

ACT IN THE BEST INTERESTS OF THE CHILDREN

Numerous issues have been raised following Izwan Abdullah's alleged abduction of his 6 year old son. Yet in the midst of all the discussions and arguments on the Constitution, conversion and custody, it is important that we do not lose sight of the most important issue at hand – that the safety and wellbeing of two innocent children hang precariously in the balance.

S. Deepa, the mother of the children, has spoken of how this is not the first time Izwan has abducted their son. She claims he abandoned the family back in 2012, but returned to make off with both children in April last year in order to convert them to Islam. In August, he then attempted to remove her son again from the salon where she worked. When Deepa tried to stop him, he assaulted her with such severity that the Court granted her an Interim Protection Order (IPO).

The UN Convention on the Rights of the Child, of which Malaysia is a signatory, makes it an obligation to protect the interests of children, which Malaysia then enacted in the Child Act 2001. The Act lists crimes that children are to be protected from, and prohibits criminal acts such as abandoning children or exposing a child to actions likely to cause emotional injury. Considering the background of this case, Izwan's alleged actions, particularly in assaulting Deepa in front of their son and subsequently forcibly abducting the child, are clear breaches of the protection granted to children.

Urgent action is required when handling child offences to ensure that children are protected from harm as much as possible. To this end, Section 110 of the Child Act empowers the police to arrest a person without a warrant if he is reasonably suspected of committing an offence against a child, including any likely reasonable suspicion of a father causing emotional injury to his own child. It is thus inexplicable that both the Inspector-General of Police (IGP) and the Home Minister have steadfastly refused to initiate any police action against Izwan for abducting his son. The IGP's astonishing "a father doesn't kidnap his child" statement appears to be wilfully ignorant of the law, particularly when the Child Act does not distinguish between perpetrators who are family members or strangers. The IGP's statement that it is caught between civil and Syariah jurisdictions is both incorrect and an excuse for inaction as once the matter becomes a criminal one, the police have a duty to act.

There is also the issue of the custody orders issued by both the High Court and Syariah court. In 2013, the Cabinet had declared that it is illegal for a single parent to convert their children without the consent of their spouse. However, Izwan still chose to illegally convert his children without Deepa's knowledge, which has led to a myriad of problems. The law must be clear in our dual legal system that any parent who wishes to convert out of the religion of the marriage should first be required to resolve the existing marriage in court before conversion. This will remove any issues of which court has proper jurisdiction in dealing with marital and custody issues.

This incident has shone a spotlight upon deep-rooted problems and issues within our national institutions. The Federal Constitution places child protection under both state and federal jurisdiction, emphasizing the importance of ensuring the child's right to be free from harm. The decision to form a Cabinet committee to look into the conversion and custody issues is welcome. However, government institutions, particularly the welfare department and the police, must act urgently to ensure that the children are placed in the hands of the parent who can best ensure their well-being. The longer we wait to resolve this matter, the greater the emotional trauma these children will suffer.

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