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Syariah Court facilitates reconciliation between couples during period of iddah (waiting period)

Syariah Court has facilitated the process for couples where talak (divorce) has been pronounced out of court, but they wish to reconcile during the period of iddah to salvage their marriage.

This includes expediting the process for registration for divorce so that these couples can commence the reconciliation process earlier during the period of iddah.

This is done through the Intention to Reconcile (“ITR”) process which differentiates couples whose iddah period has not expired from those whose iddah period has expired.

This differentiated process allows the couple to register their divorce earlier than from the usual divorce process track.

The ITR process completes a structure of safeguards that have been incorporated into the court’s divorce process to ensure that divorce is an option of last resort for couples to resolve their marital conflict, and that the welfare of children will continue to be protected in the eventuality of a divorce, said Senior President Syariah Court, Ms Guy Ghazali.

In her recent interview with Berita Minggu (BM), she said:

“The ITR process is provided for one category of divorces where the husband has pronounced talak out of court but there has not been an application for divorce filed in court, and the husband and wife wish to reconcile before the expiry of the iddah period.”

“However, not all out-of-court divorces end up in reconciliation. In fact, these form the minority of cases,” she added.

Implemented since November 2022, the differentiated ITR process allows couples to be exempted from attending the Marriage Counselling Programme (MCP), which is mandated for couples who are contemplating divorce before commencing divorce proceedings in court.

This (the exemption from MCP) allows couples to complete the reconciliation process within 2 to 3 weeks, depending on the case.

For couples who wish to reconcile but the iddah period has expired, they are still required to undergo MCP.

Implemented in 2004, the objective of MCP is to save marriages.

However, if the couples wish to proceed with a divorce, MCP provides the platform for these couples to discuss parenting plans for their children.

According to the Syariah Court, more than 27,000 referrals were made during the first 10 years from the time MCP was implemented.

44% of couples in the programme decided not to proceed with divorce.

The Syariah Court, which will be celebrating its 65th anniversary this November, has enhanced several of its processes in recent years.

Apart from the differentiated ITR process, it has also introduced an enhanced interview process for children whose custody is in dispute between parents who are undergoing the divorce process.

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Pronounce talak in court is encouraged to avoid doubt

A husband, who has pronounced talak out of court, but then regrets it and decides to remain married to his wife, is racing against time to reconcile (with his wife) before the end of the iddah period.

To facilitate such reconciliation, the Syariah Court has provided a differentiated process which allows these couples to register their divorce earlier than the ordinary divorce process.

The differentiated Intention to Reconcile process (“ITR”) has been implemented since November 2022 following a review of the previous process, said Senior President Syariah Court, Ms Guy Ghazali.

Differentiated process

Couples who wish to reconcile will have to attend at the Syariah Court to state their intention.

They will be given an ITR form to complete. The form, among other things, requires the couple to provide information such as the words used to pronounce the talak and the date and time the talak was pronounced.

Based on the information given, if there is a talak on the face of it, and the iddah period has not expired, the couple will be routed to a differentiated process so that the case can be resolved expeditiously.

The differentiated process allows the couple to be exempted from attending the Marriage Counselling Programme (MCP), which is a pre-requisite for couples to commence divorce proceedings in court.

[Pursuant to the differentiated process,] The couple can proceed to file the Originating Summons and submit the required supporting documents to commence the court process.

Eventually, the President of the Syariah Court will determine the validity of the talak.

If the court determines that the talak is valid and registers the divorce, the couple will have to attend at the Registry of Muslim Marriages (ROMM) to revoke the divorce if they are still within the iddah period.

If the period of iddah has expired at the time the divorce is registered, notwithstanding that the period of iddah has not expired at the time the couple commenced the ITR process, the couple will have to remarry at ROMM.

If the couples indicate to the Syariah Court of their intention to reconcile in situations where the iddah period has expired, or where the husband has pronounced a third or three talak, this differentiated process cannot be utilised.

According to Ustaz Muhd Fazalee Jaafar, President Syariah Court, this differentiated process allows the couple to reconcile within 2 to 3 weeks, depending on the case.

The time taken to complete the process also depends on whether all required documents have been submitted, and whether the information provided is adequate.

Hence, even if the ITR form is submitted by the couple before the expiry of the iddah period, there can be occasions where the divorce is registered after the iddah period has expired, requiring the couple to remarry, despite having undergone the differentiated process.

Enhanced process

According to Ms Guy, the revised ITR process provides more certainty, clarity and consistency in the administration of reconciliation cases in accordance with the legislation.

There is clarity on the information that is required by the court and it ensures that all relevant facts are provided at the outset. This helps to save time because the court does not need to seek clarification or further information from the couple at the hearing.

The process also ensures that there is no ambiguity about what was conveyed to the court because all information that is given to the court is documented and filed formally.

Under the current ITR process, only the Syariah Court President is able to make the assessment on whether there is a talak pronouncement on the face of it, whether the iddah period has expired based on the parties' provision of information, and whether the case has to be referred to MCP or not.

Additionally, under the current ITR process, only the Syariah Court President can make a determination on the out-of-court talak and whether it is valid or not.

"This ensures certainty and consistency because the President of the Syariah Court has the expertise and is conferred with the legal power to make such determination," said Ustaz Fazalee.

Previous process

Ustaz Muhd Fazalee, who has been serving in the Syariah Court for 7 years, shared that before the ITR process was first implemented in 2019, a husband who had pronounced talak out of court would attend at the Syariah Court to enquire about religious laws and the status of the marriage.

"Previously, sometime in early 2000, we had a process called the talak declaration process. When talak was pronounced out of court, the couple would attend at the Syariah Court and they would explain their situation to a court officer. They would be given counselling by an MCP counsellor who at that time was a court staff and they would be given indication on whether the talak was valid or not. However, there were no court proceedings yet. These couples did not realise that there was a formal court process that they would have to comply with. They could not just come to court to seek answers," he said.

Ms Guy added: "The problem then was after obtaining indication on whether the talak was valid or not, the couple did not proceed to file an application to register their divorce even when it was communicated that there was a valid talak.

She emphasised that under the Administration of Muslim Law Act, divorce and revocation of divorce must be registered.

Where divorce has been pronounced by the husband out of court, the couple must attend at the court within 7 days beginning on the date the divorce was pronounced, or such extended time as the court thinks fit, and furnish such particulars so that the divorce can be registered.

For couples who wish to reconcile, they will have to attend at ROMM within the iddah period after the divorce has been registered to apply for registration of revocation of divorce.

Court's position

According to Ms Guy, the Syariah Court adopts the position that it is better for couples who wish to be divorced to file a divorce application and pronounce talak in court.

“When the husbands pronounced talak out of court, they sometimes do not remember what they uttered, when they made the utterance, and how many utterances of talak they made. Sometimes, they would pronounce three talak in one sitting and regret their action thereafter. Sometimes, the husbands themselves would try to convince the court that their pronouncement of talak should not be considered valid as they had said it in anger. We have encountered all these issues when the couples come to court after talak has been pronounced out of court. Due to this, our position is, as far as possible, and to avoid doubt, that it is encouraged for talak to be pronounced in court,” said Ms Guy.

She added: “We are not saying that husbands cannot pronounce talak out of court but if they wish to do so, they must ensure that it is done properly, in front of the wife and witnesses, and they must also remember what was pronounced and when. Complications arise when they pronounced it in anger, and sometimes repeatedly and they do not remember all of that.”

“We would also advise couples who are undergoing marital difficulty to seek professional help to assist them in resolving their issues and explore all possibilities. If divorce is the solution, they should divorce in kindness and in a manner that protects children,” she added.

Counselling programme helps couples better understand impact of divorce, resolve conflict before commencement of case

For couples who wish to be divorced but are waiting for talak to be pronounced in the Syariah Court, they will be referred to the Marriage Counselling Programme (MCP) to discuss their marital issues and explore the possibility of salvaging their marriage.

Conversely, couples who wish to apply for divorce, where there is an out-of-court pronouncement of talak, are mandated to attend MCP to discuss parenting plans for their children.

Therefore, MCP's success in achieving its objective as a “pause button” for couples who are contemplating divorce depends on whether there has been an out-of-court pronouncement of talak.

“We would advise couples who would wish to be divorced to attend in court before pronouncing talak, because the court structure provides various safeguards within the divorce process, to ensure that the parties involved are certain of their decision, whether it is to be divorced or to save their marriage”, said Senior President Syariah Court, Ms Guy Ghazali.

“That structure starts with the MCP process. MCP takes place before any document is filed in court and before court proceedings are instituted. The objective of MCP is to facilitate reconciliation. If the parties wish to proceed with a divorce, the MCP discussions will evolve to a discussion on housing and children arrangements, so that they are aware of the consequences of a divorce” she added.

MCP started in 2004. In the first 10 years since its implementation, there were more than 27,000 referrals and 44% of these cases did not proceed with a divorce.

For couples who wish to proceed with the divorce, they will have to file an Originating Summons.

They will then attend the court mediation process which provides them with the opportunity to resolve the divorce and ancillary issues, such as children issues, amicably.

If there is an agreement on all issues, the court case will end there, and the court will issue an order based on the agreement of the parties.

“In such event, the parties do not have to file affidavits against each other, which only serves to heighten conflict between them,” said Ms Guy.

If the case proceeds to hearing and the issue of divorce is contested, the court can order, or both parties can agree to, the appointment of hakam from the Syariah Court’s Panel of Hakam (Marital Conciliators).

The hakam will endeavour to effect reconciliation where possible, or to facilitate an amicable divorce if reconciliation is not possible.

“This is so that even if divorce is the solution to resolve the marital conflict between the parties, the family relationship continues to be preserved, which will minimise the impact of divorce on children,” said Ms Guy.

The Syariah Court’s Panel of Hakam (Marital Conciliators) consists of asatizah accredited under Muis’ Asatizah Recognition Scheme with a background in Muslim law or experience in helping Muslim families.

The hakam also receive training under the H.I.K.M.A.H (Hakam’s Ideals: Knowledge, Methodology, Application, Heart) training and assessment framework, which was introduced by the Syariah Court and launched in March.

The said framework seeks to equip the hakam with knowledge and skills in aspects such as legal and social science to enhance their abilities to facilitate reconciliation and amicable divorces between parties.

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Syariah Court enhances child interview process in custody disputes

The enhanced child interview process for children whose custody is in dispute between parents who are undergoing the divorce process, has been implemented by the Syariah Court since September 2022 to ensure that the rights and welfare of children are protected.

Named the “Joint Child Interview”, the process seeks to better understand the challenges faced by children and their concerns and priorities in a holistic manner through an interview that is jointly conducted by the Syariah Court President and the Principal Court Counsellor.

The process however is not intended to place the children in a situation where they will have to choose and decide whether to live with their mother or father, said Senior President Syariah Court, Ms Guy Ghazali.

“We cannot place the children in a situation where they will have to choose between their parents.

As such, it is imperative that we have a court counsellor with social science training to conduct the interview jointly with the court president, as court counsellors have the expertise to ask appropriate questions to children, ascertain the relationship between the children and their parents, their daily activities and others.

As for court presidents, we will assess various factors before arriving at a determination on custody and the living arrangements of the child, based on our observations during the interview. In the circumstances, we will have to understand the child's condition, situation, emotion, and relationship with parents as a whole," she said.

Between September 2022 and July 2023, 70 children have undergone the Joint Child Interview.

The Syariah Court appointed its first court counsellor, Ms Nur Izzah Amir, who has two decades of experience as a court counsellor with the Family Justice Courts, on 1 July 2022.

Ms Nur Izzah is also the Principal Court Counsellor of the Syariah Court.

Since taking on this role, she has led efforts to establish a court counselling framework in the divorce process since September 2022, which seeks to enhance child centricity in the court process.

As part of the framework, interviews with children aged 7 years and above, which were formerly conducted by the court president alone, are now conducted jointly with the Principal Court Counsellor.

Sharing further details, Cik Izzah said that not all contested child cases go through the Joint Child Interview process and there are strict criteria to ensure that a child is suitable to undergo the process.

For example, the court must assess the suitability of the age and whether the child is of special needs.

"The child who has to undergo the interview process will have to attend court and we do not wish for a child with special needs, for example, to have to attend court because it is not the best and most comfortable environment for the child," she said.

Providing an illustration of a child whose custody is in dispute, Ms Nur Izzah shared about a teenager who has stated her wish not to live with her father as she wants freedom and does not wish to be burdened with the responsibility of taking care of her younger siblings.

This is known as parentification where a child is expected to provide emotional or practical support for the child's mother, father or siblings, when the child himself or herself requires such support.

"So, in this case, the relationship between the teenager and her father appears healthy. However, the child is found to not want to live with her father because she is afraid that she will have to take care of her siblings and she will not have the freedom to engage in other hobbies and go out with friends.

For this case, we conducted the Joint Child Interview session to better understand the child's situation," says Ms Nur Izzah.

The interview process is just one of the many tools to protect the welfare of children in court, added Ms Nur Izzah.

The Syariah Court can avail itself of various judicial tools and refer cases to intervention programmes to ensure that the post-divorce arrangements are in the best interest of the children.

These include Custody Evaluation Report, supervised visitation and exchange, counselling and Children-in-Between programme.

The Custody Evaluation Report, for example, is a full evaluative report by a psychologist to assess the parents' post-divorce parenting capacities.

According to figures from the Department of Statistics (DOS), there were 1,505 Muslim divorces registered in 2022. 823 of these divorces involved at least one child under the age of 21 years.

However, Ms Guy explains that this data only shows the number of children under the age of 21 years at the time the divorce was registered, after the conclusion of the divorce process.

It does not include the number of children who have attained the age of 21 years but who have been impacted by parental conflict during their minority years.

This figure also does not include children from blended families, a reference to newly formed families where one or both spouses have children from previous marriage.

Ms Guy said that the impact of divorce does not only involve affected individuals but also has a bearing on Singapore's future social compact.

"Because of this, it is important for us to ensure that the welfare of children continues to be preserved even if the parents have to separate," she said.

Court counsellor helps ensure welfare, rights of children in divorce cases are protected

Ensuring that the rights of children are heard and protected, and that living arrangements are in the children's best of interests.

That is the mission of Ms Nur Izzah Amir as Syariah Court's first Principal Court Counsellor so that children whose parents are undergoing divorce are given the opportunity to be heard and their welfare are well protected.

Equipped with two decades of experience dealing with disputes relating to divorce and custody matters, family violence, youth offences and child abuse in the Family Justice Courts, Ms Nur Izzah is now with the Syariah Court to work on enhancing child-centricity in the divorce process involving parents.

She took on the role as Principal Court Counsellor on 1 July 2022.

Driven by Ms Nur Izzah, the Syariah Court has established a court counselling framework since September 2022 to ensure that welfare of children is protected.

"If the couple has decided to divorce, our role is to be ensure that the court process preserves the relationship between the parents and the children and that the process does not exacerbate the children's situation.

We do our best. Research shows that divorce has many negative effects on children. As such, how do we reduce the impact? This is how the court counselling framework can help," she explained.

Under the framework, the Syariah Court works with partner agencies to provide integrated services and programmes in the interests of children.

This is so that the children do not have to share their stories repeatedly and undergo trauma because of their parents' divorce.

As part of her role, Ms Nur Izzah shared that the Syariah Court has enhanced the process of interviewing children aged 7 years and above, which was formerly conducted by the court president alone, but is now conducted jointly with the Principal Court Counsellor.

Under this process, she conducts interviews with children who are affected by custody disputes together with the court president.

The interview process seeks to better understand the challenges faced by children and their concerns and priorities in a holistic manner, to arrive at a suitable decision relating to the children's living arrangements, whether with mother, father or both in the context of a shared care and control arrangement.

The child interview is conducted jointly by the counsellor and the court president instead of a court president alone as the counsellor possesses expertise on child psychology and knowledge on the different stages of child development.

"The understanding of a 5-year-old child about divorce is different from a 15-year-old teenager. For example, a teenager will feel stressed about the problems that the parents are facing and may become the mother's confidant. The perspective is therefore different from that of a young child.

The last thing that we want is for the children to choose. They have a right over both their parents. That is the message that we would like to convey," she said.

Apart from the interview process, the Syariah Court can avail itself of other judicial tools and refer cases to intervention programmes to ensure that the post-divorce arrangements are in the best interest of the children.

These include directing a Custody Evaluation Report, supervised visitation and exchange, counselling and the Children-in-Between programme.

Ms Nur Izzah's role includes partnering the Ministry of Social and Family Development (MSF) and social service agencies to ensure that the various judicial tools, referrals or interventions, can be implemented efficaciously, allowing them to better understand the difficulties faced by children.

Ms Nur Izzah said that it is of significant concern that the children are stressed about the divorce process and not all parents are aware of existing support and interventions that are available for their children.

In fact, there are children who hide their anxiety, sadness, anger or stress from their parents and there are also children who are at risk of self-harming due to the emotional and mental challenges that they are facing.

"A number of these children are facing emotional and mental stress arising from prolonged parental conflict. In court, the judge will hear the parents through their affidavits and submissions by their lawyers.

However, the children do not have lawyers. In the circumstances, I hope that parents will be more aware on the impact of their decision to divorce on their children," she said.

Through the court counselling framework that has been established last year, Ms Nur Izzah hopes that the support extended to children is now more focused and catered to their needs.

"We will initiate more programmes in the future. God willing, when they are ready, we will share more details with the public on how we can assist, especially in terms of prioritising the interests of children, in preserving their well-being," she said,