

Najib rapped for passing the buck on interfaith child custody battles to apex court

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By Elizabeth Zachariah

Lawyers and civil groups are mystified by Datuk Seri Najib Razak's suggestion that parties in interfaith child custody battles should appeal to the Federal Court to settle conflicting decisions of the civil and shariah courts.

They pointed out that the cases in question have already been through the legal process and the courts have ruled on them, and questioned the need to turn to the apex court as proposed by the prime minister.

At the same time, they criticised him for "passing the buck" on unilateral conversions to the Federal Court, saying the High Court had already ruled that civil courts had jurisdiction over shariah law in such matters.

Association of Women Lawyers president Meera Samanther said affected parties had already gone to court and "orders have been given".

"Both parties have gone to court and there is already an order. It is the highest order," Meera said, referring to the May 30 ruling by the Ipoh High Court that the civil High Court has a higher jurisdiction than the Shariah Court in disputes involving a spouse who has not converted to Islam.

Judge Lee Swee Seng said the jurisdiction of the civil High Court is based on the fact that a shariah court decision cannot bind a non-Muslim party in a marriage.

"I don't understand what the PM is trying to suggest as there is already an order in this matter. Both parties have gone through the legal process and this is the outcome," Meera said.

Najib had on Thursday urged parents involved in interfaith custody cases to use the legal process when civil court verdicts differed from those of the shariah court.

Referring to the custody battles involving S. Deepa in Seremban and M. Indira Gandhi in Ipoh, Najib had said both sides could appeal to the Federal Court should there be a dispute.

"They can appeal to the Federal Court. Since this matter has attracted the attention of the public, the government believes the court will give priority to these cases," Najib was quoted as saying in media reports.

Women's Aid Organisation (WAO) executive director Ivy Josiah, in agreeing with Meera, added that only the civil court has jurisdiction to rule on the custody of children born of a non-Muslim marriage.

"It is important to note that in every dispute on custody thus far, where there is a Shariah court order and a civil court order, the civil courts have granted custody to the mothers regardless of Shariah orders to the contrary," she said.

Citing the cases of Shamala Sathiyaseelan, Indira Gandhi and Deepa, Josiah said: ""Both Justices Zabariah and Lee expressly said in their grounds of judgment that the Shariah court had no jurisdiction to make custody orders."

Zabariah (Mohd Yusof) heard Deepa's case while Lee presided over Indira Gandhi's.

"Thus, the law is quite settled that only the civil court has jurisdiction to rule on the custody of children born of a non-Muslim marriage," Josiah added.

WAO and the Joint Action Group for Gender Equality have long called for amendments to be made to the law to safeguard the rights of wives and children upon conversion of their husbands, Josiah said.

Both groups had submitted a memorandum to the federal government seven years ago, she said, proposing specific amendments to existing legislation to prohibit unilateral conversion of minors and ensure that all issues relating to a civil law marriage are settled according to civil law and adjudicated only in civil courts.

Their recommendations were for The Law Reform (Marriage and Divorce) Act 1976 (Act 164); Section 5 of the Guardianship of Infants Act 1961; and Article 12(4) of the Federal Constitution.

The head of the interfaith council, Jagir Singh, said Putrajaya should not shirk its responsibility by passing to the courts the decision to ensure there are no more unilateral conversions of children.

Jagir, who is president of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism, pointed out that the Cabinet had ruled in 2009 that in the event of any dispute, a child must be raised in the faith professed by both parents at the time of marriage.

"The Cabinet must not pass the buck to the courts. Instead they must enforce the decision they made in 2009," he told The Malaysian Insider.

The courts themselves were partly to be blamed for the "confusion", Jagir said, noting that in the 2007 case of R. Subashini, the Federal Court had ruled that the word "parent" in Article 12(4) of the Constitution, means that any one parent had the right to convert a child.

"This interpretation is wrong. It should mean both parents. If one parent can convert a child, the other also can.

"This means we will see these children changing their religions every day," he said.

As a remedy, Jagir, a practising lawyer, called on Putrajaya to introduce an amendment to the law prohibiting child conversions by one parent.

"They should come up with an amendment to ensure that both parents have to give consent to the conversion of a child."

He said that until and unless the law concerning unilateral conversion is amended, these problems will continue.

Josiah agreed, saying: "Until the Cabinet decision against unilateral conversions in 2009 is made into law and policy, many more children and non-Muslim spouses will be stuck in this legal limbo."

Yesterday, Ipoh Barat MP M. Kula Segaran questioned why the relevant laws were not amended despite the 2009 Cabinet decision.

"In 2009, I had questioned the effectiveness of the Cabinet directive, as it was only of an advisory nature. It has no legal effect. Nobody has bothered to adhere to it.

"If they had, the women concerned in the two cases would not have gone through so much agony, emotional pain and stress," he said.

Najib was reported to have held discussions with the Attorney-General and relevant ministers on the cases in question.

"Various parties have voiced their opinions regarding these cases. The government is worried about the fate and welfare of the children involved if the cases dragged on," Najib said.

"The Attorney-General will discuss with the families involved regarding this matter and I hope everyone will respect whatever decision is made by the court."

Last month, the Appeals Court dismissed the application of convert N. Viran (Izwan Abdullah) to set aside the Seremban High Court decision giving Deepa custody of her two children. The Shariah Court, however, had granted Izwan custody of the children.

As for Indira, she was granted an order by the Ipoh High Court order early this year to cite her former husband K. Patmanathan, or Muhammad Ridzuan Abdullah, for contempt of court after he failed to hand over their youngest child, Prasana Diksa, 6.

The order was made according to the High Court decision of March 11, 2010, awarding Indira full custody of her three children. Muhammad Ridzuan had, upon conversion, obtained custody of the children from the Ipoh Shariah High Court in April 2009. – June 14, 2014.

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