



Majlis Perundingan Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Tao

Malaysian Consultative Council of Buddhism
Christianity, Hinduism, Sikhism and Taoism

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MCCBCHST: Court's Duty under constitution to tackle conversion issues

Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) fully supports the Chief Justice Ariffin Zakaria's remarks at the Integrity 2012 Lecture on "Rule of Law and the Judicial system today" when he stated: "There has to exist a clear separation of powers between the judiciary and the other two arms of the Government in order to uphold the Rule of Law". [MALAYSIAKINI 19/11/2012]

At the same forum Law Professor Shad Saleem Faruqi described the 1988 judicial crisis which saw the removal of Salleh Abas as Lord President and two other Supreme Court Judges, as a black mark in Malaysia's Legal history. The Judiciary has not recovered since then.

Thus, the Chief Justice's stark reminder about upholding the Rule of Law is very timely and a welcome sign. The Honourable Judges, in order to reclaim their lost glory, should henceforth remain true to their oath of office, that is to Defend the Constitution and to meet out Justice based on the Rule of Law.

Former Bar Council President Mr. Rangunath Kesavan who also spoke at this seminar after noting the Judicial reluctance to hear and solve problem faced by converting spouse, then suggested that perhaps the Legislature should solve predicaments faced by these people.

The MCCBCHST is of the view that it is the Courts duty to hear such cases and not deny Jurisdiction to them.

History has shows that the Politicians are in on position to solve this problem. One recent example will make this clear. The cabinet at its meeting held on 23/4/2009 decided that:

- (i) a child must follow the religion practised by the parents at the time of marriage in the event one of them opts to convert (i.e. single parent cannot convert a child)
- (ii) a marriage solemnised under civil law can be dissolved only under civil law.

But the laws formulated a few months later did not include the above remedies. This was because some religious leaders had the opposed the remedies proposed by cabinet as being not in accordance with Islam, resulting in the cabinet decision remaining in limbo.

The cabinet should have stuck to its decision as it was in accordance with the Federal Constitution, that both parents must have a say if there was to be a conversion of a child and that the marriage must be dissolved in the Civil Courts as it was a Civil marriage. After all, the couple had willingly solemnised their marriage under the civil law and thus they had agreed to be bound by it.

The Guardianship of Infants Act, 1961 in Section 5 provides for Equality of parental rights "..... 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".

Despite this being the case, the Federal Court in SUBASHINI RAJASINGAM v. SARAVANAN THANGATHORAY [2008] 2 CLJ. Interpreted word "parent" in Article 12(4) to mean a single parent. This ruling has caused untold hardship and misery to hundreds of parents. If a single parent can convert, then can the other parent reconvert the child to any other religion?

The MCCBCHST feels that Article 160 (11th schedule) of the Federal constitution should have been applied which states "construction of singular or plural – words is the singular include the plural, and words in the plural include the singular".

Professor Dr. Shad Saleem Faruqi after observing the heart wrenching stories of infants separated from pining parents wrote (THE STAR: 22 SEPTEMBER, 2010 Page N43):

"We have superior Court Judge advising an aggrieved non - Muslim spouse that because civil courts have no jurisdiction, she must be open about going to the Syariah Court.

This judicial advice is irreconcilable with constitution's clear provision in Schedule 9, List 11, Paragraph 1 that Syariah Courts "shall have jurisdiction only over persons professing the religion of Islam".

We have heart-wrenching stories of infants separated from pining parents, converts sent to rehabilitation centres, dispute between walling relatives and religious authorities.

.....

It is some judges who are disregarding the constitution's gilt-edged provisions on moderation, tolerance and accommodation. One cannot, therefore, sit idly by as the ideologues tear the constitution a part and unravel the beautiful and unique music that took five decades to build".

There is also now a very timely reminder by our beloved Deputy Yang di Pertuan Agong His Highness Sultan Muhammad V of Kelantan who gave this piece of advice to the Judiciary and the Legal Profession:

"to never ever go back to the few year of darkness in our country's history" following the 1998 judicial crisis.

"We must continually learn form our mistakes and build on our success in honour of the men and women of Malaysia who stood their ground for the good of their country during that difficult period".

Keynote address at the 3rd Asia-Pacific Regional Forum
Conference on 26/11/2012.

The MCCBCHST therefore, hopes that the Judiciary will keep up the march towards Rule of Law and protecting the constitution whilst jealously guarding the separation of Powers. The wise words of the Deputy Yang DiPertuan Agong should be always at the back of our minds all the time. Let us all follow and uphold the constitution both in words and deed and strive to find a just solution to the conversion cases.



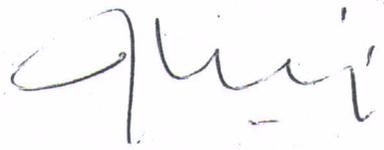
Daozhang Tan Hoe Chieow, AMS
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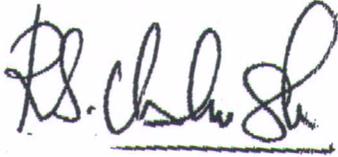
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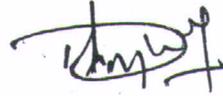
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