

THE USE OF ARTIFICIAL INTELLIGENCE IN THE RECRUITMENT PROCESS

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Abstract

*The rise of Artificial Intelligence (“AI”) has garnered significant attention among vast members of society, primarily because it affects many fields and industries. This paper focuses on the impact of automated decision-making by way of AI in the recruitment field. While the Malaysian **Personal Data Protection Act 2010** confers data subjects the right to object to the way in which their data is processed, such objections are subject to certain limitations that do not include instances related to the recruitment process in the employment realm. Therefore, this paper aims to address the legal implications of the use of automated decision-making in the recruitment process. Furthermore, this paper will propose the ways in which the legal implications may be overcome with reference to other jurisdictions.*

1. Introduction

The recruitment process is one that is pertinent in ensuring the hiring of a suitable applicant for a particular job function in a company. Over the years, recruitment has evolved to mark its significance from a strategic aspect for the employer’s advantage wherein the *crème de la crème* is chosen through a detailed process.² In the same vein, artificial intelligence (hereinafter referred to as “AI”) has grown rapidly and its relevance has crossed over many disciplines and industries.

In the context of the recruitment process, AI has served as a necessary tool to ease this process. This is because AI tools can function to screen resumes, identify patterns, and

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² Raul Gonçalves Da Cunha Barbosa Do Nascimento, Gilberto Brandão Marcon et al, ‘The Strategic Recruitment Process And Its Impacts On Achieving Organizational Objectives: Bibliographic Review’ (2024) 26 (10) <<https://www.iosrjournals.org/iosr-jbm/papers/Vol26-issue10/Ser-16/A2610160114.pdf>> accessed 8 August 2025.

suggest candidates with the greatest potential for success.³ The reality of these functions however are not as clear cut as described. The very act of resume screening and pattern identification is premised on a sequence of automated decision-making that holds more complexities than one may presume. The effects of using AI in the recruitment process has its advantages and disadvantages, though before delving into such, it is necessary to discuss the role of AI in the recruitment process in a more detailed manner.

2. AI in Recruitment: General

Where the utilisation of AI in the recruitment process is concerned, the applicant tracking system (hereinafter referred to as “ATS”) is often discussed together. This is because the ATS tool provides AI the functions needed in the recruitment process. These functions are performed based on algorithms programmed by humans.⁴ In other words, human involvement occurs at the beginning which is followed by a series of automated decision-making by the system.

An example of automated decision-making is seen in the 2018 incident involving the terms “Jared” and “lacrosse”. The client of an employment attorney was set to vet a company that sells resume screening tools but did not want to commit himself to the said company without first knowing what the algorithm prioritised in an applicant’s curriculum vitae (hereinafter referred to as “CV”). Upon auditing, it was found that the machine deemed two indicative factors to be in favor of one’s job performance. These factors were reportedly in favor of those who are named “Jared” and whether they played lacrosse during their high school years.⁵

The writer extracts that these factors are a product of “algorithmic bias” that is prejudicial to other applicants because such factors do not indicate one’s merit (unless, of course, it is for a career pertaining to lacrosse). Essentially, automated preferences that are prejudicial can emerge, potentially even without the programmer’s awareness. Thus, leading to the dismissal of high potential candidates who have missed their chance due to an overly technical and rigid system. Moreover, the hiring of applicants with lesser merit is a possibility that could lead to the plummeting of employee performance in a particular workplace.

³ *Ibid*, 6

⁴ Dave Gershgorn, ‘Companies are on the hook if their hiring algorithms are biased’ (*Quartz*, 22 October 2018) <<https://qz.com/1427621/companies-are-on-the-hook-if-their-hiring-algorithms-are-biased>> accessed 3 June 2025.

⁵ *Ibid*.

AI's automated preferences taking its course is also seen in a study by the University of Washington where the ranking of resumes was studied by three large language models (hereinafter referred to as "LLM"). The researchers varied names associated with white and black men and women across 550 resumes. It was found that white-associated names were favored 85% of the time, female-associated names at 11% but black male-associated names were never favored over white male-associated names.⁶ The research professor remarked that AI can affect peoples' lives, especially since it is widely available. This widespread availability has long since made its way into the Malaysian landscape and will be discussed briefly below.

3. AI in Recruitment: Malaysia

Many companies in Malaysia use ATS in the recruitment process. As mentioned in the [Introduction](#), ATS undoubtedly eases one's task in managing applications. Examples of ATS includes Workday, which is utilised by big name companies (Shell, Accenture, PwC etc.) and Maukerja with top companies alike (Allianz, Telekom Malaysia, Haier etc.).⁷ As Malaysia's financial⁸ and commercial sectors expand,⁹ large corporations persist in their quest for candidates. However, with this quest comes an underlying concern that applicants may be rejected hastily due to algorithmic bias.

Increased unemployment poses a threat to the nation's economy,¹⁰ and thus, addressing the root issue means protecting people from non-merit rejection. Therefore, it is pertinent to discuss whether such applicants are protected under Malaysia's current laws in the event they become victims of algorithmic bias.

⁶ Stefan Milne, 'AI tools show biases in ranking job applicants' names according to perceived race and gender' *UW News* (31 October 2024) <<https://www.washington.edu/news/2024/10/31/ai-bias-resume-screening-race-gender/>> accessed 4 June 2025.

⁷ Adinda Pryanka, 'Applicant Tracking System: What is it and How to Use it Effectively' (*A Job Thing*, 2 December 2024) <<https://www.ajobthing.com/resources/blog/what-is-ats>> accessed 4 June 2025.

⁸ -, 'Building Momentum: Sustainable Innovation in a Transforming Financial Landscape' (*2024 Finance Malaysia*, 28 July 2023) <<https://www.theasianbanker.com/finance-malaysia-2024/>> accessed 21 August 2025.

⁹ Priya Devan, 'Knight Frank survey indicates optimism for Malaysia's commercial sector this year' *The Edge* (14 April 2025) <<https://theedgemaalaysia.com/node/750003>> accessed 21 August 2025.

¹⁰ Elvis Picardo, 'How the Unemployment Rate Affects Everybody' (*Investopedia*, 19 September 2024) <<https://www.investopedia.com/articles/economics/10/unemployment-rate-get-real.asp>> accessed 21 August 2025.

4. Assessing Malaysian Law

In Malaysia, the primary legislation governing one's rights in the cyber realm is the **Personal Data Protection Act 2010** (hereinafter referred to as "PDPA"). With regard to a data subject's right to prevent certain processing, only two sections confer such a right, and of the two, only one is relevant to the content of this paper, which is **Section 42 PDPA**.¹¹

Section 42 PDPA provides that a data subject has the right to prevent processing that is likely to cause damage. *Prima facie*, this section seemingly protects job applicants from non-merit based decisions as detailed above, since one may presume that such a situation is distressful or damaging to one's career. However, the content of the section is problematic and will be discussed below.

The first part of **Section 42 PDPA** provides that a data subject may, in writing, require a data user to cease or not begin the processing of the former's data. Such an act is known as the service of "data subject notice". The issue with this section arises in the circumstance where the notice shall be served. Firstly, the processing of the personal data shall be likely to "cause substantial damage or ... distress to him or to another person", and such damage and distress should be unwarranted.

While the second part of the required circumstance aligns with instances where non-merit based decisions are made (due to the lack of justification behind such decisions), the first part poses significant ambiguity. This is due to the fact that the data subject must prove "substantial damage" or "distress". Subjective terms that pose ambiguity is not a novelty in law. This can be seen in the past where terms like "rubber",¹² "cannabis",¹³ and "public place".¹⁴ Although dated, the writer's purpose of including these cases is to put forth that over the years, the meaning of seemingly simple words has become an issue – what more for subjective words such as "damage" and "distress"?

Another hindrance that comes with this section is the fact that the subsequent limbs entail the procedural steps required to be taken once such "damage" or distress" has occurred. This is problematic because it does not consider cases where the data subject is not aware of the process behind the recruitment. From the examples above, such as the "Jared-Lacrosse" case and the study conducted by academics of the University of Washington, it is often than

¹¹ The other section is Section 43 PDPA which is limited to instances where the data subject's personal information is being used for direct marketing, hence irrelevant to the paper.

¹² *Kon Fatt Kiew v PP* [1935] 1 LNS 28.

¹³ *Loo Keck Long v Public Prosecutor* [1992] 3 CLJ 1332.

¹⁴ *PP v Chen Geok Len & Anor* [1966] 1 LNS 134.

not that the data subjects are aware of such processing. In essence, distress or damage arising from non-merit based decisions by automated decision-making AI tools cannot be made into a matter of dispute if the data subject does not take action.

In summary, assuming that a data subject somehow discovers that there was no human intervention in the automated decision-making process, how much “damage” and “distress” must he prove for it to be substantial? The readers of this paper are urged to picture a situation where one is able to show that his rejection from a career opportunity was made prejudicially by a company’s AI tool. As a result, he lives a hard life and suffers poverty which leads to “damage” and “distress”. Through this, other legal issues arise such as causation because how can one prove that this sole career rejection led to substantial damage or distress? Many questions arise when **Section 42 PDPA** is discussed and thus, it is pertinent that a reform comes into play.

5. Solution

The solution to the above matter lies in a significant reform of the present law. Reference is to be made to the **General Data Protection Regulation** (hereinafter referred to as “**GDPR**”). **Article 22(1)** confers an individual the right to not be solely subjected to automated processing if one is legally affected. While this section is insufficient to protect a data subject due to the fact that it is only applicable where there has been human intervention and if one is legally affected, **Article 22(3)** functions as a safeguard. The latter states that suitable measures shall be implemented to safeguard the data subject’s rights – at least the right to obtain human intervention on the part of the data controller. The writer of this paper observes that this is an ideal point of reference because it allows for human intervention, thus putting a stop to AI’s potential chain of biasness.

6. Conclusion

In conclusion, automated decision-making shall not be eradicated as a whole because it is highly convenient and efficient. However, human intervention should be incorporated. Ideally, such intervention should take place occasionally throughout the applicant screening process so that, in the words of **Article 22(3) GDPR**, the human is allowed to “express his [...] point of view and to contest the decision”.