Constitutional Law and Human Rights in Malaysia
Topical Issues and Perspectives

Editor
Khairil Azmin Mokhtar
LLB (Hons) (IIUM), Master of Comparative Laws (IIUM),
PhD in Law (Aberystwyth)
Associate Professor
Ahmad Ibrahim Kulliyyah of Laws
International Islamic University Malaysia
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in ensuring that the law on gender equality in Malaysia is sufficient to protect women’s right in employment specifically and women’s rights generally as a whole, and this unfortunately is not in tandem with the government and the Parliament’s efforts in this area. If case law continues to develop in the same tone, the amendment to Article 8 of the FC to include “gender” would not see any practical effect. It is the author’s hope that instead case law would develop along the same line as Noorafidilla’s case that was decided very recently, and hailed by many as a giant leap for gender equality in Malaysia. More importantly, the court in Noorafidilla’s case has demonstrated the correct approach that courts in Malaysia should take in interpreting domestic legislation to be in line with Malaysia’s obligations under International Law. Zaleha J lucidly espoused the correct position of the law in para 32 of her judgment when she said that:

Article 26 of the Vienna Convention on the Law of Treaties 1969 provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith. CEDAW is without doubt a treaty in force and Malaysia’s commitment to CEDAW is strengthened when art 8(2) of the Federal Constitution was amended to incorporate the provision of CEDAW which is not part of the reservation, i.e. to include non-discrimination based on gender. As such, I am of the opinion that there is no impediment for the court to refer to CEDAW in interpreting art 8(2) of the Federal Constitution. Hence, applying articles 1 and 11 of CEDAW I hold that pregnancy in this case was a form of gender discrimination.

The decision in Noorafidilla is laudable on all these points and although a High Court decision, should be, in the author’s humble view, the preferred approach for future course law rather than the approach of the Federal Court in Beatrice Fernandez. Arguably since the Federal Court did not really deal with the specific issue of the applicability of CEDAW despite it being raised, strictly speaking it would not be wrong for future cases to follow a similar approach as in Noorafidilla when dealing with the issue of the applicability of Malaysia’s obligations under international conventions that it is a party to.

Chapter Twenty Eight
Freedom of Speech on the Internet: Shariah and Malaysian Perspectives
Khalir Azmin Mokhtar

28.1 INTRODUCTION
Freedom of speech and expression is a prerequisite to a healthy social and democratic life. It represents the sine qua non of a democratic process because it allows members of public to express their say on certain issues of common interest and to discuss matters before decisions are made. The centrality of the role of this freedom to speech and expression transcends over the technology and the medium of communications, thus would still find its significance in today’s Information Age driven by the rise of the Internet technology.

The internet, which has been referred as the information super highway, have significant role in many areas such as shaping public opinion and disseminating information. The effectiveness of the Internet as a medium of mass communication is no longer in doubt. The technology available today has created many Internet based services including blogs, chat rooms, instant messaging, news bulletins and virtual libraries. The convergence of traditional forms of broadcasting, telecommunications and online activities and services unsurprisingly gives rise to the question among policy makers in government as to whether there should be more effective means of regulation of the Internet. However the regulation run counter the idea of freedom of speech. This paper seeks to observe the scope of freedom of speech in the Internet and certain types of content which seeks to be regulated and prohibited.

28.2 SCOPE OF FREEDOM OF SPEECH
Freedom of speech, as can be observed from the various human rights law cited later, covers:

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1 The writer would like to thank Asst Prof Dr Soeyy Zalihuda for his assistance in preparing this chapter.