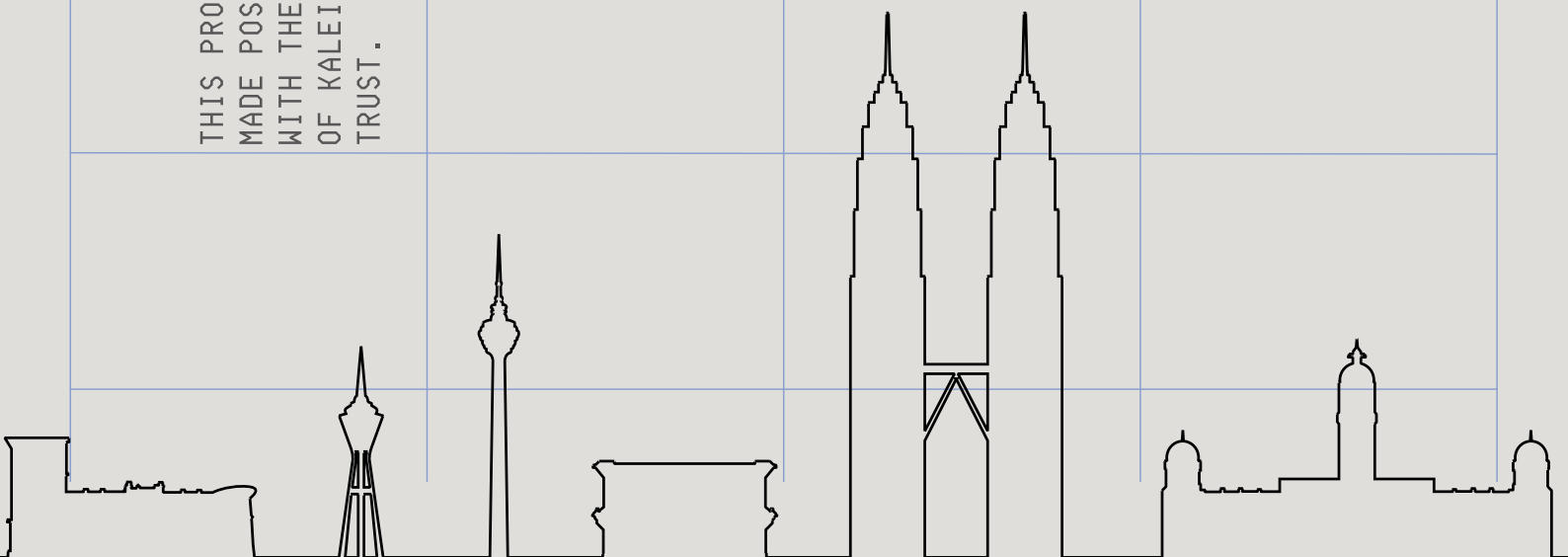


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# Navigating Our Legal System:

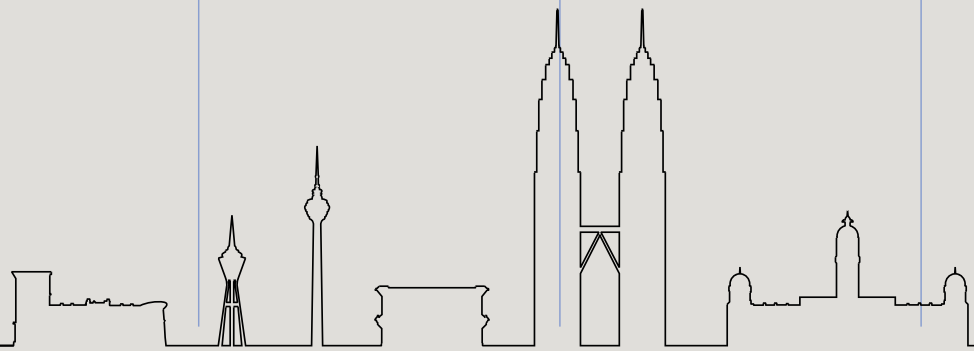
UNDERSTANDING  
SECULAR AND  
SHARIAH COURTS IN  
MALAYSIA

THIS PROJECT IS  
MADE POSSIBLE  
WITH THE SUPPORT  
OF KALEIDOSCOPE  
TRUST.



# Navigating Our Legal System:

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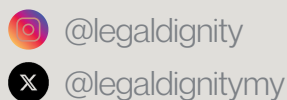


This brief resource has been prepared for Deaf LGBTQ+ community members who participated in our workshop, to support their understanding of the discussions.

Follow us for more information on promoting non-discrimination in access to justice for LGBTQ+ persons in Malaysia:



[www.legaldignity.org](http://www.legaldignity.org)



Legal Inquiry



This project is made possible with the support of **Kaleidoscope Trust.**



**January 2025**

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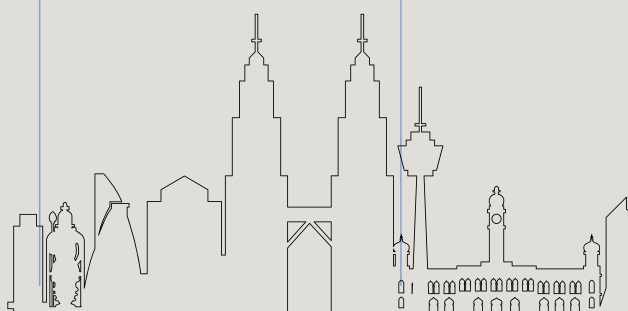
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# Introduction

Deaf LGBTQ+ individuals in Malaysia encounter unique challenges that come from the intersectionality of their disabilities and their sexual orientation, gender identity, or expression.

These difficulties are further compounded by societal stigma, systemic barriers, and inadequate access to legal protections. Understanding Malaysia's legal system—comprising secular (civil) and shariah courts—is crucial for navigating these complexities and asserting our rights.

# Understanding Our Basic Rights in Malaysia

## The Malaysian Federal Constitution

The Federal Constitution is **the supreme law of Malaysia**. Part II of the Federal Constitution of Malaysia guarantees fundamental rights and freedoms to individuals. It includes Articles 5 to 13, which cover various aspects of human rights and liberties.

- These articles form the **foundation of human rights protection** in Malaysia
- They **balance individual freedoms with the state's power** to impose reasonable restrictions for security, public order, and morality.

## ARTICLE 5: LIBERTY OF THE PERSON

- Protects individuals from unlawful detention.
- Provide the rights of an arrested person.
- Guarantees the right to a fair trial.
- Ensures that a person cannot be deprived of life or personal liberty except in accordance with the law.

## ARTICLE 6: PROHIBITION OF SLAVERY AND FORCED LABOUR

- Prohibits slavery and all forms of forced labour.
- Allows for exceptions such as compulsory national service, work as a consequence of a court sentence, or in emergencies.

## ARTICLE 7: PROTECTION AGAINST RETROSPECTIVE CRIMINAL LAWS AND REPEATED TRIALS

- Ensures that no person can be punished for an act that was not an offence at the time it was committed.
- Protects individuals from being tried or punished more than once for the same offence (double jeopardy).

## ARTICLE 8: EQUALITY

- Guarantees equality before the law and equal protection under the law.<sup>[1]</sup>
- Prohibits discrimination based on religion, race, descent, place of birth, or gender in any law or public authority actions.
- Allows special provisions for the advancement of disadvantaged groups (e.g., affirmative action for Malays and indigenous peoples).
- This guarantees all persons equality and protection under the law. However, it does not explicitly address discrimination based on disability or sexual orientation.

[1] See <https://www.thestar.com.my/lifestyle/family/2025/01/17/historic-win-for-oku-rights>

## ARTICLE 9: PROHIBITION OF BANISHMENT AND FREEDOM OF MOVEMENT

- Protects citizens from being banished from Malaysia.
- Guarantees the right to move freely<sup>2</sup> within the country and reside in any part of Malaysia, subject to laws regarding national security, public order,

## ARTICLE 10: FREEDOM OF SPEECH, ASSEMBLY, AND ASSOCIATION

- Protects:
  - Freedom of speech and expression.
  - The right to assemble peacefully.
  - The right to form associations.
- Subject to restrictions in the interest of national security, public order, or morality.
- While broadly applicable, this right is often restricted for LGBTQ+ individuals due to societal norms and legal challenges.



## ARTICLE 11: FREEDOM OF RELIGION

- Guarantees the right to profess, practise, and propagate one's religion.
- States that Islam is the religion of the Federation but does not limit the practice of other religions.
- Imposes limitations to protect public order, health, and morality.

## ARTICLE 12: RIGHTS IN RESPECT OF EDUCATION

- Prohibits discrimination based on religion, race, or descent in the administration of educational institutions.
- Provides for the freedom of religious instruction in schools.

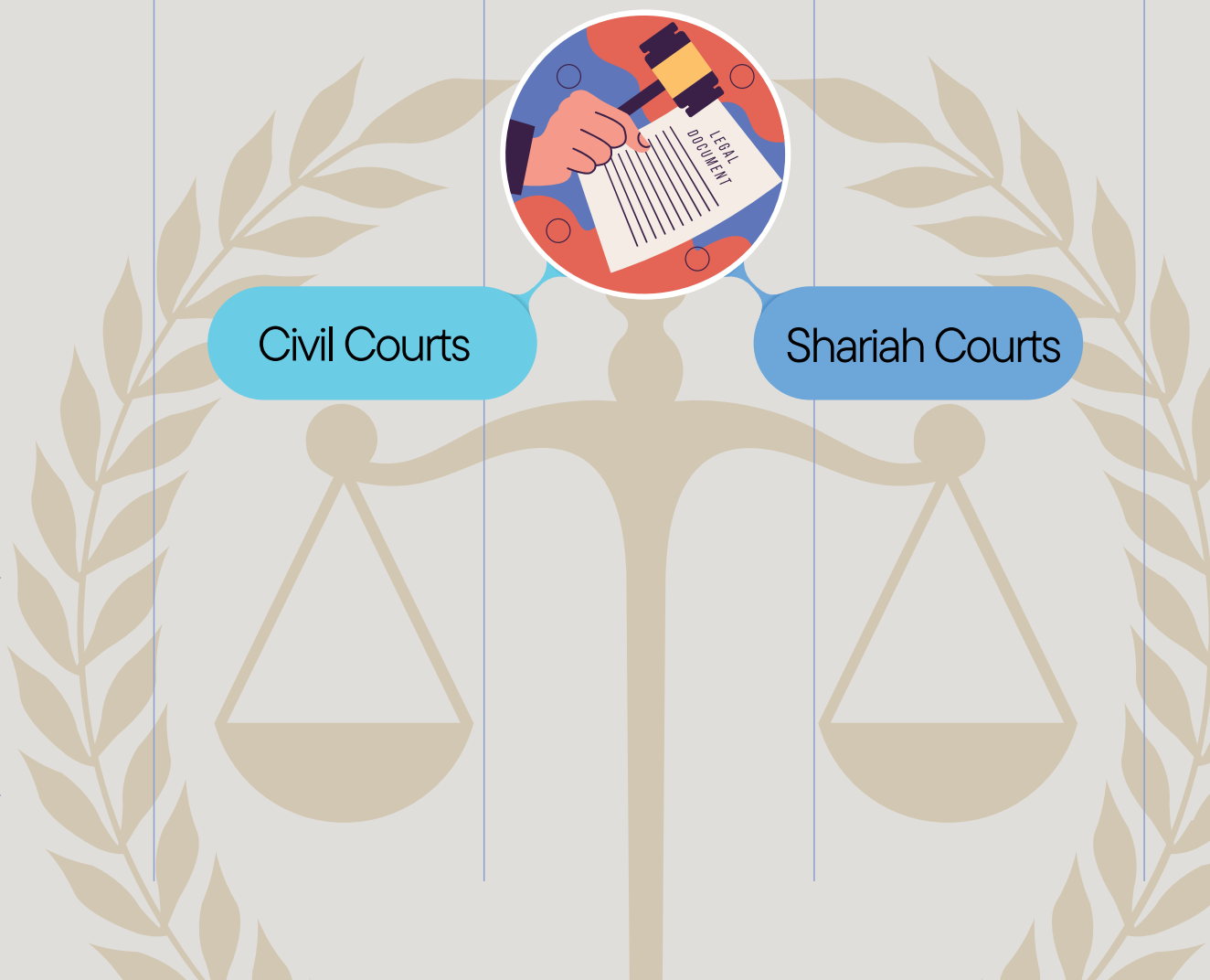
## ARTICLE 13: RIGHTS TO PROPERTY

- Protects individuals from being deprived of their property unless:
  - It is done according to the law.
  - Adequate compensation is provided.

# Malaysia legal framework

Malaysia's legal framework operates on plural legal systems, which are the civil courts, the shariah courts and the native courts.

However for the purpose of our context, we will only share about the civil and shariah courts.





## Civil Courts

- Governed by the Federal Constitution, the supreme law of Malaysia.
- Jurisdiction includes criminal law,<sup>[3]</sup> civil disputes,<sup>[4]</sup> and constitutional matters<sup>[5]</sup> for all individuals.
- Court hierarchy<sup>[6]</sup>: Magistrate's Court → Sessions Court → High Court → Court of Appeal → Federal Court (apex court).

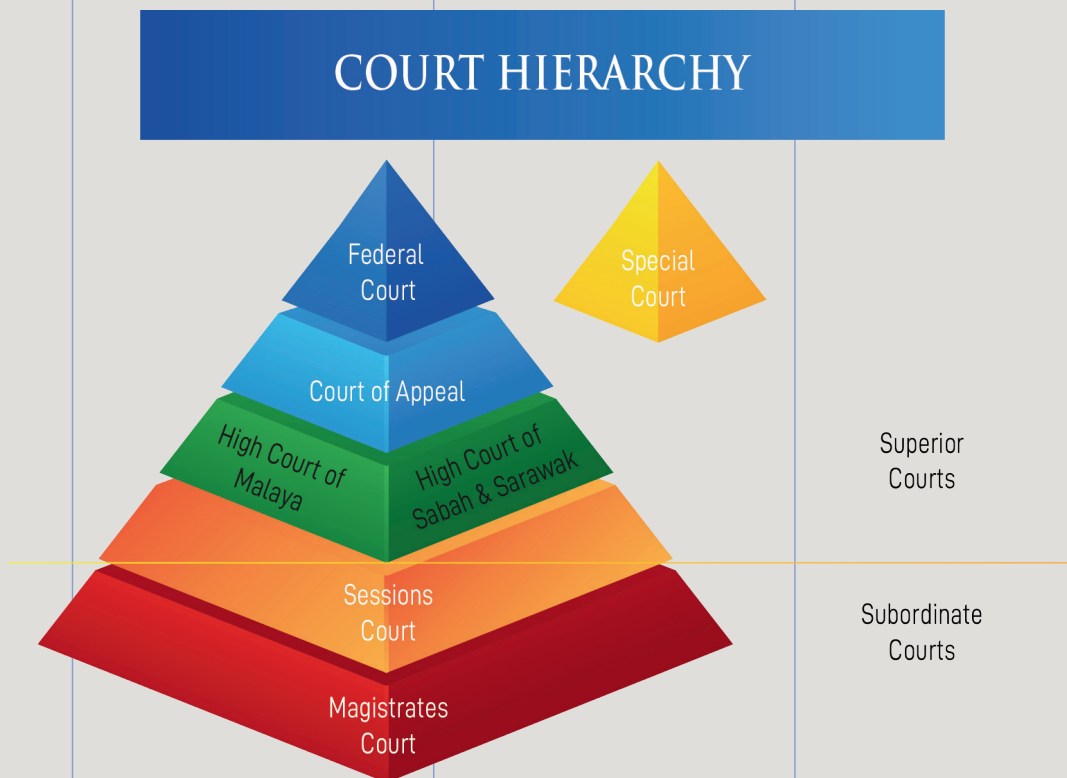


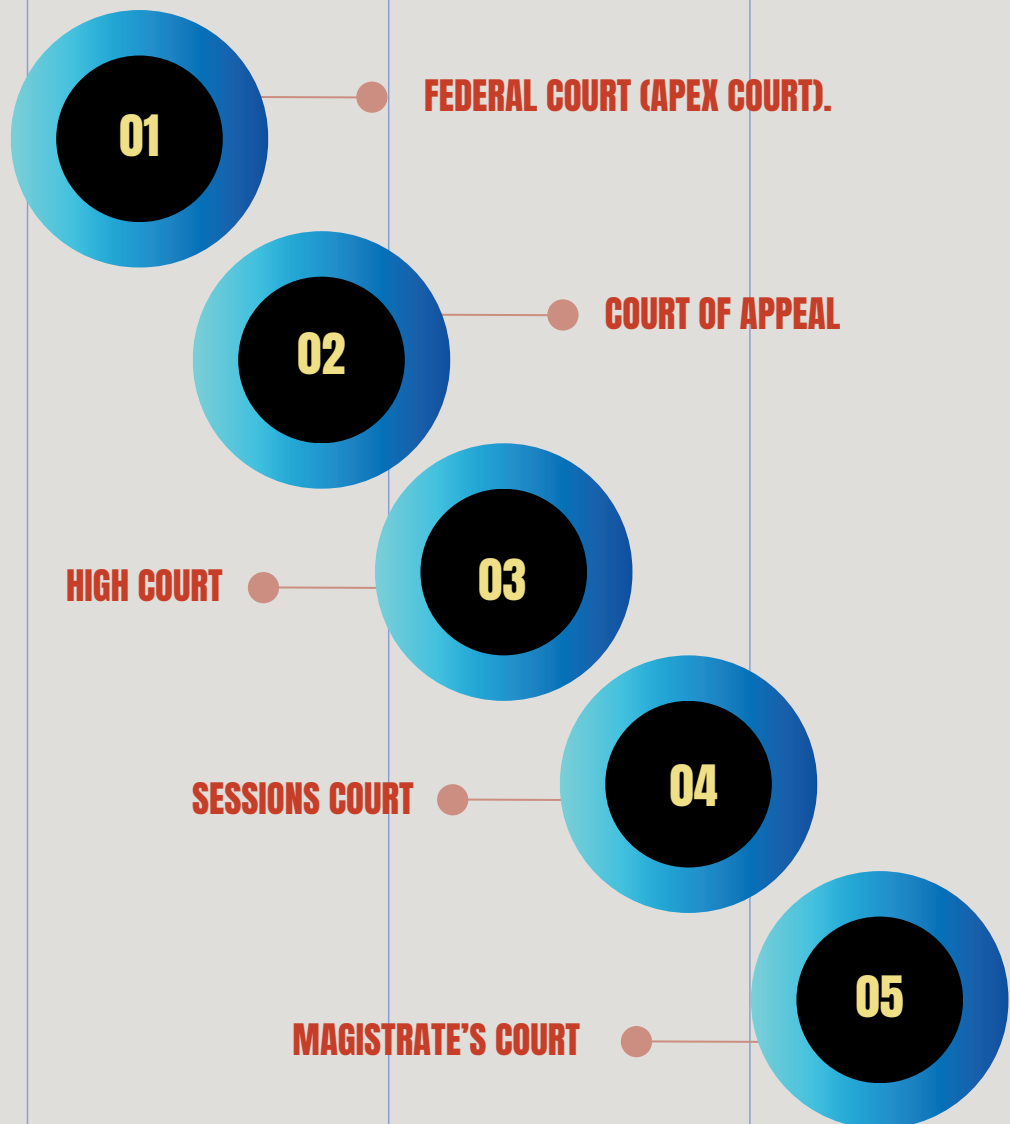
Image: [www.kehakiman.gov.my](http://www.kehakiman.gov.my)

[3] <https://www.kehakiman.gov.my/ms/kes-jenayah>

[4] <https://www.kehakiman.gov.my/ms/kes-sivil>

[5] See <https://www.thestar.com.my/lifestyle/family/2025/01/17/historic-win-for-oku-rights>

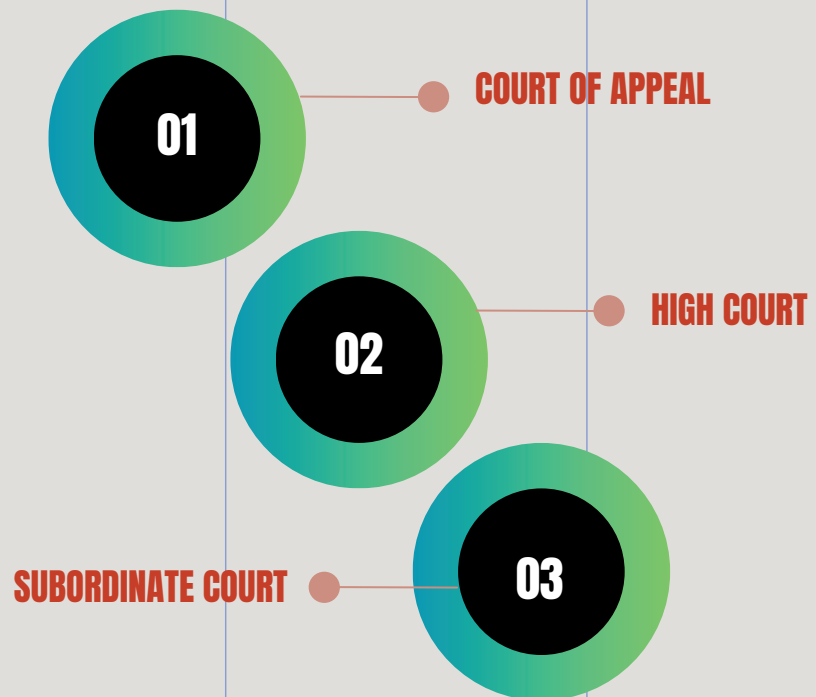
[6] <https://www.kehakiman.gov.my/en/hierarchy-high-court>





# Shariah Courts

- Governed by state-level Shariah enactments, applicable only to Muslims.
- Handle personal and family law (e.g., marriage, divorce, inheritance) and certain criminal offences (e.g., khalwat, liwat, musahaqah).
- Hierarchy: Subordinate Court → High Court → Court of Appeal (highest Shariah authority in the state).



## Persons with Disabilities Act 2008

This Act was a significant step forward for persons with disabilities (PWDs) in Malaysia. Key provisions include:

### RECOGNITION OF RIGHTS

The Act acknowledges the rights of PWDs but lacks enforceability.

### LIMITATIONS

The Act does not include anti-discrimination provisions or mechanisms for holding the government accountable, leaving many vulnerable.

## Shariah Law and LGBTQ+ Persons

Shariah law provisions in various states criminalise consensual same-sex conduct,<sup>[7]</sup> “cross-dressing”, and gender expression. Recent Federal Court cases such as Nik Elin<sup>[8]</sup> and Iki Putra<sup>[9]</sup> have clarified the constitutional limits of shariah law, impacting state enactments. However, enforcement remains inconsistent, and these laws continue to marginalise LGBTQ+ individuals.

[7] We use the term “same-sex” to align with the current legal terminology that criminalizes sexual relationships between individuals of the same sex.

[8] Easy reading, <https://www.elaw.my/LatestLaw.aspx?title=NIK%20ELIN%20ZURINA%20NIK%20ABDUL%20RASHID%20&%20ANOR%20v.%20KERAJAAN%20NEGERI%20KELANTAN&id=I9wBxExDDCJ92NvrE3oiUQ==&type=case>

[9] Easy reading, [https://www.elaw.my/JE/01/JE\\_2021\\_18.html](https://www.elaw.my/JE/01/JE_2021_18.html)

# Challenges for LGBTQ+ deaf persons accessing the Malaysian justice system

LGBTQ+ Deaf individuals face significant barriers when navigating the Malaysian justice system, arising from a combination of societal stigma, legal discrimination, and systemic inaccessibility.

## Inconsistent Implementation of Accessibility Laws



### GAPS IN THE PERSONS WITH DISABILITIES ACT (2008):

Although this Act promotes accessibility and non-discrimination for PWDs, it lacks enforcement mechanisms, resulting in inconsistent implementation in legal settings.



### FAILURE TO MEET CRPD STANDARDS:

Malaysia's commitment to the Convention on the Rights of Persons with Disabilities (CRPD) is undermined by systemic failures in providing equal access to justice.

## Criminalisation of LGBTQ+ identities

- **Discrimination under the law:**

LGBTQ+ individuals face criminalisation under Shariah law for consensual same-sex conduct, "cross-dressing", or perceived moral offences. Similarly under the secular law, consensual same-sex sexual acts are criminalised too. This creates fear of retaliation or prosecution when seeking justice.
- **Civil-Shariah legal system complexity**
  1. The coexistence of civil and Shariah courts complicates legal processes, as LGBTQ+ Muslims may face different rules under Shariah law compared to non-Muslims.
  2. Further the processes and procedures under shariah law may not necessarily be transparent, available freely and could differ from one state to another.

## Lack of Accessibility

- **Communication Barriers:**
  1. Courts often lack certified sign language interpreters, leaving Deaf individuals unable to fully understand proceedings or communicate their case.
  2. Not all certified sign language interpreters are aware and have an understanding of sexual orientation, gender expression and identity concept.
  3. Legal documents are often not adapted for Deaf persons, such as simplified language or visual aids. This also applies to information provided by NGOs.
- **Limited Awareness Among Legal Practitioners:**

Judges, lawyers, and law enforcement officers such as police and religious officers may lack training to handle cases involving Deaf individuals, leading to misunderstandings or procedural delays.

## Fear of Being Outed

- **Confidentiality concerns:**
  1. Reporting discrimination or abuse can inadvertently expose an individual's LGBTQ+ identity, risking social stigma, family rejection, or even further victimisation.
  2. This places individuals in a difficult position, forcing them to choose between protecting their privacy by staying in the closet or coming out and potentially facing severe personal and social consequences.
- **Retaliation risks:**

The fear of being prosecuted under existing laws often discourages LGBTQ+ Deaf individuals from pursuing legal action.

## Lack of Awareness and Resources

- **Limited knowledge of rights:**
  1. Many Deaf LGBTQ+ individuals are unaware of their legal rights, protections under the Federal Constitution, or how to access support systems.
  2. This can also mean there is inherently insufficient information out there that is affirming and friendly towards the deaf community.
- **Inadequate legal support:**

Existing legal aid may not be accessible, the lack of queer-affirming and Deaf-accessible legal services further marginalises this group.



## Economic Barriers

- **Cost of legal representation:**  
Accessing legal support, particularly from LGBTQ+-friendly lawyers or those skilled in Deaf advocacy, can be prohibitively expensive.
- **Socioeconomic challenges:**
  1. Limited access to employment directly related to privileges in accessing quality services.
  2. Socioeconomic challenges faced by LGBTQ+ Deaf individuals often limit their ability to afford legal representation or other justice-related expenses.

## Intersectional Stigma and Discrimination

- **Double marginalisation:**  
As both Deaf and LGBTQ+, individuals face prejudice on multiple fronts—both within the LGBTQ+ community and the Deaf community.
- **Bias in law enforcement:**
  1. Police, religious officers and court officials may hold discriminatory attitudes, dismissing or undermining cases brought forward by LGBTQ+ Deaf individuals.
  2. We have seen how the discretionary power under the Mental Health Act 2001, for example sections 10 and 11, have been used or misused to admit persons with disabilities to psychiatric hospitals, due to entrenched stigma and systemic discrimination. This often means misinterpretation of certain behaviours relating to disability as symptoms of psychiatric disorders.



# Recommendations to overcome these challenges



## Improve accessibility

- Increase funding for sign language interpreters and accessible technologies in education, healthcare, judiciary and public services.
- Develop reporting mechanisms for violence and discrimination that are accessible to Deaf individuals.
- Adapt educational content or information materials to accessible formats for deaf persons.



## Combat discrimination

- Provide comprehensive training for law enforcement and legal practitioners on LGBTQ+ and Deaf inclusivity.
- This should include raising awareness about the stigma and challenges faced by these communities to address and prevent unconscious biases, ensuring fair and equitable treatment for all. Train law enforcement and legal practitioners on LGBTQ+ and Deaf inclusivity.



## Increase advocacy and legal awareness

- Conduct outreach programmes to educate Deaf LGBTQ+ individuals about their rights.
- Conduct awareness campaigns targeting societal attitudes toward Deaf and LGBTQ communities.



## Strengthening legal protections

- Amend the **Federal Constitution** to explicitly prohibit discrimination based on disability and sexual orientation, gender identity, expressions and sex characteristics.
- Revise the **Persons with Disabilities Act 2008** to include anti-discrimination measures and enforceable mechanisms.



## Aligning national laws with the CRPD

- Ensure all policies are CRPD-compliant, particularly regarding accessible communication, inclusive education, and protection from violence.
- Implement recommendations from the CRPD Committee's reviews of Malaysia's compliance.



## Establish support networks

- Conduct outreach programmes to educate Deaf LGBTQ+ individuals about their rights.
- Conduct awareness campaigns targeting societal attitudes toward Deaf and LGBTQ communities.

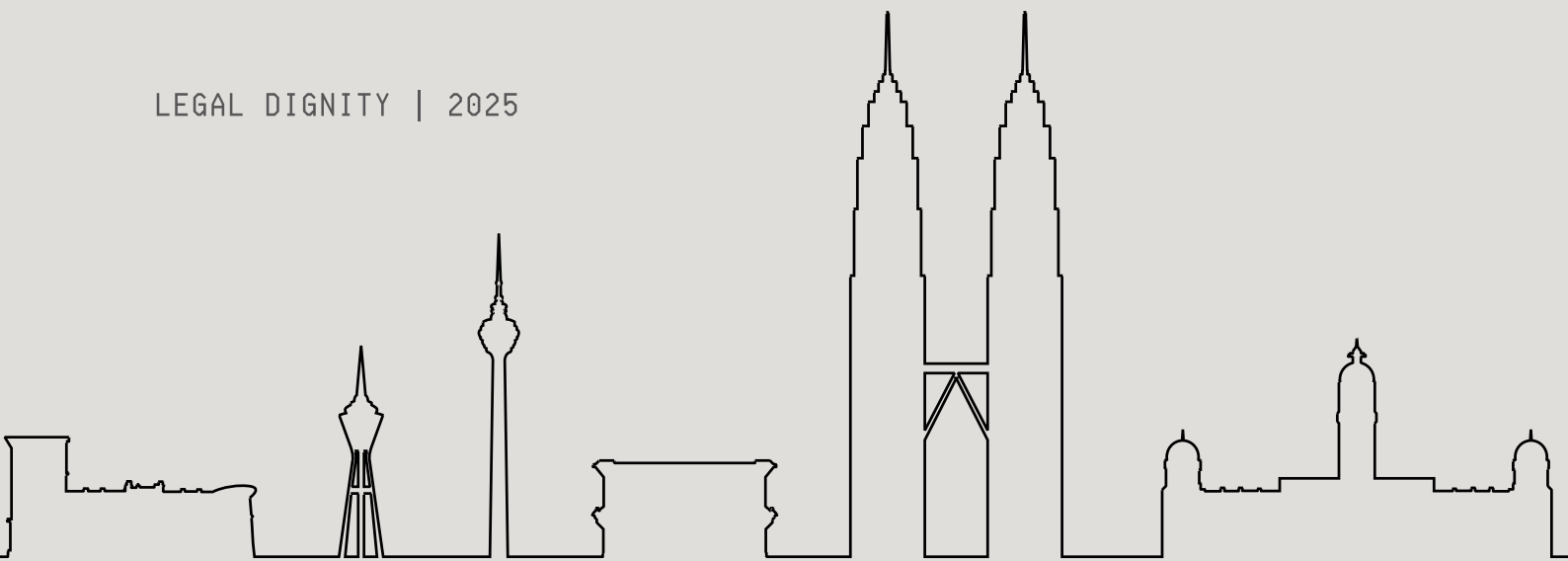


# Glossary

**Affirmative action:** a set of procedures designed to; eliminate unlawful discrimination among applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future.

In Malaysia, affirmative action refers to the preferential treatment of Malays and indigenous groups, as outlined in the provisions of the Federal Constitution.

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# Law is the foundation of justice

