

THE NATURE AND SCOPE OF THE RIGHT TO VOTE IN SINGAPORE

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Democracy (from the Greek *dêmos* “people” and *krátos* “rule”) is premised on popular vote. Government decisions are made by the people themselves, their elected representatives, their nominees, or some combination of the above. The right of the people to vote, either in referendums or in elections, are hence fundamental and central to any democracy – democracy without voting is simply a contradiction in terms.¹

One might expect this centrally important right to be enshrined in constitutional documents, and not be subject to much confusion. However, in Singapore, the precise nature and the scope of citizens’ right to vote remains murky, a rather unsatisfactory state of affairs. It is suggested that the inclusion (by constitutional amendment) of an explicit constitutional right to vote would reduce much of the surrounding uncertainty.

THE *STATUS QUO*

The right to vote is not explicitly recognised in the Constitution, but has been explicitly declared by Minister for Law Mr K Shanmugam as an *implied* constitutional right.² More recently, the Court of Appeal in *Vellama d/o Marie Muthu v Attorney-General*³ opined (in *dicta*) that voters in

¹ Nominated Member of Parliament Prof. Thio Li-ann made a similar point in Parliament when she said: “Voting rights are the hallmark of democracy; it is the Political Right of rights, a Super-Right necessary for democracy to function authentically.” *Parliamentary Debates Singapore: Official Report*, vol 85 at col 3119 (12 February 2009) (Prof. Thio Li-ann).

² *Parliamentary Debates Singapore: Official Report*, vol 85 at col 3157 (13 February 2009) (Mr K Shanmugam).

³ *Vellama d/o Marie Muthu v Attorney-General*, [2013] 4 SLR 1 [*Vellama*].

a constituency are “entitled to have a Member representing and speaking for them in Parliament”,⁴ somewhat mirroring the aforementioned declarations by the Minister in Parliament.

The right to vote is further explicitly detailed in the *Parliamentary Elections Act* [PEA],⁵ which provides that “any person who [is qualified to vote] shall be entitled to have his name entered or retained in a register of electors in that year”.⁶ The PEA further states the conditions providing for the qualification and disqualification of voters, and provides the electoral procedure. It seems clear that each citizen who qualifies under the PEA has a private statutory right to vote.

However, it is uncertain if a *constitutional* right to vote exists, and even if it does, the precise nature and scope of such a right remain unclear. While the Minister for Law and the Attorney-General may explicitly recognise a constitutional right to vote,⁷ neither office is vested with the constitutional power to make definitive pronouncements on constitutional interpretation – only the Courts may do so.⁸

While there seems to be judicial recognition in *Vellama*⁹ of a *public* constitutional right to vote,¹⁰ the pronouncement was ultimately *obiter* and not *ratio* (albeit rather strong *obiter*). Furthermore, the Court in *Vellama* did not clearly rule if citizens also have a *private* (*i.e.* personal) constitutional right to vote, one that is capable of being enforced by individual citizens who claim that their right to vote has been infringed upon by executive or legislative actions. The Court in *Vellama* merely suggested the existence of such a private constitutional right,¹¹ though not making a definitive pronouncement on its existence or its scope.

⁴ *Ibid* at [79].

⁵ *Parliamentary Elections Act* (Cap 218, 2011 Rev Ed Sing).

⁶ *Ibid* at s 5(1).

⁷ In his speech, the Minister for Law noted that he had “consulted the Attorney-General who agrees with [him] on this.” *Supra* note 2.

⁸ *Constitution of the Republic of Singapore* (1999 Rev Ed), art 93.

⁹ *Supra* note 3 at [27].

¹⁰ A public right is one which is “*shared in common* with other citizens” (*Vellama* at [33]), and would arguably only require that elections be held (*i.e.* an individual cannot assert that his public right to vote is violated if an election is held, even if he is personally denied his right to vote – he would have to rely on a private or personal right).

¹¹ *Supra* note 3 at [27], [37].

Whether the *private* right to vote is *constitutional* or *statutory* is of monumental importance. The *public* right to vote is arguably satisfied as long as elections are held in accordance with the *PEA*. If a citizen's *private* right to vote is merely statutory, it can arguably be circumvented by the legislature amending the qualification (or disqualification) provisions in the *PEA*¹² (assuming that these amendments are not unconstitutional in some other way). However, should such a private right to vote be *constitutional*, a citizen would likely be able to successfully quash a legislative amendment that removes his or her ability to vote.

A citizen's private right to vote is already significantly curtailed by the *PEA*. Would-be voters can be disqualified if they are accused of or serving a sentence punishable with a 12 months' imprisonment or more,¹³ or if they had not voted in a previous election and had not registered to be restored to the register of electors,¹⁴ for which they have to provide a 'good and sufficient reason' or pay a sum of money.

Under the current *status quo*, it remains unclear if the right to vote is constitutionally protected, and if so, what the 'irreducible core' of the right to vote – that which cannot be modified or infringed upon by legislative or executive action – is. In other words, when is legislative or executive action impacting a citizen's right to vote unconstitutional?

AN "IRREDUCIBLE CORE" OF THE RIGHT TO VOTE?

The procedural aspects of citizens' rights to vote are detailed in the *PEA*, all of which are merely statutory in nature, and can be legislatively amended, unless any of these provisions are within the 'irreducible core' of the right to vote.¹⁵

Indeed, the *PEA* provides many of the conditions of the electoral process, including detailing the qualifying criteria for voters,¹⁶ providing that each voters has exactly one vote,¹⁷ and

¹² *Supra* note 5 at ss 5, 6, 7.

¹³ *Ibid* at s 6(1A).

¹⁴ *Ibid* at s 43(3).

¹⁵ If one of the provisions within the *PEA* is also part of the constitutional right to vote, then a legislative amendment that purports to remove or change that provision may be unconstitutional.

¹⁶ *Supra* note 5 at s 5.

providing that the elections be held by secret ballot.¹⁸ However, as the scope of the *constitutional* right is still unclear, drastic changes to the *PEA* which significantly curtail citizens' rights to vote (such as by increasing the voting age from 21 to 40), change the impact of voting (such as by giving some classes of citizens a larger entitlement of ballot papers), or affect each citizen's tendencies to choose (by removing secret votes) are all *prima facie* constitutional. While these hypothetical amendments are politically undesirable (and Parliament can be said to be *politically* constrained), they can still arguably be legitimately made without any *constitutional* amendments. If this is truly the case, then it is arguable that the right to vote does *not* enjoy the "highest possible legal protection"¹⁹ in the land typically afforded to a constitutional right, unlike what the Minister for Law alluded to in his speech.²⁰

What then, is within the 'irreducible core' of the right to vote? There is scant guidance from judicial or Parliamentary pronouncements, except from the rather narrow *dicta* in *Vellama* which states that the Prime Minister "cannot... [be] completely free to do as he pleases, even to the extent of delaying indefinitely the calling of a by-election",²¹ although he maintains a "substantial measure of discretion".²² This "substantial measure of discretion" may also be said to apply to the legislature seeking to amend the *PEA*, since it is typically afforded a "strong presumption of constitutional validity".²³

At the moment, it seems that the 'irreducible core' of the right to vote arguably only comprises "elections being held within a reasonable period", and, barring exceptional circumstances, it is unlikely that a constitutional challenge of legislative or executive acts which relies on the constitutional right to vote will succeed.

THE VALUE OF AN EXPLICIT CONSTITUTIONAL RIGHT TO VOTE

¹⁷ *Ibid* at s 42(1).

¹⁸ *Ibid* at s 42(3).

¹⁹ *Supra* note 2 at col 3158.

²⁰ *Ibid*.

²¹ *Supra* note 3 at [78].

²² *Ibid* at [87].

²³ *Public Prosecutor v Taw Cheng Kong*, [1998] 2 SLR (R) 489 at [60].

Much of the uncertainty regarding the right to vote can be remedied by inserting an express Article into the Constitution to lay out and protect the right to vote. In this regard, I disagree with the Minister for Law's comments²⁴ that the express recognition of this right is unnecessary as it is already well recognised as an implied right – the precise nature and scope of this right is far from clear, and should be recognised explicitly, especially given its fundamental and central nature in a democratic society. The explicit recognition of this “Super-Right”²⁵ would also “affirm its primary importance”²⁶ and provide it with the constitutional status and protection it deserves.

²⁴ *Supra* note 2.

²⁵ In Prof. Thio Li-ann's words, *supra* note 1.

²⁶ *Ibid.*