



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 :- Cabinet Must Tackle Root Cause of Problem – Conversion of Minors by Single Parent

The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) refers to the statement by the Health Minister Datuk Seri Dr S Subramaniam that the Cabinet is looking into solving the problem of unilateral child conversion and introducing amendments to related laws.

MCCBCHST hopes that the root cause of the problem, ie the unilateral conversion of minors by a single parent would be RESOLVED.

In April 2009, the Cabinet had decided that ‘a child must follow the religion practised by the parents at the time of marriage in the event one of them opts to convert. Further a marriage solemnised under civil law can be dissolved under only the civil law.... Any individual who wanted to convert to another religion must resolve all problems regarding his responsibilities before converting to avoid innocent parties, especially children, becoming victims’ (see The Sun dated 24/04/2009)

Following this Cabinet decision, MCCBCHST lawyers were invited and were part of a committee headed by the Civil Division of the Attorney General’s Chambers to look into legislation to implement the Cabinet decision and the committee had made rapid progress in resolving the issue. After about 3 months the Committee was taken over by the Syariah Compliant Division and chaired by the Attorney General himself. After a few meetings there was a stalemate as the issue of unilateral conversion of a minor by a single parent was not being addressed.

The amendments proposed by the AG Chambers in 2009 and 2013 were not acceptable as despite the proposed amendments, a single parent could still unilaterally convert a child of the marriage without consent of the other spouse.

The facts of Indira Ghandi's case show that only the Civil Courts are competent to decide on the validity of the conversion of a minor, the facts being :-

- (i) Both Indira Ghandi and her husband were Hindus at the time of their marriage
- (ii) They had gone through a Hindu marriage ceremony which was registered under civil law.
- (iii) The children of the marriage were brought up as Hindus before their purported unilateral conversion
- (iv) Their marriage can only be annulled by civil courts
- (v) Indira Ghandi has no locus standi in a Syariah Court
- (vi) The Syariah Court has no jurisdiction over Indira Ghandi, she being a Hindu. Syariah Courts have only jurisdiction when all parties are Muslims

Based on the above facts, it is clear that only the civil courts are the proper forum for Indira to seek her remedy. Especially so, when there are so many constitutional issues to be decided including the proper interpretation of the word "his parent" appearing in Article 12 (4) of the Federal Constitution. It is obvious that Article 12 (4) should be read together with the Interpretation Section of Article 160, otherwise it would not promote a just resolution. The absurdity can be seen in that only the male gender was covered and therefore female gender was not covered in Article 12 (4) as the word only "his" was used.

The BAR COUNCIL in a statement (STAR -14/01/2016) stated that "The unilateral conversion of a minor by one parent without the knowledge or consent of the other violated the constitutional right of the non converting parent". We agree with it and many legal experts have expressed similar sentiments, including Prof. Emeritus Shad Saleem Faruqi., "Conversion of minors should not be allowed without the consent of both parents....The majority decision in Subashini notwithstanding, the word "parent" in the singular should be interpreted in the plural. Authority for this is found in the Eleventh Schedule of the Constitution, paragraph 2 (95), that "words" in the singular include the plural.... " Per Prof. Emeritus Shad Saleem Faruqi. (The Star-10/02/2008).

The constitutional position is very clear that a Non-Muslim cannot be subjected to a Syariah Court Jurisdiction. But yet, the Malaysian Syariah Lawyers Association President Musa Awang, when commenting on the verdict of Indira Gandhi's case stated "that the best remedy would be to allow, non-Muslims to seek justice from the Syariah Court. (Malaysiakini 06/01/2016). This suggestion is not only unconstitutional and strikes at the very core of the Federal Constitution but is also an attempt to impose one's religious laws on others. MCCBCHST completely rejects this and reiterate that non-Muslims cannot be subjected to Syariah Court Jurisdiction. This agenda to impose one's religious laws on others should be immediately stopped.

MCCBCHST, in conclusion appeal to the Cabinet that the Civil division of the AG Chambers should be given the task to come up with the necessary amendments to put into effect the Cabinet decision of April 2009. Any remedy proposed that do not require the consent of both parents before a child could be converted is bound to fail and the problem will persist.

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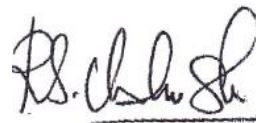
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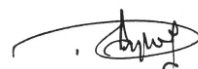
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