

SO YOU THINK YOU HAVE CONSTITUTIONAL RIGHTS?

What rights are not enshrined in our Constitution?

In this resource, we present some examples of constitutional rights that you might think you have but are actually absent from the constitutional document or our constitutional jurisprudence!



You do not have:

The right to be free from inhuman punishment

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

In the case of **Yong Vui Kong v Public Prosecutor (2010)**, defence lawyer M Ravi argued that Article 9(1) contains an implied prohibition against inhuman punishment, such as **the mandatory death penalty**. The Court of Appeal rejected this argument and observed that it could not legislate into Article 9(1) a new constitutional right. This was particularly since the Government had rejected a proposal by the 1966 Constitutional Commission to include an express constitutional prohibition against inhuman punishment.

You do not have:

The right to property

Prior to independence, Singapore was part of the Federation of Malaysia, which recognised a constitutional right to property. After Singapore became independent, the Government deliberately removed from the newly drafted Singapore Constitution the constitutional right to property and the requirement for adequate compensation in the event of any compulsory acquisition or use of land by the state.

This permitted the Government to enact the Land Acquisition Act 1966, which facilitated the state's compulsory acquisition of land for national development without incurring significant debt. In 2007, amendments were made to the Land Acquisition Act to provide for compensation based on the prevailing market value of the acquired land.

You do not have:

The right to be free from discrimination on the basis of sex or disability

Article 12(2) of the Singapore Constitution prohibits discrimination only on the basis of race, religion, descent or place of birth.

In **Lim Meng Suang v Attorney-General**, the Court of Appeal held that this is a closed list of prohibited grounds. This means that discrimination on any other ground, such as sex or disability, may not be constitutionally prohibited if it satisfies a threshold “reasonable classification” test.

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Did you know that the NUS School of Medicine imposed a quota on female students until 2004? When then NMP and former President of AWARE Kanwaljit Soin argued in Parliament that this quota “offend[ed] the letter and spirit of our Constitution”, the then Minister for Education replied by saying that this quota was not unconstitutional.



You do not have:

The right to remain silent

Ever heard this when you watched crime shows: “You have the right to remain silent...”? If you are ever arrested in Singapore, you will not hear that phrase from the police because there is no constitutional right to silence!

Also known as the right against self-incrimination, it is not explicitly recognised in the constitutional document. The Criminal Procedure Code however recognises a privilege against self-incrimination, which means that an arrested person need not answer incriminating questions during police investigations.

In **Public Prosecutor v Mazlan bin Maidun**, then Chief Justice Yong Pung How held that elevating the privilege against self-incrimination to a constitutional right would amount to an “adventurous extrapolation which we do not consider justified”.

You do not have:

The immediate right to legal representation after arrest

Article 9(3) of the Singapore Constitution states that a person who is arrested is allowed to consult and be defended by a legal practitioner of his choice. However, the Court of Appeal in **Jasbir Singh v Public Prosecutor** held that this does not mean that an arrested person has an immediate right to access to counsel.

Instead, he may do so within a “reasonable time” after his arrest to allow the police to carry out investigations. In some cases, arrested persons were only granted access to counsel after more than 2 weeks. Law professor Ho Hock Lai observed that access to counsel only after the completion of investigations may render ineffective this constitutional safeguard to deter improper pressure to confess, possible mistreatment and inaccurate recording of statements.

You do not have:

The right to be informed of your constitutional rights

In **Rajeevan Edakalavan v Public Prosecutor**, then Chief Justice Yong Pung How held that Article 9(3) did not contain an implied right to be informed of one's right to counsel. This means that arrested persons need not be told by the police that they have a right to consult their lawyers when they are undergoing police investigations.

Law professor Thio Li-Ann has suggested that the right to be informed of one's constitutional rights should be regarded as an ancillary or facilitative right "designed to effectuate the realisation of existing constitutional guarantees."