A disturbing dichotomy

We need to cool things down a bit to resolve the sad saga of legal conflict due to religious issues.

The most painful, unifying and politically charged disputes are between civil and Syariah courts. They jar our landscape now and then and disturb our national harmony. What is not well known is that the clashes are not always between Muslims and non-Muslims.

Sometimes it is Muslims challenging the jurisdiction of the Syariah courts. For example in Latifah Mat Zin v Rosnawari Sharibun (2007) there was a dispute between the daughters of the deceased and his widow over the joint account of the husband and the wife. At contention was whether the civil High Court or the Syariah court has jurisdiction?

Occasionally there are objections to Syariah courts assuming jurisdiction on marriages contracted abroad between Muslims under foreign law.

Relating to non-Muslims, the most heart-wrenching dispute is about the religion of a deceased when there is information that prior to his death he had secretly converted to Islam.

Another tragic and intractable issue is the custody of children when one party to a non-Muslim marriage converts to Islam and opens the door to a jurisdictional clash.

This is what happened in the Deepa-Izwan case. The root cause of the jurisdictional conflict is Article 121(1A) of the Federal Constitution which states that the civil High Courts and inferior courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

Another problem is sections 3 and 5(1) of the Law Reform (Marriage and Divorce) Act (LRA) 1976. Section 3 states that the Act shall not apply to a Muslim. Section 5(1) states that if one party to a civil marriage has converted to Islam, the other party may petition the civil court for divorce.

Shockingly, this means that the converting party has no right to apply for dissolution of his marriage that was contracted under civil law. As Izwan was not subject to the LRA, he rightly went to the Syariah court for dissolution and ancillary relief – much to the detriment of Deepa whose hard-won civil court order for custody of her two children was short-lived when the ex-spouse in defiance of the High Court order forcibly removed one child from her custody.

This was not the first case of its sort but it has left a deep impact on our conscience. We need urgently to repair our frayed social fabric damaged by such disputes. My suggestions are tentative, subjective and open to revision.

First, the constitutional scheme of things in 1957, that the Syariah courts shall have jurisdiction only over persons professing the religion of Islam, should be reiterated.

Second, the Muslim volege that their religious law should apply to them should, however, be respected. The radical solution that legal dualism should be abolished and there should be one uniform family law for Muslims and non-Muslims.

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Sweeping the jurisdictional disputes under the carpet is not adequate consultation. Sweeping problems under the carpet is not doing our nation any good.

Sixth, the government should rely on Article 121(1A) of the Federal Constitution which states that the civil High Courts and inferior courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

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