

Najib must turn to legislature to resolve conversion issues, say lawyers
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By V. Anbalagan

Legal reforms are needed to overcome issues arising from unilateral conversion and the onus is on Putrajaya to ensure the Parliament enacts the amendments, say constitutional and family law experts.

They told The Malaysian Insider that it was pointless to rely on the judiciary to find a remedy for family disputes involving a spouse who has converted to Islam, as suggested by the prime minister, as the courts functioned to interpret the law on specific issues.

The lawyers also said the parties in such disputes would have to endure long, costly legal battles before obtaining a decision that finally benefitted one party.

Lawyer Meera Samanther told The Malaysian Insider that a Joint Action Group for Gender Equality had in 2007 submitted a memorandum to the government outlining in detail the laws that needed to be amended following the legal tussle in a 2004 unilateral conversion case involving S. Shamala and Dr C.M Jeyaganesh.

The group wanted the Federal Constitution, the Law Reform (Marriage and Divorce) Act, the Distribution Act and The Infants and Guardianship Act be amended to render justice to the non-converting wives and children.

"Nothing much has resulted due to a lack of political will and leadership although everyone jumps on the bandwagon to make comments every time disputes are highlighted in the media," said Samanther, who is also president of the Association for Women Lawyers.

She said even the Federal Court did not seize the opportunity to answer legal and constitutional questions posed in Shamala's case and instead dismissed it on technical grounds.

"It is only through the legislature that laws can be updated to suit the changing times and circumstances as courts only interpret the law on legal questions posed," she said.

The lawyers also said that Najib's Cabinet should introduce reforms in legislation after getting inputs from the various stakeholders, referring to the

prime minister's suggestion on June 12 that single mothers S. Deepa and M. Indira Gandhi would have to wait for the apex court to make a ruling on their custody disputes.

Deepa and Indira had won their legal battles in the High Court but the police have refused to locate and return their children who were taken by their ex-husbands who had converted to Islam.

Last week MIC deputy president Datuk Seri Dr S. Subramaniam had said that Putrajaya was looking for a solution to enforce a 2009 Cabinet decision that a child must be raised in the faith professed by both parents at the time of the marriage.

Lawyer Ravi Neko said unilateral conversion was a socio-political problem that had existed "among us for a long time" and it was time for the federal government to put things right through legislation.

"The executive must get the legislature to enact laws in response to the needs of the society. The government cannot wait for judges to offer solution," said Ravi, who is a member of the Malaysian Bar Council.

Lawyer Aston Paiva, however, said there was no need for any amendment to any federal or state enactments to prevent unilateral conversions of children by a converting spouse, if the registrar of converts in the respective states observed and followed strictly the rules of their Islamic enactments.

"The Registrar of Converts (Pendaftar Muallaf) must only register the conversion if he is satisfied that the child has uttered in Arabic the two clauses of the Islamic affirmation of faith (dua Kalimah Syahadah) and is aware of what it means," said Paiva, who has taken numerous conversion cases to court.

He said the child must make such utterances on his/her free will.

Aside from that, he said the child who is seeking to convert must also obtain the consent of one of his parents in the presence of the registrar.

"These are express requirements under the relevant Administration of Islamic Enactments but they are being disregarded," he said.

Paiva said High Court judge Lee Swee Seng had cleared this legal thicket in deciding that the registration of M. Indira Gandhi's three children as Muslims was illegal as they were not even present before the registrar.

Paiva also said that it would be pertinent to revisit the 1990 Supreme Court decision in the case of Teoh Eng Huat versus Kadhi, Pasir Mas, Kelantan,

where the court had declared that the religion of those below 18 was determined by the parent or guardian.

In the case cited by Paiva, Teoh's daughter, Susie, was 17 years and 8 months old when she converted to Islam. Teoh filed a suit against the kadhi in the High Court and sought a declaration that his daughter's conversion was invalid as she was a minor.

He said the decision of the High Court judge in the case, the late Abdul Malek Ahmad was a correct reading of the constitution.

He said Abdul Malek's interpretation was consistent with Article 14(1) of the United Nations Convention on the Rights of the Child which Malaysia had ratified. The article states that "States shall respect the right of the child to freedom of thought, conscience and religion".

Abdul Malek, however, granted Teoh's application as Susie could not be located and was therefore not in court to testify that she had converted of her own free will. – June 23, 2014.

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