

Malaysia's Aging Rule of Law in An Ever-Algorithmic Future: A Study of Digital Governance's Impact

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Abstract

Malaysia's rapid digital transformation has introduced algorithmic governance tools, such as AI-assisted policing, centralised socio-economic databases, and online content regulations, that pose novel challenges to constitutional order. This study assesses how these innovations test the rule of law's core principles of legality, equality, and procedural fairness. Drawing on three case studies, the Pangkalan Data Utama (PADU) database, Section 233 of the Communications and Multimedia Act, and predictive-policing initiatives, they illustrate fractures created by opaque data practices, overbroad regulatory powers, and the absence of independent oversight. In response, the paper proposes a cohesive reform framework comprising constitutional recognition of digital rights, targeted statutory amendments, and the establishment of an independent Digital Constitutional Commission. These measures aim to bolster transparency, accountability, and protection against arbitrary exercise of power in Malaysia's evolving governance landscape.

Keywords: Rule of law, Malaysia, digital rights, and constitutional reform.

I. Introduction

Malaysia's public sphere has rapidly transformed with the introduction of biometric-enabled welfare disbursements¹ and automated takedowns of online content². Although these innovations enhance efficiency and access, they test the resilience of Malaysia's legal framework against algorithmic governance. This study, therefore, reconceptualises digital governance as a constitutional issue, examining its impact on the rule of law's principles of fairness, transparency, and protection from arbitrary power.

Drawing on Albert Venn Dicey's classic pillars of supremacy of law, equality before the law, and robust judicial oversight,³ it maps these enduring ideals onto Malaysia's Federal Constitution ('FC'), exposing hidden fractures where ouster clauses, broad speech restrictions, and the absence of explicit digital rights undermine citizen safeguards. This

¹ 'Malaysia's Targeted Fuel Subsidy Overhaul Would Use MyKad Biometric ID' (*ID Tech Wire*, 7 November 2024) <[https://idtechwire.com/malaysias-targeted-fuel-subsidy-overhaul-would-use-mykad-biometric-id/#:~:text=Malaysia's%20government%20is%20proposing%20a,through%20borrowed%20or%20duplicated%20credentials](https://idtechwire.com/malaysias-targeted-fuel-subsidy-overhaul-would-use-mykad-biometric-id/#:~:text=Malaysia's%20government%20is%20proposing%20a,through%20borrowed%20or%20duplicated%20credentials>)> accessed 6 June 2025.

² Radzi Razak, 'Malaysia Leads Global Surge in Social Media Takedown Requests' (*The Malaysian Reserve*, 10 June 2024) <<https://themalaysianreserve.com/2024/06/10/malaysia-leads-global-surge-in-social-media-takedown-request/>> accessed 6 June 2025.

³ RA Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (University of North Carolina Press 1980) 66-90.

study will touch on three real-world case studies: (1) the Pangkalan Data Utama ('PADU') centralised data initiative that exposed sensitive personal records without consent;⁴ (2) Section 233 of the Communications and Multimedia Act ('CMA')⁵ wielded selectively to stifle political dissent online;⁶ and (3) the rise of AI-powered profiling in policing.⁷ Each example illustrates how algorithmic tools can erode constitutional guarantees when left unchecked.

To illuminate a path forward, this study concludes with a coordinated reform blueprint that spans constitutional amendments, targeted statutory updates, and the establishment of a new Digital Constitutional Commission. By aligning Malaysia's laws with the realities of an algorithmic era, it can ensure that technology serves justice rather than subverting it.

II. Conceptual Framework: Rule of Law Vs. Federal Constitution

Before delving into the intricacies of the uncharted intersection of the rule of law and the ever-growing prevalence of algorithmic digital governance, it is vital that the reader first understands certain concepts pertinent to the discussion, such as the concept of the rule of law in relation to the FC.

2.1. Understanding the Rule of Law in Malaysia

At its heart, the rule of law demands that no individual, neither the citizen nor the state, stands above the law. Albert Venn Dicey's seminal formulation anchors this principle in three pillars: (1) the supremacy of law over arbitrary authority, (2) equality before the law, and (3) the indispensable role of judicial oversight in protecting rights. In Malaysia, these lofty ideals are echoed in the FC's text. However, their practical application often reveals unsettling gaps when measured against contemporary governance challenges.⁸

a. Supremacy of Law Over Arbitrary Authority

Dicey's principle of legal supremacy finds clear expression in *Article 4(1)*,⁹ which declares any law inconsistent with the Constitution void. Yet successive legislatures have inserted

⁴ 'PADU: Significant Milestone in Government's Pursuit of Efficiency, Inclusivity' *The Sun Daily* (Kuala Lumpur, 3 January 2024) <<https://thesun.my/malaysia-news/padu-significant-milestone-in-government-s-pursuit-of-efficiency-inclusivity-PK11937697>> accessed 7 March 2025.

⁵ Communications and Multimedia Act 1998 (Act 588) (as amended by the Communications and Multimedia (Amendment) Act 2024), s 233.

⁶ 'The Passing of the CMA Amendments is Another Step Backwards for Freedom of Expression' (*Amnesty International Malaysia*, 10 December 2024) <<https://www.amnesty.my/2024/12/10/cma-amendments-2024/>> accessed 7 March 2025.

⁷ Nurus Sakinatul Fikriah Mohd Shith Putera and others, 'Artificial Intelligence-Powered Criminal Sentencing in Malaysia: A Conflict with the Rule of Law' (2022) 7(S17) *Environment-Behaviour Proceedings Journal* 442 <<https://ebpj.e-iph.co.uk/index.php/EBProceedings/article/view/3813>> accessed 7 March 2025.

⁸ Constance Chevallier-Govers, 'The Rule Of Law And Legal Pluralism In Malaysia' (2010) 2(1) *Islamic and Civilisation Renewal (ICR) Journal* 90, 91-92 <<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://icrjournal.org/index.php/icr/article/download/682/668/3358&ved=2ahUKEwiyu7rw66MAxWPSGwGHb0QMGOQFnoECDwQAQ&usg=AOvVawOekYJs71isng75ZRjUw1U3>> accessed 7 March 2025.

⁹ Federal Constitution of Malaysia 1957, art 4(1).

ouster clauses, most notably in income tax¹⁰ and national security statutes¹¹, that expressly bar judicial review of executive decisions. These carve-outs risk testing constitutional limits, permitting arbitrary exercises of power to proceed unchecked. Such tensions cast doubt on whether the Constitution's supremacy is substantive or merely symbolic.

The resilience of Dicey's vision, however, shines through in property rights disputes under *Article 13*,¹² particularly in *Kerajaan Negeri Selangor & Ors v Sagong bin Tasi & Ors*.¹³ In this case, Orang Asli villagers were evicted from ancestral lands without titles or compensation, prompting the High Court on appeal to recognise their customary land rights as "property" under *Article 13*. By holding that the deprivation of property must be accompanied by adequate compensation, the court reaffirmed that executive actions must conform to constitutional limits. In doing so, *Sagong bin Tasi* demonstrates that judicial review remains the indispensable check on power, preserving the substantive supremacy of the Constitution.

b. Equality Before the Law

Article 8(1) enshrines the ideal that all persons are equal before the law and are entitled to equal protection, regardless of race, religion or status.¹⁴ However, Malaysia's unique social landscape permits race-based provisions and discretionary licensing regimes to operate beyond meaningful judicial scrutiny.¹⁵ These carve-outs dilute the promise of substantive equality, thereby entrenching legal privileges for certain groups and allowing executive discretion to flourish unchecked. An outcome starkly at odds with Diceyan equality.

This underlying tension finds concrete expression in *Beatrice A/P AT Fernandez v Sistem Penerbangan Malaysia & Ors*.¹⁶ The Federal Court considered whether a pregnancy-linked resignation clause in a private collective agreement contravened *Article 8(1)*. In drawing a firm line, the court held that the equality guarantee applies only to State action or laws of general application, not to private contracts. By doing so, it safeguarded the supremacy of public law constraints on arbitrary powers while clarifying that the constitutional promise of equality remains confined to its proper public-law sphere.

c. Predominance of Legal Spirit

A principle of due process is guaranteed under *Articles 5 and 13*.¹⁷ *Article 5(1)* proclaims that 'No person shall be deprived of his life or personal liberty save in accordance with law'.¹⁸ In *Lee Kwan Woh v Public Prosecutor*,¹⁹ the Federal Court made clear that 'law' must extend

¹⁰ Income Tax Act 1967 (Act 53), s 106(3).

¹¹ Security Offences (Special Measures) Act 2012 (SOSMA) (Act 747), s 4(5).

¹² Federal Constitution of Malaysia 1957, art 13.

¹³ [2005] 6 MLJ 289.

¹⁴ Federal Constitution of Malaysia 1957, art 8(1).

¹⁵ R Paneir Selvam, 'Towards racial harmony through legal reform' *Focus Malaysia* (Selangor, 11 April 2025) <<https://focusmalaysia.my/towards-racial-harmony-through-legal-reform>> accessed 16 July 2025.

¹⁶ [2005] 3 MLJ 681.

¹⁷ Federal Constitution of Malaysia 1957, art 5 and 13.

¹⁸ Federal Constitution of Malaysia 1957, art 5(1).

¹⁹ *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301.

beyond mere statutory language to include the bare essential principles of natural justice. When the court found that waiving an appeal without affording the accused a fair hearing breached this procedural-fairness requirement, it reaffirmed that both legislative provisions and executive decisions are subject to judicial oversight, a clear demonstration of the living legal spirit in Malaysia's courts.

However, this promise of robust oversight collides with constraints on judicial independence. While *Article 121* enshrines the doctrine of separation of powers,²⁰ the 1988 amendment carves out administrative acts from full judicial review, curtailing the courts' ability to question executive decisions.²¹ By insulating broad government actions from meaningful scrutiny, this reform risks turning judges into passive observers rather than active guardians of constitutional guarantees.²² Together, the tensions between due process safeguards and a narrowed remit for judicial review reveal how Malaysia's framework, while echoing Diceyan ideals in theory, falters in practice, especially as rapid digitalisation places new strains on these age-old principles.

2.2 Constitutional Loopholes

Despite the FC's high-minded commitments, a series of legislative and doctrinal gaps have carved out spaces where executive power can operate with minimal judicial check. Chief among these are so-called ouster clauses, which are statutory provisions inserted into various Acts, notably in income tax²³ and national security legislation²⁴, that expressly bar courts from reviewing executive decisions. By depriving citizens of any meaningful avenue to challenge administrative actions, these clauses undermine the Constitution's promise of legal supremacy and effectively place certain spheres of governance beyond the reach of judicial scrutiny.

Equally troubling is the broad language of *Article 10(2)*, which authorises restrictions on speech 'in the interest of security, public order or morality'.²⁵ In the absence of an explicit proportionality requirement, this provision has become a catch-all justification for curbing online expression. Courts have tended to interpret the threshold for censorship expansively, allowing the executive to wield Section 233 of the *CMA* as an indiscriminate measure against dissent.²⁶ In practice, vague terms such as 'indecent' or 'false' become vehicles for selective enforcement, chilling legitimate debate without any clear legal guardrails.

Finally, Malaysia's constitutional text remains silent on digital-age rights. There is no explicit guarantee of privacy against state surveillance, no statutory mandate for data-protection,

²⁰ Federal Constitution of Malaysia 1957, art 121.

²¹ Malaysian Bar, 'Amendment of Article 121(1) of the Federal Constitution' (Malaysian Bar, 2025) <[https://www.malaysianbar.org.my/cms/upload_files/document/amendment%20of%20art%20121\(1\).pdf](https://www.malaysianbar.org.my/cms/upload_files/document/amendment%20of%20art%20121(1).pdf)> accessed 16 July 2025.

²² Richard SK Foo, 'Malaysia—Death of a Separate Constitutional Judicial Power' (2010) Singapore JLS 227 <<http://www.jstor.org/stable/24870497>> accessed 7 March 2025.

²³ Income Tax Act 1967 (Act 53), s 106(3).

²⁴ Security Offences (Special Measures) Act 2012 (SOSMA) (Act 747), s 4(5).

²⁵ Federal Constitution of Malaysia 1957, art 10(2).

²⁶ Communications and Multimedia Act 1998 (Act 588) (as amended by the Communications and Multimedia (Amendment) Act 2024), s 233.

and no requirement for algorithmic transparency. As digital systems proliferate, this absence of express safeguards leaves individuals vulnerable to invasive profiling, unexplained automated decisions, and potential abuse of their personal data. In sum, these loopholes reveal a constitutional framework ill-equipped to contend with the complexities of modern technology governance.

III. Pressing Tensions in Digital Governance

The basic concept of the rule of law in Malaysia is laid down, along with the general concerns with regard to the rule of law in the digital age. Now, the right question to ask is, what specifically are the algorithmic challenges to the rule of law? However, contrary to the rule of law, it must be acknowledged that algorithmic decision-making, by its very nature, whether deliberate or accidental, operates in the opaque shadows with data-driven mechanisms that are often unchallengeable.

Thus, the two rarely align, and it raises many critical issues: in the bigger picture, who holds an artificial intelligence ('AI') system accountable if it wrongly denies a person government aid? Are algorithmic decisions even contestable in court? As governmental surveillance expands beyond mere cameras and into biometric databases and predictive analytics, do constitutional guarantees and protections, as outlined above, extend to digital privacy? Evidently, these pressing questions reveal a growing tension between technological efficiency and fundamental liberties.

With that said, this study would like to assert that Malaysia's current legal framework is critically ill-equipped to regulate algorithmic governance, leaving dangerous gaps in not only judicial oversight and digital rights but also general accountability. This study encompasses case studies on MyDigital ID, AI-assisted policing, the controversial CMA, anti-fake news laws, and the PADU system, highlighting the risks of a future with an unchecked algorithmic state. By examining the constitutional safeguards surrounding digital governance, this study calls for a new era of digital constitutionalism. One that not only fully embeds AI accountability and privacy rights, but also algorithmic transparency into Malaysia's legal system.

3.1 AI in Governance: Enhancing or Undermining Legality?

The future integration of AI into administrative governance promises efficiency and improved public service delivery. However, it also raises legal concerns regarding the rule of law, privacy rights, and algorithmic bias. As Malaysia advances its digital governance, this study finds that the inadequacy of its legal safeguards in the integration of AI into administrative governance warrants public scrutiny.

Among the safeguards neglected in the integration of AI is the absence of human oversight in all algorithmic decision-making, particularly in life-and-death areas like administrative rulings, eligibility for government aid, and automated law enforcement actions. These detrimental oversights, while done in the name of operational efficiencies, ultimately undermine the core principle of natural justice. The lack of safeguards can be seen in cases such as the MyDigital ID project and the implementation of AI-powered predictive policing.

a. MY Digital ID: Privacy and Data Security Concerns

Malaysia's MyDigital ID, integrated within the broader MyDIGITAL transformation initiative, seeks to improve citizen engagement with government agencies via a secure digital identity verification process. While this aligns with global trends toward digital transformation, citizens remain justly sceptical due to recent governmental leaks and poor policy implementations associated with privacy and data protection. The Malaysian government has attempted to ease concerns surrounding MyDigital ID by asserting that it will not attempt to create a central repository of sensitive information.²⁷ However, extensive leaks and breaches surrounding other government-operated sites in recent years give citizens more than enough reason to challenge such a claim.

For instance, while government-operated databases should have security protocols in place, cyber breaches still exist, such as source code leaks of voter databases and millions of ringgit-worth of Malaysian citizens' personal information exposed on an international gossip forum²⁸. In addition, law professor, Dr Pavitira Manogaran, notes that once someone's biometric data gets exposed, it cannot be reinstated into the system like a password. Thus, citizens' biometrics are more likely to be used for unethical and illegal gains.²⁹ Unfortunately, this is compounded by the reality that no data protection act limits governmental authority over such data, nor does it keep third-party access at bay. Therefore, although the MyDigital ID project could potentially serve a reliable need from an administrative standpoint, without legal recourse, as this study suggests, it creates a situation for violation of personal freedom rights under *Articles 5 and 13 of the FC*. Therefore, logic calls for a true data protection act with proper enforcement to safeguard citizens' concerns.

b. AI-Powered Predictive Policing: Bias and Unconstitutional Surveillance

Unbeknownst to many, Malaysia has previously attempted AI predictive policing, relying upon an analytical review of data to assess where and when crimes are most likely to occur, and where officials should intervene prior to the incident.³⁰ Yet, such advancement would pose major constitutional and ethical challenges. Under the promise of enhancing law enforcement efficiency and objectivity, AI-powered predictive policing systems designed to analyse historical data to forecast where crimes are likely to occur or who might commit them have gained momentum in several urban areas. However, when these systems are introduced without adequate legal safeguards, institutional oversight, or transparency

²⁷ 'MyDigital ID: Does Malaysia's National Digital ID Store Your Personal Data? Here's MIMOS' Explanation' *Malay Mail* (Kuala Lumpur, 6 December 2023) <<https://www.malaymail.com/news/malaysia/2023/12/06/mydigital-id-does-malaysias-national-digital-id-store-your-personal-data-heres-mimos-explanation/106159>> accessed 7 March 2025.

²⁸ Izzat Najmi Abdullah, 'Alleged MyKad Data Leak Raises Concerns over Financial Fraud' (4 December 2024) <<https://fintechnews.my/47086/cyber-security/mykad-data-leak-raises-c/>> accessed 7 March 2025.

²⁹ Pavitira Manogaran, 'Why Are Malaysians Reluctant to Register for MyDigital ID? A Reality Check on Data Privacy' (*Three Hundredth*, 23 February 2025) <<https://threehundredth.com/why-are-malaysians-reluctant-to-register-for-mydigital-id-a-reality-check-on-data-privacy/>> accessed 7 March 2025.

³⁰ Nurus Sakinatul Fikriah Mohd Shith Putera and others, 'Artificial Intelligence-Powered Criminal Sentencing in Malaysia: A Conflict with the Rule of Law' (2022) 7(17) *Environment-Behaviour Proceedings Journal* 441 <<https://ebpj.e-iph.co.uk/index.php/EBProceedings/article/view/3813/2118>> accessed 10 March 2025.

requirements, they risk replicating and even amplifying the very flaws they aim to eliminate.³¹

Unlike traditional police decision-making, which often relies on human judgment and case-by-case evaluation, predictive policing systems derive their recommendations from historical crime data, arrest records, and other socio-economic indicators. However, these data sources are often shaped by decades of biased law enforcement practices. As a result, the algorithms ‘learn’ these biases and reproduce them at scale.³² For instance, if a district historically experiences over-policing due to racial profiling or poverty-linked patrolling, the algorithm will interpret this as a hotspot, regardless of whether actual crime rates justify the designation. The result is a feedback loop where marginalised communities, especially the urban poor or B40 groups, are disproportionately subjected to surveillance, checks, and enforcement actions.

This study is particularly concerned that AI could run rampant via facial recognition and big data collection efforts contrary to *Articles 5 and 8 of the FC*. Beyond that, the broader implication of this technology is the creation of accountability gaps, that is, given the opaque nature of AI decision-making, who holds the final blame or responsibility for errors that lead to wrongful prosecution? Therefore, it is asserted that without an explicit legal framework ensuring judicial oversight and bias mitigation measures, predictive policing risks morphing into unconstitutional mass surveillance rather than a tool for genuine crime prevention.³³

c. Legal Analysis: Is Malaysia’s Legal Framework Sufficient?

The introduction of Malaysia’s AI governance standards, such as the Artificial Intelligence Governance and Ethics (‘AIGE’) framework, is a good initial step towards guaranteeing the responsible deployment of AI in Malaysia.³⁴ However, the standards remain non-binding since they are not endowed with legal force that would make public or private actors accountable for AI breaches.³⁵ As things stand, Malaysian laws do not touch on issues such as algorithmic responsibility for AI or provide any redress for individuals whose rights have been impacted by AI decision-making.³⁶ That stands in stark contrast to the European

³¹ Farlina Said and Farah Nabilah, ‘AI Governance in Malaysia: Charting a Path Forward’ (*ISIS Malaysia*, December 2024) 17 <<https://www.isis.org.my/wp-content/uploads/2024/12/AI-Governance.pdf>> accessed 8 June 2025.

³² Ibid.

³³ Ibid.

³⁴ R Paneir Selvam, ‘The EU AI Act as a Model for Malaysia’s AI Safety Framework – Part 1’ *Focus Malaysia* (Selangor, 31 December 2024) <<https://focusmalaysia.my/the-eu-ai-act-as-a-model-for-malaysias-ai-safety-framework-part-1/>> accessed 10 March 2025.

³⁵ ‘Malaysia’s Artificial Intelligence Governance and Ethics (AIGE) Guidelines’ (*Deloitte*, n.d.) <<https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/risk/sea-risk-my-aige-guidelines.pdf>> accessed 10 March 2025.

³⁶ G Vijay Kumar, ‘Insight into Malaysia’s Newly Launched AI Governance & Ethics Guidelines’ (*Chambers and Partners*, 11 December 2024) <<https://chambers.com/articles/insight-into-malaysia-s-newly-launched-ai-governance-ethics-guidelines>> accessed 10 March 2025.

Union's General Data Protection Regulation ('GDPR')³⁷, which provides individuals with a 'right to explanation' of AI-based decisions impacting their rights.

In the absence of equivalent provisions, Malaysian citizens can be subjected to impenetrable algorithmic decisions without effective means of appeal. This study strongly believes that a far-reaching legislative framework, potentially in the form of a Digital Bill of Rights, is needed to place citizens' rights at the heart of AI-driven procedures. This would ensure that technological advancements cannot occur at the expense of fundamental legal protections, thus upholding the rule of law in an algorithmic era.

3.2 Social Media Regulations: A Delicate Balancing Act

In the internet age, social media regulation poses a complex policy dilemma: how does one limit evil on the internet while still gripping on core fundamental freedoms? Malaysia's evolving legal environment for online regulation is emblematic of this conundrum marked by growing complaints against state excess and arbitrary application. The policy of content regulation by the government, particularly by controversial legislations such as the Communications and Multimedia Act (as amended by the Communications and Multimedia (Amendment) Act 2024) ('CMA') and Anti-Fake News Acts, has left people questioning whether such Acts are performing their intended purposes or are being utilised as control tools. The judiciary, as the protector of constitutional liberties, has a fundamental role in interpreting this legislation. However, the extent to which the courts have been effective in protecting free expression is an unknown factor.

a. Controversial Legislation: CMA & Anti-Fake News Laws

Malaysia's increasingly stringent regulation of social media, exemplified by *Section 233 of the CMA*,³⁸ raises significant legal questions concerning the permissible limits of state intervention on the freedom of expression. *Section 233* criminalises online communications deemed 'indecent, obscene, false, menacing, or grossly offensive'. While ostensibly targeting cyber harassment and disinformation, the provision's excessively broad terminology grants wide prosecutorial discretion. This has facilitated selective enforcement which disproportionately targets political activists, journalists, and government critics, while often failing to address similar conduct by politically aligned actors.³⁹ The 2024 amendments exacerbate these concerns by increasing penalties and expanding regulatory powers.⁴⁰

This discretion operates within a constitutional framework that permits speech restrictions.

³⁷ 'What Is GDPR?' (GDPR.eu, n.d.) <<https://gdpr.eu/what-is-gdpr/>> accessed 10 March 2025.

³⁸ Communications and Multimedia Act 1998 (Act 588) (as amended by the Communications and Multimedia (Amendment) Act 2024), s 233.

³⁹ Deepak Pillai and others, 'An Overview of Key Changes Introduced by the CMA Amendment Bill' (Christopher Lee and Ong, January 2025) <https://www.christopherleeong.com/wp-content/uploads/2025/01/2025-01_An-Overview-of-Key-Changes-Introduced-by-the-CMA-Amendment-Bill.pdf> accessed 20 March 2025.

⁴⁰ 'Malaysia: Government Stifles Expression, Increases Online Controls, and Facilitates Transnational Repression' (CIVICUS Monitor, 18 January 2025) <<https://monitor.civicus.org/explore/malaysia-government-stifles-expression-increases-online-controls-and-facilitates-transnational-repression/>> accessed 20 March 2025.

Article 10(2)(a) of the FC authorises Parliament to impose restrictions deemed necessary or expedient for national security, public order, or morality. However, such constitutionally permissible restrictions are not absolute; they must conform to rule of law principles demanding legislative clarity, proportionality, and fairness in enforcement. The application of *Section 233* demonstrates a conspicuous absence of these essential safeguards, rendering it vulnerable to abuse and undermining its constitutional legitimacy.

Parallel concerns also arise from the government's persistent efforts to regulate 'fake news'. Although the standalone *Anti-Fake News Act 2018* was repealed in 2019,⁴¹ its core enforcement mechanisms were effectively revived through exceptional measures.⁴² Initially justified as a way to deal with disinformation on national security and public order issues, the Act has been highly criticised for its potential politicisation.⁴³ During the 2021 National Emergency, the *Emergency (Essential Powers) Ordinance 2021 (EO 2021)*⁴⁴ reinstated criminal penalties for 'fake news' by inserting new offences directly into the *Penal Code* and *CMA*.⁴⁵ This bypassed parliamentary scrutiny and relied on similarly broad definitions, demonstrating how emergency powers can circumvent democratic checks.⁴⁶

Crucially, the *CMA* has now embedded additional enforcement powers within its framework. The 2025 amendments inserted a new 211A, empowering the Malaysian Communications and Multimedia Commission to direct a content applications service provider to suspend its services where it has contravened content-related provisions, breached license conditions relating to content, or failed to comply with relevant Ministerial or Commission instruments.⁴⁷ In parallel, amendments to *section 233* expanded and clarified offences relating to "grossly offensive, antecedent, obscene, false, or menacing" online content, with significantly increased penalties.⁴⁸ While these changes fall short of creating an actual standalone "fake news" offence akin to repealed *Anti-Fake News Act 2018*, they nevertheless consolidate similar regulatory tools within the *CMA* framework. The combination of excessively broad statutory language, enhanced sanctioning powers, and limited procedural safeguards remains to create significant issues to the freedom of expression under *Article 10*, as the government still has wide discretion in defining and addressing prohibited speech.

⁴¹ *Anti-Fake News Act 2018 (Malaysia) (Act 803)* (later repealed by the *Anti-Fake News (Repeal) Act 2019 (Malaysia)*).

⁴² 'Malaysia: Fake News Ordinance Threatens Freedom of Expression' (*ARTICLE 14*, 15 March 2021) <<https://www.article19.org/resources/malaysia-fake-news-ordinance/>> accessed 20 March 2025.

⁴³ Lasse Schuldt, 'Malaysia's Fake News Law: An Authoritarian Wolf in Democratic Sheep's Clothing?' (*Verfassungsblog*, 13 April 2021) <<https://verfassungsblog.de/malaysia-fake-news/>> accessed 20 March 2025.

⁴⁴ *Emergency (Essential Powers) Ordinance 2021 (Malaysia)*.

⁴⁵ Imran Shamsunahar, 'Malaysia's emergency ordinance and the clampdown on public discourse' *IDEAS* (Kuala Lumpur, 11 June 2021) <<https://www.ideas.org.my/malaysias-emergency-ordinance-and-the-clampdown-on-public-discourse>> accessed 16 July 2025.

⁴⁶ Shannon Teoh, 'Malaysia approves controversial law allowing govt, states to bypass lawmakers in fund allocations' *The Straits Times* (Kuala Lumpur, 31 March 2021) <<https://www.straitstimes.com/asia/se-asia/malaysia-approves-controversial-law-allowing-govt-states-to-bypass-lawmakers-in>> accessed 16 July 2025.

⁴⁷ *Communications and Multimedia (Amendment) Act 2025 (A1743)*, ss 211A.

⁴⁸ *Communications and Multimedia (Amendment) Act 2025 (A1743)*, ss 233.

b. The Role of Courts in Digital Governance

In the bigger picture, judicial interpretation has been critical in determining the constitutionality of social media legislation.⁴⁹ The courts have had to weigh the government's interest in maintaining public order against the constitutional right to free expression, frequently navigating difficult legal and political terrain.⁵⁰ Even historical data shows that Malaysian courts have taken varied approaches, sometimes upholding speech restrictions in the interest of national security⁵¹, while in other cases recognising the importance of free expression in a democratic society.⁵² Interestingly, cases challenging *Section 233 of the CMA* have encountered difficulties that tend to result in judgments prioritising literal statutory interpretation at the expense of substantive constitutional reasoning.⁵³ While legally accurate, this fails to address broader concerns about the impact of the law on democratic discourse and the threat of arbitrary enforcement.

Other countries, such as the United Kingdom⁵⁴ and India⁵⁵, have been more liberal in their treatment of digital free speech. UK courts have upheld the doctrine of proportionality to make sure that rules on the net are not unduly invasive and applied equally. The Indian Supreme Court's landmark ruling in *Shreya Singhal v. Union of India (2015)*⁵⁶ struck down *Section 66A of the Information Technology Act 2000 ('ITA')*⁵⁷ as it was ambiguous and had a chilling effect on speech.⁵⁸ These judgments confirm the need for judicial review to avoid legislative excesses. Malaysian courts have, nonetheless, not yet adopted a strong proportionality test in cases of digital rights. This study believes that future reforms must incorporate more specific statutory definitions, closer due diligence by the judiciary, and procedural safeguards to guarantee that regulation does not come at the expense of fundamental freedoms.

A concrete illustration of Malaysia's restrained proportionality approach can be seen in *Syarul Ema Rena binti Abu Samah v Pendakwa Raya*.⁵⁹ Here, the High Court engaged in a

⁴⁹ Congressional Research Service, 'The Supreme Court and Social Media: Government Officials' Use of Platforms under First Amendment Scrutiny (LSB11146)' (US Congress, March 2024) <<https://crsreports.congress.gov/product/pdf/LSB/LSB11146>> accessed 22 March 2025.

⁵⁰ Ibid.

⁵¹ *Prosecutor v Adam Adli Abd Halim* [2014] 4 CLJ 881.

⁵² *Kerajaan Malaysia v Mat Shuhaimi bin Shafiei* [2018] 1 AMR 837.

⁵³ *Syarul Ema Rena binti Abu Samah v Pendakwa Raya* [2018] MLJU 1128.

⁵⁴ Timothy Pinto, 'The Online Safety Act's Approach to Protecting Freedom of Expression' (*Taylor Wessing*, 2 November 2023) <<https://www.taylorwessing.com/en/interface/2023/the-uks-online-safety-act/the-online-safety-acts-approach-to-protecting-freedom-of-expression>> accessed 22 March 2025.

⁵⁵ Aviral Srivastava, 'Navigating the Fine Line: Bombay High Court's Landmark Ruling on Intermediary Liability and Free Speech in Digital India' (*IPRMENTLAW*, 28 October 2024) <<https://iprmentlaw.com/2024/10/28/navigating-the-fine-line-bombay-high-courts-landmark-ruling-on-intermediary-liability-and-free-speech-in-digital-india/>> accessed 22 March 2025.

⁵⁶ *Shreya Singhal v Union of India* (2015) AIR 2015 SC1523 [India].

⁵⁷ Information Technology Act 2000, s 66A [India].

⁵⁸ Shelal Lodhi Rajput, 'Unravelling the Bombay High Court's Ruling on Freedom of Speech and Expression in the Digital Age' (*IACL Blog*, 21 November 2024) <<https://blog-iacl-aidc.org/2024-posts/2024/11/21/unravelling-the-bombay-high-courts-ruling-on-freedom-of-speech-and-expression-in-the-digital-age>> accessed 22 March 2025.

⁵⁹ *Syarul Ema Rena binti Abu Samah v Pendakwa Raya* [2018] MLJU 1128.

rudimentary balancing test when upholding *Section 233(1)(a) of the CMA*⁶⁰ against constitutional challenges. While acknowledging free speech protections under *Articles 8 and 10*,⁶¹ the court deferred broadly to parliamentary intent, accepting that restrictions on ‘jelik’ (offensive) online content were proportionate to maintaining public order and morality. Notably, it dismissed concerns regarding vagueness and distinguished from the Indian Supreme Court’s landmark *Shreya Singhal* ruling, which struck down a similar provision for overbreadth and chilling effects, by emphasising ‘local context’. This contrasts sharply with *Shreya Singhal*’s rigorous, rights-centric proportionality analysis, where the court demanded precision in statutory language and prioritised expressive liberty against speculative state interests. This contrast underscores how Malaysia’s current jurisprudence applies proportionality superficially, focusing on rational connection rather than necessity or even minimal impairment. Consequently, as seen in *Syarul Ema Rena*, constitutional reasoning remains subordinate to literal statutory interpretation, leaving digital rights vulnerable to ever-expansive state discretion.

c. International and Domestic Support

In recent years, these issues have attracted international scrutiny. In its 2022 Universal Periodic Review, the United Nations Human Rights Council called on Malaysia to repeal or revise laws, including *Section 233*, that can be used to criminalise legitimate expression.⁶² The call echoes similar recommendations from the Human Rights Commission of Malaysia (SUHAKAM), which has urged Parliament to reform online speech laws in line with international human rights norms.⁶³

The approach of comparative jurisdictions offers clear guidance. The UK’s proportionality test, developed under the *Human Rights Act 1998*,⁶⁴ requires courts to consider whether restrictions on rights pursue a legitimate aim, are rationally connected to that aim, and impair the right no more than necessary.⁶⁵ If Malaysian courts were to adopt such a framework, many *Section 233* prosecutions would likely fail to satisfy the threshold. To safeguard the rule of law in the digital sphere, Malaysia must narrow the scope of *Section 233* by clearly defining its operative terms, removing vague language, and ensuring that offences require demonstrable harm rather than a subjective offence. Additionally, legal reforms should incorporate a similar proportionality requirement either through judicial reinterpretation or statutory amendment, compelling courts to weigh the state’s interest against the individual’s right to expression.

⁶⁰ Communications and Multimedia (Amendment) Act 2025 (A1743), s 233(1)(a).

⁶¹ Federal Constitution of Malaysia 1957, art 8 and 10.

⁶² Centre for Independent Journalism and others, ‘Universal Periodic Review Stakeholder Report’ (CIJ Malaysia 2023) 2, 6 <<https://cijmalaysia.net/wp-content/uploads/2023/10/FINAL-2-UPR-FOR-REPORT.pdf>> accessed 15 June 2025.

⁶³ ‘SUHAKAM Firmly Upholds the Principles of Freedom of Expression and Opinion’ (SUHAKAM, 9 August 2025) <[https://suhakam.org.my/category/press-statement/#:~:text=SUHAKAM%20firmly%20upholds%20the%20principles%20of%20freedom,Human%20Rights%20\(UDHR\)%20and%20the%20Federal%20Constitution.&text=The%20Malaysian%20Communications%20and%20Multimedia%20Commission%20\(MCMC\),Communication%20and%20Multimedia%20Act%201998%20\(Act%20588\)>](https://suhakam.org.my/category/press-statement/#:~:text=SUHAKAM%20firmly%20upholds%20the%20principles%20of%20freedom,Human%20Rights%20(UDHR)%20and%20the%20Federal%20Constitution.&text=The%20Malaysian%20Communications%20and%20Multimedia%20Commission%20(MCMC),Communication%20and%20Multimedia%20Act%201998%20(Act%20588)>)> accessed 15 June 2025.

⁶⁴ Human Rights Act 1998 (UK).

⁶⁵ Larry Laudan, ‘The Burden of Proof: Why the Prosecutor Should Bear It’ (2013) University of Hong Kong Faculty of Law Research Paper No. 2013/048 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2393488> accessed 15 July 2025.

Moreover, structural safeguards must be introduced. Establishing an independent digital rights ombudsperson could serve as a reliable neutral mechanism for reviewing speech-related complaints, ensuring that enforcement is fair, balanced, and free from political interference. Such an institution would not only strengthen public trust but also uphold the spirit of constitutional guarantees under *Article 10*. Ultimately, reforming *Section 233* is not simply a matter of legal drafting; it is a litmus test for Malaysia's commitment to democratic governance in the digital era. If left unaddressed, the current regime risks entrenching a culture of fear and silence, eroding both civil liberties and the institutional legitimacy of the law itself.

3.3 Big Data Collection & Processing: Privacy Concerns

With data being labelled the 'new oil'⁶⁶ in a world where governments are increasingly using large-scale data collection, pressing questions about privacy, security, and individual agency arise. For as much as big data analytics can streamline policymaking and service delivery, it also creates new risks if left unregulated. It must be stressed that, without robust legal safeguards and public oversight, the accumulation of large amounts of personal data on government-held databases can undermine civil liberties, particularly where citizens have no effective recourse against data misuse or overreach.

a. The PADU Database: A Tool for Economic Planning or a Risk to Privacy?

Introduced in 2024, PADU is a centralised socio-economic database intended to streamline service delivery, especially targeting subsidies and welfare.⁶⁷ Yet this centralisation, while efficient in theory, poses significant legal and constitutional risks that highlight deeper frictions between digital governance and the rule of law.

First, the architecture of PADU presents what technologists term a 'single point of failure', a centralised repository of sensitive personal information that becomes a prime target for cyberattacks.⁶⁸ This fear is not theoretical. In December 2024, a major breach involving the MyKad system underscored the vulnerabilities of centralised government databases.⁶⁹ In PADU's case, the aggregation of health records, income brackets, household structures, and biometric identifiers into one system magnifies both the risk of unauthorised access and the potential for misuse, be it for surveillance, discrimination, or commercial exploitation.

Second, the issue of consent and individual agency remains conspicuously absent. Unlike many data systems governed by the private sector, which are subject to the *Personal Data*

⁶⁶ Nisha Talagala, "'Data as the New Oil' Is Not Enough: Four Principles for Avoiding Data Fires' (*Forbes*, 2 March 2022) <<https://www.forbes.com/sites/nishatalagala/2022/03/02/data-as-the-new-oil-is-not-enough-four-principles-for-avoiding-data-fires/#>> accessed 24 March 2025.

⁶⁷ PADU, 'Pangkalan Data Utama (PADU) Official Website' (*Government of Malaysia*, n.d.) <<https://www.padu.gov.my>> accessed 24 March 2025.

⁶⁸ 'Is PADU Malaysia's Database Already Outdated?' (*Big Domain Blog*, 2024) <<https://blog.bigdomain.my/padu-malaysia-database-is-outdated/>> accessed 10 June 2025.

⁶⁹ Izzat Najmi Abdullah, 'Alleged MyKad Data Leak Raises Concerns over Financial Fraud' (4 December 2024) <<https://fintechnews.my/47086/cyber-security/mykad-data-leak-raises-c>> accessed 10 June 2025.

Protection Act 2010 (PDPA), PADU operates in a legal vacuum. The *PDPA*, even with recent amendments, applies strictly to private entities, leaving government-driven data initiatives like PADU unregulated. As a result, citizens have no legal entitlement to be informed about the nature and scope of data collected, nor any opt-out mechanism or redress avenue in the event of misuse.⁷⁰ This gap creates a troubling asymmetry: the state holds vast data on individuals, yet individuals lack corresponding rights over how their data is used.⁷¹

This concern has sparked significant public criticism and legal debate since PADU's implementation. Cybersecurity experts and civil society groups have highlighted how the system's lack of explicit opt-in consent, absence of data minimisation principles, and the opaque manner in which personal data is collected and managed pose serious threats to individual privacy.⁷² Critics argue that the government's exemption from the *PDPA* creates a regulatory blind spot, leaving citizens with no clear avenues for redress if their data is mishandled or leaked.⁷³

Prominent legal and civil society groups, such as Pergerakan Tenaga Akademik Malaysia (GERAK) and Persatuan Industri Komputer dan Multimedia Malaysia (PIKOM), have publicly called for urgent reforms, including transparency, a clear legal framework, and the extension of *PDPA* protections to government-held data.⁷⁴ Legal experts further note that because PADU is currently exempt from the *PDPA*, no statutory liability protects individuals in the event of a breach.⁷⁵ These critiques emphasise a broader institutional reluctance to uphold data privacy under *Articles 5 and 13*. While international jurisprudence increasingly recognises informational privacy,⁷⁶ Malaysia remains hesitant to reinterpret these constitutional rights in a digital context.

b. Lack of Comprehensive Protection for Government-Held Data

The PADU example exposes not only legal loopholes but also conceptual issues in understanding what liberty and autonomy mean in the digital age. While traditional constitutional rights are tied to physical and actual tangible harms, algorithmic governance

⁷⁰ 'PADU: Big Data or Big Brother?' (*Malaysia Now*, 25 March 2024) <<https://www.malaysianow.com/news/2024/03/25/padu-big-data-or-big-brother>> accessed 24 March 2025.

⁷¹ Ibid.

⁷² Izzul, Ikram, 'PADU Database Raises Concerns' *The Edge Malaysia* (Petaling Jaya, 25 January 2024) <<https://theedgemalaysia.com/node/697502>> accessed 12 June 2025.

⁷³ Ibid.

⁷⁴ 'GERAK Raises Alarm over PADU Personal Information Database' (Aliran, 2024) <<https://m.aliran.com/civil-society-voices/gerak-raises-alarm-over-padu-personal-information-database>> accessed 12 June 2025; 'PADU Security Breach: PIKOM Urges Govt to Engage Crucial External Expertise' (*The Vibes*, 6 January 2024) <<https://www.thevibes.com/articles/news/100580/padu-security-breach-pikom-urges-govt-to-engage-crucial-external-expertise>> accessed 12 June 2025.

⁷⁵ Alexander Wong, 'Fahmi: Malaysia Govt Guarantees PADU Data Security' (*SoyaCincau*, 24 February 2024) <<https://soyacincau.com/2024/02/24/fahmi-malaysia-govt-guarantee-padu-data-security/>> accessed 12 June 2025.

⁷⁶ Hannah Humble, 'International Law, Surveillance and the Protection of Privacy' (2021) 25 *The International Journal of Human Rights* 1 <https://gala.gre.ac.uk/id/eprint/29181/1/29181%20HUMBLE_International_Law_Surveillance_and_the_Protection_of_Privacy_%28AAM%29_2020.pdf> accessed 12 June 2025.

and data surveillance inflict much subtler and systemic forms of control that are often without an immediate or visible injury. For instance, data collected without consent can be used to create predictive profiles that inform eligibility for government assistance or monitoring by enforcement agencies. These algorithmic outputs are opaque by design and may encode biases that disproportionately affect marginalised communities, yet the legal system offers no meaningful route to challenge or audit such processes.

From a rule-of-law perspective, the core issue is more so one of accountability. The concentration of data power in the state, coupled with the absence of oversight mechanisms, not only enables arbitrary decision-making but also undermines the principle of legal transparency. In Diceyan terms, where the rule of law demands that all administrative acts be subject to law and reviewable by courts, PADU operates as a shadow architecture beyond constitutional reach. This is compounded by the absence of any legislative or judicial requirement for algorithmic explainability.⁷⁷ Citizens have no right to know how decisions affecting their welfare are made, let alone to contest them.

Further, PADU's risks extend into the political domain. There is a growing concern that such a centralised tool, while ostensibly neutral, can be weaponised for political ends, such as profiling opposition supporters, monitoring dissent, or influencing voter behaviour under the guise of public service targeting. Without strong data protection laws, judicial safeguards, or independent oversight bodies, the architecture of PADU enables potential abuses of power under the cover of efficiency. What PADU represents, then, is not merely a technological upgrade but a constitutional stress test. It asks whether Malaysia's legal system, rooted in analogue-era conceptions of liberty and state power, can adapt to the realities of automated governance. The current answer, reflected in weak institutional responses, outdated statutes, and a passive judiciary, suggests a significant misalignment between digital governance practices and the principles of the rule of law.

It is evident that correcting this misalignment requires more than patchwork regulatory fixes. It calls for a reconceptualisation of rights in the digital age, one that treats data privacy, algorithmic accountability, and informational self-determination as constitutional necessities rather than optional extras. This means extending the *PDPA*'s reach to public-sector databases, recognising data privacy as a fundamental right under *Article 5*,⁷⁸ and obliging the government to enact clear, enforceable safeguards for consent, transparency, and redress. Ultimately, the PADU system reveals a deeper truth about Malaysia's digital trajectory: without proactive legal reform, the machinery of algorithmic governance may entrench, rather than dismantle, inequality and opacity. Therefore, in the name of safeguarding the rule of law in this new terrain, this study observes vigilance, a willingness to read old rights in new contexts, and to hold the state to account in all domains, digital or otherwise.

⁷⁷ 'The Personal Data Protection (Amendment) Bill 2024: An Analysis and Upcoming Developments' (Christopher & Lee Ong, 25 September

2024) <<https://www.christopherleeong.com/viewpoints/the-personal-data-protection-amendment-bill-2024-a-n-analysis-and-upcoming-developments/>> accessed 25 March 2025.

⁷⁸ Federal Constitution of Malaysia 1957, art 5.

IV. Reform Proposals

4.1 Constitutional Amendments In The Digital Age

As Malaysia advances into the digital era, with the ever-growing integration of technologies like AI and big data into the field of governance, it set out to ponder a future seminal challenge: keeping these innovations aligned with the rule of law. The imperative is that technological advancements should not unravel the rule of law, but bolster it with informed legal reforms. Therefore, this study recommends several essential reforms to safeguard constitutional rights in the digital world.

a. A Digital Bill of Rights?

The pace of digital transformation necessitates a complete re-examination of constitutional rights to explicitly protect digital freedoms. This study proposes the inclusion of provisions in the FC to enshrine digital rights, including privacy, data protection, and the right to transparency in digital decision-making. These rights should encompass freedom from blanket state surveillance and recognition of informational self-determination as a protected liberty. Given the wide powers currently exercised without clear citizen safeguards, constitutional recognition would provide the judiciary with a firmer footing to interpret and apply protections under *Articles 5 and 8*.

In comparison, the European Union's GDPR is a relevant point of reference, entrenching wide-ranging data protection rights like access, rectification, and erasure of personal data. Further, it imposes transparency and accountability on data processors, something Malaysia's current legal framework still falls short of. Malaysia's *PDPA* has been roundly criticised for being narrow in scope, especially for its exclusion of government-held data. This exclusion creates a huge loophole in safeguarding citizens' personal data as the state is free to gather and process information without adequate regulation.

b. Remove Ouster Clauses

Ouster clauses, statutory provisions that prevent judicial review of executive decisions, present a serious threat to the principle of legal accountability. While originally justified on grounds of administrative efficiency or national security, these clauses now undermine one of the most critical elements of the rule of law: that the courts must be able to scrutinise executive action. This is especially dangerous in the context of digital governance where decisions such as the denial of digital subsidies, algorithmic profiling, or administrative enforcement based on blurry datasets can directly impact citizens' lives and liberties.

When these decisions are shielded from judicial review by ouster clauses, individuals are left without effective remedies and constitutional guarantees lose their practical meaning. In the digital age, where administrative decisions are increasingly automated and potentially flawed due to biased data or technical errors, judicial review serves as a vital mechanism to identify and correct injustices. In particular, *section 106(3) of the Income Tax Act 1967*,⁷⁹ which bars courts from questioning tax assessments, and *section 4(5) of the Security*

⁷⁹ Income Tax Act 1967 (Act (Malaysia), s 106(3).

Offences (Special Measures) Act 2012,⁸⁰ which precludes any challenge to preventive detention orders, should be singled out for immediate repeal.⁸¹ This reform would not only restore balance among the branches of government but also re-establish trust in the legal system by ensuring that all executive actions, especially those involving digital tools, remain within the bounds of constitutional scrutiny.

c. Strengthen Article 10

Article 10 of the FC guarantees the freedom of speech, but its effectiveness is diluted by the sweeping powers granted under *Article 10(2)(a)*, which permits Parliament to restrict speech in the interest of security, public order, or morality. The absence of a clear proportionality test has led to vague and inconsistent enforcement, particularly in the digital realm, where online speech is often met with punitive action under laws like *Section 233 of the CMA*. To address this, *Article 10* should be amended to incorporate a proportionality clause requiring that any restriction on free speech must be necessary to achieve a legitimate aim, proportionate to the harm, and represent the least restrictive means available.

Such a reform would align Malaysia's legal standards with those of mature democracies such as the United Kingdom and India, both of which have judicially developed proportionality frameworks to assess speech restrictions. A constitutional proportionality test would also empower Malaysian courts to engage in substantive rights-balancing, enabling more nuanced judgments that protect both public order and individual liberties. In the age of digital communication, where misinformation and hate speech coexist with legitimate dissent and activism, it is crucial that the law is not applied indiscriminately. By embedding proportionality into *Article 10*, Malaysia can build a legal regime that upholds freedom of expression while still allowing targeted, reasonable interventions against harmful content.

4.2. The Role of the National AI Initiatives

Malaysia's establishment of a National AI Office is a strategic move towards centralised control of AI. It is tasked with formulating policies, coordinating AI initiatives, and establishing a regulatory framework to ensure ethical use of AI.⁸² It has also introduced a five-year technology action plan and an AI code of ethics to address ethical concerns on the use of AI.

However, the formation of such programmes depends on whether they are couched in harmony with constitutional principles and are adaptable enough to keep up with the rapidly evolving digital landscape. A national AI policy is a welcome move, but the lack of clear legal safeguards is an open vulnerability. Without strong legislative backing, such programmes can become mere recommendations instead of binding commitments for AI

⁸⁰ Security Offences (Special Measures) Act 2012 (Malaysia), s 4(5).

⁸¹ Richard SK Foo, 'Malaysia—Death of a Separate Constitutional Judicial Power' (2010) Singapore JLS 227 <<http://www.jstor.org/stable/24870497>> accessed 7 March 2025.

⁸² 'Malaysia Launches National AI Office, Policy Regulation' (*Reuters*, 12 December 2024) <<https://www.reuters.com/technology/artificial-intelligence/malaysia-launches-national-ai-office-policy-regulation-2024-12-12/>> accessed 28 March 2025.

developers and government agencies. Thus, constant monitoring and revision of AI policies are necessary to prevent potential abuses. This study advocates for a formalised framework of AI governance to ensure that technological advancement serves the public good without compromising fundamental rights.

V. Conclusion

The integration of digital technology into governance is both unavoidable and irreversible, in a way raising a constitutional watershed issue. As AI and big data play an ever-growing role in policy implementation, Malaysia stands at a juncture: will our jurisprudence evolve to safeguard basic rights, or will unchecked digital governance erode them?

Without robust constitutional safeguards, unrestricted development of AI and digital surveillance can undermine due process, privacy, and judicial independence. Algorithmic decision-making, if left unchecked, may supersede democratic deliberation, concentrating power in opaque systems rather than accountable institutions. But fret not, Malaysia is not without remedy. By incorporating digital rights into the FC, it can harmonise innovation with constitutionalism. Thus, the issue now is not whether to embrace digital governance but whether our rule of law is robust enough to uphold justice amidst technological turmoil.

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