to one religion. There were persons of all the major religions. Thus, it is a decision, which is inclusive in nature.

The government agreed to amend the Law Reform (Marriage and Divorce) Act 1976, Islamic Family (Federal Territories) Law 1984 and Administration of Islam (Federal Territories) Islamic Law 1993.³⁶ Nevertheless, the issue will have to be discussed at the Rulers' Council first.³⁷ However, the Rulers' Council decided they will have to first seek the views of the Islamic Council of each of the States.³⁸

Case Three - *Indira Gandhi and Pathmanathan*³⁹

The Syariah Court granted interim custody of children to Pathmanathan who had converted to Islam. Meanwhile, Indira Gandhi applied to the High Court to claim custody of her children. The High Court granted her interim custody of her children. The concern is which decision stands.⁴⁰

This issue arose because Malaysia has a dual court system with Civil and Syariah Courts operating side by side. If the decision of the Syariah Court stands, it may not be received well by the affected community and if the decision of the Civil Courts stands, it may not be received well by the other community.

CONCLUSION

The conflict between Civil Law and Islamic Law on the issue of conversion to another religion and its effect on minors is far reaching. The decision made by the Cabinet has provided solace in the hearts of the non-Muslims but it is

³⁵ *New Straits Times*, "PAS Slammed over Conversion Issue", May 2, 2009, p. 15.

³⁶ *New Straits Times*, "Amendments Coming to Ease Conversions", June 17, 2009, p. 8.

³⁷ *New Straits Times*, "Rulers to Discuss Cabinet Decision", June 27, 2009, p. 1.

³⁸ *New Straits Times*, "Rulers Seek Councils' View on Conversion of Minors", June 30, 2009, p. 1.

³⁹ *New Straits Times*, "Conversion Laws Face Major Test", May 3, 2009, p. 31.

⁴⁰ *Ibid.*

not favoured by some of the Muslims. Both parties must compromise on the matter, especially because it concerns religion. The very core principle of any religion is understanding and acceptance, thus, both parties must be willing to do so.

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