

RELIGIOUS FREEDOM OF EMPLOYEES IN PUBLIC AND PRIVATE SECTOR WORKPLACES IN MALAYSIA: A COMPARATIVE STUDY OF DIFFERENT JURISDICTIONS

**Nik Ahmad Kamal Nik Mahmud, International Islamic University
Malaysia**

Rahmawati Mohd Yusoff, University Teknologi MARA Johor

Azmi Harun, International Islamic University Malaysia

Azizah Mohd, International Islamic University Malaysia

Marhanum Che Mohd Salleh, International Islamic University Malaysia

Noor Azlan Mohd Noor, International Islamic University Malaysia

Md Asraful Islam, International Islamic University Malaysia

ABSTRACT

This paper examines the extent of religious freedom exercised by the employees in public and private sector workplaces in Malaysia and some of the selected countries of the world. Hence, the objects of this study are to investigate the legal and regulatory frameworks governing religious freedom at workplaces in Malaysia and other selected jurisdictions, to highlight the necessity of religious freedom at workplaces and to suggest some policy recommendations to the government of Malaysia for ensuring effective religious freedom and religious diversity practices at workplaces. The study is conducted applying legal and doctrinal research methodology followed by an analytical approach. Both primary and secondary legal sources are considered in identifying and interpreting data. The study finds that there is no distinct legal instrument in Malaysia to govern religious freedom at workplaces. Here, religious freedom at workplaces is governed by the core laws that deal with religious freedom at large, i.e. the Constitution. It is also observed that ensuring religious freedom at the workplaces increases the productivity of an organization significantly, whereas absolute freedom might also affect the discipline inside the organization. At the end it was recommended that a comprehensive legislation is essential for Malaysia to effectively govern religious freedom at workplaces.

Keywords: Religious Freedom, Employees, Public, Private, Workplaces.

INTRODUCTION

Religious tolerance is one of the important aspects in every multicultural society in the world and Malaysia is not an exception to that. Religious tolerance is broadly recognised in Malaysia, but it is questioned by a tiny group of people. The existence and maintenance of religious tolerance and harmony among Malaysian multi-religious and multi-racial citizens in all sectors, including workplaces, is one of the many attributes that has aided Malaysian economic progress and prosperity throughout the years (Abubakar, 2013).

There are many studies, research and discussion about rights of workers at their workplaces. These rights are already in the law, be it domestic legislation or international standards and conventions. Nonetheless, there is not much discussion on the liberty and freedom of workers to exercise their religion and beliefs at their workplaces. For instance, the majority of the workers in Malaysian public and private sectors are Malay Muslims. There

are many cases where there is a lack of opportunity for Muslim workers to practice their religious duties at work. Thus, the constraint to practise one's religion includes facility and convenience to perform the rites. Not only in Malaysia, the same issue persists all over the world. This research therefore, is conducted to examine whether there are adequate laws in Malaysia to deal with the diversity of religion at the workplace that may affect individual workers' religious belief and practice, to find to what extent the workplaces in Malaysia observes freedom to practice one's religion, to investigate factors that contribute to the workers to receive freedom and right to practice their religion at workplaces in Malaysia, and finally to suggests some policy recommendations for developing a balanced diversity religious model for workplaces in Malaysia to ensure employees' freedom to profess and practice his religion. To make a comparative analysis, religious diversity practices at the workplaces of some other jurisdictions are also highlighted.

Religion and Employment: The Malaysian Context

People in Malaysia do not work in jobs that are directly related to or connected to the affairs of a religion or a religious institution or body governed by a religious group unless the job is directly related to or connected to the affairs of a religion or a religious institution or body governed by a religious group. In a mosque, for example, only a Muslim can be appointed as an imam or leader, whereas in a church, only a Christian can be appointed, and in a Buddhist temple, only a Buddhist can be appointed, and in a Hindu temple, only a Hindu can be appointed (Abubakar, I., 2013). According to Article 8(2) of the Federal Constitution of Malaysia, "there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment."

Religious Freedom at Workplaces in Malaysia

It is assured by Article 11(1) of the Federal Constitution of Malaysia, "every person has the right to profess and practise his religion and, to propagate it." This provision is applicable to all sectors including workplaces. However, there are some limitations of the right to profess and practice one's religion on the ground of public order, public health and morality (The Federal Constitution of Malaysia).

So far there is no decision made by the court that affects the right to profess and practice one's religion in the workplaces. But there are cases like *Meor Atiqulrahman bin Ishak & Ors v Fatimah Sihi & Ors* [2006] 4 CLJ 1 and *Halimatussadiyah v Public Services Commission* [1994] 3 MLJ 61 dealing with the issues about the right to wear "Islamic" dress. In the case of *Meor Atiqurrahman*, three school children challenged the school and the Ministry of Education's decision to expel them for refusing to take off their "Serban" during school hours as required in the dress code provision of the School Regulations 1997. The Federal Court opined that freedom to practice a religion requires the fulfillment of three conditions; namely, the person must profess a religion, there is a practice that he/she needs to assert, and the practice that he/she wants to assert is the practice of that religion he/she professes. Following the fulfilment of the three criteria, the following question is whether the practise in question is an integral component of the religion, which is an extremely important question to answer. If the activity is obligatory and important to the faith, the court may place greater emphasis on it. If it is not, the court may provide a lesser weight to it. The Federal Court in evaluating the main issue whether the School Regulations 1997 is constitutional or otherwise concluded that "there was not a shred of evidence before the learned judge

confirming that wearing a Serban is mandatory in Islam and therefore, is not an integral part of Islam.”

In the case of Halimatussadiyah, the issue in question was the prohibition imposed on public servant from wearing the face cover or “purdah.” Government's service circular issued in 1995 prohibited the wearing of such clothing. When she refused to abide by the circular, she was subject to disciplinary action resulting to dismissal from the public service. She challenged the action in court on the ground that the circular and the dismissal was unconstitutional as it contravened her right to practice her religion. Based on the premise that wearing “purdah” is not an integral part of the religion of Islam and the circumstances surrounding her work requires her not to cover her face. The court concluded that the dismissal was justified and was constitutional.

There are numerous challenges in protecting and promoting the right to freedom of religion or belief in Malaysia. In a recent paper The International Commission of Jurists (ICJ) (2019) has identified six significant issues concerning the practical application of constitutional provisions, federal legislation, and Islamic laws in the context of freedom of religion or belief:

1. Discrimination against religious minorities;
2. Limitations on the rights of children relating to personal matters governed by Islamic law;
3. Discrimination against persons in case of changing or adopting a new religion;
4. Criminalization and prosecution of proselytism among Muslims; and
5. Restrictions on the use of the word ‘Allah’ by non-Muslims; and
6. Relationship between freedom of expression and the crime of sedition.

The ICJ made certain recommendations to help the Malaysian government resolve these shortcomings and guarantee that its legal framework is compliant with international human rights law and fully respects freedom of religion or belief in all spheres of life, including workplaces. These recommendations include joining major international treaties, withdrawing reservations to CEDAW, CRC, CRPD, etc., fully implementing Constitutional provisions, amending or repealing laws that are incompatible with religious freedom, and so on (International Commission of Jurists, 2009).

Kadiresan & Javed (2015) conducted a study on discrimination in employment and job delegation at Malaysian workplaces, which touched on a variety of aspects of employment discrimination, including religious prejudice. According to an empirical survey of employees from various private firms in the state of Kuala Lumpur, discrimination in the workplace in Malaysia still exists in subtle forms in terms of age, ethnicity, religion, and gender. The majority of respondents believe race is the most important component, however other characteristics such as age, religion, and gender are also important (Kadiresan, 2015).

Religious Freedom at Workplaces in other Jurisdictions

Although religious freedom is a well-established fundamental right in all jurisdictions, Lucy (2015) claims that the extent to which it should be enjoyed by employees of a given organisation is still up for argument. Some may claim that because religion is a personal subject, it should not be discussed in the workplace. However, other individuals believe that work is a location where people spend a substantial portion of their lives. People interact with their coworkers, engage with a larger society and culture, ensure economic sustainability, engage in personal and professional development activities, and, to a significant extent, exhibit their personalities at work. When viewed in this light, religion cannot be excluded from the workplace. Furthermore, some studies imply that restricting religious freedom at work can lead to conflict, including conflict between equal rights and conflict between religion and other interests, such as employers' economic interests (Vickers, L. 2015). To get

a clear idea, current situation of freedom of religion at workplaces in some other countries are discussed below:

United Kingdom (UK)

The Equality Act 2010 protects employees' religious and philosophical beliefs in the workplace in the United Kingdom. The provisions of EU Directive 2000/78 are followed in the interpretation of this Act. Furthermore, the UK legislation is interpreted in accordance with the principles of the European Convention on Human Rights (ECHR), particularly Article 9 which protects freedom of religion or belief, under the Human Rights Act 1998. Direct and indirect discrimination, as well as harassment and persecution on the basis of religion or belief, are prohibited under the Equality Act 2010 (Vickers, 2019).

The UK Case law implies that to establish a charge of discrimination on the basis of religion at workplace, a group must have been disadvantaged. Negative treatment of one person may not be sufficient here. In *Eweida v British Airways* [2010] EWCA Civ 80, Eweida, a British Airways employee claimed that she experienced discrimination because of her Christian beliefs to wear a white gold cross visibly. The domestic court dismissed Eweida's petition because she couldn't find a group of people who shared her religious convictions and felt obligated to wear a cross at work. However, she successfully established her claim before the European Court of Human Rights (ECHR) under Article 9 of the Convention that does not require the need for group disadvantage. In the judgment, ECHR ordered the British Airways to pay 2,000 Euros in damages to Ms Eweida and 30,000 Euros in costs. Hence, it is found that the UK laws and the EU laws do not resemble on this issue.

There is another law in the UK known as the Employment Equality (Religion or Belief) Regulations 2003. Regulation 3 of this Law also prohibits discrimination against workers on the basis of religion or similar beliefs (Employment Equality Regulations, 2003). These regulations regulate all areas of work, including recruiting, training, terms and conditions, transfers, promotions, dismissals, and vocational training. There are several exceptions to the UK Regulations, such as a true occupational requirement for the worker to be of a specific religion or belief in order to execute the job or to comply with the organization's religious or belief ethos (Employment Equality Regulations, 2003).

United States of America (USA)

Title VII of the Federal Civil Rights Act of 1964 prohibits discrimination on the basis of religion for covered employers with 15 or more employees in the United States. Within 180 days after the discriminatory incident, an aggrieved person may file a complaint with the Equal Employment Opportunity Commission (EEOC) or a comparable state body under this legislation (The Civil Rights Act, 1964).

Following a dispute over prayer breaks in 2016, it was claimed that Cargill Meat Solutions, a US food processing company, sacked 150 Muslim workers from its beef processing factory in Colorado. Following public outcry over the layoffs, the company changed its hiring policy to allow fired employees to reapply for their jobs (Jawad et al., 2017). In September 2017, Cargill Meat Solutions and the Employee Union called the Teamsters Local Union No. 455 jointly agreed to pay the Muslim workers more than \$1.7 million dollars to settle the matter. However, Cargill Meat Solutions did not go for formal legal proceedings, rather they decided to settle the matter amicably (Honig, E., 2018). Likewise, the US Supreme Court heard a case filed by EEOC on behalf of a Muslim woman Elauf, who argued that Abercrombie & Fitch, a clothing retailer denied her a job on the ground that she wore a hijab. After in-depth investigation, it was confirmed that the allegation of Ms. Elauf was true, that is she was denied the job because of her religious dress. Consequently, Abercrombie & Fitch, in a settlement paid \$25,670 in damages to Ms. Elauf

and \$18,983 in court costs (Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc., 2015).

Japan

The idea of non-discrimination in work is recognised in the Japanese Constitution of 1946. According to Article 14 of the 1946 Japanese Constitution, all individuals are treated equally under the law, and no discrimination on the basis of race, creed, sex, social class, or family origin is permitted in political, economic, or social relations. Article 3 of the Labor Standards Act of 1947 restates the prohibition on discrimination by employers in wages, working hours, or other working conditions on the basis of a worker's nationality, creed/religion, or social status. If someone violates this nondiscrimination rule, they will be prosecuted under Article 119 of the Labor Standards Act of 1947. Such person, if proven guilty of committing such conduct shall be liable to imprisonment that may extend to six months or a fine not extending 300,000 yen (The Labor Standards Act, 1947).

Article 27 of the National Public Service Act 1947 of Japan also provides that all citizens are equal before the law and there shall be no discrimination on grounds of race, creed, sex, social status, family origin; or due to political opinions or affiliations. Article 13 of the Local Public Service Act 1950 also guarantees this principle. Violation of this law is subject to criminal action and the perpetrator shall liable for imprisonment that may extend to one year or to a fine not exceeding 500,000 yen.

Australia

There is no specific provision in the Australian Constitution of 1900 that guarantees and safeguards freedom of religion and belief. However, there are some safeguards in the Constitution, which state that no law shall be enacted by the Commonwealth for the purpose of establishing any religion, compelling any religious observance, or prohibiting the free exercise of any religion, and religious test shall not be considered as a requirement for any office or public trust under the Commonwealth (Commonwealth of Australia Constitution Act, 1900).

Australia is one of the countries that has either ratified or otherwise implied its support for numerous international instruments in the area of human rights. Some of these instruments specifically indicate that they need to be implemented through domestic legislation. There are various laws enacted by the Commonwealth of Australia to enforce these instruments. The Human Rights and Equal Opportunity Commission Act 1986 and the Racial Discrimination Act 1975 are examples of such laws. Both of these Acts provide for rational protection against discrimination on the ground of religion or belief (Human Rights and Equal Opportunity Commission, 1998). State governments could always establish a state church or religion, or even suppress religious views and mandate a religious test as a requirement for public office, because there is no legal barrier at the state level. The constitution of Tasmania, Australia's first and only state, guarantees religious freedom. Every citizen is entitled freedom of conscience and the free profession and practise of religion under Article 46 of the Constitution Act 1934 (Tas). No one shall be subjected to any disability or be compelled to take any oath or religious test because of his or her religion or religious beliefs in the context of appointment to or holding of any public office.

Canada

The Canadian Charter of Rights and Freedoms, an amendment to and part of Canada's Constitution, guarantees the fundamental right to freedom of conscience and religion, as well as freedom of thought, belief, opinion, and expression. Every individual has the right to equal

protection and benefit of the law under Article 15 of this Charter, which prohibits discrimination based on religion (The Canadian Charter of Rights and Freedoms, 1982). In the courts, the Charter is directly enforceable. All government or federally regulated entities are prohibited from discriminating on the basis of religion under the Canadian Human Rights Act of 1985. In their regions of jurisdiction, provinces and territories have identical statutes against discrimination. The Canadian Human Rights Commission and a number of provincial commissions deal with discrimination complaints (Human Rights and Equal Opportunity Commission, 1998).

New Zealand

Three clauses of the New Zealand Bill of Rights Act 1990 deal with religious freedom. Firstly, Section 13 provides that “everyone has the right to freedom of thought, conscience, religion and belief, including the right to adopt and to hold opinions without interference the New Zealand Bill of Rights Act, 1990.” Secondly, Section 15 mentions that “every person has the right to exhibit his religion or belief in worship, observance, practice, or teaching, either individually or within a community, and either in public or in private New Zealand Bill of Rights Act, 1990.” In broader sense, this provision guarantees religious freedom in workplace too. Lastly, the Act bestows a special protection of minority religious rights. The New Zealand Bill of Rights Act 1990 cannot override inconsistent legislation it does not have constitutional status. The New Zealand Human Rights Act (1993) prohibits discrimination based on religion or belief in employment, housing, education, and goods and services, with limited exceptions for religious bodies.

India

The Indian Constitution of 1949 prohibits discrimination based on religion, race, caste, sex, or place of birth; promotes equal opportunity in public employment; abolishes untouchability; and protects Scheduled Castes (SC), Scheduled Tribes (ST), and other weaker sections from social injustice and exploitation. For preventing discriminations at workplaces, India also has the Protection of Civil Rights Act (PCRA) (1955) and the Untouchability Offences Act (UOA) (1955), Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act (SC/ST Act) 1989 etc.

India is a multi-religious country where almost all major religions of the world is found. Some of these religions have originated in India itself. When it comes to religious diversity tolerance among employees in Indian enterprises, however, there is mistrust. The best way to understand religious diversity among employees is to evaluate the many ideas, practises, and cultures that shape their religion (Sing, 2020). According to Rao (2012), Indian workplaces are also multi-religious, with employees from all over the country. Furthermore, due to decades of integration and adaptation, religious diversity in Indian workplaces is tolerated and rarely causes conflict.

Vietnam

Vietnam is a country that is multi-ethnic and multi-religious. In Vietnam, all religions are treated equally, respected, and protected by the law. Religious variety and freedom of religion have always been respected in Vietnam since the restoration period (Nghia, 2015). The Constitution of Vietnam guarantees everyone the right to freedom of belief and religion, as well as the freedom to practise any religion or none at all. The Constitution also guarantees that all religions are equal before the law, and that the state must respect and protect religious freedom. No one may infringe on the freedom of belief and religion, nor may anyone use a belief or religion to circumvent the law (The Constitution of Vietnam, 2013). Vietnam also

has some other legal documents in addition to the constitutional provisions so that constitutional rights can be enforced properly. By establishing the Ordinance on Belief and Religion by the Vietnam National Assembly Standing Committee on June 18, 2004, which went into effect on November 15, 2004, Vietnam extends and expands the principles of the Constitution and institutionalises the Communist Party's objectives and directions. Vietnam is one of the rare countries in the world where major religions coexist peacefully within one country. Furthermore, like the original culture of the Vietnamese people, there are few countries where religious tolerance, a characteristic of the respect and preservation of religious freedom, has become the essence of humanism (Nghia, 2015).

Adverse Impact of Religious Freedom at Workplaces

Although it is expected that employees in an organization should have freedom to profess his religious faith, studies suggest that religious freedom in workplace may affect the working environment. There have been many studies conducted on religious discrimination at workplaces that cover many aspects of human resource management, policy and organizational behaviour. Messarra (2014) investigated the perceptual impacts of perceived religious discrimination on employee work-related behaviours, primarily commitment and engagement, in an organisational behaviour survey. A survey of 548 employees from religiously diverse firms was performed for this purpose. The findings of the study indicated that when workers perceive religious discrimination in their group, their dedication and participation towards the organization are seriously affected. The study recommended that employers should develop policies and strategies to diminish the negative organizational and personal consequences of religious discrimination in the workplace. Messarra (2014) defined religious discrimination as “valuing or treating a person or group differently because of what they do or do not believe or because of their feelings towards a given religion” (Messarra, 2014).

Perceived discrimination, according to Sanchez & Brock (1996), refers to a person's belief that he or she is being treated unfairly because of their group membership. In a study by Robbins & Judge (2013), it was discovered that people of different religious faiths frequently clash. According to the findings, employees in religiously diverse firms are more likely to have interpersonal problems and misunderstandings, which can lead to bias among coworkers (Day, 2005). According to Messarra (2014), existing research on workplace discrimination that deal with religion usually focus on management practises, such as dress requirements and the scheduling of religious holidays, or consider them when arranging meetings and/or other events. Morgan (2004) also stated that it is now standard practise for people to declare their personal religious beliefs and seek religious accommodations in the workplace, which may result in problems for managers. Managers should be well-trained in these areas.

CONCLUSION AND RECOMMENDATION

Religion makes people happier and stress free and happier and stress-free employees are the most productive ones. In a religiously diverse country like Malaysia, there is no other option but to provide freedom of religion at the workplaces so that employees with diverse religious beliefs can work together with peace and harmony. Here, one important thing must be kept in consideration that in exercising religious freedom and practicing religious norms, no discrimination must be accepted on a particular group because of their minority within the organization. Otherwise, the basic objectives of religious freedom at workplaces would fail. For this, there must be separate legal framework at national level as well as specific policies within particular organization which would adhere the national legal framework.

Thus, from the above analysis and the practices shown from other jurisdictions it is clear that religious freedom and religious diversity practices are necessary for the productivity and well-being of any organization whether public or private. At the same time, these freedoms should be practiced in a controlled and a proper manner as it is indicated in several studies that absolute freedom may create chaos and conflict within the organization. As Malaysia does not have any specific law dealing with religious freedom at workplaces, it is recommended that the Government of Malaysia would take necessary steps immediately to enact a national law dealing with religious freedom and religious diversity practices at public and private sector workplaces within Malaysia.

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