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No. 074/2014 dated 21 April 2014

Islamisation in Malaysia: Shariah, Custody and Justice

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Synopsis

Contradictory rulings by the Civil and Shariah Courts on the case of a child's custody had brought the issue of Islamisation to the fore again. The parallel legal systems and continuous Islamisation in Malaysia will complicate matters of justice in Malaysia.

Commentary

THE RECENT tussle between S. Deepa, a non-Muslim woman, and her Muslim husband over the custody of their son brings the issue of Islamisation in Malaysia to the fore again. Deepa who is separated from her husband has won the custody of her child through the Civil Court. In tandem, her Muslim convert husband, Izwan Abdullah, obtained a similar custody from the Shariah Court. Subsequently, Iswan took the child away from Deepa because the contradictory rulings had brought confusion.

Compounding the issue is the refusal of the police to take action against this abduction citing the reason that the child is safe with the father and claiming that the police are bound by both Civil and Shariah laws. This is despite the fact the police should operate according to Civil law. This latest tussle illustrates the parallel jurisdiction of the Shariah and the Civil Courts, the reluctance of the police to act justly and the powerful force of Islamisation in Malaysia.

Parallel laws - Shariah and Civil Courts

In Malaysia, there are two parallel legal systems - Shariah and the Civil law. The former has limited jurisdiction over matters of Islam and is only applicable to Muslims whereas the Civil law, which is influenced by the British common law system, has jurisdictions over all Malaysians.

As there are two parallel systems, in cases where it involves both Muslims and non-Muslims, it can be complicated. As the above example has suggested, in cases where one spouse is a Muslim and the other is not, there will be contradictory jurisdictions on who has the custody of the children should the couple separate. Another example is the case of Lina Joy, a Muslim who renounced her Islamic faith and took the matter to the Civil Court to change her name and religion.

The civil courts ruled against her on the grounds that matters of faith should be within the jurisdiction of Shariah Court. The point is the renunciation of her faith would unlikely be accepted by the Shariah Court and neither can

she rely on the Civil Court.

These examples have shown the problems arising from two parallel legal systems. Besides, what is stark here is the increasing power of the Shariah system in Malaysia and how authorities tend to lean towards the jurisdiction of Shariah law even in cases that involve non-Muslim.

Islamisation in Malaysia

Such issues reflect the impact of Islamisation in Malaysia. Since the Islamic revivalism in the 1970s, Malaysia along with many other Muslim countries has paid greater attention to religious piety. The influential Malaysian Islamic Youth Movement (ABIM) led by Anwar Ibrahim, an activist who later rose to become deputy prime minister, had inspired many Muslims to become more pious and engaged in preaching Islam. After Anwar's co-option into UMNO in 1982, Islamisation was further institutionalised by the state with the establishment of Islamic institutions and the promotion of Islamic values. In 2002, then Prime Minister Mahathir Mohamad even declared that Malaysia was an Islamic state.

The state intervention in steering Malaysia to become an Islamic state was not entirely straight-forward. While the roots of Islamisation can be attributed to the Islamic revivalism, Islam has also been used for political expediency in Malaysia. Both UMNO and PAS, the two largest Muslim-based parties in Malaysia, had consistently attempted to out-Islamise each other when trying to garner the support of the electorate. The long term results of such conscious efforts at mainstreaming Islam had inadvertently entrenched the religion in the state institutions as well as created a community of pious Muslims.

Consequently, Islam has become the identity marker for the Malays and Islamisation has also become a powerful force in accentuating the differences between Muslims and non-Muslims. This development has since polarised the multi-racial and multi-religious society further. In tandem, with the expansion of the Islamic space for Muslim expression, the teachings of Islam have become the guiding principle in the modus operandi of the different institutions of the state.

In addition, as the Malay-Muslim community is the state-endorsed privileged group and Islam is the religion of the Federation, there is the notion that teachings of Islam should take the lead in any issue, even when it affects the non-Muslims. This, however, does not sit well with the non-Muslims.

Moving forward

As Islam is the religion of the Federation and the Muslims form the majority population, Islamisation is likely to persist. But Malaysia is not a homogenous country and there is a sizable group of non-Muslims. As a matter of fact, the unintended effect of the Islamisation process has created different sets of problems and frustrations among the non-Muslims.

Should the state choose not to exercise caution in this Islamisation process, problems such as those of Deepa will not have any easy solution. It may even recur affecting different parties or families. The affected non-Muslims will see themselves as being denied justice and they will wonder where and how can they exercise their constitutional rights.

This is not just a rhetorical question. While Malaysia is a long way from being a theocratic state, one should not underestimate the repercussions of Islamisation. Deepa's case is a sobering reminder of the effects of Islamisation.

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