

# CONFLICT OF JURISDICTION BETWEEN CIVIL AND SYARIAH COURT IN APOSTASY AND CONVERSION CASE: POSITION UNDER MALAYSIAN CONSTITUTIONAL LAW

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**Abstract:** *This paper examines the conflict of jurisdiction between the Civil and Syariah Courts in Malaysia, specifically in matters relating to apostasy and religious conversion, and analyzes its position under the Malaysian constitutional framework. The dual legal system in Malaysia, comprising civil law and Islamic law, creates a complex interplay when it comes to issues involving personal status, particularly in cases where an individual seeks to renounce Islam or convert into or out of the religion. The Federal Constitution, while declaring Islam as the religion of the Federation, also guarantees the right to freedom of religion under Article 11. However, jurisdictional ambiguity arises due to the division of legislative powers between the Federal and State governments, and the exclusive jurisdiction granted to Syariah Courts on matters pertaining to Islamic law. Using a library-based methodology, this paper explores landmark judicial decisions, legislative provisions, and constitutional principles to uncover the root causes of these jurisdictional disputes. It also evaluates the implications of such conflicts on individual rights, legal certainty, and religious freedom. In conclusion, the paper proposes potential legal and institutional reforms to harmonize the jurisdictional boundaries and uphold constitutional supremacy while respecting religious sensitivities in Malaysia's plural legal landscape.*

**Keywords:** *Malaysia, Constitutional Law, Conflict of Jurisdiction, Apostasy, Conversion.*

## Introduction

Malaysia practices parliamentary democracy with a constitutional monarchy, and the Yang diPertuan Agong is the supreme head of the Federation. Pursuant to Article 4 of the Federal Constitution (FC), the Constitution is declared to be the supreme law of the land by which Malaysia shall be governed and administered. The legal system of Malaysia is derived from the British legal system due to the country's history as a former British colony. It is a predominantly common law country, with a separate Islamic law system.

The operation of Syariah law as well as the Syariah court in Malaysia, particularly Malaya, started back before Malaya was occupied by the British. During that time, Syariah or Islamic laws were substantively and procedurally applied to all subjects of the states (Ramizah, 2011). The Syariah court was established whereby the Ruler or Sultan stood on the top of the court hierarchy (Ramizah, 2009). Nevertheless, the situation changed after the advent of the British. They started to interfere with the administration by establishing a new administrative system in order to degrade the status of the Sultan and to undermine the existence of Islamic law (Sadka, 1968). They established a court system modeled after the English court system and restricted the power of the Syariah court to a certain extent. The enactment of Court Ordinance 1948 by the British has resulted in the Syariah Court being downgraded to the state level with limited jurisdiction.

After Malaya reached independence in 1957, the situation remained the same, whereby the two legal systems, i.e., Syariah and Civil courts, operated in Malaya, then Malaysia in 1963, with each having distinct jurisdictional authority. Under Article 121 of the FC, the Civil court has been given vast power to hear all cases, while Syariah law applies specifically to Muslims in matters of personal and family law. The boundaries of the matters to be heard by the Civil courts and Syariah courts are spelled out in the 9th Schedule of the Federal Constitution. The Schedule lists down the matters that fall under the Federal law and State law so that the matter can be heard by the Civil courts and Syariah courts respectively.

Despite that, there were cases where the Civil courts had interfered with the decision made by the Syariah courts. Cases such as *Roberts v Ummei Kalsum* [1966] 1 MLJ 13, *Nafsiah v Abdul Majid* [1969] 2 MLJ 174, *Myriam v Mohamed Ariff* [1971] 1 MLJ 265, and *Ali Mat bin Khamis v Jamaliah Bte Kassim* [1974] 1 MLJ 18 were amongst the cases that the Civil courts had quashed the decision of the Syariah court concerning Muslim matters. To avoid the Syariah courts from being subordinate to the Civil courts, in June 1988, the Federal Constitution was amended. Article 121(1A) was inserted therein, which limits the interference of Civil courts in matters within the jurisdiction of Syariah courts.

This article aims to explore the legal conflicts arising from overlapping jurisdiction between Civil and Syariah courts in apostasy and conversion matters in the light of constitutional provisions. This is done by examining the constitutional provisions, judicial decisions, and the impact of these conflicts on legal certainty and access to justice. By analyzing case laws and legislative frameworks, this study seeks to highlight the approach applied by the Malaysian judiciary when encountering different legal interpretations so as to harmonize the jurisdictional boundaries between these courts while upholding constitutional supremacy and the role of Islamic law in the country.

### Problem Statement

Nevertheless, the conflict of law and jurisdiction persists even after the amendment. This is because the matters of jurisdiction that have been spelled out in the 9th Schedule seem to be unclear in terms of its boundaries, which has created conflicting legal interpretations by the courts in their ruling. Cases, such as *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* [2007] 3 CLJ 55, *Indira Gandhi v. Pengarah Jabatan Agama Islam Perak* [2013] 5 MLJ 552, *Rosliza Ibrahim v. The Registrar of Mualaf and Another* [2010] 5 MLJ 490, *Jamaluddin bin Othman v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [2007] 5 MLJ 387, *Deepa Subramaniam v. Izwan Abdullah* [2016] 2 MLJ 505, *Loh Siew Hong v. Perlis Islamic Religious and Malay Customs Council & Ors* [2024] 4 CLJ 903 illustrate the complexities in determining whether Civil or Syariah courts have ultimate authority in the disputed matters particularly in cases involving conversion, family disputes and apostasy.

The ongoing jurisdictional conflicts between the civil and syariah courts in Malaysia, particularly in matters of conversion and family law, have significantly affected legal certainty and access to justice. These conflicts create confusion as to which court has final jurisdiction, especially when both Muslim and non-Muslim parties are involved. As a result, plaintiffs, especially non-Muslims, often face delays, inconsistent rulings, and procedural obstacles when seeking redress. This undermines public confidence in the legal system and calls into question the principle of equal protection before the law. Furthermore, the lack of clarity over jurisdiction can lead to protracted litigation, emotional distress, and practical difficulties, particularly in sensitive cases involving child custody and religious identity. Ultimately, the lack of clear legal boundaries weakens the predictability and fairness that are essential to the rule of law and access to justice in a pluralistic society.

### Method

This study adopts a library-based qualitative research methodology which employs a doctrinal research approach to examine the jurisdictional conflict between Civil and Syariah Courts in Malaysia, particularly in matters of apostasy and conversion. It relies on primary legal sources in Malaysia, including the Federal Constitution, state enactments, and other relevant statutory provisions. Besides the legal provision, secondary sources such as judicial decisions, academic articles, and legal commentaries are also examined in order to analyze the interplay between civil and Islamic legal frameworks in Malaysia.

The study applies a qualitative content analysis and case law interpretative framework to analyze the legal reasoning and judicial trends surrounding jurisdictional conflicts. This analytical approach involves identifying relevant constitutional and statutory provisions, interpreting landmark judicial decisions, and evaluating the extent of overlap or inconsistency between civil and Syariah jurisdictions. The examination of Federal Court and Syariah Court judgments aims to uncover underlying constitutional tensions and assess the balance between the supremacy of the Constitution and the recognition of Islamic law within the dual legal system. The interpretative analysis also seeks to highlight judicial approaches that have influenced the development of legal discourse on matters of apostasy and conversion in Malaysia.

### Scope and Limitation

This research is not a comparative study and therefore does not extend its analysis to other Muslim-majority jurisdictions such as Indonesia or Pakistan, where the interaction between civil and Islamic legal systems may differ significantly. As a doctrinal and library-based study,

the research does not include empirical data collection or interviews; rather, its findings are derived solely from textual and judicial analyses. This limitation ensures that the discussion remains focused on the interpretation and evaluation of legal sources, offering normative insights into the potential harmonization of jurisdictional boundaries within Malaysia's plural legal framework.

## Literature Review

### The Framework of Malaysian Legal System

Undeniably, the dual court system is a unique characteristic of the Malaysian legal system (Mohd Amir Abdullah, 2024). However, as stated earlier, the existence of these two courts, civil and Syariah, operating in parallel has led to ongoing jurisdictional conflicts, particularly in cases where civil law and Shariah law overlap. To better understand how this system works and why these conflicts occur, it is important to explore the legal framework that underlies this dualistic structure. The foundation of this framework is the Federal Constitution, which serves as the highest law in Malaysia, as stated in Article 4(1) of the Federal Constitution: *'This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void'*

The Constitution establishes the basic principles and institutional mechanisms that govern the relationship between the civil and Syariah legal systems. It delineates the jurisdictional boundaries between the Civil Courts and the Syariah Courts and provides the basis for addressing conflicts that arise between the two. The framework governing the powers of Malaysia's courts is primarily established under Article 121(1) of the Federal Constitution, which establishes two High Courts of equal status, one for Peninsular Malaysia (High Court in Malaya) and one for Sabah and Sarawak, along with inferior courts, all exercising jurisdiction as defined by federal law. This provision originally vested judicial authority in the High Court of Malaya and the High Court of Borneo. Empowering them to adjudicate matters of civil law, including criminal cases, contractual disputes, and constitutional issues. As the highest judicial body, the Civil Court enjoys broad jurisdiction. On the other hand, Syariah courts are established by the State Legislatures to administer specific Islamic laws.

The Federal Constitution explicitly limits the jurisdiction of the Syariah Courts to matters involving persons professing the religion of Islam as specified in Paragraph 1 of the State List (List II) in the Ninth Schedule (Federal Constitution of Malaysia, 1957). Despite this boundary, parties dissatisfied with rulings from the Syariah Courts turn to the Civil Court for redress. By virtue of its authority under Article 121(1), the Civil Court has, at times, reviewed, annulled, or modified decisions made by the Syariah Courts. This practice has led to growing frustration, especially among the Muslim community, who feel that the Syariah Courts are not being given the respect and independence they deserve. Many perceive this as a loophole that allows the reversal of Syariah Court rulings to favour aggrieved parties, thereby weakening the integrity of Islamic legal principles (Shamrahayu Ab Aziz & Badruzzaman Ishak, 2022). Landmark cases like *Myriam v. Mohamed Ariff* [1971] 1 MLJ 265 and *Commissioner for Religious Affairs, Terengganu & Ors v. Tengku Mariam binti Tengku Sri Wan Raja & Anor* (1970) 1 MLJ 220 demonstrate how Civil Court decisions have been seen as conflicting with Islamic principles, especially in sensitive issues like conversion, child custody and inheritance.

To address this issue, two pivotal amendments were made to the Federal Constitution in 1988. The first amendment revised Article 121(1), which originally outlined the structure and

jurisdiction of the High Courts. The key change was the replacement of the original wording with the phrase: “shall have such jurisdiction and powers as may be conferred by or under federal law.” This change fundamentally shifted the source of the court’s authority from the Constitution itself to federal legislation, making the judiciary more dependent on Parliament for its powers and jurisdiction (P. Rajanthiran, 2017). However, it has raised concern among legal scholars who argue that it undermines judicial independence and disrupts the balance of powers enshrined in the Constitution between the judiciary and the legislature (Foo, 2010).

Meanwhile, the second amendment introduced Article 121(1A), which explicitly states: “The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.” This clause aimed to prevent Civil Courts from intervening in matters under the Syariah Courts' jurisdiction, thereby avoiding conflicts between the two courts, preserving the credibility of the Syariah Courts and reinforcing the autonomy of Islamic law in matters involving Muslims (Shamrahayu Ab Aziz & Badruzzaman Ishak, 2022). However, the 1988 amendments did not entirely safeguard the jurisdiction of the Syariah Courts from the civil courts. While Article 121(1A) limits the civil courts' ability to interfere in matters under the jurisdiction of Syariah Courts, it does not mean that civil courts have no role at all in cases involving Islamic law. Civil courts still retain authority in certain situations, particularly when constitutional issues or fundamental rights are involved. This means that, in certain cases, the civil courts can intervene to ensure compliance with the Federal Constitution.

This division of jurisdiction is, in fact, established by Article 74 of the Federal Constitution, which provides for the distribution of legislative powers between the federal and state governments. This distribution forms the foundational framework for determining the jurisdiction of both civil and Syariah courts. According to the Ninth Schedule of the Federal Constitution, legislative powers are categorized into three main lists: the Federal List, the State List, and the Concurrent List. The Federal List (List I) reserves on matters like national defence, civil/criminal law and foreign affairs exclusively to Parliament, with civil courts exercising original jurisdiction. The State List (List II) empowers state legislatures over Islamic personal law, Malay customs, and land matters. Syariah courts which are established under state enactments have power to exercise jurisdiction over these matters but strictly limited to persons professing Islam and only on subjects expressly enumerated in the State List (Item 1, List II). The Concurrent List (List III) consists of matters on which both the federal and state governments may legislate. These include education, social welfare and public health. However, where there is a conflict between federal and state laws, federal law prevails. This division means Syariah courts' jurisdiction is constitutionally confined to specific State List subjects and only concerning Muslims, while civil courts maintain broader authority.

Another important provision related to this matter is Article 3(1) of the Federal Constitution, which declares that “Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation.” This provision establishes Islam’s special position within Malaysia’s legal and cultural landscape while safeguarding the freedom of other religions as enshrined under Article 11(1) of the Federal Constitution. This recognition provides a constitutional foundation for the existence of Syariah Courts and the administration of Islamic law at the state level. The relationship between Article 3 and Articles 121(1) and 121(1A) creates a complicated situation. On one side, Article 3 supports giving more power to the Syariah Courts, which matches the purpose of Article 121(1A). However, on the other hand the Constitution is still the highest law of the land. This means the Civil Courts must continue to safeguard constitutional rights, particularly in cases involving non-Muslims or basic freedoms.

### The Civil Court System

As mentioned earlier, Malaysia's civil court system established under Article 121(1) of the Federal Constitution forms the backbone of the country's judiciary and applies to all citizens, regardless of religion. While the Constitution provides the foundation by vesting judicial power in the High Courts, the detailed structure and functioning of the courts are laid out in legislation. The Courts of Judicature Act 1964 (Act 91) sets out the structure, jurisdiction, and powers of the superior courts, including the High Court of Malaya, the High Court of Sabah and Sarawak, the Court of Appeal, and the Federal Court. These courts deal with serious criminal and civil matters, constitutional questions, and appeals. The Subordinate Courts Act 1948 (Act 92) governs the Magistrates' and Sessions Courts, which hear less serious cases within prescribed limits. For instance, Sessions Courts can try all criminal offences except those punishable by death, and hear civil claims up to RM1,000,000, while Magistrates' Courts are limited to RM100,000 for civil claims and lighter criminal offences.

The jurisdiction of civil courts is generally categorized into original jurisdiction, where the court hears a matter for the first time, and appellate jurisdiction, where it hears appeals from lower court decisions. Within appellate jurisdiction, cases are further divided into civil and criminal appeals. Subordinate courts primarily exercise original jurisdiction within their respective limits, while the High Courts have original jurisdiction over more serious matters and serve as the appellate forum for decisions from subordinate courts. The Court of Appeal and Federal Court predominantly exercise appellate functions, reviewing decisions in both civil and criminal matters.

In terms of subject matter, Malaysia's civil courts possess authority over a wide range of legal issues including areas such as contracts, torts, and property disputes, as well as criminal offences. These courts are empowered to impose substantial penalties, including imprisonment, fines, whipping, and, in the gravest cases, the death penalty. Practically speaking, the civil courts have jurisdiction over nearly all legal matters except those that fall exclusively within the jurisdiction of the Syariah courts.

### Syariah Court System

Unlike the civil court system, which is established by the Federal Constitution, Syariah court is dependent on the State Legislature. The establishment of the Syariah court is provided under the state law in pursuant to the powers given to it under the State List in the Ninth schedule of the Federal Constitution. Prior to the establishment of the Syariah court, the High Court had jurisdiction to determine cases involving Muslims and Islamic laws. In addition, being the creature of state law, there is no provision in the Federal Constitution which provides for the jurisdiction and powers of the Syariah courts. The only provision where the Federal Constitution does mention the word 'Syariah courts' is in Article 121(1A) where it takes away the jurisdiction of the civil court in respect of any matters within the jurisdiction of the Syariah court (Mohamed Azam & Nisar, 2014). Regarding the position of the Syariah court, in *Latifah Mat Zin v. Rosmawati bt. Shariban & Anor* [2007] 5 MLJ 101, the Federal Court clearly declared that the State Legislature may make law to set up the Syariah court in the State and until such law is made, such a court does not exist.

Basically, the recognition of the Syariah court in Malaysia could be witnessed after the amendment of Article 121 of the Federal Constitution, which was made in 1988 by inserting a new clause 121(1A) which provides that, "The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts." The courts

referred to in Clause (1) here are the civil courts, i.e., the High Courts and subordinate courts which were established under the Federal Constitution. The purpose of the amendment is generally to exclude the civil court from hearing and adjudicating *Shariah* matters, which are clearly under the *Syariah* court's jurisdiction. Most importantly, the amendment is made in order to avoid any conflict between the decisions of the civil and the *Syariah* court which had occurred previously in a number of cases. For instance, in the case of *Myriam v. Mohamed Ariff* [1971] 1 MLJ 265, the High Court made a decision that it had a jurisdiction to hear a Muslim custody case notwithstanding the *Syariah* Court Order relating to custody had been recorded earlier in the *Syariah* court.

With regards to the jurisdiction of the *Syariah* court, it is limited only to Muslims and covers matters listed in the State List as provided in the Ninth Schedule of the Federal Constitution. The subject matter includes, among others, personal and family law of Muslims such as marriage, divorce, child custody and inheritance, religious matters including Waqf, Zakat and mosques, and *Syariah* criminal offences like apostasy, close proximity (*khalwat*), drinking alcohol and failure to fast during the month of *Ramadhan*. Since Islamic law is under the administration of the State, each state enacts its own *Syariah* law enactments which leads to variations in legal interpretations and implementation.

### **Legal and Constitutional Tension in Apostasy and Conversion Cases**

The tension between these two systems, particularly in matters related to family law, religious status, and personal conduct, has evolved over time due to political, social, and legal developments. These disputes often result in legal uncertainty and lead to contradictory decisions between the two courts. This article focuses on conflict arising in matters involving conversion of Muslims to other religions (apostasy) and unilateral conversion issues.

#### **(i) Apostasy**

In Islam, a Muslim who renounces his faith or converts to another religion is regarded as committing a serious offence. (Al Baqarah, 12) A *murtad* refers to a person who leaves the religion of Islam, whether through actions, speech, or intention. (Kamus Dewan Fourth Edition, 2005) A Muslim is an apostate when he publicly declares disbelief or engages in actions that contravene the foundational beliefs of Islam. The punishment for apostates has been subject to debates whereby Islamic scholars have different interpretations of Islamic jurisprudence on the subject matter. In Malaysia, statistics show an alarming increase in the number of applications to leave Islam. Within the span of 3 years (2014-2016), the state of Selangor reported 171 applications (Nor Ashikin, 2016) whereas Sabah *Syariah* Court received a massive number of 238 applications in 2010. (Musa Ismail, 2015)

Apostasy is a crime under the *Shariah* Law in each state in Malaysia, but the punishment varies according to states. States are able to do this by virtue of Article 74(2) of the Federal Constitution. In Melaka, Section 66 *Syariah* Offences Enactment (Malacca State) 1991 provides a maximum 6 months detention at the Islamic Rehabilitation Centre Sabah, while Section 63 *Syariah* Offences Enactment (Sabah State) 1995 allocates a maximum 36 months detention at Islamic Rehabilitation Centre. In Perak, Section 13 *Syariah* offences Enactment (Perak state) 1992 provides a maximum RM3000 fine or 2 years jail or both for apostasy and attempted apostasy. Normally the apostate was summoned by the *Syariah* court for counselling and rehabilitation by religious authorities. For instance, in the case of *Majlis Agama Islam Pulau Pinang v. Siti Fatimah Tan Abdullah* (2009), Tan Ean Huang, a Chinese Buddhist woman who converted to Islam in 1998 sought to renounce Islam. The *Shariah* Court in Penang directed her

to undergo three months of counseling under the state's Islamic Religious Department. These sessions involved discussion with counselors typically by religious scholars from the Islamic Religious Department who are experts in Islamic teachings. These sessions are aimed at encouraging the apostates to reconsider their decision and return to Islam. The state of Selangor and Negeri Sembilan have established an *istitabah* centre. *Istitabah* means a process that is designed to encourage offenders who violate faith-related offences to repent. (Wan Ismail et. al., 2024) In Negeri Sembilan the process of *istitabah* or counselling is conducted by the Jabatan Mufti Negeri Sembilan. The results from the process of *istitabah* or counseling will be shared with the Syariah Court who will later decide whether the person is to be declared out of Islam or remain as Muslim. (Ismail, 2020)

In Malaysia, cases of apostasy (renouncing Islam) and conversion (to Islam) have often been the subject of significant legal and constitutional debates, due to the dual legal system (civil and Syariah courts) in the country. It is crucial to note that the issue of conversion must be discussed with a view of Article 11(1), which provides that ‘*Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.*’ This provision protects the freedom of religion for all Malaysians and Article 11 (4) restricts the propagation of any religious belief among Muslims in Malaysia.

*Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* [2007] 1 MLJ 10 is one of the most controversial cases in Malaysia regarding conversion. A Muslim born woman named Azlina Jailani converted from Islam to Christianity at the age of 26. In 1999, she changed her name to Lina Joy and sought to get rid of “Islam” from her identity card. The issue at hand was whether a person who converts from Islam to another religion could legally change the religious status in the identity card. The Federal Court in 2007 ruled that she could not officially change her religion in the identity card without the permission from the Syariah court. It was decided by the court that conversion out of Islam was a matter to be decided by the Syariah Court, and civil courts do not have jurisdiction in such matters. The Federal Court ruled 2-1 that she must obtain approval from the Syariah Court to be officially recognized as having left Islam. Article 11(1) allows religious freedom, but leaving Islam must follow Islamic legal procedure, which includes Syariah Court approval. In analyzing the case of *Lina Joy*, an academician, Dr. Sivaperegasam opines that the court’s decision has limited the scope of Article 11 and gives Syariah court power to regulate apostasy cases (R. Sivaperegasam, 2017).

Prior to the *Lina Joy* case, in the case of *Jamaluddin Bin Othman v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* (2007) the Court ruled that conversion from Islam (apostasy) was a matter that should be handled by the Syariah courts. The ruling reinforced the idea that apostasy was not a simple personal matter but had legal implications within the framework of Islamic law. In 2018, a Malay woman in Sarawak applied to renounce Islam and have her religious status officially recognized as Christian. (*Syarifah Nooraffyza Bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors*, 2018) She went to the National Registration Department (NRD) in Kuching to change her name on her identity card but was told she needed a release letter from Islam from the First Respondent’s office. She wrote to the First Respondent requesting the release letter but received no response. On 9 July 2012, she visited the First Respondent’s office again and was told she needed to renounce Islam at the Syariah Court and attend counselling. However, the counselling sessions never took place. Her lawyer also could not obtain the criteria required to leave Islam. As a result, she applied to the court for permission to start a judicial review. She asked for 1) a declaration that she is a Christian; 2) an order requiring the First and/or Second Respondents to issue the release letter from Islam; and 3) an

order requiring the Third Respondent to change her name from Syarifah Nooraffyza bt Wan Hosen to Vanessa Elizabeth. On 5 January 2015, the High Court judge dismissed her application for leave to proceed with the judicial review. During the appeal, the Respondents argued that the judge was right to dismiss the application because the issue of leaving Islam (apostasy) falls under the jurisdiction of the Syariah Court, as ruled by the highest court previously. Interestingly, the Federal Court in 2018, rejected her appeal and reiterated that Syariah Court had the authority to hear apostasy cases, even though the Sarawak Shariah Court Ordinance 2001 did not explicitly address apostasy.

In a more recent case, Dahlia Dhaima (*Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and Another Appeal*, 2024) was born to non-Muslim parents. At the age of five, her mother, who had converted to Islam, unilaterally converted Dahlia to Islam. Raised in a Muslim environment, Dahlia later identified as a Hindu and sought legal recognition of her non-Muslim status. Dahlia initially filed a summons in the Kuala Lumpur Syariah High Court, seeking a declaration that she was no longer a Muslim. The court found that despite her claims, she had practiced Islamic rituals and upheld her Muslim status. Dahlia approached the civil High Court, arguing that she had never been a Muslim. The court granted her application, declaring her not a Muslim. The Court of Appeal overturned the High Court's decision, emphasizing that Dahlia's case was one of renunciation, not one of never having been a Muslim. The Federal Court upheld the Court of Appeal's ruling, affirming that Dahlia's case fell within the Syariah Court's jurisdiction due to her upbringing and practices aligning with Islam.

In *Rosliza v The Registrar of Mualaf and Another* [2010] 5 MLJ 490, Rosliza initiated a lawsuit in the High Court, seeking a declaration that she was never a Muslim. She presented evidence, including a statutory declaration from her late mother affirming that she and Rosliza's father were not married and that Rosliza was not raised as a Muslim. Despite this, the High Court dismissed her application in 2017, speculating that her parents might have married elsewhere, which could imply she was a Muslim by birth. Rosliza appealed to the Court of Appeal, which in 2018 ruled in her favor, ordering the High Court to reconsider the case. On 4 February 2021, the Federal Court delivered a landmark decision. The nine-judge bench unanimously concluded that Rosliza was never a Muslim, as there was no evidence of her mother's conversion to Islam or of her parents' marriage.

In the above cases it can be summarized that courts in Malaysia reinforced the idea that conversion from Islam is not simply a personal matter that can be decided by individuals but has legal implications. In many cases when the issue was raised in the civil courts, it was ruled that to decide whether a person has converted from Islam to another religion, it is a matter within the jurisdiction of Syariah court. The Civil court will not interfere in such matters. However, there have been a few rare cases in which individuals have been allowed to convert or leave Islam under certain circumstances. The courts appear to focus on the individual's background, specifically, whether the person was born a Muslim and whether they had practiced the Islamic faith, in determining the appropriate jurisdiction and granting a declaration of religious status.

## (ii) Unilateral Conversion

The law in Malaysia on family matters is clear, whereby Shariah courts deal with matters between muslims couples, and the issues regarding family matters involving non-muslims are under the jurisdiction of the civil court. Unilateral conversion is an act of converting a child to a religion by only one parent, without the consent of the other parent. Conflicts arise when it

involves religious conversion, where one of the spouses converts to Islam after marriage. When the Muslim parent unilaterally converts the children to Islam, issues often arise as to whether the conversion was valid. In *Shamala Sathiyaseelan* [2004] 2 MLJ 147, the High Court decided that the civil courts lacked jurisdiction over matters related to Islamic law, which fell under the purview of the Syariah courts. However, Shamala fled to Australia with her children and has not returned, and therefore the case remains unsolved.

*Deepa Subramaniam v. Izwan Abdullah* [2016] 2 MLJ 505 is a case involving unilateral conversion of children by one of the parents. One of the contentious issues is which court, Syariah or civil, has the right to hear the matter of custody of children. The Federal Court in 2016, ruled in favor of the plaintiff and declared that the unilateral conversion of the children by Izwan was invalid because it violated Deepa's rights as a mother. In *Chang Ah Mee v. Jabatan Hal Ehwal Agama Islam* (2003) 5 MLJ 131, It was also decided that unilateral conversion is invalid. These cases strengthened the principle that both parents' consent is necessary in determining the religion of the children. *Indira Gandhi's* case stands out as a landmark decision in unilateral conversion. The plaintiff's ex-husband converted to Islam and unilaterally converted their children too. The plaintiff did not agree and applied to the High Court to challenge the validity of her children's conversion to Islam. The High Court allowed the application, and Pengarah Jabatan Agama Islam Perak appealed. The Court of Appeal in 2013 overturned the High Court's ruling and stated that cases of conversion are within the jurisdiction of Syariah Court. At the final stage, in 2018, the Federal Court declared that unilateral conversion was null and void, and the High Court had the power to hear matters relating to unilateral conversion. This ruling stresses on the protection of freedom of religion enshrined in the Federal Constitution.

The most current case concerning the subject matter of unilateral conversion is *Loh Siew Hong v. Pendaftar Mualaf Negeri Perlis & Ors* [2024] 4 CLJ 903. The Federal Court quashed the unilateral conversion of three children and declared the provisions of Perlis state law that allow such conversion to be unconstitutional. (Section 117(b) Perlis Administration of the Religion of Islam Enactment, 2006) The decision in Loh Siew Hong's case aligns with the Federal Court's earlier ruling in the *Deepa Subramaniam* and *Indira Gandhi* case, emphasizing that both parents' consent is required for the religious conversion of minor children.

It is summarised that in family matters, especially in matters involving custody, the court decided that unilateral conversion is not allowed and the Syariah Court does not have exclusive jurisdiction to hear the matter. The decision in *Indira Gandhi*, *Deepa Subramaniam* and *Loh Siew Hong* case reasserted the civil court's jurisdiction in family matters regarding marriage registered under the Law Reform Marriage and Divorce Act 1976. It appears that in case of unilateral conversion of children the Civil Court has power to hear such cases and the court took cognizance of the child's interest and welfare. The courts' ruling in *Deepa Subramaniam*, *Chang Ah Mee*, *Indira Gandhi* and *Loh Siew Hong* highlight the importance of parental consent in matters of religious conversion for minors. It underscores the balance between individual rights and religious laws, emphasizing the need for mutual agreement between parents in decisions affecting their children's religious upbringing.

### Analysis of Key Court's Rulings

The Malaysian Federal Court has issued several landmark judgments that have clarified the boundaries and limitations of jurisdiction between the civil court and Syariah court system in apostasy and unilateral conversion cases. In Malaysia, apostasy cases have become a

contentious issue, with courts often rendering differing judgments depending on the circumstances. A prominent example is the *Lina Joy* case, which involved an application to change her religious status on her identity card. Although the High Court had jurisdiction to hear the application, it ruled that only the Syariah Court had the authority to determine her religious status, as she was born a Muslim. Similar rulings were made in several other cases whereby the applicants apply to change their religious status from Islam to another religion, including *Syarifah Nooraffyza Wan Hosen* [2018] 2 MLJ 354, *Tiong Choo Ting* (also known as Mohd Syafiq Abdullah), *Jenny Peter* (also known as Nur Muzdhalifah Abdullah), and *Salina Jau Abdullah*.

The law is clear that the Syariah Court holds exclusive jurisdiction over matters related to apostasy for individuals born Muslim. When a person who has converted to Islam seeks to renounce their religious status, the Civil Court will generally refrain from intervening, as such matters fall under the authority of the Syariah Court for administration and adjudication. Generally, there are three categories of apostasy cases being decided by the court:

#### **Never Muslim (Ab Initio)**

These involve individuals who claim they were never Muslims to begin with, often due to invalid or illegal conversions (e.g., as minors without proper consent). Such cases are classified as *ab initio* and fall under the jurisdiction of the Civil Courts. The Civil Courts can determine whether the person was ever legally a Muslim. This was established in landmark cases like *Rosliza Ibrahim v. Kerajaan Negeri Selangor* where the Federal Court ruled that if a person was never a Muslim by original faith or valid conversion, the Civil Courts have jurisdiction to decide this status. In assessing whether an individual had ever professed Islam, courts may consider extrinsic evidence of religious practice such as observance of Islamic rituals, public declarations of faith or engagement with Muslim communal life as relevant but not conclusive factors.

#### **Muslim Renouncing Islam (Apostasy)**

This category involves individuals who were validly Muslims but wish to renounce or convert out of Islam. Such apostasy or renunciation cases fall exclusively under the jurisdiction of the Syariah Courts. The Civil Courts cannot overrule or interfere with Syariah Court decisions in these matters, as clarified by the Federal Court in the case of *Lina Joy* and reinforced by Article 121(1A) of the Federal Constitution. In the case of *Jamaluddin Bin Othman v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [2007] 5 MLJ 387 and *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* [2007] 1 MLJ 10, the jurisdiction of Syariah Courts was delineated, with the court ruling that matters of apostasy fall exclusively within the jurisdiction of syariah court and therefore the civil court cannot interfere. This decision was seen as an affirmation of the autonomy of the Syariah legal system in regulating Islamic matters, although a number of debates had erupted over the implications on religious freedom and individual rights in Malaysia (R. Sivaperegasam, 2017).

Further reinforcing this, the 2018 Federal Court ruling on Sarawak apostasy cases confirmed that even though the Sarawak Syariah Courts Ordinance did not explicitly mention apostasy, the Syariah Courts have implied jurisdiction over apostasy cases based on related provisions concerning conversion to Islam in the Sarawak Islamic Religious Council Ordinance. The court unanimously dismissed appeals seeking Civil Court jurisdiction, emphasizing the exclusive role of Syariah Courts.

### Non-Muslim Reverting to Original Faith

This category is nuanced and depends on whether the person was ever validly Muslim. If the initial conversion was invalid (*ab initio*), the Civil Courts may have jurisdiction to recognize the person as never having been Muslim, as seen in *Rosliza Ibrahim*. However, if the person was validly Muslim and seeks to revert, this is treated as apostasy, falling under Syariah Court jurisdiction. The Federal Court has not explicitly separated this as a distinct category, but the principle follows from the above rulings.

In contrast, the law regarding unilateral conversion of children is more settled. It is established that the conversion of a child to Islam requires the consent of both parents. In such matters, the Civil Court has jurisdiction and authority to adjudicate cases involving unilateral conversions. The post *Indira Gandhi* era reflects a doctrinal shift in constitutional interpretation where the judiciary had to meet these challenges by affirming that Syariah courts cannot exercise authority over non-Muslims and that civil courts remain the final authority on constitutional matters. The Federal Supreme Court ruled that civil court orders must prevail in cases involving non-Muslim parties, even if the other party has obtained a conflicting order from the Syariah Court. This judgement strengthens the legal protection for non-Muslim parents in inter-faith custody disputes and confirms the authority of the civil court in deciding such matters where the Syariah Court does not have jurisdiction.

The decision also reaffirmed Article 11 of the Federal Constitution, which guarantees freedom of religion. The court highlighted that freedom of religion includes the freedom not to be forced to profess a religion without informed consent, especially in the case of minor children. The decision emphasized the best interests of the child and brought Malaysian jurisprudence in line with international instruments such as the Convention on the Rights of the Child (CRC). The court recognized that a child's change of religion has significant and long-term implications and cannot be done unilaterally.

These rulings collectively demonstrate that while Article 121(1A) was intended to prevent the Civil Court from interfering in Syariah matters, it is not an absolute barrier to the civil jurisdiction to set aside the decision of the Syariah Court. The Federal Court has consistently held that the civil courts retain jurisdiction over cases involving the interpretation of the Constitution, the rights of non-Muslims and cases where the jurisdiction of the Syariah Courts may overreach. Malaysian constitutional jurisprudence thus reflects a nuanced approach to dealing with the interface between the civil and syariah legal systems, which seeks to balance the autonomy of syariah law with the overriding supremacy of the Federal Constitution.

**Table 1: Comparison of Key Courts' Ruling in Apostasy Cases**

| Type of Apostasy                     | Case & Citation                                                   | Court         | Decision                                                                 | Key Principles                                                                                                                                                   |
|--------------------------------------|-------------------------------------------------------------------|---------------|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Never Muslim ( <i>Ab Initio</i> ) | <i>Rosliza Ibrahim v. Kerajaan Negeri Selangor</i> [2021] 1 MLJ 1 | Federal Court | Invalid conversion and thus the court allowed declaration as non-Muslim. | Since the party was never Muslim, no Syariah Court involvement was needed. Therefore, the Civil Court has jurisdiction to decide the legality of the conversion. |

|                                                  |                                                                                      |                 |                                                                                                                 |                                                                                                                            |
|--------------------------------------------------|--------------------------------------------------------------------------------------|-----------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| <b>2. Muslim Renouncing Islam (Apostasy)</b>     | <i>Lina Joy v. Majlis Agama Islam Wilayah Persekutuan</i> [2007] 4 MLJ 585           | Federal Court   | Dismissed the appeal. National Registration Department (NRD) cannot remove "Islam" without Syariah Court order. | Syariah Court has exclusive power over apostasy declarations (Art. 121(1A) FC).                                            |
|                                                  | <i>Dahlia Daima binti Abdullah v. MAIS</i> [2024] 4 MLRA 453                         | Federal Court   | Dismissed the appeal. Syariah Court must decide.                                                                | In the renunciation case the jurisdiction remained with the Syariah Court.                                                 |
| <b>3. Non-Muslim Reverting to Original Faith</b> | <i>Majlis Agama Islam Pulau Pinang v. Siti Fatimah Tan Abdullah</i> [2021] 4 MLJ 501 | Court of Appeal | Allowed reversion (invalid conversion).                                                                         | Civil courts may intervene if Syariah Court refuses jurisdiction or conversion was defective.                              |
| <b>4. Unilateral Conversion of Children</b>      | <i>Indira Gandhi a/p Mutho v. Pengarah JAI Perak</i> [2018] 1 MLJ 545                | Federal Court   | Nullified unilateral conversion.                                                                                | Civil courts prevail in child custody/conversion disputes. The consent of both parents is required for child's conversion. |
|                                                  | <i>Loh Siew Hong v. Pendaftar Mualaf Negeri Perlis &amp; Ors</i> [2023] 2 CLJ 1      | Federal Court   | Allowed mother's custody; children's conversion void without consent.                                           | Reaffirmed the Federal Court's decision in Indira Gandhi.                                                                  |

Source: Processed by authors

### Possible Solutions & Reforms

The ongoing jurisdictional conflicts between civil and Syariah courts in Malaysia have created legal uncertainty, inconsistent court decisions and challenges in enforcement. This paper aims to provide potential legal reforms to clarify the boundaries of jurisdiction, strengthen constitutional rights and ensure legal consistency in cases involving apostasy and unilateral conversion.

### Judicial Interpretation

The legal framework governing apostasy in Malaysia remains uncertain, with varying interpretations and applications by different courts. While Shariah courts are generally recognized as having jurisdiction over apostasy cases, civil courts may intervene in specific circumstances, leading to a lack of uniformity in legal outcomes. Therefore, in order to avoid jurisdictional ambiguity, the court must come out with more consistent rulings in apostasy cases, with the objective of upholding constitutional supremacy while respecting religious laws.

### **Alternative Disputes Resolution (ADR)**

In resolving jurisdictional disputes, a formal mediation framework needs to be established to facilitate dialogue and cooperation between civil and Syariah court authorities. This mechanism would encourage mutual understanding, reduce legal friction, and promote a harmonised approach to cases involving overlapping legal domains, such as matters of religious status. This mechanism includes mediation, arbitration, and conciliation aiming at resolving disputes amicably to address sensitive issues like apostasy and conversion outside of prolonged litigation. The ADR structures should be jointly endorsed by both civil and Syariah legal institutions to ensure legitimacy, accessibility, and effectiveness.

### **Conclusion**

In conclusion, the jurisdictional conflict between Civil and Syariah Courts in Malaysia, particularly in cases involving apostasy and religious conversion, reflects the broader challenges of managing a dual legal system within a constitutional framework. These conflicts often result in uncertainty for individuals seeking to exercise their constitutional rights, highlighting the need for clearer jurisdictional boundaries and more consistent judicial interpretations. To address these challenges, there is an urgent need for clearer laws and consistent judicial approach to resolve jurisdictional conflict. Legal and institutional reforms are also necessary to harmonize the relationship between civil and Syariah courts, ensuring that constitutional supremacy is upheld while respecting for Islamic law and the religious sensitivities of Malaysia's diverse society is crucial in order to maintain Malaysia's legal harmony. Such reforms could include clearer legislative guidelines and judicial interpretation, enhanced judicial training, and other alternative mechanisms for resolving jurisdictional disputes. The ultimate goal of these legal reforms is no other but to ensure justice for all citizens with greater legal certainty and protection of individual rights.

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