

# INTERNET FREEDOMS IN MALAYSIA

REGULATING ONLINE DISCOURSE ON RACE, RELIGION, AND ROYALTY



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**INTERNET FREEDOMS IN MALAYSIA:**  
Regulating Online Discourse on Race, Religion, and Royalty

2023  
Asia Centre

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# ACKNOWLEDGEMENTS

This baseline study examines how discussions around the 3Rs – race, religion, and royalty – concerning the special position of the Malays, Islam, and the Monarchy in the Constitution impact internet freedoms in Malaysia.

A mixture of colonial and post-independence era laws, policies and practices that regulate contrary opinions on the 3Rs has led to blocking online sites, removing online content, investigating and prosecuting individuals and organisations. As the political party equation shifts in Malaysia, there has also been an unchecked rise in hate speech and ultranationalist groups that require increased attention.

A range of respondents was interviewed to gather insights into the impact of internet freedoms when articulating ideas of racial equality, secularism, and the primacy of the constitution in Malaysia. We would thus like to thank Andrew Khoo, Cheryl Lee Yesudas, Dina Zaman, Hew Wai Weng, Nikki Cheong, Wathshlah Naidu and Zaid Malek, and another respondent who wishes to be anonymous for their time and valuable input.

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*Internet Freedoms in Malaysia: Regulating Online Discourse on Race, Religion, and Royalty* is dedicated to those whose internet freedoms are affected when they engage in conversations related to the 3Rs. Asia Centre hopes this report and its recommendations will help Malaysians discuss 3Rs issues safely both off and online.

Sincerely,



Dr James Gomez  
Regional Director  
Asia Centre

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# ABBREVIATIONS

<b>1MDB</b>	1Malaysia Development Berhad
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AHRD</b>	ASEAN Human Rights Declaration
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>AMRI</b>	ASEAN Ministers Responsible for Information
<b>BN</b>	Barisan Nasional
<b>CMA</b>	Communications and Multimedia Act
<b>COVID-19</b>	Coronavirus Disease 2019
<b>CSO</b>	Civil Society Organisation
<b>DAP</b>	Democratic Action Party
<b>GE15</b>	General Elections 15
<b>GLC</b>	Government-linked Company
<b>GTA</b>	Gerakan Tanah Air
<b>JENDELA</b>	Jalinan Digital Negara
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ISA</b>	Internal Security Act
<b>LGBT</b>	Lesbian, Gay, Bisexual, and Transgender
<b>LFL</b>	Lawyers for Liberty
<b>MCA</b>	Malaysian Chinese Association
<b>MCMC</b>	Malaysia Communications and Multimedia Communications
<b>MIC</b>	Malaysian Indian Congress
<b>NEP</b>	New Economic Policy
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OONI</b>	Open Observatory of Network Interference
<b>OSA</b>	Official Secrets Act
<b>PAS</b>	Malaysian Islamic Party
<b>PKN</b>	Parti Keadilan Nasional
<b>PH</b>	Pakatan Harapan
<b>PM</b>	Prime Minister
<b>PN</b>	Perikatan Nasional
<b>PPBM</b>	Parti Pribumi Bersatu Malaysia (Malaysian United Indigenous Party (BERSATU))
<b>PPPA</b>	Printing Presses and Publications Act
<b>PR</b>	Pakatan Rakyat

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# ABBREVIATIONS

<b>SA</b>	Sedition Act
<b>SUHAKAM</b>	Suruhanjaya Hak Asasi Manusia Malaysia
<b>UN</b>	United Nations
<b>UNCT</b>	United Nations Country Team
<b>UNHRC</b>	UN Human Rights Council
<b>UMNO</b>	United Malays National Organisation
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>UPR</b>	Universal Periodic Review



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# EXECUTIVE SUMMARY

Malaysian independence in 1957 was premised on reinstalling the displaced rights of the indigenous people and traditions by enshrining the special position of the Malays, Islam and the Monarchy in the Federal Constitution. Over sixty years, discussions on racial equality, secularism, and the primacy of the constitution have taken place against this backdrop.

In the early post-independence years that were led by successive UMNO governments, discussions on race, religion, and royalty – the 3Rs – were strictly regulated via the British-inherited the Penal Code and Sedition Act to maintain Malaysia's racial unity and the primacy of the Malay and Muslim communities. The arrival of the internet facilitated people's access to a broader range of viewpoints on the 3Rs, questioning the special position of the Malays, Islam, and the Monarchy. This increased policing of the digital sphere with old and new laws to monitor and censor discussions on the 3Rs, thereby affecting freedom of speech in the country.

Pakatan Harapan's (PH) electoral 3Rs progressive narrative with multiculturalism at its core allowed the coalition to secure a thin majority in 2018. However, that government collapsed less than two years after being formed. The PH lost its parliamentary majority and the Prime Minister Mahathir Mohamad resigned. Consequently, PH's progressive 3Rs discourse did not gather traction, nor did it consolidate. In 2022, following an election that saw a more stark ideological divide over the 3Rs, PH formed a unity government with the BN since it could not secure a simple majority. Including the BN – known for defending the special position of Islam, Malay rights, Bahasa Melayu and Monarchy – in the unity government means that the political hegemony of the traditional 3Rs remains in a polar position in Malaysian politics. However, the electoral weakening of UMNO has also spurred a right-wing 3R discourse that was led by Perikatan Nasional comprising Bersatu and PAS. Notwithstanding the headwinds that the unity government will face, both the questioning of the centrality of 3Rs and the right-wing articulation of the 3Rs stands to impact freedom of expression both online and offline in Malaysia.

Given these developments, this report analyses how Malaysia's legal provisions, inherited from the British, and revised and expanded by successive UMNO-led BN administrations, apply to 3Rs discussions in the online sphere and impact internet freedoms in the country. Malaysia's Federal Constitution ensures and protects fundamental human rights like freedom of speech, assembly and association (Article 10), and religion (Article 11). However, the country's Penal Code, Sedition Act, Evidence Act, Communications and Multimedia Act, Anti-fake News Act, and the Emergency (Essential Powers) (No.2) Ordinance 2021 form an ecosystem of laws to ensure that the special position of the Malays, Islam and the Monarchy remains in line with the special provisions of the Federal Constitution and is not dislodged by those questioning the 3Rs.

This ecosystem of laws has resulted in blocked websites, the removal of online content, and the investigation and prosecution of individuals and organisations connected to online content questioning the traditional 3Rs narrative and holding a progressive view that included multiculturalism. At the same time, as a right-wing interpretation of the 3Rs emerged in response to the political weakening of UMNO, ultranationalist groups advocating for the primacy of the Malay community, Islam and the Monarchy have also flourished legally unhindered, resulting in online harassment and hate speech. Although PH's electoral campaigns in 2018 and 2022 were built upon a progressive 3Rs narrative with multiculturalism at its core, the inclusion of UMNO into an unity government has resulted in maintaining the existing ecosystem of laws that will continue to impact internet freedoms in Malaysia given the country's post-electoral realignment with the 3Rs.

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# EXECUTIVE SUMMARY

Since the post-electoral developments have maintained the status quo regarding the 3Rs and internet freedoms have been challenged, Asia Centre provides a list of recommendations to safeguard and improve freedom of expression in the country. These are primarily addressed to the Malaysian government and include ratifying international human rights treaties like ICCPR, revisiting and addressing concerns around ratifying conventions like the ICERD and amending or repealing legislation to align the national legislative framework with international norms and human rights standards. This report also includes actions stakeholders like the national human rights institutions, parliamentarians, technology companies, and civil society organisations can take to strengthen internet freedoms in the country.

Implementing these recommendations can contribute to ensuring internet freedoms and freedom of expression in Malaysia. More importantly, the recommendations seek to create an environment where people feel they can discuss issues related to race, religion and royalty safely without fear and resorting to self-censorship.

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# 1. Introduction

At the onset of Malaysia's digital era in the mid-1990, the government promised to keep the internet free to attract international investment that would contribute to national development via establishing an information and communications technology sector. The promotion of internet access was prioritised, and different Ministers of Communications and Multimedia in 2018 and 2021 stated that access to the internet must be considered a human right. In 2018, after the historical election that disrupted Barisan Nasional's (BN) political dominance, Democratic Action Party's (DAP) Gobind Singh Deo proposed the cabinet guarantee the right to access the Internet in the Constitution. In 2021, former BN Minister Tan Sri Annuar Musa, continued the call to make access to internet facilities a human right in tandem with basic necessities such as clothing, food and shelter. Although Article 10 of the Federal Constitution guarantees the right to freedom of expression, this right in the digital sphere was not mentioned in such calls, thus exposing a gap in a fundamental freedom such as being able to express one's opinions freely online.

Although Freedom House (2022) – an organisation that conducts research and advocacy on democracy, political freedom, and human rights – evaluated Malaysia in 2022 as a partly free country with a score of 59 out of 100 in internet freedoms, this report shows that, over the years, the government has used a mixture of old and new laws to regulate, among other issues, opinions on race, religion, and royalty that challenged the special position of the Malays, Islam and the Monarchy outlined in the Constitution. This baseline study examines how the law has been used to protect the mainstream 3Rs narrative while suppressing other views and impacting internet freedoms.

## 1a. Methodology

This report is based on primary and secondary data analysis carried out between August and December 2022. Desk research was conducted to review United Nations (UN) documents published between 2009 and 2018, such as Malaysia's Universal Periodic Review (UPR) process and its relevant documents (National Reports, UN Reports, Stakeholder Summary, Report of the Working Group and Addendum from State under review). Malaysia's body of legislation was also reviewed to assess which laws and provisions were used to limit internet freedoms. Additionally, reports from international organisations, think tanks, government agencies and media reports were examined to gather data and statistics on the internet and social media usage, compare rankings and indices, identify gaps in the realisation of internet freedoms and assess possible solutions. Eight key informant interviews were also conducted with selected stakeholders including academics, CSOs representatives, lawyers and media practitioners to obtain information and validate the findings from the desk research.

## 1b. Race, Religion, and Royalty

Malaysia is at a political crossroads where political parties and coalitions are oscillating between the traditional approach to the 3Rs and its progressive interpretation. This is happening at a time when the country is also trying to keep a check on the rising right-wing promotion of race, religion, and royalty.

The politicisation of the 3Rs was led by the United Malays National Organisation (UMNO), the most prominent member of the BN coalition. In such a process, race, religion, and royalty were crucial markers of mobilisation for the Malays to re-claim their supremacy after the Federation's independence in 1957. Using

an inter-communal model, first through the Alliance Party and later the BN coalition, UMNO portrayed itself as the protector of the interests of ethnic Malays, Islam and Malaysia's rulers (Gabriel, 2015; Lee, 2007). During this time, it was able to consolidate the traditional 3Rs narrative that enshrined the special position of the Malays, Islam and Malay rulers. Starting from the later 1970s, when Partai Islam SeMalaysia (PAS) left the coalition, UMNO members "harnessed the value of absolute loyalty to the protector and exploited the religious authority of the sultans to undermine PAS' electoral support" (Singh, 1995). In this way, UMNO tried to keep its primary political opponent for Malay voters, PAS, in check by keeping the nascent right-wing interpretation of the 3Rs at bay, which led both parties to label each other as 'deviant' (Saat and Alatas, 2022).

While the centrality of the 3Rs was not questioned, the push by minority communities and others to approach governance in Malaysia based on an equitable multicultural policy was gaining traction. This view got a political lift in the late 1990s, following the sacking of Anwar Ibrahim as former UMNO deputy Prime Minister, who initiated the *Reformasi* movement in 1998 leading to the formation of Parti Keadilan Nasional (PKN). To carve a different political position from UNMO and PAS, the party advocated for racial and religious justice among all social groups and aimed to attract Malays, Chinese and Indian voters in cooperation with other opposition parties and formed Pakatan Rakyat (PR). Over successive elections in 2004, 2008, and 2013, PR publicly consolidated a progressive interpretation of the 3Rs. Again, this evolution did not question the centrality of the 3Rs as they remain vital in mobilising Malay political support, but it did call out racism and religious extremism. On the issue of royalty, its role as an electoral mediator and balancing conservative Islam was noted, while its constitutional and business overreach was not politically called out.

The progressive interpretation of the 3Rs had an opportunity for consolidation in 2018. Pakatan Harapan (PH), the coalition that succeeded the PR, won the general elections obtaining 113 seats in parliament, thus defeating the BN coalition after more than six decades of holding power. Mahathir Mohamad became Malaysia's PM for the second time, aiming to integrate ethnic and religious groups better. Nonetheless, the new parliamentary chapter brought political instability (Chin, 2022a; Mazumdaru, 2022). Between 2018 and 2021, PH's policy initiatives were challenged on the basis that it was endangering the special position of the Malays. The move to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and concessions to non-Malay interests, including the appointment of the first Chinese politician as finance minister in 44 years together with internal disagreements and power struggles within the ruling coalition resulted in Mahathir's resignation in 2020, ended the PH government and stalled any possibility to consolidate a progressive policy approach to the 3Rs. These developments facilitated the shifting of the traditional 3Rs narrative further to the right as a challenge to both the PH and BN framing of the 3Rs.

PH's promotion of an equitable multicultural policy while paying deference to the 3Rs, led to a right-wing challenge that led to the emergence of Perikatan Nasional (PN) (Saat, 2020). Despite not having an electoral mandate to govern (Bhatia, 2020), the new coalition, formed in early 2020 with the intention to replace the PH government, brought Muhyiddin Yassin to the Prime Minister's office by the appointment of the King. With almost an all-Malay-Muslim slate of Ministers from *bumiputera*, UMNO, PAS, and Bersatu parties, the government of Muhyiddin Yassin had to reassure minority communities that he would be a Prime Minister for all Malaysians (Ibid.). During his tenure, Yassin struggled to handle the COVID-19 pandemic and later resigned in August 2021 after losing most of the political support he enjoyed. Ismail Sabri Yaakob, an UMNO member, succeeded Yassin and became Malaysia's ninth Prime Minister, thus returning BN to power. During this period, the monarchy was in the media spotlight for its role in summoning Parliament and the government over the declaration of the State of Emergency, refusal to revoke the Emergency Ordinances and the amendment of constitutional provisions related to Islam.

The Palace was also involved in issuing press communiques without consultation with the PM's Department and receiving petitions from citizens' groups calling for urgent remedial actions (Faruqi, 2022). Amidst calls from his party to call for an early election, in October 2022, PM Yaakob advised the King to dissolve Parliament to call early elections (GE15) on 19 November 2022 (The Guardian, 2022).

In the 2022 General Election, the political landscape in Malaysia changed from a dominant one-coalition or two-coalition political contest to one that involved four diverse coalitions, including BN, PN, PH and GTA (Gerakan Tanah Air). The 2022 elections was a grand contest for Malay votes as the different political coalitions championed the 3Rs using their own emphasis during their campaigns in a bid to undermine their opponents. The aim was to attract Malays voters in rural heartlands who tend to support candidates who champion the rights of the Malays, fight for Islam's centrality and pledge to preserve the longevity of the royal house (Yusof, 2022). Barisan Nasional was dominated by the Malay-centric UMNO, which portrayed itself as a Malay nationalist protector. However, its campaign featured a certain rhetoric of inclusiveness to ensure its political survival in the elections. During its campaigns in the opposition state Penang, UMNO leader Ismail Sabri used the idea of 'Keluarga Malaysia' (Malaysian Family), an initiative to promote unity and harmony among various races and religions, to attract voters (Mok, 2022).

Perikatan Nasional, led by former Prime Minister Muhyiddin Yassin, launched its manifesto for the 15th GE promising to defend the constitution, uphold Islam as the religion of the federation and protect the rights of all races (Salleh, 2022). However, PN coalition members were accused of using divisive campaign speeches to win ethnic Malay voters (Muttaqin, 2022). For example, in a viral TikTok video, Muhyiddin was seen giving a speech asking voters not to vote for Pakatan Harapan as the opposition was being backed by a group of Jews and Christians who were pushing for a Christianisation agenda in Malaysia (The Star, 2022). Even PAS, one of the world's oldest Muslim political parties, realised the necessity to reach out to non-Muslim voters (Bernama, 2022a). But its president Abdul Hadi Awang was slammed over his speeches. In one of them, he blamed non-Muslims and non-Bumiputras for being the root cause of corruption in the country (Pfordten, 2022). Another viral video purportedly captured a PAS representative warning that Pakatan voters will burn in hell (Muttaqin, 2022). The Gerakan Tanah Air coalition, headed by twice former prime minister Mahathir Muhammad contested the election with no non-Muslim representation (Cheema, 2022). On the contrary, Pakatan Harapan, a multi-racial coalition led by Anwar Ibrahim, campaigned on good governance and anti-corruption and spoke out against racist policies and fanatical religious beliefs (Dzulkilfly, 2022).

On 19 November 2022, the poll results showed that PH won the largest number of constituencies with 82 seats, followed by PN with 73 and BN with 30. Since no coalition gained 112 seats to form a simple majority, PH and PN began to seek alliances with their political rivals to create a new government. Following several days of uncertainty after the elections, the King appointed Ibrahim Anwar (PH) as Malaysia's 10th Prime Minister and instructed him to form a new government. Thereafter, Anwar gathered several parties, including UMNO, Gabungan Parti Sarawak (GPS), Gabungan Rakyat Sabah (GRS) and Warisan, to form a unity government (Guang-Xi, 2022).

In forming a unity government for the first time ever in Malaysia, Anwar compromised on his party's principles of inclusiveness in aligning with UMNO, its long-time political rival who institutionalised the superiority of Malay, Islam and Monarchy, resulting in the cabinet comprising a Malay majority, three politicians who lost the recent election and a deputy premier facing numerous graft charges. The deal fulfilled PH's need to legitimise its administration by acquiring UMNO's influence and representation of the Malay community (Ng, 2022). Such a move helped protect PH from accusations and criticisms of undermining and under-representing the Malay-Muslim community in a manner that PH faced during its term in power from May 2018 to February 2020 (Ibid). The unity government of Anwar was further

cemented by the memorandum of understanding (MoU) signed in December 2022 by its coalition parties effectively preventing MPs from defying their party directives or voting in parliament according to their conscience. The MOU guaranteed PH's power, secured the confidence vote in parliament, and established the centrality of the 3Rs within the government. The MOU (*Perjanjian Persefahaman Kerjasama*) emphasised not only the King's aspiration to establish a unity government for the sake of political stability, but also guaranteed that the coalition members would uphold the provisions of the Federal Constitution regarding the position of the Malays, Islam, Malays and Monarchy ([Bernama, 2022b](#)). In January 2023, Anwar's comment that there would be no recognition of LGBT groups or a secular state confirmed the unity government's conservative stand ([Bernama, 2023](#)).

GE15's electoral results and new unity government show that Malaysia is at a political crossroads between a traditional approach to the 3Rs, its progressive interpretation and its possible supervision by a right-wing interpretation. The political outcomes, through the establishment of the unity government, highlight the unshakeable centrality of the 3Rs and the precarious position of genuine multiculturalism in Malaysia.

Wathshlah Naidu, Executive Director of the Centre for Independent Journalism, unpacked how the 3Rs dominate Malaysian society:

*"First, practices including Ketuanan Melayu that position the superiority of race and religion are institutionalised. Therefore, any narrative that challenges the concept or the constitutional rights of loyalty gets censored. Secondly, the 3Rs are ingrained in politics and policies. From the divide-and-rule politics that segregated people along their ethnic and racial lines inherited to the affirmative actions including New Economic Policy that promoted bumiputera but not all other marginalised races. Lastly, laws in Malaysia is less about promoting basic rights or the right to free speech. It is more about restricting, censoring and criminalising expression both online and offline, especially when touching the issues of 3Rs".*

However, the co-existence of the 3Rs is dynamic. Dr Hew Wai Weng, Research Fellow at the Universiti Kebangsaan Malaysia, analysed the key features of the 3Rs during an interview with Asia Centre. He said:

*"The 3Rs are interrelated, but sometimes there are tensions. For example, some Malay nationalists might think Salafisation threatens the Malay tradition or culture. Or, there was a case that Sultan played a subtle role in countering more conservative Islam. For example, in mid this year (2022), JAKIM and the Minister of Religious Affairs issued a statement stating that Muslims should not attend Bon Odori. But, the Sultan of Selangor defied it and said it was not a problem for Muslims to attend the Japanese festival".*

As seen above, the 3Rs have been consolidated, contested and even realigned to serve political benefit. Zaid Malek, a lawyer from Lawyers for Liberty (LFL), further pointed out that:

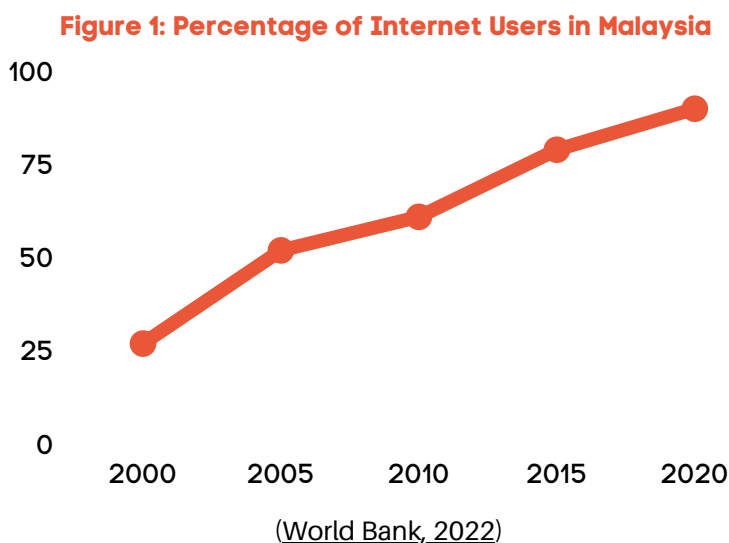
*"Those who enjoy the advantage of regulating the discourse on the 3Rs are always part of the status quo and people who are comfortable within. They can take advantage of this censorship to protect their positions of privilege. Still, with a broader lens, that is a problem for Malaysia because we, as a society, cannot progress unless we talk more about race, religion, and royalty. These 3Rs are highly important for our political discussions. They still dominate how people vote. But if you criminalise such subjects, how can we progress beyond the 3Rs?"*

Given that the core issues of race, religion and royalty remain important to the Malays, especially those in rural areas, the internet and social media remain a fertile ground for the public to exchange opinions ([Wok and Mohamed, 2017](#)) and for dissenting voices to promote either a traditional, progressive or a right-wing 3Rs discourse. As seen with the example of viral TikTok videos during the 2022 elections, the role of the internet can be vital in shaping the 3Rs narrative. Given the growing influence of digital media, examining

how online expressions are regulated when it affects discussions on race, religion and royalty will allow us to evaluate the impact on internet freedoms in Malaysia.

## 1c. Internet Landscape

The internet has been available in Malaysia since the mid-1990, and 1995 marks the beginning of the internet age in the country ([Salman et al., 2013](#)). The internet became more widely available – although slowly – in the early 2000s. In the late 2010s, its popularity skyrocketed. As Figure 1 shows, internet users increased from 1% in 1996 to 90% in 2020.



We Are Social and KEPIOS's ([Kemp, 2022](#)) digital report on Malaysia shows that 29.55 million of the total 32 million population were internet users in Malaysia in 2022 or 89.6% of its population, while 30.25 million out of Malaysia's total population were social media users – 91.7% of the population. 81.6% of users use the internet to search for information, 75.5% to access news and current events, and 72.2% to stay in touch with friends and family. The study also shows that the most popular social media platforms are WhatsApp (93.2%), Facebook (88.7%), Instagram (79.3%), and Telegram (66.3%). 60.7% of people in Malaysia use social media to stay in touch with friends and family, 58.6% to fill their spare time, 47.4% to read news stories, and 44.1% to see what is being talked about.

The Digital News Report undertaken by the Reuters Institutes for the Study of Journalism ([2022](#)) explains the digital news consumption behaviour in Malaysia. The study shows that 89% of respondents used online media (including social media) as the primary source of news, followed by TV (51%) and printed media (17%). Smartphones were the device of choice to engage with the news, as 52% of the respondents said they share news via social media, messaging applications or email. Regarding messaging applications, the most widely used platforms to interact with the news are Facebook (52%), WhatsApp (47%), YouTube (39%), Instagram (24%), Twitter (22%) and Telegram (19%). Additionally, the 2022 survey shows that respondents' trust in media outlets with strong political biases had fallen. In contrast, trust in independent media sources like Astro Awani and Malaysiakini, known for their critical approach and independence, remained high at 64% and 54% respectively ([Newman et al., 2022](#)).

The Speedtest Global Index developed by Ookla shows that in July 2022, internet users in Malaysia enjoyed average connectivity in relation to global figures. Malaysia's median mobile download speed was

30.08 Mbps, and the median fixed broadband download speed was 83.90. That was close to the worldwide performance - 30.78 Mbps for mobile devices and 67.25 Mbps for fixed broadband ([Speedtest, 2022](#)). Yet, internet coverage and network quality still need to be improved for some. Users have complained about Malaysia's poor internet connectivity in some areas. During the COVID-19 pandemic in 2020, Veveonah Mosibin's video - an 18-year-old student at the Universiti Malaysia Sabah - went viral as she had to climb a tree to get a solid, uninterrupted internet connection to sit for online university examinations ([New Straits Times, 2021](#)).

The example above highlights that the digital divide remains a challenge many Malaysian citizens face in the digital age, especially between urban and rural communities. The 2020 Internet Users Survey shows that 75.6% of urban residents could connect to the internet, while only 24.4% could do so in rural areas ([MCMC, 2020](#)). To overcome the digital challenges, the Malaysian government announced the National Digital Network Plan (JENDELA) in 2020 to improve network coverage and broadband quality in preparation for implementing 5G ([MCMC, 2021](#)). The plan aims at shutting 3G networks and, by 2025, achieving full 4G coverage in populated areas and rolling out 5G connectivity nationwide.

Given the popularisation of the internet and the government's ambitious plans to create a digital society, mobile network operators are vital since most citizens prefer connecting to the internet with their mobile phones. In the first quarter of 2022, the mobile cellular penetration rate was 139.2%, the mobile broadband penetration rate stood at 124.1%, and the fixed broadband penetration rate was 41.9% ([MCMC, 2022a](#)). Malaysia's major mobile network operators are DiGi, Celcom, Maxis and Unifi, the latest being operated by Telekom Malaysia. Celcom Axiata, established in 1988, is the oldest provider in Malaysia. Yet, Digi.com Bhd, 49% owned by the Norway-based Telenor ASA, offered the fastest connection in the third quarter of 2021, scoring 33.19 points ([Speedtest, 2022](#)).

Maxis Bhd is Malaysia's top mobile services provider quantitatively, with more than 9.4 million revenue-generating subscribers ([Chu, 2022](#)). 60% of its totality is controlled by Usaha Tegas, a private investment arm of Malaysian billionaire Ananda Krishnan ([Nikkei Asia, 2022](#)). The business tycoon is a personal friend of former Prime Minister Mahathir Mohamad. It was alleged that the friendship with Mahathir allowed Krishnan to win telecommunication, broadcasting and satellite services and licences while Mahathir ruled between 1981 and 2003 ([Miller, n.d.](#)). In June 2022, Telenor's Digi.com Bhd and Celcom Axiata Bhd, the second and third largest mobile service operators in Malaysia, respectively, won the MCMC (the national communications regulator) approval to merge and will be completed within the second half of 2022. After the merger, Axiata and Telenor will hold equal ownership of 33.1% each ([Chu, 2022](#)).

Unifi is operated by Telekom Malaysia Bhd (TM). Telekom Malaysia was established as the national telecommunications company providing fixed-line, radio and television broadcasting services before evolving into the country's largest provider of broadband services, data, fixed-line, pay television and network services. Telekom Malaysia, a government-linked company (GLC), is accused of monopolising the telecommunication industry, thus impeding other telco players from growing ([Yusof, 2020](#)).

In Malaysia, internet penetration and social media usage are relatively high, as shown before. Even though the urban-rural divide still exists, there are ongoing efforts to bridge this gap. Social media in particular serves as the conduit through which people seek and share information. Hence, the internet and social media will be the sphere over which the contestation over the 3R narrative will take place, and the government of the day will use the available legal tools to shape the narrative.

## 1d. Adherence to Human Rights Mechanisms

Malaysia's adherence and compliance with international human rights frameworks provide a framework to analyse how the 3Rs impact internet freedoms in the country. The UN's Universal Periodic Review (UPR) of 2009, 2013, and 2018 provides essential insights.

In the first UPR cycle in 2009, the National Report and the UN Compilation Report prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) did not assess internet freedoms and online freedom of expression. The National Report emphasised that the Malaysian government, through the Federal Constitution, ensures people's fundamental rights, including freedom of speech. The report also emphasised that it was seriously considering the accession of the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). To that end, the report stated that the Ministry of Foreign Affairs chaired the InterAgency Coordinating Committee to look into the treaties. Meanwhile, the Malaysian government defended the New Economic Policy as a tool to eradicate poverty irrespective of people's race ([UNHRC, 2008a](#)).

However, the UN compilation report expressed concerns about using the Internal Security Act (ISA) that could threaten to implement human rights, including the rights of expression and assembly. It also noted that the Internal Security Ministry had banned 18 books on inter-religious matters for allegedly disturbing peace and harmony ([UNHRC, 2008b](#)). The Stakeholders Reports contained assessments of internet freedoms in Malaysia, pointing out that freedom of opinion and expression was curtailed by restrictive laws, such as the Printing Presses and Publication Act and the Sedition Act (SA). The report cited restrictive actions against bloggers to control online political expressions, particularly since 2006. It highlighted the shutting down of 11 websites by Malaysia Communications and Multimedia Communications (MCMC) for breaching rules and regulations regarding the publication of information on the Internet ([UNHRC, 2008c](#)).

In the 2013 second UPR cycle, the National Report emphasised that the government had promoted peace, stability, and national security to strengthen freedom of expression. Nonetheless, the report did not address freedom on the net. The government also defended that the Federal Constitution ensures the special position of the Bumiputra and natives of the States of Sabah and Sarawak. It continues to emphasise the State's responsibility to safeguard the legitimate interests of other communities. In addition, it stated that although Article 3 of the Constitution recognises Islam as the country's religion, other religions may be practised in peace and harmony in any part of the country ([UNHCR, 2013a](#)). The UN Compilation Report contained recommendations for Malaysia to ratify the basic instrument of international protection of human rights, including ICCPR and ICERD. The report highlighted that the government was using restrictive laws – such as the Printing Presses and Publications Act, the Official Secrets Act, the Sedition Act and the Penal Code – to silence political dissent, including attempts to tighten control over the internet and restrict bloggers' views.

UNESCO pointed out that the Evidence Act was problematic for freedom of expression because it placed an undue burden on internet users and domain owners, including social media and blog accounts. It also noted bans on several publications of different religions, including the official newspaper of the Roman Catholic Church (The Herald) and other books related to Islam. In its report, the United Nations Country Team (UNCT) noted the rise of state-led conservative Islam and the use of punitive measures and laws to silence different opinions ([UNHCR, 2013b](#)). The Stakeholders Report expressed concerns over the continuous use of national laws to limit freedom of expression and prohibit political criticism, such as the Sedition Act, the Communication and Multimedia Act, the Printing Press and Publications Act, the Official



Secrets Act, and the Evidence Act. The report also underlined that August 2012 marked the government's first explicit attempt to censor internet users by making computer owners and operators of computer networks responsible for whatever is displayed on their screens. In addition, it recommended that Malaysia repeal laws that criminalise blasphemy and defamation in response to bloggers facing legal harassment with the accusation of sedition [\(UNHCR, 2013c\)](#).

In contrast to previous cycles, internet freedoms were mentioned in the National Report corresponding to the third cycle in 2018. It stated that Article 10 of the Constitution protects the right to freedom of expression of all citizens, including bloggers and journalists. Yet, it warned online news portals, blogs, and social media platforms to make sure that the information available online is accurate and not aimed to mislead. It also insisted that the accession of ICCPR, ICESCR, and ICERD can be carried out after key provisions of the Federal Constitution are amended [\(UNHCR, 2018a\)](#). However, the UN Compilation Report highlighted concerns over legislation that affects internet freedoms. It also recorded the Special Rapporteur in the Field of Cultural Rights' call to repeal sections 211 (1) and 233 (1) of the Communications and Multimedia Act - which are the main legal provisions to be used against offensive content on the internet and also prohibit anonymous expression online. The report also stated the UN Country Team was concerned about the wide scope of and harsh penalties included in the anti-fake news legislation passed in April 2018 [\(UNHCR, 2018b\)](#). The Stakeholder Report noted that websites posting critical comments about the government, including corruption allegations, were blocked. The report also criticised that the definition of fake news prescribed in the Anti-Fake News Act was vague and subject to the discretion of authorities. Stakeholders called for repealing laws that were abused to restrict freedom of expression. In addition, it reported that at least two mobile applications were introduced by the state Islamic departments to report sharia offences and LGBT orientation including Hotline JAIS and Hijrah Diri - *homoseksual* [\(UNHCR, 2018c\)](#).

During an interview with Asia Centre, Cheryl Lee Yesudas, Communications and Administration Assistant of Article 19, had this to say about Malaysia's adherence to international standards:

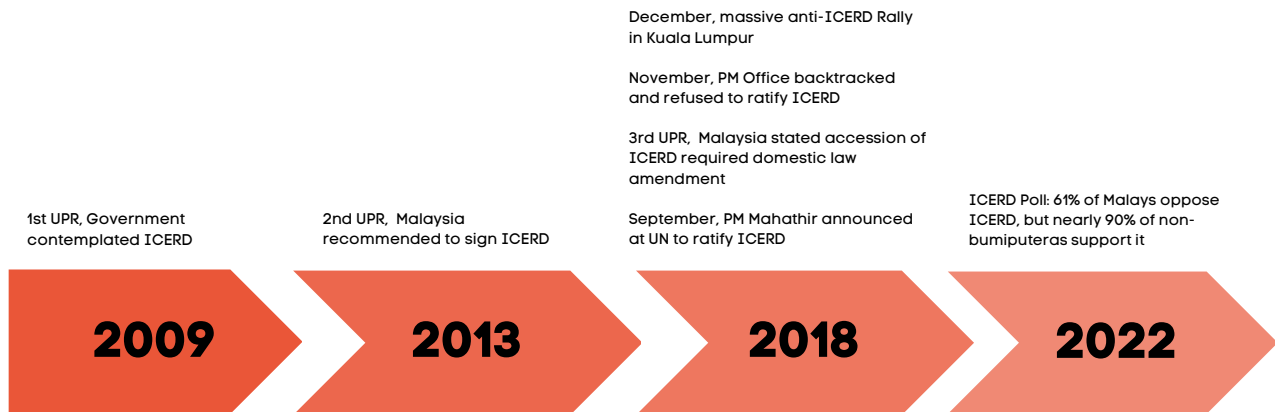
*"The government has not acknowledged the need to ratify international treaties. Instead, it had done the contrary. Legal reform to meet international standards has not been prioritised, which can result in disproportionate sanctions and discrimination against certain individuals".*

With consistent demands from the international community for Malaysia to sign and ratify the core international human rights treaties, the government reacted by buying time and moving back and forth. In 2013, the Malaysian government announced that it would contemplate the option of ratifying key human rights instruments by signing the ICCPR only if it was beneficial to the nation [\(Carvalho, 2013\)](#). In September 2018, Prime Minister Mahathir addressed the UN General Assembly, announcing that the government would ratify all remaining core UN instruments related to the protection of human rights, including ICERD and five other unratified conventions. However, in November 2018, the Prime Minister's Office backtracked and refused to ratify ICERD. Instead, it pledged to defend the provisions of the Federal Constitution after facing strong opposition, especially from UMNO and Parti Islam SeMalaysia (PAS) [\(The Straits Times, 2018a\)](#).

The government decision was celebrated by thousands of ethnic Malays who participated in the massive anti-ICERD rally in Kuala Lumpur in early December 2018 which was pre-planned before the November 2018 announcement was made. In 2022, Merdeka Centre conducted a survey to measure Malaysian adults' perception of signing and ratifying the ICERD. The poll showed that the acceptance of ICERD was divided based on ethnic lines. The Malay community remains reluctant to support the treaty because of a belief in conspiracy narratives such as the possible diminishment of Malay rights. 61% of Malays oppose ICERD, but high numbers of non-*bumiputeras* support it, accounting for 88% of the Chinese and 90% of the

Indians. However, respondents' perception towards ICERD is changing towards a more positive and neutral stance but at a slow pace (Merdeka Centre, 2022).

Figure 2: Malaysia's ICERD Timeline



At the end of 2022, Malaysia has not signed or ratified several core human rights instruments including ICCPR and ICERD. The unity government with its coalition members is unlikely to make progress on the issue. This makes Malaysia one of 14 countries in the world that have neither signed nor ratified the ICERD treaty. It is among only three ASEAN member countries, Brunei and Myanmar, that have still not committed to the ICERD (Lim, 2018). In terms of the ICCPR Malaysia is one of 4 countries in ASEAN, alongside Brunei, Myanmar, and Singapore, that has not ratified the treaty.

Figure 3: ICCPR and ICERD Adoption of SEA Nations

BRUNEI	LAOS	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	TIMOR-LESTE	VIETNAM
✗	✓	✓	✓	✗	✗	✓	✗	✓	✓	✓
✗	✓	✓	✓	✗	✗	✓	✓	✓	✓	✓

Zaid Malek highlighted a key challenge in ratifying international conventions in Malaysia. He said:

*“When they wanted to ratify ICERD, it became a racial issue. People think the accession may threaten the special privileges of Malays in Malaysia. They took the discussion of ratification of these international instruments, put them within the confines of the 3Rs and then made you unable to discuss it openly. Because they confine the conversation under the 3Rs, they’ll likely point fingers at you and say that you’re going against Malay, Islam and Sultans if you say anything about it. If we want to move forward, we have to move away from packaging those international instruments as a challenge to really special privilege or the position of the Rajas or the rulers in Malaysia.”*

Regionally, Malaysia signed up for the regional human rights mechanism by adopting the ASEAN Human Rights Declaration (AHRD) (2012), established in 2012. The declaration ensures that Malaysia will implement the AHRD to promote and protect human rights (Article 2), including freedom of religion (Article 22). Article 23 upholds internet freedoms and freedom of expression. Every person has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person’s choice. However, this declaration has no mandate to force the state parties to implement it since it is not legally binding.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009 as a consultative body with the responsibility to promote and protect the human rights and fundamental freedoms of the people of ASEAN. However, AICHR’s effectiveness in upholding human rights in the region has been questioned since it has focused more on promotion rather than the protection of human rights (Muntarhorn, 2021). Its promotion activities include consultations to implement AHRD Articles (ASEAN, 2019) and the organisation of conventions like the Forum on Freedom of Religion and Beliefs in ASEAN, which provided a platform for members to share their experiences in implementing freedom of religion and beliefs and their responses to challenges, and the High-Level Dialogue on Managing Freedom of Expression in the Information Age (ASEAN, 2018). While AICHR has promoted freedom in the region through consultative and dialogue activities, which resulted in key recommendations, the Commission failed to provide mechanisms to protect people’s freedom of religion and belief.

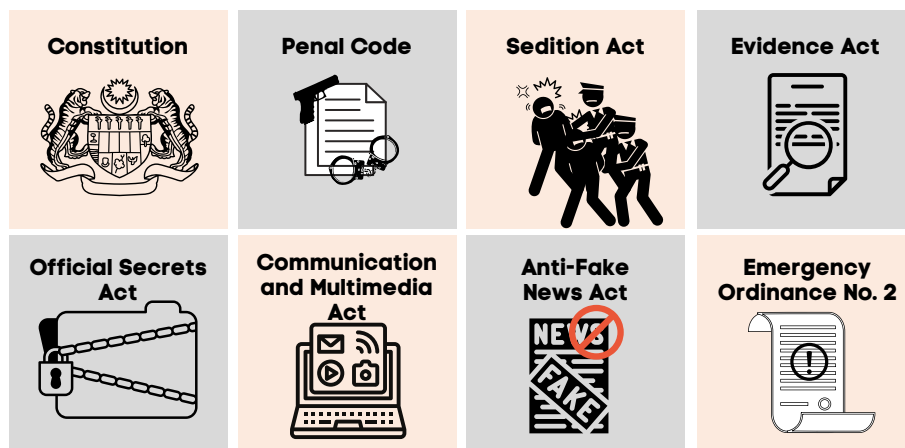
At the national level, the Human Rights Commission of Malaysia (SUHAKAM) was established by the Parliament of Malaysia under the Human Rights Commission of Malaysia Act 1999 (Act 597) and came into force in 2000 with four key functions: promote human rights education, advise the government in formulating legislation and administrative directives, counsel the government on the accession of treaties and other international human rights instruments, and inquire into complaints regarding the infringement of human rights. SUHAKAM has submitted reports to UNHRC during three cycles of Malaysia’s UPR process. Concerning the 3Rs and internet freedoms, in 2008, during the first UPR cycle, SUHAKAM reported a case that the authorities labelled some articles from Catholic newsletters as political and outside religious concerns (UNHRC, 2008c). In its additional response, SUHAKAM issued a separate statement expressing concerns about the threat to suspend the publication of the Catholic newsletter that was deemed to infringe on freedom of expression (SUHAKAM, 2008). In 2013, during the second cycle of the UPR process, SUHAKAM expressed concern that Section 114A of the Evidence Act would undermine and threaten freedom of speech and expression, especially on the internet (UNHCR, 2013c). In the third cycle of the UPR process, SUHAKAM submitted a report to the UN Human Rights Council (UNHRC) warning about an alarming escalation of arrests and charges under the Sedition Act, especially in 2014, against members of Parliament, state assemblymen, students and academicians for criticising the BN government. The Commission also expressed its concern about the Anti-Fake News Bill, thus urging the Malaysian government to sign and ratify the ICCPR (UNHRC, 2018c).

SUHAKAM also investigates human rights violations, including 3Rs-related issues. In January 2021, SUHAKAM called for immediate legal action and remedy after receiving complaints of indigenous children in Sarawak State being forced to observe Islamic rituals such as mandatory attendance of religious classes and wearing veils and traditional Islamic attire. The Commission attributed this largely to interfaith marriages in which one of the spouses no longer wished to practise Islam, often leading to their children being registered as Muslims, despite being raised as followers of other faiths ([Zahid, 2021](#)). In February 2021, SUHAKAM Commissioner Madeline Berma expressed concern over the prevalence of online hate speech mocking Prophet Muhammad and Jesus and using derogatory terminology to refer to specific ethnic groups and beliefs ([Free Malaysia Today, 2021](#)). Additionally, SUHAKAM submits annual reports to Parliament. In its 2019 annual report, SUHAKAM noted it received a total of 1,154 complaints of human rights violations, including 22 complaints on equality and discrimination (based on race, religion, gender, disability, political affiliation etc.) and two complaints on freedom of thought, belief and religion. No complaints were received on freedom of opinion and expression in the period. In the report, SUHAKAM recommended the government repeal the Sedition Act without delay and enforce the Harmony Bills. Meanwhile, the Department of Statistics Malaysia (DOSM) was asked to clarify its definitions of the terms *bumiputera* or 'others' in collecting race and ethnicity-disaggregated data to reduce discrimination and inequalities in the country. It also recommended that the government root its strategies and initiatives for national unity and social cohesion in the Federal Constitution and national human rights obligation ([SUHAKAM, 2019](#)).

Having outlined Malaysia's political background and the role of the 3Rs, the internet and social media landscape and adherence to the international, regional and national mechanisms, the next chapter will review those laws used to regulate the creation and dissemination of online content in the country. It will identify the relevant provisions in the Federal Constitution, the Penal Code, the Sedition Act, the Evidence Act, the Official Secrets Act, the Communications and Multimedia Act, the Anti-Fake News Act, and the Emergency (Essential Powers) (No.2) Ordinance 2021 and list out the sanctions.

## 2. National Laws in Malaysia

This chapter examines laws inherited from the British colonial era that were amended and expanded during the six decades of UMNO-led BN administrations and how they have been used to regulate the publishing and distribution of online content that question the special position of the Malays, Islam, and the Monarchy. These include provisions under the Federal Constitution, the Penal Code, the Sedition Act, the Evidence Act, the Official Secrets Act (OSA), and the Communications and Multimedia Act (CMA). The Anti-Fake News Act, which had been introduced by the BN government, was revoked during the PH administration between 2018 and 2020. Following the exit of PH, the Emergency (Essential Powers) (No.2) Ordinance 2021 which included provisions from the Anti-Fake News Act was introduced and later revoked. Overall, the right to freedom of speech and expression is guaranteed under Article 10 of the Federal Constitution. However, the ecosystem of laws mentioned in Chapter 1 restricts several fundamental rights on different grounds, which impacts internet freedoms in the country.



### 2a. The Federal Constitution of Malaysia

Malaysia's Federal Constitution (1957) give shape to the country's legal foundations. It was first enacted in 1957 and since then, it has gone through 57 amendments. The constitution also establishes the legal framework that regulates the special position of the Malays and indigenous people (*bumiputera*), Islam and Yang di-Pertuan Agong (Malaysia's ruler). These three elements (the 3Rs) are tightly interrelated and form one of the dominant traits of Malaysian society.

Article 3 of the Constitution proclaims Islam as the official religion but also states that other religions may be practised peacefully in any part of the Federation. Article 153 stipulates that the king has the responsibility to safeguard the special position of the Malays and native people in Sabah and Sarawak. This provision also allows the king to exercise all functions necessary to safeguard the special position of the Malays and natives, including reserving positions for public office, education, trade or businesses, and other training or special facilities for Malays and native people. Article 181(1) of the Constitution guarantees the sovereignty and powers of the Yang di-Pertuan Agong and their Royal Highnesses, the Malay Rulers. Proceedings in any court cannot be brought against the ruler except in the Special Court established by the Constitution.

The rights to freedom of speech and expression are entitled to every Malaysian citizen as specified in Article 10 of the Constitution. Yet, this provision allows the Parliament to impose laws restricting such rights

as it deems necessary for public order and national security. The Parliament is authorised to pass the restrictions on a total of eight grounds under Article 10(2)(a): security, friendly relations with other countries, public order, morality, protection of the privileges of the parliament, contempt of court, defamation, and incitement to any offence. Furthermore, Article 10(4) allows the parliament to pass laws prohibiting the questioning of issues and provisions related to citizenship (Part III of the Constitution), the status of the Malay language (Article 152), special position and privileges of bumiputras (Article 153) and sovereignty and prerogatives of the Malay rulers (Article 181).

The power of the parliament over freedom of speech in Malaysia is further exacerbated by Articles 149 and 150 of the Federal Constitution. Article 149 allows legislative action against freedom of speech on grounds like subversion, organised violence, exciting disaffection against the Supreme Head of the Federation or the government, and promoting hostile acts or other actions that alter public order. Article 150 concerns the proclamation of emergency, permitting the creation or amendment of laws in emergency situations. It authorises any legislation that changes the constitution's provision except for grounds on religion, citizenship and language. For example, on freedom of expression, the Emergency (Essential Powers) (No.2) Ordinance in March 2021 was enacted under Article 150 of the Constitution to criminalise offences relating to the creation and dissemination of fake news about the COVID-19 pandemic.

Therefore, although freedom of speech and expression is guaranteed in Article 10, Articles 10(2)(a), 10(4), 149, and 150 limit such freedoms creating room for new legislation that might restrict fundamental liberties. This is problematic because it leads to the creation of an ecosystem of laws to influence narratives on race, religion, and the monarchy and, overall, impact internet freedoms.

**Table 1: Compilation of Malaysia Internet-Related Laws Reviewed & Key Provisions**

<b>Regulation</b>	<b>Penalty</b>
<p><b>Penal Code</b></p> <ul style="list-style-type: none"> <li>• Blasphemy Offense (298/298A (1))</li> <li>• Public Mischief Offense (505)</li> </ul>	<p>Section 298 criminalises the use of words or gestures to wound religious beliefs with 1 year imprisonment or a fine or both.</p> <p>Section 298A (1) criminalises the use of words or gestures to cause disharmony or unity with 2-5 year imprisonment.</p> <p>Section 505 criminalises statements resulting in public mischief with imprisonment of up to 2 years or with a fine or with both.</p>
<p><b>Sedition Act</b></p>	<p>Section 4 criminalises the causing of physical harm/property damage as a result of sedition (first offense) with fine not exceeding RM 5,000, imprisonment for up to 3 years, or both. Second offences onward carry imprisonment of up to 5 years.</p> <p>Under Section 5, the court can impose travel restrictions on a person charged with an offence under Section 4.</p> <p>Under Section 10, the penalty for a seditious publication is subject to a fine not exceeding RM 5,000, imprisonment for no more than three years, or both. A daily fine of RM 3,000 for every day that the publication is not taken down.</p>

**Table 1: Compilation of Malaysia Internet-Related Laws Reviewed & Key Provisions (cont'd)**

Regulation	Penalty
Official Secrets Act	Section 8 criminalises illegal communication of official secrets with imprisonment for 1-7 years. Unauthorised receipt of the official secret carries the same penalty.
Communication and Multimedia Act	<p>Section 211 criminalises content that is indecent, obscene, false, menacing, or offensive with the intent to annoy, abuse, threaten or harass. Penalty is a fine of RM 50,000 max or to imprisonment for a term not exceeding 1 year. It also imposes a further fine of RM 1,000 for each day during which the offence is continued after conviction.</p> <p>Section 233 criminalises those who misuse network facilities or network service or applications to create any comment or other communication which is obscene, indecent, false, menacing or offensive ... with intent to annoy, abuse, threaten or harass another person. If found guilty, a person faces a fine of up to RM 50,000 or an imprisonment term of up to 1 year, or both.</p>

## 2b. The Penal Code

Before Malaysia's Penal Code ([ILO, 2018](#)) was introduced, Islamic law applied in most states in the country, but in the colonial era, the British made treaties with the Malay rulers and introduced a new Penal Code in 1936, which was extended throughout Malaysia in 1976. A revised version of the code was published in the Gazette in 1997. Currently, the code is a product of the 1997 version, although it has gone through several amendments.

Several sections of the penal code have been used as a basis to justify charges and prosecution of journalists, social media users, and bloggers, as shown in section 3c. According to Sections 298 and 298A (1) of the Penal Code, insulting any religion is a criminal offence, albeit in practice, these laws are mostly applied against individuals judged to have insulted Islam ([Freedom House, 2010](#)). Section 298 states that expressing words or making sounds or gestures intended to wound someone's religious beliefs will be considered an offence that shall be punishable by jail time extending to one year, a fine, or both. Section 298A (1) elaborates on that offence, defined as using religious aims to cause disharmony, disunity, hatred, or threaten unity through words, signs, or actions. The punishment for these offences is two to five years in prison. As we Section 3c of this report will show, many actions by Muslim right-wing ultranationalists are not prosecuted.

Under Section 505, making, publishing, or circulating any statement, rumour or report that results in public mischief is an offence. Subsections (a), (b) and (c) specify the scope of the offence based on the effects of those sentences, which might create trouble. The penalty for all subsections is the same, which is imprisonment of up to two years or with a fine or with both. One exception that does not create an offence is that of making, publishing, or circulating a statement by believing that it is true and without any intent of causing mischief.

- **Section 505(a)** specifies that statements made, published, or circulated with the intention or likelihood of causing any officer, soldier, or airman of the Malaysian Armed Forces to mutiny or otherwise neglect or fail in his duty as such.
- **Section 505(b)** specifies that statements made, published or circulated to - or are likely to - create fear and can encourage people to commit a crime against the state is regarded as an offence.
- **Section 505(c)** criminalises spoken, published, or disseminated statements with the goal or likelihood of inciting one class or community of people to commit a crime against any other class or community of people.

As mentioned above, Section 3C of this report provides evidence showing how the penal code has been used to prosecute some stakeholders while others have not.

## 2c. Sedition Act

The British colonial government introduced the Sedition Act in 1948 ([CommonLII, 1969](#)) to crack down on local communist insurgents. The Act's Section 3 (1) defines sedition in six ways.

- A tendency that generates hatred or contempt or to incite dissatisfaction against any ruler - Section 3 (1)(a).
- Inciting the subjects of any ruler to strive to change any issue established by law in any way other than via legitimate methods in - Section 3 (1)(b).
- Inciting hostility or disaffection against the administration of justice in Malaysia or any state was also a seditious tendency - Section 3 (1)(c). This was deleted in the 2015 Amendment.
- Raising unrest or disaffection among the subjects of the Supreme Head or the ruler of any state or amongst the people of Malaysia or any state - Section 3 (1)(d).
- Before the amendment in 2015, sedition was defined as stimulating feelings of hostility amongst Malaysians of various races or classes. After the amendment, it was changed to stimulating feelings of hostility among Malaysians of various groups on the ground of religion - Section 3 (1)(e).
- Challenging any topic, right, position, privilege, or sovereignty created or guaranteed by the Federal Constitution as a seditious act - Section 3 (1)(f).

Sedition offences are determined in Section 4 (1A) under four subsections. *First*, anyone who seeks to perpetrate, perpetrates, or collaborates in acts deemed seditious. *Second*, anyone who states any seditious words. *Third*, anyone who prints, publishes, or facilitates to be published, sells, offers for sale, distributes, or reproduces any seditious materials. *Fourth*, anyone who imports seditious publications. In light of all acts



described under these four subsections, Section 4 (1A) concludes that those who cause physical harm or property damage as a result of such acts are guilty of an offence and, upon conviction, shall be sentenced to imprisonment for a term of not less than five years but not more than twenty years.

The 2015 Amendment includes a new offence for aggravating cases of sedition if bodily harm or property damage is caused. The penalty for these offences also changed. Instead of imprisonment from five to twenty years, the fine for the first offence shall not exceed RM 5,000 (USD1,100), imprisonment for a term not exceeding three years, or both. The subsequent offence was imprisonment for a maximum of five years. The 2015 amendment added a new subsection to Section 5, 5B (1), which states that when a person is charged with an offence under Section 4 and released on bail, the court can impose travel restrictions. The court might order the accused to surrender his travel documents within a specified time or order the Director General of Immigration not to issue any travel document to the accused in case he is a citizen or permanent resident until all proceedings regarding the charge have been concluded. In addition, 5B (2) adds that anyone who does not comply with surrendering his travel documents is guilty of an offence and, upon conviction, is subject to a fine of not more than RM 5,000 (USD1,100), imprisonment for a term not more than three years, or both. Additionally, bail will be revoked by the court.

Section 10, which concerns seditious publication, was also affected by the 2015 Amendment. Previously, publications that could result in sedition acts like unlawful violence or promote feelings of hostility between different classes or races were prohibited. After the amendment, the prohibition terms were altered. As a result, publications that could trigger seditious acts that were likely to cause physical injuries, property damage, and promote feelings of hostility between different races or classes and between people on the ground of religion, were prohibited (Section 10 (1)). Thus, with the amendment, the terms of the prohibition order were extended to cover religious-motivated actions that could result in bodily injury or damage to the property. Additionally, the penalty for a seditious publication was changed to a fine not exceeding RM 5,000 (USD1,100), imprisonment for less than three years, or both. In the case of a repeated offence, a fine of RM 3,000 for each day when the offence continues applies (Section 10 (4)). Previously, the fine was under RM 1,000 (USD215), imprisonment for less than one year, or both.

The amendment included a new subsection under Section 10 (1A) requiring anyone possessing a copy of a prohibited publication to turn it over to the police immediately. This part remained the same as in the previous version of the Act before the amendment. However, with the amendment, the Act's scope became wider to cover prohibited publication by electronic means. In the case of a prohibited publication by electronic means, the prohibition order necessitates the person creating or distributing the prohibited publication to remove or cause the prohibited publication to be withdrawn in whole or in part (Section 10 (5)(a) & Section 10 (5)(b)). Failure to do so is subject to a fine not exceeding RM 5,000 (USD1,100), imprisonment for up to three years, or both. If the offence is repeated, a daily fine of RM 3,000 shall be imposed. If the fine is not paid, the penalty will be jail time for up to one year (Section 10 (5)).

The most important part of the amendment was the insertion of a new section after Section 10 on "special power to issue an order regarding seditious publication by electronic means". According to this section, the court shall order anonymous online seditious publication blocked if it would likely result in bodily harm or damage to property, or generates feelings of ill will, hostility, or hatred between members of racial groups or amongst individuals belonging to different religious groups. Blocking access to such publications is authorised under the Communications and Multimedia Act 1998 (Section 10A).

## 2d. Evidence Act

The Evidence Act ([CommonLII, 1971](#)) became effective in 1950. As a prime source of the law of evidence, the Act outlines the evidential rules and legal principles that apply in all civil and criminal proceedings. However, the 2012 amendment changed how freedom of speech is exercised by shifting the burden of proof onto the accused ([Theophilus, 2012](#)).

In 2012, the Act was amended by inserting a new section, 114a (1-4), on “presumption of fact in the publication”, which specifies that: (1) any person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or republish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved; (2) a person who is registered with a network service provider as a subscriber of a network service on which any publication originates from is presumed to be the person who published or republished the publication unless the contrary is proved; and (3) any person who has in his custody or controls any computer on which any publication originates from is presumed to have published or re-published the content of the publication unless the contrary is proved.

Put simply, the revision places the onus on the computer owner to which a seditious posting is traced or to a website on which a seditious posting has been published unless they can prove they are not responsible for it. This implies any public member can be sued for reposts and/or content generated by others who can access their email, Facebook account, wifi network, or computer. However, website providers can be liable for posts by others on a community online forum they manage ([Wenjun, 2019](#)). Ong Kian Ming, a political analyst and lecturer based in Malaysia, quoted in an Aljazeera report in 2012, said that the Amendment creates a climate of fear where people become afraid to post anything or to allow others to post anything on their online accounts and may even prevent their guests from using their wireless network. He considered the amendment as a governmental attempt to reduce anonymous online attacks and postings against the establishment ([Theophilus, 2012](#)).

During the Malaysian 2013 second UPR process, United Nations Educational, Scientific and Cultural Organisation (UNESCO) noted that the amendment to section 114(A) of the Evidence Act 2012 was problematic for freedom of expression, as the Act placed the onus on the owner of the domain, including social media and blog accounts, to prove his or her innocence in the event of alleged wrongdoing ([UNHRC, 2013b](#)). The report also underlined that 2012, the year when the Act was amended, marked the government’s first explicit attempt to censor the internet used by making computer owners and operators of computer networks responsible for whatever is displayed on their screens ([Ibid](#)).

## 2e. Official Secret Act

The Official Secret Act (OSA) ([CommonLII, 1972](#)) was enacted in 1972 and last amended in 1995. It gives extensive power to the authorities to classify any information as an official secret and prescribes jail time for those who release such information. In Section 2, the official secret is defined as covering cabinet records, State Executive Council documents and documents on national security, defence, and international relations. It also includes other official documents, information and material that may be classified as 'top secret', 'secret', 'confidential', or 'restricted' by a Minister, a Chief Minister of a State or a public officer as appointed.

In Malaysia, the air pollution index readings, highway and water concession agreements, and even sex crime statistics all had been classified as official secrets ([Haas, 2016](#)). The Act is criticised by a UN report and the media sector for stifling dissent, curtailing freedom of expression and reducing government transparency ([UNHCR, 2013b](#)). One of the most notable abuses of the act concerns the 1Malaysia Development Berhad (1MDB) case, a conspiracy case involving corruption, bribery, and money laundering in which the Malaysian sovereign wealth fund 1MDB was routinely defrauded, and its assets were diverted across the globe by the scheme's perpetrators. The BN administration classified the auditor general's report on the 1MDB scandal as secret ([Reuters, 2018](#)). In August 2018, former Prime Minister Mahathir Mohamad accepted that the Official Secrets Act was abused. However, he defended the necessity of the Act ([The Straits Times, 2018b](#)).

Section 8 criminalises wrongful communication of official secrets. Any person who possesses or controls any official secret to (1)(i) communicate directly or indirectly such information to a foreign country, or any person other than those who are authorised could face imprisonment for more than one year but not exceed seven years. Section 8 (2) also criminalises the unauthorised receipt of the official secret with more than one year but not exceeding seven years imprisonment unless the receipt can prove that such action is against his/her desire.

## 2f. Communications and Multimedia Act

The Communications and Multimedia Act of Malaysia (CMA) ([MCMC, 1998](#)) was introduced to govern the communications and multimedia industries in 1998. Its objectives were defined as advancing national policy goals for the communications and multimedia industry, creating a licensing and regulatory framework for those goals, forming the Malaysian Communications and Multimedia Commission (MCMC), and defining the authority for carrying out the provisions of the Act. Its scope is extensive, having ten different parts and 282 provisions regarding various issues such as obtaining licences, powers of the Malaysian Communications and Multimedia Commission, and economic, social, and technical regulations. Alongside the Act's extensive scope, the geographical application of the Act is substantially broad as well, where it applies in Malaysia and beyond its borders.

Although Section 3 (3) states that nothing in this Act shall be construed as permitting the censorship of the internet, Section 211 of the Act criminalises those who provide indecent, obscene, false, menacing, or offensive content with the intent to annoy, abuse, threaten or harass any person with a fine not exceeding RM 50,000 (USD 11,000) or to imprisonment for a term not exceeding a year. It also imposes a further fine of RM 1,000 (USD 228) for each day during which the offence is continued after conviction.

Section 233 on improper use of network facilities or network service criminalises those who misuse "network facilities or network service or applications to create any comment or other communication which is obscene, indecent, false, menacing or offensive [...] with intent to annoy, abuse, threaten or harass another person." If found guilty, a person faces a fine of up to RM 50,000 (USD 11,000) or an imprisonment term of up to 1 year, or both. It also imposes a further fine of RM 1,000 (USD 228) for each day during which the offence is continued after conviction.

During the third cycle of the Malaysian UPR process (2018), the Special Rapporteur on cultural rights called for the amendments in the CMA to be consistent with international standards for freedom of expression and cultural rights and also called for the repeal or clarification of sections 211(1) and 233(1) of the Act ([UNHCR, 2018b](#)).

## 2g. Anti-Fake News Act

The Anti-Fake News Act ([CLJLaw, 2018](#)) came into force in April 2018, one month before the 14th General Election, by the government of former Prime Minister Najib Razak. Under Section 2 of the Act, 'fake news' includes any news, information, data and reports, which are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas. The Bill was tabled on 27 March 2018, and it only took two weeks to be minimally debated, passed and gazetted on 11 April 2018 ([Daud and Zulhuda, 2020](#)).

The Act was introduced on the pretext that it would curb the creation and spread of false news threatening public order and national security in the country. However, it was allegedly a response to what the government deemed as false allegations against Najib Razak of his connection to the 1MDB scandal ([Hacıyakupoglu, 2018](#)), as mentioned in Section 2e of this report, it has been considered one of the hastiest legislation in the history of Malaysia. Section 4 of the Anti-Fake News Act criminalises anyone who creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news by any means with a fine penalty of up to RM 500,000 (USD 109,000), imprisonment for up to 10 years, or both.

Section 5 underlines that providing financial assistance for committing or facilitating those crimes under Section 4 is an offence and subject to a fine of up to RM 500,000 (USD 109,000) or imprisonment of up to ten years or both.

Section 6 criminalises those failing to perform the duty to remove publications containing fake news. This section targets intermediaries and others who control third-party content. Under this section, any person with any publication that includes fake news within their possession or control should immediately remove it after knowing or having reasonable evidence to believe that such publication contains fake news. Any person who fails to perform this obligation commits an offence and is subject to a fine of up to RM 100,000 (USD 22,200) and an increased fine of RM 3,000 (USD 650) per day for a continuing offence.

Section 7 states that anyone affected by a publication containing fake news may apply to the Court for an order to remove such publication. The court order may include particulars of the person required to remove the publication, the procedure, the time within which removal must be made, and any other order the Court deems appropriate. Failure to comply with this rule is an offence and is subject to a fine of up to RM 100,000 (USD 22,200).

Under Section 9, if the person does not remove the publication containing fake news after the order made under Section 7, the Court is authorised to make an order directing a police officer or an authorised officer under the Communications and Multimedia Act to take necessary measures to remove it.

A few weeks after the implementation of the Anti-Fake News Act, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression expressed concerns in its communication over the incompatibility of the Act with international human rights standards and the abuse of the Act to censor and suppress criticism and dissent ([Kaye, 2018](#)).

Following the 14th General Election, the new Pakatan Harapan (PH) coalition took control of the government under the premiership of Dr Mahathir Mohamad, who pledged to repeal the Anti-Fake News Act in his election campaign. In August 2018, as a part of PH's commitment to abolish draconian laws and ensure media freedom, the Lower House passed the Bill to repeal the Anti-Fake News Act. However, it was

blocked by the Senate, where the BN held the majority. Therefore, the Bill had to be tabled again at the Lower House after a one-year cooling-off period. On 9 October 2019, the Bill was passed in the second attempt when 92 members of parliament voted for the law to be abolished, while 51 were against it. The former Bill was officially scrapped on 19 December 2019 ([The Star, 2019](#)). Even before the revocation, issues were raised over its possible after-effects. It was argued that without the Act, there was no legal tool to tackle hateful comments. A commentator stressed that laws to block content that stirred hatred and prevent people from expressing disrespectful comments remain relevant and necessary ([Aziz and Amerul, 2019](#)).

Following the official revocation in December 2019, the spread of fake news increased in 2020 due to the COVID-19 pandemic through traditional and online media outlets. Instead of an anti-fake news law, alternative legislation such as the Communications and Multimedia Act 1998 and the Penal Code were used to prosecute fake news distributors. In November 2020, a proposal to revive the Anti-Fake News Act was discussed in Malaysia's Parliament. Datuk Seri Shahidan Kassin presented the UMNO proposal as a solution to curb the prevalence of fake news ([Danielle, 2020](#)). In response, the government reiterated during the Dewan Rakyat session that it would use existing laws to curb the spread of false information and ensure that people receive legitimate and updated news and reports ([Azmi, 2020](#)).

Section 8 criminalises wrongful communication of official secrets. Any person who possesses or controls any official secret to (1)(i) communicate directly or indirectly such information to a foreign country, or any person other than those who are authorised could face imprisonment for more than one year but not exceed seven years. Section 8 (2) also criminalises the unauthorised receipt of the official secret with more than one year but not exceeding seven years imprisonment unless the receipt can prove that such action is against their desire.

## **2h. Emergency (Essential Powers) (No.2) Ordinance**

In January 2021, a nationwide state of emergency was declared in Malaysia to tackle the spread of COVID-19. In March 2021, the government of Muhyiddin Yassin later enacted the Emergency (Essential Powers) (No.2) Ordinance without parliamentary approval. This law criminalised offences relating to the creation and dissemination of fake news about the COVID-19 pandemic. The government claimed that the Ordinance was used to tackle rampant fake news related to COVID-19 and helped expedite enforcement, investigation and prosecution by authorities who would be hampered by old laws that are ill-equipped to deal with the wide use of social media ([Sipalan, 2021](#)). However, the Ordinance was alleged to follow a structure and contain provisions that were a “copy and paste” from the revoked Anti-Fake News Act.

Fake news is defined under Section 2 of the Ordinance as “any news, information, data or reports, which is or are wholly or partly false relating to COVID-19 or the proclamation of emergency, whether in the forms of features, visuals or audio recordings or in any other form capable of suggesting words or ideas”. The offences are the same as in the revoked 2018 Anti-Fake News Act.

According to Article 3, the application of the ordinance is wide-reaching. Malaysian authorities may target any person anywhere in the world as long as the offence relates to Malaysia or the person affected by the commission of the offence is a Malaysian citizen.

According to Article 4, creating, offering, publishing fake news or publication containing fake news is an offence and subject to a fine of up to RM 100,000 (USD 22,000) or imprisonment of up to three years or both, and an additional fine of up to RM 1,000 (USD 220) for every day during the continued offence after

conviction. Additionally, the Court might order the convicted person of an offence to apologise to the person affected by the offence. If the convicted fails to comply with this order, he/she will be subject to a fine of up to RM 50,000 (USD 11,000), imprisonment for up to one year, or both. Article 5 criminalises providing financial assistance for the aim of committing or facilitating the commission of an offence under Article 4. It is subject to a fine of up to RM 500,000 (USD 109,000) or imprisonment for up to six years or both. Article 6 states that failure to perform the duty of removing any publication which contains fake news is an offence. According to Article 6, the person who has possession, custody, or control of such publication must remove it within twenty-four hours from an order issued by a police officer. Anyone who does not comply with this rule is subject to a fine of up to RM 100,000 (USD 22,000) and an additional fine of up to RM 3,000 (USD 650) per day, the offence continues after conviction.

Article 17 gives extensive power to police officers or any authorised officer to arrest anyone “whom he reasonably believes has committed or is attempting to commit an offence under this Ordinance”. In addition, Article 19 states that any person who does not give access to computerised data and who does not provide the necessary password, encryption code, decryption code, software, or hardware to enable comprehension of the data to a police officer commits a crime. It is subject to a fine of up to RM 1,000 (USD 215) or imprisonment for up to one year or both.

A few weeks after its implementation, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a communication expressing concerns over the incompatibility of the Ordinance with international human rights law ([Khan, 2021](#)). The Human Rights Commission of Malaysia (SUHAKAM) also expressed its concerns that implementing the Emergency (No. 2) Ordinance created a chilling effect on the freedom of expression. The Commission also warned the government to distinguish between criticism of the government and fake news and to take action against the latter ([SUHAKAM, 2021](#)). Seven months after its implementation, the anti-fake news Ordinance, together with six other Ordinances, was repealed by the Upper House of the Parliament in October 2021. Wathshlah summed up the laws in Malaysia that are used to regulate the publication and distribution of content, in particular about the 3Rs:

*"The Printing Presses and Publications Act 1984 allows the Minister to arbitrarily suspend or terminate and revoke media licences creating self-censor so that media publish information and news to avoid penalty. The Official Secret Act is implemented to censor information and continues to create secrecy, undermining transparency and balance-checking. We also have laws like the Sedition Act. It is about censoring actions. We also have some problematic provisions of the Penal Code, such as defamation laws. We also have laws Section 504 or 505 of the Penal Code that are used on the grounds of security or public morality. These laws are used against individuals. Challenges come to internet spaces. The main law covering the internet space is the CMA. Section 3 of that Act is very relevant. It says that the intention of the Act is not to censor the internet. However, many subsequent sections are used to censor the internet. Section 233 is widely used to silence critics, people who comment about royalty, and individuals who bring up issues related to race and religion. These laws work hand in hand to restrict our space both online and offline."*

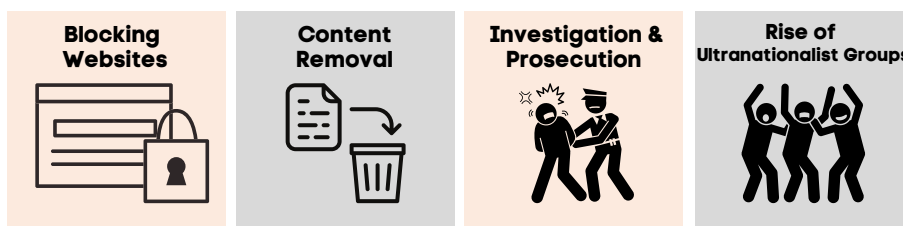
Andrew Khoo, a legal practitioner, pointed out that:

*"One of the reasons why laws are still there to regulate the online discourse on race, religion and royalty is because it is a sensitive topic. People seem to get insulted and take things very personally easily. For example, people think when you insult my king or my sultan, you insult me. So there is that kind of personalization of the hurt that is felt when you hear negative comments. So the law apparently caters for that and allows for that to be the basis on which someone then feels personally hurt that the royal family or the race or the religion has been insulted in some ways. Another justification is national harmony and race relations. And again, people's feelings are very easily hurt when you talk about these things. Then, the danger is that people will overreact to some of these comments that they feel are negative and resort to some violence of ... threats of violence, which may result in some physical conflict or some disturbance to peace and order and national harmony. So the law is used to try and prevent the occurrence of such incidents. So it is written very broadly to allow for even minor insults or comments. Such comments are interpreted as insults, which then trigger police reports and police investigations and sometimes will lead to criminal prosecution and conviction."*

In Malaysia, an ecosystem of laws that protects the special position of the Malays, Islam, and the Monarchy has been in place for over six decades. This legal ecosystem was inherited from the British during their colonial rule in the country and was amended and added to by successive UMNO-led BN administrations. In spite of a changing of administrations, in essence that same set of laws continue to be in place and are used to regulate online discourse that question the special positions of Malays, Islam, and Monarchy. The next chapter provides clear evidence how these laws impact internet freedoms.

## 3. Impact on Internet Freedoms

After reviewing the provisions and sanctions in the Malaysian legislation that regulate online content, this chapter examines specific cases where such an ecosystem of laws has been used to ensure the special position of the Malays, Islam, and Monarchy and suppress progressive 3Rs narratives with fear, thereby affecting internet freedoms in the country. The ecosystem of laws shaped by the UMNO-led BN coalition after inheriting part of it from the British has played a critical role in articulating the 3Rs narrative in the public domain. Although the PH was able to revoke the Fake News Act during its short-lived administration, the ecosystem of laws has been used to block websites and social media platforms, remove online posts, and investigate and prosecute individuals and organisations challenging the traditional 3Rs narrative while allowing hate speech and ultranationalist groups to flourish with limited legal consequence.



### 3a. Blocking Websites

Malaysia's legislation has been used to prevent netizens from accessing 3R-related online content, thus allowing only desirable narratives on race, religion, and royalty. Blocking websites has become an obstacle to advancing internet freedoms in Malaysia. It has decreased internet users' freedom of information and, from the standpoint of content creators, freedom of expression. Moreover, based on international standards, blocking measures can only be permissible in specific situations, such as child sex abuse, the encouragement of genocide, the promotion of national, racial, or religious hatred that encourages discrimination, hostility, or violence, and the incitement of terrorism.

In Malaysia, although the Communications and Multimedia Act (CMA) was passed to regulate the country's communications and multimedia industry and to not allow the censorship of the Internet, the Act has been widely used to block undesirable online content. The Malaysian Communications and Multimedia Commission (MCMC) has used CMA's provisions (Sections 211 and 233) to justify the blocking of websites with topics that are both directly or indirectly related to race, religion, and royalty, including critical political blogs and pornographic and gambling websites ([Sinar Project, n.d.](#)).

As of December 2022, the Censorship Dashboard by the Open Observatory of Network Interference (OONI) shows that 217 websites have been blocked in Malaysia, of which 24 were on human rights, 19 on gambling, 18 on the LGBT community, 15 were news outlets, 13 contained pornography and 7 on religion ([OONI, 2022](#)). The number is a sharp drop from 1,866 websites that were blocked in 2021 ([Ibid.](#)). The MCMC, however, only acknowledged blocking 5,954 online gaming websites between 2018 and 2022 due to violations of the 1953 Common Gaming Houses Act ([MCMC, 2022a](#)).



Malaysia's CMA has also been used to block websites and minimise the attempts to undermine Islam as the predominant religion in the country. The OONI dashboard also showed that between 2017-2022, the number of religious websites that were blocked continued to increase but fell in 2022. In 2017, 15 religious websites were blocked, in 2018 it increased to 47, in 2019 to 54, in 2020 to 89, in 2021 to 106 and in 2022 the dashboard recorded only 7 sites ([Sinar Project, 2022](#)). Selected websites critical of Islam have been blocked to avoid negative perceptions of the Muslim community from flourishing. For example, The Religion of Peace ([thereligionofpeace.com](http://thereligionofpeace.com)) is one website that posts "heavy criticism" of Islam. This website tracks and records the number of terror attacks, suicide blasts, and deaths and injuries worldwide. It also publishes information that documents violence against non-Muslims in Bangladesh and other countries around the world ([Xynou et al., 2016](#)). In 2022, most of the religious websites being blocked in Malaysia feature content that propagates non-Muslim sections, conversion and atheism which are perceived as a threat to traditional Islam ([Sinar Project, 2022](#)), including [Conversion to Judaism](#), [Exmormon](#), [IICO](#), [Jesus Saves](#), [Religious Consultation](#), [Atheist Alliance](#), and [Bahai](#).

Blocking online content limits users' access to online content concerning Islam. Therefore, their opportunities to assess and discuss topics on religion from a range of standpoints, which might not necessarily align with those of the ruling elites, are limited. This impacts internet freedoms negatively in two ways. First, by controlling the online narrative on Islam, freedom of information is limited. Furthermore, the dominance of Islam and the Muslim community is ensured at the expense of the rights of other groups. Second, the fact that some online content is removed is an attack against freedom of expression on the internet, a right that is protected by the Federal Constitution. This creates new political dynamics that can shape electoral results in favour of the Islamic ruling elites, thus undermining the role of opposition parties. For example, in the context of the 2018 elections, the MCMC requested 11 ISPs to block three Malaysiakini websites providing live election updates on the basis that the content would pose a threat to public order ([Malaysiakini, 2018](#)).

Apart from criticising the superiority of Islam, promoting non-Islamic faiths and challenging Islamic ruling elites, the blocking measure is imposed on content that violates Islamic values. In Malaysia, online LGBT content mostly featuring gender identity or expressing sexual orientation, promoting homosexual relationships or supporting the LGBT community get censored. As LGBT content is available on the internet and social media platforms, the authorities censor such content ([OutRight Action International, 2021](#)). For example, in 2021, Gay Star News and PlanetRomeo were blocked ([Ibid](#)). According to OONI's study, cases of blocked access to LGBT community websites increased dramatically between 2017 to 2021. In 2017, 25 LGBT websites were blocked. Then, 28 in 2018, 30 in 2019, 68 in 2020, and 103 in 2021 ([Sinar Project, 2022](#)). As of December 2022, 18 LGBT websites had been blocked by ISPs in Malaysia, such as [Gay Today](#), [LGBT Foundation](#), or [LGBT Global Faith](#) ([Ibid](#)), curtailing people's freedom of expression on the internet.

Ethnic conflict has been a recurrent reason used by the government to justify blocking some websites. Back in 2008, Malaysia Today, a news portal often critical of the government, was shut after posting comments that the government considered could incite members of different ethnic backgrounds in the country. The Malaysia Today case was problematic on two fronts. First, it established precedent since it was the first time a non-pornographic website was blocked. Second, the law was used to curtail and justify a regression in the country's freedom of online freedom of expression ([Reuters, 2008a](#)) that, more generally, has contributed to the overall decline of internet freedoms in Malaysia.

Blocking online content that questions the monarchy's role has also contributed to the overall decline of internet freedoms. Given the royalty's symbolic role in Malaysian society, authorities have tried to protect the royal institution against online criticism by blocking online content. In 2009, Azrin Mohamad Zain

posted a comment on Sultan Azlan Shah's website insulting him. Azrin was fined MYR10,000, and "five others were also charged for "improper use of facilities" by making comments deemed "obscene, indecent, false, menacing or offensive" on the website of the sultan of the northern Perak state, representatives of the attorney general's office said on condition of anonymity citing protocol". Moreover, Azrin's case also shows that Malaysian authorities took the opportunity to crack down on online content. The sultan's website could not be accessed in the days following the incident ([Zappej, 2009](#)).

As the examples above show, blocking online content as a means to regulate narratives on race, religion, and monarchy have been used widely by Malaysian authorities. Malaysia being locked into a 3Rs narrative that puts the interests of Malay and Muslim communities ahead of those of other minorities has challenged the online experiences of netizens and content creators, limiting their freedom of expression in the online sphere and, overall, curbing internet freedoms in the country.

### 3b. Content Removal

Like the previous section on blocking websites, this section focuses on online content. It examines how BN/UMNO era laws have been used to remove 3R-related online content that questions its narrative on race, religion, and royalty. However, this has been at the expense of internet freedoms in the country since removing online content further exacerbates limited freedom of information and expression as explained in the previous section.

According to Google ([2022a](#)), government agencies requesting social media platforms to remove or restrict some of their online content has been a usual practice. Since 2011, Google has received 248 removal requests from MCMC, and other government agencies have requested the removal of 1,319 items from other Google products and services. For example, between April to June 2022, YouTube removed 53,045 videos in Malaysia, making it the 14th country with the most removals online ([Google, 2022b](#)). Facebook further updated that between July to December 2021, the platform had restricted access in Malaysia to 33 items reported by the MCMC. Eight of them were deemed to violate Section 505(b) of the Penal Code, seven items were alleged to violate Section 4(1) of the Common Gaming Houses Act 1953, five items were alleged to violate Section 504 of the Penal Code – unlawful provocation – and thirteen items alleged to violate sections of the Penal Code concerning blasphemy, hate speech and obscenity ([Meta, 2021](#)).

Like Google, other social media platforms have had similar experiences. Between July and December 2021, Twitter received 189 legal demands from government agencies to remove content. Its compliance rate with these requests was 22.8%. From 2018 to 2021, the platform received 496 removal requests, and its compliance rate was 42.3% ([Twitter, 2021](#)). From these examples, it is observed that false information plays a key role in governmental requests for content removal. With the anti-fake news bill, the government can punish those creating and disseminating false information – although what is and what is not false information is often open to interpretation, especially when dealing with politically sensitive topics.

Removing content from the internet has also been used as a medium to protect Islam as Malaysia's dominant religion and the Muslim community in the country. As the outlet Medium ([Bateyko, 2018](#)) stated that Malaysian Internet censors also pull content that offends religious sentiments. For example, Malaysian censors blocked [Steam](#) in 2017, a popular video-game distribution platform, after the release of "Fight of Gods", a fighting game that sets religious figures in opposition. MCMC called the game a "threat to the sanctity of religion and interracial harmony in the country" leading Steam to pull the game from their Malaysian store ([Ibid](#)).

Another example concerns Malaysian journalist Aisyah Tajuddin, whose case exposes how online content criticism of Islam can be taken down as it is deemed sensitive and offensive. PAS, Malaysia's leading Islamic political party, proposed implementing *hudud* laws – in Islam, a mechanism to regulate punishments under Islamic law as mandated by God – in Kelantan, a primarily rural state in northern Malaysia. *Hudud* laws that PAS proposed target and punish “adultery, apostasy, robbery and theft, and prescribe punishments considered cruel or unusual in most countries: public beatings, stoning, amputation and public execution” (BBC, 2015) and represent a strict interpretation of the Sharia law. Aishyah mocked PAS' proposal in a video criticising Islamic law and suggested PAS take care of more pressing issues like the economic safety nets for people following several floods. Backlash arrived shortly after the video was posted on BFM Radio's website, where Aisyah worked, and Malaysian authorities accused her of engaging in a seditious act attempting to hurt the Muslim community, citing Section 298 of the Code, which criminalises premeditated intentions to hurt people's religious feelings (Cheng, 2015). BFM Radio quickly took the video down and issued an apology. However, the video had already gone viral on Facebook and YouTube (BBC, 2015). These examples demonstrate the action authorities take to protect Islam and the Muslim community by removing online content that might affect the dominant or a right-wing narrative of the 3Rs at the expense of the country's internet freedoms. Fundamental rights like freedom of expression and freedom of information, especially those of minority and underrepresented groups, are systematically suppressed pointing to the impact on internet freedoms.

The government also considers the posting of online content criticising the special rights enjoyed by the *bumiputera*, persons of Malay race or from the aboriginal or indigenous tribes in Malaysia, as crossing a red line – like religion and royalty. According to Ahmad (2009), the MCMC has removed online content on race, skipping legal and judicial requirements and can also ask netizens to do so (Freedom House, 2021; MCMC, n.d. -c). Other examples show the attempts of authorities to minimise protests of non-Malay social groups, such as the Indian, with the blockage of online content. In 2009, Malaysiakini, posted two videos showing Shah Alam residents in Sengalor protesting because a Hindu temple in one of their neighbourhoods was being relocated. The MCMC referred to Article 233 of the CMA, which targets offensive content with the intent to annoy, abuse, threaten or harass another person, to order Malaysiakini to take down both videos since they allegedly provided content deemed sensitive that could alter the city's social order (PEN International 2020; Persatuan Kesedaran Komuniti Selangor, 2017).

Social media posts and comments against the Malaysian monarchy have also resulted in online content being removed from the online sphere. In 2021, a netizen used the queen's Instagram account to post a comment asking whether the palace chefs had been vaccinated against COVID-19. According to local media, shortly after the comment was made, the official Instagram account of the monarch responded by asking if the follower was jealous - causing a great deal of controversy on social media. Then, her Instagram account was briefly deactivated and when reinstated did not have the remarks (Reuters, 2021a). However, that incident is just the tip of the iceberg because graphic artist Fahmi Reza later uploaded a Spotify playlist with songs containing the word *jealousy* with a photo of the monarch and linked the playlist to his Facebook account. As a result, the artist was arrested – see section 3c for prosecution cases – and the playlist was censored and deleted, referring to the Sedition Act and CMA (DW, 2021).

Andrew Khoo discussed content removal measures and tech companies' stance, saying that:

*"We tend to see that internet companies do not really understand Malaysian culture and the dynamics of Malaysian culture. So they are quite easily persuaded if there are many complaints, it's more like a numbers game. If there are many complaints about a particular statement, you tend to find that statement gets removed. Even though that statement is acceptable if you look at it from an international human rights perspective. But because there have been many complaints, maybe by the ultranationalists, maybe by cyber troopers, if they make all these ...*

*... complaints, what the Internet companies see is that, oh, suddenly there's this huge amount of complaints about this particular posting. We should block this posting or this particular user from making these postings. I think that the Internet companies take the easy way out, and they will look at, you know, the number of complaints, the volume of complaints, and they will use that as a guide to what constitutes community standards rather than to be objective. And to look at it from a pro ICCPR kind of perspective. So what we tend to find is that there will be racist and nationalistic comments that still get allowed, whereas voices against those that want to talk about minority rights sometimes tend to get shut down."*

Overall, what stands out is that the ecosystem of laws used to regulate online content in Malaysia has major implications for internet freedoms in the country. The laws used to remove online content threatening BN/UMNO views and narratives on race, religion, and royalty limit 3Rs-related content citizens can search online and what news portals and blogs can post about race, religion, and royalty. Regulatory efforts to influence the online narrative by limiting users' exposure to online content that question the BN/UMNO narrative does infringe on internet freedoms. The examples shown in this section demonstrate that Malaysia's legislation has shaped the online 3Rs discourse during the BN/UMNO era and continues to do so even after UMNO's weakening and electoral defeat in 2018. The primacy of the traditional 3Rs narrative over a counternarrative has come with a high cost for internet freedoms, which are severely restricted, preventing users from free access to a range of information sources with views and opinions that might offer content against the interests of the ruling elites.

### 3c. Investigation and Prosecution

Unlike the two previous sections, which focus on online content, this section examines how the violation of individuals' online rights has worsened internet freedoms in the country. It explores how the ecosystem of laws has been used to investigate and prosecute individuals and organisations that create and disseminate online content on race, religion, and royalty-related topics. This part of the report makes two points about those who are deemed to go too far in expressing their views on race, religion, and royalty online. First, the authorities used the law to target, investigate, and legally pressure individuals and organisations. Second, they used the legislation to prosecute and punish them. In both scenarios, the use of laws by the authorities to investigate and prosecute those with critical opinions around the 3Rs has impacted internet freedoms in Malaysia negatively.

In July 2022, Rizal Van Geyzel, comedian and co-founder of the Crackhouse Comedy Club, was arrested under Section 4(1) of the Sedition Act and Section 233 of the CMA after creating three social media posts on Facebook, TikTok, and Instagram that allegedly caused disharmony and incited racial tensions among people. He pleaded not guilty to these three charges, and the court set bail at RM12,000 with one surety. Additionally, Rizal was required to hand over his passport, and the court ordered him not to make any social media posts relating to the case ([Dzulqarnaun, 2022](#)). Rizal's case shows the impact on individuals discussing race-related topics online. First, evidence shows that the law is being used to press legal charges against those posting on issues like race on social media platforms. Second, the legal system is further being used to silence critics with legal requirements to not post on social media, as Rizal's case demonstrates. Both attempt to limit users' freedom of expression and consequently impact internet freedoms in Malaysia.

Many individuals who have been accused of insulting Islam in the online sphere have also been prosecuted. In July 2022, Siti Nuramira Abdullah was detained as a result of a widely circulated video of her performing stand-up comedy that was alleged to be offensive to Islam. In the video, Nuramira revealed at

the Crackhouse Comedy Club that she was Muslim and had memorised 15 *juzuk* (chapters) of the Quran before taking off her hijab and *baju kurung* (Malay traditional costume). She was accused of disrespecting Islam and violating the Penal Code's Section 298A, for causing disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing the maintenance of harmony or unity on grounds of religion ([Khairulrijal, 2022](#)). The following day, Siti Nuramira Abdullah's boyfriend, 38-year-old freelance writer Alexander Navin Vijayachandran, was charged with two counts of uploading material of his partner on Instagram and YouTube accounts that were deemed to be offensive to Islam. The female stripper and her boyfriend were able to crowdfund their RM 40,000 bail ([Asyraf, 2022](#)). In April 2022, Malaysian writer Uthaya Sankar was arrested under Section 298A of the Penal Code and Section 233 of the CMA for his Facebook post allegedly insulting the Islamic prophet Muhammad. During the arrest, police also seized his mobile phone and a SIM card, which were believed to be used for uploading the post. A case like this one exemplifies, once again, how Malaysia's legal system has been used to shape the 3Rs discourse and impacts internet freedoms in the country.

What is more, authorities have also used the threat of prosecution to induce fear in the broader society. After Uthaya Sankar's arrest, the Federal Commercial Crime Investigation Department director warned the public to make smart use of social media and not to use digital platforms to generate public anxiety since it may threaten Malaysia's harmony. Otherwise, firm action without compromise would be taken against any individual who intentionally threatens the country's public order and safety ([DW, 2021](#); [OpIndia, 2022](#)). Another example of religion concerns an individual - whose name was not disclosed - who was arrested under Section 233 of the CMA in April 2021 for circulating a letter on social media allegedly condemning a Masjid and insulting the Malays, according to SUARAM ([2021](#)), a local human rights group. In September, Prajiv Lionel Proctor, 39, was charged under the CMA for posting insulting remarks against Islam and the Monarch. The court allowed the accused bail of RM5,000 with one surety ([Bernama, 2021a](#)). In 2019, a Malaysian individual was sentenced to more than 10 years in prison for defaming Islam and the Prophet Muhammad online. The sentence is thought to be the toughest of its kind ever imposed in the Muslim-majority nation. The unnamed individual had admitted guilt to 10 counts of abusing communication networks under the CMA ([Reuters, 2019](#)).

There have been similar cases of individuals being targeted and prosecuted after criticising the royalty. Their cases further show how the law has been used to press legal charges against them. In April 2022, political artist Fahmi Reza was arrested and remanded for two days under the Sedition Act due to his artwork depicting 'Mojo Jojo', a villainous character from the kids' show Powerpuff Girls, dressed in royal attire. Fahmi's artwork was done in response to the recent report that the Selangor Sultan Sharafuddin Idris Shah had recently purchased a painting depicting members of parliaments as primates and frogs ([Leong, 2022](#)). Before that, in April 2021, Fahmi was arrested under the sedition and communications laws for allegedly insulting the queen by posting a satirical playlist on Spotify ([Reuters, 2021](#)). The activist's case is yet another example of how online critics of the monarchy are subject to being prosecuted over social media posts, shrinking internet freedoms and freedom of speech online. In May 2022, Malaysian police, citing the Sedition Act and the CMA, sought information from the public about Hussein Abd Hamid, who runs the Steadyaku47 blog for his online article which was deemed to have defamed the Pahang royal family ([Free Malaysia Today, 2022a](#)). In February, two university students pleaded guilty for posting offensive remarks against Yang di-Pertuan Agong. Nur Azira Azman, 22 years old, a university student was fined RM 4,000 (USD 920) for insulting the Yang di-Pertuan Agong and the Royal Malaysian Police (PDRM) on Twitter in 2021. Likewise, Muhammad Luqmanulhakim Mohd Aziz, another student from Negeri Sembilan was charged for posting offensive comments about the Yang di-Pertuan Agong and the Prime Minister on social media in 2021 ([Bernama, 2022c](#)). In January 2022, Ganesparan Nadaraja who is believed to be in Germany was charged for allegedly insulting Yang di-Pertuan Agong on social media. Before that, Malaysian police had requested the International Criminal Police Organisation (Interpol) to issue a red

notice against Ganesparan for his online statements against the royal institutions and the Malaysian government (Malaysiakini, 2021). In June 2021, Sarawak PKR member Iswardy Morni was charged under Section 4(1)(a) of the Sedition Act after he allegedly posted a statement on Facebook containing seditious words that tended to insult the king. The Judge set bail at RM5,000 (USD 1,100) in one surety with the additional condition that the accused be prohibited from making seditious comments and causing social distress or public unrest using social media or any print and digital medium ([Bernama, 2021b](#)). There have been more cases of legal charges being pressed against those criticising the monarchy. In 2016, the Communication and Multimedia Act was used to sentence a teenager from Johor to one year in prison after using the TRW Troll Story Facebook group to allegedly post a derogatory comment about the Johor royalty ([The Straits Times, 2016](#)).

Two dynamics can be observed from the cases presented above. First, the BN/UMNO era ecosystem of laws is being systematically used to investigate and prosecute those using the internet to criticise the mainstream 3Rs narrative. In some cases, the law has also been used to legally require them not to post on social media again on such topics. Second, conviction cases are widely being used to send a message to other individuals that those making similar online comments may be prosecuted too. This challenges internet freedoms in the country as it drives online users into self-censorship and refrain from producing, distributing and engaging with such content. Although this report does not contain the views of victims, other studies document Malaysian youth as saying, "that is proof of there being a sort of invisible wall when you want to say the things that you do" ([Johns and Cheong, 2019](#)), leading people to "disengage from posting contentious political' content to Facebook "walls," public forums or Twitter, and to become instead a "paranoid" user of Telegram (a messenger app using end-to-end encryption)" ([Ibid](#)).

There are also other government efforts to reign in criticisms of the 3Rs. In August 2019, the MCMC established a WhatsApp hotline for the public to send screenshots of social media posts presumed "sensitive, inappropriate or negative" on 3Rs ([Perimbanayagam, 2019](#)). In November 2019, six weeks after the launch, MCMC received 21,296 reports about 3Rs social media posts. Out of the total number of reports that the MCMC received, 80% concerned race-related issues and the other 20% concerned religion ([MCMC, 2019](#)). Although those who are being persecuted are not facing legal procedures, a great deal of pressure is being put on their shoulders, constituting an attempt to silence those who are overly critical about issues deemed as sensitive.

Cheryl Lee Yesudas, Communications and Administration Assistant of Article 19, made key observations, pointing out that:

*"The Communication and Multimedia Act is mostly used to criminalise internet users. They used to use the Sedition Act for this purpose before. Then, they used a combination of the Sedition Act and the CMA, sometimes even together with other laws like the 505 of the Penal Code. Now, it seems they just mostly prosecute under the CMA."*

She further highlighted the blurriness of law enforcement, stating that:

*"The CMA just says misuse of network facilities. It can be anything. In 2018, the MCMC report announced to monitor online and convict people for using indecent words. I never see people get convicted specifically for using these words. The line is not clear. Perhaps it depends on the authorities' mood. Everything negative you say, especially towards a public figure in power, can open you up to investigation."*

Additionally, according to Zaid Malek:

*"When it comes to discussions on the 3Rs on social media, the main provision used is Section 233 (1A) of the Communications and Multimedia Act 1998. The Act is problematic in two issues. First, the Act criminalises comments, suggestions and communication which are obscene, indecent, false, menacing or offensive. Most of these categorizations of the statements are subjective. The Act itself does not lend any guide to interpreting what is obscene, indecent, or offensive in character. It will be entirely up to the police or the enforcement authorities to decide whether or not this person has committed a crime of provision 233 (1A). Another interesting point to note is that it does not consider the context of discussion or conversation. Even if it is a purely academic discussion about race, religion or royalty it does not matter because it is only decisive if it is obscene or offensive."*

During the interview, he also assessed the impact of the investigations and prosecutions of individuals, stating that:

*"Obviously, when it comes to criminal prosecutions, the best thing to do is to get a lawyer. If they are unable to access help from NGOs or pro-bono lawyers, it could be costly for them to hire a defence lawyer, which would effectively put a strain on their finances. Additionally, going to court, say at least, once every month until the completion of the trial can take a long time, around one year or one and a half years. So that is time-consuming."*

A media practitioner, whose identity is kept anonymous, said to Asia Centre that:

*"It's sad to see media editors being taken to face charges, but should there be any other way to avoid that from happening, for example, rather than going to court the way you have an intermediary session or things like that, there should be a better way to go about it. The moment you stop the media from speaking, then you stop the people from being able to think because they do not have enough resources or enough views for them to ponder upon before making a decision."*

Overall, investigating and prosecuting individuals and organisations whose content questions the dominant narratives of race, religion, and royalty is a strategy to restrict such content concerning the 3Rs. Such attempts to influence the 3Rs narratives contribute to the decline of internet freedoms. Targeting those posting online content on these topics complements the methods explained in sections 3a and 3b of this report to block and remove from digital platforms that question the 3Rs. In the next section we will see how, with the decline in UMNO, another more right-wing interpretation of the 3Rs to appeal to the Malay-Muslim majority broadly goes legally unchecked and also poses a remarkable challenge to people's fundamental rights and liberties in the online sphere.

### 3d. Hate Speech and the Rise of Ultranationalist Groups

Article 8(2) of the Malaysian Federal Constitution criminalises discrimination based on religion, race, descent, place of birth or gender. Still, the overall decline of internet freedoms and the intolerant 3Rs discourse that advances the interests of the Malay race and language, Islam, and Monarchy has raised concerns about the country's pluralism, inclusion, and social diversity. This section shows that, as part of the political contestation for Malay-Muslim support, an emerging right-wing interpretation of the 3Rs can be the basis for online hate speech and fans the rise of ultranationalist groups threatening the liberties of minority groups, further cracking down on internet freedoms.

Asia Centre (2020) identified in its report *Hate Speech in Southeast Asia: New Forms, Old Rules* four main forms of hate speeches. Those are hate speech against ethnic and religious groups, foreign nationals, migrant workers and refugees, political ideology and values, and sexual minorities. In Malaysia, these four forms of hate speech were evident in the digital space and revolve around the discourse of the 3Rs by propagating the unchallenged special position of Malays and the Malay language, Islam and Monarchy. In August 2022, the MCMC revealed that it received a total of 1,782 complaints regarding hate speech related to race, religion and royal institutions since 2020. The regulator claimed that all complaints were resolved with appropriate actions including, but not limited to, investigations under Section 233 of the Communications and Multimedia Act 1998 as well as administrative actions such as account/content take down notices, website restrictions, abuse reports, advice and guidance on other steps that can be taken by the complainant (MCMC, 2022b). Meanwhile, in August 2022, Trackerbenci, an AI program initiated to track and categorise online hateful speech in the Malaysian context developed by the think-tank The Centre (2022), monthly detected 2,430 hateful tweets targeting ethnic communities, minorities, migrant workers, women and members of the LGBT community.

The first form of hate speech related to issues of race and religion. In Malaysia, hate speech has been used to attack those who publicly challenge traditional Islam and the Muslim community. Sisters in Islam is a Malaysian group that has advocated for the advancement of rights for Muslim women in Malaysia since 1988. Sisters in Islam has been the target of several online violent acts and hate speech triggered by the fatwa, a formal ruling or interpretation about a point of Islamic law given by a qualified legal scholar. In 2014, a fatwa ruled that Sisters in Islam's advocacy of religious liberalism and pluralism deviated from Islamic teachings. Additionally, the fatwa also instructed federal authorities to close their social media accounts (Tackling Hate, 2020). In the context of the COVID-19 pandemic, a Chinese woman falsely accused Malacca Hospital of not treating patients. Her video was uploaded on social media platforms and went viral. As a result, that woman received online pejorative comments regarding her nationality and race and was accused of not adhering to Malaysia's Movement Control Order (MCO) (Tham and Omar, 2020). Another example of religious-motivated hate speech involved the Malay Daily newspaper. In 2011, its front page contained the headline "Christianity the official religion?" claiming that the opposition Democratic Action Party (DAP) was conspiring with Christian leaders to take over Putrajaya and abolish Islam as the religion of the federation" (Mohd Sani, 2013). In response, Ibrahim Ali, the president of the right-wing group PERKASA, called for a *crusade* against Christians who dared to challenge Islam's dominance in the country (ibid).

Cases of hate speech in the online sphere against members of non-Malay ethnic communities have not been unheard of, in particular, directed at citizens of Chinese and Indian backgrounds. The fact that the Constitution regards Islam as the religion of the country and practically the religion of the majority (Wan Husin and Haslina, 2016) gave way to the creation of hate speech against non-Malay ethnic communities like the Chinese and Indians, creating a narrative of 'us' (Malay) against 'them' (non-Malay). The classification of non-Muslims as non-Malays has been weaponised and used in the online sphere by right-wing groups including influential Islamic preachers and Malay politicians as a form of hate-based propaganda. For example, it is not unusual to observe that, in the digital sphere, some members of the Chinese community are being referred to with hateful terms like *pendatang* (newcomers), *kafir* (non-believers/infidel), *balik cina* or *balik tongsan* (go back to China) and *cina-babi* (Chinese Pigs) (Chin, 2022b). The main Chinese-based political party, DAP, even was dubbed 'DAPig', and its followers were frequently portrayed as 'anti-Islam' and a part of a larger Christian plot to harm Malay Muslims (ibid).

The second form of hate speech in Southeast Asia concerns foreign nationals, migrant workers and refugees. Although the Muslim-dominated Malaysian society has traditionally supported the Rohingya Muslim community fleeing from persecution in Myanmar by Buddhist groups, the sentiments of many



Malaysians made a U-turn during the pandemic when fake news was spread that refugees were bringing the coronavirus into the country (Reuters, 2020), paving the way for defamatory cases. Some hate speech directed towards the Rohingya revolved around the privilege and superiority of Malay – a key component of the 3Rs. For example, in the context of the COVID-19 pandemic, some mosques in Malaysia supported a government announcement that non-Malaysian people would not be allowed to enter mosques with anti-Rohingya banners (Sukhani, 2020). Cases of hate speech also grew online as many Malays perceived that members of the Rohingya community demanded Malaysian citizenship and other rights from local politicians. Consequently, many Malaysian citizens expressed discontent at a Facebook post that falsely claimed that a Rohingya leader had demanded the authorities grant Malaysian citizenship to members of his community (Refugees International, 2020). After the rumour was spread, Rohingya supporters received death threats. Tengku Emma Zuriana Tengku Azmi's case, the European Rohingya Council's representative to Malaysia, was targeted after objecting to Malaysia's pushback of boats containing Rohingya asylum seekers (CIJ Malaysia, 2020). Months later, social media posts targeting members of the Rohingya community in Malaysia were still circulating on Facebook, including pages like "Anti Rohingya Club" and "Foreigners Mar Malaysia's Image" – these were removed after Reuters flagged them to Facebook (Latiff and Ananthalakshmi, 2020).

The third type of hate speech was based on political ideology and values. It is used to instigate violence against people who oppose the political establishment and try to bring about regime change. In authoritarian regimes, this kind of hate speech frequently targets activists and members of opposition parties (Asia Centre, 2020). The Malaysian government reportedly adopts non-legal measures, such as cyber troops, to influence online narratives that are the basis for hate speech and crime, which has had a remarkable negative impact on freedom of expression on the net and overall online freedoms (Bradshaw et al., 2020). The report 'Industrialised Disinformation: 2020 Global Inventory of Organised Social Media Manipulation' by Oxford University classifies Malaysia as a country with medium cyber troop capacity having operational teams with a much more consistent form and strategy, coordinating with multiple actor types, and experimenting with a wide variety of tools for social media manipulation (ibid).

Multiple cases of online hate speech motivated by the 3Rs have been reported. In 2018, the conservative forces, particularly the Islamic political parties, defied the PH administration's move to ratify the ICERD by painting the convention and consequently the UN as having "Zionist" agendas (Asia Centre, 2020). A day before the 2014 Teluk Intan by-election, a cyber trooper explained how she contributed to producing a staged video depicting an Indian member of BN being assaulted by a DAP activist who had also insulted his mother and religion. The video contained an explicit message for Malaysians with Indian heritage 'to go and vote for Barisan Nasional and make sure that the DAP loses'. She noted that the video was directly curated for the election, as Indian minorities were the swing voters (Guest, 2018). The video exemplifies how false information and hate speech hinders internet freedoms. On the one hand, it is manipulative and delves into race-related sensitive issues that can result in hate speech.

The final type of hate speech outlined in this report targets women and sexual minorities. Women and members of the LGBT community are often targets of hate speech due to their gender or sexual orientation. In March 2020, Kow Gah Chie, a female Malaysian journalist, was a victim of online hate speech after she published an article in the online news website Malaysiakini, allegedly claiming that the Environment Minister supported a logging company in the northern state of Kelantan. The woman journalist was attacked with a Facebook post citing her Chinese ancestry and threatening to physically harm her (Palatino, 2020). In Malaysia, being lesbian, gay, bisexual, and transgender (LGBT) is legally punishable. Section 377 of the Penal Code criminalises sodomy and carries a penalty of up to 20 years in prison and physical abuse by the state (Reuters, 2008b). In 1998, Anwar Ibrahim was sent to prison for four years after being arrested on sodomy charges, showing how the law on this matter has been used for political

purposes (Baume, 2020). Also in 1998, two women who had had sex with each other were sentenced to a beating by a court (Ibid). Furthermore, members of the Muslim community may also be subject to sharia law and be convicted of capital punishment in court (Reuters, 2021b). Members of sexual minorities have become marginalised and are subject to online and offline harassment because of their online posts and expression. A 2021 study undertaken by Justice for Sisters, Diversity Malaysia, PLUHO (People Like Us Hang Out!) and Queer Lapis confirmed that online hate speech was one of four forms to spread anti-LGBT narratives in Malaysia. Nearly half of the respondents (106 of the total 220) said that they experienced emotional and mental burdens as a result of online hate speech ([Justice for Sisters et al, 2021](#)). A high-profile case was the use of hate speech against a Malaysian Transgender, Nur Sajat Kamaruzzaman. In 2020, the public figure and cosmetics entrepreneur faced doxxing and online hate speech by the public and media outlets after posting pictures and videos on her social media wearing women's attire in Mecca, Saudi Arabia. The transgender victim was attacked by hateful comments for donning the *hijab* and performing her pilgrimage as a woman when her identity is stated as a man ([Ishak, 2020](#)).

The 2022 General Election and its aftermath exemplified how hate speech was weaponised in the digital space to advance the interests of right-wing 3Rs, which threatened social harmony and undermined electoral integrity. The TikTok platform was extensively used as a GE15 campaign strategy to influence the youth voters ([Salleh, 2022](#)), and featured videos inciting hate and divisiveness without any constructive conversations ([Tan, 2022](#)). For one, a viral hateful and race-based content warned of the repetition of the riot on 13 May 1969, the Sino-Malay sectarian violence that took place in Kuala Lumpur which claimed about 200 lives. A media review showed some TikTok videos featuring people displaying weapons such as knives and machetes. Others addressed "young Malay warriors" and threatened Anwar's supporters to "remember the May 13 tragedy" ([Latiff and Chu, 2022](#)). This serious incitement was reacted by all relevant sectors. The MCMC initially warned the public to stop spreading hate speech, especially involving royalty, race and religion, if not those who commit such acts may face jail time and fines under the CMA. The regulator also urged citizens to respect the election outcomes and the Yang di-Pertuan Agong's choice of the 10th Prime Minister ([Sekaran, 2022](#)). An examination by Malaysiakini found at least three of the videos were paid content on TikTok ([Kamarulzaman, 2022](#)). The MCMC and the police stepped up its action by calling on TikTok's management to provide an immediate explanation for the three sponsored videos ([Free Malaysia Today, 2022b](#)). In response, TikTok announced it was on "high alert" for such content that violates its guidelines after authorities warned of a rise in ethnic tension on social media. The platform proceeded to remove videos with May 13-related content and said it had "zero tolerance" for hate speech and violent extremism ([Latiff and Chu, 2022](#)).

Another race-based narrative that emerged ahead of GE15 was the propagation of *Ketuanan Melayu* (Malay supremacy) according to a finding conducted by the Centre for Independent Journalism (CIJ). A viral and hateful content induced Malay-Muslim voters to vote against PH for defending the rights of Malays and Muslims. The Social Media Monitoring Initiative reviewed 52,012 hate speech posts between the campaigning period and found that race-based narratives were topped with 32,066 posts, followed by religion (13,338), gender and comments targeting the LGBTQ community (5,161), royalty (3,968), and anti-migrant and refugee content (2,246) ([Zurairi, 2022](#)). The initiative also identified PAS President Abdul Hadi Awang as a main amplifier of divisive, racist, intolerable, and hate-based narratives based on his hateful and provocative rhetorics such as 'going to hell if you vote PH and BN' or 'fighting against enemies of Islam'. Not only the President, but during the 2022 election, PAS members and supporters also weaponized hate speech against non-Malay and Muslims. For instance, in November 2022, PAS celebrity supporter and actor Zul Huzaimy expressed a wish to slaughter non-Muslims who opposed the Islamic rule purportedly espoused by PAS ([Eng, 2022](#)). Hate speech was also abused to stir hatred and direct the election outcome by other Malay political parties. A widely reported incident was PN leader Muhyiddin Yassin's claim that the Jews and Christians were attempting to colonise Malaysia by working with the PH coalition ([Daud, 2022](#)).

Wathshlah Naidu emphasised the serious impact of hate speech:

*"When we talk about hate speech online/online bullies/online harassment, there are many implications, especially when you look at human rights activists or human rights defenders who experience a lot of online attacks, they tend to withdraw from spaces such as online and public space. They experienced emotional and psychological impacts leading to the impact of public participation. The internet environment is contributing to a kind of spiral impact that is not only yourself but also your life in public."*

Taken all together, the volume of 3R-induced hate speech circulated online demonstrates why internet freedoms in Malaysia have declined. Often the views of some, mostly Malay-Muslim ultranationalists, were protected and not prosecuted, while those expressing dissonant 3R opinions were selectively prosecuted as shown in previous sections. This impacts online freedom of expression because people fear being harassed, attacked or discriminatively prosecuted.

Based on desk research, consultations and interviews, Asia Centre was able to develop a deeper understanding of ultranationalist groups, a key actor using the internet to espouse the supremacy of the 3Rs and erode other's digital rights. The ultranationalists, who upheld the Malay race, Islamic religion and the Sultanate royalty were a faction existing even in the pre-Internet days. The ideology they shared via propaganda was limited to printed materials, publications, speeches, recordings, or films. Nevertheless, these means were costly and not extensively accessible. The arrival of the internet which provided them easy access to the masses at low costs enabled these nationalists to widely promote their agenda through mobile and electronic devices. The ease and reach also increase the aggressiveness of the messages. Furthermore, informational operations that were once a tactic used by state actors due to the associated cost and manpower were now available to non-state actors. These non-state nationalists are preachers, religious leaders, influencers, members of NGOs, opinion leaders or radical extremists. They either joined groups to coordinate their message or operated individually online.

Online ultranationalists and their operations surged after the 2018 General Election and came about after a political vacuum arose when the six-decade rule of UMNO during which time it championed the 3Rs was challenged and lost to a more progressive narrative. In that vacuum, the more right-wing 3R narrative that emerged was led by online ultranationalists that promoted an extremist doctrine of the 3Rs. They patrolled and monitored the online space to promote their discourse, while doxxing individuals, attacking them with hate speech and exposing those who question the 3Rs. Outside of the digital sphere, ultranationalist groups file complaints to the police to prosecute those they disagreed with or report to the social media platform and Internet Service Providers (ISP) to block access or take down the allegedly offensive content. There were also calls to violence on occasion.

Hate speech incited by these online ultranationalist groups – all the while with little to no scrutiny over their conduct – can be partly explained by the lack of political will to call out or prosecute these actions as their actions sometimes are seen as politically favourable to the contesting political parties and coalitions.

Dr Hew Wai Weng observed that:

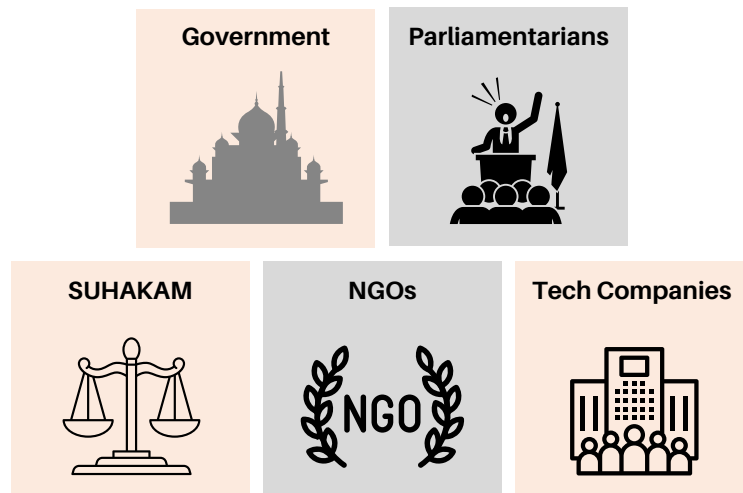
*"More exclusive and more right-wing groups use social media to propagate their agendas. These groups are able to silence people. They used their 'freedom of speech' to limit the freedoms of other people, especially those of minority background – be it gender, ethnic or religious minorities. For example, they campaigned against LGBT people. They monitor LGBT activism online and offline. These right-wing groups are not necessarily state actors. There can be preachers, NGO leaders, and opinion leaders who propagate Malay Muslim insecurity. These ..."*

*people became more active especially after UMNO lost the government in the 2008 election. This gives a vacuum where Malays need to defend Malays. Also, social media platforms allow their voices to be amplified. Many Malaysians are not actually aware of these groups. They cannot see the threat of these groups and think these groups are harmless". However, after the GE15 results, which reflect the rise of PAS, some people begin to aware of the rising right-wing activism."*

This chapter has shown that the ecosystem of laws inherited and amended and added to by successive UMNO-led BN administrations after independence from the British has been politicised to regulate online discussions on the 3Rs. More specifically, the ecosystem of laws has been used to ensure the special position of the Malays, Islam and the Royalty regardless of the BN's loss of political grip in the 2018 elections and the strengthening of a progressive 3Rs narrative. The ecosystem of laws used to stop and criminalise progressive 3Rs narratives that threatened the status quo impacted the online sphere and has resulted in blocked sites, the removal of online content, and the investigation and prosecution of individuals and organisations who question the traditional views of 3Rs. Furthermore, the political weakening of the UMNO facilitated the rise of ultranationalist groups and narratives advocating for more radical approaches to protect and preserve the Malay race, Islam, and Royalty with limited legal consequences. Given these developments, the next chapter lists recommendations that can be implemented to promote and protect internet freedoms in Malaysia.

## 4. Recommendations

This chapter provides recommendations that the Malaysian government can take to strengthen internet freedoms in the country. This includes signing and ratifying key international treaties such as the ICCPR and ICERD. Revise or repeal national laws so that they adhere to international human rights standards. It also contains other suggestions for stakeholders such as the national human rights institution, parliamentarians, technology companies, and civil society organisations to take to equally improve internet freedoms in Malaysia.



- Comply with the recommendations of member states and other stakeholders during the UPR process to, support, and expand the promotion and protection of human rights.
- Sign and ratify the ICCPR and ICERD and align Malaysia’s legal framework to international human rights standards.
- Amend Sections 10, 149, and 150 of the Constitution to ensure that legal restrictions are imposed only by the provision of the law, legitimate aims and necessity.
- Repeal Sections 298 and 298(A) (blasphemy) of the Penal Code that criminalise content or actions that authorities consider an insult to religion.
- Amend Section 505 of the Penal Code to meet the three-part test that allows restrictions of freedom of expression only as provided for by law, and not when pursuing legitimate aims necessary for a democratic society.
- Repeal the Sedition Act that imposes harsh penalties and abuse to criminalise dissent.
- Amend the Evidence Act by dropping Section 114a, which imposes liability on intermediaries.
- Repeal the Official Secret Act to uphold freedom of expression and the right to information.
- Review and amend Section 233 of the Communication and Multimedia Act to clearly define an offence on the improper use of network facilities or network service.

- Do not reintroduce the Anti-fake News law, which does not meet international standards of legitimacy, legality, necessity and proportionality.
- SUHAKAM should continue to monitor, highlight and take action against allegations of harassment, prosecution, and other forms of human rights violations against internet users.
- Parliamentarians should take advantage of their immunity in parliament to advance positive discussions on the 3Rs.
- Parliamentarians should use their lawmaking capacity to create legislation that supports freedom of expression and does not impinge on internet freedoms.
- CSOs in partnership with other stakeholders should promote media literacy among all groups of people in the country at a national level to help them deal with cases of fake news and hate speech related to the 3Rs.
- CSOs should regularly monitor and document harassment, prosecutions or other human rights violations against internet users.
- Tech companies should design and manage their digital platforms so that they adhere to international human rights standards and contribute to fighting fake news and hate speech.
- Tech companies should work closely with CSOs to take note of their assessments and warnings about the issues that impact internet freedoms in the country.
- Tech companies should increase their transparency by publishing all government requests to block online content.

By signing up for international treaties and aligning national laws to international obligations and standards, the Malaysian government can strengthen internet freedoms. Other stakeholders can similarly do their part by undertaking appropriate actions to support the promotion and protection of internet freedoms.

## 5. Conclusion

Although Pakatan Harapan's victory in 2018 generated hope for improving internet freedoms by cancelling the blockage of websites and repealing the Anti-Fake News Act, its collapse in 2020 negated these advances.

Instead, the subsequent Perikatan Nasional administration simply re-continued the six-decade UMNO-led BN administration ecosystem of laws to regulate freedom of expression in the digital space, thus realigning the country with the traditional take on the 3Rs that championed the special position of the Malays, Islam and the Royalty.

In 2022, PH's inability to secure a simple majority of seats also meant it could not once again try to consolidate its progressive brand of 3Rs. Eventually, it formed a unity government with UMNO as a component member. The MOU that anchors the unity government is set to continue this six-decade legal trend.

What this means is that under the unity government, any progressive 3Rs narrative is likely to suffer the same fate as it did previously with blocking, removal, investigation and prosecution of online content and actors challenging the traditional approach to the 3Rs.

Meanwhile, Malaysia is at a political crossroads where political parties that promote either the traditional 3Rs, progressive or right-wing discourse are jostling with each other. The jostling will not end but will impact the construct of Malaysian society.

Pakatan Harapan's victory in GE15 was once again unable to consolidate a progressive approach to race, religion, and royalty that concurrently advocated for a multicultural and multireligious society. Instead, it has to incorporate the UMNO view on the 3Rs that seeks to ensure the special provisions that the Malay and Muslim communities are not questioned.

UMNO's continuous political weakening over the last four general elections – 79 seats in 2008, 88 in 2013, 54 in 2018, and 30 seats in 2022 – has created a power vacuum that is being filled by parties articulating a right-wing discourse.

PAS had 23 seats in 2008, then 21 in 2013, dropping to 18 in 2018 and rising steeply to 43 in 2022. Similarly, Bersatu has also been on the rise, from 13 in 2018 when it first contested to 31 in 2022.

These parties have ridden on the back of ultranationalist discourses at the expense of racial equality, secularism and the primacy of the constitution. In such a context, online harassment and hate speech that has been weaponised with legal impunity needs to be a cause for concern.

Race, religion, and royalty remain vital elements in the politics of Malaysia and are set to impact internet freedoms in the country. Hence, this report provides a set of recommendations, which Asia Centre hopes will ensure a safe discussion of the 3Rs without being affected by censorship or self-censorship.

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