

Determination of the Parent's Right to Decide on the Religion of a Minor Child: The Malaysian Perspective

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Abstract: This article seeks to highlight on the issue of determining a child's religious freedom upon his or her parent's conversion into Islam and the jurisdictional conflict that arises in Malaysia in resolving the matter. Article 11 of Federal Constitution of Malaysia provides for the fundamental right of a person to profess and practise his or her religion subject to certain restrictions. Nonetheless, Article 12(4) of Federal Constitution restricted the religious freedom of a person under the age of 18 whereby it shall be decided by his or her parent or guardian. Article 11 of the Federal Constitution is a fundamental right but with the exemption in Article 12(4), it invites the question whether a child has a right to religious freedom. The issue is further heightened in Malaysia in a situation where one parent converts into Islam whilst the other refuses to do so. Difficulties arises when a child of the marriage was unilaterally converted to Islam without the consent of the other spouse. In addressing the jurisdictional conflicts which arises due to the scenario, this study adopts a doctrinal approach whereby a critical analysis of relevant statutory provisions and decided cases are made. The findings of this study suggest that the matter is still not clearly resolved as yet.

Key words: Child's right • Malaysia • Religious freedom • Unilateral conversion

INTRODUCTION

Freedom of religion is provided under Article 11 of the Federal Constitution of Malaysia albeit with certain restrictions, intended to preserve the harmonious racial and cultural diversity within the population. Article 11 (1) states as follows:

“Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.”

Clause 4 of the same Articles stipulates that each state has the right to enact laws and regulations to control the propagation of other faith among the Muslims, cognisant of the legal fact that Islam is the religion of the Federation of Malaysia.

Article 12(3) of Federal Constitution of Malaysia states that:

“No person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own.”

Article 12(4) of Federal Constitution of Malaysia reads:

“For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his or her parent or guardian.”

The exemption provided under Article 12(4) of the Federal Constitution invites the question as to whom has the right to decide on the faith of a child of the marriage in case of conversion of one of his or her parents to another religion. In Malaysia, this issue raises jurisdictional concerns as well as Malaysia has two set of rules applicable in the area of family law, i.e. civil law for the non-Muslims and Shariah law for the Muslims.

Before proceeding further with the investigation and analysis, it is pertinent at the outset to understand that the Federal Constitution of Malaysia provides for two sets of different laws governing family and inheritance matters of its citizens, namely the Shariah law for Muslims and the civil law for the non-Muslims.

Article 74(2) of Federal Constitution provides that: The legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to

say, the Second List set out in the Ninth Schedule) or the Concurrent List.

The above article sets out that state governments in Malaysia have been conferred certain legislative powers to regulate subject matters which are enumerated under the State List of the Federal Constitution. Matters concerning Islamic law and Shariah courts are within the ambit of states' legislative powers. The amendment to Article 121(1A) to the Federal Constitution by Constitution (Amendment) Act 1988 divides the jurisdiction between Shariah and civil courts and determine that in matters concerning marriage and related proceedings thereto, Muslims parties are bound by Shariah court determinations. Nonetheless, conflicts of jurisdiction between the two courts still arises in situations where a spouse converts into Islam, whilst his or her other spouse remains in their original faith. As Muslims, the converted party shall be bound by the rulings of the Shariah court in matters concerning marriage and inheritance, whereas the non-Muslim party shall be bound by decisions of the civil court.

As highlighted earlier on, based on the provisions of Article 12(4), issues do arise as to determination of the religion of a child of a marriage where one of the parent converts to Islam. Reason being, Shariah law and civil law construe the matter differently, though both stress on the welfare and wellbeing of the child as the paramount consideration. In an attempt to resolve the struggles between parents of different faith to decide on the religion of a child and to be in line with Article 12(4), the Government proposes an amendment to the Law Reform Marriage & Divorce Act 1976 in November 2016. At the time of publication of this article, the amendment to the Law Reform (Marriage and Divorce) Act 1976 has just been passed in mid-August 2017 with certain modifications to the earlier proposed amendments. The Bill was tabled by Minister in the Prime Minister's Department, Datuk Seri Azalina Othman to amend the Law Reform (Marriage and Divorce) Act 1976. The main effect of the amendment is that the new law will empower the civil courts to resolve issues between parties who had earlier contracted a marriage according to civil law, but subsequently one of the spouse converts to Islam. The amendment will empower the civil courts to resolve matters related to the dissolution of the civil marriage between the parties, regardless of the fact that one of the party is now a Muslim and constitutionally would not be bound by the civil court jurisdictions in matters of family law and inheritance as stipulated under the Federal Constitution. Though the among the prime intention of

the amendments is to enable a non-Muslim party to petition to the civil courts to resolve family matters upon conversion of a spouse to Islam, [1] it is yet to be seen whether it would assist in resolving matters or further complicates things for the parties.

Methodology: In completing this study, the research adopts a qualitative approach of the legal issues. Making full use of library based doctrinal research investigation, analysis is made of relevant statutory provisions and case laws relating to conflicts of jurisdiction between the two courts concerning family matters in Malaysia. The focus nonetheless is restricted to conversion of a spouse into Islam. In the course of the study, references were also made to judicially reported cases, journal articles and newspapers reports. To provide an international perspective on religious freedom of a child, reference was made to the United Convention on the Rights of the Child. The Federal Constitution, the Islamic Family Law (Federal Territories) 1984, the Law reform (Marriage and Divorce) Act 1961, the Guardianship and Infant Act 1961 are among the sources for the analysis. Reference to various journal articles and newspapers were also made.

The Position of Islam under the Malaysian Constitutional Framework: Malaysia is a multiracial country and Muslims make up almost 60 percent of the population. In line with constitutional supremacy, Article 3 of Federal Constitution uphold Islam as the official religion in Malaysia. The inclusion of Article 3 was proposed by Alliance Party during the memorandum to the Reid Commission (where it was not included earlier) [2]:

“...the religion of Malaysia shall be Islam, the observance of this principle shall not impose any disability on non-Muslim natives professing and practicing their religions and shall not imply that the State is not a secular State.”

Malaysian legal framework development has created a dual sets of law applicable to Muslims and non-Muslims in matters relating to family and inheritance – the Shariah law for Muslims and the civil law for non-Muslims. In other civil and criminal matters (except offences against the tenets of Islamic faith), Muslims and non-Muslims are subjected to the same national laws. Shariah or Islamic law is subject to constitutional supremacy of the Federal Constitution and the federal law. The provisions of Article 3, Article 11(1)(4), Article 12(2), Article 74(2), Article 121(1A), Schedule 9 of State List, Article 150(6A) and

Article 160 of the Federal Constitution ascribed Islam in a special position compared to other religions in Malaysia [3]. Cases such as *Meor Atiqulrahman Ishak & Ors v. Fatimah Sihi & Ors* [2006] 4 CLJ 1, *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* [2007] 4 MLJ 585 (FC) and *Kamariah bt Ali v. Kerajaan Negeri Kelantan and Anor* [2002] 3 CLJ 766 remark on the special position of Islam in Malaysia [4].

The terms 'Malay' and 'Islam' have become so intertwined such that the Federal Constitution denotes professing Islam as one of the legal definitions of a Malay, as clearly stated under Article 160 of the Constitution. Faruqi observed that the word Islam has been mentioned in the Constitution nearly 24 times [5]. However, the insertion of that word by the framers of the Constitution does not make Malaysia into an Islamic state. Nevertheless, the relation between Islam and the Malay identity remarks the closeness of these two elements [6].

The study on special status of Islam involves an analysis of constitutional and historical documents. Based on the above discussions, the existing laws and policies in Malaysia is sometimes at discrepancies, particularly when Muslims intended to carry out their religious teachings. The implication and the extension of Shariah principles have greatly impacted the development of Malaysian legal system. Article 4 of the Federal Constitution provided the Constitution as the highest law of the land but in the meantime other Articles in the same Constitution made special references to the position of Islam, Malays and Shariah principles.

With regard to right to determine a minor's religious freedom under Article 12(4) there seems to be a need for a clearer interpretation to avoid further and prolong confusion in order to achieve justice between the parties. Presently the enforcement of this Article is in accordance with what have been ruled by courts based on the doctrine of binding precedent of previous judgments. The courts stipulated that the word 'parent' in the Article refers to the consent of one parent as the only requirement and not that of both. During the first reading of the Bill tabled in November 2016 by the Minister to amend the Law Reform (Marriage and Divorce) Act 1976, a new section 88A was proposed. This proposed new section 88A states the need for both parties in a civil marriage to give consent for their child to be converted to Islam before it can occur [7]. The proposed section 88A of the Law Reform (Marriage and Divorce) Act 1976 is to be given retrospective effects even for cases which are still pending in courts [1]. It is argued that such move to

amend section 88A of Law Reform (Marriage and Divorce Act) 1961 will be contradictory to Article 12(4) of the Federal Constitution as well as the Shariah principles. It creates avenue for non-Muslims to exercise their rights while Muslims might be denied the right to practice the true teachings of Islam. The legal precedent in *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeal* [2008] 2 CLJ 1, wherein the Federal Court decided that only the consent of one parent is required should be binding on future cases but, with the proposed section 88A amendment, the status of the religion of a child of a marriage will be subjected to more complications. When parties are embroiling in divorce proceedings, reconciliation efforts and mutual understanding from both parties is at its very minimal. The proposed article 88A of the Bill which requires consent from both parents in determining the religion of the child is seen as creating and prolonging tension between parties and might result in delay of the process. The amendment to the Act was passed recently in August 2017, however the proposed section 88A was not put through due to the heated debate that it has generated.

Concept of Child's Religious Freedom: This section analyses the concept of religious freedom from the perspectives of Islamic law as well as under the international legal framework. The discussion will then proceed to examine this concept under the Malaysian legal framework as well.

Islamic Perspective: Right of Right of Custody and of Guardianship: The Islamic concept of child's religious freedom considers every child born in a state of pureness and natural. The Prophet Muhammad (p.b.u.h) said:

“No child is born except that he is upon natural instinct, but his parents make him a Jew or a Christian or Magian.”

This hadith is reported both in Bukhari and Muslim [8]. Based on the hadith, it stipulates that parents are responsible for the religious upbringing of the child. A minor who has attained age of 'baligh' (adulthood) has the legal right to choose Islam as his or her religion. Under Shariah law, a child attains his or her adulthood latest by the age of fifteen or upon undergoing biological changes indicating their adulthood [9].

In the case of religious freedom of a minor, Islam prioritise the welfare of the child. This is in line with the concept of *Maqasid Shariah* which serves purposely to

protect religion, life, intellect, offspring and material wealth. On this premise, a child will follow the religion of the parents if there is no conflict between parents. Nevertheless, when one parent converts into Islam and the other spouse remain in his or her own faith, then the dispute will arise. The majority of the Muslims jurists (includes Shafiis, Hanafi's and Hambalis) are of the opinion that the child will adopts the religion of the Muslim's parent. As for the custody of the child, the right does not lie solely in either of the parents. The bigger consideration before the court is on the most compassionate atmosphere for the future of the child and Islam upholds the preservation of family's institution [10].

The discussion on the religion of a child usually delves on the issue of the right of guardianship (*wilayah*) and custodianship (*hadhanah*). There is a marked difference between the two terms with different legal implications under Islamic law. At times, the words are used interchangeably but their meaning and legal effects are different under the law. This two distinct words needs to be defined clearly since it affects the status of religious freedom of a child. The term custody (*hadhanah*) denotes care and protection granted to a person in raising a child by way of providing for his or her basic needs, protection from danger and nurturing of the body, soul and mind. The term guardianship (*wilayah*) of a child refers to the supervision of the affairs of a child including safeguarding, protection and administering the affairs of a child [9]. It relates closely with the issue of ascendancy. The main difference between the two, custody and guardian is that custody (*hadhanah*) relates to the physical care and upbringing of the child, whereas guardian (*wilayah*) is more on the supervisory right and legal power to make important decisions relating to matters which affect the child at present or in future. Custodianship occurs upon a child being placed in the care of the person granted such right but a guardianship right exists regardless of a child living with the guardian or elsewhere [11]. That being said, the right of guardianship is of utmost importance in administering the legal affairs of a child of a marriage in comparison with custodianship.

In Islam, discussions on both custody and guardian is quite lengthy. Again, the prime importance is on the right of the child to be taken properly rather than on the right of the persons entitled to seek for custody. The general consensus among the scholars is that a child who is still an infancy stage should be under the custody of the mother due to the compassionate nature of the mother as well as being able to take care of an infant

child. The custodial right over the infant child may transfer to the next person in line, i.e. maternal grandmother, then father, upon the mother's absence, relinquishment, or inability to carry out such custodial responsibilities [11]. When a child attains the age of discernment, the Shafie scholars opined that the child is given the right to choose as to which parents that he prefers to live with, in cases of divorce [8]. This is based on the Prophetic tradition as follows:

Abu Hurairah narrated that a woman came to the Prophet p.b.u.h. and asked: O Messenger of Allah, my (former) husband wants to take my son away when he (my son) is capable of bringing water from the well and it is very useful for me. The Messenger said to the child: This is your father and this is your mother, choose either one of them. The child chose his mother and then both of them left.

A non-Muslim mother may be entitled to obtain custody of her infant child or children who did not fully comprehend about religion as opined by scholars of Hanafi schools. They based their reasoning on the decision of the Prophet in the case of Rafi' bin Sinan who has converted to Islam but his wife refused to do so. The daughter was with the wife until it was about time to wean the daughter. The wife then brought the matter before the Prophet, to decide as to whom shall have the right over the child. The Prophet then instructed both parents to sit at different corners and called to the child. The child was likely to go to the mother. The Prophet then prayed to Allah to guide the child. The daughter was more inclined towards the father and he then took the daughter [11].

Guardianship in Islam signifies a more important implication in the upbringing of a child, as it involves the guardian making decisions related to supervision, management of the child properties and legal power to make important decisions on behalf and for the benefit of the child. In this context, Islamic jurisprudence regards the father as a guardian of the family as in the saying of Prophet Muhammad (p.b.u.h):

Every one of you is a protector and guardian and responsible for your wards and things in your care; and a man is a guardian of his family members, and is accountable for those placed under his charge. (Reported by al-Bukhari and Muslim) [10].

On this note, a criterion for a father to be the legal guardian of a Muslim child is that he is a Muslim. The right of guardianship will pass to the male agnate or the appointed guardian in case of the father's demise. Under Islamic law, the father continues to be the guardian of the child and to support the child financially even though the

mother is given custody of the child. In situation whereby parents are of different religions, Islamic jurisprudence prioritise the parent who follows Islam [9, 10]. Based on this principles, in case of a non-Muslim spouse or parent applying for hadhanah or custody of the child, the jurists from the Shafie and Hanbali schools of thoughts opine that custody of a child should be given to a Muslim spouse. This is to ensure that the custodian shall not damage the child's religion. Nonetheless, other jurists such as Imam Malik, the Hanafis and Zahiris schools allow custody of a child to be given to a mother, especially if the child is of early years to ensure that he/she will not be deprived of the warmth, affection and tender loving care of the mother in his/her growing years. Thus, Islam does not deny the right of a non-muslim mother to her her children of early years subject to certain conditions being satisfied. This is because in the right of custody, it is not the welfare of the parents are at stake but rather that of the child of the marriage [11].

International Concept: At the international level, Article 14 of the United Nation Convention on the Rights of the Child recognizes the child's religious freedom. It reads:

- States Parties shall respect the right of the child to freedom of thought, conscience and religion.
- States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
- Freedom to manifest one's religion or beliefs may be subject only to such as be prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Based on the provision, it depicts that guidance by the parent is essential and the provision respects the parental right to decide the religion to his or her child. At the same time, the article does not deny the right of the child themselves to decide their religion and the parents can guide the children in deciding the religion they embrace.

United Nation Convention on the Rights of the Child and the principles are widely accepted by the countries around the world, albeit certain countries such as Malaysia, put in some reservations on certain articles of the Convention due to pluralistic nature of its citizens. Steiner opines that the approach adopted by Lee Swee Seng JC in the case of *Pathmanathan A/L Krishnan v.*

Indira Gandhi a/p Muth [2016] 1 CLJ 911 reflects on the judge's stand on the United Convention on the Rights of the Child when he stated that [12] :

“The principles propounded in these conventions are *highly persuasive* (italic added) and should provide that guiding light to help us interpret the Fundamental Liberties enshrined in Our Constitution.”

Thus the wordings of the international conventions are highly persuasive and in interpreting these provisions, it is important to highlight the existing laws applicable in the country. Though Malaysia has ratified the United Convention on the Rights of the Child, due to the reservations made on certain Articles of the Convention, not all the interpretation of the provisions sit well with Sharia principles and Malaysian law.

Malaysian framework governing child's religious freedom for the right for Muslims and Non-Muslims: In Malaysia, generally Article 12(4) of Federal Constitution safeguards the right of religious freedom for children below 18 years old. For non-Muslims, reference can be made to the Guardianship and Infant Act 1961. Section 5 reads as follows:

- In relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, a mother shall have the same rights and authority as the laws allows to a father, and the rights and authority of mother and father shall be equal.
- The mother of an infant shall have the like powers of applying to the court in respect of any matter affecting the infant as are possessed by the father.

The provision provides for the powers, responsibilities and authorities of parent's in matters affecting his or her child. According to Section 2 of the Guardianship of Infants Act 1961, the term 'infant' is to be defined as a person who has not attained his majority. Section 2(a) of the same Act, provides that every person professing the religion of Islam shall be considered to have attained his majority when he completed his age of eighteen years (for Muslims) and for non-Muslims deemed to have attained the age of twenty-one years. Section 3 of the Guardianship and Infant Act 1961 gives equal rights to both parents relating to administrative matters concerning with the well-being of the child. It is a

positive development in Malaysian laws since the previous provision before the amendment had provided that the father was the natural guardian for the child and thus the mother has to seek cooperation for the divorced spouse should she need to comply with administrative matters such as during the process of applying for her children's identification cards.

The Preamble of Child Act 2001, acknowledges that a child due his/her physical, mental, and emotional immaturity requires special safeguards, care and assistance. The Preamble further emphasises on the role of the family as the fundamental group to provide a natural environment for the growth, support and well-being of all its members, particularly children. The Preamble of the Act acknowledges the needs and rights of a child and it upholds the well-being of a child paramount. The Preamble is parallel with notion of Islamic law as both safeguards the well-being of the children.

In addition to that, section 81 of the Islamic Family Law (Federal Territories) Act 1984 governs the right of custody of children. In Section 81(1) of the Islamic Family Law (Federal Territories) Act 1984 reads as follows:

Subject to section 82, the mother shall be of all persons the best entitled to the custody of her infant children during the connubial relationship as well as after its dissolution.

According to the provision, the legal custody should be given to the mother but it subject to certain conditions and circumstances as enumerated under Section 82 of the same Act.

With regards to guardianship, the same Act under section 88(1) provides that even though the custody of the child may be vested in another person, the father remains the first and primary natural guardian of the property and person of his minor child [13].

RESULT

The Legal Development in Malaysia Pertaining to a Child's Freedom of Religion: This section discusses the cases which have been decided by the Malaysian courts pertaining to a child's religion and whether the parents has any say on it.

In the earliest case regarding a minor child to choose his or her preferred religion, *Teoh Eng Huat v. the Kadhi of Pasir Mas Kelantan & Anor.* [1990] 2 MLJ 300, the Federal Court overruled the decision of High Court. The Federal Court ruled that the father has the right to determine the religion of the child (Susie Teoh). The child

had not attained the age of 18 years old therefore the parent or guardian will have the right to ascertain the child's religion. In the case, the child wished to convert to Islam but her parents was against her wish.

Under the law, the religion of a minor is determined by the parent or guardian, which is to be found under Art. 12(4) of Federal Constitution and to be read together with Guardianship of Infants Act 1961. In *Nedunchelian V Uthiradam v. Nurshafiqah Mah Singai Annal & Ors* (2005) 2 CLJ 306, the dispute was pertaining to the meaning of the word 'parent'. According to Article 12(4) of the Constitution, it provides that only the consent of a parent or guardian is needed to determine the religion of person below 18 years old. It was concluded in the judgment that the intention of the framers of the Constitution is to include the consent of *both* (italic added) parents.

In the case of *Chang Ah Mee v. Jabatan Hal Ehwal Agama Islam dan Majlis Ugama Islam Sabah & Ors* (2003)1 CLJ 458, the High Court held that the word 'parent' is to be construed as meaning both the father and mother. The judge ruled that it is a deprivation of the other parent's right if the consent required is only one of both. It will deny the constitutional right of the other under Art. 12(4) of Federal Constitution.

The government purposely create a new amendment to avoid further disputes following the controversy which arises from two cases; *Pathmanathan Krishnan v. Indira Gandhi Mutho & Other Appeals* [2016] 1 CLJ 911 and *Viran Nagappan v. Deepa Subramaniam & Other (Intervener)* [2015] 3 CLJ 573. In the case of *Pathmanathan Krishnan v. Indira Gandhi Mutho & Other Appeals* [2016] 1 CLJ 911 the Court of Appeal's 2-1 decision for unilateral conversion of minors into Islam had caused injustice towards non-Muslims spouse. The husband Muhammad Riduan (who was formerly known as K. Pathmanathan) had embraced Islam on 2009 and unilaterally converted all their three children without the wife's (Indira) knowledge and presence. Earlier on, a temporary custody of the children was granted to the husband which was subsequently made permanent by the Shariah Court, respectively on 8 April and September 29. In this case, the appeal was allowed against Indira and the decision by the High Court was set aside. The Court of Appeal in its ruling ruled that:

The exercise of the right of one parent under Article 12(4) cannot and shall not be taken to mean a deprivation of another parent's right to profess and practice his or her religion and to propagate it under Article 11(1) of the Federal Constitution.

In 2007, it was held in Federal Court in the case of *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeal* [2008] 2 CLJ 1 that a single parent can unilaterally converts their children to Islam. The Federal Court (Malaysia's Highest Court) ruled in that case of *Subashini* that the husband has the right to change their son's religion to Islam. The landmark judgment held that *Saravanan* (the converted Muslim's spouse) was exercising his right as a Muslim to file the divorce proceedings in the Sharia court. Also, the Federal Court ruled that the divorce petition on the ground of conversion by *Subashini* was premature as under the Section 51(1) of the Law Reform (Marriage and Divorce) Act 1976, such the petition can be filed only after three months after the date of the spouse's conversion. However, *Subashini's* petition is void since it was filed before the requisite three months period. Nonetheless, it is to be noted that the law reform provisions provides such right for non-converting spouse to have a locus standi to dissolve the marriage under the Act. The converted Muslim spouse shall have no corresponding right under the Law Reform (Marriage and Divorce) Act 1976. The only recourse is to seek divorce under the Shariah Court, of which the judgment shall not be enforceable against the non-Muslim spouse. It seems to leave the whole situation at the disadvantage to the converted Muslim spouse [14].

In a recently decided case, *Viran Nagappan v. Deepa Subramaniam & Other (Intervener)*, [2015] 3 CLJ 537, two questions of law were before the Federal Court. One issue was on the conflicting order between the two courts under Article 121(1A) of the Federal Constitution and the other on interpretation of Section 52 and 53 of the Child Act 2001. The Federal Court highlights the important principles about the exclusive jurisdiction of civil court. The civil courts have the exclusive jurisdiction to grant divorce of a civil marriage contracted under the Law Reform (Marriage and Divorce) Act 1976. In the judgment of the case, at the paragraph 32, page 19-20:

“...The Civil Courts have the exclusive jurisdiction to grant decrees of divorce of a civil marriage under the Law Reform (Marriage and Divorce) Act 1976 and to make other ancillary orders including custody care and access of the children born out of that marriage and all other matters ancillary thereto. It is an abuse process for the spouse who has converted to Islam to file for dissolution of the marriage and for the

custody of the children in Sharia courts. This is because the dispute between a parties is not a matter within the exclusive jurisdiction of Sharia courts. Therefore Article 121(1A) of the Federal Constitution which deprives the Civil Courts jurisdiction of the Sharia court is not applicable in this case.”

The Federal Court decisions suggested that the Shariah Court exclusive jurisdiction to decide on the dissolution of marriage needs to be read together with the respective state enactments. If such state enactments provides that the Shariah Court has to decide only on marriages solemnises according to Muslim law, then only the Shariah court would have the jurisdiction to do so. This is to maintain the exclusivity of the jurisdictions of both courts as enumerated under the Federal Constitution.

CONCLUSION

The uncertainty and injustice should be avoided at all costs. In every litigation, one party is bound to suffer losses compare to the other. Realising the ongoing disputes that seems to add to disrespect towards different court authorities and prolong racial tensions between members of the society in cases of family disputes, the parliament has passed the amendment to Law Reform (Marriage & Divorce) Act 1976 in August 2017. The intent is to ensure that every party in a dispute will be able to achieve as near justice as possible. However as the amendments are quite new, it is yet to be seen as to how it will fare for the respective parties in a court proceedings. To sum up, every citizen should respect the others' right in order to maintain the stability on the country. The laws regulating conversion of a minor is not a new issue. The welfare of the child as well as Sharia principles are the main mechanism for Shariah courts to decide on religious upbringing of the children. Therefore, both parents will have the equal opportunity to decide on the religion but it must be spelled out clearly the right of custody and guardianship between them. This will help both parents to enjoy their rights as parents towards their children because the welfare of the child is the most important in resolving this issue.

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