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THE Federal Constitution is the highest law of the land.

Because the Constitution is the country's supreme law, as stipulated in Article 4(1), all other laws and powers conferred by law must be constitutionally consistent.

Unlike Pakistan's constitution, which states that all laws must be consistent with *syariah* – as derived from the Quran and the Hadith – our Constitution does not stipulate this.

This is what makes our nation a secular one, no matter the kind of rhetoric our politicians resort to.

That may be stating the obvious but, sometimes, the obvious needs repeating especially in the light of the Court of Appeal's majority decision in the R. Subashini case last Tuesday.

In the landmark decision, the Hindu woman was told by the Court of Appeal that she had to seek recourse through the Syariah Appeal Court to stop her estranged and Muslim-convert husband from dissolving their marriage in the syariah court, and converting their children to Islam without her permission.

This, despite the fact that both Subashini and her formerly Hindu husband, Muhammad Shafi Saravanan Abdullah, were married in a civil ceremony in 2001, and hence, should logically and justly be governed by civil

Federal Constitution must be respected

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Conversion tussle

WOMAN FAILS TO STOP HUSBAND FROM CHANGING SON'S RELIGION

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PUTRAJAYA: The Court of Appeal yesterday dismissed a non-Muslim woman's appeal to stop her

elder boy to Islam in May last year. Yesterday's judgment paves the way for Saravanan to proceed with his plan to convert his second son and so dissolve his marriage to Subashini.

found in Section 33 of the Administration of Islamic Law (Federal Territories) Act 1993. Article 12(1)(A) of the Federal Constitution provides that the civil courts have jurisdiction in respect of the jurisdiction of the Syariah High

Constitution, such a law would be ultra vires the Constitution and to that extent would be void. And that is why, in order to be ultra vires, the Federal Constitution, Section 33 of the 1993 Act (Administration of Islamic Law (Federal Territories) Act 1993) is unconstitutional.

laws in ending their marriage and resolving issues such as custody and inheritance.

Since marriage is a contract, then the terms of reference that both spouses agree to upon entering such a contract, cannot and should not be overturned by new terms of reference that are a result of one spouse's conversion to another religion, in this case Islam.

Indeed, to suddenly impose new terms of reference on a spouse, who chose neither a new

religion nor agreed to new conditions that are disadvantageous, is grossly unjust and contradicts Islam's exhortations for justice and fairness.

What recourse, then, do couples have if one spouse converts? Section 51 of the Law Reform (Marriage and Divorce) Act 1976 already empowers the civil courts to deal with such situations.

Nobody disputes the legality of the Law Reform Act. Indeed, the law ensures that the interests of

all parties in a dispute are protected according to the agreed terms of their civil marriage.

Hence, the civil court's decisions thus far in Subashini's case is highly problematic. By allowing the converted spouse to have his civil marriage dissolved and to obtain custody of his son in the syariah court, the civil court is, in fact, turning its back on the non-Muslim spouse.

What's more, the Court of Appeal's majority decision that a non-Muslim spouse must seek remedy in the syariah court, is unconstitutional.

Schedule 9, List II (1) of the Constitution stipulates clearly that the syariah courts, which are constitutionally subordinate to the civil courts, only have jurisdiction over "persons professing the religion of Islam".

How then can Subashini seek recourse in the syariah courts? And

why isn't the civil court upholding her constitutional and civil rights?

Malaysians should also remember that three years ago, the High Court told S. Shamala, a Hindu, that she could not seek redress in the civil courts to declare null and void her children's unilateral conversion by her Muslim-convert husband, and advised her to seek the Majlis Agama Islam Wilayah Persekutuan's help instead.

Out of desperation, Shamala fled the country with her two children.

Following that, M. Moorthy's family was also told they could not seek justice in the civil courts because Moorthy had allegedly converted to Islam.

In Subashini's case, however, the civil court has gone one step further by telling a non-Muslim to submit to the syariah court. Not only is the Court of Appeal abdicating its responsibility to protect a citizen's rights and interests as provided for by good law, it is also ignoring the Constitution by enlarging the syariah court's jurisdiction where none can exist unless there is law to that effect.

Such a judgment not only undermines the Constitution that this nation was founded on, it also fuels the fear that our Constitution is being hijacked by an Islamist agenda.

Hence, the need to repeat the obvious. The Federal Constitution is the highest law of the land, and we would all do well to respect its supremacy.

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