

**Subashini case: 'Defend the constitution'**  
**Malaysiakini.com**  
**March 29, 2007**

Without doubting the capability of the syariah courts to dispense justice, the Women's Aid Organisation said compliance with the Federal Constitution must take precedence when it comes to deciding the rights of non-Muslims caught up in cases of conversion of Islam.

In a statement, the group voiced uneasiness with comments by Women, Family and Community Development Minister Shahrizat Abdul Jalil and several religious leaders that non-Muslims like R Subashini can be required to seek legal redress via the Syariah Court.

Subashini, 28, an Indian Malaysian, has contested her now-Muslim husband's move to convert their children to Islam, but was told by the Court of Appeal to take her case before the Syariah court.

On March 13, the appellate court dismissed her attempt to stop her husband, Muhammad Shafi Saravanan Abdullah, from bringing divorce proceedings in the Syariah Court.

WAO said it is unjust to require non-Muslims to subject themselves to the Syariah Court, which will apply religion-based laws to individuals who do not profess Islam.

"Although their focus on justice is reassuring, the Federal Constitution explicitly stipulates that Syariah courts can only exercise jurisdiction over persons who profess Islam as their religion, and the judiciary must continue to uphold this guarantee," the statement reads.

### **Compliance issue**

WAO said the constitution does not permit Islamic laws to be applied to non-Muslims.

"Within our constitutional framework, there is no option for non-Muslims to seek legal remedy in the Syariah courts, even if they wish to do so," it said.

"The crux of the issue is constitutional compliance, which must not be deflected by arguments about the status of the civil versus syariah courts."

In this respect, the group urged the government to give effect to its commitment expressed before the United Nations-level dialogue with the Cedaw (Convention on the Elimination of All Forms of Discrimination Against Women) Committee in May last year.

Shahrizat was quoted in recent news reports as saying that it does not matter whether the cases go to the civil or Syariah courts, and that "what is important thing is that they (non-Muslims) get justice".

Terengganu Mufti Ismail Yahya said: "We know non-Muslims are worried that the Syariah court will always side with the Muslims but do not fear, there is still hope that non-Muslims could win the case."

His Perlis counterpart Dr Mohd Asri Zainul Abidin said prevailing prejudice against the Syariah court was due to lack of understanding by non-Muslims - but assured that Islam promises justice for all - as well as lack of professionalism in Syariah courts themselves.

Syariah Lawyers Association adviser Muhammad Burok described the Court of Appeal's judgment in the Subashini case as 'recognition for the Syariah court' and that non-Muslims must accept this decision.

He invited non-Muslims to learn to accept Syariah law, saying if Muslims can go to the civil court, there is no reason why non-Muslims cannot go to the Syariah court.

### **'Protect rights'**

WAO, which is part of a coalition of women's groups known as JAG (Joint Action Group on Gender Equality), has also drawn up a memorandum calling for a review of laws relating to conversions to Islam.

The memorandum entitled 'Safeguard Rights of Wives and Children upon Conversion of Husbands to Islam' urges legislative reform to ensure that the rights of non-converting family- members (especially spouses and children) under civil laws are preserved.

"Regardless of one spouse's conversion, all duties and obligations arising out of the marriage must be settled according to civil law, and not under state Islamic law enactments, since the marriage was solemnised or registered under civil law," it said.

WAO called for the legitimate expectations of all Malaysians to be protected and for their existing rights to be upheld.

"It is unfair and retrogressive when a woman loses the rights she had upon marriage as a result of her spouse's change of faith," it added.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.  
Source : <http://www.malaysiakini.com/news/65192>