

3. Where there is ambiguity or doubt, the law should be interpreted according to the following:

- » the intent of its makers in the light of the history of their times and the conditions and circumstances of its enactment;
- » tempered with the court's full understanding of the goal to be accomplished by the law, judges should be aware of the law's language and purposes as well as their own interpretations. Judges should be fully aware of the consequences of their interpretations. The judiciary has the duty to read the authoritative text, for example of the Constitution, in a manner that remains true to its text while at the same time giving full effect to all the values and principles enshrined in it;
- » it is not helpful to consider a case as though the positions of the litigants are only about the essential conflicts between secular rights v. religious beliefs or the rights of women v. the right to free exercise of one's belief. Instead, the judiciary must adopt a way of considering a case that is less dogmatic and open to interpretations to liberate. Judges must be careful that their constructions do not contribute to the reification of a patriarchal culture;
- » Members of the judiciary have a role to play in ensuring that cultural structures that are more affirming of human dignity evolve. But the public's role in shaping the cases that define the laws are also as critical as many of our courts are passive institutions.

Reconciling the Competing Jurisdictions of Civil Courts and Syariah Courts

In a country of such diverse ethnicities such as Malaysia, the issue of culture or religion clashing with claims of women's human rights has become one of the controversies brought before the courts for resolution. In the case of *Indira Gandhi v. Mohd Riduan Abdullah et. al* (Judicial Review No. 25-10-2009), the father, Mohd Riduan Abdullah, converted his three minor children of a civil marriage to Islam without their mother's consent. When informed that the Syariah High Court had deprived her of the custody of her three children Indira, a non-Muslim, filed to challenge the constitutionality and validity of her children's conversion to Islam without her consent.

The petitioner and defendant in this case belong to two different religions; the petitioner is a non-Muslim and the defendant is a Muslim convert. Therefore, the court had to resolve which court – whether the Syariah High Court or the Civil Superior Court – should have jurisdiction over the case. In upholding the Civil Court's jurisdiction, the Judicial Commissioner explained that the applicant was challenging the constitutionality of the respondents' acts in converting her children to Islam without her consent. She was asserting her rights under the Federal Constitution as well as under the Guardianship of Infants Act 1961.

Because dual legal systems are in force in Malaysia, there are many cases of competing jurisdictions between Civil Courts and Syariah Courts. A single case might even involve several issues that neither court could have full jurisdiction over. To resolve this, the court directed that if in a case before the Syariah Court a civil law issue arises, the party raising the issue should file a case in the Civil Court solely for the determination of that issue and the Civil Court's decision should be applied by the Syariah Court in the determination of the case, or vice versa.