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Judiciary, bureaucracy blamed for unresolved religious issues

Claudia Theophilus
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Issues of religious freedom, conversion and renunciation, particularly in family disputes, remain unresolved mainly due to the attitude of the Malaysian judiciary and the bureaucracy's mindset, a public seminar was told.



Senior lawyer Raja Aziz Addruse said the Malaysian courts have been passing the buck on issues surrounding civil and syariah jurisdictions and its social implications on the families involved for far too long.

"No remedy is provided when the function of the law is to afford some form of legal redress to the aggrieved," said the prominent human rights advocate in Kuala Lumpur today.

"All the injustices suffered by the people at the hands of the court, both civil and syariah, must be continuously highlighted because nothing has been resolved to this day under the present system."

He said the public must constantly pressure the judiciary and the government into taking note of the system's failure to handle matters involving Islam.

In his presentation, lawyer Malik Imtiaz Sarwar posed several questions on religious freedom and offered an insightful context of the pre-Merdeka drafting of the Federal Constitution to show the historical link with the present concept of an Islamic state.

Obsessed with labels

"Are we an Islamic state? What is an Islamic state? When did Malaysians become so obsessed with labels, calling ourselves an Islamic state?" he asked.

And here, he said, the courts have repeatedly failed to resolve the issue, choosing instead to shift it to their syariah counterparts citing jurisdiction.

Malik Imtiaz said that at the core of the issue on religious freedom in Malaysia was the legal distinction of a Muslim and an administrative



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application of policy.

He argued that when the Federal Constitution, the country's social contract, was drafted and adopted in 1957, Malaysia was a secular country without the label of being an Islamic state.

"The Reid Commission stated that the constitutional provision on Islam as the official religion was for 'ceremonial purposes' only in order to secure the position of the sultans at that time."

The provision, he said, was never intended to legally encroach into the practice of religion.

"But the story now is different. Administratively, we see the civil service applying the syariah laws on anyone who is deemed to be a Muslim.

Based on legal developments over the last two decades, Malik Imtiaz was convinced that Malaysia's social contract was being re-written.

"It is no longer reflective of the Merdeka mindset and rationale. It is also not solely a legal problem but more of a socio-political issue that is reflective of people's thinking that Malaysia is an Islamic state," he said, citing the mindset of the civil service and the Malaysian Bench itself.

"Based on my experience handling such cases, the judges do not dare (to set a precedent) nor do they care enough to do so."

Harrowing experience

About 60 people attended the half-day public seminar on 'The Right to Freedom of Thought, Conscience and Religion' organised by Article 11, a coalition of civil-society and community-based organisations, church groups, human rights movement and lawyers.



The seminar focused on parental rights under Section 51A of the Law Reform Act (Marriage and Divorce) in cases of one parent's conversion to Islam, restrictions on the freedom to profess and practice one's chosen faith and the diminishing importance of religions.

The three topics were illustrated by a case study each, including a case in the early 1990s of four Kelantanese, who after renouncing Islam earlier, had been found guilty of spreading deviant teachings and subsequently jailed.

One of them, Kamariah Ali, related her emotional and harrowing experience today.

"The problem here is the distinction between a Muslim in law and a Muslim in fact. You may renounce Islam but until you get an order from the syariah court confirming your decision, you remain legally a Muslim," her counsel Haris Mohamed Ibrahim said.

The Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism also aired several long-standing grievances restricting the practice and worship of the respective faiths.

Its president Harcharan Singh said previously houses of worship were allowed to be built without much issue.



"Now, there are so many restrictions when we apply to build a new gurdhara or extend an existing structure which was there before a mosque was built later.

"The reason often cited is that a new building cannot be built near a mosque when in fact, the latter was built only recently.

He said in a case involving an application to extend a 100-year-old gurdhara, they were told the new building must be relocated before it can be approved.

Use of 'Allah'

"There is also a condition that a new house of worship would be considered if the religious order can show that there are 5,000 followers of the faith within a certain area."

Harcharan said the word "Allah" was also outlawed for usage by the Sikhs (and Christians) although it is found in the respective holy scriptures and believed as divine revelation.

During the question-and-answer session, many expressed their concern and fear over the gradual deterioration of their right to practice the religion of their choice and the religious institutions that are part of that right.

One view of Islam offered was that it was an Arabic religion, explained by the Arabic names given to Malaysian Muslims.

"Malaysian Malays practice Islam thinking they are Arabs or as if Islam is an Arabic religion," said Ismail Ibrahim.

He urged Malaysians to reject use of word such as "racial or religious tolerance" and insist on the using the word "acceptance" to depict a more harmonious multi-religious, multi-ethnic and multi-cultural society.

Ibrahim Babu, who related his arrest by the police for questioning Islam and his subsequent journey through the syariah system described it as very oppressive.

"The syariah courts should be abolished. Malaysia cannot have two captains - the civil and the syariah.

Define religious freedom

"We should have only the civil courts because the other, in my experience, is too oppressive," he said, citing his 23-day remand and unjust treatment before a syariah judge in court as examples.

There were questions on why the government had banned the teaching of religion other than Islam in schools and why there were no departments for the affairs of other religions when there was an Islamic Affairs Department.



One of the suggestions was to clearly define what freedom of religion really means - whether it was the freedom to choose or to practice a particular religion.

Non-governmental organisations, human rights movement and religious bodies were also chided for failing to show their full support for people like Kamariah who had suffered imprisonment for standing up for her faith and constitutional right.

The blatant lack of interest in cases as hers was compared to the response, including the release of urgent press statements by various bodies, that would have immediately followed a political arrest.

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