

# **THE 2017 AMENDMENTS TO THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976: A MILESTONE OR A STONE'S THROW IN THE DEVELOPMENT OF MALAYSIAN FAMILY LAW?**

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## **ABSTRACT**

The Law Reform (Marriage and Divorce) Act 1976 (LRA) which was passed in 1976 and came into force on 1<sup>st</sup> March 1982, standardized the laws concerning non-Muslim family matters. Many family issues concerning non-Muslim have emerged ever since, the most important being the effects of unilateral conversion to Islam by one of the parties to the marriage. There has been a lot of public hue and cry for amendments to be made to the LRA. After much deliberation, the Malaysian Parliament finally passed the amendments to the LRA in October 2017, which came into force in December 2018. Although the amendments have addressed selected family law issues, the most important amendment on child custody in a unilateral conversion to Islam was dropped from the Bill at the last minute. Howsoever, at the end of the day, the real question that needs to be addressed is whether the amendments have resolved the major issues that have arisen over the past four decades? Hence, the purpose of this article is as follows: first, to examine the brief background to the passing of the LRA, secondly, to analyse the 2017 amendments, thirdly, to identify the weaknesses that still exist in the LRA, and finally, to suggest recommendations to overcome these weaknesses by comparing the Malaysian position with the Singaporean position. In conclusion, it is submitted that despite the recent amendments to the LRA, much needs to be done to overcome all the remaining issues that have still not been addressed.

**Keywords:** Law Reforms Act, amendments, family law, rights of non-Muslims, recommendations for future reforms.

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**PINDAAN 2017 KEPADA AKTA MEMBAHARUI UNDANG-UNDANG (PERKAHWINAN DAN PERCERAIAN) 1976: SATU PERKEMBANGAN YANG BESAR ATAU SEKADAR PEMANGKIN DALAM PEMBANGUNAN UNDANG-UNDANG KELUARGA MALAYSIA?**

**ABSTRAK**

Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 (AMU) yang telah diluluskan pada 1976 dan mula berkuat kuasa pada 1 Mac 1982, menyeragamkan undang-undang mengenai hal-hal keluarga bukan Islam. Banyak isu keluarga mengenai orang bukan Islam telah muncul sejak itu, yang paling pentingnya adalah kesan tukaran unilateral kepada Islam oleh salah satu pihak kepada sesuatu perkahwinan. Beberapa cadangan telah dibuat untuk meminda AMU untuk menangani keadaan di atas. Parlimen Malaysia, akhirnya, telah meluluskan pindaan kepada AMU pada Oktober 2017, yang mula berkuat kuasa dari bulan Disember 2018. Walaupun pindaan tersebut telah menangani beberapa isu undang-undang keluarga, pindaan yang paling penting mengenai hak penjagaan kanak-kanak di mana salah seorang ibu atau bapanya telah menukar ugama kepada Islam telah ditarik balik dari Rang Undang-Undang pada saat-saat akhir. Bagaimanapun, pada akhir hari, soalan sebenar yang perlu ditangani ialah sama ada pindaan-pindaan tersebut telah menyelesaikan isu-isu utama yang telah timbul sejak empat dekad yang lalu? Oleh itu, tujuan kertas ini adalah seperti berikut: pertama, untuk mengkaji latar belakang secara ringkas berkenaan penggubalan AMU pada tahun 1976, kedua, untuk menganalisis pindaan yang baru-baru ini diluluskan pada tahun 2017, ketiga, untuk mengenal pasti kelemahan-kelemahan yang masih wujud dalam AMU, dan akhirnya, memberi cadangan untuk mengatasi kelemahan-kelemahan ini dengan membandingkan kedudukan di Malaysia dengan kedudukan di Singapura. Kesimpulannya, telah dikemukakan bahawa walaupun pindaan baru-baru telah dibuat kepada AMU, masih terdapat banyak langkah yang perlu diambil untuk mengatasi semua masalah yang masih belum ditangani.

**Kata kunci:** Akta Memperbaharui Undang-Undang (Perkahwinan dan Perceraian), pindaan, undang-undang keluarga, hak bukan Muslim, cadangan memperbaharui di masa hadapan.

## INTRODUCTION

Malaysia practices a dual family law system, one for the Muslims and the other for the non-Muslims. The Muslims are governed by the *Syariah* law, administered by the *Syariah* Courts, whereas the non-Muslims are governed by civil laws, administered by the civil courts. One of the civil laws that plays a prominent role in governing Family Law matters for the non-Muslims, especially concerning marriage and divorce is the Law Reform (Marriage and Divorce) Act 1976 (Act 164) (LRA).

As the title of this article suggests, the focus here would be on the LRA 1976, in particular, an analysis of the recent amendments that were passed in October 2017 (“the recent 2017 amendments”). Since the LRA was passed way back in 1976, about four decades ago, it underwent about three minor amendments. Many family law issues concerning non-Muslims have emerged since then. However, sadly, no steps were taken to resolve such issues until fairly recently in October 2017, when the Parliament finally passed the amendments to the LRA. The amendments came into force on 15<sup>th</sup> December 2018.

Hence, the purpose of this article is as follows: first to examine the brief background to the passing of the LRA, second, to analyse the recent 2017 amendments, third, to identify the issues that are yet to be addressed and finally, to suggest recommendations to overcome the gaps that still exist.

## BRIEF BACKGROUND TO THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976

As mentioned above, the LRA was passed in 1976. Prior to the passing of the LRA, the non-Muslims were not governed by a standard law which applied to all non-Muslims where family issues were concerned. Thus, many non-Muslims resorted to their personal laws.<sup>1</sup> Hence, persons belonging to the Chinese race were subject to the personal law of the Chinese and the Hindus were governed by the Hindu law in family matters.<sup>2</sup>

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<sup>1</sup> Mimi KamariahMajid, *Family Law in Malaysia* (Kuala Lumpur, Malaysia: Malayan Law Journal, 1999), 2.

<sup>2</sup> *Ibid.*

The non-availability of a single statute to govern family matters of the non-Muslims in Malaysia was raised in the case of *Re Ding Co Ca, deceased*<sup>3</sup>, where Thompson LP stated:

... the whole question of personal law in this country, particularly as regards questions of marriage, divorce and succession, calls for attention of the legislature. As regards persons professing Islam, the position is tolerably clear. But as regards persons of Chinese race the law the courts are administering is probably different from any law that exists or even had existed in China... The same sort position may well arise in relation to the persons professing the Hindu religion by reason of the enactment in India of the Hindu Marriage Act 1955.

The above suggestion by Thompson LP was supported by MacIntyre J in the same case who stated as follows:

I cannot but fully support [the Lord President's] call for legislative action to bring our laws in regard to marriage, divorce and succession in so far as they affect non-Muslims, in conformity with modern thinking on these subjects.

Four years after the above suggestions were made by the learned judges, the Yang di Pertuan Agong appointed a Royal Commission on non-Muslim marriage and divorce laws on 4<sup>th</sup> February 1970. The Royal Commission's terms of reference were as follows:<sup>4</sup>

- a) To study and examine existing laws relating to marriage and divorce (other than Muslim marriages) and to determine the feasibility of a reform if any is considered necessary, in particular in the light of the resolution of the United Nations Convention on consent to marriage, minimum age of marriage and registration of marriage.

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<sup>3</sup> [1966] 2 MLJ 220.

<sup>4</sup> See the Report of the Commission on non-Muslim Marriage and Divorce Laws 1971.

- b) To receive and consider representations that might be submitted from any racial or religious group affected by or likely to be affected by the changes or reforms to the existing marriage and divorce laws; and to prepare and submit a report to the Government and to recommend changes or reforms if any to be made to such laws.

In 1971, the Royal Commission, after considering the representations from various racial and religious groups, completed its report. The Law Reform (Marriage and Divorce) Bill 1972 was annexed to the report. On 4<sup>th</sup> February 1972, this bill was introduced in the Dewan Rakyat for the first time, with slight modifications. Both the Dewan Rakyat and the Dewan Negara appointed a Joint Select Committee in May 1973 to consider the bill. Unfortunately, before the said committee could table its report and recommendations before the two houses, Parliament was dissolved, and the Bill lapsed. Consequently, the original Bill was redrafted. It considered the recommendations made by the Joint Select Committee. Ultimately in 1976, the LRA was passed and came into effect on 1<sup>st</sup> March 1982. The long title to the Act states the purpose of passing the same as follows:

An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

Hence, from the long title above, it could be observed that not only does the LRA provide for marriage and divorce, but it also touches on matters incidental thereto, such as maintenance, custody and distribution of property. Section 3 of the LRA clearly provides that it (the LRA) is applicable to all non-Muslims residing in Malaysia as well as those who are Malaysian citizens and domiciliaries but are resident outside Malaysia.

The passing of the LRA was much welcomed as it laid to rest many doubtful and unsettled issues. Ahmad Ibrahim in his book entitled *Family Law in Malaysia*, states as follows:<sup>5</sup>

... such law is necessary and expedient to replace the heterogenous personal laws applicable previously to persons of different ethnic origins comprising the majority of the non- Muslims population of Malaysia with a diversity of customs and usages observed by them. The primary virtue of the reforms is certainty – replacing doubts regarding the true legal status of woman cohabiting with man under circumstances which may or may not be legal wedlock until the question is determined by the courts and clarifying the legal status of their issue.

However, as mentioned in the Introduction earlier, it is about four decades since the LRA was passed. Over the past forty years, the LRA was only amended about three times, despite the emergence of several issues that arose in the course of time. These issues were not addressed by the Parliament by amending the relevant section in the Act, until recently, in October 2017, where after much hue and cry, the Parliament finally passed major amendments to the LRA *vide* the Law Reform (Marriage and Divorce) (Amendment) Act 2017.<sup>6</sup> However, these amendments only came into force in December 2018. The writer would next examine the 2017 amendments.

## **THE 2017 AMENDMENTS TO THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976**

Perusing the Law Reform (Marriage and Divorce) (Amendment) Act 2017 (“Amendment Act”), it could be observed that there are five amendments to the existing provisions in the LRA and the inclusion of a new provision. Nevertheless, when comparing the Amendment Act to the original Amendment Bill, it could be noted that the Bill contained a new section, i.e. section 88A, which was to have been included. It is submitted that out of all the amendments in the Amendment Act, section 88A would have been the most important

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<sup>5</sup> Ahmad Ibrahim, *Family Law in Malaysia*, 3<sup>rd</sup> edition (Kuala Lumpur, Malaysia: Malayan Law Journal, 1997), 6.

<sup>6</sup> Act A1546.

amendment as it would have resolved a very crucial issue pertaining to the unilateral conversion of a child to Islam in Malaysia. This issue would be discussed later in this article.

An analysis of the recent 2017 amendments would next be done. In discussing the amendments, reference to the “old” provisions (prior to the amendment) would be made first before looking at the amendments.

### **Amendment to section 3(3)**

Section 3(3) of the LRA basically provides that the LRA is not applicable to Muslims. However, an exception is stated therein, where the provision states that if there is a petition for divorce on the ground of conversion to Islam of one of the parties to the marriage under section 51, the court has jurisdiction to hear the petition and grant the decree of divorce (if it thinks fit) even though one of the parties is a Muslim. The “old” section 3(3) read as follows:

#### **3. Application**

(3) This Act shall not apply to a Muslim or to any person who is married under Muslim law and no marriage of one of the parties which professes the religion of Islam shall be solemnized or registered under this Act; but nothing herein shall be construed to prevent a court before which a petition for divorce has been made under section 51 from granting a divorce on the petition of one party to a marriage where the other party has converted to Islam, and such decree shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam.

Therefore, the above provision clearly states that the LRA only applies to Muslims in a divorce matter where the ground of divorce is conversion to Islam under section 51. This subsection was amended in the recent 2017 amendments as a consequence of the amendment to section 51(which would be discussed below). The new section 3(3) reads as follows:

(3) This Act shall not apply to a Muslim or to any person who is married under Muslim law and no marriage of one

of the parties which professes the religion of Islam shall be solemnised or registered under this Act; but nothing herein shall be construed to prevent a court from having exclusive jurisdiction over the dissolution of marriage and all matters incidental thereto including granting a decree of divorce or other orders under Part VII and Part VIII on a petition for divorce under section 53 where one party converts to Islam after the filing of the petition or after the pronouncement of a decree, or a petition for divorce under either section 51, 52 or 53 on the petition of either party or both parties to a marriage where one party has converted to Islam, and such decree and orders made shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam.

The above amendment could be described as a quantum leap in the development of Family Law in Malaysia. The actual effect of this amendment will be discussed below when the amendment to section 51 is discussed. Nevertheless, the writer intends to state herein that the amendment has widened the jurisdiction of the civil court over Muslims in Family Law matters in two ways:

- a) When the court dissolves a marriage and makes provisions on all matters incidental thereto, including granting of a divorce or other orders under Part VII and Part VIII on a petition for divorce under section 53, where one party converts to Islam after the filing of the petition or after the pronouncement of a decree. This has broadened the scope of section 3(3) as it includes a situation where initially, the parties were non-Muslims at the time of filing of the petition for divorce or pronouncement of a decree of divorce, but one of the parties converts to Islam after either of above two situations take place. When compared to the “old” provision which states that the court has jurisdiction over a Muslim only when a petition for divorce is brought by the non-converting spouse under section 51, the abovementioned amendments is definitely wider.
- b) Where the petition is filed by either party or both parties under section 51, 52 or 53, where one of the



parties has converted to Islam, the decree or order made by the court, shall, notwithstanding any other written law to the contrary be valid against the party who has converted to Islam. When comparing to the “old” section 3(3), it is reiterated that the amendment has expanded the court’s jurisdiction over the converting spouse as he or she is allowed to bring a petition for divorce, not only under section 51, but also under sections 52 (on the ground of mutual consent) and 53 (on the ground of irretrievable breakdown of marriage).

### **Amendment to section 12(1)**

Section 12(1) of the LRA provides that if any of the parties to a proposed marriage is below the age of twenty-one, he or she needs to obtain the consent from any of the persons listed therein. This requirement applies even though the said party has reached the minimum age of marriage as provided for in section 10, i.e. eighteen for males and sixteen for females (on condition they obtain a licence from the Chief Minister under section 21(2)).

Section 12 (1) was amended in the recent 2017 amendments. The “old” section 12(1) provides the list of persons who need to give consent in such a situation as follows:

#### **12. Requirement of consent**

(1) A person who has not completed his or her twenty-first year shall, notwithstanding that he or she shall have attained the age of majority as prescribed by the Age of Majority Act 1971, nevertheless be required, before marrying to obtain the consent in writing-

- a) of his or her father; or
- b) if the person is illegitimate or his or her father is dead, of his or her mother; or
- c) if the person is an adopted child, of his or her adopted father, or if the adopted father is dead, of his or her adopted mother; or

- d) if both his or her parents (natural or adopted) are dead, of the person standing in *loco parentis* to him or her before he or she attains that age,

but in any other case no consent shall be required.

Thus, it could be observed that if a person between the ages of eighteen and twenty wants to get married and is a legitimate child, he needs to get the consent of his father. The issue that arises herein is what happens if the father has deserted the family and is untraceable? Would he be able to get the consent of his mother instead? Perusing section 12(1)(b), the answer to this question seems to be in the negative as he would only be able to get his mother's consent if the father is dead or if he is an illegitimate child. The same principle applies to an adopted child as could be observed in section 12(1)(c). The only way to resolve this issue is to apply to court under section 12(2) to obtain the consent of the court instead. Section 12(2) applies in any of the following three situations:

- a) where the consent of any person to a proposed marriage is being withheld unreasonably; or
- b) where all the persons who could give consent under subsection (1) are dead; or
- c) where it is impracticable to obtain such consent.

If any of the circumstances mentioned above is proven, the court may give consent and such consent shall have the same effect as if it had been given by the person whose consent was required under subsection (1).

The above issue arose in the case of *Re CHS*<sup>7</sup>, where the mother of a girl, aged below twenty-one years, applied to the court to dispense with the father's consent to her marriage under section 12 as he was not available. She also asked the court if she (the mother) could be allowed to give the necessary consent to her daughter's marriage. The learned judicial commissioner Augustine Paul JCA (as he then was) perused section 12(1) and stated that the mother could

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<sup>7</sup> [1997] 3 MLJ 152.

only consent if the father of the child is dead or if the child is illegitimate. Hence, the proper procedure here was for the parties to apply to the court under section 12(2) (as mentioned aforesaid). The above case is a clear example of what happens in situations where the father is untraceable or has deserted the family. The parties would have to apply to court for the court's consent and this in turn would involve legal costs to them (the parties).

Fortunately, Parliament, bearing the above situation in mind, amended section 12(1) in the recent 2017 amendments. The new section 12(1) reads as follows:

(1) A person who has not completed his or her twenty-first year shall, notwithstanding that he or she shall have attained the age of majority as prescribed by the Age of Majority Act 1971, nevertheless be required, before marrying to obtain the consent in writing-

- a) of his or her father or mother; or
- b) if the person is illegitimate, of his or her mother; or
- c) if the person is an adopted child, of his or her adopted father or adopted mother; or
- d) if the both his or her parents (natural or adopted) are dead, of the person standing in *loco parentis* to him or her before he or she attains that age,

but in any other case no consent shall be required.

Perusing the above amendment, it could be clearly noticed that the mother (whether natural or adopted) is placed on an equal footing with the father (natural or adopted). In other words, the party to a proposed marriage who is below the age of twenty-one years has a choice to either obtain his father's consent or mother's consent. This amendment is most welcomed. The reason for this amendment is explained in the Explanatory Statement to the Law Reform (Marriage and Divorce) Bill as follows:

4. *Clause 3* seeks to amend subsection 12(1) of Act 164 to confer equal rights, in giving consent for marriage to the mother or adopted mother of a person below twenty-one years of age, similar to that given to the father.

It is reiterated here that the above amendment has laid to rest the dilemma that arises for parties to a proposed marriage who are below the age of twenty-one and are unable to trace the whereabouts of their fathers. It also saves them for the hassle of applying to the court under section 12(2) for the court's consent as well as saves them from forking out a large sum of money as legal costs.

### **Amendment to section 51**

Section 51 of the LRA provides one of the grounds to petition for divorce, i.e. conversion to Islam, as follows:

#### **51. Dissolution on the ground of conversion to Islam**

1. Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce:

Provided that no petition under this section shall be presented before the expiration of the period of three months from the date of conversion.

2. The Court upon dissolving the marriage may make provision for the wife or husband, and for the support, care and custody of the children of the marriage, if any, and may attach any conditions to the decree of the dissolution as it thinks fit.
3. Section 50 shall not apply to any petition for divorce under this section.

Perusing the above section, it could be observed that upon conversion to Islam by one of the parties to the marriage, the non-converting spouse can petition for divorce on this ground. This section came under severe criticism by scholars.<sup>8</sup> Two main criticisms were made against this provision. First is that the converting spouse is not given the right to petition for divorce under section 51(1). He or she is treated as the person at fault. The second criticism, which flows

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<sup>8</sup> Ahmad Ibrahim, "Seksyen 51 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 Perlu Dipinda" *KANUN*, no.2 (1990):32.

from the first, is that even though the marriage has irretrievably broken down, the converting party is also not able to petition for divorce under section 53 of the LRA. This is due to section 3(3) of the LRA (as discussed earlier) which provides that the LRA generally does not apply to Muslims, save in a situation where a petition for divorce is brought under section 51 by the non-converting spouse.

In the case of *Pedley v Majlis Ugama Pulau Pinang & Anor*<sup>9</sup>, the High Court referred to section 51 of the LRA and stated:<sup>10</sup>

... under the law, a non-Muslim marriage is not dissolved upon one of the parties converting to Islam. It only provides a ground for the other party who has not converted to petition for divorce.

The above case clearly illustrates that the converting party does not have any right to petition for divorce in the event the non-converting spouse does not do so. However, all the Muslim party could do is to proceed to a Syariah Court to have his or her conversion to Islam and consequently the dissolution of the marriage confirmed by the court. This could be observed in section 46(2) of the Islamic Family Law (Federal Territories) Act 1984.<sup>11</sup> Unfortunately, the decision of the Syariah Court would not affect the non-Muslim party as section 4 of Act 303 states that it only applies to the Muslims living in the Federal Territory.<sup>12</sup>

Suggestions to amend section 51 was also made by the learned judge Abdul Hamid Mohamed J in the case of *Ng Siew Pian v Abd Wahid bin Abu Hassan, Kadi Daerah Bukit Mertajam & satu lagi*.<sup>13</sup> In this case, the husband, who converted to Islam applied to the Syariah Court for a decree of dissolution of marriage on the ground that he had converted to Islam. The Syariah Court granted the said decree in the absence of the wife. The wife applied to the High Court for a declaration that the Syariah Court does not have jurisdiction to grant the said decree. The High Court held that the Syariah Court

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<sup>9</sup> [1990] 2 MLJ 307.

<sup>10</sup> *Ibid* at 307.

<sup>11</sup> Act 303.

<sup>12</sup> Ahmad Ibrahim, "The Need to Amend Section 51 of the Law Reform (Marriage and Divorce) Act 1976", *MLJ*, no.2 (1990): lvii.

<sup>13</sup> [1991] 1 CLJ 391.

does not have jurisdiction to hear the application by the husband when he requested for the dissolution of marriage as the wife was not a Muslim and the relevant Syariah Enactment requires that both parties before the court must be Muslims. The learned judge then discussed whether the High Court had the jurisdiction to do so and as such, reference was made to section 51.

His Lordship stated that section 51 only allows the non-converting spouse to petition for divorce on the ground of conversion to Islam. Hence, there is a lacuna in the law. Suggestion was made by the learned judge to amend section 51 in such a situation to allow the converting spouse to initiate a divorce proceeding in the High Court.

In addition to the lacuna in section 51(1) to allow the converting spouse to initiate a divorce proceeding, criticisms were also made by the members of the Bench pertaining to section 51(2) which provides that the Court may grant ancillary relief. The issue that arises is when does the court have power to grant such ancillary relief under section 51(2)? The dilemma that arises is whether it should only be granted in cases where there is a divorce petition filed by the non-converting spouse under section 51(1) or whether it could also be granted in a situation where when a divorce petition was filed section 53 (breakdown of marriage) both parties were non-Muslims, but one of the parties converts to Islam after the petition was filed or after the Court had granted the decree of divorce? It was argued by the learned judges in certain judicial decisions<sup>14</sup> that section 51(2) does not cover the second scenario due to section 3(3) which provides that the LRA is only applicable to Muslims in a petition for divorce on the ground of conversion to Islam under section 51(1). Hence, it leads to a dilemma as the non-converting spouse would not be able to file a petition for ancillary matters in the High Court due to section 3(3). Neither is the party able to file the petition in the Syariah Court as he or she does not fall within the jurisdiction of the Syariah Court.

In the case of *Tan Sung Mooi v Too Miew Kim*,<sup>15</sup> the Supreme Court discussed the dilemma as stated above and held that the High Court does have the jurisdiction to hear the application for ancillary relief although one of the parties had converted to Islam after the

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<sup>14</sup> See cases such as *Letchumy v Ramadason* [1984] 1 MLJ 143; *Tan Sung Mooi v Too Miew Kim* [1994] 3 MLJ 117.

<sup>15</sup> [1994] 3 MLJ 117.

dissolution of marriage. The learned judge, Mohamed Dzaiddin SCJ cited two reasons for his decision as follows:

The legislative intention of s.3 must be construed within the framework and the general purpose of the Act. With that in mind, the legislature by enacting s.3 clearly intended to specify the persons to whom the Act applies or does not apply ... s.3(3) provides that the Act shall not apply to Muslims or Muslim marriages and that only non-Muslim marriages may be solemnized or registered ... In the present reference it is common ground that both parties were non-Muslims who contracted a non-Muslim marriage. The High Court dissolved the said marriage and thereafter the petitioner filed an ancillary application under sections 76 and 77 of the Act. From the above facts, it is without doubt that the Act applies to them since they were non-Muslims. It follows that as the petitioner's application under sections 76 and 77 concerned matters affecting both parties' legal obligation as non-Muslims and incidental to the granting of the divorce, the High Court would have jurisdiction to hear and determine the ancillary proceedings despite the fact that the respondent had converted to Islam after the divorce but before the hearing of the ancillary application...<sup>16</sup>

... it would seem to us that Parliament in enacting sub-s 51(2), must have had in mind to give a protection to non-Muslim spouses and children of the marriage against a Muslim convert. Perhaps, in its desire to accord such protection of the law, it failed to foresee a situation such as in the present reference where the parties remained non-Muslims until after the marriage was dissolved, and then one party converted to Islam. Neither the language of s.3 nor s.51 is sufficiently precise in dealing with the issue of jurisdiction of the High Court in the circumstances. From the wording of s.51(2), the legislation clearly intended to provide ancillary reliefs for non-Muslim spouses and the children of the marriage as a result of one party's conversion to Islam. In our opinion, by implication from s.51(2) above, the High Court, in the present case reference, has jurisdiction to hear and determine the ancillary issues... It would result in grave injustice to non-Muslim spouses and children whose only remedy would be

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<sup>16</sup> *Ibid* at 123.

in civil courts if the High Court no longer has jurisdiction, since the Syariah Courts do not have jurisdiction over non-Muslims. In the context of the legislative intent of s.3 and the overall purpose of the Act, the respondent's legal obligations under a non-Muslim marriage cannot surely be extinguished or avoided by his conversion to Islam.<sup>17</sup>

Taking into consideration the aforesaid weaknesses in section 51, sections 51(1) and 51(2) were amended in the recent 2017 amendments. The new subsections (1) and (2) of section 51 read as follows:

- (1) Where one party to a marriage has converted to Islam-
  - a) either party may petition for divorce under this section or section 53; or
  - b) both parties may petition for a divorce under section 52.
- (2) The Court upon dissolving the marriage or at any time may make provision for the wife or husband and for the support, care and custody of the children of the marriage, if any, under Part VII and Part VIII and may attach any conditions to the decree of the dissolution as it thinks fit.

From the above, it could be observed that the lacuna that existed in section 51(1), i.e. whether a converting spouse should also be allowed to petition for divorce has been closed. This is expressly provided for in the new section 51(1)(a). However, in addition to resolving the above issue, it could also be observed that the application of section 51 extends to application for divorce under section 53 (ground of irretrievable breakdown of marriage) and section 52 (ground of mutual consent). Thus, when a person converts to Islam, he or she would be able to petition for divorce in the civil court under either section 51, 52 or 53. This amendment could be described as a milestone achievement as it puts to rest the dilemma that has been hovering around section 51(1). This is also explained in

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<sup>17</sup> *Ibid* at 124.



para 5 of the Explanatory Statement to the Law Reform (Marriage and Divorce) Bill which states:

5. *Clause 4* seeks to amend subsection 51(1) of Act 164 to enable a party to a marriage who has converted to Islam or both parties to present a petition for divorce.

The consequence of the above amendment is that there will be no more occasions where the converted spouse files a separate application to dissolve the civil marriage at the Syari'ah Court. This would in turn resolve the issue of conflict of jurisdiction, particularly in matters pertaining to dissolution of marriage involving parties of different religions.<sup>18</sup>

Next, upon perusing the new section 51(2), two observations could be made. First, the phrase "at any time" is added, which now means that the court need not order the ancillary relief requested only upon dissolving the marriage. It may order such relief at any time, thereby enabling the parties to request for the ancillary relief at any time. Secondly, the phrase "under Part VII and Part VIII" has been added. Part VII refers to the provisions on the division of matrimonial property upon divorce and judicial separation as well maintenance of spouse, whereas Part VIII refers to the provisions on the custody and maintenance of children. Hence, it is clearer now that application for (a) division of property upon divorce or judicial separation (b) custody or (c) maintenance under any of these parts may be made under section 51(2), thereby not restricting such application to only when a petition for divorce is made on the ground of conversion to Islam under section 51(1). This has indeed set aside the dilemma that existed prior to the amendment which had to be dealt with by the courts (as discussed above)

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<sup>18</sup> Najibah Mohd Zin, Hidayati Mohamed Jani, Abdul Ghafur Hamid, Nora Abdul Hak, Jurisdictional Conflict In Interfaith Child Custody Disputes: A Legal Discourse In Malaysian Courts, *Al-Shajarah, Journal of Islamic Thought and Civilization of The International Islamic University Malaysia*, Vol. 24 No. 1 (2019), pp. 1-24 at p.20.

Therefore, it is submitted that the amendments to section 51 has cleared various doubts and concerns that existed prior to the recent 2017 amendments.

### **Inclusion of a new section 51A**

A new section, i.e. section 51A, has been incorporated after section 51 in the LRA. According to the Explanatory Statement to the Law Reform (Marriage and Divorce) (Amendment) Bill, the purpose of including this provision is explained as follows:

6. *Clause 5* seeks to introduce a new section 51A of Act 164 to ensure that the next-of-kin of the person converting to Islam who subsequently dies before the non-Muslim marriage is dissolved shall be entitled to the matrimonial assets. In making the distribution, the court shall have regard to the extent of the contributions made towards acquisition of the assets, debts owing, the duration of the marriage and the needs of children.

The new section 51A reads as follows:

#### **51A Property of spouse after conversion**

- (1) Where a person who has converted to Islam dies before the non-Muslim marriage of which that person is a party has been dissolved, that person's matrimonial assets shall be distributed by the court among the interested parties in accordance with the provisions of this section upon application of any interested party.
- (2) In exercising the power conferred by subsection (1), the court shall have regard to –
  - a) the extent of the contribution made by the interested parties in money, property or works towards the acquisition of the matrimonial asset or payment of expenses for the benefit of the family;
  - b) any debts owing by the deceased and the interested party which were contracted for their benefit;

- c) the extent of the contributions to the welfare of the family by looking after the home or caring for the family;
  - d) the duration of the marriage;
  - e) the needs of the children, if any, of the marriage; and
  - f) the rights of the interested party under the Distribution Act 1958 (Act 300) if the deceased had not converted.
- (3) For the purposes of this section “interested party” or “interested parties” means the surviving spouse and surviving children of a marriage, if any, and the parents of the deceased converted spouse.

Perusing the above section, it could be observed that basically the provision is more or less similar to section 76 of the LRA which provides for the division of matrimonial assets upon a divorce or judicial separation. The inclusion of this new provision indicates that the legislature has considered the plight and interest of the surviving family members of a deceased who had converted to Islam and dies before his or her marriage is dissolved. This could be seen in section 51A (3) which provides that the phrase ““interested party” or “interested parties” in the section refers to the surviving spouse, surviving children of the marriage, if any and the parents of the deceased converted spouse. In this respect, it is submitted that section 51A includes the parents of the deceased as “interested parties”, whereas the focus of section 76 of the LRA is on the spouse. It is submitted that the purpose of including the parents in section 51A is due to the reason that they (the parents) fall within the category of beneficiaries upon the death of their child under the Distribution Act 1958, whereas the distribution of matrimonial assets under section 76 does not contemplate death.

The next difference between section 76 and section 51A is that section 76 applies when there is a divorce or a judicial separation whereas section 51A applies when the converting spouse dies before the dissolution of his or her non-Muslim marriage.

Further thereto, subsection (2) provides that in exercising its powers under this section, the court shall have regard to the factors

stated therein, i.e. the extent of contribution made by the interested party in acquisition of the matrimonial asset or payment of expenses for the family, any debts owing by the deceased and the interested party contracted for their benefit, the interested party's contribution to the welfare of the family, the duration of marriage, the needs of children of the marriage and the rights of the interested party under the Distribution Act 1958.

It is submitted that the factors stated above are more or less similar to the factors stated in section 76 of the LRA, save for two factors, i.e. the duration of the marriage and the rights of the interested party under the Distribution Act 1958. At this juncture, it is to be noted that the right under the Distribution Act 1958 would refer to the entitlement to the deceased's property as laid down by section 6 of the Distribution Act 1958. Section 6 divides the beneficiaries into three categories, i.e. the surviving spouse, issues or children and the parents of the deceased. This tallies with the meaning of "interested parties" in section 51A (3) as these three categories are also mentioned therein.

In addition, it is submitted that section 51A has also resolved the issue as to the distribution of the converted deceased's estate. This is especially in a situation where the deceased has died intestate. The Distribution Act 1958, which generally applies in the distribution of a deceased's estate where he or she has died intestate, would not generally apply where the deceased was a Muslim. This is provided in section 2 of the Distribution Act 1958 which provides as follows:

## **2. Application**

Nothing in this Act shall apply to the estate of any person professing the Muslim religion or shall affect any rules of Muslim law as varied by local custom in respect of the distribution of the estate of any such person nor shall this Act apply to any estate, the distribution of which is governed by the Parsee Intestate Succession Ordinance of the Straits Settlements [S.S. Cap. 54].

Hence, after the recent 2017 amendments come into force, the surviving members of a deceased who had converted to Islam would not need to worry about being entitled to his or her estate. However, it is submitted that the inclusion of section 51A in the LRA *per se* is

not sufficient. The Legislature needs to amend section 2 of the Distribution Act 1958 as well, as it is a specific Act on the distribution of the estate of a deceased who dies intestate.

Therefore, it is submitted that the inclusion of the new section 51A would lay to rest any dilemmas as to the matrimonial asset of a converting spouse if he dies before dissolving his non-Muslim marriage. It (section 51A) could be described as protecting the rights of the non-converting spouse, children of the marriage as well as the parents of the deceased converting spouse.

### **Amendment to section 76**

Section 76 of the LRA, as mentioned briefly above, provides for the power of the court to order the division of matrimonial assets upon granting a decree of divorce or judicial separation. Prior to the recent 2017 amendments, section 76 read as follows:

- (a) If the matrimonial asset is acquired by the joint efforts of the parties, section 76(1) shall be read with section 76(2), which provide as follows:
  - (1) The Court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
  - (2) In exercising the power conferred by subsection (1) the court shall have regard to –
    - (a) the extent of contribution made by each party in money, property or work towards the acquisition of the assets;
    - (b) any debts owing by either party which were contacted for their joint benefit.
    - (c) the needs of the minor children, if any, of the marriage,and subject to those considerations, the court shall incline towards equality of division.

OR

(b) if the matrimonial asset is acquired by the sole effort of one of the parties to the marriage, section 76(3) should be read together with section 76(4), which provide as follows:

- (3) The Court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of the sale.
- (4) In exercising the power conferred by subsection (3) the court shall have regard to-
  - (a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;
  - (b) the needs of the minor children, if any, of the marriage;and subject to those considerations, the court may divide the assets or the proceeds of the sale in such proportions as the court thinks reasonable; but in any such case the party by whose effort the assets were acquired shall receive a greater proportion.

Therefore, before the Court decides on the division of the matrimonial assets it would first have to examine whether such asset was acquired by the joint efforts of the parties to the marriage or through the sole effort of one party. Having done so in arriving at a decision, the court would be guided by different factors as stated above in subsection (2) (for joint efforts) or subsection (4) (for sole effort). Both the said subsections also state that the ultimate amount that the court awards to the parties depend on their contribution to the purchase of the property, i.e. towards an equal share where the property was acquired jointly (section 76(2)) and awarding a greater share to the party who solely acquired the property (section 76(4)).

The recent 2017 amendments also witnessed an amendment to section 76 which could be described as doing away with the distinction as explained above. Sections 76(1) and (2) have been amended whereas sections 76(3) and (4) have been deleted. The amended sections 76(1) and (2) read as follows:

**76 Power for court to order division of matrimonial assets**

- (1) The court shall have power when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.
- (2) In exercising the power conferred by subsection (1) the court shall have regard to-
  - (a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets or payment of expenses for the benefit of the family;
  - (aa) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;
  - (b) any debts owing by either party which were contracted for their joint benefit;
  - (c) the needs of the minor children, if any, of the marriage;
  - (d) the duration of the marriage,
  - (e) and subject to those considerations, the court shall incline towards the equality of division.

The following observations could be made from the above amendment. First, the section has done away with having different provisions to distinguish assets that were jointly acquired and assets that were acquired through the sole effort of one of the parties to the marriage by deleting subsections (3) and (4) and merging it with sections 76(1) and (2). So therefore, section 76(1) refers to both jointly and solely acquired matrimonial assets. The factors that the

court had to take into account under the former subsection (4) is now included in the new subsection (2) as a new para (aa). Secondly, there are two new considerations that the court shall look at before ordering the division of the matrimonial assets, i.e. each party's "payment of expenses for the benefit of the family" (in subsection 2(a)) and "the duration of the marriage" (in subsection 2(d)). It could be noted that these two new considerations are also stated in the new section 51A (as discussed earlier in this article). Thirdly, it could be observed that whether the said property was acquired jointly or through the sole efforts of one of the parties to the marriage, the court shall incline towards the equality of division. This third observation could be described as an amendment which may attract a mixed reaction from the parties. We would have to wait for judicial decisions on this new amendment in order to see the judicial reaction to this amendment.

### **Amendment to section 95**

It is submitted that the amendment to section 95 of the LRA is long overdue. It could be described as a provision which had dampened the spirit of many non-Muslim adult children<sup>19</sup> in Malaysia, especially those who intend to pursue their tertiary education, as the section clearly states that the duty to maintain of the parents cease when the child reaches the age of eighteen. However, there is an exception mentioned therein, i.e. if the child is physically or mentally challenged the duty of the parents to maintain continues until the disability ceases.

There has been a mixed reaction among judges in dealing with the interpretation of the phrase "under physical or mental disabilities". For example, in the case of *Ching Seng Woah v Lim Shook Lin*<sup>20</sup> the Court of Appeal held that a person who intends to pursue his or her tertiary education could be described as being involuntarily financially dependent. Hence, such involuntary financial dependence of a child of the marriage for the purpose of pursuing and/or completing tertiary and/or vocational education came within the exception of physical or mental disability under section 95 of the LRA. This decision expanded the meaning of "physical or mental

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<sup>19</sup> Adult children here refer to those who are between the ages of eighteen and twenty-four.

<sup>20</sup> [1997]1MLJ 209.



disability to include involuntary financial dependence, thereby allowing children who have reached the age of eighteen or above to continue receiving maintenance from their parents for the purposes of continuing their tertiary and/or vocational education. This decision was upheld and followed by the High Court<sup>21</sup> and the Court of Appeal<sup>22</sup> in the case of *Punithambigai a/p Ponniah v Karunairajah a/l Rasiah*. However, when the case went on appeal to the Federal Court<sup>23</sup> the Federal Court refused to follow the High Court's and Court of Appeal's decisions which gave a very broad meaning to the phrase "physical and mental disability". The Federal Court, *inter alia*, held that the term "disability" in section 95 clearly refers to "physical and mental disability". Thus, it does not cover involuntary financial dependence.

The Federal Court's decision shattered the hopes of many non-Muslim adult children in Malaysia. This decision, as well as section 95 of the LRA was criticized by academics.<sup>24</sup> The recent 2017 amendments witnessed the amendment to section 95. The Explanatory Statement to the Law Reform (Marriage and Divorce) (Amendment) Bill states as follows:

9. *Clause 8* seeks to amend section 95 of Act 164 to extend the duration of the order of maintenance where a child is pursuing further or higher education or training.

The amendment to section 95 thus reads as follows:

95 – Except where an order for custody or maintenance of a child is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the child of the age of eighteen years or where the child is under physical or mental disability or is pursuing further or higher education or training, on the

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<sup>21</sup> [2000] 5 CLJ 21.

<sup>22</sup> [2003] 2 MLJ 529.

<sup>23</sup> [2004] 2 MLJ 401.

<sup>24</sup> Mimi Kamariah Majid, *Family Law in Malaysia* (Kuala Lumpur, Malaysia: Malayan Law Journal, 1999), Sridevi Thambapillay, "The Federal Court Ruling in *Karunairajah a/l Rasiah v Punithambigai a/p Ponniah*: The Need to Amend Section 95 of the Law Reform (Marriage and Divorce) Act 1975?" *JMCL*, no.32 (2005): 109.

ceasing of such disability or completion of such further or higher education or training, which is later.

Hence, the above amendment could be described as infusing new life into the LRA by creating a hope for all non-Muslim adult children who intend to pursue their tertiary education or training, especially those from broken homes, where the parents may not want to continue to support them financially. Nevertheless, a recent High Court decision in the case of *SSS v JTSV*<sup>25</sup> held that the amendment to section 95 of the LRA does not have retrospective effect to vary a *decree nisi* entered by parties if the said decree was granted before the amendment came into force and the child attained 18 years also before the said amendment came into force. It is submitted that as this is merely a judgment of the High Court, it would be interesting to note that views of the superior courts such as the Court of Appeal and the Federal Court, in case the parties decide to appeal.

## ISSUES YET TO BE ADDRESSED

Although the recent 2017 amendments to the LRA are commendable as it is a step forward in the development of the Malaysian non-Muslim Family Law in Malaysia, there are still issues that need to be addressed by the legislature. The writer would next briefly address these issues.

### Unilateral Conversion of Child to Islam

It is disheartening to note that the Law Reform (Marriage and Divorce) (Amendment) Bill initially contained a new provision, i.e. section 88A which provides for the religion of the child of the marriage where one of the parties to the marriage had converted to Islam. In other words, it addresses the issue as to whether the converting parent has a right to unilaterally convert the child to Islam. This has been a hotly debated issue in Malaysia, especially in the past

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<sup>25</sup> [2020] 10 CLJ 107.

decade with many such cases being filed in both the Syariah Court and the civil court.<sup>26</sup>

The dilemma that arises is whether both parents have to consent to the conversion of the child of the marriage to Islam or is it sufficient for one parent to decide the religion of the child. This dilemma is the result of the interpretation of the word “parent” in Article 12(4) of the Federal Constitution which provides that “...the religion of a person below the age of eighteen years shall be decided by his parent or guardian.”

The proposed section 88A lays to rest the above dilemma by providing as follows:

**Religion of child**

**88A** (1) Where a party to a marriage has converted to Islam, the religion of any child of the marriage shall remain as the religion of the parties to the marriage prior to the conversion, except where both parties to the marriage agree to a conversion of the child to Islam, subject always to the wishes of the child where he or she has attained the age of eighteen years.

(2) Where the parties to the marriage professed different religions prior to the conversion of one spouse to Islam, a child of the marriage shall be at liberty to remain in the religion of either one of the prior religions of the parties before the conversion to Islam.

The above provision is most welcomed as it clearly states that both parties to the marriage have to consent to the conversion of the child. Unfortunately, at the last minute, just before the Law Reform (Marriage and Divorce) (Amendment) Bill was passed, this provision was dropped on the ground that it went against Article 12(4) which states that the religion of a person below the age of eighteen years shall be decided by a parent or guardian. The decision to drop the

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<sup>26</sup> See *Subashini a/p Rajasingam v Saravanan a/l Thangatoray & other appeals* [2008] 2 MLJ 147, *Shamala a/p Sathiyaseelan v Dr Jeyaganesh a/l C.Mogarajah* [2004] 2 MLJ 241, *Viran a/l Nagappan v Deepa a/p Subramaniam and other appeals* [2016] 1 MLJ 585.

proposed section 88A by the Government received criticisms from many parties as was published in the media.<sup>27</sup>

Nevertheless, the recent Federal Court decision in the case of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals*<sup>28</sup> has finally cleared the air on the above issue. The Federal Court referred to the meaning of “parent” in Article 12(4) of the Federal Constitution as well as made reference to sections 5<sup>29</sup> and 11<sup>30</sup> of the Guardianship of Infants Act 1961<sup>31</sup> and held as follows:<sup>32</sup>

... where the child’s religion or religious upbringing is in issue, the paramount consideration for the court is to safeguard the welfare of the child having regard to all the circumstances of the case. In so doing, the court does not pass judgment on the tenets of either parent’s belief. Conversion to another religion is a momentous decision affecting the life of a child, imposing on him a new and different set of personal laws. Where a decision of such significance as the conversion of the child is made, it is undoubtedly in the best interests of the child that the consent of both parents must be sought. The contrary approach of allowing the child to be converted on the consent of only one parent would give rise to practical conundrums...

...Since a literal construction of Article 12(4) would give rise to consequences which the legislative could not

<sup>27</sup> “Group disappointed with removal of Clause,” *The Star*, 8 August 2017, “Lawmakers hoping new amendments will be fair to all parties”, *The Star*, 8 August 2017.

<sup>28</sup> [2018] MLJU 69.

<sup>29</sup> Section 5(1) provides as follows: “(1) 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 law allows to a father, and the rights and authority of mother and father shall be equal”.

<sup>30</sup> Section 11 provides as follows: “The Court or a Judge, in exercising the powers conferred by this Act, shall have regard primarily to the welfare of the infant and shall, where the infant has a parent or parents, consider the wishes of such parent or both of them, as the case may be”.

<sup>31</sup> Act 351.

<sup>32</sup> *Supra* n 27 at paras 157-158.

possibly have intended, the Article should not be construed literally...A purposive reading of Article 12(4) that promotes the welfare of the child and is consistent with good sense would require the consent of both parties (if both are still living) for the conversion of a minor child.

It is respectfully submitted that although the apex court has laid to rest the issue of unilateral conversion of a child to Islam, it would be better if the relevant law contains a provision to that effect as well. This is because there is always a risk that there may be another Federal Court in the future which may overrule the above decision. Unfortunately, the current Prime Minister, Tan Sri Muhyiddin Yassin, in a Parliamentary session in April 2019, stated there are no plans to reintroduce section 88A to amend the LRA due to the fact that there were several Federal Court decisions in the previous year which had decided against unilateral conversion of minors.<sup>33</sup>

### **Meaning of “minor” in section 2**

It is submitted that the meaning of “minor” in section 2 be amended to include a divorcee. This is because at present, minor refers to a person below the age of twenty-one years who is not a widow or widower. The writer’s suggestion to include a divorcee herein is in relation to section 12(5) of the LRA which states that if a minor has been previously married, he or she does not need to get the consent of the parties listed in section 12(1) (as discussed earlier in this article).

Therefore, this would mean that only a person who is below the age of twenty-one and is either a widow or widower need not obtain the consent. It does not refer to a divorcee, although both a widow or widower and a divorcee fall under the category of being previously married.

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<sup>33</sup> “Muhyiddin: No need to amend marriage law to deal with unilateral conversion of minors”, *The Star*, 4 April 2019.

### **Extending the time to grant an order for division of matrimonial assets under section 76**

Section 76 currently provides that the court may, when granting a decree of divorce or judicial separation order the division of matrimonial assets between the parties to a marriage. The issue that arises is whether the application for division of matrimonial assets should be made at the same time as a divorce or judicial separation and not at a later stage.

In the case of *Manokaran a/l Subramaniam v Ranjit Kaur a/p Nata Singh*<sup>34</sup> the Court of Appeal held that a strict construction should be given to the words “when granting” in section 76. As such an order for division of matrimonial assets is limited to the time when granting a decree of divorce or judicial separation and is not at a later stage. The learned judge also stated that Singapore has a similar provision in the Women’s Charter and had to amend the said Charter to enable the division of matrimonial assets to be made at any time subsequent to the granting of judgment of divorce.

Therefore, it is submitted that a similar step as was done in Singapore should be taken to amend the words “when granting” to “when or after granting” in section 76 in order to be fair to the parties applying.

### **RECOMMENDATIONS AND CONCLUSION**

Having analysed the amendments and the issues that are yet to be addressed, the writer submits that the recent 2017 amendments to the LRA could be described as a step forward in the development of Family Law in Malaysia. As was mentioned earlier, there were not many amendments to the LRA since the time it came into force in 1982. In fact, the last amendment was about thirty years ago in 1986. As such, the recent 2017 amendments have addressed some of the major issues that have been hovering above for the past thirty years. Nevertheless, despite these amendments, there are still certain issues that are yet to be addressed by the legislature.

One major issue that still needs to be sorted out is the unilateral conversion of children to Islam. This matter could have

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<sup>34</sup> [2009] 1 MLJ 21.

been resolved if the proposed section 88A was included in the recent 2017 amendments. Instead, it was dropped at the last minute. It is fervently hoped that the Government decides to include it in the LRA in the near future.

The other issues, as discussed earlier, are concerning the amendment to the meaning of minors in section 2 which needs to include divorcees, and the amendment to section 76 to enable the court to grant an order for the division of matrimonial assets even after the granting of a decree of divorce or judicial separation (as was done in the Singapore Women's Charter).

In conclusion, it is reiterated that the recent 2017 amendments could indeed be described as a milestone achievement in the development of Family Law in Malaysia. Many of the issues that have been of grave concern for the past three decades have been laid to rest by this amendment. Nevertheless, as has been stated above, the legislature's work is not complete yet as it still needs to address other issues which could be described as the missing pieces in a jigsaw puzzle.

Once these gaps have been closed, we could truly be described as a nation which has a developed system of Family Law, which has its society's interest at heart.