

CONSTITUTIONAL LAW AND HUMAN RIGHTS IN MALAYSIA

Selected Issues



KHAIRIL AZMIN MOKHTAR

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**EDITOR
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Table of Contents

Preface	i
Table of contents	v
Table of Cases	x
Table of Statutes	xiv
CHAPTER 1	
The Civil Service and The Doctrine of Holding Office at Pleasure <i>Nik Mohd Kamal</i>	<i>1</i>
CHAPTER 2	
Crown Privilege Under The Common Law and The Evidence Act <i>Mohd. Akram Bin Shair Mohamed</i>	<i>25</i>
CHAPTER 3	
The Role of Judicial Review in Malaysia as a tool of Check and Balance under The Doctorine of Seperation of Powers <i>Khairil Azmin and Siti Aliza Binti Alias</i>	<i>45</i>
CHAPTER 4	
The Accountability and Integrity of the Judiciary <i>Faridah Jalil</i>	<i>71</i>
CHAPTER 5	
Contempt of Court and a Chilling Effect on Freedom of Speech and Expression: Rethinking the Malaysian Courts' Attitude in Striking a Balance <i>Shukriah Mohd Sheriff</i>	<i>99</i>
CHAPTER 6	
The Price of Access to Justice: Adversial Costs in Public Interest Litigation <i>Abu Haniffa Mohamed Abdullah</i>	<i>123</i>
CHAPTER 7	
Functions and Privileges of the Malaysian Parliament: An Overview <i>Khairil Azmin Mokhtar</i>	<i>143</i>

CHAPTER 8 The Election Commission: History and Functions <i>Tengku Mohar Mokhtar</i>	<i>169</i>
CHAPTER 9 Elected Members and the Right to Change Party <i>Muhd Umar Abd Razak</i>	<i>193</i>
CHAPTER 10 The Status, Scope and Application of Islamic Law in the Federal Framework and the Legal System of Malaysia and Nigeria <i>Khairil Azmin Bin Mokhtar and Mr Abdulmumini A. Oba</i>	<i>213</i>
CHAPTER 11 The General Principles of Good Governance in Public Administration in Malaysia: A Judicial Approach <i>Ibrahim Ismail</i>	<i>239</i>
CHAPTER 12 The Malaysian Constitution, Political Party and Party System <i>Wahabuddin Ra'ees</i>	<i>260</i>
CHAPTER 13 Living in Limbo: Constitutional and Legal Issues of Unregistered Birth <i>Nor Hafzah Binti Mohd Badrol Afandi</i>	<i>277</i>
CHAPTER 14 Establishing an Effective Coordination Mechanism between Federal and State for Promoting Good Governance and Achieving Sustainable Land Administration for Malaysia <i>Ainul Jaria Maidin</i>	<i>293</i>
CHAPTER 15 Right to Development as a Human Right: A Challenge to Malaysia <i>Salawati Mat Basir</i>	<i>333</i>

CHAPTER 16

The Rights of the Orang Asli under the Federal Constitution of Malaysia

Hamimah Hamzah and Hunud Abia Kadouf

355

CHAPTER 17

The Rights to Health: Guidance from International Human Rights Law and Experience from Other Countries

Husna Fauzi

377

CHAPTER 18

Rights of Persons with Disabilities - The 'Almost forgotten' Protection under the Malaysian Federal Constitution

Ikmal Hisham Md. Teh

413

CHAPTER 19

Basic Principles and Constitutional Legal Framework of Freedom of Information

Juriah

441

CHAPTER 20

Right to Privacy in Malaysia: Development, Cases and Commentaries

Sonny Zulhuda

459

CHAPTER 21

Eliminating Slavery and Combating Human Trafficking in Malaysia: The Relevant Constitutional Provisions and Domestic and International Laws

Khairil Azmin Mokhtar

487

CHAPTER 22

Gender Equality under Article 8 of the Federal Constitution: Beatrice A/P at Fernandez V Sistem Penerbangan Malaysia Revisited

Siti Aliza Binti Alias

511

CHAPTER TWENTY TWO

Gender Equality under Article 8 of the Federal Constitution: *Beatrice A/P At 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