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Contents

Consumer Protection in Malaysian E-Commerce under the Fourth Industrial Revolution: Legal Challenges and Comparative Insights from Australia

Asail Ahmed Mubarak Alqathmi
Postgraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
imasail.137@gmail.com

Abstract

This paper examines the adequacy of Malaysia's legal framework in protecting consumers engaged in e-commerce within the context of the Fourth Industrial Revolution. Using a doctrinal legal research methodology supplemented by comparative analysis of selected aspects of Australian consumer protection law, the study evaluates Malaysia's principal legal framework governing e-commerce and examines emerging challenges arising from platform-based business models, artificial intelligence, data protection, cybersecurity, and cross-border digital transactions.

The findings identify important legal gaps in Malaysia's existing framework, particularly regarding digital consumer rights, platform accountability, seller verification, consumer redress mechanisms, and the regulation of emerging digital technologies. Accordingly, the study proposes targeted legislative reforms, supported by consumer legal education, AI-powered legal assistance, and strategic collaboration to strengthen the practical implementation of consumer protection laws. Collectively, these recommendations aim to enhance consumer confidence, improve regulatory effectiveness, and strengthen Malaysia's digital consumer protection framework.

Keywords: Consumer Protection, E-Commerce, Malaysia, Consumer Rights, Platform Liability, Digital Transactions, Data Privacy, Cyber Security, Fourth Industrial Revolution, Australian Consumer Law.

1. Introduction

Given the rapid evolution of e-commerce, particularly in Malaysia, consumer protection has become an increasingly significant legal issue requiring effective coordination between government authorities, policymakers, and digital platforms. This study focuses on Malaysian consumers aged 18 to 34, as this age group forms the focus of the present legal analysis. Within this age group, particular attention is given to Generation Z, which constitutes one of the most active consumer groups engaging in online shopping and digital transactions within the context of the Fourth Industrial Revolution.[1] Consequently, this group is particularly relevant to examining the legal challenges associated with e-commerce in Malaysia.

[1] Mohd Remie Mohd Johan, Md Azalanshah Md. Syed and Hamedi Mohd Adnan, 'Digital Media and Online Buying Considerations among Generation Z in Malaysia' (2022) 17 *Jurnal Intelek* 164 <https://doi.org/10.24191/ji.v17i1.15920> accessed 30 June 2026.

Despite the existence of legislation such as the *Consumer Protection Act 1999 (Act 599)*, the *Electronic Commerce Act 2006 (Act 658)*, and the *Personal Data Protection Act 2010 (Act 709)*, concerns remain regarding the effectiveness of Malaysia's existing legal framework in addressing legal issues arising from e-commerce.[2] The Ministry of Domestic Trade and Cost of Living (KPDN) recorded 4,809 e-commerce-related complaints as of 31 July 2025.[3] This continuing volume of complaints suggests that the existing legal and enforcement framework may be insufficient to provide effective consumer protection within Malaysia's digital marketplace.

Regional developments further emphasise the need to strengthen consumer protection laws. The ASEAN High-Level Principles on Consumer Protection recognise the importance of reviewing legislative frameworks to address challenges arising from e-commerce, artificial intelligence, automation technologies, and cross-border digital transactions.[4] Similarly, the Federation of Malaysian Consumers Associations (FOMCA) has consistently highlighted consumer concerns relating to online fraud, rogue sellers, and risks associated with online shopping through digital platforms.[5] These developments demonstrate that significant legal and regulatory gaps continue to exist despite the current legislative framework.

The *Consumer Protection Act 1999* remains the primary legislation governing consumer protection in Malaysia. Although the Act was amended by the *Consumer Protection (Amendment) Act 2007* to extend its application to transactions conducted through electronic means, it was not originally designed to address the increasingly complex legal challenges arising from the Fourth Industrial Revolution, including platform liability, algorithmic marketing, data-driven business practices, and cross-border digital commerce.[6] Consequently, important questions remain regarding whether Malaysia's existing legal framework provides adequate protection for consumers in the digital economy and what lessons may be drawn from the Australian consumer protection framework.

1.1 Research Question and Objectives

This study examines whether Malaysia's existing legal framework provides adequate protection for consumers engaged in e-commerce within the context of the Fourth Industrial Revolution. It further examines whether the current legal framework adequately addresses challenges arising from digital platforms, artificial intelligence, data privacy, cybersecurity, and cross-border online transactions. It also considers how selected aspects of the

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[2] 'Govt Strengthens E-Commerce Legal Framework Following over 4,800 Complaints in 2025' *The Vibes* (23 August 2025) <https://www.thevibes.com/index.php/articles/news/111925/govt-strengthens-e-commerce-legal-framework-following-over-4800-complaints-in-2025> accessed 27 June 2026.

[3] ibid.

[4] ASEAN Committee on Consumer Protection, 'ASEAN High-Level Principles on Consumer Protection' <https://aseanconsumer.org/cterms-regional-cooperation-in-asean/asean-high-level-principles-on-consumer-protection> accessed 27 June 2026.

[5] 'Rogue Sellers Prey on People's Reliance on e-Shopping' *FOMCA* (9 July 2021) <https://www.fomca.org.my/v1/index.php/fomca-di-pentas-media/fomca-di-pentas-media-2021-21/1407-rogue-sellers-prey-on-people-s-reliance-on-e-shopping> accessed 27 June 2026.

[6] Joo Xun Loh, 'The Legal Framework of E-Commerce in Malaysia' (2023) 3 *Asian Journal of Law and Policy* 183 <https://doi.org/10.33093/ajlp.2023.13> accessed 30 June 2026. .

Australian consumer protection framework may inform legal reforms to strengthen consumer protection in Malaysia.

Accordingly, this study addresses the following research question:

Does Malaysia's existing legal framework provide adequate protection for consumers in e-commerce, and what lessons can Malaysia draw from the Australian consumer protection framework to strengthen consumer protection in the digital marketplace?

To answer this research question, the study pursues the following objectives:

1. To examine the adequacy of Malaysia's legal framework governing consumer protection in e-commerce.
2. To identify legal challenges and regulatory gaps relating to platform liability, data privacy, cybersecurity, emerging technologies, and digital platforms.
3. To analyse selected aspects of the Australian consumer protection framework and identify legal reforms that may strengthen consumer protection in Malaysia.
4. To propose legal and policy recommendations for improving consumer protection, regulatory enforcement, and consumer legal empowerment within Malaysia's digital economy.

2. Research Methodology

This study adopts a doctrinal legal research methodology supplemented by comparative legal analysis. The doctrinal approach critically examines the adequacy of Malaysia's legal framework governing consumer protection in e-commerce through the analysis of primary legal sources, including legislation, judicial decisions, and relevant policy documents. Particular attention is given to the *Consumer Protection Act 1999*, the *Electronic Commerce Act 2006*, the *Personal Data Protection Act 2010*, and the *Communications and Multimedia Act 1998*.[7]

The study also undertakes a comparative analysis of selected aspects of Australia's consumer protection framework. Australia was selected because the *Australian Consumer Law* provides a comprehensive statutory consumer protection framework supported by effective compliance and enforcement mechanisms administered by the Australian Competition and Consumer Commission (ACCC).[8] Malaysia forms the primary focus of this study because the research evaluates the adequacy of its existing legal framework governing consumer protection in e-commerce. The study further focuses on Generation Z consumers because they represent one of the most active groups participating in e-commerce and digital transactions in Malaysia.[9] The comparative analysis identifies legal principles and regulatory approaches that may assist in strengthening Malaysia's consumer protection framework.

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[7] Consumer Protection Act 1999 (Act 599) (Malaysia); Electronic Commerce Act 2006 (Act 658) (Malaysia); Personal Data Protection Act 2010 (Act 709) (Malaysia); Communications and Multimedia Act 1998 (Act 588) (Malaysia).

[8] Department of the Treasury, 'About Australian Consumer Law' (12 March 2025) <https://consumer.gov.au/about/australian-consumer-law> accessed 30 June 2026; Australian Competition and Consumer Commission, 'Buying Products and Services' <https://www.accc.gov.au/consumers/buying-products-and-services> accessed 30 June 2026.

[9] Johan, Syed and Adnan (n 1).

In addition to primary legal sources, this study relies on secondary sources, including academic journal articles, government reports, policy papers, and publications issued by consumer protection organisations. Publications issued by the Federation of Malaysian Consumers Associations (FOMCA) were consulted because they provide practical insight into consumer complaints and emerging issues relating to e-commerce in Malaysia.[10] By combining doctrinal and comparative legal research, this study critically evaluates Malaysia's existing legal framework, identifies legal gaps, and proposes legal reforms to strengthen consumer protection and improve access to justice within the digital economy.

3. Malaysian Legal Framework

This section examines Malaysia's legal framework governing consumer protection in e-commerce within the context of the Fourth Industrial Revolution. It analyses the principal legislation regulating digital transactions and evaluates whether the existing framework adequately addresses emerging challenges, including platform liability, data privacy, cybersecurity, artificial intelligence, and cross-border digital transactions.

Malaysia has developed a comprehensive legal framework for consumer protection in e-commerce, although significant legal gaps remain. Although the Malaysian *Federal Constitution* does not expressly regulate e-commerce, Article 8 guarantees equality before the law and equal protection of the law.[11] This principle supports the equal application of consumer protection laws to both traditional and online transactions.

The *Consumer Protection Act 1999* was amended in 2008 to extend its application to electronic transactions under section 2.[12] Sections 10 and 12 prohibit false or misleading representations relating to goods, services, and prices. These provisions provide important safeguards against unfair commercial practices in e-commerce.[13] However, the Act was originally enacted to regulate conventional consumer transactions rather than the increasingly complex digital marketplace. It does not clearly define the legal responsibilities of digital platforms acting as intermediaries between consumers and online sellers, particularly where disputes arise through online marketplaces. Nor does it specifically address emerging issues such as algorithm-driven advertising, personalised pricing, automated decision-making, or other data-driven commercial practices. Consequently, consumers may encounter practical difficulties in obtaining effective legal remedies where disputes involve digital platforms and third-party sellers. These limitations demonstrate the need for further legislative reform to ensure that the *Consumer Protection Act 1999* remains effective in protecting consumers within Malaysia's evolving digital economy.

The *Consumer Protection Act 1999* is complemented by other statutes that strengthen Malaysia's legal framework for e-commerce. For instance, the *Communications and Multimedia Act 1998*, which regulates online communications. Section 211(1) of the Act prohibits the provision of false, offensive, or misleading content, thereby helping reduce online fraud and misleading advertising.[14] Nevertheless, the Act primarily regulates online

[10] 'Rogue Sellers Prey on People's Reliance on e-Shopping' (n 5).
[11] Federal Constitution (Malaysia), art 8(1)
[12] Consumer Protection Act 1999 (Act 599) (Malaysia), s 2
[13] Consumer Protection Act 1999 (Act 599) (Malaysia), ss 10–12
[14] Communications and Multimedia Act 1998 (Act 588) (Malaysia), s 211(1)

content rather than consumer transactions and does not establish comprehensive obligations relating to consumer protection, platform accountability, or dispute resolution in e-commerce. Consequently, its role in protecting consumers remains supportive rather than comprehensive.

Similarly, the *Personal Data Protection Act 2010* supports consumer protection by requiring data users to comply with the Personal Data Protection Principles under section 5(1).[15] These principles promote accountability, transparency, and the responsible handling of consumers' personal information. However, the Act primarily regulates the processing of personal data and does not specifically address privacy challenges arising from emerging technologies, such as artificial intelligence, or the growing complexity of cross-border data transfers. As digital commerce increasingly relies on data-driven technologies, these limitations may reduce the effectiveness of the Act in protecting consumers' personal information. Consequently, continuous legislative reform is required to ensure that consumer privacy remains adequately protected within Malaysia's evolving digital economy.

The *Electronic Commerce Act 2006* recognises electronic messages, electronic contracts, and digital signatures, thereby facilitating legally valid electronic transactions[16]. However, its primary function is to recognise the legal validity of electronic communications rather than to regulate consumer rights or provide remedies in e-commerce transactions.[17] Issues relating to platform liability, unfair commercial practices, and consumer redress remain governed by other legislation. Therefore, the *Electronic Commerce Act 2006* alone is insufficient to provide comprehensive consumer protection for digital transactions and must operate alongside other consumer protection legislation.

The *Contracts Act 1950* governs the formation and enforcement of contracts, including offer, acceptance, consideration, and contractual obligations.[18] Although these principles remain applicable to electronic transactions, the Act does not specifically address modern forms of electronic contracting. Likewise, the *Sale of Goods Act 1957* governs contracts for the sale of goods but does not expressly regulate online marketplaces or define the legal responsibilities of digital platforms acting as intermediaries.[19] Consequently, these Acts provide limited guidance on platform liability and consumer remedies in e-commerce disputes.

In addition, section 420 of the *Penal Code* provides an important criminal mechanism for addressing cheating and fraudulent conduct.[20] Its provisions may also apply to fraudulent activities committed through digital platforms, depending on the facts of each case. However, criminal sanctions do not provide consumers with direct civil remedies or clarify the legal responsibilities of digital platforms. Consequently, criminal law alone is insufficient to address the legal challenges arising from e-commerce within the context of the Fourth Industrial Revolution.

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[15] Personal Data Protection Act 2010 (Act 709) (Malaysia), s 5(1)

[16] Amirah Khadijah Roslan and others, 'Legal Protection of E-Consumers in Malaysia' (2022) 7 *International Journal of Law, Government and Communication* 223 <https://doi.org/10.35631/IJLGC.729016> accessed 27 June 2026.

[17] ibid.

[18] Contracts Act 1950 (Act 136)

[19] Sale of Goods Act 1957 (Act 382)

[20] Penal Code (Malaysia) (Act 574), s 420

From a judicial perspective, *A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd* provides important guidance on the legal position of digital platforms within Malaysia's e-commerce framework.[21] The dispute concerned allegations that products bearing the plaintiff's registered trade mark were sold on Shopee's online marketplace without authorisation. The principal issue before the High Court was whether Shopee, as the operator of an online marketplace, could be held legally responsible for the activities of independent third-party sellers.[22]

The High Court dismissed the application and held that Shopee operated as an intermediary facilitating transactions between buyers and independent sellers rather than acting as the seller of the products.[23] The Court also observed that Shopee had established procedures for reporting complaints relating to intellectual property infringement, reinforcing its role as a platform operator rather than a direct seller.[24]

Although the dispute primarily concerned trademark infringement rather than consumer protection, the decision has broader implications for platform liability in Malaysia's digital economy. It illustrates the absence of clear statutory rules defining when e-commerce platforms may be held legally responsible for the conduct of independent third-party sellers. Consequently, greater legislative clarity is needed to balance platform accountability with the practical operation of digital marketplaces while ensuring effective consumer protection within the context of the Fourth Industrial Revolution.

4. Comparative Analysis of Consumer Protection in Malaysia and Australia

The United Nations Guidelines for Consumer Protection (UNGCP) provide an internationally recognised benchmark for evaluating national consumer protection frameworks in the digital economy.[25] The Guidelines emphasise that consumers engaging in electronic commerce should receive a level of protection equivalent to that available in traditional commerce.[26] They also promote transparency, fair business practices, effective consumer redress, consumer education, and international cooperation in addressing cross-border consumer disputes.[27] These principles provide an appropriate benchmark for assessing the adequacy of Malaysia's legal framework governing consumer protection in e-commerce.

Unlike Malaysia, which regulates e-commerce through several separate statutes, Australia has established a comprehensive legal framework through the *Australian Consumer Law (ACL),* providing a uniform system of consumer protection across all Australian states and territories.[28] The ACL prohibits misleading or deceptive conduct, establishes statutory consumer guarantees, and provides consumers with clear legal remedies where traders fail

[21] *A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd (berniaga sebagai Shopee Malaysia) [2021] MLJU 65 (HC).*
[22] ibid.
[23] ibid.
[24] ibid.
[25] UNGA Res 70/186 (22 December 2015) UN Doc A/RES/70/186, annex.
[26] ibid.
[27] ibid.
[28] Department of the Treasury, 'About Australian Consumer Law' (n 8).

to comply with their legal obligations.[29] The Australian Competition and Consumer Commission (ACCC) supports this framework by monitoring compliance and enforcing consumer protection laws. This integrated approach provides greater legal certainty than Malaysia's fragmented legislative framework, enabling consumers and businesses to understand their respective rights and obligations more clearly.

By comparison, Malaysia regulates consumer protection in e-commerce through multiple statutes, including the *Consumer Protection Act 1999*, the *Personal Data Protection Act 2010*, the *Electronic Commerce Act 2006*, the *Communications and Multimedia Act 1998*, and other related legislation. Although this legislative framework provides an important legal foundation for regulating digital transactions, it remains less integrated than the Australian model. Consequently, disputes involving platform liability, consumer remedies, personal data protection, and cross-border digital transactions may require the simultaneous application of multiple statutes, potentially creating greater legal complexity for consumers seeking effective remedies.

Compared with Malaysia, Australia adopts a stronger institutional approach to consumer awareness and regulatory guidance. Through the Australian Competition and Consumer Commission (ACCC), consumers are provided with practical information regarding their rights under the *Australian Consumer Law*, while businesses receive guidance on their rights, responsibilities, and compliance with consumer law.[30] This contributes to greater public confidence in e-commerce and encourages compliance by traders. While Malaysia has undertaken various consumer awareness initiatives through government agencies and organisations such as the Federation of Malaysian Consumers Associations (FOMCA), further efforts may be required to strengthen consumers' understanding of their rights in digital transactions and the avenues available for obtaining effective legal redress.

This comparative analysis demonstrates that Malaysia is not lacking in legislation but rather in the coherence and coordination of its regulatory framework. Rather than introducing entirely new legislation, Malaysia may strengthen consumer protection by adopting selected aspects of the Australian model, including clearer provisions on platform liability, more effective consumer redress mechanisms, stronger regulatory coordination, and enhanced consumer education. Such reforms would improve legal certainty, strengthen consumer confidence, and better equip Malaysia's legal framework to address the legal challenges arising from e-commerce in the context of the Fourth Industrial Revolution.

5. Legal Challenges of Consumer Protection under the Fourth Industrial Revolution

The Fourth Industrial Revolution has fundamentally transformed the nature of e-commerce by integrating artificial intelligence, automated decision-making, blockchain technology, smart contracts, and large-scale data processing into digital commercial activities.[31] Unlike

[29] ibid.
[30] Australian Competition and Consumer Commission, ‘Buying Products and Services’ <https://www.accc.gov.au/consumers/buying-products-and-services> accessed 28 June 2026.
[31] Aaron M French, JP Shim, Kai R Larsen, Marten Risius and Hemant Jain, ‘The 4th Industrial Revolution Powered by the Integration of AI, Blockchain, and 5G’ (2021) 49 *Communications of the Association for Information Systems* 266 <https://doi.org/10.17705/1CAIS.04910> accessed 28 June 2026; Judy Yueh Ling Song and Esther Tan, ‘Beyond Traditional Contracts: The Legal Recognition and Challenges of Smart Contracts in

earlier stages of electronic commerce, where consumer transactions mainly involved the online purchase of goods and services, digital platforms now rely extensively on data-driven technologies that influence consumer behaviour, personalise commercial offers, automate contractual processes, and facilitate cross-border digital transactions.[32] These technological developments create legal challenges that extend beyond the scope of traditional consumer protection laws, particularly in relation to transparency, accountability, data privacy, cybersecurity, platform liability, and effective consumer redress. Consequently, the adequacy of Malaysia's legal framework should be evaluated not only according to its ability to regulate conventional e-commerce but also according to its capacity to respond to the increasingly complex legal challenges arising from the Fourth Industrial Revolution.

5.1 Data Privacy and Cybersecurity

Data privacy and cybersecurity have become fundamental components of consumer protection under the Fourth Industrial Revolution, where digital commerce increasingly depends on the large-scale collection, processing, storage, and transfer of consumers' personal data. Consequently, effective legal protection is no longer limited to regulating commercial transactions but also extends to safeguarding consumers' personal information and ensuring the security of digital systems.

In Malaysia, the *Personal Data Protection Act 2010* (PDPA) constitutes the principal legislation governing the processing of personal data in commercial transactions. The Act establishes several important safeguards through the Personal Data Protection Principles, including the General Principle under section 6, which requires the consent of the data subject before personal data may be processed, subject to the statutory exceptions provided by the Act.[33] In addition, section 8 restricts the disclosure of personal data without the consent of the data subject, except in circumstances permitted by law.[34] These provisions provide an important legal foundation for protecting consumers' personal information and promoting accountability among data users.

Nevertheless, the PDPA continues to present several limitations when applied to the increasingly complex digital environment. In particular, section 2(2) limits the territorial application of the Act to specified circumstances connected with Malaysia.[35] As e-commerce increasingly involves cross-border digital platforms and cloud-based data processing, this territorial limitation may reduce the effectiveness of legal protection where consumers' personal data are processed or stored outside Malaysia. Consequently, consumers may encounter practical difficulties in obtaining effective legal protection when personal data are transferred across multiple jurisdictions, demonstrating the need for continuous legislative reform to address cross-border data governance.

Cybersecurity presents a similar legal challenge. Before the enactment of the *Cyber Security Act 2024*, Malaysia primarily relied on separate statutes, including the *Computer Crimes Act*

Malaysia and Singapore' (2024) 3 *Journal of Law, Market & Innovation* 323 <https://doi.org/10.13135/2785-7867/11334> accessed 28 June 2026.

[32] French and others (n 31).

[33] Personal Data Protection Act 2010 (Act 709), s 6

[34] Personal Data Protection Act 2010 (Act 709), s 8

[35] Personal Data Protection Act 2010 (Act 709), s 2(2)

1997[36] and the *Communications and Multimedia Act 1998*, to regulate cyber-related activities.[37] Although these statutes provide important legal protection against various cyber offences, they regulate different aspects of cybersecurity rather than establishing a comprehensive framework specifically designed to protect digital consumers. The *Cyber Security Act 2024* represents an important legislative development towards strengthening Malaysia's national cybersecurity framework.[38] Nevertheless, its long-term effectiveness will depend on effective implementation, regulatory coordination, and consistent enforcement.

Overall, Malaysia has established an important legal framework for protecting personal data and cybersecurity. However, the rapid expansion of cross-border digital commerce under the Fourth Industrial Revolution requires continuous legislative development to ensure that consumer protection remains effective within an increasingly interconnected digital environment.

5.2 Artificial Intelligence and Algorithmic Decision-Making

Artificial intelligence (AI) has become an increasingly important component of modern e-commerce by enabling personalised advertising, automated decision-making, and tailored product recommendations based on consumer behaviour.[39] These technologies allow digital platforms to analyse consumer data, personalise commercial offers, and automate various aspects of online transactions.[40] While these technological developments improve commercial efficiency and consumer convenience, they also raise important legal concerns relating to transparency, accountability, fairness, and consumer autonomy.

From a consumer protection perspective, AI-driven decision-making may influence consumers without their knowledge by determining the advertisements they receive, the products displayed to them, or the prices offered through automated systems.[41] In addition, businesses increasingly rely on consumer data to identify purchasing preferences and personalise commercial practices.[42] The growing use of these technologies raises significant legal concerns regarding transparency, informed consent, and the accountability of businesses deploying artificial intelligence in digital commerce.

Malaysia's current legal framework does not specifically regulate artificial intelligence, algorithmic profiling, or automated decision-making within consumer transactions. Although the *Personal Data Protection Act 2010* regulates the processing of personal data, it does not contain specific provisions governing AI-driven decision-making or provide consumers with clear legal safeguards against the risks associated with AI-based commercial practices.[43] Likewise, the *Consumer Protection Act 1999* prohibits misleading representations and unfair

[36] Computer Crimes Act 1997 (Act 563)
[37] Communications and Multimedia Act 1998 (Act 588) (n 7).
[38] Cyber Security Act 2024 (Act 854) (Malaysia), National Cyber Security Agency (NACSA)
[39] Aditi M Jain and Ayush Jain, 'AI Based Content Creation and Product Recommendation Applications in E-Commerce : An Ethical Overview' (2025) 11 *International Journal of Scientific Research in Computer Science, Engineering and Information Technology* 3720 <https://doi.org/10.32628/CSEIT2410414> accessed 28 June 2026.
[40] ibid.
[41] ibid.
[42] ibid.
[43] Personal Data Protection Act 2010 (Act 709) (Malaysia) (n 7).

commercial practices but does not expressly address AI-driven advertising, personalised pricing, or automated commercial decision-making.[44] Consequently, significant legal uncertainty remains regarding the extent to which existing legislation adequately protects consumers against emerging forms of digital manipulation.

By comparison, the European Union has adopted a more proactive regulatory approach through the Artificial Intelligence Act, which establishes a risk-based framework governing the development and use of artificial intelligence systems.[45] Although Malaysia is not required to adopt an identical regulatory model, the European approach demonstrates the importance of developing legal safeguards that promote transparency, accountability, and responsible innovation. As artificial intelligence continues to transform digital commerce under the Fourth Industrial Revolution, Malaysia may need to consider legislative reforms that provide clearer regulation of AI-driven commercial practices while maintaining an appropriate balance between technological innovation and consumer protection.

5.3 Blockchain and Smart Contracts

Blockchain technology and smart contracts have transformed e-commerce by facilitating secure, automated, and decentralised digital transactions. Smart contracts automatically execute contractual obligations once predetermined conditions are met, while blockchain technology provides secure and transparent records of digital transactions.[46] These technologies improve transactional efficiency, reduce reliance on intermediaries, and facilitate secure digital transactions. However, they also create legal challenges concerning contractual validity, legal accountability, dispute resolution, and consumer protection.

Malaysia's *Electronic Commerce Act 2006* provides legal recognition for electronic messages and electronic contracts, thereby supporting the legal validity of digital transactions.[47] However, although the Act recognises electronic transactions, it does not expressly regulate legal issues arising from blockchain technology or smart contracts, including automated contractual performance and decentralised digital transactions. Likewise, the *Consumer Protection Act 1999* and the *Contracts Act 1950* neither expressly address disputes involving self-executing smart contracts nor clearly define the legal responsibilities of parties operating blockchain-based commercial systems.[48]

The absence of specific legislative provisions creates legal uncertainty where disputes arise from automated transactions executed without direct human intervention. Questions relating to contractual interpretation, the allocation of liability where coding errors or system failures occur, consumer remedies, and the respective responsibilities of technology providers, digital platforms and traders remain largely unresolved under Malaysia's current legal framework. This legal uncertainty may reduce consumers' ability to understand their legal rights and obtain effective remedies in situations where disputes arise from blockchain-based transactions. As blockchain technology becomes increasingly integrated

[44] Consumer Protection Act 1999 (Act 599) (Malaysia) (n 7).
[45] European Commission, 'AI Act | Shaping Europe's Digital Future' (19 June 2026) <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> accessed 30 June 2026.
[46] Song and Tan (n 31).
[47] Electronic Commerce Act 2006 (Act 658) (Malaysia) (n 7).
[48] Consumer Protection Act 1999 (Act 599) (Malaysia) (n 7).

into digital commerce under the Fourth Industrial Revolution, these legal challenges are likely to become more significant.

Comparative legal developments demonstrate an increasing recognition of the need to adapt legal frameworks to emerging technologies. Consistent with the principles of the United Nations Guidelines for Consumer Protection (UNGCP), Malaysia would benefit from reviewing its existing legislation to ensure that emerging digital technologies are supported by effective consumer protection, legal certainty, and appropriate regulatory safeguards.[49]

5.4 Critical Evaluation

The Fourth Industrial Revolution has transformed the legal landscape of consumer protection by introducing technologies that extend beyond traditional electronic commerce. The integration of artificial intelligence, blockchain technology, smart contracts, big data analytics, and digital identity systems into digital commerce has created new legal challenges relating to transparency, accountability, data governance, platform responsibility, and consumer redress. The foregoing analysis demonstrates that effective consumer protection now requires legal frameworks capable of regulating not only digital transactions but also the technologies that influence consumer behaviour and commercial decision-making.

Malaysia has established an important legislative foundation through statutes such as the *Consumer Protection Act 1999*, the *Personal Data Protection Act 2010*, the *Electronic Commerce Act 2006*, and the *Cyber Security Act 2024*.[50] Nevertheless, the foregoing analysis demonstrates that these statutes regulate different aspects of the digital environment without comprehensively addressing several emerging legal challenges associated with the Fourth Industrial Revolution. In particular, clearer legislative provisions are needed to regulate artificial intelligence, algorithmic decision-making, blockchain-based transactions, smart contracts, and the increasing use of big data and digital identity in e-commerce.

Accordingly, future legislative reform should focus not only on responding to technological innovation but also on ensuring that consumer protection remains effective within an increasingly digital and interconnected economy. Such reforms would strengthen legal certainty, enhance consumer confidence, and support the sustainable development of Malaysia's digital economy while safeguarding consumers' legal rights.

6. Recommendations for Legal Reform and Consumer Empowerment

The foregoing analysis demonstrates that Malaysia has established an important legal framework governing consumer protection in e-commerce through legislation such as the *Consumer Protection Act 1999*, the *Personal Data Protection Act 2010*, the *Electronic Commerce Act 2006*, the *Communications and Multimedia Act 1998*, and the *Cyber Security Act 2024*. [51] Nevertheless, several legal and regulatory gaps continue to limit the

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[49] UNCTAD (n 25).

[50] Consumer Protection Act 1999 (Act 599) (Malaysia) (n 7); Personal Data Protection Act 2010 (Act 709) (Malaysia); Electronic Commerce Act 2006 (Act 658) (Malaysia) (n 7); Cyber Security Act 2024 (Act 854) (Malaysia) (n 38).

[51] ibid.

effectiveness of consumer protection within the rapidly evolving digital economy. These include the absence of clear statutory recognition of digital consumer rights, limited regulation of platform liability, insufficient safeguards for artificial intelligence and emerging technologies, fragmented regulatory coordination, and challenges relating to cross-border consumer disputes.

Accordingly, this section proposes legal reforms to strengthen Malaysia's consumer protection framework in the context of the Fourth Industrial Revolution. The recommendations are derived from the analysis undertaken in this study and aim to improve legal certainty, strengthen consumer confidence, enhance regulatory effectiveness, and promote greater accountability within the digital marketplace. In addition to legislative reform, this section recommends measures centred on consumer empowerment to improve legal awareness, facilitate access to justice, and support the sustainable development of Malaysia's digital economy.

6.1 Legislative Reforms

6.1.1 Statutory Recognition of Digital Consumer Rights

The *Consumer Protection Act 1999* should be amended to expressly recognise the legal rights of digital consumers within the e-commerce environment.[52] A new statutory provision should be introduced to expressly define the core rights of digital consumers engaging in digital transactions, including the right to transparent commercial information, protection against misleading digital practices, fair complaint-handling procedures, effective consumer redress, protection of personal data, and access to remedies where transactions involve digital platforms or cross-border sellers.

This reform would strengthen legal certainty by clearly defining the rights of digital consumers and the corresponding obligations of online traders and digital platforms. It would also provide a stronger legal basis for the interpretation and enforcement of consumer protection law as digital commerce continues to evolve through platform-based marketplaces, artificial intelligence, automated decision-making, and other emerging technologies.

Furthermore, this recommendation addresses the legal gap identified in the foregoing analysis. Although the *Consumer Protection Act 1999* extends to electronic transactions, it does not expressly recognise the distinct legal rights of digital consumers or provide a comprehensive statutory framework capable of responding to the legal challenges arising from the Fourth Industrial Revolution.[53] Express statutory recognition of digital consumer rights would therefore strengthen Malaysia's consumer protection framework, promote greater consistency in judicial interpretation and regulatory enforcement, and enhance consumer confidence in the digital economy.

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[52] Consumer Protection Act 1999 (Act 599) (Malaysia) (n 7).
[53] ibid.

6.1.2 Statutory Platform Liability Framework

Malaysia should introduce clear statutory provisions defining the legal responsibilities of e-commerce platforms operating digital marketplaces. The legislation should distinguish between platforms acting solely as intermediaries and those exercising significant control over transactions, including product listings, payment processing, advertising, recommendations, or fulfilment services. Where platforms play an active role in facilitating commercial transactions, they should be subject to clearly defined legal duties to protect consumers.

Such reform would provide greater legal certainty by specifying the circumstances in which digital platforms may be held legally responsible for consumer harm arising from fraudulent sellers, misleading commercial practices, or failures to comply with consumer protection obligations. It would also reduce uncertainty regarding the allocation of legal responsibility among digital platforms, traders, and consumers while promoting greater consistency in judicial interpretation and regulatory enforcement.

This recommendation addresses the legal uncertainty identified in the foregoing analysis of *A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd (Berniaga Sebagai Shopee Malaysia)*.[54] The case demonstrates that the absence of clear statutory provisions governing platform liability creates uncertainty regarding the legal responsibilities of digital marketplace operators. Introducing a dedicated statutory framework would therefore strengthen consumer protection by ensuring that legal responsibility reflects the increasingly active role of digital platforms within Malaysia's evolving digital economy.

6.1.3 Mandatory Seller Verification

Malaysia should introduce mandatory seller verification requirements for all commercial sellers operating on e-commerce platforms. Digital platforms should be placed under a statutory obligation to verify the identity and essential business information of commercial sellers before permitting them to offer goods or services through online marketplaces. Verification should include, where appropriate, business registration details, identity verification, and relevant contact information to improve seller accountability and traceability.

This reform would reduce the risk of fraudulent or anonymous sellers exploiting digital platforms to deceive consumers while enabling more effective regulatory enforcement. It would also assist the relevant authorities in identifying non-compliant traders and taking appropriate legal action whenever consumer protection laws have been breached.

Mandatory seller verification would further strengthen consumer confidence by improving transparency and accountability within the digital marketplace while reducing the risk of scams, counterfeit goods, and misleading commercial practices. As Malaysia's e-commerce sector continues to expand, statutory seller verification would provide an important

[54] *A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd (berniaga sebagai Shopee Malaysia)* (n 21).

preventive safeguard that complements the existing consumer protection framework and enhances the integrity of digital marketplaces.

6.1.4 Statutory Complaint-Handling Duties for Digital Platforms

Malaysia should introduce handling duties compliant to Malaysia’s existing statutes on e-commerce, requiring e-commerce platforms to establish transparent, accessible, and effective internal complaint mechanisms. The legislation should require these platforms to acknowledge consumer complaints within a specified timeframe, provide written reasons for their decisions, inform consumers of the available avenues for redress, maintain complaint records, and cooperate with the relevant regulatory authorities where complaints involve fraud or breaches of consumer protection legislation.

This recommendation addresses the legal gap identified in the foregoing analysis by promoting greater accountability and transparency in the handling of consumer complaints. Introducing statutory complaint-handling duties would strengthen legal certainty by ensuring that digital platforms comply with consistent minimum standards when handling consumer complaints.

Establishing legally enforceable complaint-handling duties would improve platform accountability, facilitate regulatory oversight, and provide consumers with more effective and timely access to redress. It would also enhance public confidence in Malaysia's digital marketplace by ensuring that consumer complaints are managed through transparent, fair, and legally accountable procedures.

6.1.5 Cross-Border Consumer Redress Mechanism

Malaysia should establish a statutory cross-border consumer redress mechanism to strengthen consumer protection in international e-commerce transactions. The proposed framework should enable Malaysian consumers to submit complaints arising from cross-border online purchases through a single, accessible mechanism while facilitating cooperation between the relevant Malaysian authorities and their foreign counterparts where disputes involve overseas traders.

The proposed legislation should also require e-commerce platforms facilitating cross-border transactions to disclose the identity and business location of foreign sellers, provide clear information on the applicable complaint procedures, and cooperate with the relevant authorities where consumer disputes arise. These statutory obligations would improve transparency, reduce practical barriers to obtaining redress, and strengthen accountability in cross-border digital transactions.

Establishing a dedicated statutory mechanism would provide consumers with clearer legal procedures for pursuing remedies against foreign traders, reduce uncertainty in cross-border disputes, and increase consumer confidence when engaging in international e-commerce. Such reform would better equip Malaysia's consumer protection framework to respond to the increasingly global nature of digital commerce under the Fourth Industrial Revolution.

6.1.6 Strengthening Data Protection

Malaysia should amend the *Personal Data Protection Act 2010* to introduce stronger statutory safeguards governing the collection, processing, storage, and cross-border transfer of consumers' personal data within the digital economy. The legislation should establish enhanced obligations for businesses engaging in e-commerce to ensure greater transparency regarding data collection practices, obtain meaningful consumer consent, implement appropriate security measures, and provide consumers with accessible mechanisms to exercise their data protection rights.

The proposed amendment should also provide clearer legal requirements governing cross-border transfers of personal data to ensure that consumers' information receives an equivalent level of protection when processed outside Malaysia. Strengthening these statutory safeguards would improve accountability among digital businesses while reducing the risk of data misuse, unauthorised disclosure, and privacy-related harm.

Such reform would reinforce consumer confidence in digital commerce by ensuring that personal data is protected throughout the entire lifecycle of online transactions. It would also enable Malaysia's data protection framework to respond more effectively to the increasing volume and complexity of personal data processing associated with e-commerce under the Fourth Industrial Revolution.

6.1.7 Statutory Rules on Algorithmic Transparency

Malaysia should introduce statutory rules governing the use of artificial intelligence and automated decision-making systems in e-commerce. The legislation should require businesses to clearly disclose when significant commercial decisions affecting consumers, such as personalised pricing or targeted recommendations, are generated or materially influenced by automated systems. Consumers should also have the right to receive clear and meaningful information regarding the use of such systems where they significantly affect consumer transactions.

The proposed framework should further require businesses to maintain sufficient records demonstrating that algorithmic systems operate in a fair, transparent, and non-discriminatory manner. Compliance with these statutory obligations should be subject to regulatory oversight by the relevant authorities, enabling effective investigation of complaints involving unfair or misleading AI-driven commercial practices.

Introducing statutory rules on algorithmic transparency would establish clearer legal standards governing the use of artificial intelligence in digital commerce, reduce legal uncertainty, and strengthen accountability among businesses deploying automated decision-making systems. Such reform would ensure that technological innovation develops consistently with Malaysia's consumer protection framework while safeguarding consumers against emerging forms of digital harm.

6.1.8 Institutional Coordination Framework

To strengthen the enforcement of digital consumer protection laws, Malaysia should establish a formal institutional coordination framework involving the relevant regulatory authorities and consumer organisations, including the Ministry of Domestic Trade and Cost of Living (KPDN), the Malaysian Communications and Multimedia Commission (MCMC), the Personal Data Protection Department (PDPD), the Tribunal for Consumer Claims Malaysia (TCCM), and the Federation of Malaysian Consumers Associations (FOMCA). The framework should clearly define the respective roles and responsibilities of each institution while establishing formal procedures for information sharing, complaint referrals, coordinated investigations, and joint enforcement actions relating to digital consumer disputes.

The framework should also require participating authorities to adopt common operational guidelines, establish regular coordination mechanisms, and exchange relevant information to ensure a consistent and effective regulatory response to emerging challenges in e-commerce. These measures would reduce regulatory fragmentation, minimise overlapping responsibilities, and promote greater consistency in the enforcement of consumer protection laws.

Establishing a formal institutional coordination framework would enhance the effectiveness of Malaysia's consumer protection regime by enabling public authorities and consumer organisations to respond to digital consumer complaints through a more integrated and coordinated approach. It would also facilitate the effective implementation of the legislative reforms proposed in this study and contribute to a more coherent and accountable system of digital consumer protection.

6.2 Implementing Legal Reforms through Consumer Legal Empowerment

Legislative reform alone cannot fully address the legal challenges facing digital consumers in the Fourth Industrial Revolution. While the statutory reforms proposed in this study would strengthen Malaysia's consumer protection framework, their effectiveness ultimately depends on consumers' ability to understand, exercise, and enforce their legal rights. Without adequate legal awareness, accessible legal information, and effective institutional support, consumers may be unable to benefit fully from the protections provided by law.

Accordingly, legal empowerment should complement legislative reform by improving consumer legal literacy, facilitating access to legal information, and strengthening cooperation among public authorities, consumer organisations and digital platforms. Together, these measures would support the effective implementation of the proposed reforms and contribute to a more consumer-centred and effective system of digital consumer protection.

6.2.1 Consumer Legal Education

To support the effective implementation of the legislative reforms proposed in this study, Malaysia should strengthen consumer legal education through structured national awareness programmes explaining statutory consumer rights, complaint mechanisms, data protection obligations, and safeguards against online fraud, together with the additional protections introduced by the proposed reforms.

Consumer education should adopt practical and interactive approaches, including simulated fraud scenarios, real case studies, and multilingual educational materials that reflect Malaysia's diverse society. These initiatives would enable consumers to understand and effectively exercise their legal rights while making greater use of the enhanced consumer protection measures proposed in this study, thereby improving the practical implementation of Malaysia's consumer protection framework.

Australia's Aboriginal Consumers Education Plan illustrates the importance of tailoring consumer education to the cultural and linguistic needs of different communities through targeted and culturally appropriate consumer education initiatives.[55] Although Malaysia's social context differs, adopting similarly inclusive educational strategies would strengthen legal awareness and facilitate the effective implementation of the legislative reforms proposed in this study.

6.2.2 AI-Powered Legal Assistance

To complement the legislative reforms proposed in this study, lawmakers of Malaysia should establish AI-powered legal assistance platforms to provide consumers with accessible and reliable guidance on their statutory rights, complaint procedures, data protection obligations, and the consumer remedies available under Malaysia's consumer protection laws. These platforms should support consumers in understanding and exercising the additional legal protections introduced through the proposed reforms while directing them to the appropriate authorities where further assistance is required.

AI-powered legal assistance should be designed to improve access to legal information rather than replace professional legal advice. Accordingly, such platforms should operate under appropriate human oversight and be developed consistently with Malaysia's AI governance objectives as set out in the *Malaysia National Artificial Intelligence Roadmap 2021–2025 (AI-RMAP)*.[56] Appropriate safeguards should be implemented to promote transparency, reliability, and the protection of consumers' personal data. These measures would support the effective implementation of the proposed legal reforms while improving access to justice within Malaysia's digital consumer protection framework.

6.2.3 Strategic Collaboration

To support the effective implementation of the legislative reforms proposed in this study, Malaysia should strengthen strategic collaboration between public authorities, consumer organisations, educational institutions, and digital platforms. Such collaboration should include joint consumer education initiatives, coordinated public awareness campaigns, and the dissemination of reliable legal information to improve consumers' understanding of the statutory rights and remedies provided under the proposed reforms.

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[55] ‘‘Aboriginal Consumers Education Plan 12 Principles - Consumer Protection - LGIRS’ (18 November 2024) <https://www.consumerprotection.wa.gov.au/publications/aboriginal-consumers-education-plan-12-principles> accessed 30 June 2026.

[56] Ministry of Science, Technology and Innovation (MOSTI), Malaysia National Artificial Intelligence Roadmap 2021–2025 (AI-RMAP) (MOSTI 2021) <https://mastic.mosti.gov.my/publication/artificial-intelligence-roadmap-2021-2025/> accessed 30 June 2026.

Institutionalising these collaborative efforts would strengthen the implementation of Malaysia's consumer protection framework by promoting consistent consumer education, improving public awareness of legal rights, and supporting the effective enforcement of consumer protection laws. It would also facilitate information sharing, reduce regulatory fragmentation and the duplication of public awareness initiatives, and promote a more coordinated and consumer-centred approach to digital consumer protection.

6.2.4 Alignment with the Sustainable Development Goals

The legislative reforms proposed in this study support the achievement of several United Nations Sustainable Development Goals (SDGs). In particular, the proposed statutory recognition of digital consumer rights, strengthened platform accountability, mandatory seller verification, improved domestic and cross-border consumer redress mechanisms, enhanced data protection, greater algorithmic transparency, and stronger institutional coordination contribute to SDG 16, which promotes access to justice, effective institutions, and the rule of law.[57]

These reforms also support SDG 1 by reducing consumers' exposure to financial loss arising from online fraud and unfair commercial practices, while contributing to SDG 8 by strengthening consumer confidence, promoting secure digital commerce, and supporting sustainable and inclusive economic growth.[58] Accordingly, the proposed legal framework not only strengthens Malaysia's consumer protection regime but also contributes to the country's broader sustainable development objectives within the digital economy.

7. Conclusion

This study demonstrates that Malaysia's existing consumer protection framework provides an important legal foundation for e-commerce but requires further legislative reform to address the legal challenges arising from the Fourth Industrial Revolution. Accordingly, this study proposes clearer statutory recognition of digital consumer rights, strengthened platform accountability, mandatory seller verification, improved consumer redress mechanisms, enhanced data protection, greater algorithmic transparency, and stronger institutional coordination. It further argues that these reforms should be supported through consumer legal education, AI-powered legal assistance, and strategic collaboration to ensure their effective implementation. Collectively, these recommendations provide a coherent framework for strengthening Malaysia's digital consumer protection regime, improving consumer confidence, promoting legal certainty, and supporting sustainable development within the digital economy.

[57] UNGA Res 70/1 (25 September 2015) UN Doc A/RES/70/1, para 54.
[58] ibid.

Bibliography

‘Aboriginal Consumers Education Plan 12 Principles - Consumer Protection - LGIRS’ (18 November 2024) <https://www.consumerprotection.wa.gov.au/publications/aboriginal-consumers-education-plan-12-principles> accessed 30 June 2026.

‘Govt Strengthens E-Commerce Legal Framework Following over 4,800 Complaints in 2025’ *The Vibes* (23 August 2025) <https://www.thevibes.com/index.php/articles/news/111925/govt-strengthens-e-commerce-legal-framework-following-over-4800-complaints-in-2025> accessed 27 June 2026.

‘Rogue Sellers Prey on People’s Reliance on e-Shopping’ FOMCA (9 July 2021) <https://www.fomca.org.my/v1/index.php/fomca-di-pentas-media/fomca-di-pentas-media-2021-21/1407-rogue-sellers-prey-on-people-s-reliance-on-e-shopping> accessed 27 June 2026.

‘Rogue Sellers Prey on People’s Reliance on e-Shopping’ *FOMCA* (9 July 2021) <https://www.fomca.org.my/v1/index.php/fomca-di-pentas-media/fomca-di-pentas-media-2021-21/1407-rogue-sellers-prey-on-people-s-reliance-on-e-shopping> accessed 27 June 2026.

A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd (berniaga sebagai Shopee Malaysia)[2021] MLJU 65 (HC).

ASEAN Committee on Consumer Protection, ‘ASEAN High-Level Principles on Consumer Protection’ <https://aseanconsumer.org/cterms-regional-cooperation-in-asean/asean-high-level-principles-on-consumer-protection> accessed 27 June 2026.

Australian Competition and Consumer Commission, ‘Buying Products and Services’ <https://www.accc.gov.au/consumers/buying-products-and-services> accessed 28 June 2026.

Communications and Multimedia Act 1998 (Act 588) (Malaysia)

Computer Crimes Act 1997 (Act 563) (Malaysia)

Consumer Protection Act 1999 (Act 599) (Malaysia)

Contracts Act 1950 (Act 136) (Malaysia)

Cyber Security Act 2024 (Act 854) (Malaysia)

Department of the Treasury, ‘About Australian Consumer Law’ (12 March 2025) <https://consumer.gov.au/about/australian-consumer-law> accessed 28 June 2026.

Electronic Commerce Act 2006 (Act 658) (Malaysia)

European Commission, 'AI Act | Shaping Europe's Digital Future' (19 June 2026) <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> accessed 30 June 2026.

Federal Constitution (Malaysia)

French AM, Shim JP, Larsen KR, Risius M and Jain H, 'The 4th Industrial Revolution Powered by the Integration of AI, Blockchain, and 5G' (2021) 49 *Communications of the Association for Information Systems* 266 <https://doi.org/10.17705/1CAIS.04910> accessed 28 June 2026.

Jain AM and Jain A, 'AI Based Content Creation and Product Recommendation Applications in E-Commerce: An Ethical Overview' (2025) 11 *International Journal of Scientific Research in Computer Science, Engineering and Information Technology* 3720 <https://doi.org/10.32628/CSEIT2410414>accessed 28 June 2026.

Loh JX, 'The Legal Framework of E-Commerce in Malaysia' (2023) 3 *Asian Journal of Law and Policy* 183 <https://doi.org/10.33093/ajlp.2023.13> accessed 30 June 2026.

Ministry of Science, Technology and Innovation (MOSTI), Malaysia National Artificial Intelligence Roadmap 2021–2025 (AI-RMAP) (MOSTI 2021) <https://mastic.mosti.gov.my/publication/artificial-intelligence-roadmap-2021-2025/> accessed 30 June 2026.

Mohd Remie Mohd Johan, Md. Azalanshah Md. Syed and Hamedi Mohd Adnan, 'Digital Media and Online Buying Considerations among Generation Z in Malaysia' (2022) 17 *Jurnal Intelek* 164 <https://doi.org/10.24191/ji.v17i1.15920> accessed 30 June 2026.

Penal Code (Act 574) (Malaysia)

Personal Data Protection Act 2010 (Act 709) (Malaysia)

Roslan Amirah Khadijah and others, 'Legal Protection of E-Consumers in Malaysia' (2022) 7 *International Journal of Law, Government and Communication* 223 <https://doi.org/10.35631/IJLGC.729016> accessed 27 June 2026.

Sale of Goods Act 1957 (Act 382) (Malaysia)

Song JYL and Tan E, 'Beyond Traditional Contracts: The Legal Recognition and Challenges of Smart Contracts in Malaysia and Singapore' (2024) 3 *Journal of Law, Market & Innovation* 323 <https://doi.org/10.13135/2785-7867/11334> accessed 28 June 2026.

UNGA Res 70/186 (22 December 2015) UN Doc A/RES/70/186, annex

UNGA Res 70/1 (25 September 2015) UN Doc A/RES/70/1

Medical Negligence in Malaysia: Rising Claims, Structural Gaps, and the Case for Reform

Lim Zhen Ping[1]
Undergraduate Student, School of Biomedical Sciences, Faculty of Health and Medical Sciences,
Taylor's University, Malaysia
limzhenping10@gmail.com

Abstract

This paper examines the rise in medical negligence claims in Malaysia and argues that this trend reflects underlying structural gaps within the medico-legal framework. Adopting a doctrinal legal research methodology complemented by analytical and comparative approaches, the study analyses legislation, judicial decisions, government reports, and relevant academic literature to assess the adequacy of Malaysia's existing medico-legal framework. It examines the interaction between common law principles, statutory provisions, and regulatory oversight. It further evaluates the impacts of evolving legal standards, judicial developments, institutional challenges in healthcare delivery, and increasing patient awareness.

The findings indicate that although the existing framework provides flexibility through common law, it is characterised by inconsistency, fragmented accountability, regulatory limitations, and inadequate patient-centred mechanisms. In particular, the regulatory scope of the Medical Act 1971 does not adequately address modern medico-legal challenges, resulting in a disconnect between professional regulation and civil liability.

The paper concludes that targeted reforms, including clearer standards of care, improved reporting mechanisms, enhanced regulatory oversight, and the institutionalisation of alternative dispute resolution, are necessary to Malaysia's medico-legal framework while balancing patient protection with the practical realities of medical practice.

Keywords: Malaysia, Medical Negligence, Medico-legal Framework, Standard of Care, Medical Act 1971, Law Reform.

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1. Introduction

Medical negligence, also known as medical malpractice, arises from a breach of duty of care and a failure to provide the required standard of care, resulting in harm or injury to the patient.[2] Traditionally, such claims were viewed as isolated failures of individual practitioners. However, medical negligence is increasingly understood as a reflection of broader systemic strain within modern healthcare systems. As patient expectations rise alongside increasing medical complexity, even minor lapses may escalate into legal disputes. This has likely contributed to a noticeable increase in medical negligence claims. In Malaysia, this trend raises critical questions about whether existing legal and regulatory frameworks remain adequate to balance patient protection with the realities of clinical practice.

1.1 Conceptualising Structural Gaps in Malaysia's Medico-Legal Framework

For the purposes of this paper, the term "structural gaps" refers to systemic deficiencies within the Malaysian medico-legal framework that impede the effective alignment of legal accountability, professional regulation, institutional governance, and patient protection. These gaps are not limited to deficiencies in statutory law, but include disciplinary and civil mechanisms, inconsistencies in standards of care, limited integration between healthcare regulation and negligence litigation, inadequate institutional accountability mechanisms, and the absence of comprehensive reporting systems capable of generating reliable medico-legal data.

This conceptual framework underpins the analysis throughout the paper. The rise in medical negligence claims is therefore examined not merely as an increase in litigation, but as a manifestation of broader structural weaknesses affecting the interaction between legal institutions, healthcare providers, regulatory bodies, and patients.

Against this backdrop, this paper has three primary objectives. First, it examines the existing medico-legal framework governing medical negligence in Malaysia, including the role of common law, statutory provisions, and regulatory oversight. Second, it aims to identify and analyse the key factors contributing to the rise in medical negligence claims, including legal, judicial, institutional, and societal influences. Third, it evaluates whether the current framework is sufficient to address contemporary challenges in medical practice.

1.2 Research Methodology

This study adopts a doctrinal legal research methodology, supplemented by an analytical and policy-oriented inquiry, to examine the adequacy of Malaysia's existing medico-legal framework in addressing the increasing incidence of medical negligence claims. Doctrinal legal research is appropriate because the principal objective of this article is to analyse the development and application of legal principles governing medical negligence through judicial decisions, statutory provisions, and regulatory instruments, while critically evaluating their effectiveness in contemporary healthcare practice.

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[2] B Sonny Bal, 'An Introduction to Medical Malpractice in the United States' (2009) 467 Clinical Orthopaedics & Related Research 339.

The primary sources examined include Malaysian legislation such as the Medical Act 1971[3], the Civil Law Act 1956[4], the Limitation Act 1953[5], together with relevant subsidiary regulations and professional guidelines issued by the Malaysian Medical Council (MMC) and the Ministry of Health Malaysia (MOH). Judicial authorities from Malaysian courts constitute the principal source of doctrinal analysis, particularly decisions concerning standards of care, informed consent, institutional liability, and professional accountability. In addition, comparative reference is made to selected Commonwealth jurisdictions, namely Singapore, the United Kingdom (UK), Australia, Canada, and New Zealand, due to their shared common law heritage and the development of significant medico-legal reforms that may offer persuasive guidance for the Malaysian context.

In addition to doctrinal analysis, the study incorporates a limited empirical review of publicly available governmental reports, academic literature, and medico-legal policy documents to contextualise recent trends in medical negligence claims and healthcare governance. Rather than conducting quantitative empirical research, these materials are utilised to support the broader policy analysis concerning the interaction between legal doctrine, regulatory institutions, judicial practice, and healthcare administration.

The scope of this article is confined to civil medical negligence under Malaysian law and does not extend to criminal liability, contractual disputes, or Islamic medical jurisprudence. Similarly, while comparative jurisdictions are discussed, they are intended to provide illustrative examples of possible regulatory approaches rather than direct models for legal transplantation.

The study is subject to certain limitations. Malaysia presently lacks a comprehensive national database on medical negligence litigation, settlements, and medico-legal complaints, resulting in reliance upon publicly available judicial decisions, MOH reports, MMC publications, and academic research. Consequently, observations concerning the increase in medical negligence claims should be understood as based on available institutional indicators rather than complete nationwide empirical statistics. Nevertheless, these materials provide sufficient evidence to facilitate a critical evaluation of structural issues within Malaysia's current medico-legal framework.

1.3 Empirical Trends in Medical Negligence Claims in Malaysia

Although Malaysia does not maintain a comprehensive national database recording all medical negligence claims, settlements, disciplinary actions, and indemnity payouts, available evidence from government reports, professional bodies, academic studies, and judicial developments collectively suggests that medico-legal disputes are becoming increasingly significant within the Malaysian healthcare landscape.[6]

[3] Medical Act 1971.
[4] Civil Law Act 1956.
[5] Limitation Act 1953.
[6] Siti Naaishah Hambali and Solmaz Khodapanahandeh, 'A Review of Medical Malpractice Issues in Malaysia under Tort Litigation System' (2014) 6 Global Journal of Health Science 76.

The most direct evidence comes from MOH. Financial data from the MOH Annual Report 2023 indicates that compensation for medico-legal cases rose from RM5.8 million in 2022 to RM6.8 million in 2023, indicating an upward trajectory in medico-legal liability.[7] Available institutional data suggest that medico-legal complaints and litigation involving public healthcare facilities have become increasingly prominent over recent years. According to the MOH Annual Report 2024, a total of 336 medico-legal complaints and 118 litigation cases were registered against MOH healthcare facilities during the year, while 41 cases resulted in recommendations for ex gratia payments.[8] The report further notes that Independent Inquiry Committees were convened for 76 complex cases involving compensation claims, reflecting the increasing complexity of medico-legal dispute management within the public healthcare sector.[9]

Longitudinal data published by the MOH similarly indicate an upward trend in medico-legal complaints over recent years.[10] MOH statistics recorded 211 medico-legal complaints in 2020, increasing to 234 complaints in 2021, 283 complaints in 2023, and 336 complaints in 2024. Litigation cases also increased from 68 cases in 2020 to 118 cases in 2024.[11] Although these figures relate only to MOH facilities and exclude private healthcare institutions, they suggest increasing medico-legal activity within Malaysia's largest healthcare provider.

Table 1. Medico Legal Statistics (2020 to 2024)[12]

Year	MOH Medico-Legal Complaints	Litigation Cases	Ex Gratia Cases
2020	211	68	107
2021	234	76	108
2022	283	81	117
2023	283	86	121
2024	336	118	125

The observed increase should, however, be interpreted cautiously. Rising complaint numbers do not necessarily indicate declining standards of medical practice. Instead, they may reflect multiple interacting factors, including greater patient awareness of legal rights, improved institutional complaint mechanisms, increasing healthcare utilisation, demographic changes, expansion of specialised medical services, and greater willingness to pursue legal or administrative remedies following adverse clinical outcomes. Thus, numerical increases in complaints should not automatically be equated with increasing medical negligence or declining professional competence.

[7] Ministry of Health Malaysia, *Annual Report 2023* (MOH/S/RAN/275.24(AR) - e, 2024).
[8] Ministry of Health Malaysia, *Annual Report 2024* (MOH/S/RAN/304.25(AR) - e, 2025).
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.

Academic literature similarly supports the existence of a growing medico-legal trend. Puteri Nemie Jahn Kassim observed that Malaysia was experiencing a gradual increase in both the number of medical negligence claims and the size of compensation awards over past decades.[13] Subsequent research continued to identify medical negligence litigation as an expanding area of legal practice, driven by greater patient awareness, increased healthcare consumerism, and evolving judicial approaches towards professional accountability.[14] Hambali and Khodapanahandeh similarly noted that increased public awareness, easier access to information, rising healthcare expectations, and dissatisfaction with healthcare outcomes may have contributed to a greater willingness among patients to challenge clinical decisions through legal mechanisms.[15]

Further illustrating this trajectory are recent Malaysian judicial developments. Malaysian courts have, over the past two decades, delivered a growing body of jurisprudence addressing informed consent, institutional liability, delayed diagnosis, specialist standards of care, and hospital accountability. Landmark decisions between 2023 and 2024, such as *Siow Ching Yee v Columbia Asia Sdn Bhd*[16], *Syazwani binti Drani v Government of Malaysia & Ors*[17], and *Prince Court Medical Centre Sdn Bhd v Lim Yoke Har*[18], demonstrate the courts' increasing willingness to scrutinise medical conduct and impose substantial liability. This trend continued into 2026, as seen in *AF (a child suing through his mother) v Putra Medical Centre Darul Aiman Sdn Bhd*[19], where both medical practitioners and the hospital were held liable for failures in timely diagnosis and treatment, reinforcing the expanding scope of institutional accountability. The emergence of such litigation reflects the increasingly complex nature of contemporary healthcare delivery and demonstrates that medical negligence disputes now extend beyond allegations of individual professional error to encompass broader issues of organisational governance and systemic patient safety.

Importantly, none of the foregoing sources should be interpreted in isolation. MOH data capture only the public healthcare sector, judicial decisions represent only a small proportion of disputes that proceed to reported litigation, disciplinary proceedings pursue objectives distinct from civil liability, and empirical studies are necessarily shaped by their respective institutional contexts. However, the convergence of evidence across these independent sources supports the broader conclusion that medical negligence has become an increasingly significant component of Malaysia's healthcare governance framework. Thus, the central argument advanced in this article is not that litigation has increased solely because medical care has deteriorated, but rather that evolving legal standards, institutional transformation, technological change, and heightened patient awareness have collectively increased the visibility, complexity, and frequency of medico-legal disputes.

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[13] Puteri Nemie Jahn Kassim, *Medical Negligence in Malaysia: Cases and Commentary* (2nd edn, Thomson Reuters Asia 2021).
[14] Margaret Brazier and Emma Cave, *Medicine, Patients and the Law* (7th edn, Manchester University Press 2023).
[15] Hambali and Khodapanahandeh (n 6).
[16] [2024] 3 MLRA 208.
[17] [2023] 1 LNS 2261.
[18] *Prince Court Medical Centre Sdn Bhd v Lim Yoke Har (bertindak melalui anak lelaki dan wakil litigasinya, Goh Seng Cha) & Ors and another suit* [2024] MLJU 2699.
[19] *AF (a child suing through his mother 'parents ad litem' Isrul Hasmah bt Ismail) & Anor v Putra Medical Centre Darul Aiman Sdn Bhd & Anor* [2026] 8 MLJ 349.

2. Medico-Legal Framework in Malaysia

2.1 Elements of Medical Negligence

Under Malaysian law, a successful medical negligence claim requires the claimant to establish a duty of care, breach of duty, and causation.[20] These elements constitute the legal threshold that must be satisfied before compensation can be awarded.[21]

2.1.1 Duty of Care

The existence of a duty of care is generally established once a doctor–patient relationship is formed.[22] This duty requires medical practitioners to exercise reasonable care and skill when providing treatment.[23] In medical negligence claims, this element is typically straightforward, as courts readily recognise that healthcare providers owe patients a legal obligation once treatment is undertaken. Although the existence of the duty is seldom disputed in Malaysian medical negligence litigation, its practical significance lies in determining the scope of accountability within increasingly complex healthcare systems.

Importantly, modern Malaysian jurisprudence has extended this duty beyond individual practitioners to include healthcare institutions, particularly private hospitals.[24] This expansion increases the scope of potential defendants in medical negligence claims, enabling claimants to pursue both individual and institutional liability where appropriate. This judicial development reflects a broader recognition that patient safety increasingly depends upon organisational governance, multidisciplinary care, and institutional systems rather than solely on the conduct of individual practitioners. Consequently, this expansion of the duty of care reinforces the article's central argument that structural gaps arise not merely from individual professional failures but also from evolving institutional responsibilities that existing regulatory frameworks do not fully address.

2.1.2 Breach of Duty

Breach of duty is often the central issue in most medical negligence claims, as it requires the court to determine whether the medical practitioner’s conduct fell below the accepted standard of care. This assessment is inherently fact specific and relies heavily on expert evidence. However, determining what constitutes the applicable standard has become increasingly complex as medical practice evolves beyond traditional doctor–patient interactions into multidisciplinary and technology-assisted healthcare delivery.

In practice, establishing breach largely determines whether a claim succeeds, as courts must evaluate whether the practitioner acted in accordance with accepted medical practice. Where the standard of care is interpreted more strictly, particularly in areas such as risk

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[20] Jahn Kassim (n 13).
[21] *Shalini a/p Kanagaratnam v Pusat Perubatan Universiti Malaya (formerly known as University Hospital) & Anor* [2016] 3 MLJ 742.
[22] *R v Bateman* [1925] 19 Cr App R8.
[23] *Foo Fio Na v Dr Soo Fook Mun & Anor* [2007] 1 MLJ 593.
[24] *Siow Ching Yee* (n 16).

disclosure, the likelihood of establishing breach increases, thereby contributing to the rise in medical negligence claims.

2.1.3 Causation

Causation requires the claimant to prove that the breach of duty caused the injury suffered. If the injury would have occurred regardless of the breach, liability will not follow, although liability may still arise where the breach materially contributed to the harm.[25] Malaysian courts generally apply the “but for” test, supported by expert medical evidence.[26] In medical negligence claims, causation often presents a significant hurdle due to the complexity of medical conditions and the presence of multiple contributing factors. This difficulty has become increasingly pronounced within modern healthcare, where patient outcomes frequently involve multidisciplinary treatment, pre-existing medical conditions, and complex clinical pathways that complicate the attribution of legal responsibility. Even where a breach of duty is established, a failure to prove causation may result in the claim being dismissed. Thus, the complexity of proving causation therefore reinforces the need for clearer institutional accountability and more comprehensive documentation, both of which constitute recurring structural issues examined throughout this article.

2.2 Standard of Care in Malaysia

The standard of care is a critical determinant in medical negligence claims, as it defines the threshold against which a practitioner’s conduct is assessed. Malaysian law reflects an evolving approach that balances professional expertise with patient rights.

2.2.1 The Bolam Test

Traditionally, Malaysian courts have applied the Bolam test, under which a medical practitioner is not negligent if their conduct is supported by a responsible body of medical opinion.[27] This approach places considerable weight on professional consensus and has made it more difficult for claimants to succeed in medical negligence claims, as courts defer to medical expertise.

Although the Bolam test provides flexibility, it has been criticised for limiting patient protection, particularly where professional standards may not adequately reflect patient expectations or evolving norms of care. Excessive judicial deference to professional opinion may also reduce transparency and hinder meaningful external scrutiny of clinical decision-making, particularly where institutional practices rather than individual errors contribute to patient harm.

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[25] Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd 2 MLJ 1; Nur Fuziatun binti Mohd Fadzli v Gombak Medical Centre Sdn Bhd & Ors MLJU 4319.

[26] *Cork v Kirby Maclean Ltd* [1952] 2 All ER 402; *Barnett v Chelsea Kensington Hospital Management* [1967] 1 QB 428.

[27] Mah Weng Kwai & Associates, 'Approach to Medical Negligence Claims by Malaysian Courts' (*MahWengKwai & Associates*, 10 January 2013) <https://mahwengkwai.com/approach-to-medical-negligence-claims-by-malaysian-courts/> accessed 15 March 2026.

2.2.2 Post-Foo Fio Na Developments

The Federal Court decision in *Foo Fio Na v Dr Soo Fook Mun & Anor*[28] marked a significant shift in Malaysian law, particularly in relation to informed consent. The case involved a patient who suffered paralysis following surgery and alleged inadequate disclosure of risks. The Court held that the duty to disclose material risks should be assessed from the perspective of a reasonable patient, rather than solely by reference to medical opinion. This development aligns Malaysian law with the approach in *Rogers v Whitaker*[29] and reflects a move towards patient-centred care.

In the context of medical negligence claims, this shift has important implications. It lowers the threshold for establishing breach in cases involving non-disclosure and enhances patient autonomy. Consequently, claims based on inadequate communication or failure to disclose material risks have become more viable, contributing to the overall increase in litigation.

2.3 Statutory Regulation and Emerging Challenges

Although medical negligence claims are primarily governed by common law, statutory provisions play an important role in shaping the regulatory environment, procedural requirements, and institutional responsibilities that influence such claims. The Medical Act 1971[30] establishes the framework for the registration and regulation of medical practitioners in Malaysia, while other legislation, including the Civil Law Act 1956[31], the Limitation Act 1953[32], and the Private Healthcare Facilities and Services Act 1998[33], collectively provides the broader statutory context within which negligence claims operate.

The Civil Law Act 1956[34] provides the legal basis for the application of common law principles in Malaysia, including those governing negligence. It provides the statutory foundation for the application of established tort principles in medical negligence claims. The Limitation Act 1953[35] imposes time limits on the filing of claims, which directly affects access to justice in medical negligence cases. Delays in diagnosis or the discovery of harm may complicate compliance with limitation periods, potentially barring otherwise valid claims.

As for the Private Healthcare Facilities and Services Act 1998[36], it regulates private healthcare providers and imposes statutory obligations relating to patient safety, quality of care, and institutional governance. In medical negligence claims, this Act has assumed increasing importance as courts recognise that healthcare institutions owe independent duties of care to patients. This development supports claims against hospitals for systemic

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[28] *Foo Fio Na* (n 23).
[29] [1992] 175 CLR 479.
[30] Medical Act 1971.
[31] Civil Law Act 1956.
[32] Limitation Act 1953.
[33] Private Healthcare Facilities and Services Act 1998.
[34] Civil Law Act 1956.
[35] Limitation Act 1953.
[36] Private Healthcare Facilities and Services Act 1998.

failures, such as inadequate supervision or poor clinical governance, thereby expanding the scope of liability beyond individual practitioners.

The Medical Act 1971[37] has served Malaysia's healthcare system for more than five decades by establishing professional standards and empowering the MMC to oversee professional conduct. While the Act does not directly determine civil liability, it plays an indirect evidentiary role in medical negligence claims. Courts may refer to professional standards, ethical guidelines, and disciplinary findings when assessing whether a practitioner has met the required standard of care. Nevertheless, significant developments in healthcare delivery raise legitimate questions regarding whether the Act remains sufficiently responsive to contemporary medico-legal challenges. At the time of its enactment, healthcare delivery in Malaysia was predominantly centred upon individual practitioners operating within comparatively simple institutional structures. Modern healthcare, by contrast, is characterised by multidisciplinary treatment teams, complex corporate healthcare organisations, technological innovation, and increasing reliance upon digital healthcare services.

The rapid expansion of private healthcare illustrates this transformation. Contemporary medical care increasingly involves institutional decision-making rather than isolated professional judgment, with hospitals exercising substantial control over staffing arrangements, clinical governance, administrative systems, and patient safety mechanisms. Recent judicial decisions recognising non-delegable duties owed by private hospitals demonstrate that institutional responsibility has become an increasingly important aspect of medical negligence litigation. However, the existing statutory framework remains principally focused upon regulating individual practitioners rather than healthcare institutions as integrated systems of care.

The emergence of telemedicine, electronic health records, artificial intelligence-assisted diagnosis, and remote healthcare delivery further exposes limitations within the current legislative framework. Although Malaysia enacted the Telemedicine Act 1997[38], one of the earliest telemedicine statutes globally, questions remain regarding the practical integration of telemedicine regulation with the broader professional framework established under the Medical Act 1971.[39] Increasing reliance on remote consultations, digital prescribing platforms, electronic medical records, and cross-border healthcare services has generated novel issues relating to standards of care, informed consent, continuity of treatment, and professional accountability. These developments require regulatory responses that extend beyond traditional models of face-to-face clinical practice.

Thus, the issue is not whether the Medical Act 1971[40] remains relevant, but whether its current regulatory framework has evolved sufficiently to respond to contemporary healthcare delivery. The increasing complexity of healthcare services suggests a need for ongoing legislative review to ensure that professional regulation remains capable of

[37] Medical Act 1971.
[38] Telemedicine Act 1997.
[39] Medical Act 1971.
[40] Ibid.

responding to institutional liability, technological innovation, and evolving patient expectations.

2.4 Institutional Limitations of Malaysian Medical Council (MMC)

The MMC, established under *section 3* of the Medical Act 1971[41], is responsible for regulating professional conduct and maintaining standards within the medical profession. Its functions include receiving complaints, conducting disciplinary proceedings, and issuing professional guidelines. In relation to medical negligence claims, the MMC plays a complementary but limited role. MMC findings and guidelines may influence negligence claims by informing the court's assessment of professional standards.

A recurring challenge concerns the availability of publicly available information regarding disciplinary proceedings and complaint outcomes. While the MMC possesses extensive disciplinary powers under the Medical Act 1971[42], comprehensive annual data relating to complaint volumes, investigation outcomes, disciplinary sanctions, and case-processing timelines are not routinely published in a consolidated format. This limits opportunities for independent assessment of regulatory performance and makes it difficult for policymakers and researchers to evaluate broader trends in professional misconduct and patient complaints.

Another challenge concerns procedural efficiency. Effective professional regulation requires complaints to be investigated and resolved within reasonable timeframes. Delays in disciplinary proceedings may undermine both practitioner confidence and public trust, particularly where complainants perceive that accountability mechanisms are inaccessible or ineffective. Although procedural reforms introduced through the Medical (Amendment) Act 2012[43] and Medical Regulations 2017[44] were intended to strengthen disciplinary processes and improve the functionality of the MMC, ongoing evaluation of complaint-handling efficiency remains necessary.

Furthermore, the MMC's jurisdiction is inherently limited. The Council's processes focus on misconduct rather than civil liability, and the MMC does not fully address the needs of claimants seeking civil redress. Consequently, disciplinary proceedings, civil negligence claims, hospital complaint mechanisms, and MOH investigations frequently operate in parallel rather than as components of a coordinated accountability system. This institutional fragmentation reinforces the broader structural issue that medical negligence claims in Malaysia are resolved primarily through the courts, with regulatory mechanisms serving only a supporting function.

[41] Ibid, s3.
[42] Ibid.
[43] Medical (Amendment) Act 2012.
[44] Medical Regulations 2017.

3. Factors Contributing to the Rise in Medical Negligence Claims

3.1 Legal Factors

Legal developments have significantly expanded the scope and accessibility of medical negligence claims in Malaysia. In the Malaysian context, the position evolved through judicial refinement, particularly in relation to informed consent and disclosure obligations. *Foo Fio Na v Dr Soo Fook Mun & Anor*[45] made it clear that courts are not strictly bound by medical opinion in all circumstances. Instead, in cases involving risk disclosure, the courts may independently assess whether a practitioner has disclosed material risks that a reasonable patient would consider significant. The Bolam test was replaced in favour of the test set out in *Rogers v Whitaker.*[46] Because of this, doctors must now ensure that patients understand all major risks related to their medical care. As a result of this judgement, patients gain more control over their treatment and doctors may be held more accountable and are required to be more open when describing their management plans.

Subsequent jurisprudence has reinforced this shift. In *Dr Hari Krishnan & Anor v Megat Noor Ishak Bin Megat Ibrahim & Anor*[47], the Federal Court held that failure to disclose material risks, particularly where a patient has expressed specific concerns, constitutes a breach of duty. The case involved a patient becoming permanently blind in one eye following retinal detachment surgeries. He alleged that he was not properly informed of the specific risks of the second procedure, including blindness, and was denied further diagnostic testing before the operation. The Court emphasised that informed consent must be meaningful and tailored to the patient's understanding, rather than limited to generalised warnings.

Importantly, the court drew a distinction between the standards for advice, diagnosis, and treatment. It affirmed that while the *Rogers v Whitaker* test governs the duty to inform patients of risks, the *Bolam* test, with the *Bolitho* qualification, still applies to diagnosis and treatment. In other words, courts will assess medical decisions based on whether they are supported by a responsible body of opinion, but they also reserve the right to reject illogical or unreasonable professional views. This case reaffirmed that informed consent must go beyond generic warnings and address risks that a reasonable patient would consider significant.

At the same time, statutory frameworks have strengthened the regulatory environment surrounding medical practice. The Private Healthcare Facilities and Services Act 1998[48] imposes obligations on private healthcare providers to maintain standards of safety and quality, effectively broadening institutional responsibility. thereby extending responsibility beyond individual practitioners to healthcare institutions themselves. This reflects the increasing institutionalisation of healthcare delivery, where hospitals and private healthcare facilities are expected to implement effective governance systems, clinical protocols, and risk

[45] *Foo Fio Na* (n 23).
[46] *Rogers* (n 29).
[47] *Dr Hari Krishnan & Anor v Megat Noor Ishak Bin Megat Ibrahim & Anor and Another Appeal* [2018] 3 MLJ 281.
[48] Private Healthcare Facilities and Services Act 1998.

management measures to safeguard patient safety. Although the Act does not create an independent cause of action for medical negligence, breaches of its statutory obligations may provide persuasive evidence that a healthcare institution has failed to exercise reasonable care, particularly in cases involving inadequate staffing, poor clinical governance, or systemic failures in patient management. Consequently, the Act reinforces the growing recognition that medical negligence may arise not only from individual clinical errors but also from organisational shortcomings within healthcare institutions.

The Medical Act 1971[49] further establishes professional registration requirements and disciplinary mechanisms, ensuring that practitioners meet minimum competency standards. While these statutes do not create civil liability directly, it provides a regulatory framework that promotes professional competence and ethical practice. Courts may refer to statutory requirements, the MMC's Code of Professional Conduct, and other professional guidelines as persuasive evidence when assessing whether a medical practitioner has exercised the standard of care expected of a reasonably competent practitioner in similar circumstances. These serve as normative benchmarks that assist the court in evaluating whether the common law standard of care has been satisfied alongside expert evidence and established legal principles.

These legal developments collectively expand both the grounds for liability and the ease with which claims can be substantiated, thereby contributing to the rise in medical negligence litigation.

3.2 Judicial Factors

The increasing number of medical negligence claims in Malaysia is partly due to how courts have evolved in applying standards of care, not only in technical treatment but also in communication, timeliness, and institutional responsibility. The judiciary's willingness to hold both individuals and healthcare systems accountable for procedural lapses has possibly contributed to a more rights-conscious litigation environment. Rather than deferring entirely to professional opinion, courts increasingly examine whether medical decisions are logically defensible, adequately documented, and aligned with reasonable clinical expectations.

A notable example is *Dr Hari Krishnan & Anor v Megat Noor Ishak Bin Megat Ibrahim & Anor and Another Appeal*[50], where the court not only addressed the failure to disclose risks but also scrutinised the adequacy of communication between doctor and patient. The judgment emphasised that informed consent is not a mere procedural formality but a substantive requirement grounded in patient autonomy.

Another relevant case is *Ahmad Thaqif Amzar bin Ahmad Huzairi v Kuala Terengganu Specialist Hospital Sdn Bhd & Ors*[51], where the plaintiff, a child represented by his mother, suffered irreversible brain damage after multiple doctors failed to respond urgently to a

[49] Medical Act 1971.
[50] *Dr Hari Krishnan* (n 47).
[51] *Ahmad Thaqif Amzar bin Ahmad Huzairi v Kuala Terengganu Specialist Hospital Sdn Bhd & Ors* [2021] 9 MLJ 10.

progressively enlarging neck swelling that obstructed his airway. The court found both private and public healthcare providers liable for delays in referral, diagnosis, and specialist intervention. Importantly, liability was apportioned, with the courts recognising both individual negligence and institutional responsibility, while also considering contributory negligence on the part of the patient's guardians.

This case illustrates how Malaysian courts no longer focus solely on the competence of individual doctors but increasingly interrogate institutional procedures and documentation. In comparison, in *Foo Fio Na v Dr Soo Fook Mun & Anor*[52], although the Federal Court significantly expanded the doctrine of informed consent by emphasising patient autonomy, the court's inquiry remained centred on the conduct and professional obligations of the treating doctor rather than the wider organisational systems within which healthcare was delivered. Similarly, in *Shalini a/p Kanagaratnam v Pusat Perubatan Universiti Malaya*[53], the court's assessment largely focused on whether the treating clinicians had breached the applicable standard of care, with comparatively limited examination of broader institutional governance or systemic failures. By contrast, the decision in *Ahmad Thaqif*[54] demonstrates an increasingly holistic judicial approach. Delayed scans, failure to escalate to specialists, and poor communication were all treated as breaches of the standard of care, even when the patient had initially presented to a private facility and was later transferred to a public one.

More recently, in *Siow Ching Yee v Columbia Asia Sdn Bhd*[55], the Federal Court clarified that private hospitals owe a direct and non-delegable duty of care to patients. In this case, the hospital was held liable for the negligence of an independent anaesthetist who failed to detect hypoxia. The Court held that private healthcare facilities are also healthcare providers and that they are legally required to take responsibility for their patients' care, emphasising that hospitals cannot avoid liability merely by structuring contractual relationships with independent practitioners. This decision significantly strengthens institutional liability and expands the avenues through which patients may pursue claims.

Collectively, these cases demonstrate that Malaysian courts have progressively shifted from a predominantly profession-centred conception of medical negligence towards a more patient-centred model of accountability. Malaysian courts now may be more willing to interrogate the logic of medical decisions and the sufficiency of communication. This shift not only strengthens patient protections but also increases the likelihood of findings of liability and encourages more claimants to bring actions.

3.3 Institutional Factors

Along with updated laws, certain aspects within the institution are also responsible for the rise in medical litigation claims due to negligence. Modern healthcare systems involve complex coordination between multiple practitioners, departments, and administrative

[52] *Foo Fio Na* (n 23).
[53] *Shalini a/p Kanagaratnam* (n 21).
[54] *Ahmad Thaqif Amzar* (n 51).
[55] *Siow Ching Yee* (n 16).

processes, which increases the risk of communication breakdowns, delayed responses, and procedural lapses.

As seen in the case of *Ahmad Thaqif Amzar*[56] institutional shortcomings, such as failure to escalate care and delays in diagnosis, can result in severe patient harm and subsequent legal liability. These issues are often linked to weaknesses in clinical governance, inadequate adherence to standard operating procedures, and insufficient interdepartmental coordination.

In the landmark case of *Foo Fio Na*[57], the hospital's inaction on a patient clearly getting worse was considered negligent by the Federal Court. It was clear that the system's problems included poor communication between teams in charge and not having urgent plans to escalate the situation. Such failures demonstrate that the hospital's standard operating procedures (SOPs) were not followed and there was no framework for clinical governance. These warnings from the institution suggest that judges are now paying closer attention to details that can lead to harm which could prompt more people to file medical lawsuits because of negligence.

Statutory obligations under the Private Healthcare Facilities and Services Act 1998[58] further reinforce the expectation that healthcare institutions must maintain safe operational standards. Courts have increasingly interpreted these obligations alongside common law duties, effectively holding institutions accountable for systemic failures that contribute to patient harm. The recognition of non-delegable duties means that hospitals are responsible for ensuring that all care provided within their facilities meets acceptable standards, regardless of whether services are rendered by employees or independent contractors.

In recognising these emerging challenges and concerns, policy-level responses such as MOH's *2022 Guideline on the Management of Medico-Legal Complaints*[59], which serves as an internal administrative guideline to standardise the management of medico-legal complaints across Ministry of Health facilities. Although the Guideline does not have the force of legislation and does not create independent legal obligations or causes of action, it is intended to guide MOH healthcare institutions in ensuring timely, consistent, and transparent complaint management. Its goal is to ensure that institutions are more open, accountable and that complaints in the public healthcare system are handled promptly. While such frameworks aim to improve internal resolution and reduce litigation, they also increase formal documentation and reporting, which may indirectly contribute to the visibility and traceability of potential negligence incidents.

3.4 Social factors

Social changes in Malaysia have influenced the evolving medico-legal landscape by increasing public awareness of patient rights and facilitating greater access to health-related

[56] *Ahmad Thaqif Amzar* (n 51).
[57] *Foo Fio Na* (n 23).
[58] Private Healthcare Facilities and Services Act 1998.
[59] Ministry of Health Malaysia, *Guideline on the Management of Medico-Legal Complaints in Ministry of Health* (Medical Practice Division, 2022).

information. However, these developments should not be interpreted as direct causes of increased medical negligence litigation. Instead, they likely contributed to an environment in which patients are better informed about healthcare standards, legal rights, and available avenues for seeking redress.

One contributing social factor is the widespread use of online health platforms and communities. As Malaysians increasingly rely on the internet for health information, their eHealth literacy, defined as the ability to seek, understand, and use digital health information-has improved significantly. Platforms such as online health communities, health blogs, and reputable sites like WebMD and Mayo Clinic empower patients to self-educate about symptoms, treatments, and medical standards. This access enables patients to better recognize when their experiences may constitute substandard care or negligence, making them more likely to pursue legal action. Research shows that higher eHealth literacy is associated with more proactive patient behaviour and a greater willingness to question or challenge healthcare providers.[60] While these developments do not necessarily translate into increased litigation, they may enhance patients' ability to recognise potential instances of substandard care and make informed decisions regarding available complaints or legal mechanisms.[61]

Similarly, social media has transformed the way healthcare experiences are shared and discussed. Platforms like Facebook, TikTok, X (formerly Twitter), and online discussion forums provide spaces for patients to recount personal healthcare experiences, exchange information, and discuss issues relating to patient safety and professional accountability. Viral posts and threads foster empathy, provoke public outrage, and inform others about their legal rights and potential legal recourse. Existing research suggests that social media can increase public awareness of patient rights, healthcare quality, and complaint mechanisms by facilitating the rapid dissemination of information and peer experiences.[62] However, empirical evidence directly linking social media exposure to an increase in medical negligence litigation remains limited, particularly within the Malaysian context. Thus, social media should therefore be viewed as one of several contributing factors that may shape public awareness and healthcare expectations, rather than as an independent driver of litigation.

Social media also facilitates the rapid dissemination of information and advice, potentially normalizing litigation as an accessible and reasonable response to unsatisfactory medical care.[63] In addition, courts and legal practitioners increasingly recognize social media posts as evidence in medical negligence litigation, as illustrated in cases such as *Wye Valley NHS Trust*

[60] Xinyi Lu and Runtong Zhang , 'Association between eHealth Literacy in Online Health Communities and Patient Adherence: Cross-Sectional Questionnaire Study' (2021) 23 Journal of Medical Internet Research.
[61] Samantha R Paige and others, 'eHealth Literacy in Health Care' (2018) 20(10) Journal of Medical Internet Research e36.
[62] Judith H Hibbard and Jessica Greene, 'What the Evidence Shows About Patient Activation' (2013) Health Affairs 207.
[63] Maizatul Farisah Mohd Mokhtar , 'Medical Negligence Dispute in Malaysia: Choosing Mediation as the Best Constructive Approach to Address the Paradoxes in Medical Negligence Claims' (2024) 7(1) European Journal of Medicine and Natural Sciences 147.

v Murphy.[64] In this case, the defendant, Mr. Murphy, claimed damages for a rugby injury but was found to have deliberately exaggerated his incapacity. The Trust presented video evidence from social media showing Mr. Murphy lifting heavy weights and engaging in physical work, contradicting his claims. The court found him in contempt for knowingly providing false information to medical experts and the court, leading to dismissal of his claim and a committal order for contempt. Although this case does not demonstrate that social media increases medical negligence claims, it illustrates the expanding role of digital evidence in modern medico-legal proceedings and highlights how online content may influence the conduct and adjudication of healthcare-related disputes.

Mainstream media also reinforces this trend. High-profile reports about hospital errors or fatal medical outcomes regularly make headlines in Malaysia. Such reports, often featured in newspapers and broadcast media, draw attention to institutional failures and legal proceedings, including investigations by the MMC and court settlements.[65] While news coverage may influence public perceptions of healthcare quality and accountability, there is insufficient empirical evidence to conclude that media exposure alone leads to increased medical negligence litigation. Instead, it is more accurate to regard mainstream media as an important source of public information that contributes to broader societal expectations regarding transparency, professional accountability, and patient rights. [66]

3.5 Synthesis

In summary, the rise in medical negligence claims in Malaysia is the result of an interplay between evolving legal standards, increasingly interventionist judicial approaches, institutional complexities within healthcare delivery, and heightened social awareness among patients. Legal reforms and statutory frameworks have expanded the scope of liability, judicial decisions have strengthened patient-centred protections, institutional realities have exposed systemic vulnerabilities, and social developments have empowered patients to act on perceived grievances.

Rather than reflecting any single causal factor, the increase in claims is better understood as a cumulative outcome of these interacting forces. Collectively, these developments have reshaped both the expectations placed on healthcare providers and the willingness of patients to seek legal redress, thereby contributing to the observable rise in medical negligence litigation in Malaysia.

4. Consequences of Rising Medical Negligence Claims

4.1 Defensive Medicine and Clinical Practice

One important consequence of increasing negligence litigation is the practice of defensive medicine, whereby healthcare practitioners modify their clinical decision-making primarily

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[64] [2024] EWHC 1912 (KB).

[65] C Lee Ventola, 'Social Media and Health Care Professionals: Benefits, Risks, and Best Practices' (2014) 39(7) PT <https://pubmed.ncbi.nlm.nih.gov/25083128/> accessed 17 May 2025.

[66] Hambali and Khodapanahandeh (n 6)

to minimise potential legal liability rather than optimise patient care. Defensive medicine generally takes two forms: positive and negative defensive medicine. Positive defensive medicine involves ordering additional diagnostic investigations, referrals, or procedures primarily to document clinical diligence, whereas negative defensive medicine involves avoiding high-risk patients or complex procedures altogether.

Although comprehensive Malaysian empirical evidence remains limited, international literature consistently demonstrates that fear of litigation influences clinical decision-making and contributes to increased healthcare utilisation and expenditure.[67] Excessive diagnostic testing and unnecessary referrals may increase costs for both patients and healthcare providers without necessarily improving clinical outcomes. Moreover, defensive practice may undermine clinical efficiency while exacerbating resource allocation challenges within an already strained healthcare system.[68]

4.2 Medical Indemnity and Healthcare Costs

The financial consequences of medical negligence litigation beyond compensation awards to professional indemnity arrangements and institutional healthcare expenditure. Increasing compensation awards and litigation costs may contribute to higher professional indemnity premiums borne by medical practitioners and healthcare institutions. These additional costs may ultimately be passed on to patients through higher healthcare charges or absorbed by public healthcare expenditure.

Across many jurisdictions, escalating medical malpractice litigation has been associated with rising insurance costs and greater institutional investment in legal risk management. While Malaysia lacks publicly available national data regarding medical indemnity expenditure, the increasing number of medico-legal complaints and compensation payments reported by the MOH suggests that negligence claims impose measurable financial burdens on healthcare providers and public resources.[69]

4.3 Professional Pressure and Workforce Sustainability

Increasing medico-legal exposure may adversely affect professional morale and workforce retention within the healthcare sector. Medical practitioners practising in high-risk specialties such as obstetrics, emergency medicine, surgery, and anaesthesiology may experience greater professional anxiety arising from potential litigation. Fear of legal liability may contribute to occupational stress, burnout, and reduced willingness to undertake high-risk procedures or manage medically complex cases.

Existing research suggests that medico-legal pressures may influence workforce migration and specialist retention, particularly where practitioners perceive increasing legal exposure without corresponding institutional support or regulatory certainty. Although litigation

[67] David M Studdert and others, 'Defensive Medicine Among High-Risk Specialist Physicians in a Volatile Malpractice Environment' (2005) 293(21) Journal of the American Medical Association 2609.
[68] Ibid.
[69] MOH Annual Report 2024 (n 8).

serves an important accountability function, an overly adversarial medico-legal environment may inadvertently discourage innovation and appropriate clinical risk-taking that are often essential components of effective clinical practice.[70]

4.4 Public Confidence and Healthcare Governance

Rising medical negligence claims may also affect public confidence in the healthcare system. Increased litigation can reflect greater patient awareness and stronger accountability mechanisms, but persistent negligence disputes may simultaneously undermine trust in healthcare institutions if systemic failures remain inadequately addressed. Transparency, effective complaint resolution, and timely institutional responses therefore become increasingly important elements of healthcare governance.

Conversely, an effective medico-legal framework that promotes accountability, early dispute resolution, and institutional learning may strengthen rather than diminish public confidence by demonstrating that healthcare providers are committed to patient safety and continuous quality improvement. The objective of reform should therefore not be to reduce litigation at all costs but to create mechanisms that prevent avoidable harm while providing fair and efficient avenues for patient redress.

4.5 Implications for Structural Reform

These consequences demonstrate that medical negligence litigation affects the healthcare system as a whole rather than only the parties involved in individual disputes. Rising claims may increase healthcare expenditure, encourage defensive medicine, place additional pressure on healthcare professionals, and expose institutional weaknesses in governance and patient safety. Accordingly, reforms aimed at strengthening regulatory oversight, promoting alternative dispute resolution, improving institutional accountability, and encouraging early error disclosure should be viewed not only as legal reforms but also as broader healthcare governance initiatives designed to enhance patient safety while maintaining the sustainability of Malaysia's healthcare system.

5. Existing Non-Legislative Responses

5.1 Communication

Effective communication remains a cornerstone of the healthcare provider–patient relationship and is widely recognised as one of the primary factors influencing patient satisfaction and litigation risk.[71] Transparent and empathetic communication enables patients to make informed decisions regarding their treatment while aligning expectations with clinical realities. This is particularly significant in medical negligence contexts, where

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[70] Redwan Yasin and others, 'Medical Negligence, Workforce Migration, and the Sustainability Crisis in Malaysia's Public Healthcare System' (2025) 15 International Journal of Asian Social Science 150.

[71] John M Travaline , Robert Ruchinskas and Gilbert E D'Alonzo Jr, 'Patient-Physician Communication: Why and How' (2005) 105 The Journal of the American Osteopathic Association 13.

many claims are triggered not solely from adverse outcomes, but from dissatisfaction arising from inadequate explanations or perceived failures of disclosure.

Transparent communication may help defuse anger, frustration, and mistrust, which are common precursors to complaints and legal action. When patients feel adequately informed and heard, they may be less likely to pursue costly and time-consuming negligence claims. This aligns with medico-legal risk management principles emphasised in professional guidance and clinical governance frameworks, where communication is recognised as both an ethical obligation and a preventive risk-management strategy.

In practice, effective communication includes obtaining informed consent, explaining risks and alternatives in clear terms, and ensuring that patients understand the proposed treatment. Judicial approaches to informed consent in Malaysia have reinforced the expectation that material risks must be disclosed in a manner that supports patient autonomy. Although communication alone cannot prevent all disputes, it significantly reduces the likelihood of misunderstandings escalating into formal claims.

Importantly, the role of communication is further amplified by Malaysia’s status as a multiracial and multicultural society, comprising diverse ethnic, linguistic, and religious groups. Differences in language proficiency, health literacy, cultural expectations, and attitudes toward authority may create barriers to effective doctor–patient communication. Miscommunication in such contexts may lead to misunderstandings regarding diagnosis, treatment risks, or consent, thereby increasing the likelihood of dissatisfaction and subsequent legal claims.[72] As such, culturally competent communication, tailored to the patient’s background and level of understanding, is not merely desirable but essential in mitigating medico-legal risk within the Malaysian healthcare setting.

5.2 Robust Documentation

Comprehensive and accurate medical documentation represents another non-legislative safeguard against medical negligence claims. Although Malaysia already imposes documentary obligations through various legislative, regulatory, and professional instruments, there are inconsistencies in the quality, completeness, and implementation of documentation across different healthcare settings.[73]

Medical records provide a contemporaneous account of patient history, clinical findings, diagnostic reasoning, treatment decisions, and follow-up care. These records are often central in litigation, as courts rely extensively on contemporaneous documentation to assess whether the standard of care was met.

Robust documentation requires maintaining detailed records of all procedures, consultations, investigations, and communications with patients. This documentation not only serves as evidentiary support in the event of a dispute but also enables healthcare

[72] Kate E. Humphrey and others, 'Frequency and Nature of Communication and Handoff Failures in Medical Malpractice Claims' (2022) 18(2) Journal of Patient Safety 130.

[73] Jahn Kassim (n 13).

providers to evaluate and improve their clinical practice. Proper records facilitate continuity of care, improve coordination among practitioners, and reduce the likelihood of medical errors.[74]

From a medico-legal perspective, incomplete or inconsistent documentation may weaken a practitioner's defence in negligence proceedings. Conversely, well-maintained records can demonstrate adherence to accepted standards of practice and support the credibility of the practitioner's account. In this way, documentation functions as both a clinical tool and an important medico-legal safeguard, directly influencing the outcome of negligence claims.[75]

5.3 Malaysian Medical Council Complaint Mechanism

The MMC provides a formal avenue for patients to lodge complaints against medical practitioners under the Medical Act 1971.[76] This disciplinary mechanism operates independently from civil litigation and focuses on professional misconduct, ethical breaches, and deviations from accepted standards of practice. This allows for feedback and constructive criticism, enabling the MMC to assess whether a practitioner's conduct falls below expected professional standards and providing patients with an avenue to raise concerns without immediately resorting to litigation. Where necessary, the MMC may initiate disciplinary proceedings, which can result in sanctions such as warnings, suspension, or removal from the medical register.[77]

In the context of medical negligence claims, the MMC plays a preventive and corrective role. By addressing complaints at an early stage, the MMC may reduce the likelihood of patients pursuing civil action, particularly where grievances are resolved through explanation, acknowledgement of errors, or corrective measures.[78] Additionally, disciplinary findings and recommendations often encourage practitioners to engage in Continuous Professional Development (CPD), thereby strengthening clinical competence and reducing the recurrence of similar incidents.

Although MMC proceedings do not determine civil liability or award damages, they complement the tort system by reinforcing professional accountability.[79] In medico-legal disputes, MMC findings may indirectly influence perceptions of credibility and standard of care, even though they are not binding on civil courts. As such, the MMC operates as part of a broader medico-legal regulatory framework that supports both patient protection and professional self-regulation.

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[74] Peter Chiu-Leung Chow , 'Keeping good documentation: the ethical and legal issues in medical records' (2025) 66(9) Singapore Med J 517 <https://doi.org/10.4103/singaporemedj.SMJ-2025-042>accessed 17 March 2026.

[75] Ibid.

[76] Medical Act 1971.

[77] Mahmud Mohd Nor, 'Proceedings in a Disciplinary Action at the Malaysian Medical Council' (2005) 60(Supp D) Med J Malaysia 32.

[78] Puteri Nemie Jahn Kassim, 'Medical Negligence Litigation in Malaysia: Current Trend and Proposals for Reform' (Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia) <https://mdm.org.my/downloads/dr_puteri_nemie.pdf> accessed 15 March 2026.

[79] Mohd Nor (n 77).

5.4 Alternative Dispute Resolution (ADR)

ADR, including mediation and negotiation, has emerged as an increasingly significant mechanism for resolving medical negligence disputes outside the formal court system. In Malaysia, mediation services are facilitated through institutions including the MMC, which provide structured, neutral platforms for parties to negotiate settlements.

ADR offers several advantages in the context of medical negligence claims. Mediation allows patients to express their grievances in a non-adversarial environment, which can be particularly valuable in cases where emotional distress or communication breakdown has likely contributed to the dispute. Through facilitated negotiation, parties may reach resolutions that include apologies, explanations, corrective actions, or financial compensation, depending on mutual agreement.[80]

From a practical standpoint, ADR is significantly faster and more cost-effective than litigation.[81] While court proceedings may extend over several years, mediation processes can often resolve disputes within a considerably shorter timeframe, sometimes within a few months.[82] Empirical studies indicate that mediation has a high success rate of approximately 80 to 90 per cent and is generally less costly than full litigation, in some cases even falling below the value of the compensation claimed.[83]

However, ADR is not without limitations. Its effectiveness depends on the willingness of both parties to engage in good faith, and outcomes are not guaranteed unless a settlement is reached.[84] There may also be concerns regarding power imbalances between individual patients and institutional healthcare providers, particularly where legal representation is uneven.

Furthermore, the absence of publicly available data on mediation outcomes presents a further structural challenge. Without systematic reporting on the number of disputes referred to ADR, settlement rates, resolution times, or participant satisfaction, it is difficult to evaluate whether existing ADR mechanisms effectively reduce litigation or improve access to justice. Greater transparency in ADR reporting would therefore facilitate empirical evaluation, while also informing future medico-legal policy development. Despite these challenges, ADR remains a valuable complement to litigation, offering a more flexible, efficient, and less adversarial means of resolving disputes while potentially reducing the overall volume of medical negligence claims.

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[80] Siti Farahiyah Ab Rahim and Anggraeni Endah Kusumaningrum, 'Tort Litigation Versus Mediation in Medico-Legal Disputes: Evaluating The Limits Of Mediation and Proposals for Reform' (2025) 30(2) Journal of Fatwa Management and Research 176.
[81] Mohd Mokhtar (n 63).
[82] Azmi Izhar Azmi and others, 'Medical Negligence Dispute Resolution in Malaysia: The Role of Mediation' (2021) 6(16) Environment-Behaviour Proceedings Journal 191, 195.
[83] Ibid.
[84] Rahim and Kusumaningrum (n 80).

6. Proposed Reforms

6.1 Codified Standards of Care

One proposed reform is the statutory codification of the standard of care. This would involve enacting legislation that defines key aspects of medical negligence, particularly those relating to professional conduct and risk disclosure.

Such codification could establish clear benchmarks for medical practice, enabling both practitioners and courts to assess conduct against objective criteria. It would also support more consistent legal outcomes and reduce reliance on conflicting expert testimony. Importantly, codified standards could incorporate clinical guidelines and best practices, thus enhance patient safety and promote evidence-based care.

Despite its potential advantages, codification is not without limitations. One commonly identified concern is the risk of regulatory rigidity.[85] Medical practice continues to evolve rapidly in response to scientific developments, technological innovation, and changing clinical standards. Statutory provisions that are drafted too narrowly may become outdated and fail to accommodate emerging treatment or evolving standards of care.[86] In contrast, common law principles possess greater flexibility and may adapt more readily to new clinical circumstances through judicial interpretation.

A further concern is that overly prescriptive statutory standards may inadvertently encourage defensive medicine practice.[87] Where healthcare practitioners perceive codified legal requirements as rigid rules rather than guiding principles, clinical decision-making may become overly cautious and compliance-oriented. This may discourage the exercise of professional clinical judgment and reduce flexibility in responding to individual patient circumstances, particularly where patients present with complex or atypical conditions.[88] Consequently, any statutory codification should provide sufficient flexibility to accommodate evolving medical knowledge and individualised patient care, rather than prescribing exhaustive or inflexible standards of clinical practice.

6.2 Mandatory Error Reporting

Another proposed reform is the introduction of mandatory medical error reporting. Currently, Malaysia does not have legislation requiring systematic disclosure of medical errors to patients or regulatory authorities.

[85] Paula Giliker, 'Codification, Consolidation, Restatement? How Best to Systemise the Modern Law of Tort' (2021) 70(2) International and Comparative Law Quarterly 271.
[86] Angela Campbell and Kathleen Cranley Glass, 'The Legal Status of Clinical and Ethics Policies, Codes, and Guidelines in Medical Practice and Research' (2001) 46 McGill Law Journal 473.
[87] Vera Lúcia Raposo, 'Defensive Medicine and the Imposition of a More Demanding Standard of Care' (2019) 39(4) Journal of Legal Medicine 401.
[88] Johan Christiaan Bester, 'Defensive Practice Is Indefensible: How Defensive Medicine Runs Counter to the Ethical and Professional Obligations of Clinicians' (2020) 23 Medicine, Health Care and Philosophy 413.

Mandatory reporting could enhance transparency and trust, which are critical in reducing patient dissatisfaction and litigation. Early disclosure of errors allows for prompt resolution, potentially reducing both the duration and cost of disputes. It also fosters a culture of learning, enabling healthcare institutions to identify underlying systemic weaknesses and implement preventive measures.

One concern is that compulsory reporting requirements may inadvertently foster a culture of blame if healthcare professionals perceive that disclosures will automatically expose them to disciplinary action or civil liability. Such perceptions may discourage open communication, encourage defensive documentation, or lead to underreporting of incidents, thereby undermining the very objective of improving patient safety. Thus, any mandatory reporting framework introduced in Malaysia should seek to balance transparency and accountability with a supportive, learning-oriented approach that encourages honest disclosure while safeguarding patient interests and ensuring procedural fairness for healthcare professionals.

6.3 Expanded Malaysian Medical Council Jurisdiction

Reform may also involve expanding the jurisdiction and powers of the MMC. Currently, the MMC’s role is largely disciplinary and reactive. By broadening its mandate, the Council could adopt a more proactive and preventive approach to medical regulation.

Potential enhancements include strengthening investigatory powers, promoting adherence to clinical guidelines, and ensuring ongoing competency through structured oversight and Continuous Professional Development (CPD).[89] Expanding the MMC’s jurisdiction to address a wider range of negligence-related issues could help bridge the gap between professional regulation and civil liability. However, such expansion would require careful design to maintain fairness, independence, and procedural integrity, particularly in distinguishing between disciplinary action and civil adjudication.

However, expanding the MMC's powers also raises important concerns. While broader investigatory and enforcement powers may strengthen professional accountability, they also raise concerns regarding procedural fairness, institutional capacity, and the appropriate scope of professional regulation. Disciplinary proceedings are intended to regulate professional conduct rather than determine civil liability, and care should therefore be taken to avoid unnecessary overlap between disciplinary processes and negligence litigation.[90] Moreover, any expansion of the Council's functions must be accompanied by adequate staffing, expertise, funding and administrative resources to ensure timely complaint resolution and maintain public confidence in the regulatory process.

In *Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd*[91], Raja Azlan Shah FCJ emphasised the fundamental constitutional principle that “every legal power must have legal limits,” reinforcing that administrative discretion is never unfettered and

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[89] Jahn Kassim (n 78).
[90] Medical Act 1971 (Act 50), ss 29–30.
[91] [1979] 1 MLJ 135.

must be exercised within the bounds of fairness and reasonableness.[92] Any expansion of MMC's powers should therefore be accompanied by appropriate safeguards, including procedural transparency, independent oversight mechanisms, clearly defined jurisdictional boundaries, and adequate institutional resources.

6.4 Institutionalised ADR

Finally, the formal integration of ADR mechanisms into the medico-legal framework may provide a more efficient and patient-centred approach to resolving disputes. While ADR is already available in Malaysia, it is not systematically embedded within medical negligence processes.

Institutionalising mediation, for example through mandatory pre-litigation mediation schemes, could facilitate earlier resolution of disputes. ADR allows patients to express their grievances in a less adversarial setting and may result in remedies such as apologies, explanations, or corrective actions. ADR is also significantly faster and more cost-effective than litigation, with typical resolution timelines of months rather than years.

However, mandatory pre-litigation mediation may inadvertently delay access to the courts if mediation becomes an additional procedural hurdle rather than a genuine opportunity for early resolution.[93] As mentioned before, the effectiveness of ADR depends heavily on the willingness of both parties to participate in good faith.[94] Significant power imbalances may also arise where patients, who often possess limited medical knowledge and financial resources, negotiate against well-resourced healthcare institutions or insurers. Without appropriate procedural safeguards, there is a risk that vulnerable claimants may feel pressured into accepting settlements that do not adequately reflect the merits of their claims. Additionally, mediation outcomes are generally confidential and non-precedential, meaning that recurring systemic issues or unsafe clinical practices may remain hidden from public scrutiny, thereby limiting opportunities for broader institutional learning and legal development.

Thus, ADR should complement rather than replace judicial mechanisms. Any mandatory mediation framework should therefore incorporate safeguards such as voluntary informed participation, access to independent legal advice, qualified mediators with medico-legal expertise, and clear exceptions permitting direct recourse to litigation where mediation is inappropriate or unlikely to succeed.

7. Comparative Framework and Jurisdictional Selection

Comparative legal analysis serves an important function in medico-legal research by providing insights into alternative regulatory approaches that may assist domestic legal development. The jurisdictions examined in this article—Singapore, the UK, Australia,

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[92] *R Rama Chandran v Industrial Court of Malaysia* [1997] 1 MLJ 145 (FC).
[93] *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
[94] Rahim and Kusumaningrum (n 80).

Canada, and New Zealand—have been selected because they share historical and doctrinal connections with Malaysia through the common law tradition while adopting distinct responses to challenges arising from medical negligence litigation. Their experiences provide persuasive rather than binding guidance and illustrate different approaches to balancing patient protection, professional autonomy, and healthcare governance.

Accordingly, comparative analysis does not suggest that Malaysia should replicate foreign legal models in their entirety. Instead, selective adaptation of specific institutional mechanisms, such as targeted statutory clarification, enhanced transparency obligations, strengthened institutional accountability, and expanded alternative dispute resolution, offers a more realistic and context-sensitive approach. Such incremental reform preserves the strengths of Malaysia's common law tradition while addressing structural gaps exposed by contemporary healthcare practice and increasing medical negligence litigation.

7.1 Singapore

Singapore offers perhaps the most relevant comparator for Malaysia due to similarities in legal heritage, regional context, and mixed public-private healthcare delivery. Following the decision in Hii Chii Kok v Ooi Peng Jin London Lucien[95], Singapore introduced *section 37* of the Civil Law Act 1909[96], providing statutory guidance on medical advice and informed consent while preserving judicial flexibility. Rather than comprehensively codifying medical negligence, the legislation clarifies specific aspects of professional responsibility. This targeted codification may enhance legal certainty and consistency. However, as mentioned before, there is a risk that statutory provisions could become overly prescriptive or fail to keep pace with developments in medical science, healthcare technology, and evolving clinical practices. Unlike common law, which develops incrementally through judicial interpretation, legislation may require frequent amendment to remain relevant.

Furthermore, Malaysia's healthcare system differs from Singapore's in terms of institutional capacity, regulatory structure, and the scale of public healthcare delivery. A reform that functions effectively within Singapore's relatively centralised healthcare system may therefore not produce the same outcomes in Malaysia without corresponding institutional support, clear implementation guidelines, and periodic legislative review. Consequently, any move towards codification should be confined to clearly defined areas, such as informed consent and disclosure obligations, while preserving judicial discretion to ensure that the law remains sufficiently flexible to respond to the complexities of individual clinical cases.

7.2 United Kingdom

The UK provides a useful example of institutional transparency through the statutory Duty of Candour introduced under *section 20* of the Health and Social Care Act 2008.[97] The obligation requiring healthcare providers to disclose significant patient safety incidents promotes openness, organisational learning, and patient trust. While Malaysia's healthcare

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[95] [2017] SGCA 38.
[96] Civil Law Act 1909, s37.
[97] Health and Social Care Act 2008, s20.

system differs structurally from the National Health Service, introducing statutory obligations encouraging early disclosure and communication following medical errors could strengthen accountability and reduce adversarial disputes.

Unlike the UK, where the duty operates within the institutional framework of the National Health Service (NHS) alongside established patient safety reporting systems and regulatory oversight, Malaysia's dual public-private healthcare system presents a more fragmented regulatory landscape. Without clear legislative guidance and institutional support, mandatory disclosure obligations may inadvertently encourage defensive medical practice, increase concerns over self-incrimination, or discourage open reporting if healthcare practitioners fear that disclosed information could subsequently be used against them in disciplinary proceedings or civil litigation.

Furthermore, implementing such a duty would require robust legal safeguards, standardised reporting protocols, adequate practitioner training, and alignment between the MOH, the MMC, and private healthcare regulators to ensure that disclosure promotes organisational learning rather than merely creating an additional compliance burden. Thus, while the underlying principles of transparency and patient-centred communication are highly relevant to Malaysia, any statutory duty should be carefully adapted to the local healthcare and regulatory context rather than directly replicating the UK model.

7.3 Canada

Canada offers valuable lessons regarding patient safety and disclosure practices through its emphasis on systemic learning rather than individual blame when responding to patient safety incidents. This is reflected in the Canadian Disclosure Guidelines[98], developed by the former Canadian Patient Safety Institute (now Healthcare Excellence Canada), which encourages healthcare providers to engage in open disclosure with patients and their families following adverse events while simultaneously promoting organisational learning and quality improvement. Rather than viewing every adverse event solely through the lens of professional fault, the Canadian framework recognises that patient harm may arise from a combination of organisational processes, communication failures, human factors, and system design. Accordingly, disclosure is intended not merely to facilitate accountability, but also to identify underlying causes and prevent similar incidents from recurring.[99] This systems-based approach encourages healthcare providers to report patient safety incidents without fear that every error will automatically result in disciplinary or legal sanctions. Such an environment facilitates earlier identification of systemic risks, strengthens institutional learning, and supports continuous quality improvement alongside patient-centred transparency.

However, Canada's disclosure framework operates within a mature patient safety infrastructure characterised by established incident-reporting systems, multidisciplinary

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[98] Healthcare Excellence Canada, *Canadian Disclosure Guidelines: Being Open with Patients and Families* <https://www.healthcareexcellence.ca/resources/canadian-disclosure-guidelines> accessed 30 June 2026.

[99] Health Canada, *Resources on Patient Safety* <https://www.canada.ca/en/health-canada/services/health-care-system/quality-care/patient-safety/resources.html> accessed 30 June 2026.

quality improvement programmes, statutory protections for apologies in many provinces, and a healthcare culture that increasingly embraces organisational learning over individual blame. Malaysia's current medico-legal framework remains more divided, with professional regulation, hospital governance, civil litigation, and complaint mechanisms operating largely as separate processes. Without comparable institutional capacity, mandatory disclosure initiatives may inadvertently increase practitioners' concerns regarding legal exposure, discourage candid reporting of adverse events, or impose additional administrative burdens on already resource-constrained healthcare institutions. While Canada's experience offers valuable lessons for strengthening patient safety and accountability, any Malaysian adaptation should be implemented incrementally and accompanied by broader institutional reforms rather than adopted as a standalone regulatory measure.

7.4 New Zealand

New Zealand provides a more useful comparative model through its no-fault compensation scheme, administered by the Accident Compensation Corporation (ACC) since 1974. Patients receive compensation for treatment-related injuries without proving negligence.[100] This system shifts the focus away from adversarial fault-finding toward accessibility, efficiency, and rehabilitation.[101]

Despite its strengths, the New Zealand model should be approached cautiously in the Malaysian context. The ACC scheme operates within a unique legal, economic, and institutional environment supported by substantial public funding and long-standing policy commitments. The present article[102] does not undertake a detailed assessment of the financial, administrative, or legislative implications of introducing a comparable no-fault compensation system in Malaysia.

Yet, the New Zealand experience remains valuable because it demonstrates that compensation and patient support need not always depend upon traditional fault-based litigation. While such a model may not be directly transferable to Malaysia, it highlights an alternative approach focused on accessibility and efficiency rather than fault-based litigation. Elements of this approach, such as simplified claims processes or administrative compensation schemes, may inform future reforms in Malaysia.

7.5 Towards a Hybrid Malaysian Model

Rather than adopting comprehensive legislative reform or preserving the existing framework unchanged, Malaysia may benefit from a hybrid model combining the strengths of common law flexibility with targeted statutory and institutional reform. Judicial development should continue to govern evolving medical practice while legislation should address specific areas

[100] Ken Oliphant, ‘Beyond Misadventure: Compensation for Medical Injuries in New Zealand’ (2007) 15 Medical Law Review 357.
[101] Katharine A Wallis, 'No-fault, no difference: no-fault compensation for medical injury and healthcare ethics and practice' (2017) 67(654) British Journal of General Practice 38.
[102] Ibid.

requiring greater legal certainty, including informed consent, institutional accountability, digital healthcare governance, and early dispute resolution mechanisms.
Similarly, stronger regulatory oversight, enhanced transparency, mandatory error disclosure, and greater use of mediation should complement rather than replace civil litigation. Such an integrated approach would preserve the adaptability of Malaysia's common law tradition while addressing the structural gaps identified throughout this article, thereby promoting patient safety, professional accountability, and sustainable healthcare governance in an increasingly complex medical environment.

8. Conclusion

The rise in medical negligence claims in Malaysia should be viewed as an indicator of deeper systemic issues within the medico-legal and healthcare framework. As this paper has demonstrated, the increasing trend in claims is shaped by a convergence of legal developments, evolving judicial approaches, institutional shortcomings, and heightened patient awareness. Together, these factors indicate a shifting landscape in which expectations of accountability, transparency, and quality of care have significantly intensified.

This highlights a structural gap within the existing medico-legal framework, particularly under the Medical Act 1971.[103] While the Act continues to play a crucial role in regulating professional conduct and maintaining standards within the medical profession, its scope remains largely limited to registration and disciplinary control. It does not directly address civil liability, nor does it provide comprehensive mechanisms for patient redress or integrated dispute resolution. As healthcare delivery becomes increasingly complex through the expansion of private healthcare, multidisciplinary practice, digital health technologies, and institutional care, these structural gaps have become more apparent and have exposed the limitations of a framework that was developed for a markedly different healthcare environment.

Addressing the rise in medical negligence claims requires more than isolated legislative amendments or institutional reforms. Rather, it requires an integrated and context-sensitive approach that strengthens the coherence of Malaysia's medico-legal framework by aligning legal standards, regulatory oversight, institutional accountability, and patient-centred healthcare governance. The comparative analysis in this article demonstrates that jurisdictions sharing Malaysia's common law heritage have responded to similar challenges through targeted reforms, combining judicial flexibility with carefully designed statutory and institutional measures.

Ultimately, the increase in medical negligence claims highlights the need for a more cohesive and responsive medico-legal framework. While the flexibility of the common law remains a valuable strength, it must be complemented by targeted reforms that address gaps in regulation, enhance accountability, and promote preventive mechanisms within healthcare practice. The challenge moving forward is not to replace the existing system entirely, but to refine it in a manner that better aligns legal standards, regulatory oversight, and patient

[103] Medical Act 1971.

expectations within Malaysia's evolving healthcare landscape. By addressing these structural gaps through evidence-based and context-sensitive reform, Malaysia can develop a more responsive and sustainable medico-legal framework that safeguards patient rights while supporting professional autonomy, public confidence, and the continued delivery of high-quality healthcare.

Bibliography

Ab Rahim SF and Kusumaningrum AE, 'Tort Litigation Versus Mediation in Medico-Legal Disputes: Evaluating the Limits of Mediation and Proposals for Reform' (2025) 30(2) Journal of Fatwa Management and Research 176.
AF (a child suing through his mother 'parents ad litem' Isrul Hasmah bt Ismail) & Anor v Putra Medical Centre Darul Aiman Sdn Bhd & Anor [2026] 8 MLJ 349
Ahmad Thaqif Amzar bin Ahmad Huzairi v Kuala Terengganu Specialist Hospital Sdn Bhd & Ors [2021] 9 MLJ 10
Azmi AI and others, 'Medical Negligence Dispute Resolution in Malaysia: The Role of Mediation' (2021) 6(16) Environment-Behaviour Proceedings Journal 191.
Bal BS, 'An Introduction to Medical Malpractice in the United States' (2009) 467 Clinical Orthopaedics and Related Research 339.
Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428
Brazier M and Cave E, Medicine, Patients and the Law (7th edn, Manchester University Press 2023).
Chow PCL, 'Keeping good documentation: the ethical and legal issues in medical records' (2025) 66(9) Singapore Med J 517 <https://doi.org/10.4103/singaporemedj.SMJ-2025-042> accessed 17 March 2026
Civil Law Act 1956
Code of Professional Conduct 2019
Cork v Kirby Maclean Ltd [1952] 2 All ER 402
Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and Another Appeal [2018] 3 MLJ 281
Foo Fio Na v Dr Soo Fook Mun & Anor [2007] 1 MLJ 593
Hambali SN and Khodapanahandeh S, 'A Review of Medical Malpractice Issues in Malaysia under Tort Litigation System' (2014) 6 Global Journal of Health Science.
Hart HLA, The Concept of Law (3rd edn, Oxford University Press 2012).
Health and Social Care Act 2008 (UK)
Health Canada, Resources on Patient Safety <https://www.canada.ca/en/health-canada/services/health-care-system/quality-care/patient-safety/resources.html> accessed 30 June 2026.
Healthcare Excellence Canada, Canadian Disclosure Guidelines: Being Open with Patients and Families (Healthcare Excellence Canada) <https://www.healthcareexcellence.ca/resources/canadian-disclosure-guidelines > accessed 30 June 2026.
Hii Chii Kok v Ooi Peng Jin London Lucien [2017] SGCA 38
Humphrey KE and others, 'Frequency and Nature of Communication and Handoff Failures in Medical Malpractice Claims' (2022) 18(2) Journal of Patient Safety 130.
Jahn Kassim PN, 'Medical Negligence Litigation in Malaysia: Current Trend and Proposals for Reform' (Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia) <https://mdm.org.my/downloads/dr_puteri_nemie.pdf> accessed 15 March 2026.
Jahn Kassim PN, Medical Negligence in Malaysia: Cases and Commentary (2nd edn, Thomson Reuters Asia 2021).
Kiak Min MT, 'Considerations for Introducing Legislation on Advance Decisions in Malaysia' (2018) 10(1) Asian Bioethics Review 87.
Limitation Act 1953

Lu X and Zhang R, 'Association between eHealth Literacy in Online Health Communities and Patient Adherence: Cross-Sectional Questionnaire Study' (2021) 23 Journal of Medical Internet Research e25379.
MacCormick N, Institutions of Law: An Essay in Legal Theory (Oxford University Press 2007).
Mah Weng Kwai & Associates, 'Approach to Medical Negligence Claims by Malaysian Courts' <https://mahwengkwai.com/approach-to-medical-negligence-claims-by-malaysian-courts/> accessed 15 March 2026.
Mahmud MN, 'Proceedings in a Disciplinary Action at the Malaysian Medical Council' (2005) 60(Suppl D) Medical Journal of Malaysia 32.
Medical Act 1971
Ministry of Health Malaysia, Annual Report 2023 (MOH/S/RAN/275.24(AR) - e, 2024).
Ministry of Health Malaysia, Annual Report 2024 (MOH/S/RAN/304.25(AR) - e, 2025).
Ministry of Health Malaysia, Guideline on the Management of Medico-Legal Complaints in the Ministry of Health (Medical Practice Division, Ministry of Health Malaysia 2022).
Mohd Mokhtar MF, 'Medical Negligence Dispute in Malaysia: Choosing Mediation as the Best Constructive Approach to Address the Paradoxes in Medical Negligence Claims' (2024) 7(1) European Journal of Medicine and Natural Sciences 147
Nur Fuziatun binti Mohd Fadzli v Gombak Medical Centre Sdn Bhd & Ors MLJU 4319
Oliphant K, 'Beyond Misadventure: Compensation for Medical Injuries in New Zealand' (2007) 15 Medical Law Review 357.
Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135.
Prince Court Medical Centre Sdn Bhd v Lim Yoke Har (bertindak melalui anak lelaki dan wakil litigasinya, Goh Seng Cha) & Ors and another suit [2024] MLJU 269
Private Healthcare Facilities and Services Act 1998
R v Bateman (1925) 19 Cr App R 8
Rogers v Whitaker (1992) 175 CLR 479
Shalini a/p Kanagaratnam v Pusat Perubatan Universiti Malaya (formerly known as University Hospital) & Anor [2016] 3 MLJ 742
Siow Ching Yee v Columbia Asia Sdn Bhd [2024] 3 MLRA 208
Syazwani binti Drani v Government of Malaysia & Ors [2023] 1 LNS 2261
Travaline JM, Ruchinskas R and D'Alonzo GE Jr, 'Patient-Physician Communication: Why and How' (2005) 105 Journal of the American Osteopathic Association 13.
Ventola CL, 'Social Media and Health Care Professionals: Benefits, Risks, and Best Practices' (2014) 39(7) PT <https://pubmed.ncbi.nlm.nih.gov/25083128/> accessed 17 March 2026.
Wallis KA, 'No-fault, No Difference: No-fault Compensation for Medical Injury and Healthcare Ethics and Practice' (2017) 67(654) British Journal of General Practice 38.
Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd 2 MLJ 1
Wye Valley NHS Trust v Murphy [2024] EWHC 1912 (KB)

Combating Inequality in Primary Education within Rural Areas - Is Legal Reform Necessary?

Keshviena A/P Ramachandarn
Undergraduate Student, School of Law
University of Leeds, United Kingdom
keshviena2002@gmail.com

Bethan Tsai Ong
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
bethanong@gmail.com

Ebony Chin Li Jean
Undergraduate Student, School of Law
University of Leeds, United Kingdom
ebonychin09@gmail.com

Vaishnavi A/P Sanase
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
vaishuuusanase@gmail.com

Agnes Pek
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
agnespek12@gmail.com

Wan Marcella Faizi Binti Azarol Faizi
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
faiziwanmarcella@gmail.com

Abstract

This article explores persistent educational inequality in primary education in rural areas of Malaysia and evaluates whether legal reform is necessary to achieve equal access to quality education. Although Malaysia recognises education as a fundamental right through constitutional provisions, statutory frameworks, and international human rights commitments, significant gaps remain between rural and urban schools. Through legal analysis, academic research, and insights gathered from non-governmental organisations and educators, the study identifies four main factors contributing to educational inequality: the digital divide, socioeconomic class, educational malpractice, and inadequate infrastructure. The findings show that existing government initiatives and policies, although beneficial, are often limited by inconsistent implementation and lack of accountability, leaving rural students at a continued disadvantage that affects long-term outcomes. This article argues for stronger legal safeguards, concludes that educational equity requires substantive reforms to protect the rights of rural students and ensure they receive such education on equal footing with their urban counterparts.

Keywords: constitutional law, rural education in Malaysia, education inequality, human rights, reform

1. Introduction

Malaysia is aligned with international agreements reinforcing education as a fundamental right. Notably, *Article 26 of the Universal Declaration of Human Rights (UDHR)* guarantees the right to free elementary education,[1] while *Article 28 of the United Nations Convention on the Rights of the Child (CRC)* mandates that primary education be compulsory and accessible to all on the basis of equal opportunity.[2] Furthermore, the *United Nations Sustainable Development Goal 4*, specifically *Target 4.1* calls for ensuring that all children complete free, equitable and quality primary education. Despite these commitments, there exists an abysmal challenge within Malaysia’s educational landscape where rural schools face substantial limitations in access to quality education. This educational disparity leaves rural schools neglected and isolated in progress compared to their urban counterparts. Thus, it raises critical concerns about whether Malaysia's commitment to these global declarations is fully realised in its educational frameworks. Therefore, this article seeks to explore how constitutional measures can be leveraged to combat persistent inequality in rural primary education.

It is evident that schools in rural locations are at a distinct disadvantage compared to schools in the city. While urban schools enjoy the advantages of greater funds, modern infrastructure, and easy access to technology, rural schools grapple constantly to satisfy even the most basic educational needs. These challenges have adverse consequences on students’ learning and overall school performance. As a result, students will have diminished opportunities to fulfil

[1] Universal Declaration of Human Rights, art 26.

[2] United Nations Convention on the Rights of the Child, art 28.

their maximum potential, placing their futures on the line. Unfortunately, these obstacles are frequently overlooked by the public, who may be unaware of the daily struggles rural education systems endure. Although rural schools face a plethora of challenges, this article will be focusing specifically on the issues of the digital gap, low socioeconomic class, educational malpractice, and inadequate infrastructure, as these factors represent the most immediate barriers to educational equity and have significant implications for academic development.

Despite existing legal frameworks, our survey findings under Appendix B shows 29.3% of respondents strongly agree that present policies remain futile as rural students all over Malaysia still face obstacles to obtain the high-quality education they deserve. To address these challenges, we propose targeted legislative reforms and strategic initiatives to ensure rural students receive an education that is on equal footing with their urban counterparts. The findings of this article aim to serve as a catalyst for change that will not only reshape the Malaysian educational landscape but also uphold fundamental human rights and foster social justice.

2. Methodology

This paper adopts a qualitative approach to examine the educational landscape in Malaysia. To provide a comprehensive evaluation, the research integrates existing legal frameworks alongside secondary sources such as journal articles, media reports, government policy documents, and commentaries.

A purposive sampling method was employed to select participants with specialised expertise and active engagement in educational advocacy and legal academia. This method was adopted to ensure the insights gathered were highly centred on the research objective and to provide practical perspectives on existing challenges within Malaysia's education system. Accordingly, in-person interviews were conducted with representatives from key non-governmental organisations (NGOs), namely the *Parent Action Group for Education Malaysia (PAGE)* and the *Melaka Action Group for Parents in Education (MAGPIE).* Expert academic insight was further obtained through correspondence with *Dr. Heama Latha A/P Narayanan Nair*, a senior law lecturer at Taylor's University. The information gathered from these sources contributed to the analytical discussion presented in the article.

3. Background, Recent Reforms and Key Developments

3.1 Background

The combating of inequality in primary education in rural areas is a crucial element of social justice and human rights. The need to combat inequality in primary education within rural areas, as highlighted by *Marwan, Sumintono and Mislan*, arises from one of the main issues contributing to greater social and economic inequality in Malaysia, namely the disparity in educational opportunities between urban and rural areas.[3] Although in Malaysia, several legal frameworks, including statutes, constitutional provisions, and international conventions, are in place to address the inequality in primary education in rural areas, the effectiveness and efficiency of the frameworks have been a topic of ongoing debate. Therefore, an effective strategy to address these inequalities would be the implementation of reforms to effectively uphold their rights to education. This could prove to be a strong approach and may guarantee that students in rural areas receive an education on par with that of students in urban areas. To accomplish this objective, it is imperative to prioritise the equal distribution of resources, increase financial investments, and establish focused strategies, all of which will be discussed and explored in this article.

According to a study**,** a closer examination of the level of education of the 38 heads of families within the community of 'Orang Sungai' in Paitan, Sabah, thus demonstrates educational disparities. The majority of the people in the community had neither completed nor attended primary education at all. It has been stated that thirteen individuals (34.2%) completed their primary education and a small percentage (7, 18.4%) completed their secondary education. Whereas, regarding the spouse's level of education, the majority had neither attended nor finished primary school (29, 68.5%). Meanwhile, there was an equal distribution of those who have finished primary education (5, 13.2%) and secondary education (5, 13.2%).[4]

3.2 Current Legal Framework

3.2.1 Education Act 1996 (Act 550)

This legislation governs the provision of education in Malaysia. The two main goals of this Act are to achieve equality and equitable provision in the nation's educational system. According to *Abu Yazid Abu Bakar*, to achieve educational equality, the government and educators must provide all children equal access to school, regardless of socioeconomic status, gender, race, location, or physical or mental disability. On the other hand, equity in education emphasises that all individuals should be able to attain at least a minimum level of skills and social and personal circumstances do not obstruct realising educational potential.[5]

The foundations for the principles of equality, equity, and non-discrimination in education are preserved by Malaysia's *Federal Constitution*,[6] which includes provisions safeguarding and promotion of educational rights. Specifically, *Article 12 of the Federal Constitution* provides that there shall be no discrimination against any citizen solely based on religion, race, descent, or

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[3] Ardi Marwan, Bambang Sumintono and Nora Mislan, *Revitalizing Rural Schools: A Challenge for Malaysia* (Universiti Teknologi Malaysia Press RMC 2012).
[4] Mohd Suhaimi Mohamad and Manisah Binti Mohd. Ali, 'Inequality in Education: Experience of Critical Pedagogy and Community Engagement with Orang Sungai in Paitan, Sabah' [2017] 1(2) ASEAN Journal of Community Engagement 1.
[5] Abu Yazid Abu Bakar, 'The Equal and Equitable Provision of Primary School Education in Malaysia: Issues and Challenges' [2022] 6(7) Journal of Positive School Psychology 2476.
[6] Federal Constitution of Malaysia 1957.

place of birth concerning educational institutions.[7] Therefore, this paper asserts that the Education Act aligns with Article 12 of the Federal Constitution by explicitly emphasising equality and equity, thereby reinforcing the government's constitutional obligation to provide fair and inclusive education for all Malaysians.

To execute equality and equitable provision into practice, *Section 29A of the Education Act 1996* specifies that children must be enrolled in preschool education by the age of six and complete six years of primary school. Non-compliance with this provision may result in a fine not exceeding five thousand ringgit or imprisonment for up to six months.[8] This requirement highlights the government's commitment to ensuring that every child receives a fundamental level of education, bridging gaps in access, and reinforcing the nation's goal of an equitable education system for all. However, many issues arise when this mandate is not effectively implemented, which will be further discussed in this article.

3.3 Recent Reforms and Key Developments

Although Malaysia has not recently enacted constitutional amendments to specifically address educational inequality in rural areas, the government has concentrated on policy reforms to improve access and quality in education, addressing urban-rural disparities through national education policies and programmes. This can be seen in the allocation of RM2 billion to enhance educational facilities and financial support for rural schools. These reforms show a common approach focused on infrastructural development, digital inclusion, and targeted educational support.[9] Thus, they represent the fundamental assumption that increasing access to learning opportunities and educational resources will reduce education inequality.

3.3.1 The Malaysia Education Blueprint 2013-2025 as the Policy Framework.

The Malaysia Education Blueprint 2013-2025 was launched as the main framework to transform the national education system from preschool to upper secondary education, guiding educational reform in Malaysia.[10] The blueprint sets out five aspirations for a complete education system, which are access, quality, equity, unity, and efficiency. To achieve 'Education for All', it emphasises full access to education and reduces achievement gaps for equity, particularly between urban and rural areas. Several initiatives have been done by the government to enhance equity and reduce socioeconomic and geographical disparities, namely ICT integration in classrooms, financial support programmes, Special Education Needs

[7] ibid.
[8] Education Act 1996, s 29A.
[9] Teach For Malaysia, 'Malaysia's Budget 2025: A Step Forward for Education' (Teach For Malaysia, 25 October 2024) <https://teachformalaysia.org/malaysias-budget-2025-a-step-forward-for-education/> accessed 15 November 2024.
[10] Ministry of Education Malaysia, *Executive Summary Malaysia Education Blueprint 2013 - 2025* (Ministry of Education, 2013).

initiatives, and programmes for Orang Asli communities, such as Kumpulan Wang Amanah Pelajar Miskin (KWAPM) and Kelas Orang Asli dan Pribumi (KEDAP).[11]

The Blueprint reveals a shift from focusing solely on educational access towards addressing disparities in educational opportunities. Through initiatives such as ICT integration, financial assistance programmes, and targeted support for vulnerable communities, the government has sought to reduce barriers faced by disadvantaged students. However, poverty and socioeconomic background continue to influence educational outcomes in rural communities.[12] This suggests that while the Blueprint has expanded educational opportunities, improving access alone may be insufficient to eliminate persistent inequalities experienced by rural students.

3.3.2 Digital Inclusion as a Strategy for Educational Equity

A defining feature of the educational reforms launched is the increasing reliance on digital technology to reduce educational disparities between rural and urban communities. Initiatives such as Digital Educational Learning Initiative Malaysia (DELIMa), Maxis eKelas, and Pusat Internet 1 Malaysia collectively illustrate this strategy, although each programme addresses a different dimension of the digital divide.

DELIMa serves as the government's primary digital learning platform by providing students and teachers with access to educational resources, digital textbooks, and learning applications.[13] By making educational content more readily available, this initiative aims to ease the financial burden on families, especially in rural areas by minimising the need for physical textbooks and supplies while also providing health benefits for students. This suggests that this digital learning platform enables students in rural areas to access high-quality educational content and digital facilities on par with those available to urban students, helping to bridge the rural-urban educational divide. However, DELIMa primarily addresses access to educational content rather than the broader conditions necessary for effective learning.

In contrast, Maxis eKelas adopts a more engagement-oriented approach by providing experiential learning through live tutorials, group learning, competitions, and access to digital content. While DELIMa focuses on ensuring access to educational resources regardless of location, eKelas emphasises active participation and interaction. The distinction between these initiatives suggests that educational inequality cannot be addressed solely through the provision

[11] Ministry of Education Malaysia, *Dasar Pendidikan Kebangsaan* (4th edn, Ministry of Education Malaysia 2017) 139-141.
[12] Mohd Mahzan Awang, Abdul Razaq Ahmad and Bennedine Albert Allang, 'Rural Education: How Successful Low-Income Students Received Socio-Educational Supports from Families, School Teachers and Peers?' [2021] 10(1) International Journal of Academic Research in Progressive Education and Development 311.
[13] Bii Hui Hii and Muhammad Sofwan Mahmud, 'Teachers' Perception Towards DELIMa Learning Platform for Mathematics Online Teaching and Learning in Sibu District' [2022] 12(11) International Journal of Academic Research in Business and Social Sciences 1888.

of digital content. Effective learning also requires meaningful engagement with educational resources and opportunities to develop skills beyond classroom instruction.

Furthermore, Pusat Internet 1 Malaysia addresses a further dimension of the digital divide by focusing on internet accessibility and digital literacy within rural communities. Unlike DELIMa and eKelas, which operate on the assumption that students can access online learning environments, Pusat Internet seeks to establish the foundational infrastructure and digital competencies necessary for participation. In this respect, this initiative serves as an enabling mechanism that reduces the gap in access to and development of necessary digital skills between rural and urban areas,[14] as well as supports the effectiveness of both DELIMa and eKelas.

3.3.3 Infrastructure Development and Educational Access

The School Solar Project in Sarawak reflects the government's efforts to address infrastructural barriers affecting rural education. Through the installation of hybrid solar systems in rural schools to provide electricity and lighting,[15] the project illuminated 43 rural schools in Sarawak, providing a better learning environment for the students.[16] By utilising solar power, this project will not only provide sustainable energy solutions but also address the challenges of ensuring reliable electricity infrastructure in remote areas. This initiative is important for ensuring that students in rural areas in the state of Sarawak have access to basic utilities and a conducive learning environment. The initiative also offers access to online learning resources, such as Massive Open Online Courses (MOOC) and other digital content, supporting self-directed learning and educational advancement.

As a result, infrastructure development and digital inclusion should be viewed as mutually dependent strategies. While programmes such as DELIMa and eKelas seek to expand educational opportunities through technology, their effectiveness is constrained where reliable electricity, internet connectivity and basic school facilities remain inadequate.

[14] Malaymail, 'In Sarawak, 43 rural schools equipped with hybrid solar systems' (*Malaymail*, 21 October 2023) <https://www.malaymail.com/news/malaysia/2023/10/21/in-sarawak-43-rural-schools-equipped-with-hybrid-solar-systems/97525#:~:text=KUCHING%2C%20Oct%2021%20%E2%80%95%20A%20total,involving%20seven%20districts%20in%20Sarawak> accessed 17 November 2024.

[15] Nantha Kumar Subramaniam, *Technology in Education: A Case Study on Malaysia* (UNESCO 2023).

[16] ibid.

4. Key Issues to be Addressed through Reforms

4.1 The Digital Divide

Essentially, the digital divide is the gap between those with access to advanced technology and those without, notably affecting people in rural areas who are less inclined and less confident to engage in modern technology.[17] In today's evolving digital environment, where technology influences all facets of life, students must develop digital literacy as a fundamental skill, especially at a young age. This skill allows students to tap into an extensive array of online materials, e-learning platforms, digital learning tools, and the capability to engage with others through various online communication platforms.[18] Access to these resources can foster innovation and critical thinking skills, contributing to a more interactive and well-rounded approach to education.[19] However, according to the Ministry of Education (MOE), it is reported that students in rural areas experience disadvantages in their ability to develop digital literacy skills, having less access to resources and opportunities than their urban peers.[20] This systemic failure is empirically supported by data collected in Appendix B. When surveyed on the main causes of educational gaps between rural and urban primary schools, 87.9% of respondents pointed to the limited access to technology.

An example of the effects of the digital divide was observed during the recent Malaysian Movement Control (MCO) amid the COVID-19 pandemic, which led to a significant increase in the use of digital tools. The nationwide lockdowns disrupted the education sector, forcing all schools to shut down and make an immediate transition to online learning.[21] With the shift from face-to-face to online learning at home, students and teachers had no alternative but to adapt. This presented significant difficulties as many struggled to cope and fully engage in their studies due to limited access to digital devices and poor internet service.[22] In a survey conducted by the Ministry of Education (MOE) between March and April 2020, 37% of students did not own digital devices, while only 15% owned personal computers, and 50% depended on smartphones.[23] While the surge to digitalisation poses benefits for some, it has highlighted

[17] Hannah Jongebloed and others, 'The digital divide in rural and regional communities: a survey on the use of digital health technology and implications for supporting technology use' [2024] 17 BMC Research Notes <https://doi.org/10.1186/s13104-024-06687-x> accessed 17 November 2024.

[18] ICDL, 'The Crucial Role of Digital Literacy in Shaping Tomorrow's Students' (*ICDL*, 24 October 2023) <https://icdl.org/the-crucial-role-of-digital-literacy-in-shaping-tomorrows-students/> accessed 18 November 2024.

[19] Chanda Chansa Thelma and others, 'Digital Literacy in Education: Preparing Students for the Future Workforce' [2024] 11(8) International Journal of Research.

[20] Malaymail, 'Education Ministry admits gap in digital skills between rural, urban schools' (*Malaymail*, 30 April 2024) <https://www.malaymail.com/news/malaysia/2024/04/30/education-ministry-admits-gap-in-digital-skills-between-rural-urban-schools/131622> accessed 12 November 2024.

[21] Wong Sin Yun, 'Challenges of COVID-19 Crisis on Malaysia's Education Sector' [2023] 9(1) EDUCATUM Journal of Social Sciences 37.

[22] ibid.

[23] Justin Ong, 'Education Ministry: Over one in three students couldn't access online learning during MCO' (*Malaymail*, 16 July 2020)

challenges for rural students, restricting their ability to participate in online learning and exacerbating existing disparities in the education system.[24]

Several governmental initiatives such as 1BestariNet and the 1Malaysia Netbook Project have emerged to provide students in rural areas with low-cost devices and internet services and were touted as a way to bridge the urban-rural divide. Despite these efforts, many students in rural areas still struggle significantly due to inadequate implementation of these initiatives and lack of maintenance.[25] Limited access to technology hinders educational equality, stressing the necessity of bridging the digital divide and providing students in rural areas with equal learning opportunities and experiences.

4.2 Socioeconomic Challenges

Poverty is a significant factor contributing to educational inequality, with students in rural areas often having lower socioeconomic backgrounds compared to their urban counterparts.[26] Research shows that economic stability influences academic success, as low-income families struggle to meet their children's educational needs, while high-income families have greater access to resources.[27] Therefore, rural students have restricted access to learning materials, including digital devices, textbooks, and private tutoring, which impairs academic achievement. Financial difficulties can lead to irregular school attendance, as children may need to work to support their families, and parents often lack the education or time to provide adequate support. Economic struggles extend the cycle of poverty, resulting in higher dropout rates and fewer prospects for postsecondary education.

The objective of government initiatives, such as the allocation of RM2 billion to enhance educational facilities in rural schools, is to address these issues. However, proper implementation is essential to ensure resources are utilised effectively and rural schools receive adequate support.[28] Currently, implementation efforts often fail because centralised policies apply a 'one-size-fits-all' approach, providing digital tools or resources without first addressing foundational infrastructure deficits in rural schools, such as unstable electricity and lack of broadband connectivity. Additionally, the inability of families to afford necessary educational resources and extracurricular activities further disadvantages rural pupils. While programs such

<https://www.malaymail.com/amp/news/malaysia/2020/07/16/education-ministry-over-one-in-three-students-couldnt-access-online-learnin/1885005> accessed 14 November 2024.

[24] Outreach International, 'The Digital Divide in Education: Bridging the Gap for Equal Learning Opportunities' (*Outreach International*, September 2024) <https://outreach-international.org/blog/digital-divide-in-education/> accessed 14 November 2024.

[25] Zairil Khir Johari, '1BestariNet will widen, not reduce, the urban-rural gap' (*DAP Malaysia*, 18 November 2014) <https://dapmalaysia.org/en/38788/1bestarinet-will-widen-not-reduce-the-urban-rural-gap/> accessed 21 November 2024.

[26] Siti Nurzahirah, 'Education Inequality' (*Charisma Movement,* n.d.) <https://www.charismamovement.com/educationinequality#:~:text=Poverty%20is%20one%20of%20the,compared%20to%20their%20urban%20counterparts> accessed 15 November 2024.

[27] Mohd Mahzan Awang (n 12)

[28] Teach For Malaysia (n 9).

as the Supplementary Food Plan (RMT) and the Underprivileged Student Trust Fund (KWAPM) provide cash assistance, they do not sufficiently mitigate the long-term consequences of poverty.[29]

Targeted interventions are needed to address the negative effects of low socioeconomic status on education in rural Malaysia. These include expanding access to government funding, enhancing digital and infrastructure resources, and launching community-based projects to lower educational barriers and enhance general living conditions in rural areas. Programmes that offer mentorship and increase awareness of available scholarships may also help those students achieve better academic results.

4.3 Educational Malpractice by Teachers

The neglect of a teacher's duty stands as a barrier to equal access to quality education, particularly for students in rural areas. Professional dedication is crucial for educators to effectively handle challenges and remain committed to their responsibilities.[30] In the absence of passion for teaching, a teacher may quickly become bored and neglect their duty. As a result, this situation negatively impacts the teacher's quality and the outcome of the students.[31] As illustrated in Appendix B, a significant 51.7% of 58 survey respondents identified the shortage of qualified and dedicated teachers as a primary cause of the educational gap between rural and urban primary schools, underscoring that educational malpractice is a widely recognised barrier.

The case of *Rusiah bt Sabdarin & Ors v Mohd Jainal bin Jamran & Ors* is relevant, where the plaintiffs, former students of SMK Taun Gusi Kota Belud, sued their previous English teacher and the school principal for the failure to provide the plaintiffs with English classes during 2017.[32] The plaintiffs argued that the defendants violated *Section 19 of the Education Act 1996,* which imposes a duty on schools to prepare pupils for prescribed examinations. The High Court allowed the claim and held that the plaintiffs had proven on a balance of probabilities that the defendants breached the aforementioned statutory duty under the Act and also the common law obligations. Hence, the defendants were liable for breach of statutory duty and negligence. Moreover, the defendants had also failed to take reasonable steps to safeguard the plaintiffs' constitutional rights, under *Article 5(1)* read together with *Article 12 of the Federal Constitution*. The court in this case interpreted 'life' in *Article 5(1)* expansively, including rights to livelihood, quality of life, and education. The plaintiffs' constitutional right to receive education included the right to a teacher who attended classes to instruct and prepare them for the English language examination. Thus, the defendants had violated the said constitutional right. The plaintiffs were awarded damages by the court for the loss of the opportunity to obtain good results in English and the loss of a good opportunity in their lives to have a better education in the future.

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[29] ibid.

[30] Mohd Rahimi A Rahman and Mohammad Faiz Ikhlas, 'Teacher Quality: Malaysian Teacher Standard' [2022] 12(7) International Journal of Academic Research in Business and Social Sciences 684.

[31] ibid.

[32] [2023] 12 MLJ 531.

This case highlights an institutional failure to uphold educational standards. Although it is not exclusive to teachers at rural schools, such negligence in teaching and administrative oversight hampers students' academic progress while deepening the educational inequalities faced by rural communities. When educators neglect their responsibility to consistently prepare their students and school leaders overlook these issues, it leads to a reduced quality of education and students are robbed of future opportunities.

4.4 Inadequate Infrastructure in Rural Schools

According to the results, one of the biggest obstacles in Malaysia is providing rural infrastructure.[33] In comparison to rural areas, which continue to be hindered by a lack of suitable infrastructure, urban areas are frequently associated with proper facilities or fundamental infrastructure.[34] When surveyed on the main drivers of educational inequality, 70.7% of 58 respondents pinpointed the lack of infrastructure, such as basic facilities and internet connectivity, as a root cause.

Learning environments are challenging due to frequently insufficient physical infrastructure, such as classrooms and essential utilities like electricity and water. Through programmes like the *Internet Desa Programme* and *Gerakan Desa Wawasan*, which aim to enhance infrastructure and raise digital literacy in rural regions, the Malaysian government has attempted to reduce this problem. Nonetheless, the problem's scope is still comprehensive and remedies are still being developed.[35] Inadequate infrastructure not only makes learning more difficult but also lessens the impact of educational initiatives meant to raise students' ICT and digital literacy. The *Smart Schools* initiative, for instance, brought ICT to many Malaysian schools, but rural schools have frequently fallen behind in terms of both digital and physical resources.[36]

Another major problem is geographic isolation. Poor road infrastructure makes it difficult for students in rural areas to commute long distances to school. Transportation alternatives in places with challenging roads are frequently inconsistent, which may lead to irregular school attendance and disruptions in the classroom.[37] For many students living in remote locations, daily commuting is physically impossible due to poor access roads and extreme weather conditions, making school hostels a basic necessity to accommodate those who live quite far

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[33] Mark Anak Edward Tuah, Peter Aning Tedong and Melasutra Binti Md. Dali, 'The Challenges in Rural Infrastructure Planning Governance in Sarawak' [2022] 20(5) Journal of the Malaysian Institute of Planners 391.
[34] Incham Manggat, Rajwani Zain and Zakiyah Jamaluddin, 'The Impact of Infrastructure Development on Rural Communities: A Literature Review' [2018] 8(1) International Journal of Academic Research in Business and Social Sciences 637.
[35] Maniam Kaliannan, Shahniza Ismail and Nurul Inani, 'Urban-rural Technology Gap in Malaysia: An Exploratory Study' (Proceedings of International Conference on Public Policy and Social Science, UiTM Melaka Malaysia, November 2012).
[36] Azlin Zaiti Zainal and Siti Zaidah Zainuddin, 'Technology adoption in Malaysian schools: An analysis of national ICT in education policy initiatives' [2020] Digital Education Review <https://files.eric.ed.gov/fulltext/EJ1301316.pdf> accessed 15 November 2024.
[37] ibid.

from school and cannot travel regularly. Unfortunately, rural schools frequently suffer from insufficient or poorly maintained hostel facilities.[38] When hostels are dilapidated or lack basic amenities, students are left with no other option but to endure the exhausting daily commute or risk absenteeism.

Therefore, due to these compounding infrastructural factors, students in rural areas have less access to high-quality education, and this makes it difficult for them to attend regularly, focus on their studies, and take full advantage of their learning environment. A more comprehensive strategy is required to address these problems successfully, one that guarantees sustainable technological integration, dependable transportation, sufficient and safe hostel accommodations, and a strong system of educational assistance for rural communities, in addition to upgrades to the physical infrastructure. Additional funding and regional collaborations may lessen the obstacles rural students encounter in obtaining high-quality education.

5.0 Proposed Reforms

The proposed reforms are designed primarily to benefit primary school students in rural areas of Malaysia, who continue to experience socioeconomic and geographical disparities compared to their urban counterparts.

5.1 The Digital Divide

5.1.1 Mandatory Access to Digital Devices

To begin with, this article advocates inserting a statutory provision into the *Education Act 1996* that ensures mandatory access to digital devices. A precedent for such a reform exists within neighbouring ASEAN countries. For example, the Ministry of Education in Thailand previously executed a ‘One-Tablet-Per-Child’ (OTPC) project in 2012. This initiative was designed to expand knowledge beyond textbooks, especially for those in remote areas who lack access to basic learning materials. The Thailand government delivered approximately 800,000 tablets to Grade 1 primary school students nationwide, loaded with over 336 learning objects, including e-books, educational videos, and interactive content.[39] In Malaysia, the government acknowledges the crucial role of ICT in promoting national growth, aiming to bridge the digital gap that exists between urban and rural students.[40]

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[38] Larissa Lumandan, ‘While leaders squabble, pupils struggle with termites and floods’ (*Free Malaysia Today*, n.d.) <https://www.freemalaysiatoday.com/category/nation/2019/08/26/while-leaders-squabble-pupils-struggle-with-termites-and-floods> accessed 15 June 2026.

[39] Ratchada Viriyapong and Antony Harfield, ‘Facing the challenges of the One-Tablet-Per-Child policy in Thai primary school education’ [2013] 4(9) International Journal of Advanced Computer Science and Applications 176.

[40] Mohd Razilan Abdul Kadir, ‘Broadband Usage and Internet Diffusion Initiatives in Rural Areas: A Correlational Study’ [2014] 8(23) Australian Journal of Basic and Applied Sciences 176.

However, rural areas remain disadvantaged in terms of access to technology. A recent example was during the 2021 budget announcement, where officials allocated 150,000 learning devices designed to assist underprivileged students who were unable to participate in online learning throughout the pandemic. However, the government had failed to successfully distribute the devices, with only 10% having been provided by June 2021.[41] Nevertheless, recent developments suggest a renewed governmental commitment to improving digital access for students. In 2024, Deputy Prime Minister Ahmad Zahid Hamidi reiterated the Ministry of Education's aspiration to provide every student with a tablet device.[42] He further stated that a phased rollout beginning in 2024 could enable the majority of students to receive tablets within the next four to five years.[43] These statements remain aspirational unless the government implements a statutory provision that enforces strict timelines for the distribution of digital devices and mandates the public disclosure of distribution data. Transparency and accountability can be enhanced among governmental bodies responsible for such initiatives to ensure that students in rural areas can engage in technology and fully immerse themselves in their education.

5.1.2 Standardise Digital Curriculum Integration

Furthermore, establishing a standardised approach to digital curriculum integration requires the development of a comprehensive and cohesive framework that promotes equitable access to digital learning opportunities for all students, irrespective of their location and socioeconomic background. However, as noted in an interview conducted with *PAGE Malaysia*, the effort to standardise technology in rural schools may face resistance due to a lack of ICT training for educators, as well as cultural differences and belief systems that significantly influence the effectiveness of digital integration.[44] The limited exposure to modern technological tools and resources among many rural educators may also impede their capacity to incorporate digital tools proficiently.[45] Therefore, the integration of technology in rural schools requires tackling long-standing concerns regarding its relevance to the community involved and access.

To overcome these obstacles, the government must allocate additional resources to schools, ensuring not only access to devices and ICT tools whenever needed but also implementing training programmes for educators to equip them with the necessary technological skills for teaching. This involves the familiarisation of e-learning platforms and digital tools. This effort can cultivate a more positive perspective, enabling educators to enhance their proficiency in

[41] Teo Nie Ching, 'When will the 150,000 laptops promised in Budget 2021 be ready for students? (*DAP Malaysia*, 19 January 2021) <https://dapmalaysia.org/en/42546/when-will-the-150000-laptops-promised-in-budget-2021-be-ready-for-students/> accessed 13 November 2024.

[42] Malaymail, 'Digital Learning: Govt Aims to Provide Each Student with a Device, Implementation in Phases, Says DPM Zahid' (*Malaymail*, 16 May 2024) <https://www.malaymail.com/news/malaysia/2024/05/16/digital-learning-govt-aims-to-provide-each-student-with-a-device-implementation-in-phases-says-dpm-zahid/134727> accessed 18 June 2026.

[43] ibid.

[44] Interview with Datin Noor Azimah Abdul Rahim, Chairperson and Founder, PAGE Malaysia (7 November 2024).

[45] Azlin Zaiti Zainal (n 36).

integrating digital tools into their teaching and classrooms while remaining informed about new technological advancements.[46] Additionally, the government should also prioritise student readiness and provide support for students in adapting to a digital curriculum. By implementing programmes that utilise hybrid teaching approaches, incorporating both in-person and online learning, it enables students to adjust by combining the traditional classroom environment with digital resources.[47] Gradually, these initiatives promote the integration of a digital curriculum, empowering both students and educators to strengthen their confidence in navigating digital literacy.

5.2 Socioeconomic Challenges

A report by UNICEF revealed that students from economically disadvantaged families are highly likely to drop out of school compared to their peers. Alarmingly, 44% of girls and 34% of boys from low-income households fail to complete their primary education, perpetuating a cycle of poverty which education is meant to break.[48] A study revealed that an essential reason for this is due to the differing priorities and perceptions of parents from lower socioeconomic backgrounds.[49] These parents often view education as secondary to immediate economic survival, thrusting their children to take on responsibilities such as working or caring for younger siblings, contributing to high dropout rates in rural primary schools. In contrast, wealthier families view education as a critical investment, providing access to private tuition and supplementary materials that disadvantaged students cannot afford, further widening the educational divide.

To overcome this issue, the government must adopt a proactive and exemplary role in uplifting economically disadvantaged families. A key step would be to establish ambitious constitutional benchmarks ensuring equitable funding and infrastructure allocation across all rural schools in Malaysia. This effort can be supported by *Article 8(1) of the Federal Constitution*, which ensures equality before the law, and *Article 12(1)*, which guarantees equal access to public education. Additionally, a proposed independent constitutional body would regulate resource equity and provide recommendations on reallocating funds to underperforming schools.

The government must also allocate targeted funds for children from B40 families to address these financial barriers that frequently contribute to school dropouts. As illustrated by the United Nations, a way to ensure that funds are being equitably distributed is by implementing a

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[46] Simin Ghavifekr and Wan Athirah Wan Rosdy, 'Teaching and Learning with Technology: Effectiveness of ICT Integration in Schools' [2015] 1(2) International Journal of Research in Education and Science 175.

[47] Nurshamshida Md Shamsudin and others, 'Closing The Divide: Insights into Cloud-Based Learning for Students in Rural Areas' [2023] 20(4) Journal of Social Sciences and Humanities <https://doi.org/10.17576/ebangi.2023.2004.38> accessed 13 November 2024.

[48] UNICEF, *Addressing the learning crisis:An urgent need to better finance education for the poorest children* (UNICEF 2020).

[49] Osman Rani Hassan and Rajah Rasiah, 'Poverty and Student Performance in Malaysia' [2011] 3(1) International Journal of Institutions and Economies 61.

transparent tracking system that would monitor investments and outcomes in education in a disaggregated and systematic manner.[50]

Additionally, it is equally important to teach parents from low-income households the importance of education. To successfully help parents with their children's education, the government can initiate programmes by collaborating with non-governmental organisations to conduct seminars or campaigns. Giving parents useful resources to help with schoolwork, test preparation, and scholarship knowledge is one example. By emphasising that education is not just a choice but a crucial means of ending the cycle of poverty, these programmes should seek to change attitudes and perceptions in these communities. This will enable parents to place greater importance on their children's education and actively promote school attendance above all else.

Not only that, the government must make it a statutory obligation to strengthen parent-teacher engagement through mandatory parent-teacher meetings and active participation in school activities. Such efforts would solidify trust, enhance collaboration, and provide parents with multiple support networks to overcome challenges in their children’s education. Currently, while Malaysia implements collaborative initiatives, such as the ‘Persatuan Ibu Bapa dan Guru’ (PIBG), which has the mandate to build strong school-community bonds, they are frequently reduced to mere fundraising bodies rather than educational stakeholders.[51] To achieve true equity, Malaysia must reform the existing PIBG framework to mandate active parental involvement. We can refer to Indonesia’s legally mandated ‘Komite Sekolah’ (School Committee), which integrates parents, community members, education practitioners, teachers, and officials from the school foundations to actively advise on school policy, enforce institutional transparency, and facilitate schools to interact with society and local government.[52] By amending the existing PIBG framework, it empowers lower-income parents to influence school policies that directly affect their children, allowing schools to adapt to local socioeconomic realities, such as addressing rural transportation barriers or establishing community-led learning support for children of working parents.

Ultimately, creating an equitable educational system requires a collective approach. The government should focus on enforcing constitutional benchmarks for resource allocation, providing targeted financial aid to lower-income families, and strengthening parental involvement. Simultaneously, NGOs should support these efforts by conducting awareness campaigns that equip parents with academic resources in recognising the long-term value of education. Finally, schools and PIBGs must go beyond fundraising activities and focus on

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[50] United Nations, ‘Financing Education’ (*United Nations*, n.d.) <https://www.un.org/en/transforming-education-summit/financing-education#collapseFive > accessed 30 November 2024.

[51] Teach For Malaysia, ‘The Power of Parents: Parental Involvement in Education’ (*Teach For Malaysia*, 3 July 2024) <https://teachformalaysia.org/the-power-of-parents-parental-involvement-in-education/> accessed 15 June 2026.

[52] Nisa Felicia and Dhitta PS Ramli, *Accountability in Education Sector in Indonesia* (Country case study prepared for the 2017/8 Global Education Monitoring Report, UNESCO 2017) <https://unesdoc.unesco.org/ark:/48223/pf0000259539/PDF/259539eng.pdf.multi> accessed 15 June 2026.

fostering active parent-teacher collaboration to strengthen engagement and ensure that the educational needs of disadvantaged students are effectively addressed. As expressed by *Dr. Che Hasniza Che Noh*, the involvement of all stakeholders ensures that no student is left behind, allowing equal and inclusive opportunities for everyone to succeed.[53]

5.3 Educational Malpractice by Teachers

5.3.1 Enhance Legal Literacy Among Educators

Students' constitutional rights must be upheld by addressing the pressing issue of educational malpractice or teacher negligence. It is advocated that comprehensive training programmes to improve teachers' understanding of their legal responsibilities under the *Federal Constitution* and the *Education Act 1996* be implemented. A study revealed that over 90% of Malaysian educators lack basic knowledge of education laws.[54] Educators play a pivotal role in shaping the academic development of their students; thus, they must understand the legal framework relating to the profession. This includes legislation concerning education, a teacher's roles and responsibilities, employment policies, examination policies, and the school curriculum.[55]

To achieve this, an 'Education Law and Ethics' module may be integrated into teacher training programmes. For example, most enter their teaching career by enrolling in the *Program Ijazah Sarjana Muda Perguruan (PISMP)*, also known as the Bachelor's Degree in Teaching by the Ministry of Education, which includes four years of training and an internship to qualify as an educator.[56] By implementing a module covering topics such as constitutional rights related to education, statutory obligations, and consequences of professional negligence, future teachers are empowered to fulfil their roles ethically. By investing in the legal literacy of educators, a more informed and responsible teaching workforce can be created.

5.3.2 Empowering Communities and Breaking the Cycle of Self-Investigation

Establishing secure and accessible channels is crucial to getting reports of instances where educational malpractice has happened. Subsequently, students, parents, administrators and fellow teachers must be encouraged to use those channels to tackle issues such as teacher absenteeism. For example, anonymous reporting systems can be created to allow the community to raise concerns about absenteeism or misconduct without fear of retaliation. This is particularly relevant considering a plaintiff witness, Nurhaizah Ejab in the case of *Rusiah bt Sabdarin & Ors v Mohd Jainal bin Jamran & Ors,* was intimidated at the level of the State

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[53] Balkish Awang, 'Sponsoring Poor Students Will Yield Positive Results over Long Term – Experts' (*Bernama*, 21 April 2023) <https://www.bernama.com/en/bfokus/news.php?id=2183525> accessed 30 November 2024.

[54] Mohamed Ishak Abdul Hamid and Nik Azahani Nik Mohammad, 'Legal Literacy of Educators in Malaysia: An Empirical Study' [2018] 19(2) International Journal of Business and Society 187.

[55] ibid.

[56] Government of Malaysia, 'Application for Admission to Program Ijazah Sarjana Muda Perguruan (PISMP), KPM' (*Malaysia Government Portal*, n.d.) <https://www.malaysia.gov.my/portal/content/29595> accessed 20 November 2024.

Education Department for refusing to comply with the school's orders to keep quiet about the systemic truancy by the defendant,[57] which was her colleague.[58]

However, mere reporting channels may be insufficient to address the root of the problem. The *Tiada.Guru Campaign* has pointed out that a critical flaw lies in the procedural handling of such reports, as schools and the Ministry often investigate themselves.[59] According to the "Ministry's Guidance Against Absence Officers", Memo 15, Integrity Information by the Ministry of Education, the disciplinary process for addressing absenteeism is arguably straightforward. Within five days of a teacher's unexplained absence, the head of the department must report the incident, gather evidence, and submit the case to the Disciplinary Board under the Education Services Commission.[60] The timeline and procedure appear to be robust enough to rectify the issue. Even so, the systemic problem arises as the body tasked with investigating it is the same body which is responsible for the misconduct. This inherent conflict of interest thus creates a significant barrier to accountability. To resolve this, an independent oversight body must be established to handle such investigations and reports. Without such reforms, even the most well-thought-out policies and reporting mechanisms will fail to address the deeper systemic issues perpetuating the educational system, especially in rural areas.

5.4 Inadequate Infrastructure in Rural Schools

5.4.1 Proper mandatory infrastructure development to be provided for rural schools

In order to improve the education of children and ensure a better future for those in rural schools, amendments must be implemented to provide support. As proposed by *Dr. Heama Latha A/P Narayanan Nair*, it is advocated to insert a provision in the *Education Act 1996* that mandates proper infrastructure development for rural schools. Such a statutory guarantee is crucial to provide marginalised communities with access to a safe and fully equipped learning environment.[61]

This is due to the substantial disparity between urban and rural schools in terms of resources, infrastructure quality and learning environments. *Fatimah Kari* emphasises the significance of high-quality facilities in rural schools, asserting that the condition of the building directly impacts students' academic performance. It is stated that if nothing is done to enhance their

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[57] *Rusiah bt Sabdarin* (n 32) .
[58] Gloria Jaymess, 'Truant teacher: Intimidated for refusing to collude, witness says' (*Malaysiakini*, 14 August 2024) <https://www.malaysiakini.com/news/715491#friendshare-link-KoxcvFiZC-63929fcea3755bb4f281922db567e326-2a8b6402635c14d87c3469209250dbdbi1> accessed 19 November 2024.
[59] Tiada.Guru, 'Definitive Guide by MOE Whistleblowers: Malaysia's Extreme Teacher Absenteeism Crisis' (*Tiada.Guru,* n.d.) <https://tiada.guru/en/the-definitive-guide-to-malaysias-extreme-teacher-absenteeism-eta-crisis> accessed 20 November 2024.
[60] Ministry of Education Malaysia, 'Panduan Mengurus Pegawai THB Version JPA' (2017) <https://web.archive.org/web/20170715163606/https://moe.gov.my/images/KPM/BPM/Pekeliling/2017/Panduan_Mengurus_Pegawai_THB_version_JPA.pdf> accessed 20 November 2024.
[61] Interview with Dr. Heama Latha A/P Narayanan Nair, Senior Lecturer II, Taylor's University (6 November 2024).

infrastructure, rural schools will continue to fall behind.[62] Therefore, the *Education Act 1996* has to be amended, as it currently does not explicitly address this prevalent issue in rural schools.

Students in rural schools are suffering from inadequate infrastructure, including leaking roofs, rotting floors, poor lighting, dirty water and broken furniture.[63] Therefore, the Ministry of Education and the respective states have an obligation to allocate sufficient funding and to repair basic infrastructure for students to learn in a better environment. This is because without a suitable learning environment, students are unable to fully engage and concentrate in class, hindering their academic potential. It is essential to promote equality in education, ensuring rural students have access to high quality facilities on par with their urban peers.

6.0 Conclusion

In conclusion, the proposed recommendations aim to address the educational gaps between rural and urban Malaysia, focusing on ensuring quality and accessible education for primary students in rural areas, bridging the digital divide, strengthening educators' legal literacy, and upgrading school infrastructure. By taking these steps, this paper argues that students' constitutional rights must be upheld and that they should be equipped with the necessary resources and skills to thrive academically, irrespective of their location and socioeconomic status.

Currently, implementation efforts often fail because centralised policies apply a 'one-size-fits-all' approach, providing digital tools or resources without first addressing foundational infrastructure deficits in rural schools, such as unstable electricity and lack of broadband connectivity. The dissemination of educational content and the collection of feedback from a variety of stakeholders, including non-governmental bodies, academicians, parents, university students, and the public, have the ability to facilitate meaningful discussions on educational equity. The outcomes of these initiatives demonstrate the pressing need for institutional reform and shed light on the systemic issues impeding rural students' educational advancement. In doing so, a wider discussion is engaged regarding the significance of equitable educational opportunities, addressing the root causes of disparity in rural education and advancing the values of social justice and human rights. Viewed cumulatively, these initiatives not only tackle current educational issues but also advance long-term structural changes to bridge the gap between rural and urban education, ensuring a better future for all Malaysian children.

[62] Ainaa Aiman, 'With UPSR scrapped, rural schools need better facilities' (*Free Malaysia Today*, 7 May 2021) <https://www.freemalaysiatoday.com/category/nation/2021/05/07/with-upsr-scrapped-rural-schools-need-better-facilities/> accessed 20 November 2024.

[63] Marwan (n 3).

Bibliography

A Rahman MR and Ikhlas MF, 'Teacher Quality: Malaysian Teacher Standard' [2022] 12(7) International Journal of Academic Research in Business and Social Sciences 684

Abdul Hamid MI and Nik Mohammad NA, 'Legal Literacy of Educators in Malaysia: An Empirical Study' [2018] 19(2) International Journal of Business and Society 187

Abdul Kadir MR, 'Broadband Usage and Internet Diffusion Initiatives in Rural Areas: A Correlational Study' [2014] 8(23) Australian Journal of Basic and Applied Sciences 176

Aiman A, 'With UPSR scrapped, rural schools need better facilities' (*Free Malaysia Today*, 7 May 2021) <https://www.freemalaysiatoday.com/category/nation/2021/05/07/with-upsr-scrapped-rural-schools-need-better-facilities/> accessed 20 November 2024

Awang B, 'Sponsoring Poor Students Will Yield Positive Results over Long Term – Experts' (*Bernama*, 21 April 2023) <https://www.bernama.com/en/bfokus/news.php?id=2183525> accessed 30 November 2024

Awang MM, Ahmad AR and Allang BA, 'Rural Education: How Successful Low-Income Students Received Socio-Educational Supports from Families, School Teachers and Peers?' [2021] 10(1) International Journal of Academic Research in Progressive Education and Development 311

Bakar AYA, 'The Equal and Equitable Provision of Primary School Education in Malaysia: Issues and Challenges' [2022] 6(7) Journal of Positive School Psychology 2476

Bii HH and Mahmud MS, 'Teachers' Perception Towards DELIMa Learning Platform for Mathematics Online Teaching and Learning in Sibu District' [2022] 12(11) International Journal of Academic Research in Business and Social Sciences 1888

Conference on Public Policy and Social Science, UiTM Melaka Malaysia, November 2012)

Education Act 1996

Edward Tuah M, Tedong PA and Md. Dali M, 'The Challenges in Rural Infrastructure Planning Governance in Sarawak' [2022] 20(5) Journal of the Malaysian Institute of Planners 391

Federal Constitution of Malaysia 1957

Felicia N and PS Ramli D, *Accountability in Education Sector in Indonesia* (Country case study prepared for the 2017/8 Global Education Monitoring Report, UNESCO 2017)

Ghavifekr S and Rosdy WAW, 'Teaching and Learning with Technology: Effectiveness of ICT Integration in Schools' [2015] 1(2) International Journal of Research in Education and Science 175

Government of Malaysia, 'Application for Admission to Program Ijazah Sarjana Muda Perguruan (PISMP), KPM' (Malaysia Government Portal, n.d.) <https://www.malaysia.gov.my/portal/content/29595> accessed 20 November 2024

Hassan OR and Rasiah R, ‘Poverty and Student Performance in Malaysia’ [2011] 3(1) International Journal of Institutions and Economies 61

ICDL, ‘The Crucial Role of Digital Literacy in Shaping Tomorrow’s Students’ (ICDL, 24 October 2023) <https://icdl.org/the-crucial-role-of-digital-literacy-in-shaping-tomorrows-students/> accessed 18 November 2024

Interview with Datin Noor Azimah Abdul Rahim, Chairperson and Founder, PAGE Malaysia (7 November 2024)

Interview with Dr. Heama Latha A/P Narayanan Nair, Taylor’s University Senior Lecturer II (6 November 2024)

Jaymess G, ‘Truant teacher: Intimidated for refusing to collude, witness says’ (*Malaysiakini*, 14 August 2024) <https://www.malaysiakini.com/news/715491#friendshare-link-KoxcvFiZC-63929fcea3755bb4f281922db567e326-2a8b6402635c14d87c3469209250dbdbi1> accessed 19 November 2024

Johari ZK, ‘1BestariNet will widen, not reduce, the urban-rural gap’ (DAP Malaysia, 18 November 2014) <https://dapmalaysia.org/en/38788/1bestarinet-will-widen-not-reduce-the-urban-rural-gap/> accessed 21 November 2024

Jongebloed H and others, ‘The digital divide in rural and regional communities: a survey on the use of digital health technology and implications for supporting technology use’ [2024] 17 BMC Research Notes <https://doi.org/10.1186/s13104-024-06687-x> accessed 17 November 2024

Kaliannan M, Ismail S and Inani N, ‘Urban-rural Technology Gap in Malaysia: An Exploratory Study’ (Proceedings of International Conference on Public Policy and Social Science, UiTM Melaka Malaysia, November 2012)

Lumandan L, ‘While leaders squabble, pupils struggle with termites and floods’ (*Free Malaysia Today*, n.d.) <https://www.freemalaysiatoday.com/category/nation/2019/08/26/while-leaders-squabble-pupils-struggle-with-termites-and-floods> accessed 15 June 2026

Malaymail, ‘Digital Learning: Govt Aims to Provide Each Student with a Device, Implementation in Phases, Says DPM Zahid’ (*Malaymail*, 16 May 2024) <https://www.malaymail.com/news/malaysia/2024/05/16/digital-learning-govt-aims-to-provide-each-student-with-a-device-implementation-in-phases-says-dpm-zahid/134727> accessed 18 June 2026

Malaymail, ‘Education Ministry admits gap in digital skills between rural, urban schools’ (*Malaymail*, 30 April 2024)

<https://www.malaymail.com/news/malaysia/2024/04/30/education-ministry-admits-gap-in-digital-skills-between-rural-urban-schools/131622> accessed 12 November 2024

Malaymail, 'In Sarawak, 43 rural schools equipped with hybrid solar systems' (*Malaymail*, 21 October 2023) <https://www.malaymail.com/news/malaysia/2023/10/21/in-sarawak-43-rural-schools-equipped-with-hybrid-solar-systems/97525#:~:text=KUCHING%2C%20Oct%2021%20%E2%80%95%20A%20total,involving%20seven%20districts%20in%20Sarawak> accessed 17 November 2024

Manggat I, Zain R and Jamaluddin Z, 'The Impact of Infrastructure Development on Rural Communities: A Literature Review' [2018] 8(1) International Journal of Academic Research in Business and Social Sciences637

Marwan A, Sumintono B and Mislan N, *Revitalizing Rural Schools: A Challenge for Malaysia* (Universiti Teknologi Malaysia Press RMC 2012)

Md Shamsudin N and others, 'Closing The Divide: Insights into Cloud-Based Learning for Students in Rural Areas' [2023] 20(4) Journal of Social Sciences and Humanities <https://doi.org/10.17576/ebangi.2023.2004.38> accessed 13 November 2024

Ministry of Education Malaysia, 'Panduan Mengurus Pegawai THB Version JPA' (Ministry of Education, 2017) <https://web.archive.org/web/20170715163606/https://moe.gov.my/images/KPM/BPM/Pekeliling/2017/Panduan_Mengurus_Pegawai_THB_version_JPA.pdf> accessed 20 November 2024

Ministry of Education Malaysia, *Dasar Pendidikan Kebangsaan* (4th edn, Ministry of Education Malaysia 2017) 139-141.

Ministry of Education Malaysia, *Executive Summary Malaysia Education Blueprint 2013 - 2025* (Ministry of Education 2013)

Mohamad MS and Mohd. Ali MB, 'Inequality in Education: Experience of Critical Pedagogy and Community Engagement with Orang Sungai in Paitan, Sabah' [2017] 1(2) ASEAN Journal of Community Engagement 1

Nurzahirah S, 'Education Inequality' (Charisma Movement) <https://www.charismamovement.com/educationinequality#:~:text=Poverty%20is%20one%20of%20the,compared%20to%20their%20urban%20counterparts> accessed 15 November 2024

Ong J, 'Education Ministry: Over one in three students couldn't access online learning during MCO' (*Malaymail*, 16 July 2020) <https://www.malaymail.com/amp/news/malaysia/2020/07/16/education-ministry-over-one-in-three-students-couldnt-access-online-learnin/1885005> accessed 14 November 2024

Outreach International, 'The Digital Divide in Education: Bridging the Gap for Equal Learning Opportunities' (Outreach International, September 2024) <https://outreach-international.org/blog/digital-divide-in-education/> accessed 14 November 2024

Rusiah bt Sabdarin & Ors v Mohd Jainal bin Jamran & Ors [2023] 12 MLJ 531

Subramaniam NK, *Technology in Education: A Case Study on Malaysia* (UNESCO 2023)

Teach For Malaysia, 'Malaysia's Budget 2025: A Step Forward for Education' (Teach For Malaysia, 25 October 2024) <https://teachformalaysia.org/malaysias-budget-2025-a-step-forward-for-education/> accessed 15 November 2024

Teach For Malaysia, 'The Power of Parents: Parental Involvement in Education' (*Teach For Malaysia*, 3 July 2024) <https://teachformalaysia.org/the-power-of-parents-parental-involvement-in-education/> accessed 15 June 2026

Teo NC, 'When will the 150,000 laptops promised in Budget 2021 be ready for students? (DAP Malaysia, 19 January 2021) <https://dapmalaysia.org/en/42546/when-will-the-150000-laptops-promised-in-budget-2021-be-ready-for-students/> accessed 13 November 2024

Thelma CC and others, 'Digital Literacy in Education: Preparing Students for the Future Workforce' [2024] 11(8) International Journal of Research

Tiada.Guru, 'Definitive Guide by MOE Whistleblowers: Malaysia's Extreme Teacher Absenteeism Crisis' (Tiada.Guru, n.d.) <https://tiada.guru/en/the-definitive-guide-to-malaysias-extreme-teacher-absenteeism-eta-crisis> accessed 20 November 2024

UNICEF, *Addressing the learning crisis: An urgent need to better finance education for the poorest children*(UNICEF 2020)

United Nations Convention on the Rights of the Child

United Nations, 'Financing Education' (United Nations, n.d.) <https://www.un.org/en/transforming-education-summit/financing-education#collapseFive> accessed 30 November 2024

Universal Declaration of Human Rights

Viriyapong R and Harfield A, 'Facing the challenges of the One-Tablet-Per-Child policy in Thai primary school education' [2013] 4(9) International Journal of Advanced Computer Science and Applications 176

Wong SY, 'Challenges of COVID-19 Crisis on Malaysia's Education Sector' [2023] 9(1) EDUCATUM Journal of Social Sciences 37

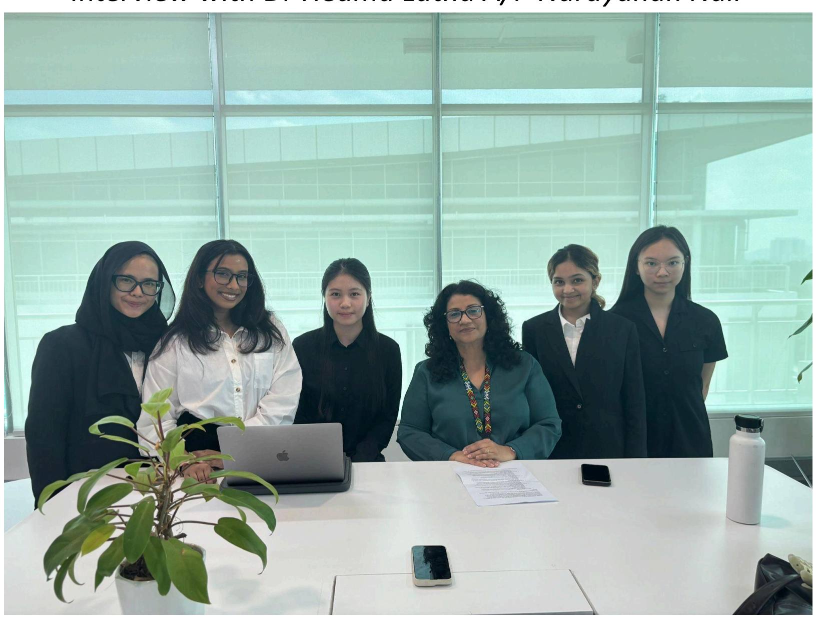
Zainal AZ and Zainuddin SZ, ‘Technology adoption in Malaysian schools: An analysis of national ICT in education policy initiatives’ [2020] Digital Education Review <https://files.eric.ed.gov/fulltext/EJ1301316.pdf> accessed 15 November 2024

Appendices

Appendix A: Interviews

Interview with Datin Noor Azimah Abdul Rahim from PAGE Malaysia

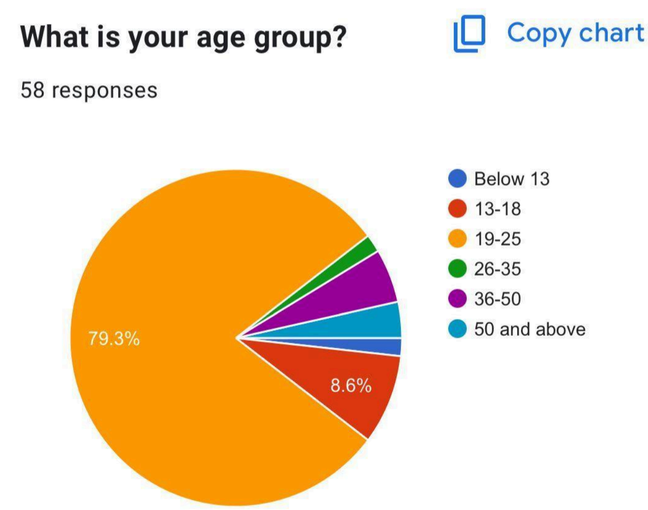
Interview with Dr Heama Latha A/P Narayanan Nair

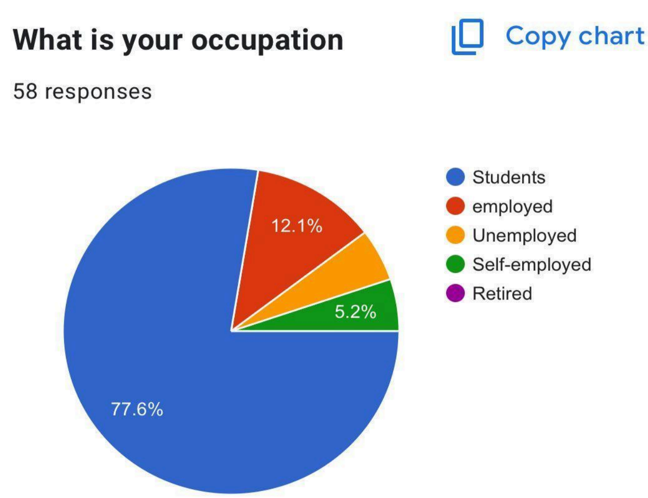


Interview with Dr Chan Siok Yee (Sam) from MAGPIE

Appendix B: Survey

An online survey was conducted to determine the public's level of awareness regarding educational inequality in primary education in rural areas.

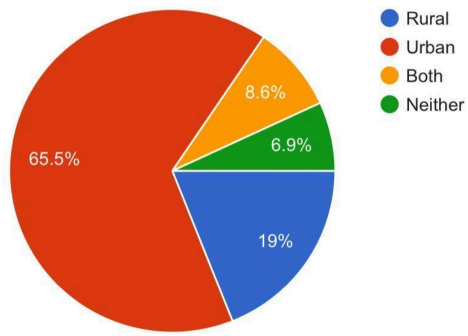




Have you ever studied in a rural or urban primary school?

Copy chart

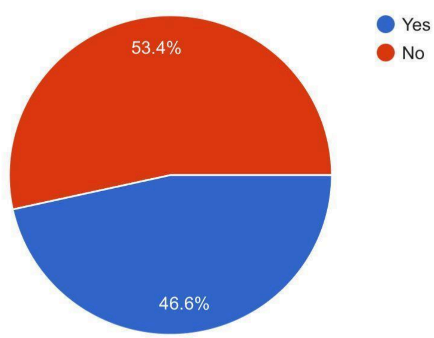
58 responses



Do you have any family members or close connections who studied in rural primary schools now?

Copy chart

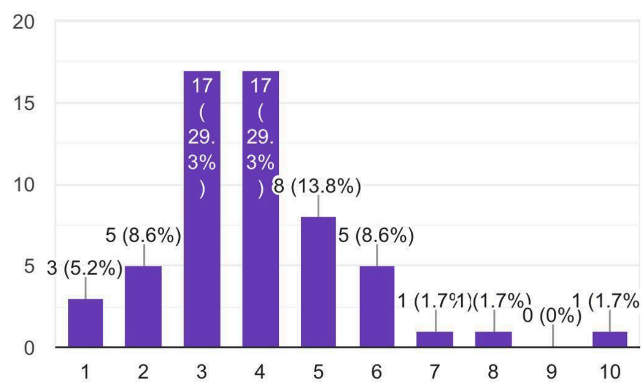
58 responses



How would you rate the quality of education in rural primary schools compared to urban primary schools?

Copy chart

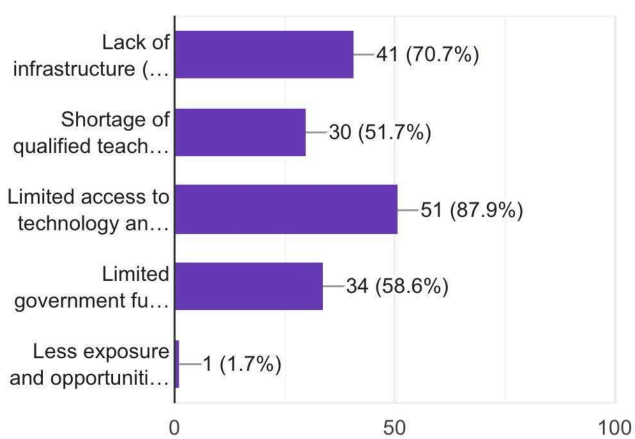
58 responses



What do you think are the main causes of educational gaps between rural and urban primary schools?

Copy chart

58 responses



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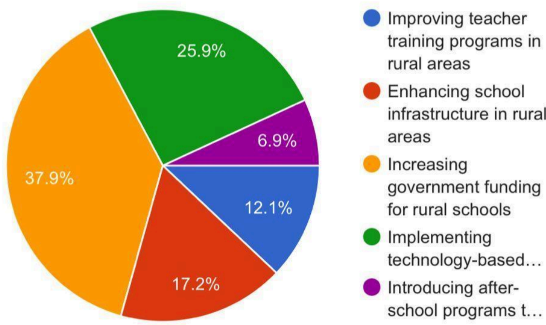
Which measures do you believe would be most effective in reducing the educational gap in primary schools?

58 responses



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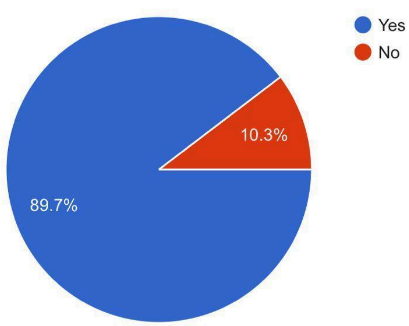
Do you think technology (e.g., online platforms, e-learning) can effectively bridge the gap in primary education?

58 responses



What is one specific change you would suggest to reduce the disparities in primary education?

58 responses

Better teaching methods

Develop the rural areas, make technology accessible for students to have better educational opportunities and resources for them to keep up with urban areas, which requires the funding of organisations no matter government or local authorities. With the help of technology I think students in rural areas can learn based on their paces and ability too so that they won't feel discouraged and lose interests in studying

Allocate resources to creating better teacher recruitment and training in smaller schools .

Using same teaching method with same infrastructure to make sure the same primary education in rural and urban area

The Illusion of Assembly: Procedural Constraints and Constitutional Correction in *Amir Hariri*

Deborah Ong Jie En
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
dewdebs03@gmail.com

Low Pey Leigh
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
peyleighlow@gmail.com

Ismail Rajwan Nashid
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
irajwann@gmail.com

Abstract

Peaceful assembly has long functioned as one of the most visible forms of collective political expression, particularly in moments of immediacy and public contestation. This article examines the constitutional protection of peaceful assembly in Malaysia, focusing on the tension between Article 10(1)(b) of the Federal Constitution and the procedural controls imposed under the Peaceful Assembly Act 2012 ('PAA 2012'). It argues that while regulation may be necessary to preserve public order and security, such requirements become difficult to justify when they operate as indirect barriers to the exercise of the right. Using a doctrinal and comparative legal methodology, this article examines Malaysian constitutional provisions, statutory requirements under the PAA 2012, and relevant case law alongside selected common law jurisdictions, namely Hong Kong, the United Kingdom, and the Maldives. It situates Malaysia's framework within broader common law approaches, highlighting the distinction between facilitative regulation and control-oriented restriction. It traces the inconsistent interpretation of Article 10(2)(b), from *Nik Nazmi* to *Yuneswaran* and *Maria Chin*, before considering the Federal Court's decision in *Amir Hariri*. Its significance extends beyond the invalidation of section 9(5), inviting reconsideration of the PAA 2012 and its restrictive procedural features. The article finds that the PAA 2012 risks transforming peaceful assembly from a constitutional right into a procedurally conditional privilege.

Keywords: Malaysia, Freedom of Assembly, Peaceful Assembly Act, Fundamental Liberties, Proportionality, Judicial Interpretation.

1. Introduction

"If you want to win any meaningful kind of victory, you'll have to fight for it." — Eric Greitens

Meaningful "victories" have often been secured through collective action, including riots and protests. The March on Washington was undertaken in pursuit of civil and economic rights for African Americans; the Black Lives Matter protests in 2020 challenged police brutality and systemic racism; and the #MeToo movement sought accountability for sexual misconduct.

These developments would not have been possible without the freedoms of expression and assembly. In Malaysia, the right to assemble is expressly guaranteed under Article 10(1)(b) of the Federal Constitution.[1] However, this freedom is not absolute. Article 10(2)(b) permits Parliament to impose such restrictions as it deems "necessary or expedient", thereby introducing a framework within which the exercise of this right may be regulated.

Notwithstanding this, the scope of permissible restrictions under Article 10(2) risks being rendered illusory in light of the procedural requirements governing peaceful assemblies. Where such requirements extend beyond what is "necessary or expedient", the constitutional guarantee of assembly is correspondingly undermined. This raises serious concerns as to the legitimacy of such limitations within the constitutional framework.

The Federal Court's decision in *Amir Hariri*[2] represents an important development in this regard. In recognising that regulatory measures must remain consistent with the rule of law and the principle of proportionality, the Court sought to recalibrate the balance between state control and constitutional freedom.

This article examines the right to freedom of assembly across selected common law jurisdictions, analyses the relationship between Article 10(2) of the Federal Constitution and section 9(5) of the Peaceful Assembly Act 2012, and considers the judicial developments culminating in *Amir Hariri*. In doing so, it evaluates the significance of the decision and proposes reforms in light of the Federal Court's reasoning.

2. Jurisdictional Approaches to the Freedom of Assembly

2.1 Hong Kong

The position in Hong Kong reflects a structured yet ultimately state-deferential approach to the freedom of assembly. While the courts have consistently affirmed that the right is constitutionally protected, the manner in which proportionality is applied reveals a judicial inclination to prioritise public order and administrative discretion.

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[1] Federal Constitution, art 10(1)(b).

[2] Amir Hariri bin Abd Hadi v Public Prosecutor [2025] 4 MLJ 807 (FC).

In *HKSAR v Chow Hang Tung*,[3] the Court of Final Appeal accepted that restrictions on assembly must satisfy constitutional proportionality and recognised that defendants may raise both constitutional and collateral challenges within criminal proceedings. On its face, this signals a degree of procedural openness to rights-based scrutiny. However, the Court ultimately upheld the prohibition order, finding that it struck a "fair balance" between individual rights and societal interests. The outcome suggests that, notwithstanding the availability of such challenges, the threshold for invalidating executive decisions remains high, particularly where public safety considerations are invoked.

While Hong Kong, like Malaysia, recognises freedom of assembly as a constitutionally protected right, its approach differs in the treatment of proportionality. In *HKSAR v Lai Chee Ying (No 3),*[4] the Court treated proportionality as having been built into the statutory notification and authorisation framework, thereby limiting the need for a separate proportionality assessment at the prosecution or conviction stage. Any challenge must instead be directed at the legality of the underlying statutory framework or the Commissioner's decision. This approach significantly narrows the scope for defendants to rely on the peaceful nature of their conduct, even in circumstances where no violence has occurred.

The cumulative effect is a framework in which the exercise of the right is increasingly contingent on prior authorisation. This sits uneasily with the standard reflected in Article 21 of the International Covenant on Civil and Political Rights ('ICCPR') and the UN Human Rights Committee's General Comment No. 37, which provides that notification regimes must not operate as authorisation systems, and that failure to notify should not, by itself, render participation unlawful or justify criminal sanctions.[5] By rejecting a fact-sensitive proportionality inquiry at the point of conviction, the courts risk reducing the freedom of assembly to a formal entitlement, rather than one meaningfully protected in practice.

Recent legislative and enforcement developments further underscore this trajectory. The expanded national security framework has been accompanied by increased restrictions on public expression and assembly, reinforcing a legal environment in which the protection of the right is, in substance, considerably attenuated.

2.2 United Kingdom

The UK adopts a regulatory approach to peaceful assemblies that is comparatively facilitative rather than restrictive. At its core, the English constitutional tradition assumes that what is not prohibited is permitted, so the law defines the limits of restriction rather than the right itself.[6] The legal framework distinguishes between public assemblies and

[3] [2024] HKFCA 22.

[4] [2021] HKFCA 3.

[5] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 21; UN Human Rights Committee, General Comment No 37 (2020) on the right of peaceful assembly (article 21) (17 September 2020) UN Doc CCPR/C/GC/37, paras 70–71.

[6] David Glyndwr Tudor Williams, 'Freedom of Assembly and Free Speech: Changes and Reforms in England' (1975) 1 *University of New South Wales Law Journal* 97.

public processions,[7] with processions referring to marches moving along a route, as recognised in *Flockhart v Robinson*.[8]

Under Section 11 of the Public Order Act 1986, organisers of processions must provide six days' advance notice, although this requirement does not extend to static assemblies.[9] The distinction reflects practical concerns: processions move through public spaces and are more likely to disrupt traffic and public order, thereby justifying stricter regulation. In such cases, the police may impose conditions where they reasonably believe a protest may result in serious disorder, property damage, or disruption.[10]

These powers have been expanded by the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023, which broaden the meaning of "serious disruption" and introduce new protest-related offences.[11] Notwithstanding this expansion, the exercise of these powers remains formally constrained by Article 11 of the European Convention on Human Rights, which guarantees the right to peaceful assembly subject to restrictions that are lawful, necessary, and proportionate.[12]

Proportionality thus operates as the central organising principle. In *Director of Public Prosecutions v Ziegler,* the Supreme Court affirmed that even conduct causing a degree of disruption may fall within the scope of protected expression where the imposition of criminal liability would be disproportionate.[13] In this way, the expanded powers are anchored in proportionality, limiting the risk of restrictions disproportionately encroaching upon the right to peaceful assembly.

The UK framework, as shaped by both the statutory scheme and the courts' interpretation of it, therefore remains fundamentally facilitative. Assemblies are generally permitted to proceed, notwithstanding the possibility of controlled and, at times, intrusive policing. Unlike systems in which procedural requirements operate as a gateway to the exercise of the right, the UK treats such procedures as secondary mechanisms of coordination, thereby maintaining the primacy of the freedom itself.

2.3 Maldives

Similar to Malaysia, the right to peaceful assembly is constitutionally protected in the Maldives. Article 32 of the Constitution provides that "*everyone has the right to freedom of*

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[7] OSCE, *Guidelines on Freedom of Peaceful Assembly* (2nd edn, OSCE Office for Democratic Institutions and Human Rights 2010).

[8] [1950] 2 KB 498.

[9] Public Order Act 1986, s 11.

[10] William Downs, 'Police powers: Protests' (House of Commons Library, Research Briefing SN05013, 8 January 2026)

[11] ibid.

[12] Ern Nian Yaw, 'The Public's Right to Protest: A Critical Analysis on the Right to Freedom of Peaceful Assembly in Malaysia and the United Kingdom' [2013] *HELP Student Law Journal*.

[13] [2021] UKSC 23

peaceful assembly without prior permission of the State",[14] whilst Article 16 allows the parliament to limit such rights only by statute and only where the limitation is "*demonstrably justified in a free and democratic society*".[15]

The Constitution also provides guidance for courts to follow when interpreting such rights, in doing so, the courts are to give consideration to the following: the nature and character of the right or freedom, the purpose and importance of limiting the right or freedom, extent and manner of limiting the right or freedom, and the relationship between the limitation of the right or freedom and the importance of the right or freedom.[16] Crucially, the Constitution also requires the courts to consider if the limitation is proportional: "*extent to which the objective for which the right or freedom has been limited could have been achieved by limiting the right or freedom to a lesser degree*".[17]

Such limitation came to reality through the enactment of the Freedom of Peaceful Assembly Act 2013 (FPAA). The FPAA aims to regulate the freedom of assembly and aims to facilitate the right to freedom of assembly with minimal limitations.[18] The act is meant to ensure compatibility of Article 21 of the International Covenant on Civil and Political Rights[19] with domestic law, and to establish guidelines and arrangements to facilitate the right.

However, this framework became significantly restrictive after an amendment in 2016 which added section 24(f) which is useful to highlight in full: "Although otherwise stated in this Act, any type of assembly or walk or vehicle rally in the capital of the Maldives, *Male' City*, can only be done so after, obtaining written permit from the Maldives Police Service (MPS), and at a location determined by the Ministry of Home Affairs. Accordingly, any such locations are to be announced in the Gazette of the Government of Maldives at least within 30 days of enactment of this amendment, and any additions or redactions to the list of locations shall be in force after 30 days of announcement in the Gazette".[20]

This provision has garnered significant attention and appears to introduce a tension with fundamental freedom of assembly enshrined in the constitution and arguably inconsistent with the constitution. Journalists have filed a petition to review the amendment in 2022 to the High Court; however, there has been no judgment from the court as of yet.[21]

[14]Constitution of the Republic of Maldives 2008, art 32.

[15] ibid art 16.

[16] ibid art 16(c).

[17] ibid art 16(c)(5).

[18] FPAA 2013, s 17(a)

[19] ICCPR (n 5).

[20] FPAA 2013, s 24(f)

[21] Archive Mv , 'Hearing Scheduled for the Case Submitted to Repeal the Amendment to Freedom of Peaceful Assembly Act' (Archive Mv 19 October 2022) <https://archive.mv/en/articles/dEnv40?utm> accessed 15 April 2026.

Similar to Malaysia, the FPAA also requires submission of 36-hour notice to the MPS, although exemptions are given to Impromptu assemblies.[22] Read comparatively, the procedural requirements are similar to the previous provisions regulating the freedom of assembly in Malaysia, with the Police Act 1967. The position in the Maldives illustrates a sharper concern in *Amir Hariri*, where such limitations can impose a prohibition effectively adding a precondition to protest, eroding the substance of the freedom itself.

3. The Roads Travelled by Article 10(2)

Across cases spanning over a decade, the interpretation of Article 10(2) has taken both progressive and regressive turns. It is useful to begin with the text of Article 10(2)(b) of the Federal Constitution:

> "(2) Parliament may by law impose…on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order."[23]

A plain reading yields three points. First, only Parliament may lawfully impose such restrictions. Second, any restriction must be "necessary" or "expedient". Third, such restrictions must be justified by reference to the security of the Federation or public order. Read together with Article 10(1)(b), it is clear that while the freedom of assembly is guaranteed, its exercise may be constrained where Parliament considers it necessary in preserving public order and security.

The difficulty, however, lies not in the text but in its judicial application.

A useful starting point is *Nik Nazmi*,[24] where the Court of Appeal held that section 9(5) of the Peaceful Assembly Act 2012 ("PAA"), which criminalises the failure to provide ten days' prior notice, was unconstitutional. The Court reasoned that the mere absence of notice bears no direct relation to threats against public order or security. To impose criminal sanctions in such circumstances would therefore be disproportionate.

The argument that such sanctions are necessary to give effect to regulatory requirements is unconvincing. It entails accepting that an organiser of a peaceful assembly may be subjected to a substantial fine solely for failing to comply with a procedural requirement, notwithstanding the absence of any actual threat to public order. This is particularly difficult to justify given the existence of other legal provisions, such as those under the Penal Code, which already address assemblies that genuinely pose a risk to public safety. In this respect, *Nik Nazmi* represented a principled application of Article 10(2), ensuring that restrictions remained tethered to their constitutional justification.

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[22] FPAA 2013, s 27, 31

[23] Federal Constitution, art 10(2)(b).

[24] Nik Nazmi bin Nik Ahmad v Public Prosecutor [2014] 4 MLJ 157.

This position, however, proved short-lived. In *PP v Yuneswaran*,[25] the Court of Appeal adopted a markedly different approach, holding that the criminal sanction under Section 9(5) was constitutionally valid. The Court reasoned that such sanctions formed part of Parliament's power to regulate the exercise of the right, and did not in themselves constitute a restriction.

This reasoning is difficult to sustain. In so holding, the Court conflated legislative competence with constitutional validity. While Article 10(2)(b) does not prohibit Parliament from imposing penalties for non-compliance with procedural requirements, it does not follow that any such penalty is thereby justified. The constitutional inquiry must go further: whether the restriction imposed is "necessary" and "expedient" in the interests identified.

Erroneously, the Court fell into a double error. First, it treated the existence of legislative power as determinative of constitutionality. Second, it failed to assess whether the criminal sanction satisfied the threshold of necessity and proportionality. The result was the reinstatement of section 9(5) without meaningful engagement with the constitutional standard. Plainly, this underscores the need for closer judicial scrutiny, so that the protection under Article 10(1)(b) does not depend solely on what Parliament chooses to permit.

The subsequent decision in *Maria Chin Abdullah*[26] further entrenched this position. Faced with conflicting Court of Appeal authorities in *Nik Nazmi* and *Yuneswaran*, the High Court held that it was bound to follow the latter as the more recent decision. In doing so, it affirmed the continued enforceability of Section 9(5), notwithstanding the earlier constitutional concerns identified.

While the High Court's approach was consistent with the ordinary doctrine of precedent, its practical consequence remained significant. By treating *Yuneswaran* as the prevailing authority, the Court was constrained from undertaking a fresh substantive assessment of the constitutional issues surrounding Section 9(5). The effect was that Section 9(5) remained operative until its constitutionality was eventually reconsidered by the Federal Court in *Amir Hariri*.

Taken together, these decisions illustrate an uneven trajectory in the interpretation of Article 10(2). The travel took its first principled steps to align statutory restrictions with constitutional limits (in *Nik Nazmi*), but took a wrong turn towards a more deferential approach in *Yuneswaran* and *Maria Chin Abdullah*. The result is a framework in which the scope of the freedom of assembly is, at times, shaped less by constitutional principle than by judicial restraint.

The judicial trajectory outlined has tangible consequences for how the right to peaceful assembly is experienced in practice. These tensions are most clearly manifested within the procedural framework governing assemblies under the Peaceful Assembly Act 2012. The procedural framework governing peaceful assemblies under the PAA 2012 provides a

[25] [2015] 6 MLJ 47.
[26] [2016] MLJU 271.

compelling illustration of how, in the absence of a consistent constitutional standard, regulatory mechanisms may operate in practice as constraints on the right to assemble.

This raises a deeper constitutional concern: *at what point does the regulation of a constitutional right effectively amount to a prohibition of its exercise?*

3.1 Procedural Barriers to the Exercise of Assembly

Under Section 9(1) of the PAA 2012, organisers must notify the Officer in Charge of the Police District (OCPD) at least five days before the assembly.[27] Although the 2019 amendment reduced the notice period from ten days to five, it failed to introduce any exception for spontaneous protests, leaving the framework ill-suited for solidarity actions or rapid public responses.[28]

For example, a solidarity march held in March 2019 by the Minister in the Prime Minister's Department (Religious Affairs), Mujahid Yusof Rawa, following the Christchurch mosque shootings would not have complied with the five-day notice requirement if the amendment had been in force.[29] While notification requirements may serve legitimate administrative purposes, excessively long notice periods may disproportionately restrict citizens' ability to respond to urgent political events.

In this sense, measures intended to regulate the exercise of the right may instead operate as restrictions.

Datuk Professor Emeritus argues that peaceful assemblies should not require prior state authorisation.[30] Instead, notification should be purely administrative, aimed at facilitating organisation, ensuring public safety, and managing traffic.[31] She further suggests that notification periods should be short and straightforward, ideally within forty-eight hours, given that assemblies often arise in response to critical political developments.[32] This view is persuasive, as it recognises that restrictions should focus on ensuring assemblies remain peaceful rather than limiting the right to assemble itself.

Under Section 15 of the PAA 2012, the police may impose restrictions or conditions on assemblies for the purpose of ensuring security, maintaining public order and protecting the

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[27] PAA 2012, s 9(1).

[28] Peaceful Assembly (Amendment) Act 2019 (Act A1600)

[29] International Center for Not-for-Profit Law, 'Civic Freedom Monitor: Malaysia' (ICNL 2025) <https://www.icnl.org/resources/civic-freedom-monitor/malaysia> accessed 15 April 2026.

[30] Mazita Mohamed, Haslinda Mohd Anuar and Rusniah Ahmad, 'Right to Assemble Peacefully under Article 10 of the Federal Constitution' (International Conference on Law, Policy and Social Justice 2014, UiTM Institutional Repository) <https://ir.uitm.edu.my/id/eprint/52238/> accessed 15 April 2026.

[31] ibid.

[32] ibid.

rights and freedoms of others.[33] In exercising this power, the police may regulate various aspects of an assembly, including its date, place, manner and route.[34]

While these powers aim to maintain public order, broad discretion allows authorities to alter assemblies in ways that weaken their impact, even in cases where not necessary and expedient. Conditions on time, place, and manner, including moving protests to remote areas, restricting timing, prohibiting marches, or altering routes, may render them ineffective or amount to a de facto prohibition. For example, a peaceful protest planned outside a government building to draw attention to a specific policy could be relocated to a remote area, significantly reducing its effectiveness.

This concern is further compounded by the breadth of the statutory grounds under the PAA itself. The PAA permits the police to regulate assemblies not only for reasons of security and public order, but also to protect "the rights and freedoms of other persons". This arguably expands the scope of permissible restrictions beyond those expressly provided in Article 10(2)(b) of the Federal Constitution, which allows Parliament to restrict the right to peaceful assembly only in the interests of the security of the Federation or public order. By introducing additional grounds for restricting assemblies, the PAA may therefore extend beyond the constitutional limits envisaged under Article 10.

Under Section 16 of the PAA 2012, organisers who disagree with the restrictions imposed by the police may appeal to the Minister within 24 hours of being informed of the restrictions, and the Minister is required to deliver a decision within 24 hours of receiving the appeal.[35]

Although this mechanism provides a formal avenue for challenging police decisions, the short timeframe for lodging and deciding appeals raises concerns about whether organisers are able to meaningfully contest restrictions before the scheduled assembly takes place.
While ministerial appeal mechanisms are not unusual in statutory schemes, their use in this context is significant because the decision directly affects the exercise of constitutional freedom. Appeals are directed to the Minister rather than an independent judicial body, which may raise concerns as to whether restrictions on assemblies are subject to sufficiently impartial and effective oversight.[36]

Under Sections 3 and 4 of the PAA 2012, assemblies are restricted at certain prohibited places, including hospitals, fire stations, airports, petrol stations, schools, and places of worship, and assemblies are prohibited within 50 metres of these locations.[37] While these restrictions aim to prevent disruption to essential services, they significantly limit the

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[33] PAA 2012, s 15.

[34] Agalya J Munusamy, 'Analysing the Evolution of the Peaceful Assembly Act 2012' (MahWengKwai & Associates, 27 February 2026) <https://mahwengkwai.com/law-peaceful-assembly-malaysia-permits-notification/> accessed 15 April 2026.

[35] PAA 2012, s 16.

[36] Haslinda Mohd Anuar, 'Peaceful Assembly Act 2012: A Comparison with Suhakam's Recommendations' [2016] *UUM Journal of Legal Studies*.

[37] PAA 2012, ss 3–4.

availability of suitable assembly locations, particularly in densely populated urban areas.[38] This has implications beyond mere convenience.

The force of a protest is often tied to its location, especially where the subject matter is directed at a particular institution or site. A demonstration concerning religious governance, for instance, derives its symbolic weight from proximity to places of worship, just as protests relating to education or public health may seek visibility near schools or hospitals.

By restricting access to such locations, the law risks displacing protests from the spaces that give them meaning and impact. This is further compounded by the Protected Areas and Protected Places Act 1959 (as amended in 2006), which empowers the Minister to declare any area a “protected area” where special measures are considered necessary to control the movement and conduct of persons.[39]

The broad discretion afforded under this legislation potentially expands the number of restricted zones, thereby further constraining the range of locations available for peaceful assemblies. Under Section 4(1)(d) of the PAA 2012, persons below 21 years old cannot organise assemblies.[40] However, such restrictions undermine youth participation in democratic engagement. This concern is particularly significant given that the age of majority in Malaysia is 18 years old, and individuals of that age are legally permitted to vote, enter into contracts and assume other civic responsibilities.[41]

The prohibition, therefore, appears inconsistent with the broader legal recognition of young adults as capable participants in civic and political life. It also appears discordant with recent governmental efforts to reduce the limitations imposed by the Universities and University Colleges Act 1971 on student participation in politics, where Section 15(5)(a) of the UUCA was found unconstitutional.[42]

Malaysia’s international commitments under the United Nations Convention on the Rights of the Child (UNCRC), which it acceded to in 1995, are also relevant, and restrictions that prevent young people from participating in peaceful assemblies may therefore raise concerns regarding the compatibility of domestic law with international human rights standards.[43]

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[38] ibid.

[39] Protected Areas and Protected Places Act 1959, ss 3–5, 8.

[40] PAA 2012, s 4(1)(d).

[41] Mohd Irwan Syazli Saidin and Nabighah Azrun, ‘Barriers to Youth Political Participation: Insights from Malaysia’s Lowered Voting Age Policy (Undi18) in the 15th General Election’ (2025) 11 *Cogent Social Sciences*.

[42] Universities and University Colleges Act 1971, s15(5)(a); Amanda Whiting, ‘Malaysia – Assembling the Peaceful Assembly Act’ (The Malaysian Bar, 2011) <https://www.malaysianbar.org.my/article/news/legal-and-general-news/legal-news/malaysia-assembling-the-peac eful-assembly-act> accessed 23 April 2026.

[43] Malaysian Bar, Resolution on the Right of Peaceful Assembly and Related Matters (77th Annual General Meeting, 18 March 2023)

Judicial commentary has similarly underscored the importance of youth participation in political discourse. In *Muhammad Hilman Idham & Ors v Kerajaan Malaysia & Ors*,[44] Justice Hishamudin Yunus observed that universities should cultivate thinkers rather than compliant “robots,” highlighting the contradiction of recognising students as legal adults while restricting their political expression.[45] Such limitations are difficult to justify, as they stifle independent thought and undermine the very forms of critical engagement that higher education institutions are intended to cultivate.

Taken together, these procedural requirements demonstrate how regulatory measures may cumulatively operate to constrain, rather than facilitate, the effective exercise of the constitutional right to peaceful assembly. In this respect, it is doubtful whether such measures can truly satisfy the threshold of being “necessary or expedient” in the interests of public order or security under Article 10(2).

4. Reforming the Peaceful Assembly Act 2012 Post Amir Hairi

The decision of the Federal Court was not narrowly confined to only Section 9(5) of the PAA, the judgment clearly defines the broader constitutional principle that while the Parliament may regulate the right to freedom of assembly, it may not do so in a manner that transforms the exercise of the right under Article 10(1)(b) of the Federal Constitution into a licensed activity, only exercisable after complying with prerequisite procedures that impose a criminal liability where not followed.[46]

In invalidating Section 9(5), the Court determined that criminalising non-notification had a prohibitory effect, as it effectively prevented any person from organising a peaceful assembly without first providing notice under Section 9(1), even in urgent situations where waiting for the notice period was impractical.[47]

In explaining, the court also expanded on the practical consequence of such a provision would discourage organisers of assemblies from carrying out their role as an organiser of an assembly for fear of prosecution for a lack of notice.[48] Moreover, the significance of *Amir Hariri*, therefore, extends beyond the invalidation of a single penal provision; it reaffirms that procedural regulation must be facilitative and proportionate, rather than suppressive in effect.[49]

In light of this, the notification regime under Section 9 should be the first and most immediate focus of reform. Following *Amir Hariri,* notification should operate solely as an

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[44] [2011] MLJU 770.

[45] ibid.

[46] *Amir Hariri* (n 2).

[47] ibid [72].

[48] ibid.

[49] ibid [86].

administrative mechanism to assist authorities in managing public order and safety, rather than as a legal prerequisite to the exercise of the right to assemble.
The Act should be amended to clarify that a failure to notify does not, in itself, render an assembly unlawful or justify arrest, dispersal, or the imposition of penal sanctions. This clarification is particularly important for spontaneous assemblies, which often arise in response to sudden political or social developments. International human rights standards recognise that such assemblies remain protected, as their urgency renders prior notification impracticable.

Secondly, it is worthwhile to consider the amendment or repeal of Section 11. The current requirement for organisers to obtain the consent of the owner or occupier of the assembly location effectively grants a private veto over the exercise of a constitutional freedom, particularly when the location is of public significance. Although the consent requirement, balances the interests of a private owner of a property for which courts already recognise *trespass to land*[50], and *quiet enjoyment of land*[51], equating the requirement of consent afforded to a private property owner to those belonging to the state would, in practice, obstruct assemblies held in public spaces even in the absence of any genuine threat to public order or security. A calibrated approach to reform would need to distinguish between private and public land.

For example, Kuala Lumpur City Hall maintained that Dataran Merdeka would not be allowed as a location for the Bersih 3.0 rally in 2012, and instead proposed alternative stadium venues.[52] The case for repeal is further strengthened by the government's public indication of its willingness to remove Section 11 and facilitate peaceful gatherings without such prior approval.[53]

However, repealing Section 11 alone would constitute only a partial reform. Without broader statutory revisions, the PAA would continue to prioritise control over facilitation in its regulation of assemblies.

Thirdly, Sections 15 and 16 require significant restructuring. Section 15 currently authorises the Officer in Charge of the Police District (OCPD) to impose restrictions and conditions on assemblies regarding a wide range of matters, including date, time, duration, location, manner, participant conduct, clean-up costs, concerns of interested parties, and any other matters the OCPD considers necessary or expedient. This breadth of discretion risks enabling indirect prohibition through relocation, dilution, delay, or excessive conditions, even when assemblies are peaceful.

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[50]*Tenaga Nasional Bhd v Bukit Lenang Development Sdn Bhd* [2019] 1 MLJ 1 (FC).

[51]Federal Constitution, art 13(1).

[52] Austin Camoens, 'Dataran Merdeka Off-Limits to Rally, DBKL Reiterates Mayor Proposes Badminton Stadium and Kuala Lumpur Football Stadium in Cheras and Titiwangsa Stadium as Alternative Venues' (2012) <https://www.suhakam.org.my/wp-content/uploads/2014/01/Dataran-Merdeka-off-limits-to-rally-DBKL-reiterates.p df> accessed 19 April 2026.

[53] BERNAMA, 'Govt Agrees to Amend Peaceful Assembly Act, All Probes into Previous Rallies Will Be Halted' (BERNAMA2025) <https://bernama.com/en/news.php?id=2392007> accessed 18 April 2026.

Such a catch-all provision is difficult to reconcile with the constitutional requirement for proportionality reaffirmed in *Amir Hariri*. Reform should eliminate open-ended discretionary language, limit police conditions to those strictly necessary for public order or security, and require written justifications demonstrating necessity and proportionality in each instance.

Section 16, which directs appeals to the Minister within a compressed twenty-four-hour period, is closely related. Furthermore, a meaningful right of review cannot rely solely on executive reconsideration. The appeal process should be transferred to an independent judicial or quasi-judicial body capable of assessing whether imposed conditions are constitutionally justified, rather than leaving such determination to the executive, with the Minister effectively functioning in a quasi-judicial capacity.[54]

Fourthly, the age restriction in Section 4(1)(d) warrants reconsideration. The current rule, which prohibits individuals under twenty-one from organising an assembly, is difficult to justify on democratic grounds. This restriction excludes a significant group of politically engaged young adults from organising collective expression, despite their meaningful participation in civic and political life.

A more coherent approach would be to lower the organiser threshold while distinguishing between organisation and participation. Child protection concerns should not be dismissed; however, they are better addressed through proportionate safeguards rather than a broad exclusion of young persons from the exercise of the right. Such safeguards may include adult support for younger organisers, parental or guardian involvement where appropriate, and a facilitative police duty to ensure that assemblies involving young participants remain peaceful and safe. Notably, the Bar Council's draft Peaceful Assembly Bill sets the organiser threshold at eighteen, while allowing for the participation of younger individuals in appropriate contexts.[55] This approach better balances the State's protective obligations under the Convention on the Rights of the Child, particularly the best interests principle, with children's expressive and associational rights under Articles 13 and 15.[56]

[54] Malaysian Bar, *'Memorandum on Peaceful Assembly Bill '* (2011).

[55] Malaysian Bar, *Peaceful Assembly Bill prepared by the Bar Council* (2011) cl 5(1).

[56] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC), arts 13, 15.; see also Malaysian Bar, Memorandum on Peaceful Assembly Bill (24 November 2011) discussing Malaysia's CRC commitments in relation to assembly rights.

5. Conclusion

Ultimately, the right to peaceful assembly cannot be meaningfully protected if regulation diminishes its practical value. Not all regulation amounts to a restriction, but it becomes constitutionally problematic where it interferes with the exercise of the right.

In practice, a constitutional right is seldom displaced by express repeal. More often, it is gradually confined through procedural frameworks that shape the conditions of its exercise. The concern, therefore, is whether such regulation leaves the right capable of meaningful exercise. Viewed against comparative approaches and the relationship between Article 10(2) and the PAA 2012, the limits of permissible restriction come into sharper focus.

The decision in *Amir Hariri* marks a necessary point of correction. It reaffirms that procedural requirements cannot assume a prohibitory character, and that restrictions must remain grounded in necessity and proportionality. Its significance lies in restoring a measure of constitutional discipline that had, at times, receded in application.

Whether this approach endures will depend on how it is applied in future cases. A regulatory framework oriented primarily toward controlling risks reproducing the very concerns identified, thereby limiting the effective exercise of the right.

The freedom to assemble is rarely invoked in neutral conditions. It emerges in moments of urgency, contestation, and collective visibility. Where the law renders such moments difficult to access or sustain, the right is diminished in substance. The task is to ensure that regulation preserves, rather than undermines, the conditions for its exercise. In this respect, the space to gather, to be seen, and to be heard remains one that the law must recognise and protect.

Bibliography

Amir Hariri bin Abd Hadi v Public Prosecutor [2025] 4 MLJ 807 (FC)

Archive Mv, 'Hearing Scheduled for the Case Submitted to Repeal the Amendment to Freedom of Peaceful Assembly Act' (Archive Mv, 19 October 2022) <https://archive.mv/en/articles/dEnv40> accessed 15 April 2026

BERNAMA, 'Govt Agrees to Amend Peaceful Assembly Act, All Probes into Previous Rallies Will Be Halted' (BERNAMA, 2025) <https://bernama.com/en/news.php?id=2392007> accessed 18 April 2026

Camoens A, 'Dataran Merdeka Off-Limits to Rally, DBKL Reiterates Mayor Proposes Badminton Stadium and Kuala Lumpur Football Stadium in Cheras and Titiwangsa Stadium as Alternative Venues' (2012) <https://www.suhakam.org.my/wp-content/uploads/2014/01/Dataran-Merdeka-off-limits-to-rally-DBKL-reiterates.pdf> accessed 19 April 2026

Constitution of the Republic of Maldives 2008

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

Director of Public Prosecutions v Ziegler [2021] UKSC 23

Downs W, 'Police Powers: Protests' (House of Commons Library, Research Briefing SN05013, 8 January 2026)

European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221

Federal Constitution of Malaysia 1957

Flockhart v Robinson [1950] 2 KB 498

Freedom of Peaceful Assembly Act 2013 (Maldives)

Haslinda Mohd Anuar, 'Peaceful Assembly Act 2012: A Comparison with Suhakam's Recommendations' [2016] *UUM Journal of Legal Studies*

HKSAR v Chow Hang Tung [2024] HKFCA 22

HKSAR v Lai Chee Ying (No 3) [2021] HKFCA 3

International Center for Not-for-Profit Law, 'Civic Freedom Monitor: Malaysia' (ICNL 2025) <https://www.icnl.org/resources/civic-freedom-monitor/malaysia> accessed 15 April 2026

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

Malaysian Bar, *Memorandum on Peaceful Assembly Bill* (24 November 2011)

Malaysian Bar, *Peaceful Assembly Bill Prepared by the Bar Council* (2011)

Malaysian Bar, *Resolution on the Right of Peaceful Assembly and Related Matters* (77th Annual General Meeting, 18 March 2023)

Maria Chin binti Abdullah lwn Pendakwa Raya [2016] MLJU 271

Mazita Mohamed, Haslinda Mohd Anuar and Rusniah Ahmad, 'Right to Assemble Peacefully under Article 10 of the Federal Constitution' (International Conference on Law, Policy and Social Justice 2014, UiTM Institutional Repository) <https://ir.uitm.edu.my/id/eprint/52238/> accessed 15 April 2026

Mohd Irwan Syazli Saidin and Nabighah Azrun, 'Barriers to Youth Political Participation: Insights from Malaysia's Lowered Voting Age Policy (Undi18) in the 15th General Election' (2025) 11 *Cogent Social Sciences*

Muhammad Hilman Idham & Ors v Kerajaan Malaysia & Ors [2011] MLJU 770

Munusamy AJ, 'Analysing the Evolution of the Peaceful Assembly Act 2012' (MahWengKwai & Associates, 27 February 2026) <https://mahwengkwai.com/law-peaceful-assembly-malaysia-permits-notification/> accessed 15 April 2026

Nik Nazmi bin Nik Ahmad v Public Prosecutor [2014] 4 MLJ 157

OSCE, *Guidelines on Freedom of Peaceful Assembly* (2nd edn, OSCE Office for Democratic Institutions and Human Rights 2010)Peaceful Assembly Act 2012

Peaceful Assembly (Amendment) Act 2019 (Act A1600)

Police Act 1967

Police, Crime, Sentencing and Courts Act 2022

Protected Areas and Protected Places Act 1959

Public Order Act 1986

Public Order Act 2023

Public Prosecutor v Yuneswaran a/l Ramaraj [2015] 6 MLJ 47

Tenaga Nasional Bhd v Bukit Lenang Development Sdn Bhd [2019] 1 MLJ 1 (FC)

UN Human Rights Committee, *General Comment No 37 (2020) on the Right of Peaceful Assembly (Article 21)* (17 September 2020) UN Doc CCPR/C/GC/37

Universities and University Colleges Act 1971

Whiting A, 'Malaysia – Assembling the Peaceful Assembly Act' (The Malaysian Bar, 2011) <https://www.malaysianbar.org.my/article/news/legal-and-general-news/legal-news/malaysia-assembling-the-peaceful-assembly-act> accessed 23 April 2026

Williams DGT, 'Freedom of Assembly and Free Speech: Changes and Reforms in England' (1975) 1 *University of New South Wales Law Journal* 97

Yaw EN, 'The Public's Right to Protest: A Critical Analysis on the Right to Freedom of Peaceful Assembly in Malaysia and the United Kingdom' [2013] *HELP Student Law Journal*

Drone Warfare and Civilian Protection under International Humanitarian Law: Distinction, Proportionality and Precautions in Attack

Ahmed Saif Fadhil
Postgraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
aaldulimi990@gmail.com

Abstract

This article critically evaluates the compatibility of drone warfare with the principle of distinction under international humanitarian law (IHL), focusing on the structural implications of technologically mediated targeting practices. While unmanned aerial operations are often justified on the basis of enhanced precision and reduced operational risk, their increasing reliance on data-driven processes raises fundamental concerns regarding the reliability of target identification and the protection of civilian populations.

The analysis examines how core IHL principles—distinction, proportionality, and precautions in attack—operate within the context of remote warfare. It highlights a shift from direct human assessment to intelligence-based and behavioral forms of targeting, in which individuals are identified through patterns of activity rather than verified status. This transformation introduces a probabilistic logic into targeting decisions, heightening the likelihood of misclassification and expanding the scope of potential error.

Particular attention is given to the cumulative effects of repeated drone strikes and their interaction with complex operational environments, especially in urban settings, where proportionality assessments are complicated and precautionary measures are constrained. The article also explores how limited transparency and distributed decision-making structures obscure accountability.

It is argued that these challenges are structural in nature, requiring a reassessment of how IHL principles operate within increasingly automated warfare.

Keywords: Drone Warfare; International Humanitarian Law; Principle of Distinction; Civilian Protection; Targeted Killing; Autonomous Weapons Systems.

1. Introduction

Armed conflicts in the twenty-first century are increasingly characterized by the deployment of advanced military technologies, particularly unmanned aerial vehicles (UAVs), commonly referred to as drones. These systems enable both state and non-state actors to conduct remote military operations with extensive operational reach while significantly reducing risks to their own personnel. Although drones are frequently presented as precision weapons capable of minimizing collateral damage, growing evidence suggests a widening gap between their claimed accuracy and their actual humanitarian impact. In numerous contemporary conflicts, drone strikes have been conducted in or near densely populated areas, resulting in civilian casualties and damage to civilian infrastructure. These developments have intensified legal and scholarly debates concerning whether the use of armed drones complies with the fundamental rules of international humanitarian law (IHL).[1] International humanitarian law, also known as the law of armed conflict, comprises a body of rules designed to limit the effects of armed conflict for humanitarian purposes. It seeks to protect individuals who are not, or are no longer, participating in hostilities and to regulate the means and methods of warfare.[2] The core legal framework of IHL is derived primarily from the Geneva Conventions and their Additional Protocol I, which establish essential protections for civilians and civilian objects during armed conflict.[3] At the heart of this framework lies the principle of distinction, which requires parties to an armed conflict to distinguish at all times between civilians and combatants, as well as between civilian objects and military objectives.[4] Attacks may therefore be directed only against lawful military targets, while civilians and civilian objects must be protected from direct attack. Closely connected to this rule are the principles of proportionality and precautions in attack, which aim to limit incidental civilian harm and ensure that military operations are conducted with due regard for humanitarian considerations.[5] However, despite the existence of a comprehensive legal framework, recent scholarship highlights persistent difficulties in the practical application of these principles in contemporary conflicts. In particular, the widespread reliance on remote targeting technologies, combined with the complexity of urban warfare environments, has blurred the distinction between civilian and military actors and heightened the risk of targeting errors.[6] Drone operations frequently depend on surveillance data and intelligence-based assessments rather than direct human observation, which may result in the misidentification of individuals and objects. As a consequence, civilians may be mistakenly targeted or exposed to incidental harm, raising serious concerns regarding compliance with the principle of distinction and the adequacy of existing accountability mechanisms under IHL. Against this background, this article argues that, despite their perceived precision, drone strikes

[1] S S Korol'ov, A I Ignatieva and K S Romashova, 'Protection of Civilian Objects during Armed Conflicts' (2026) 3(1) Analytical and Comparative Jurisprudence.
[2] International Committee of the Red Cross, *What is International Humanitarian Law?* (ICRC Advisory Service 2004).
[3] Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) 1125 UNTS 3.
[4] Additional Protocol I (n 3) art 48.
[5] Additional Protocol I (n 3) arts 51–57.
[6] Andrés Eduardo Fernández-Osorio, 'Drones and Fifth Generation Warfare: Humanitarian Implications in the Colombian Conflict' (2025) 17(2) *Revista Logos Ciencia & Tecnología* 32.

structurally increase the risk of misidentification of targets, leading to civilian harm and undermining consistent compliance with the principle of distinction under international humanitarian law. This article begins by outlining the legal framework governing the protection of civilians under international humanitarian law, with particular reference to the Geneva Conventions and Additional Protocol I. It then examines the characteristics of drone warfare and their humanitarian implications. The analysis subsequently evaluates how the principles of distinction, proportionality, and precautions in attack apply specifically to drone operations. Finally, the article addresses challenges of accountability arising from drone warfare, including the role of the International Criminal Court.

2. Legal Framework

The legal framework governing drone warfare is derived primarily from international humanitarian law (IHL), particularly the four Geneva Conventions of 1949, Additional Protocol I, and customary international humanitarian law.[7] These sources regulate the conduct of hostilities and establish legal protections for civilians and civilian objects during armed conflict. In addition to treaty obligations, customary international humanitarian law recognizes many core IHL principles as binding on all states regardless of treaty ratification.[8] Considered together, these rules provide the legal basis for evaluating the lawfulness of contemporary military operations, including the deployment of armed drones.

A central rule within this framework is the principle of distinction, codified in Article 48 of Additional Protocol I, which obliges parties to an armed conflict to differentiate between civilians and combatants, in addition to distinguishing civilian objects and military objectives.[9] Under this principle, attacks may only be directed against legitimate military targets, while civilians and civilian infrastructure remain protected from direct attack. The principle of distinction therefore functions as one of the essential safeguards intended to reduce the humanitarian consequences of armed conflict.

The protection afforded to civilians is further elaborated in Articles 50 and 51 of Additional Protocol I. Article 50 defines civilians as persons who do not belong to the armed forces of a party to the conflict,[10] while Article 51 provides that they are entitled to general protection against dangers arising from military operations and must not be made the object of attack.[11] However, such protection is not absolute and may cease where individuals directly participate in hostilities. In present-day conflicts, particularly those involving remote military technologies, determining when individuals satisfy this threshold has become increasingly complex. Modern targeting practices frequently depend on surveillance systems, behavioral analysis, and intelligence-based evaluations rather than direct battlefield observation. Consequently,

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[7] Additional Protocol I (n 3).
[8] Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (Vol I, Cambridge University Press 2005).
[9] Additional Protocol I (n 3) art 48.
[10] Additional Protocol I (n 3) art 50.
[11] Additional Protocol I (n 3) art 51.

identifying lawful targets may involve significant uncertainty, increasing the risk of misidentification and incidental civilian casualties.

International humanitarian law also extends protection to civilian objects. Article 52 of Additional Protocol I provides that civilian objects must not be attacked unless they qualify as lawful military objectives.[12] This protection applies to homes, schools, hospitals, religious sites, and infrastructure essential to civilian life. Nevertheless, such objects may lose protection where they make an effective contribution to military action and where their destruction offers a definite military advantage. In contemporary conflicts, particularly within urban environments, distinguishing between civilian and military objects is often highly difficult because military activities may occur close to civilian infrastructure. These challenges are further intensified in unmanned operations, where target identification depends heavily on remote surveillance and indirect intelligence gathering.

Even where a legitimate military objective has been identified, attacks remain subject to the principle of proportionality. Article 51(5)(b) of Additional Protocol I prohibits attacks expected to cause incidental civilian harm that would be excessive in relation to the anticipated military advantage.[13] This principle requires commanders to balance military necessity against humanitarian considerations before authorizing attacks. In practice, proportionality assessments are frequently complicated by uncertainty regarding civilian presence, limitations in available intelligence, and rapidly changing operational conditions. Accordingly, accurately predicting the humanitarian impact of attacks may prove particularly difficult in remote forms of warfare.

In addition to distinction and proportionality, parties to an armed conflict are required to take precautions in attack. Article 57 of Additional Protocol I imposes obligations to verify military objectives, select methods of warfare that minimize civilian harm, and suspend attacks where doubts concerning legality arise.[14] Advance warnings must also be provided where feasible. Although advanced technologies may enhance monitoring and surveillance capabilities, the effectiveness of precautionary measures depends largely on the reliability of available information and the accuracy of operational assessments. In many situations, rapid decision-making processes and dependence on indirect intelligence may limit the practical implementation of these safeguards.

Viewed together, the principles of distinction, proportionality, and precautions in attack form the core legal framework governing civilian protection during armed conflict. While international humanitarian law establishes clear legal standards regulating the use of force, the operational characteristics of drone operations continue to create substantial challenges for the consistent application of these rules. The growing reliance on remote targeting technologies

[12] Additional Protocol I (n 3) art 52.
[13] Additional Protocol I (n 3) art 51(5)(b).
[14] Additional Protocol I (n 3) art 57.

and intelligence-based evaluations raises persistent concerns regarding civilian protection under contemporary conditions.

3. Drone Warfare in Modern Armed Conflict

The development of unmanned aerial vehicles (UAVs), commonly referred to as drones, has significantly reshaped the nature of modern armed conflict. Initially developed for reconnaissance and intelligence-gathering purposes, drones gradually evolved into multifunctional systems capable of conducting surveillance and offensive strike operations. Their increasing use reflects a broader transformation in military strategy, where technological systems play a central role in operational planning and battlefield coordination. In recent conflicts, especially in Ukraine, drones have enhanced situational awareness through real-time intelligence collection and rapid target identification, thereby improving coordination between military units and accelerating operational decision-making.[15]

In contemporary warfare, armed drones are widely employed for intelligence, surveillance, reconnaissance (ISR), and precision strike missions. Their ability to remain airborne for extended periods enables continuous monitoring of designated areas without exposing military personnel directly to hostile environments. This capability has altered traditional methods of warfare by allowing states to conduct operations remotely while maintaining persistent observation over potential targets. As military operations increasingly depend upon data collection and remote assessment, the conduct of hostilities has become progressively influenced by technologically mediated forms of engagement rather than conventional battlefield interaction.[16]

A defining characteristic of drone warfare is its reliance upon remote targeting and persistent surveillance capabilities. Drone operations depend heavily on intelligence, surveillance, and reconnaissance systems to identify, monitor, and track potential military objectives. Modern drone platforms are capable of maintaining prolonged aerial observation over specific locations, enabling military operators to collect and analyze information before conducting strikes. This form of loitering surveillance has become central to contemporary targeting practices because it facilitates continuous monitoring of individuals, vehicles, and infrastructure while enhancing situational awareness across the battlespace.[17]

Notwithstanding these technological capabilities, drone operations remain highly dependent upon the interpretation and reliability of collected intelligence. Targeting decisions are frequently based upon behavioral patterns, aerial surveillance, and remote observation rather than direct physical verification. This creates substantial risks of misidentification, particularly in conflicts involving non-state actors where distinguishing civilians from combatants is often

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[15] Dominika Kunertova, 'The War in Ukraine Shows the Game-Changing Effect of Drones Depends on the Game' (2023) 79(2) Bulletin of the Atomic Scientists 95.
[16] Ann Rogers, 'Investigating the Relationship Between Drone Warfare and Civilian Casualties in Gaza' (2014) 7(4) Journal of Strategic Security 94.
[17] Stefan Borg, 'Assembling Israeli Drone Warfare: Loitering Surveillance and Operational Sustainability' (2021) 52(5) Security Dialogue 401.

exceptionally difficult. As Lattimer demonstrates in the context of Israeli drone operations over the Gaza Strip, ongoing surveillance technologies expand military control over civilian spaces while simultaneously growing concerns regarding intelligence reliability and the potential misidentification of legitimate targets.[18]

The increasing accessibility and relatively low operational cost of drones have further contributed to their widespread use. Unlike conventional military aircraft, UAVs can be deployed repeatedly and at comparatively limited expense, enabling sustained patterns of engagement over prolonged periods of conflict. The growing availability of drone technology has also expanded its use beyond state militaries to include non-state actors and armed groups. This proliferation has altered the strategic landscape of contemporary warfare by lowering the threshold for the use of force and increasing the number of actors capable of conducting technologically sophisticated operations.[19]

Recent conflicts further demonstrate the humanitarian implications associated with drone operations. Iranian drone and missile strikes across Gulf states have reportedly endangered civilian populations by damaging residential buildings, airports, hotels, and financial centres. Such attacks illustrate the continuing risks posed by remote warfare technologies to civilian infrastructure and protected civilian objects during contemporary armed conflict.[20]

Additional concerns arise from the dependence of drone warfare upon remote assessment and technologically mediated targeting processes. Although drone operations are frequently presented as highly precise, the accuracy of strikes remains closely linked to the reliability of intelligence and the interpretation of collected data. Restrepo argues that drone warfare presents significant epistemological concerns because operators may rely upon patterns of behaviour rather than direct confirmation of combatant status. As a result, civilians may be mistakenly identified as military targets, particularly where targeting decisions are based upon incomplete or ambiguous information.[21]

In Afghanistan and Pakistan, drone campaigns have generated criticism concerning civilian casualties, psychological distress, and social disruption within affected communities. Reports indicate that persistent drone activity has created an atmosphere of continuous fear among civilians living in conflict zones, particularly where individuals remain uncertain whether they may be perceived as potential targets. These operational realities illustrate that, despite their

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[18] Connor Lattimer, 'Flight of the Drone: Geopolitical Analysis of Drone Warfare over the Gaza Strip' (31 May 2012) <https://www.e-ir.info/2012/05/31/flight-of-the-drone-geopolitical-analysis-of-drone-warfare-over-the-gaza-strip/> accessed 6 April 2026.

[19] Valeri Modebadze, 'The Importance of Drones in Modern Warfare and Armed Conflicts' (2021) 1(2) *KutBilim Journal of Social Sciences and Arts* 89.

[20] Human Rights Watch, 'Iran: Unlawful Strikes Across Gulf Endanger Civilians' (17 March 2026) <https://www.hrw.org/news/2026/03/17/iran-unlawful-strikes-across-gulf-endanger-civilians> accessed 5 April 2026.

[21] Daniel Restrepo, 'Naked Soldiers, Naked Terrorists, and the Justifiability of Drone Warfare' (2019) 45(1) *Social Theory and Practice* 103.

reputation for precision, drone operations do not eliminate the risks posed to civilian populations during armed conflict.[22]

4. Legal Analysis

The application of the principle of distinction to remotely conducted attacks remains one of the most contested issues within contemporary international humanitarian law. Although unmanned aerial systems are frequently described as highly precise technologies capable of reducing incidental harm, precision alone does not guarantee lawful targeting decisions. Contemporary targeting practices frequently depend upon remote monitoring technologies and intelligence-based evaluations instead of direct physical verification of targets. Within complex civilian environments, particularly urban areas, these methods may complicate efforts to determine whether individuals qualify as lawful military objectives.

Contemporary military operations further demonstrate the risks associated with erroneous target assessments despite advances in surveillance and precision-strike capabilities. Investigations into remotely conducted strikes have revealed instances in which civilians, including women and children, were killed following failures to correctly assess civilian presence or accurately identify the intended objective. These incidents illustrate the continuing practical difficulties associated with implementing the principle of distinction during modern military operations.[23]

These concerns become even more considerable in urban battlefields where armed groups commonly operate among civilian infrastructure. During military operations in Gaza, targeting processes were shaped by continuous monitoring and rapid intelligence assessments intended to identify threats in real time. Nevertheless, the presence of civilians within crowded neighbourhoods created persistent ambiguity regarding the status of individuals and surrounding structures. Even where operators possessed advanced observation capabilities, ambiguity concerning civilian presence could not always be eliminated. As a result, the legal requirement of distinction was consistently challenged by the realities of asymmetric warfare and remote observation.[24]

The principle of proportionality similarly raises serious legal questions regarding the use of remotely piloted force. Under international humanitarian law, incidental civilian harm must not be excessive in relation to the concrete and direct military advantage anticipated from an attack. Supporters of advanced targeting technologies frequently argue that improved surveillance systems and precision-guided weapons diminish collateral damage. However, this

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[22] Abdul Manan Bazai, Muhammad Usman Tobawal and Kaleemullah Bareach, 'Impacts of the US Drone Strikes in FATA' (2016) 50(2) *Grassroots* 147.

[23] Oona A Hathaway and Azmat Khan, '"Mistakes" in War' (2024) 173(1) University of Pennsylvania Law Review 1, 4–5.

[24] Kristina Benson, '"Kill 'em and Sort it Out Later:" Signature Drone Strikes and International Humanitarian Law' (2014) 27(1) *Pacific McGeorge Global Business & Development Law Journal* 17, 36.

assumption has increasingly been questioned by legal scholars and humanitarian commentators. Critics have argued that secrecy surrounding operational procedures, intelligence standards, and casualty assessments limits meaningful external scrutiny. Without transparency, it becomes difficult to determine whether attacks complied with the principles of distinction, proportionality, and precautions in attack under international humanitarian law.[25]

The humanitarian consequences of these operations are particularly visible in densely populated territories such as Gaza, where civilians remain continuously exposed to surveillance and recurring strikes. Precision weaponry may reduce the scale of destruction compared with indiscriminate bombardment, yet repeated attacks within urban environments continue to generate substantial civilian suffering. Furthermore, the perception that advanced technologies are inherently humane risks lowering the operational threshold for the use of force. This creates a paradox in which increased precision may contribute to the expansion rather than the limitation of military violence.[26] Research examining military campaigns in the region demonstrates that civilian casualties were not merely accidental consequences of isolated targeting errors but were often structurally connected to the broader conduct of hostilities.[27]

Questions concerning precautions in attack further complicate the legality of contemporary targeting practices. International humanitarian law obliges parties to verify military objectives, select means capable of minimizing incidental harm, and suspend operations where civilian risks become disproportionate. Remotely operated aircraft undeniably provide important surveillance advantages because they permit persistent observation of potential targets before engagement. Continuous monitoring theoretically allows operators to assess patterns of movement, identify civilian presence, and reconsider planned attacks where doubt exists. However, technological capability alone cannot ensure compliance with precautionary obligations. As Krebs demonstrates, prolonged aerial surveillance and drone imagery may still produce major interpretive limitations despite advanced monitoring capabilities. Investigations into remotely conducted strikes have revealed that operators may incorrectly interpret civilian behaviour as hostile activity due to confirmation bias, incomplete contextual awareness, and technological mediation.[28]

The expanding integration of artificial intelligence and automated data analysis within military targeting processes has exacerbated these concerns. Modern systems progressively assist in identifying suspicious activity and prioritizing potential objectives, yet algorithmic assessments remain vulnerable to errors and misinterpretation. Where operators depend heavily upon automated recommendations, there is a danger that human judgment becomes secondary to technological efficiency. Accountability may consequently become diluted because

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[25] Charles M Rowling, Jason Gilmore and Penelope Sheets, 'The Named and the Nameless: A Comparative Analysis of US and UK News Coverage of Civilian Deaths Caused by US Drone Strikes, 2009–2016' (2025) 18(1) Media, War & Conflict 122, 134–135.
[26] Frédéric Mégret, 'The Humanitarian Problem with Drones' (2013) *Utah Law Review* 1283, 1300.
[27] Rogers (n 16) 101.
[28] Shiri Krebs, 'Above the Law: Drones, Aerial Vision and the Law of Armed Conflict – A Socio-Technical Approach' (2023) 105 *International Review of the Red Cross* 1.

responsibility is distributed between commanders, analysts, and technological systems. These developments challenge traditional understandings of legal responsibility under international humanitarian law and raise concerns regarding the adequacy of existing regulatory frameworks governing emerging military technologies.[29]

The legal debate surrounding targeted killing practices also demonstrates broader accountability difficulties associated with remote warfare. Critics have argued that secrecy surrounding operational procedures, intelligence standards, and casualty assessments limits meaningful external scrutiny. Without transparency, it becomes difficult to determine whether attacks complied with distinction, proportionality, and precautionary obligations under international humanitarian law. Concerns have additionally emerged regarding strikes against rescuers and gatherings where the presence of civilians was highly foreseeable. Such incidents have amplified international criticism and contributed to growing doubts concerning the consistency of legal compliance during counterterrorism operations.[30]

Overall, these developments show that the challenges posed by remotely conducted attacks extend beyond isolated operational mistakes. The integration of continuous surveillance, algorithmic assistance, and high-speed precision targeting has altered the conduct of hostilities in ways that complicate the practical application of humanitarian principles. While advanced systems may improve situational awareness and reduce certain forms of indiscriminate violence, they do not remove the legal and ethical difficulties associated with identifying lawful objectives and protecting civilian populations. Contemporary operations therefore reveal a sustained tension between technological capability and humanitarian restraint. Additionally, the expanding use of drone strikes has generated continuing debate regarding the interaction between international humanitarian law, international human rights law, and the comprehensive legal framework governing the use of force across borders.[31] Rather than guaranteeing compliance with international humanitarian law, remote warfare often exposes the structural limitations involved in applying distinction, proportionality, and precautionary obligations within modern armed conflict.

5. Accountability

Accountability in drone warfare remains one of the most difficult issues within contemporary international humanitarian law. Although remotely operated systems are frequently defended as capable of improving precision and reducing civilian harm, drone strikes may nevertheless

[29] Lucy Dibsdale, 'Beyond Human Judgment – The Morality of Machines: A Critical Examination of the Ethical and Moral Dimensions of Autonomous and AI Weapon Systems in Modern Warfare' (2025) 12(2) *Journal of Global Faultlines* 129.
[30] Tony Nasser, 'Modern War Crimes by the United States: Do Drone Strikes Violate International Law? Questioning the Legality of U.S. Drone Strikes and Analyzing the United States' Response to International Reproach Based on the Realism Theory of International Relations' (2014) 24 *Southern California Interdisciplinary Law Journal* 289.
[31] Stuart Casey-Maslen, 'Pandora's Box? Drone Strikes under Jus ad Bellum, Jus in Bello, and International Human Rights Law' (2012) 94(886) *International Review of the Red Cross* 597.

constitute war crimes where attacks intentionally target civilians or are conducted in disregard of humanitarian principles. Under international humanitarian law, civilians are protected against direct attack unless they take direct part in hostilities. As a result, intentionally directing attacks against civilians or launching operations expected to cause excessive incidental harm may result in criminal responsibility. These concerns become particularly significant in remotely conducted operations where targeting decisions often rely upon surveillance data, behavioral analysis, and intelligence assessments rather than direct battlefield observation. As Chehtman indicates, the operational structure of drone warfare complicates traditional understandings of lawful force and creates significant legal difficulties concerning responsibility for unlawful attacks.[32]

The Rome Statute of the International Criminal Court provides an important framework for assessing criminal liability arising from unlawful drone strikes. Article 8 classifies intentionally directing attacks against civilians as war crimes during armed conflict. Similarly, launching attacks with knowledge that incidental civilian harm would be clearly excessive in relation to the anticipated military advantage may also constitute a war crime. These provisions are especially relevant in densely populated environments where remotely conducted operations create substantial risks for civilians. Signature strikes illustrate this concern because targeting decisions may depend upon patterns of behaviour rather than verified combatant identification. In such circumstances, civilians risk being incorrectly classified as legitimate military objectives despite the continuing obligation to distinguish civilian persons from combatants.

Questions concerning liability become more complex where advanced technologies and autonomous systems are incorporated into military targeting processes. Modern drone operations increasingly involve algorithmic analysis capable of identifying suspicious behaviour and prioritising potential objectives. However, automated systems remain vulnerable to technical errors and flawed intelligence assessments. Sterio observes that the growing use of autonomous weapon systems presents significant accountability challenges because existing international humanitarian law frameworks were primarily developed to regulate human decision-making in armed conflict.[33] Where operators rely heavily upon automated recommendations, determining individual responsibility becomes increasingly difficult. Liability may potentially extend across commanders, drone operators, intelligence analysts, programmers, and state authorities involved in the targeting process.

The responsibility of military commanders represents another central issue within accountability debates surrounding drone warfare. Under the doctrine of command responsibility, military superiors may incur liability where they knew or should have known that subordinates were committing violations of international humanitarian law and failed to prevent or punish such conduct. This principle becomes particularly important within remotely conducted operations involving fragmented decision-making processes. Kerrigan observes that the growing participation of contractors within intelligence and operational support functions

[32] Alejandro Chehtman, ‘The ad bellum Challenge of Drones: Recalibrating Permissible Use of Force’ (2017) 28(1) *European Journal of International Law* 173.
[33] Milena Sterio, ‘Autonomous Weapons Systems and the Need to Update International Humanitarian Law?’ (2025) 57 Case Western Reserve Journal of International Law 301.

creates additional oversight difficulties because civilian actors may contribute to targeting procedures without being fully integrated into traditional military accountability systems.[34] Thus, identifying responsibility for civilian casualties or unlawful attacks becomes significantly more complicated where authority is dispersed across multiple institutional actors.

State responsibility also arises where unlawful drone strikes violate international humanitarian law. Contemporary drone programs often involve overlapping authority between military institutions and intelligence agencies, creating accountability challenges due to the application of distinct legal authorities and oversight frameworks.[35] The secrecy surrounding such operations may restrict meaningful external scrutiny and limit the ability of courts or international institutions to assess compliance with humanitarian obligations.

Despite the existence of legal frameworks governing armed conflict, considerable obstacles continue to undermine effective accountability in drone warfare. Whetham highlights that oversight mechanisms regulating drone strikes remain underdeveloped despite the growing normalization of targeted killing operations.[36] Operational secrecy, confidential casualty assessments, and national security concerns commonly restrict independent investigations into civilian harm. Benjamin further observes that remote technologies create forms of autonomy and anonymity that distance operators from the immediate realities of violence, potentially weakening transparency within military decision-making processes.[37] These factors contribute to accountability deficits in which operational failures and civilian casualties may stay insufficiently investigated.

In combination, these developments demonstrate that accountability in drone warfare extends beyond isolated operational mistakes and reflects broader structural limitations within contemporary legal and institutional frameworks. Although advanced technologies may improve certain aspects of military targeting, they do not eliminate criminal responsibility arising from unlawful attacks against civilians. Modern drone warfare therefore reveals a persistent tension between technological capability and effective legal oversight.

[34] Sarah Kerrigan, ‘Preventing Civilian Casualties: Accountability and Oversight for Drone Contractors’ (2020) 49(4) Public Contract Law Journal 735.
[35] Michael E DeVine, Covert Action and Clandestine Activities of the Intelligence Community: Selected Definitions in Brief (CRS Report R45175, Congressional Research Service, 29 November 2022) 2–8.
[36] David Whetham,‘Targeted Killing: Accountability and Oversight via a Drone Accountability Regime’ (2015) 29(1) *Ethics & International Affairs* 59.
[37] Garfield Benjamin, ‘Drone Culture: Perspectives on Autonomy and Anonymity’ (2022) 37(3) *AI & Society* 1039, 1045.

6. Conclusion

This article has examined the implications of drone warfare for the principle of distinction under international humanitarian law, demonstrating that the growing reliance on unmanned technologies presents significant challenges for the effective protection of civilians. While the existing legal framework—particularly the Geneva Conventions and Additional Protocol I—establishes clear obligations governing distinction, proportionality, and precautions in attack, the practical application of these rules within drone operations remains deeply constrained by the realities of contemporary conflict.

The analysis has shown that drone warfare fundamentally transforms the process of target identification. Instead of relying on direct human engagement, decisions are increasingly shaped by surveillance data, algorithmic interpretation, and behavioral analysis. This shift introduces constant uncertainty into the classification of individuals and objects, thereby undermining the consistent application of distinction. Practices such as signature strikes further illustrate how probabilistic assessments can expand targeting beyond clearly identified combatants, increasing the risk of error and civilian harm.

In relation to proportionality, the assumption that enhanced technological precision necessarily reduces incidental damage is not borne out in practice. Evidence suggests that repeated strikes and sustained operational methods, particularly in urban environments, generate expected risks for civilian populations. At the same time, limited transparency surrounding drone campaigns restricts meaningful evaluation of whether anticipated military advantages justify the harm inflicted. Similarly, although advanced systems enhance the capacity to implement precautionary measures, their effectiveness remains dependent on the reliability of intelligence and the constraints of real-time decision-making.

The article has also highlighted substantial obstacles to accountability. The diffusion of responsibility across multiple actors, including operators, commanders, engineers, and political authorities, complicates the attribution of liability. Increasing automation further obscures decision-making processes, weakening traditional mechanisms of legal responsibility and reducing the likelihood of enforcement. The ongoing conflict involving Iran demonstrates that although drone technology may enhance surveillance and precision-strike capabilities, it does not eliminate the humanitarian challenges associated with modern warfare. In particular, military operations conducted in or near populated areas continue to raise concerns regarding civilian protection, proportionality, and precautionary obligations. While parties to the conflict may issue warnings or rely on advanced targeting technologies, the effectiveness of such measures remains dependent on the ability of civilians, including children, elderly persons, and persons with disabilities, to respond and reach safety. The conflict therefore reinforces the importance of strict compliance with the principles of distinction, proportionality, and precautionary obligations under international humanitarian law, while highlighting the continuing need for transparency and accountability in the use of drones during armed conflict. Furthermore, the increasing prevalence of drone warfare in contemporary armed conflicts may contribute to the gradual development of customary international law governing the use of emerging military technologies, making it increasingly important to ensure that evolving state practice remains consistent with the fundamental principles of international humanitarian law.

Taken together, these findings indicate that drone warfare does not simply create operational difficulties in applying IHL but reveals deeper structural limitations within its current framework. Ensuring meaningful civilian protection in technologically mediated conflict therefore requires not only improved compliance but also a critical re-evaluation of how legal norms are interpreted, applied, and adapted to evolving forms of warfare.

Bibliography

Bazai, Abdul Manan, Muhammad Usman Tobawal and Kaleemullah Bareach, ‘Impacts of the US Drone Strikes in FATA’ (2016) 50(2) Grassroots 147.

Benjamin G, ‘Drone Culture: Perspectives on Autonomy and Anonymity’ (2022) 37(3) AI & Society 1039.

Benson, Kristina, ‘“Kill ’em and Sort it Out Later:” Signature Drone Strikes and International Humanitarian Law’ (2014) 27(1) *Pacific McGeorge Global Business & Development Law Journal* 17.

Borg, Stefan, ‘Assembling Israeli Drone Warfare: Loitering Surveillance and Operational Sustainability’ (2021) 52(5) Security Dialogue 401.

Casey-Maslen, Stuart, ‘Pandora’s Box? Drone Strikes under Jus ad Bellum, Jus in Bello, and International Human Rights Law’ (2012) 94(886) *International Review of the Red Cross* 597.

Chehtman, Alejandro, ‘The ad bellum Challenge of Drones: Recalibrating Permissible Use of Force’ (2017) 28(1) *European Journal of International Law* 173.

DeVine ME, Covert Action and Clandestine Activities of the Intelligence Community: Selected Definitions in Brief (CRS Report R45175, Congressional Research Service, 29 November 2022).

Dibsdale L, ‘Beyond Human Judgment – The Morality of Machines: A Critical Examination of the Ethical and Moral Dimensions of Autonomous and AI Weapon Systems in Modern Warfare’ (2025) 12(2) *Journal of Global Faultlines* 129.

Fernández-Osorio, AE, ‘Drones and Fifth Generation Warfare: Humanitarian Implications in the Colombian Conflict’ (2025) 17(2) Revista Logos Ciencia & Tecnología 32.

Hathaway OA and Khan A, ‘“Mistakes” in War’ (2024) 173(1) University of Pennsylvania Law Review 1.

Henckaerts, Jean-Marie and Doswald-Beck, Louise, Customary International Humanitarian Law (Vol I, Cambridge University Press 2005).

Human Rights Watch, ‘Iran: Unlawful Strikes Across Gulf Endanger Civilians’ (17 March 2026) <https://www.hrw.org/news/2026/03/17/iran-unlawful-strikes-across-gulf-endanger-civilians accessed 5 April 2026>.

International Committee of the Red Cross, *What is International Humanitarian Law?* (ICRC Advisory Service 2004).

Kerrigan S, ‘Preventing Civilian Casualties: Accountability and Oversight for Drone Contractors’ (2020) 49(4) Public Contract Law Journal 735.

Korol’ov, S S, Ignatieva, A I and Romashova, K S, ‘Protection of Civilian Objects during Armed Conflicts’ (2026) 3(1) *Analytical and Comparative Jurisprudence*

Krebs, Shiri, ‘Above the Law: Drones, Aerial Vision and the Law of Armed Conflict – A Socio-Technical Approach’ (2023) 105 *International Review of the Red Cross* 1.

Kunertova D, ‘The War in Ukraine Shows the Game-Changing Effect of Drones Depends on the Game’ (2023) 79(2) *Bulletin of the Atomic Scientists* 95.

Lattimer C, ‘Flight of the Drone: Geopolitical Analysis of Drone Warfare over the Gaza Strip’ (31 May 2012)

<https://www.e-ir.info/2012/05/31/flight-of-the-drone-geopolitical-analysis-of-drone-warfare-over-the-gaza-strip/accessed 6 April 2026>.

Mégret, Frédéric, 'The Humanitarian Problem with Drones' (2013) Utah Law Review 1283.

Modebadze, Valeri, 'The Importance of Drones in Modern Warfare and Armed Conflicts' (2021) 1(2) KutBilim Journal of Social Sciences and Arts 89.

Nasser, Tony, 'Modern War Crimes by the United States: Do Drone Strikes Violate International Law? Questioning the Legality of U.S. Drone Strikes and Analyzing the United States' Response to International Reproach Based on the Realism Theory of International Relations' (2014) 24 *Southern California Interdisciplinary Law Journal* 289.

Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) 1125 UNTS 3

Restrepo, Daniel, 'Naked Soldiers, Naked Terrorists, and the Justifiability of Drone Warfare' (2019) 45(1) Social Theory and Practice 103.

Rogers, Ann, 'Investigating the Relationship Between Drone Warfare and Civilian Casualties in Gaza' (2014) 7(4) Journal of Strategic Security 94.

Rowling CM, Gilmore J and Sheets P, 'The Named and the Nameless: A Comparative Analysis of US and UK News Coverage of Civilian Deaths Caused by US Drone Strikes, 2009–2016' (2025) 18(1) Media, War & Conflict 122.

Sterio M, 'Autonomous Weapons Systems and the Need to Update International Humanitarian Law?' (2025) 57 Case Western Reserve Journal of International Law 301.

Whetham D,'Targeted Killing: Accountability and Oversight via a Drone Accountability Regime' (2015) 29(1) *Ethics & International Affairs* 59–65.

Laws Without Closure: Recent Reform Legislation and Challenges to the Rule of Law in Malaysia

Lim Eu Xuan
Undergraduate Student, School of Law and Governance
(formerly known as Taylor's Law School)
Taylor's University, Malaysia
euxuanlim@gmail.com

Abstract

This paper examines the emergence of "laws without closure" in Malaysia, referring to reform legislation that continues to attract sustained criticism and calls for amendment even after enactment. Through an analysis of recent Bills, particularly the Government Procurement Bill and the Online Safety Bill, the paper demonstrates how shortcomings in drafting, consultation and parliamentary deliberation may contribute to legislation that remains contested and may hinder the attainment of certainty, finality and public confidence ordinarily expected of legal reform. While legal indeterminacy is an inevitable feature of law-making, these reform Bills illustrate how shortcomings in legislative design may pose challenges to the rule of law, particularly the principles of legality and legal certainty.

Keywords: Legislative Design, Rule of Law, Legality, Legal Certainty, Legislative Drafting, Public Consultation; Parliamentary Deliberation, Malaysia

1. Introduction

Closure, within the criminal justice system, is a feeling of relief from loss and harmed experience.[1] Parallel to this, is the need for ordinary individuals to feel a sense of relief from legal problems in their daily life, from as small as online protection, to as big as preventing procurement scandals, like the multibillion-dollar 1MDB scandal, from reoccurring. Individuals are in a constant need for clear, settled, and determinate new laws to feel closure.

However, certain recent reform Bills have continued to attract sustained criticism even after enactment, with Members of Parliament ('MPs'), civil society organisations ('CSOs') and affected stakeholders voicing concerns over what appears to be unfinished law. Such persistent contestation suggests that enactment alone does not necessarily bring legal and political closure where significant concerns surrounding legislation remain unresolved. This article examines two principal examples: the *Government Procurement Bill 2025* and the *Online Safety Bill 2024*.

[1] The John Howard Society of Canada, 'What is "closure" in criminal justice' (*JohnHoward.ca*, 8 January 2020) <https://johnhoward.ca/blog/what-is-closure/> accessed 28 February 2026.

The passage of the *Government Procurement Bill 2025* has been described as a historic milestone in Malaysia's efforts to standardise and regulate public procurement.[2] The Bill was introduced with the stated aim of addressing entrenched problems such as rent-seeking, subcontracting abuses, and political interference in procurement processes. However, despite these reformist aims, the Bill attracted sustained criticism from CSOs and MPs. The CSO Platform for Reform, a coalition of over 70 CSOs, raised concerns over the concentration of ministerial control in procurement decision-making.[3] Similar concerns were articulated during parliamentary debate. For example, Tuan Hassan bin Abdul Karim, MP for Pasir Gudang, questioned clauses *10(1)(a) and 12(8) of the Government Procurement Bill 2025*, arguing that they conferred excessive ministerial influence over procurement decision-making.[4] [5] Nevertheless, these concerns did not result in further review, consultation or substantive amendments during the legislative process during the Second Reading.[6]

Similar issues also arose in relation to the *Online Safety Bill 2024*, enacted to enhance and promote online safety in Malaysia. The Bill was criticised by the Online Safety Advocacy Group (OSAG), a coalition of 19 CSOs, for employing broad and vague definitions of "harmful" content under the First Schedule, potentially impeding lawful expression.[7] These criticisms were also echoed in parliamentary debates, where Dr. Mohammed Taufiq bin Johari, MP for Sungai Petani, expressed reservations regarding the wording of *section 13(3)*, noting that it had generated ambiguity and differing interpretations among members of the public and CSOs.[8] [9]

Taken together, these reform Bills therefore raise broader questions concerning how legislation is drafted, how consultations are conducted and how parliamentary deliberation is structured. This paper argues that the shortcomings observed in these Bills may contribute to legislation that remains contested and continues to attract criticism, calling for amendment even after enactment. The result is the emergence of what this article terms "laws without closure": laws that formally enter into force but may hinder the attainment of certainty, finality and public confidence ordinarily expected of legal reform.

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2 'Overview of the Government Procurement Bill 2025' (*NZ Chambers*, 2025) <https://nzchambers.com/overview-of-the-government-procurement-bill-2025/> accessed 28 February 2026.

3 Reuters, 'Malaysia's parliament approves law to regulate government procurement' (*Reuters*, 28 August 2025) <https://www.reuters.com/world/asia-pacific/malaysias-parliament-approves-law-regulate-government-procurement-2025-08-28/> accessed 28 February 2026.

4 Government Procurement Bill 2025, cls 10(1)(a) and 12(8) (permitting ministerial approval of government procurements and requiring matters on which a procurement board cannot reach a unanimous decision to be referred to the Minister or equivalent State authority for determination).

5 DR Deb 27 August 2025, 15th Parl, 4th Sess, 2nd Mtg, pp 102. (Malaysia).

6 L. Amin, C. N. Yiau, 'Govt procurement bill under fire from MPs over finance minister's wide discretion' (*The Edge Malaysia*, 27 February 2026) <https://theedgemalaysia.com/node/768447> accessed 28 February 2026.

7 Amnesty International Malaysia, 'Passage of the Online Safety Bill a grave blow to freedom' (*Amnesty.my*, 12 December 2024) <https://www.amnesty.my/2024/12/12/online-safety-bill/> accessed 28 February 2026.

8 DR Deb 11 December 2024, 15th Parl, 3rd Sess, 3rd Mtg, pp 51. (Malaysia).

9 Online Safety Bill 2024, cl 13(3) (requiring measures implemented by licensed applications service providers and licensed content applications service providers to not unreasonably or disproportionately limit a user's expression).

This paper does not suggest that Malaysian legislative practice generally suffers from these shortcomings, nor that the majority of legislation enacted in Malaysia fails to satisfy established principles of legislative drafting. Rather, the *Government Procurement Bill 2025* and the *Online Safety Bill 2024* are utilised as case studies to examine how deficiencies in drafting, consultation, and parliamentary deliberation may, in certain circumstances, contribute to the emergence of "laws without closure".

2. Structural Limitations

The legislative process has two main stages in the drafting and passage of a Bill. The first is the pre-parliamentary stage, during which ministries submit draft Bills to the Attorney General's Chambers ('AGC') Drafting Division before a Bill is introduced in Parliament. This is followed by the parliamentary stage, in which the Bill is presented before the House of Representatives (Dewan Rakyat) and the Senate (Dewan Negara) for its First, Second, and Third Readings. Following the Second Reading, the Bill may, at the discretion of Parliament, be referred to a Select Committee before proceeding to Royal Assent by the Yang di-Pertuan Agong.[10]

This section focuses on how Bills are drafted by Parliamentary Draftsmen in the AGC, how consultation informs the legislative process, and how Bills are debated in Parliament. Where deficiencies arise at these stages, through indeterminate drafting aims, limited consultation, or constrained deliberation, they contribute to the production of laws without closure, in which individuals are left uncertain about the rationale and boundaries of the laws governing them.

2.1 Drafting

In Malaysia, the drafting of legislation is undertaken by Parliamentary Draftsmen within the AGC, pursuant to the constitutional authority conferred under *Article 145(2) of the Federal Constitution*, which assigns the Attorney General responsibility for legal advisory functions and other duties of a legal character.[11] In practice, the drafting process is initiated through drafting instructions prepared by ministry instructing officers, which are then submitted to the Parliamentary Draftsmen for examination, consultation, and refinement before a Bill is finalised for tabling in Parliament.[12] However, these instructions are often derived from draft Bills rather than presented in narrative form. The use of draft Bills as drafting instructions gives rise to several structural limitations in legislative drafting.

First, drafters encounter significant difficulties in ascertaining the substance and policy rationale of a proposed Bill.[13] Based on Rozmizan's questionnaire administered to 20 drafters from the Drafting Division within the AGC, all respondents reported attempting to

[10] ASEAN Parliamentarians for Human Rights (APHR), A Toolkit on Advancing Human Rights through the Malaysian Legislative Process (2023) 6-8.
[11] Federal Constitution, art 145(2).
[12] R. Muhamad, 'Instructions to Draft Legislation: A Study on the Legislative Drafting Process in Malaysia' (2011) 13 European Journal of Law Reform 236, 241.
[13] ibid 254-255.

understand the substance of draft Bills upon receipt, while 75% sought further clarification from instructing officers. Despite these efforts, 60% of respondents were unable to obtain satisfactory explanations regarding the policy rationale. This suggests a structural limitation in which legislative intent may be insufficiently articulated at the point of drafting.

Second, drafters are oriented towards correcting existing draft Bills rather than engaging in comprehensive legislative design.[14] Rozmizan's findings indicate that 50% of respondents reported dedicating substantial effort to correcting minor textual or transactional matters, which in turn detracted from broader considerations of coherence and comprehensiveness. This suggests a structural limitation whereby the drafter's role is narrowed to that of a textual editor rather than that of a legislative architect.

According to classical accounts of a drafter's role, Thornton characterises the drafter as one who must understand the legislative problem, formulate an appropriate legislative response, and communicate that response with clarity and precision,[15] while Stephen J emphasises that drafters should frame statutory language with sufficient clarity and precision to prevent even a bad-faith reader from misunderstanding its meaning.[16]

The structural limitations identified above may, in certain circumstances, undermine the realisation of Thornton's and Stephen J's ideals, insofar as inadequate drafting instructions and preconfigured statutes may leave significant questions of meaning unresolved. In such circumstances, the scope and rationale of legislation may remain unsettled at the moment of enactment, producing what may be described as "laws without closure", whereby fundamental questions of meaning are deferred rather than resolved through the law-making process itself.

2.2 Consultation

As observed in the *Report of the Controller and Auditor-General of New Zealand*, consultation is 'essentially a tool or mechanism for citizens' participation, which can inform and assist the decision-making process of public authorities'.[17] Building on the drafting process examined in the preceding section, consultation within the legislative process operates at two critical junctures: first, during the early stages of policy formulation and development among ministerial officials, and second, during the drafting stage through interactions between instructing officers and legislative drafters.[18]

In Malaysia, consultation at both junctures is often conducted within the confines of government, namely within government ministries and departments, to ensure alignment of government interests.[19] Although consultation with non-state actors, such as CSOs and affected stakeholders, does occur in certain legislative processes, its scope and extent

[14] ibid 256.
[15] GC Thornton, *Legislative Drafting* (4th edn, Butterworths 1996) 54–55.
[16] *In re Castioni* [1891] 1 QB 149 (Div Ct) 167-168 (Stephen J).
[17] Office of the Controller and Auditor-General (New Zealand), Public Consultation and Decision-Making in Local Government (December 1998) 15.
[18] Noor Azlina Hashim, 'Consultation: A Contribution to Efficiency of Drafting Process in Malaysia' (2012) 14 Eur JL Reform 161.
[19] ibid 157.

remains largely dependent upon executive discretion rather than being institutionalised. As a result, in circumstances where stakeholder participation is limited or omitted, consultation risks functioning less as a genuine mechanism for citizens' participation and more as a ‘box-ticking exercise’ contingent on executive discretion.[20]

Concerns regarding the discretionary nature of consultation may be illustrated by the enactment of the *Government Procurement Bill 2025*, which attracted criticism for being rushed through all three parliamentary readings within a single week and for the absence of prior consultation with certain CSOs.[21] Commenting on the Bill, Raymon Ram, President of Transparency International Malaysia (TI-M), cautioned that:

> “A law rushed through without consultation, and riddled with discretionary loopholes, will not clean up procurement. It will only create a hollow reform, one that looks good on paper but fails in practice. The government must delay, amend, and get this law right. Anything less is a betrayal of public trust.”[22]

The discretionary character of consultation in Malaysia is further entrenched at the legal level. As observed by Syahmi, community consultation is not explicitly mandated by statute but only implied in select legislative frameworks.[23] For instance, the *Environmental Quality Act 1974* incorporates public participation within the Environmental Impact Assessment (EIA) process through *s 34A*.[24] However, judicial interpretation has limited the practical accessibility of these participatory mechanisms. In *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals,* the Court of Appeal held that EIA reports were available to members of the public upon request and payment of the prescribed fee, and that there was no accrued right to automatic public distribution of such reports.[25] Thus, participation places the burden on affected communities to seek access to information before meaningful engagement can occur.

These features suggest that, in certain legislative processes, structural limitations may arise from the absence of legally binding obligations or normative expectations requiring meaningful consultation with affected stakeholders. In contrast to jurisdictions such as New Zealand, where public consultation is statutorily required under the *Local Government Act 2002*,[26] and the United Kingdom, where government departments are guided by formal

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[20] Transparency International Malaysia, 'Transparency International Malaysia Decries Rushed Procurement Bill 2025' <https://www.transparency.org.my/pages/news-and-events/press-releases/transparency-international-malaysia-decries-rushed-procurement-bill-2025> accessed 28 February 2026.
[21] ibid.
[22] ibid.
[23] M.S. Jaafar, 'Public Consultation in Malaysia: A Practical Approach of Multi-Mind Engagement' (unpublished manuscript) 3.
[24] Environmental Quality Act 1974, s 34A.
[25] *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 (CA) 25, 56-57.
[26] Local Government Act 2002 (NZ), ss 82–83 (setting out principles of consultation, including reasonable opportunities for affected or interested persons to present their views, and establishing a special consultative procedure for specified decisions).

Consultation Principles encouraging stakeholder engagement,[27] consultation practices in Malaysia remain comparatively dependent upon executive discretion and administrative practice. To the extent that consultation remains discretionary, there exists a risk that affected stakeholders may be excluded from formative stages of legislative design, producing what may be described as "laws without closure", whereby fundamental questions concerning scope, meaning and legislative purpose remain unsettled notwithstanding formal enactment.

2.3 Legislature

As Zander observes, public consultation is often understood as being sufficiently accommodated within the policy-formulation process on the basis that views and objections can be channelled through Parliament.[28] In theory, this assumption is supported by the formal structure of the Malaysian legislative process: Bills are subjected to three readings in each of the two Houses, discussed by a Special Select Committee, and debated by members of the House.[29] On paper, this structure appears to be sufficient for public concerns to translate into parliamentary scrutiny through representatives, interest groups, and CSOs. However, in certain legislative processes, structural features may constrain parliamentary deliberation, limiting Parliament's capacity to compensate for deficiencies in pre-legislative drafting and consultation at the point of enactment.

Abdul Aziz Bari, a former Constitutional Law professor, observes that Parliament’s role in examining policies in depth is insufficient.[30] However, the House of Lords Constitution Committee has observed that it is difficult to determine what constitutes effective parliamentary scrutiny.[31] In light of this difficulty, this subsection adopts the degree of textual amendment to a Bill as a proxy indicator of parliamentary examination. While no official consolidated statistics are publicly available on the number of Bills amended prior to enactment, parliamentary records suggest that Bills are frequently approved at the later stages of the legislative process without textual amendment. For instance, a message from the Dewan Negara during the Fifteenth Parliament recorded that nine government Bills were passed by the *Senate tanpa pindaan (without amendments)*.[32] According to a newspaper report of remarks made by Shad Saleem Faruqi, a constitutional law expert, approximately 80 per cent of draft Bills introduced between 1991 and 1995 were passed without amendment, while a further 15 per cent were altered following pressure from non-governmental organisations and other external actors. Only 5 per cent were amended

[27] Cabinet Office, Consultation Principles (2018) Principles A and C (encouraging consultation where appropriate and requiring consultees to be provided with sufficient information to submit informed responses) <https://www.gov.uk/government/publications/consultation-principles-guidance> accessed 28 February 2026.
[28] M. Zander, *The Law-Making Process* (6th edn, Cambridge University Press 2004) 8.
[29] APHR (n 10) 6–8.
[30] A. A. Bari, *Perlembagaan Malaysia: Asas-Asas dan Masalah* (Dewan Bahasa dan Pustaka 2001) 208-209.
[31] House of Lords Constitution Committee, The Legislative Process: The Passage of Bills Through Parliament (24th Report of Session 2017–19, HL Paper 393, 2019) para 12.5
[32] Malaysia, Penyata Rasmi Parlimen Dewan Rakyat, Parlimen Kelima Belas, Penggal Ketiga, Mesyuarat Pertama, 27 February 2024, 3 (Perutusan Daripada Dewan Negara, 14 December 2023).

within Parliament itself.[33] These patterns lend support to Aziz's contention that Parliament's role in the detailed examination of policy may, in certain circumstances, be limited.

This limited degree of parliamentary refinement is not accidental but structural in nature. First, the executive exercises substantial control over parliamentary time through the *Standing Orders of the Dewan Rakyat*.[34] *Standing Orders 11(2) and 12(1)* empower the Leader of the House and Ministers to determine the dates on which the House sits and to vary its sitting hours.[35] As neither the Federal Constitution nor the Standing Orders prescribe a minimum number of annual sitting days, the parliamentary time available for legislative business remains dependent upon executive discretion.[36] This has, at times, produced significant variation in the annual number of sitting days across different administrations, ranging from 80.4 days to 48.7 days.[37] As Balakrishnan observes, such fluctuations demonstrate inconsistency in the scheduling of the parliamentary calendar. As a result, opportunities for MPs to perform their legislative, deliberative, and scrutiny functions are contingent upon the amount of parliamentary time allocated by the executive.

Second, the executive exercises significant control over the parliamentary agenda.[38] *Standing Orders 14(2) and 15* permit Ministers to reorder parliamentary business without notice and accord precedence to government business over private members' business.[39] Thus, the executive exercises substantial influence over the allocation and sequencing of parliamentary business.[40] As Balakrishnan notes, the prioritisation of government business means that matters raised by government backbenchers and members of the parliamentary opposition may be delayed or not proceeded with when parliamentary time is limited.[41] Opportunities for private members to initiate debates on issues of public administration or to raise matters of public importance that the government fails or refuses to address are therefore constrained. This restricts the ability of MPs to influence the matters debated in the House and limits Parliament's capacity to shape its deliberative priorities.

Third, committee scrutiny in legislative processes remains discretionary rather than mandatory. *Standing Order 83(4)* provides that committees may deliberate only upon matters referred to them by the House.[42] Thus, committee examination depends upon a prior decision of the House rather than arising automatically as part of the legislative process. This is reflected in the limited use of parliamentary committees in Malaysia to

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[33] Z. Ahmad and L. Phang, 'The All-Powerful Executive' The Sun (1 October 2005) <https://web.archive.org/web/20070310224459/http://www.sun2surf.com/article.cfm?id=11381> accessed 2 June 2026.
[34] M. Balakrishnan, 'Who Controls Time Controls Parliament: The Case for Shared Control of Parliamentary Time in the Dewan Rakyat' (2025) 5 Journal of the Malaysian Parliament 56.
[35] Parliament of Malaysia, Standing Orders of the Dewan Rakyat (14th edn, Percetakan Nasional Malaysia Berhad 2018) SOs 11, 12.
[36] Balakrishnan (n 34) 56.
[37] ibid 58.
[38] ibid 56.
[39] Standing Orders of the Dewan Rakyat (n 35) SOs 14(2), 15.
[40] Balakrishnan (n 34) 56.
[41] ibid 54.
[42] Standing Orders of the Dewan Rakyat (n 35) SOs 83(4).

facilitate MPs in the discharge of their legislative and oversight functions.[43] The absence of a mandatory committee scrutiny stage creates the possibility that some Bills may proceed through Parliament without the benefit of detailed examination, expert evidence and public participation.[44] As a result, opportunities for legislative refinement remain limited.

Taken together, these structural features suggest that, in certain legislative processes, Parliament may face institutional constraints in fully performing its function as the final forum for resolving contestation over legislative content. Where Bills proceed with minimal amendment, limited scrutiny and constrained debate, there exists a risk that legislation may emerge without a fully settled and reasoned account of its scope and purpose. In such circumstances, parliamentary procedures may prove insufficient to remedy deficiencies arising at earlier stages of the legislative process, potentially contributing to what may be described as "laws without closure", whereby significant questions concerning legislative meaning and implications remain unresolved notwithstanding formal enactment.

3. Rule of Law

Structural limitations in legislative design, drafting, consultation and enactment are not aberrations but inherent features of law. As H L A Hart observes, lawmakers are inevitably constrained by two structural handicaps: relative ignorance of fact and relative indeterminacy of aim.[45] Legislators cannot foresee all future circumstances in which legal rules may operate, nor can legislative objectives always be specified exhaustively in advance. The rule of law concern, however, is not the existence of such limitations per se, but whether, notwithstanding them, the law can retain sufficient clarity, foreseeability, and stability to guide conduct, and whether legislative processes can meaningfully mitigate the risks such limitations generate.

The rule of law, as articulated by Lord Bingham, requires that all persons and authorities within the state be bound by and entitled to the benefit of the law.[46] While Bingham's account is influential, it is not exhaustive, and no single definition commands universal acceptance.[47] For the purposes of analysing structural limitations in legislative design, two rule of law principles recur across leading accounts: legality and legal certainty. These principles are emphasised in the work of Bingham and are reflected in institutional frameworks such as those advanced by the Venice Commission and the World Justice Project.[48] It is these principles that are vulnerable to erosion where legislative design and institutional practices systematically constrain clarity, accountability, and participatory law-making. It is through this lens that the effects of structural limitation on the rule of law in Malaysia are examined.

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[43] Malaysian Economic Association, MEA Proposal: Enhancing Parliamentary Committees in Malaysia (Malaysian Economic Association 2017) 11.
[44] ibid 12-13.
[45] H L A Hart, 'Discretion' (2013) 127(2) Harvard Law Review 652, 661.
[46] T. Bingham, *The Rule of Law* (Penguin Books 2011) 7-8.
[47] M. Ryan, Written Evidence (ROL0003) to the House of Lords Constitution Committee Rule of Law Inquiry (2025) para 1.
[48] Bingham (n 46) 40, 53; European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist (Council of Europe 2016) 10; World Justice Project, 'What is the Rule of Law?' (*World Justice Project)*

3.1 Legality

Legality requires that the exercise of public power be authorised by and conducted in accordance with the law.[49] As a core component of the rule of law, it ensures that lawmakers exercise power within the bounds of pre-existing legal rules. The Venice Commission introduces nine sub-indicators to assess a country's compliance with the principle of legality. While these indicators encompass multiple aspects of the legal order, this subsection focuses on those most relevant to the law-making process: first, whether the role of the legislature as lawmaker is ensured, and second, whether the law-making process is efficient, transparent, inclusive, and democratic.

First, on whether the role of the legislature as a lawmaker is ensured. *Article 44 of the Federal Constitution* states that "the legislative authority of the Federation shall be vested in a Parliament," a provision that establishes the Parliament as the body with constitutional authority to enact laws.[50] In addition, *Standing Orders 48–61* regulate the procedure by which Bills are introduced, debated, committed, and passed.[51] These constitutional and procedural arrangements, however, do not introduce substantive limits on "objectives, contents, scope, and, where necessary, time limits of the delegation of power," as articulated by the Venice Commission.[52] As a result, Parliament may delegate broad law-making authority to the executive without retaining meaningful control over how such power is exercised.

Second, on whether law-making procedures are efficient, transparent, inclusive, and democratic, similar structural limitations arise. While the framework facilitates the efficient passage of legislation through *Article 66 of the Federal Constitution*, which sets out the stages of passing a Bill,[53] and Standing Orders 48–61, which regulate parliamentary procedures,[54] there are no binding constitutional or procedural requirements mandating public consultation, minimum deliberation periods, opposition participation, impact assessments, or meaningful restrictions on expedited procedures.[55] Consequently, in certain legislative processes, the degree of openness and public participation may remain substantially dependent upon executive discretion.

The Government Procurement Bill 2025 provides an illustration of these concerns. The executive dismissal of government backbenchers' and opposition criticisms of the Bill, coupled with the decision to proceed without examination by a Select Committee, may be regarded as an erosion of Parliament's legislative role.[56] Moreover, the sidelining of CSOs during the drafting and consultation process exposes the Bill to excessive executive control

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[49] European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist (CDL-AD(2016)007, Council of Europe 2016) paras 44–56.
[50] Federal Constitution, art 44.
[51] Standing Orders of the Dewan Rakyat (n 35) SOs 48-61.
[52] Venice Commission, (n 49) 20.
[53] Federal Constitution, art 66.
[54] Standing Orders of the Dewan Rakyat (n 35) SOs 48-61.
[55] Venice Commission (n 49) 21.
[56] Amin (n 6).

over public procurement, thus undermining transparency, inclusivity, and democratic participation in regulatory areas intended to safeguard the public interest.[57]

The quality of the law depends largely on the quality of the law-making process. Practically, these structural limitations may, in certain legislative processes, contribute to an expansion of executive discretion in determining the substance of the law. To the extent that the executive determines not only the scope of parliamentary deliberation, but also the extent of public participation in the formation of the law, there exists a risk that transparency, accountability and inclusivity may be compromised.[58] Principally, such developments may affect the protection of rights and freedoms by increasing the possibility that laws are enacted without adequate parliamentary deliberation or public consultation. In such circumstances, legislation may exhibit characteristics of "laws without closure", as enactments produced without adequate deliberation risk being perceived as exercises of power rather than expressions of law, thus undermining the principle that public authority must act in accordance with the supremacy of law.

3.2 Legal Certainty

Legal certainty is a significant guiding principle of the rule of law. This subsection argues that structural limitations in Malaysia's legislative design undermine legal certainty and, in turn, weaken the rule of law's function of guiding conduct and protecting rights.[59]

The principle of legal certainty requires the law to be clear in what it prohibits and allows, enabling members of the public to decide, in advance, their course of action or omission.[60] At its core, legal certainty demands that "the law must be accessible ... intelligible, clear and predictable."[61] Legal certainty does not, however, require absolute precision or the complete elimination of judicial discretion, as some degree of interpretive flexibility is necessary to accommodate novel circumstances and changing social conditions. Rather, legal norms must remain sufficiently accessible and foreseeable such that individuals may reasonably regulate their conduct and anticipate its legal consequences.

The significance of legal certainty is reflected in its incorporation within international institutional frameworks. The Venice Commission, for example, identifies legal certainty as a core component of the rule of law and operationalises it through a series of sub-indicators, including the accessibility and foreseeability of the law, as well as the stability and consistency of the law.[62] This demonstrates that legal certainty is not merely an abstract normative aspiration, but a concrete evaluative standard against which legislative processes and outputs may be assessed.

In comparison, the Malaysian Federal Constitution does not expressly articulate the principle of legal certainty. However, it implicitly embeds this value within its constitutional structure.

[57] Reuters (n 3).
[58] JUSTICE, 'The State We're In: Addressing Threats & Challenges to the Rule of Law' (September 2023) 10.
[59] B. Z. Tamanaha, 'Functions of the Rule of Law' (2021) 8.
[60] JUSTICE (n 58) 43.
[61] Bingham (n 46) 40.
[62] Venice Commission (n 49) 25–26.

For instance, *Article 4(1)*, which proclaims that "the Constitution is the supreme law of the Federation", necessitates a clear and predictable hierarchy of legal norms. Similarly, *Article 8(1)*, which guarantees equality before the law, implicitly requires legal norms to be applied in a consistent and predictable manner. These provisions reflect an implicit appreciation of legal certainty as a foundational element of the rule of law.

Despite this implicit recognition, structural limitations in legislative design may, in certain legislative processes, undermine legal certainty in practice. Where legislative aims are indeterminate at the point of drafting, laws become less foreseeable to the public.[63] Where public consultations are limited or curtailed, laws become less accessible and legal knowledge is concentrated within the executive branch. Where parliamentary deliberation by elected representatives is constrained, laws may become less consistent with public interests and more aligned with the priorities of the ruling government. Taken together, these structural limitations may reduce the clarity and predictability of legislation and, in certain circumstances, undermine its perceived legitimacy.

The Online Safety Bill 2025 provides a clear illustration of these concerns. *First Schedule [Section 4] Paragraph 4* refers to "generally accepted behaviour or culture" as a regulatory standard.[64] Whilst some degree of interpretive flexibility is inevitable in legislative drafting, the phrase "generally accepted behaviour or culture" arguably confers broad discretion by failing to indicate whose standards are decisive, how such standards are to be identified, and which forms of expression fall within its scope. Furthermore, the divergence between the initial promise of a systems-based regulatory approach and the eventual focus on content moderation reflects executive influence over the consultative process.[65] In addition, the dismissal of the need for a Select Committee further illustrates the marginalisation of deliberative examination. Taken together, these features of the Online Safety Bill 2025 illustrate how deficiencies arising in certain legislative processes may undermine legal certainty by producing legal norms whose scope, rationale and application remain insufficiently defined.

The consequences of disregarding legal certainty are twofold. First, it diminishes the law's role in guiding human conduct. Individuals must be able to understand what the law prohibits and allows before pursuing a course of action.[66] This guidance function extends beyond daily life to economic pursuits such as "trade, investment, and business", where individuals and enterprises must be certain of the rights and duties imposed upon them in order to participate with confidence in the marketplace. Second, the erosion of legal certainty undermines the effective exercise of rights and freedoms. As Tamanaha observes, legal certainty enhances freedom and rights because individuals understand their permissible range of actions.[67] Furthermore, legal certainty also protects the constitutional fundamentals of law: upholding the Federal Constitution as the supreme law safeguards

[63] ibid.
[64] Online Safety Act 2024 (Act 854) First Schedule para 4.
[65] Amnesty International Malaysia (n 7).
[66] JUSTICE (n 58) 43.
[67] Tamanaha (n 59) 8.

fundamental liberties such as freedom of expression and freedom of assembly.[68] These protections are weakened when legal boundaries are vague or unstable.

In this sense, structural limitations in legislative design may, in certain circumstances, contribute to the production of "laws without closure". In such circumstances, individuals may be unable to determine with confidence and finality the legal consequences of their conduct. Such uncertainty may chill lawful behaviour and undermine the practical enjoyment of civil liberties guaranteed by the Federal Constitution. If left unaddressed, these conditions may undermine important aspects of the rule of law in Malaysia.

4. Conclusion

In conclusion, this paper has argued that the problem of “laws without closure” in Malaysia is not merely a problem of the merits of individual statutes, but arises from structural limitations embedded within legislative design, drafting, consultation, and parliamentary deliberation. Through the examination of three elements of the law-making process, namely drafting, consultation, and parliamentary deliberation, this paper has demonstrated how limitations arising in certain legislative processes may collectively undermine the capacity of the law-making process to produce clear, settled, and determinate laws. In doing so, these structural constraints may weaken important aspects of the rule of law by eroding the principles of legality and legal certainty.

At the drafting stage, insufficient articulation of legislative aims and the reliance on draft Bills as drafting instructions constrain the capacity of drafters to engage in legislative design. This may result in statutes whose scope and rationale remain insufficiently settled at the point of enactment. Such indeterminacy may reflect an absence of closure, as fundamental questions of meaning are deferred rather than resolved through the legislative process itself.

To compound this problem, the discretionary nature of consultation further worsens deficiencies in drafting. Where consultation with civil society organisations or affected stakeholders is neither institutionalised nor legally mandated, there exists a risk that legislation may proceed without the benefit of meaningful public participation capable of clarifying contested interests and policy boundaries prior to enactment.

Furthermore, parliamentary deliberation, which ought to function as the last line of defence in resolving legislative shortcomings, is structurally constrained by limitations such as executive control over parliamentary time, limited advisory and technical support for MPs, and the discretionary use of Select Committees. This, in turn, may restrict Parliament's ability to scrutinise and refine legislation, thereby limiting its capacity to provide closure where earlier stages have fallen short.

The cumulative effect of these structural limitations is that, in certain legislative processes, legislation may struggle to fully realise the principles of legality and legal certainty. For individuals, this may manifest as uncertainty over what is prohibited and what is permitted. For institutions, it may encourage greater reliance upon administrative and judicial discretion to complete laws that remain without closure.

[68] Federal Constitution, art 10(1).

Addressing “laws without closure”, therefore, requires more than interpretative or enforcement reform. It demands structural changes in legislative design itself, ensuring that drafting, consultation, and parliamentary deliberation operate together to produce law that is not merely enacted, but also sufficiently settled in its meaning, rationale, and purpose.

Bibliography

Ahmad Z. and Phang L, ‘The All-Powerful Executive’ (1 October 2005) <https://web.archive.org/web/20070310224459/http://www.sun2surf.com/article.cfm?id=11381.> accessed 2 June 2026.

Amin L, Yiau C N, ‘Govt Procurement Bill under Fire from MPs over Finance Minister’s Wide Discretion’ (27 February 2025) <https://theedgemalaysia.com/node/768447.> accessed 28 February 2026.

Amnesty International Malaysia, ‘Passage of the Online Safety Bill a Grave Blow to Freedom’ (12 December 2024) <https://www.amnesty.my/2024/12/12/online-safety-bill/.> accessed 28 February 2026.

ASEAN Parliamentarians for Human Rights (APHR), A Toolkit on Advancing Human Rights through the Malaysian Legislative Process (2023).

Balakrishnan M, ‘Who Controls Time Controls Parliament: The Case for Shared Control of Parliamentary Time in the Dewan Rakyat’ (2025) 5 Journal of the Malaysian Parliament 54.

Bari A A, Perlembagaan Malaysia: Asas-Asas dan Masalah (Dewan Bahasa dan Pustaka 2001).

Bingham T, The Rule of Law (Penguin Books 2011).

Cabinet Office, Consultation Principles (2018).

Environmental Quality Act 1974.

European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist (CDL-AD(2016)007, Council of Europe 2016).

Government Procurement Bill 2025.

Hart HLA, ‘Discretion’ (2013) 127(2) Harvard Law Review 652.

Hashim NA, ‘Consultation: A Contribution to Efficiency of Drafting Process in Malaysia’ (2012) 14 European Journal of Law Reform 161.

House of Lords Constitution Committee, The Legislative Process: The Passage of Bills Through Parliament (24th Report of Session 2017–19, HL Paper 393, 2019).

JUSTICE, The State We're In: Addressing Threats & Challenges to the Rule of Law (September 2023).

Local Government Act 2002 (NZ).

Malaysia, Penyata Rasmi Parlimen Dewan Rakyat, Parlimen Kelima Belas, Penggal Ketiga, Mesyuarat Pertama, 27 February 2024.

Malaysian Economic Association, MEA Proposal: Enhancing Parliamentary Committees in Malaysia (Malaysian Economic Association 2017).

Muhamad R, ‘Instructions to Draft Legislation: A Study on the Legislative Drafting Process in Malaysia’ (2011) 13 European Journal of Law Reform 236.

Office of the Controller and Auditor-General (New Zealand), Public Consultation and Decision-Making in Local Government (December 1998).

Online Safety Act 2024 (Act 854).

‘Overview of the Government Procurement Bill 2025’ (NZ Chambers, 2025) <https://nzchambers.com/overview-of-the-government-procurement-bill-2025/> accessed 28 February 2026.

Parliament of Malaysia, Standing Orders of the Dewan Rakyat (14th edn, Percetakan Nasional Malaysia Berhad 2018).

Reuters, ‘Malaysia’s parliament approves law to regulate government procurement’ (Reuters, 28 August 2025) <https://www.reuters.com/world/asia-pacific/malaysias-parliament-approves-law-regulate-government-procurement-2025-08-28/> accessed 28 February 2026.

Ryan M, Written Evidence (ROL0003) to the House of Lords Constitution Committee Rule of Law Inquiry (2025).

Tamanaha BZ, ‘Functions of the Rule of Law’ (2021) Washington University in St Louis Legal Studies Research Paper No 21-01-03.

The John Howard Society of Canada, 'What is "closure" in criminal justice' (*JohnHoward.ca*, 8 January 2020) <https://johnhoward.ca/blog/what-is-closure/> accessed 28 February 2026.

Thornton GC, Legislative Drafting (4th edn, Butterworths 1996).

Transparency International Malaysia, 'Transparency International Malaysia Decries Rushed Procurement Bill 2025' <https://www.transparency.org.my/pages/news-and-events/press-releases/transparency-international-malaysia-decries-rushed-procurement-bill-2025> accessed 28 February 2026.

World Justice Project, ‘What is the Rule of Law?’ (World Justice Project)

Zander M, *The Law-Making Process* (6th edn, Cambridge University Press 2004).