

# CONSTITUTIONAL RIGHTS & WHERE TO FIND THEM

*"[I]ndividual rights do not exist in a vacuum. Permitting **unfettered individual rights** in a process that is value-neutral is not the rule of law. Indeed, that form of governance could be described as the antithesis of the rule of law – a society premised on individualism and self-interest."*

*- Chee Siok Chin v Minister for Home Affairs [2005] SGHC 216*

As part of CAPE's infographic series on the Singapore Constitution, we explore in this infographic some constitutional rights that Singaporeans are entitled to and the restrictions that the Government may impose on these rights.



## **i** DID YOU KNOW?

The Singapore courts have not found any law enacted by Parliament to be unconstitutional, except in one case which was subsequently overruled on appeal. This can be attributed to two factors.

On one hand, the text of the Singapore Constitution confers on Parliament a wide discretion to restrict constitutional rights. On the other hand, the Singapore courts adopt an approach that has been described as “highly deferential to the political branches” in constitutional adjudication.<sup>1</sup>

<sup>1</sup> Jack Lee, "Protecting Human Rights: The Approach of the Singapore Courts" Singapore Public Law Blog <<https://singaporepubliclaw.com/2015/03/11/protecting-human-rights-Singapore>>



## Art 9(1) Right to life and personal liberty

**This right can be trumped by:** Any law enacted by Parliament according to proper procedure and fundamental rules of natural justice

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Art 9(1) of the Constitution states that “no person shall be deprived of his life or personal liberty *save in accordance with law.*”

While “personal liberty” has been interpreted in other jurisdictions to include a right to privacy or personal autonomy, this was rejected by the Court of Appeal in ***Lim Meng Suang v Attorney-General***. Instead, the court held that the right refers only to a right against unlawful detention and incarceration.

According to the Court of Appeal in ***Nguyen Tuong Van v Public Prosecutor***, the phrase “save in accordance with the law” means that any legislation which deprives a person of his life or personal liberty may be unconstitutional only if it was not passed by Parliament in a procedurally valid manner or breaches the fundamental rules of natural justice (“FRNJ”).

FRNJ include the right to a fair hearing and the right against bias. In ***Yong Vui Kong v Attorney-General***, the Court of Appeal held that FRNJ do not include a prohibition against inhuman punishment under Singapore law, and upheld the constitutionality of the mandatory death penalty and the punishment of caning.

## Art 12(1) Right to equality before the law & the equal protection of the law

**This right can be trumped by:** Any law that passes the reasonable classification test

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Any law which classifies different groups of people is not unconstitutional if it passes the reasonable classification test, which comprises two stages.

First, the classification must be “intelligible”. A law would fail at this stage only if it is so unreasonable to be illogical and/or incoherent. The Court of Appeal in ***Lim Meng Suang v Attorney-General*** suggested that a law banning women from driving would likely fail at this stage.

Second, there must be a rational (but not perfect or complete) connection between this classification and the purpose of the law. A law would fail at this stage only if there is a “clear disconnect”, such as a ban on female drivers which has no other purpose other than to ban women from driving.

Such a law may however be found constitutional as long as Parliament is able to provide some reason for enacting it (e.g. women drivers cause more traffic accidents than men). In ***Yong Vui Kong v Attorney-General (2015)***, the Court of Appeal held that the exemption of women from caning did not contravene the right to equality because women are “less able to withstanding caning” given the “obvious physiological differences” between the sexes. The court did not go further to scrutinise the legitimacy or soundness of this argument.

## Art 14(1) Right to freedom of speech, assembly and association

**This right can be trumped by:** Restrictions imposed by Parliament in the interest of national security, public order, public morality, laws governing contempt, defamation, parliamentary privileges, etc

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In *Chee Siok Chin v Minister for Home Affairs*, the High Court observed that Art 14(2) grants Parliament a “wide legislative remit” to restrict the freedom of speech and assembly. The phrase “necessary or expedient” in Art 14(2) means that the restrictions on these rights need not be reasonable or necessary to be constitutionally valid.

The Public Order Act (“**POA**”) restricts the freedom of assembly by prohibiting all public assemblies without a police permit. In *Jolovan Wham v Public Prosecutor*, the High Court upheld the constitutionality of the permit requirement and reiterated that the right to freedom of assembly is “not an absolute right”.

Controversially, a permit is required for a demonstration or march even by a single person alone. In 2018, artist Seelan Palay was fined \$2,500 after he walked to Parliament House as part of a performance art piece without a permit.

In addition, because Art 14 specifies “citizens of Singapore”, only Singapore citizens enjoy a constitutional right to free speech and assembly. Non-citizens enjoy such rights as a common law residual liberty, which connotes a weaker degree of protection.

## Art 15 Right to profess, practise and propagate religion

**This right can be trumped by:** Any law relating to public order, public health and public morality

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The right to profess one's religion is recognised as the "only absolute and inviolate right in the Constitution" and ensures that everyone is free to choose to join or leave a religion.

However, as the former Chief Justice Yong Pung How ("Yong CJ") emphasised in ***Liong Kok Keng v Public Prosecutor***, religious freedom is "not an absolute and unqualified right." This is because the rights to practise and propagate one's religion may be curtailed on the basis of public order, public health or morality.

For instance, in ***Colin Chan v Public Prosecutor***, the High Court upheld the constitutionality of the Government's decision to deregister the Jehovah's Witnesses as a society and ban all of its publications. This was because its members' refusal to undertake military duties during National Service was "prejudicial to public welfare and good order in Singapore."

In ***Vijaya Kumar v Attorney-General***, the High Court similarly upheld the constitutionality of the Singapore Police Force's policy to restrict the use of musical instruments during the annual Thaipusam procession in the interest of public order.

## Bonus: An implied right to vote?

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The Singapore Constitution does not explicitly state that Singapore citizens enjoy a right to vote. However, in ***Vellama d/o Marie Muthu v Attorney-General***, the Court of Appeal observed that “voters of a constituency are entitled to have a Member representing and speaking for them in Parliament”.

Subsequently, in ***Yong Vui Kong v Attorney-General (2015)***, the court went further to suggest that the right to vote is an implied right under the Singapore Constitution. It quoted then Minister for Home Affairs, Wong Kan Seng, who said that the right to vote at parliamentary and presidential elections is implied within the structure of the Constitution, which establishes representative democracy in Singapore.

Interestingly, the Government had rejected the 1966 Constitutional Commission’s recommendation to enshrine an explicit right to vote on the basis that Singaporeans at that time had “little experience of general elections nor could it be safely assumed that they have grown up to cherish as an inalienable right the right to be governed by a government of their own choice”.