

Moreover, the court explained that Syariah Courts do not have any jurisdiction over a case if one of the parties is a non-Muslim, even if the subject matter falls within its jurisdiction. In other words, non-Muslims cannot come under the jurisdiction of the Syariah Courts and its orders cannot bind non-Muslims. Not only does the subject matter of a case determine which court assumes jurisdiction, but the parties must also come within the purview of Syariah Courts for such courts to preside over a case.

Upholding Freedom of Religion and Equality before the Law

In granting the non-converting parent's petition to nullify her minor children's conversion to Islam without her consent, the court in the case of *Indira Gandhi v. Mohd Riduan Abdullah et. al* invoked Article 8 of the Federal Constitution of Malaysia. Article 8 states that "all persons are equal before the law and entitled to the equal protection of the law." There shall be no discrimination in law against citizens on the ground of religion, race, gender or any other status. The court upheld that a father converting his minor children to Islam without the consent of the mother violated her right to equal protection before the law on the grounds of religion and gender.

The court further ruled that Article 11 of the Federal Constitution guarantees every person the right to profess and practise his or her religion. In this case, the court emphasised that a parent of a new found faith must not exercise it in such a way as to deny the rights of the other parent to practise her faith and to deprive that other parent of her religious freedom as well.

According to the court, Article 3 (1) of the Federal Constitution proclaims that Islam is the religion of the Federation, but it does not prohibit the practice of other faiths. The court cited that in the deliberations of the constitutional commission, "there was universal agreement that if any such provision were inserted (to the effect that Islam should be the State religion) it must be made clear that it would not affect the civil rights of non-Muslims."

The court also reasoned that the UN Convention on the Rights of the Child (CRC) and CEDAW, which were acceded to by Malaysia, are "highly persuasive" and should guide the interpretation of the fundamental rights enshrined in the Federal Constitution. In particular, according to the court, Article 16(1) of CEDAW guarantees women's equal rights in marriage and family life. When Malaysia reported before the CEDAW Committee in 2006, the Court cited the following relevant excerpt of the Concluding Comments:

The Committee is concerned about the existence of the dual legal system of civil law and multiple versions of Syariah law, which results in continuing discrimination against women, particularly in the field of marriage and family relations.... The Committee is further concerned about the lack of clarity in the legal system, particularly as to whether Civil or Syariah law applies to marriages of non-Muslim women whose husbands convert to Islam.