CONSTITUTIONAL LAW AND HUMAN RIGHTS IN MALAYSIA
SELECTED ISSUES

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Gender Equality under Article 8 of the Federal Constitution:
*Beatrice A/P Al Fernandez v Sistem Penerbangan Malaysia*

Revisited

Siti Aliza binti Alias

Introduction

Recently on 12th July 2011 Justice Datuk Zaleha Yusof delivered a decision considered by many to be a landmark and timely decision on gender equality in Malaysia, when the Shah Alam High Court ruled in the matter of *Noorfadilla Ahmad Saikin v Chayed Bin Basirun & 5 Ors.*¹, that the Government’s revocation of its offer of employment, on the basis that the plaintiff was pregnant, was unconstitutional, null and void. In granting Noorfadilla damages to be assessed, the Judge upheld the prohibition against gender discrimination that is enshrined in Article 8(2) of the Federal Constitution ("FC"), and more interestingly, the Judge referred to the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), which Malaysia acceded to on 5 July 1995, and found that CEDAW has the force of law and is binding on the Malaysian government, and Article 8(2) of the FC must be read to comply with it.

What constitutes ‘discrimination against women’ and ‘gender discrimination’ has not been decided in Malaysia prior to Noorfadilla’s case. Zaleha J referred to Article 1 of CEDAW to assist her in defining “discrimination against women” and also to Article 11 of CEDAW which sets out the prohibition of discrimination against women in the field of employment, particularly on the prohibition of using pregnancy as an excuse to stop women from working. This interpretation gives meaning to the Government’s obligation under CEDAW, namely, to “condemn discrimination against women in all its forms” and “to pursue