

**Singapore**

A decorative graphic consisting of several parallel diagonal stripes in shades of gray, located on the right side of the dark horizontal band.

# Singapore

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## **Introduction**

Singapore is a paradox of a modern city-state. It sits within a discordant clash of values and an uneasy mediation of seemingly contradictory impulses. It is one of the most open and developed countries in Asia and the third richest country in the world,<sup>1</sup> with a world-class infrastructure and a highly educated populace.

Yet, there are darker facets to Singapore's sprawling 'First World-ness' that gradually chip away at its image as a progressive modern city-state: the government continues to place restrictions on civil and political rights; it retains the use of the death penalty and caning; and in a country that relies heavily on foreign labour, the rights of migrant workers receive shockingly scant protection. Indeed, the Singapore government has long eschewed liberal human rights for a 'communitarian' approach.<sup>2</sup> However, without a clear articulation of how competing interests are to be negotiated, 'communitarian' human rights sacrifice some segments of Singapore society for little compelling reason. As this chapter will demonstrate, a more attractive approach to rights would be one that follows, in principle, the Dworkinian directive of treating people 'with equal concern and respect.'<sup>3</sup>

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1 'The 23 richest countries in the world' Business Insider, 13 July 2015, available at [http://www.businessinsider.sg/the-23-richest-countries-in-the-world-2015-7/#.VcBl1\\_mqpBd](http://www.businessinsider.sg/the-23-richest-countries-in-the-world-2015-7/#.VcBl1_mqpBd), accessed on 31 August 2015.

2 Thio, L, *A Treatise on Singapore Constitutional Law*, 2012, Academy Publishing, at p 621.

3 Dworkin, R, *What Rights Do We Have? Taking Rights Seriously*, 2011, Bloomsbury, at pp 272-273.

# Part 1: Overview of Singapore

## A. Country Background<sup>4</sup>

Singapore Facts <sup>5</sup>	
Geographical size	718.3 sq km
Population	5,469,700
Ethnic breakdown	Main ethnic groups: Chinese (74.3%) Malays (13.3%) Indians (9.1%) Others (3.3%)
Official language(s)	English (working language) Malay (national language) Chinese Tamil
Literacy rate (among residents aged 15 years and older)	96.7%
Life expectancy	82.8
GDP (at current market prices in SG\$)	SG\$98,743.3 million (first quarter of 2015) (per capita est SG\$71,318)
Government	A republic with a unitary, Westminster parliamentary system of government
Political and social situation	Elections have been held regularly in Singapore since 1948 with voting made compulsory in 1959. The People's Action Party (PAP) won the 1959 election by a landslide as it has won every general election ever since. Although the PAP's political hegemony appeared to be threatened in 2011 when it suffered its worst results since independence, <sup>6</sup> in the 2015 election, it captured nearly 70% of the votes and won 83 out of 89 seats. <sup>7</sup>

4 'Latest data' Department of Statistics, Singapore, available at <http://www.singstat.gov.sg/statistics/latest-data>, accessed on 31 August 2015.

5 Figures relate to 2014 unless otherwise stated.

6 The PAP captured 60.1% of valid votes, down from 66.6% in the 2006 general election. See <http://singapore-elections.com/political-parties/pap.html>, accessed on 31 August 2015.

7 'Singapore election: governing party secures decisive win' BBC, 12 September 2015, available at <http://www.bbc.co.uk/news/world-asia-34205869>, accessed on 26 November 2015.

## ***B. International Human Rights Commitments and Obligations<sup>8</sup>***

Singapore has ratified three major international human rights instruments: (1) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), (2) the Convention on the Rights of the Child (CRC), and (3) the Convention on the Rights of Persons with Disabilities (CRPD).

**Table 1: Ratification Status of International Instruments – Singapore<sup>9</sup>**

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance		
Convention on the Elimination of All Forms of Discrimination against Women		5 Oct 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination	19 Oct 2015	
International Covenant on Economic, Social and Cultural Rights		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		
Convention on the Rights of the Child		5 Oct 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	7 Sep 2000	11 Dec 2008
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		
Convention on the Rights of Persons with Disabilities		18 Jul 2013

<sup>8</sup> Singapore is notably not a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>9</sup> United Nations Human Rights, Office of the High Commissioner, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx), accessed on 14 November 2016.

Singapore adopts a dualist approach in implementing international legal obligations.<sup>10</sup> The government prefers to accede to treaties which are already in line with its domestic laws, thus enabling it to embed treaty obligations into existing legislation.<sup>11</sup>

*CEDAW: reservations and submission of country reports*

Singapore has lodged reservations to Arts 2(a) to (f); Arts 16(1)(a), 16(1)(c), and 16(2); Art 11; and Art 29(1). Its initial report was submitted on October 1999; a Second Periodic Report was submitted on May 2011; a Third Periodic Report in November 2004; and a Fourth Periodic Report in November 2008.

Singapore's reservations in respect of Arts 2 and 16<sup>12</sup> are targeted at the rights of minorities to observe personal or religious laws which would contravene the CEDAW provisions, such as Islamic marriage laws. One of the Singapore government's bedrock policies is the protection of minority rights to freedom of religion and religious practices. The government has a constitutional duty to "constantly ... care for the interests of racial and religious minorities,"<sup>13</sup> which specifically extends to protecting the special position of Malays.<sup>14</sup> Muslim marriages are therefore administered separately under the Administration of Muslim Law Act 1996 (AMLA).<sup>15</sup>

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10 See, for example, Thio, L, 'Singapore human rights practice and legal policy: of pragmatism and principle, rights, rhetoric and realism' Singapore Academy of Law Journal, 2009, Vol 21, p 326 at 345; Chen, S, 'The relationship between international law and domestic law' Singapore Academy of Law Journal, 2011, Vol 23, p 350 at 355-356; and Public Prosecutor v Tan Cheng Yew [2013] 1 SLR 1095 at 56: "It is trite law that Singapore follows a dualist position."

11 Thio, L, 'Singapore human rights practice and legal policy: of pragmatism and principle, rights, rhetoric and realism' Singapore Academy of Law Journal, 2009, Vol 21, p 326 at 346; and Tan, EKB, Keeping the Faith: A Study of Freedom of Thought, Conscience and Religion in ASEAN, Singapore Country Report Human Rights Resource Centre, p 5. The government has also stated that Singapore's non-ratification of a treaty does not mean that Singapore's "policies are not already largely in compliance with the substance of its provisions" (written answer by Minister for Law, K Shanmugam, to a parliamentary question on human rights treaties and conventions available at <https://www.mlaw.gov.sg/content/minlaw/en/news/parliamentary-speeches-and-responses/written-answer-by-minister-on-human-rights-treaties-conventions.html>, accessed on 31 August 2015).

12 Article 2 requires State Parties to condemn all forms of discrimination against women, and Art 16 requires State Parties to enact measures to eliminate discrimination against women as regards marriage and family relations.

13 Constitution of the Republic of Singapore (1999 Rev Ed), Art 152(1).

14 This duty is contained in Art 152(2) of the Constitution, and it includes the duty to "safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests, and the Malay language."

15 Cap 3 (Rev Ed 2009). The key AMLA provisions that are inconsistent with Art 16 are Sec 96(4) which provides that a child aged at least 16 years can legally marry and, in special circumstances, the Registrar of Muslim Marriages can solemnise the marriage of a girl under 16 who has attained puberty; and Sec 96(2), allowing Muslim men to enter into polygamous marriages in accordance with Islamic law. Unsurprisingly, the CEDAW Committee, in considering Singapore's Fourth Periodic Report, urged it to withdraw these reservations: 'Concluding observations of the Committee on the Elimination of Discrimination Against Women' CEDAW/C/SGP/CO/4/Rev 1, 5 January 2012, para 13. In response, the Singapore delegation to the 49th CEDAW session stated the reservations were necessary to preserve the "delicate balance of our multi-cultural, multi-religious society" (statement by Mdm Halimah Yacob, Minister of State for Community Development, Youth and Sports and leader of the Singapore delegation to the 49th CEDAW session, 22 July 2011).

Singapore's reservation to Art 11(1)<sup>16</sup> was entered in light of Art 4(2)<sup>17</sup> to "safeguard the welfare of women and their unborn children in certain hazardous occupations."<sup>18</sup> In addition, Art 11(2) requires State Parties to "take appropriate measures" to protect women from unfair maternity-related employment practices. Women who hold managerial, executive and confidential positions do not fall within the ambit of the Employment Act,<sup>19</sup> and Singapore has deemed it unnecessary to enact legislation to cover this category of women.<sup>20</sup>

*CRC: reservations, declarations and submission of country reports*

Singapore has entered interpretive declarations to Arts 12 to 17 (to be read in conjunction with Arts 3 and 5); and Arts 19 and 37. In addition, it has lodged reservations to Arts 28(1)(a)<sup>21</sup> and 32. Its initial country report was submitted in April 2002 and the Second and Third Periodic Reports in January 2009.

Articles 12 to 17 cover substantive rights.<sup>22</sup> Singapore considers that, at the minimum, these must be exercised in accordance with Arts 3 and 5.<sup>23</sup> Singapore goes beyond the obligation in Art 5 and asserts that these substantive rights must be "exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child, and in accordance with the customs, values and religions of Singapore's ... society."<sup>24</sup> Singapore's declaration mirrors its recognition of the family as "the fundamental building block of society,"<sup>25</sup> although it is unclear why the authority of schools is elevated to the same status as that of parents.

16 Article 11 requires State Parties to eliminate discrimination against women in the field of employment to achieve equality between the sexes.

17 Article 4(2) states that special measures enacted by State Parties aimed at protecting maternity shall not be considered discriminatory.

18 Initial report of State Parties to the Committee on the Elimination of Discrimination Against Women – Singapore at p 55, para 12.1.

19 Cap 91 (Rev Ed 2009).

20 The government's reasoning is two-fold. First, the exclusion in the Act is not gender-based; all employees who hold such positions are not covered by the Act. Second, such employees are excluded because "they are in a better position to negotiate for their own terms and conditions of employment" (Initial report of State Parties to the Committee on the Elimination of Discrimination Against Women: Singapore at p 55, para 12.2). In the event of disputes between employer and employee, the Ministry of Manpower provides a free conciliation service to resolve salary disputes; alternatively, employees can seek redress through the courts.

21 Singapore's reservation to Art 28(1)(a) is made on two grounds: first, that this obligation is unnecessary in Singapore where "in practice virtually all children attend primary school" (Singapore Reservations and Declarations to the CRC); and second, that it reserves the right to provide free primary education to Singaporean citizens only. In any event, this issue is now moot; Parliament passed the Compulsory Education Bill in October 2000, making six-year primary education in national schools compulsory with effect from January 2003. However, there are four categories of pupils who are exempt from compulsory education. They are: (1) pupils of madrasahs; (2) pupils of San Yu Adventist School; (3) children receiving home schooling; and (4) children with special needs. See Singapore's Initial Report to the Committee on the Rights of the Child, para 421.

22 These rights include the right to express one's own views, the right to freedom of expression and thought, and the right to access information.

23 Article 3 mandates that the best interests of the child be a primary consideration in actions undertaken concerning children. Article 5 instructs the State to respect the responsibilities, rights and duties of parents and/or extended family members in guiding children to exercise their Convention rights.

24 See note 19 (Singapore's Reservations to the CRC); emphasis added.

25 See note 19 (Singapore's Initial Report to the Committee), para 115.

Singapore's declaration in respect of Arts 19 and 37<sup>26</sup> do not prohibit the application of prevailing laws and measures for maintaining law and order, and which are necessary for national security and public order. The key point of the declaration appears to be that Singapore does not consider these articles to prohibit the "judicious application of corporal punishment in the best interest of the child."<sup>27</sup> Corporal punishment is carried out against male children either in the juvenile justice system or in schools and is guided by the Regulations under the Children and Young Persons Act<sup>28</sup> in respect of the former; in schools, corporal punishment is carried out as a last resort by the principal or a teacher authorised by the principal.<sup>29</sup>

Finally, Singapore has reserved the right to apply Art 32<sup>30</sup> subject to existing employment legislation which prohibits the employment of children below 12 years of age, while giving special protection to employed children between the ages of 12 and 16.

*CRPD: reservations and submission of country reports*

Singapore has lodged reservations to Arts 12(4), 25(e) and 29(a)(iii)<sup>31</sup> but has yet to submit its initial country report.<sup>32</sup>

Singapore's reservation to Art 12(4)<sup>33</sup> stems from the fact that the Mental Capacity Act, which allows an individual with mental capacity to create a lasting power of attorney (LPA) to appoint a trusted person to make decisions for him if he loses mental capacity in the future, does not require a regular review of decisions. This is to "avoid undermining the assumption of trust and goodwill and to encourage reliance on the social bond between the person and his appointed proxy decision maker."<sup>34</sup>

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26 Article 19 protects the child against, inter alia, all forms of physical or mental violence, injury or abuse. Article 37 prohibits torture or other cruel, inhuman or degrading treatment or punishment, and unlawful or arbitrary deprivation of liberty.

27 See note 19 (Singapore's Reservations to the CRC).

28 Cap 38 (Rev Ed 2001). Under the juvenile justice system, the caning of children is sometimes carried out for serious offences such as murder, rape and drug trafficking, but is done with a "light rattan instead of the usual rattan used for adults" (SG CRC Initial Report, para 214). It can be carried out in juvenile homes, prisons, and drug rehabilitation centres. Solitary confinement is also used in detention centres and prisons: see note 19 (Singapore's Reservations to the CRC).

29 Education (Schools) Regulations (Rev Ed 2013), Reg 88.

30 Article 32 recognises the right of the child to be protected from economic exploitation and requires the State to regulate employment conditions for children.

31 Article 29(a)(iii) requires the State Party to "undertake to ... [allow disabled persons] assistance in voting by a person of their own choice." In Singapore's view, however, such assistance can only be provided by an election official, so as to "keep voting secret and safeguard the integrity of voting" ("Singapore ratifies UN Convention on the Rights of Persons with Disabilities (UNCPRD)" Ministry of Social and Family Development, 19 July 2013, available at <http://app.msf.gov.sg/Press-Room/Singapore-Ratifies-UNCPRD>, accessed on 28 August 2015).

32 Singapore is expected to submit its initial country report within two years of ratification. As Singapore ratified the CRPD on 18 July 2013, its initial country report is due this year.

33 Article 12(4) requires State Parties ensure that the exercise of legal capacity on behalf of a person with disabilities is "subject to regular review by a competent, independent and impartial authority or judicial body."

34 See note 29.

Article 25(e) requires State Parties to “[p]rohibit discrimination against persons with disabilities in the provision of health insurance.” However, this conflicts with the government’s policy of non-interference in private insurance: the government does not compel private insurers to extend coverage to persons with disabilities in order to avoid “[compelling] private insurers to accept risks beyond their risk appetite ... or to reduce the affordability of insurance premiums for the majority of the population.”<sup>35</sup> There appears to be no national insurance scheme that specifically caters to the need of the disabled; rather, disabled persons can “enjoy access to heavy Government subsidies at public hospitals.”<sup>36</sup>

### ***C. National Laws Protecting Human Rights***

Singapore has not enacted specific human rights legislation; instead, its international human rights obligations have been incorporated into existing domestic laws.<sup>37</sup> The only set of laws that deals specifically with human rights is contained in Part IV of the Constitution. The more contentious rights will be briefly explained below.<sup>38</sup>

#### *Article 9: Liberty of the person*

Article 9(1) states that “[no] person shall be deprived of his life or personal liberty save in accordance with law.” Unlike some jurisdictions that have adopted an expansive and substantive reading of their liberty clauses,<sup>39</sup> the Singapore courts prefer to narrow Art 9(1) to an austere “personal liberty of the person against unlawful incarceration or detention.”<sup>40</sup>

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35 See note 29.

36 See note 29.

37 The Children and Young Persons Act (Cap 38 (Rev Ed 2001)) and the Women’s Charter (Cap 353 (Rev Ed 2009)).

38 The other rights are:

- Article 10 prohibits slavery and forced labour, but allows Parliament to enact laws providing for compulsory national service and work undertaken as part of a prison sentence
- Article 11 prohibits the retroactive application of criminal laws (including any changes in the penalties for an existing offence) and trying a person for the same offence where he has been convicted or acquitted of the said offence
- Article 13 prohibits the banishment of a Singaporean citizen from Singapore and guarantees the freedom of movement of every citizen throughout Singapore
- Article 16 prohibits discrimination against any Singapore citizen on grounds of race, religion, descent or place of birth in respect of his educational rights

39 The most obvious example of an expansive reading of a right to liberty clause can be seen in the US Supreme Court’s interpretation of the 14th Amendment to include a wide array of rights such as the right to abortion (*Roe v Wade*; *Planned Parenthood v Casey* (505 US 833 (1992))), the right to contraceptives used in private (*Grisworld v Connecticut* 381 US 479 (1965)), and most recently, the right to gay marriage (*Obergefell v Hodges* 576 US \_\_\_ (2015)).

40 *Lo Pui Sang v Mamata Kapildev Dave* [2008] 4 SLR(R) 754 at [6], affirmed in *Tan Eng Hong v Attorney-General* [2013] 4 SLR 1059 at [120]. A plain reading of Art 9 ostensibly supports this interpretation: the subsequent subsections of Art 9 set out the necessary procedural requirements to satisfy Art 9(1), such as the right of a person to be informed of the grounds of his arrest (Art 9(3)).



### *Article 12: Equal protection*

Article 12(1) states: “All persons are equal before the law and entitled to equal protection of the law.” This seemingly straightforward declaration has proven controversial in recent times, which will be explored in Part 2 below.

### *Article 14: Freedom of speech, assembly, and association*

Article 14 is the most controversial and restricted fundamental liberty. Unlike other articles that immediately establish a substantive right, Art 14 is limited straightaway by the first half of Art 14(1), which reads: “Subject to clauses (2) and (3) ...” Articles 14(2) and 14(3) confer upon Parliament broad powers to impose restrictions on Art 14(1) rights<sup>41</sup> “as it considers necessary or expedient in the interest of the security of Singapore, public order or morality.”<sup>42</sup> The controversies surrounding Art 14 will be explored in greater depth below.

### *Article 15: Freedom of religion*

Article 15(1) protects the right of every person to profess, practise and propagate his religion, and every religious group has the right to, inter alia, manage its own religious affairs.<sup>43</sup> The freedom of religion, however, is circumscribed by national security considerations: conscientious objection is not a valid ground to refuse to serve compulsory national service.<sup>44</sup> As such, the Jehovah’s Witnesses were de-registered as a society in 1972 due to their beliefs and practices, “which included the refusal ... to perform national service.”<sup>45</sup> The right to freedom of religion is also subject to policy considerations favouring the maintenance of religious and racial harmony and integration. As such, the tudung has been banned from public schools and public sector jobs.<sup>46</sup>

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41 Namely, the right to freedom of speech and expression, the right to assemble peaceably and without arms, and the right to form associations.

42 Articles 14(2)(a), (b) and (c).

43 Article 15(3)(a).

44 Chan Hiang Leng Colin v Public Prosecutor [1994] 3 SLR(R) 209, where a Jehovah’s Witness’s conscientious objection to compulsory military service was not characterised as conscientious objection at all, but as “conduct which was prejudicial to national security” (at [78]).

45 Thio, L, *A Treatise on Singapore Constitutional Law*, 2012, Academy Publishing, at p 906. The constitutionality of the ban was upheld in Chan Hiang Leng Colin, see note 42. The High Court (headed by ex-Chief Justice, Yong Pung How) described national service as a “fundamental tenet,” but this elevation of national service to a constitutional obligation was criticised by Thio as “contrary to the sensible canons of constitutional construction” (*A Treatise on Singapore Constitutional Law* at para 15.067).

46 Following the 2002 tudung controversy over whether Muslim students should be allowed to wear the headscarf to school (subsequently resolved in a private settlement), in 2013, the Singapore Islamic Scholars and Religious Teachers Association “called on the government to review their position on the issue and allow the tudung to be worn in uniformed public sector jobs.” The conflict was eventually resolved in a closed-door meeting between the Prime Minister and the Malay-Muslim community in January 2014 (see ‘Govt’s stance on tudung issue evolving, says PM Lee’ *Today*, 26 January 2014, available at <http://www.todayonline.com/singapore/govts-stance-tudung-issue-evolving-says-pm-lee>, accessed on 31 August 2015.)

## ***D. National Laws Threatening Human Rights***

### *Liberty and criminal justice*

Singapore continues to retain the Internal Security Act<sup>47</sup> (ISA) and the Criminal Law (Temporary Provisions) Act<sup>48</sup> (CLTPA) which allow detention without trial.<sup>49</sup> The ISA is typically used against international terror suspects while the CLTPA is used to combat domestic crimes such as gang violence and football match-fixing activities.<sup>50</sup>

Singapore also retains the death penalty and caning.<sup>51</sup> In 2012, legislative amendments to the Penal Code<sup>52</sup> and the Misuse of Drugs Act<sup>53</sup> (MDA) abolished the mandatory death penalty for most forms of murder and drug trafficking offences.<sup>54</sup> While this was a step in the right direction, the death penalty regime remains problematic. First, the death penalty is mandatory in cases of intentional murder.<sup>55</sup> Second, the courts' sentencing discretion in cases of drug trafficking arises only when specific conditions are met. The accused first has to prove that he acted merely as a drug courier.<sup>56</sup> Subsequently, the Public Prosecutor either has to certify that he rendered substantive assistance to police

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47 Cap 143 (Rev Ed 1985).

48 Cap 67 (Rev Ed 1985).

49 Section 8(1) of the ISA empowers the Minister for Home Affairs to order detention without trial for up to two years if necessary to prevent a person "from acting in any manner prejudicial to the security of Singapore ... or to the maintenance of public order," and Sec 8(2) authorises the President to extend the period of detention "for a further period or periods not exceeding two years at a time." Similarly, Sec 30 of the CLTPA empowers the Minister for Home Affairs to detain any person suspected of criminal activity for any period not exceeding one year, or to place the suspect under police supervision for up to three years. Police supervision comes with a list of restrictions set out in Sec 33, including requiring written permission from the police if the person under supervision wishes to leave Singapore.

50 'Law allowing detention without trial extended' Today, 12 November 2013, available at <http://www.todayonline.com/singapore/law-allowing-detention-without-trial-extended>, accessed on 31 August 2015.

51 Caning is a mandatory additional sentence for a range of crimes including drug trafficking, vandalism, armed robbery, and some immigration offences (e.g. illegal entry into Singapore: Sec 6(3) of the Immigration Act). Caning is imposed on medically fit males aged 16 to 50. The Court of Appeal recently ruled on the constitutionality of judicial caning; see Sec E below.

52 Cap 224 (Rev Ed 2008).

53 Cap 185 (Rev Ed 2008).

54 Penal Code (Amendment) Act 2012 and Misuse of Drugs (Amendment) Act 2012.

55 Section 300 of the Penal Code sets out the offence of murder, distinguishing four types:

Except in the cases hereinafter excepted, culpable homicide is murder —

- (a) if the act by which the death is caused is done with the intention of causing death;
- (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
- (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
- (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

Section 300(a) attracts the mandatory death penalty.

56 The accused has to prove this on a balance of probabilities.

investigations, or the accused has to prove that he suffered from abnormality of mind at the time of the commission of the offence.<sup>57</sup>

### *Freedom of expression, assembly and association*

As freedom of expression, assembly and association is the most contested and controversial right in Singapore, a considerable number of laws regulate media content, artistic expression, and assembly and association.<sup>58</sup>

A perennial problem is the government's heavy regulation of the press and the general lack of press freedom.<sup>59</sup> The Newspaper and Printing Presses Act<sup>60</sup> allows newspapers to be published only if the proprietor or the chief editor of the newspaper has obtained a permit from the Minister to do so,<sup>61</sup> and newspapers can only be published by a newspaper company,<sup>62</sup> whose shareholdings and voting power can be controlled by the Minister.<sup>63</sup>

Further, the government has recently begun to regulate online media. Changes made to the Broadcasting Act<sup>64</sup> in 2013 require any online news website which receives at least 50,000 unique monthly visitors over a two-month period, and which contain one Singapore news programme<sup>65</sup> per week on average over the same period, to obtain a licence from the Media Development Authority.<sup>66</sup> To obtain a licence, news sites must

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57 Of particular concern here is the requirement of certification of substantive assistance from the Public Prosecutor. Section 33B(4) of the MDA provides that the determination of the Public Prosecutor in this regard is not open to judicial review “unless it is proved to the court that the determination was done in bad faith or with malice” (emphasis added), although there is a presumption that the Public Prosecutor's determination is also open to judicial review on grounds of unconstitutionality: see *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2014] SGHC 179 at [38]. The requirement of bad faith or malice on the part of the Public Prosecutor is an extremely high threshold to meet, and the rationale is the perceived danger of hampering the investigations of the Central Narcotics Bureau if the Public Prosecutor's refusal to grant a certificate of substantive assistance were to be more readily scrutinised: *Muhammad Ridzuan* at [51].

58 Freedom of association is regulated by the Societies Act (Cap 311 (Rev Ed 2014)) which requires “any club, company, partnership or association of 10 or more persons, whatever its nature or object” (Sec 2) to register with the government. The Registrar has the power to refuse to register a society if he is satisfied that the society is “likely to be used ... for purposes prejudicial to public peace, welfare or good order in Singapore” (Sec 4(2)(b)) or if “it would be contrary to the national interest for the specified society to be registered” (Sec 4(2)(d)).

59 See, e.g. Reporters Without Borders' Press Freedom Index; Singapore is ranked #153 out of 180 countries, available at <https://index.rsf.org/#!/index-details>, accessed on 28 August 2015.

60 Cap 206 (Rev Ed 2002).

61 Cap 206 (Rev Ed 2002), Sec 21.

62 Cap 206 (Rev Ed 2002), Sec 8.

63 Cap 206 (Rev Ed 2002), Secs 11 and 12.

64 Cap 28 (Rev Ed 2012).

65 ‘Singapore news programme’ is defined broadly to include “any programme ... containing any news, intelligence, report of occurrence, or any matter of public interest, about any social, economic, political, cultural, artistic, sporting, scientific or any other aspect of Singapore in any language” but does not include programmes produced by or on behalf of the government: Broadcasting (Class Licence) Notification, Reg 3A(3).

66 Broadcasting (Class Licence) Notification, Reg 3A(1).

submit a bond of S\$50,000 and are required to remove prohibited content within 24 hours of notification from the Authority.<sup>67</sup>

Another pertinent issue is film censorship, particularly the banning of ‘politically sensitive’ films about Singapore.<sup>68</sup> It is an offence under Sec 33 of the Films Act<sup>69</sup> to import, make, distribute or exhibit ‘party political films.’ A ‘party political film’ is defined as inter alia a film directed with political ends in mind that contain references on political matters which, in the opinion of the Board of Film Censors, are either partisan or biased.<sup>70</sup> The Board itself is appointed by the Minister.

With respect to freedom of expression and assembly, Speakers’ Corner is the only designated area where citizens and permanent residents can give public speeches without a Public Entertainment licence<sup>71</sup> – provided that these speeches do not touch on matters of race and religion. The National Parks Board has to approve any use of the space, and the Commissioner of Parks and Recreation has the power to revoke approval of an event if, in his/her opinion, the event may “endanger or cause discomfort or inconvenience to other users of the ... public park.”<sup>72</sup>

### *Equality*

Section 377A<sup>73</sup> of the Penal Code exclusively criminalises sex between men, and the Court of Appeal upheld its constitutionality in 2014. This will be explored in Part 2 below.

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67 Fact sheet: online news sites to be placed on a more consistent licensing framework as traditional news platforms’ Media Development Authority, 28 May 2013, available at <http://www.mda.gov.sg/AboutMDA/NewsReleasesSpeechesAndAnnouncements/Pages/NewsDetail.aspx?news=4>, accessed on 31 August 2015. For a more detailed analysis of the changes, see ‘How should the Singapore government regulate online news sites?’ Lee Kuan Yew School of Public Policy, available at <http://lkyspp.nus.edu.sg/wp-content/uploads/2013/08/MDA-regulation-of-online-news-sites.pdf>, accessed on 31 August 2015.

68 The most recent Singapore political film to be banned is Tan Pin Pin’s *To Singapore, With Love*, which featured interviews with Singaporean political exiles on their feelings towards Singapore.

69 Cap 107 (Rev Ed 1998).

70 Cap 107 (Rev Ed 1998), Sec 2(2).

71 The Speakers’ Corner is also regulated by two other pieces of legislation that place further restrictions on the freedom of assembly: the Public Order Act (POA) (Cap 257A (Rev Ed 2012)) and the Public Entertainments and Meeting Act (PEMA) (Cap 257 (Rev Ed 2001)). The PEMA allows for those suspected of committing an offence under it to be arrested without a warrant: PEMA, Sec 18. The POA regulates assemblies and processions in public places and requires the organiser of an assembly or procession to apply for a police permit: POA, Sec 7(1). Section 7(2) sets out the instances where the Police Commissioner may refuse to grant a permit, such as when the Commissioner has “reasonable ground for apprehending” the proposed assembly or the procession may “cause feelings of enmity, hatred, ill-will or hostility between different groups in Singapore.”

72 Parks and Trees Regulations, Reg 4(2)(b). This power was exercised in October 2014 when activist, Han Hui Hui’s approval to demonstrate in the Speakers’ Corner was revoked after she was arrested for allegedly causing a public nuisance by disrupting a charity carnival held there: see ‘Six protesters, including activist, Han Hui Hui, and blogger, Roy Ngerng, charged with public nuisance’ *The Straits Times*, 27 October 2014, available at <http://www.straitstimes.com/singapore/courts-crime/six-protesters-including-activist-han-hui-hui-and-blogger-roy-ngerng-charged>, accessed on 29 August 2015.

73 Section 377A reads: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years” (hereinafter referred to as ‘377A’).

## *E. Important Human Rights Cases*

### *Yong Vui Kong v Public Prosecutor*<sup>74</sup>

In March 2015, the Court of Appeal ruled on the constitutionality of judicial caning as a form of punishment and held that caning does not violate Art 9(1) of the Constitution.<sup>75</sup> Adopting a strictly doctrinal analysis, the Court decided, first, that caning does not amount to a deprivation of “life or personal liberty;” and second, that the laws of Singapore do not necessarily prohibit torture simply on the basis that the prohibition against torture is a jus cogens norm, or that it is prohibited under common law; and third, that caning is not form of torture and its use is improperly understood. Although the Court’s decision is mostly doctrinally sound, it nevertheless had the effect of further entrenching caning as a legitimate form of punishment, which has obvious human rights ramifications.<sup>76</sup>

### *Attorney-General v Au Wai Pang*<sup>77</sup>

In January 2014, a prominent socio-political blogger, Alex Au, was found guilty of contempt of court by writing an article that commented on the composition of the bench hearing constitutional challenges to 377A and their hearing dates.<sup>78</sup> The High Court held that the contentious statements in the post were unfair comments, made without any rational basis and in the absence of good faith; further, the post “created a real risk of undermining public confidence in the administration of justice in Singapore.”<sup>79</sup>

### *Lee Hsien Loong v Roy Ngerng Yi Ling*<sup>80</sup>

In 2014, Prime Minister Lee Hsien Loong sued blogger Roy Ngerng for defamation for a post in which he compared the government’s handling of Central Provident Fund<sup>81</sup> money to the alleged mismanagement of funds by mega church, City Harvest, whose key personnel are undergoing corruption trials. Even though Ngerng later removed the post and offered S\$5,000 as compensation (which PM Lee’s lawyers dismissed

74 [2015] SGCA 11.

75 The appellant also mounted a challenge under Art 12(1), arguing that the exclusion of women and men over 50 years of age from receiving caning as a punishment violates the equal protection clause. The Court dealt with this issue swiftly, ruling that the differentiation measures satisfied the ‘reasonable classification’ test: at [110] (in relation to the exclusion of women from caning) and [116] (in relation to the exclusion of men aged 50 and over from caning). The ‘reasonable classification’ test will be explained in detail in Part 2.

76 What is significant about this case is the Court’s analysis of the status of jus cogens norms in domestic law where there is no domestic legislation giving effect to the norms. The Court adhered to Singapore’s dualist approach to international law and held that not only are jus cogens norms not automatically incorporated into domestic law, but in the event of conflict between domestic legislation and a jus cogens norm, domestic law will prevail (at [38]). Further, although the Court probably decided rightly at [91] that caning is not a form of torture, the question of whether it amounts to cruel and unusual punishment nevertheless persists (although it should also be noted that the appellant specifically argued that caning amounted to a form of torture and so the Court was not invited to consider whether caning constituted cruel and unusual punishment).

77 [2015] SGHC 16.

78 See [2015] SGHC 16 at [55] for the impugned article. Au was fined S\$8,000.

79 [2015] SGHC 16 at [80] and [81].

80 [2014] SGHC 230.

81 Singapore’s compulsory savings scheme.

as ‘derisory’<sup>82</sup>), PM Lee commenced legal action on 30 May 2014 and was awarded summary judgment against Ngerng.<sup>83</sup> This was the first case in Singapore where a defendant was found liable for defamation over a purely online article.<sup>84</sup>

## Part 2: Outstanding Human Rights Issues

### *A. Free Speech, Protecting Religious Feelings, and Amos Yee*

Arguably the most controversial human rights issue that has arisen over the past year is the furore surrounding 16-year-old blogger Amos Yee, who uploaded a video titled *Lee Kuan Yew is Finally Dead!* four days after the death of Singapore’s founding Prime Minister, Mr Lee Kuan Yew. In his profanity-laden diatribe, Yee compares Lee unfavourably to Jesus Christ, asserting that “[t]hey are both power hungry and malicious, but deceive others into thinking that they are compassionate and kind.”<sup>85</sup> After claiming that their legacies would not last, Yee concludes: “[Lee’s] followers are completely delusional and ignorant and have absolutely no sound logic or knowledge about him ... which [Lee] very easily manipulates, similar to the Christian knowledge of the Bible and the work of a multitude of priests.”<sup>86</sup>

Lee is arguably the most important figure in Singapore’s modern history, and his passing deeply affected many Singaporeans. Yee’s video thus provoked a tidal wave of outrage, including at least 20 police reports,<sup>87</sup> at a time when emotions were running high. Yee was eventually charged with two offences under the Penal Code and one under the Protection from Harassment Act.<sup>88</sup> The relevant charge here is Sec 298 of the Penal Code, which creates the offence of uttering words with the “deliberate intention

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82 ‘Blogger’s S\$5,000 offer for damages ‘derisory’: PM Lee’s lawyers’ Today, 27 May 2014, available at <http://www.todayonline.com/singapore/bloggers-s5000-offer-damages-derisory-pm-lees-lawyers>, accessed on 31 August 2015.

83 Ngerng was ordered to pay costs of S\$29,000 to PM Lee.

84 ‘Singapore PM wins defamation suit against activist’ AFP News, 7 November 2014, available at <https://sg.news.yahoo.com/singapore-pm-wins-defamation-suit-against-activist-092131139.html>, accessed on 31 August 2015.

85 Public Prosecutor v Amos Yee Pang Sang (MAC Nos 902694 & 902695 of 2015) at [27] (Amos Yee).

86 Amos Yee (MAC Nos 902694 & 902695 of 2015) at [27].

87 ‘Amos Yee: Singapore charges teen over anti-Lee Kuan Yew rant’ BBC, 31 March 2015, available at <http://www.bbc.com/news/world-asia-32115052>, accessed on 31 August 2015. One police report was lodged by a lawyer named Chia Book Teck because: “The individual had said many things against Mr Lee and the government that are defamatory under the [P]enal [C]ode as well as in violation of the [S]edition [A]ct. His utterances against Christians also amounted to a ‘deliberate intent to wound religious feelings’ under the [P]enal [C]ode. There is a limit to freedom of speech. If the line separating freedom and offence is crossed, the person will have to face the consequences” (‘Singapore police arrest 17-year-old over critical Lee Kuan Yew video’ The Guardian, 30 March 2015, available at <http://www.theguardian.com/world/2015/mar/30/singapore-police-arrest-17-year-old-amos-yee-critical-lee-kuan-yew-video>, accessed on 31 August 2015).

88 Cap 256A (Rev Ed 2015).

of wounding the religious or racial feelings of any person.”<sup>89</sup> He was found guilty of both Penal Code charges and given a four-week backdated jail term.<sup>90</sup>

Yee was simultaneously an easy target for the government and a crucial test case for the state of political freedom in Singapore. His unabashed use of vulgarity-infested invectives in expressing his opinion makes him the poster child for what an abuse of free speech would look like from the government’s point of view, and the resulting responses shore up the pubescent state of public discourse in Singapore and the difficulties of Singapore’s approach to free speech. Three broad observations may be made.

The first relates to the general response to offensive speech in Singapore. Although he was charged for wounding religious feelings, it is important to bear in mind the specific context of the controversy: Yee offended many Singaporeans with his disparaging tirades against Lee at a particularly emotional period. It would not be a stretch to posit that at least some of the 20 police reports were made because individuals were genuinely offended by his comments. What is troubling is that some members of the public felt it appropriate to respond to his offensive opinions by resorting to the brute force of the law. This reflects a deeply-ingrained inability to respond to offensive speech without trying to silence it with the law, which regrettably illustrates Singapore’s lack of democratic maturity.

The second observation relates to Singapore’s general intolerance of dissenting opinions. When Yee was remanded at the Institute for Mental Health (IMH) for two weeks,<sup>91</sup> questions were raised about his mental health. An IMH psychiatrist found that he did not suffer from any mental illness; curiously, the report also stated that Yee

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89 The other two charges are under Sec 292(1)(a) of the Penal Code (distributing an obscene image) for posting a picture of two stick figures engaged in anal sex with the superimposed images of Lee and Margaret Thatcher on the image; and under Sec 4(1)(b), punishable under Sec 4(2) of the Protection from Harassment Act for causing harassment, alarm or distress. The latter charge was stood down at trial.

90 ‘Amos Yee given 4-week backdated jail term; blogger is ‘remorseful,’ says lawyer’ Channel News Asia 6, July 2015, available at <http://www.channelnewsasia.com/news/singapore/amos-ye-given-4-week/1963292.html>, accessed on 31 August 2015. Yee’s criminal trial drew mixed responses from Singaporeans, with some expressing the view that he deserved it and others questioning the proportionality of bringing criminal charges against a 16-year-old boy over a YouTube video. A group of Christians started a petition for Yee’s release: ‘Release Amos Yee from your anger’ available at <https://www.change.org/p/the-government-of-singapore-release-amos-ye>, accessed on 20 August 2015. The case also received international coverage which provoked predictable (and ultimately unhelpful) chiding from the liberal West about Singapore’s “dire need for cultural education through intelligent dissent” (‘Amos Yee: YouTube star, teen-ager, dissident’ *The New Yorker*, 10 April 2015, available at <http://www.newyorker.com/culture/cultural-comment/the-arrest-of-a-teen-aged-youtube-star>, accessed on 18 August 2015). In a particularly dire overstretching of the imagination, Nathan Heller calls Yee a “cinematic prodigy” and compares him to Voltaire.

91 ‘Amos Yee to be remanded at IMH, assessed for treatment’ *Today*, 23 June 2015, available at <http://www.todayonline.com/singapore/amos-ye-be-remanded-two-weeks-imh?singlepage=true>, accessed on 31 August 2015. He was remanded for an assessment of his suitability for a mandatory treatment order (which requires an offender suffering from a psychiatric illness to undergo treatment in lieu of imprisonment) after a psychiatrist’s report suggested that he could be suffering from autism spectrum disorder.

admitted to using his intelligence in “the wrong ways.”<sup>92</sup> This suggests a hegemony of the prevailing majority opinion over those daring to go against the grain, and a disquieting tendency to colonise dissenters to make them fall in line with the dominant ideology. The speculation that Yee was mentally ill reveals a rigidity of thought that cannot accommodate even the possibility that someone may hold an opposing opinion; thus, if Yee dared to say all those things, he must be mentally ill. This is further underscored by the notion that Yee used his intelligence in the wrong way, which raises the question of who gets to dictate what is right or wrong,<sup>93</sup> which leaves little room for diverse opinions.

The third observation relates to the categorical restriction of free speech in favour of maintaining racial and religious harmony, such that the latter has been elevated to a ‘quasi-constitutional norm.’<sup>94</sup> That freedom of speech has to yield to religious harmony, however, is not axiomatic, and it would be a mistake not to interrogate this assumption because it carries serious consequences. Its legality notwithstanding,<sup>95</sup> Yee’s conviction captures the disproportionality of this approach. It shows that anyone who crosses the line can and will be taken to task, even if the culprit is a mere 16-year-old child. There is more at stake in this case than the protection of religious feelings: a child with his entire future ahead of him was convicted of two Penal Code offences for essentially uploading a YouTube video.<sup>96</sup> If the impulse driving Yee’s conviction was to protect religious harmony at all costs, then Singapore has sacrificed one of its own at the altar of religious harmony, and failed to treat him with equal concern and respect.<sup>97</sup>

Further, the categorical approach prevents circumspection on what exactly is required to maintain religious harmony, i.e. whether there should be a threshold of offensiveness before speech becomes criminally liable, and if so, what that threshold should be. Yee’s conviction reveals a startling paucity of thought on what constitutes speech so offensive

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92 ‘Amos Yee to be remanded at IMH, assessed for treatment’ Today, 23 June 2015, available at <http://www.todayonline.com/singapore/amos-yee-be-remanded-two-weeks-imh?singlepage=true>, accessed on 31 August 2015.

93 A possible rejoinder to this point is that Yee used his intelligence in the “wrong way” because he chose to make offensive remarks against Christians. This argument, however, wrongly suggests that offensive remarks against a religious group are wrong per se, even if this position appears to be the one adopted by the Singapore government. A more reasoned position would recognise a scale of severity under which offensive speech should fall. This will be explored in slightly more depth below.

94 Thio, L, *A Treatise on Singapore Constitutional Law*, Academy Publishing, 2012, at p 781. The government considers it crucial to good governance: see Thio, L, ‘The virtual and the real: Article 14, political speech and the calibrated management of deliberative democracy in Singapore’ *Singapore Journal of Legal Studies*, 2008, Vols 25-27, p 25 at 37.

95 As mentioned previously in Part 1, freedom of speech is the most heavily circumscribed fundamental liberty. On a technical reading of Art 14(2) of the Constitution, Sec 298 of the Penal Code falls under its purview because the prevention of speech that deliberately wounds religious feelings is a restriction that is necessary or expedient in the interests of the security of Singapore or public order: Arts 14(2)(a), (b) and (c). Therefore, Yee’s conviction is legally sound.

96 It is important to strip down the issue to its bare essence—and strip away the offensive content of his video, the deliberateness of his timing, and his general unlikable demeanour—to fully appreciate the disproportionality of the consequences that were foisted upon him.

97 He is considered a child under Art 1 to the CRC. Yee was eventually tried as an adult.



that the speaker is criminally liable for it. It is undeniable that Yee's words were offensive; but the crucial question is whether they were offensive enough to warrant a criminal conviction.<sup>98</sup> There is a qualitative difference between accusing Christians of having no real knowledge of the Bible and calling Jesus malicious, and calling for Christians to be eradicated: one is petulant criticism; the other an incitement to violence. It is no answer to simply treat all kinds of prima facie offensive statements about religion as threats to religious harmony, and then silence the speaker on that basis.<sup>99</sup>

## ***B. The Inequality of Enforcing Public Morality***

Perhaps the thorniest human rights issue that continues to plague Singapore is the lack of sexual equality for gay men.<sup>100</sup> In 2014, the Court of Appeal affirmed the constitutionality of 377A in *Lim Meng Suang v Attorney-General*<sup>101</sup> on the thinnest of justifications, hence raising serious questions about the protection of minority rights against the judgement of public morality. This section will first discuss the Court's unconvincing reasoning in holding that 377A does not violate Art 12,<sup>102</sup> and then argue that the enforcement of public morality is not a legitimate State interest that justifies the unequal treatment of gay men.

The Court used a two-stage reasonable classification test to determine the constitutionality of the impugned legislation, 377A: (a) whether the classification prescribed by statute is based on an intelligible differentia; and (b) whether the differentia bears a rational relation to the purpose or object of the statute.<sup>103</sup> The

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98 In Yee's case, a quasi-strict liability approach was adopted. The court ruled that once an utterance is made with the deliberate intention of wounding religious feelings, the offence is complete: *Amos Yee* at [37]. Liability is not dependant on proof that religious feelings were in fact wounded: *Amos Yee* at [40]. This outcome may have been required by the plain language of Sec 298, but it is nevertheless troubling that there was no deeper analysis of the degree of offensiveness of Yee's comments.

99 In some cases, it may be difficult to decide what kind of speech is so offensive that it should attract criminal liability, but this is precisely the kind of question of fact courts must decide. Further, it is a cause for concern that the courts have tended to treat cases of seditious speech that promote feelings of ill-will or hostility between races or religious groups as warranting general deterrence. As such, in both *Public Prosecutor v Koh Song Huat* [2005] SGDC 272 and *Public Prosecutor v Ong Kian Cheong* [2009] SGDC 163, the accused were given custodial sentences for posting anti-Muslim and anti-Malay remarks online, and sending Christian tracts to Malay recipients respectively. Although the courts passed down these sentences because "[c]ommunity or racial harmony form the bedrock upon which peace and progress in Singapore are founded" and that "the courts must remain ... vigilant in ensuring that all offences that jeopardise such a foundation be firmly ... dealt with" (*Ong Kian Cheong* at [74]), it begs the question whether the maintenance of racial and religious harmony should be elevated to such a status that it seems to always trump constitutional rights. While maintaining harmonious relations between Singaporeans is a legitimate and worthy goal, a more proportionate approach to delimiting free speech in favour of racial and religious harmony would be desirable; not only is a constitutional right at stake, but speech that threatens racial and religious harmony attracts custodial sentences. See Thio, L, *A Treatise on Singapore Constitutional Law*, 2012, Academy Publishing, at pp 789-790, paras 14.091-14.092.

100 Although the law technically extends to bisexual men as well, I will use 'gay men' for simplicity's sake to also cover bisexual men. See also note 71.

101 [2014] SGCA 53 (*Lim Meng Suang*).

102 377A was also alleged to violate Art 9, but the Court dismissed this argument rather swiftly by adopting a strict reading of it as explained in Part 1 above.

103 *Lim Meng Suang* at [60].

differentia in (a) needs only be intelligible, not perfect, meaning that it is capable of being apprehended by intellect.<sup>104</sup> This test serves a ‘minimal threshold function’ of requiring logic and coherence in the statute,<sup>105</sup> and it sits at a low threshold to avoid controversial moral, political, and ethical issues.<sup>106</sup> This is important because, as the Court was at pains to emphasise throughout the judgment, such issues were properly within the legislature’s purview; the court cannot act as a ‘mini-legislature’ to decide controversial issues.<sup>107</sup>

The Court then held that 377A satisfied the reasonable classification test: that the classification prescribed by 377A of ‘men who have sex with other men’ was based on a logical and coherent intelligible differentia;<sup>108</sup> and that there was a ‘complete coincidence’ in the relation between the differentia and the purpose of 377A, which is to criminalise sexual conduct between men.<sup>109</sup> The Court categorically rejected the suggestion that it could review the legitimacy of the purpose of 377A, stating that, under the doctrine of separation of powers, the issue of legitimacy was an extra-legal consideration that is exclusively within the legislature’s purview.<sup>110</sup>

First, limb (a) of the test sets too low a standard. It requires only that the classification, ‘gay men’ makes sense as a plain logical fact at a basic level. It requires no justification for the classification; and so it stands to reason that virtually any differentia which is not plainly absurd is capable of satisfying it. Granted, the Court attempted to introduce a substantive element to the test by stating that a differentia capable of being apprehended by intellect could nevertheless be unintelligible if extremely illogical and/or incoherent.<sup>111</sup> However, this qualification paradoxically sets the bar too high by requiring extreme illogicality and incoherence, a differentia so absurd it is implausible that a law would be passed on this basis in Singapore.<sup>112</sup> It is therefore difficult to see how this limited substantive element

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104 Lim Meng Suang at [60].

105 Lim Meng Suang at [66].

106 Lim Meng Suang at [65].

107 Lim Meng Suang at, e.g., [70] and [77].

108 Lim Meng Suang at [110] and [113].

109 Lim Meng Suang at [153]. The Court does not explicitly state that the object of 377A is to criminalise sexual conduct between men. It is implicit in its combing through of the legislative history of 377A, most of which point to the criminalisation of homosexual acts as the purpose of the law, and its rejection of the appellant’s argument that the original purpose of 377A was to criminalise male prostitution. For the Court’s analysis of the legislative history of 377A, see [116]-[152].

110 Lim Meng Suang at [76], [77] and [154]. The Court further held that 377A does not engage Art 12(2), which “furnishes specific legal criteria as to what constitutes discrimination” and is constitutionally prohibited, because Art 12(2) does not contain reference to gender or sexual orientation: at [90], [92] and [182].

111 Lim (n 7) [67], [86]. This recalls the classic English administrative law example of a teacher dismissed for having red hair as “something so absurd that no sensible person could ever dream that it lay within the powers of the authority” (*Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223, 229 (Lord Greene MR), citing *Warrington LJ in Short v Poole Corporation* [1926] Ch 66).

112 Further, in response to the appellants’ argument that 377A is analogous to a law that bans women from driving, the Court stated that such a law would not satisfy the substantive element of limb (a), but failed to convincingly explain how it differs from 377A: [114].

would serve as a check against unconstitutional legislation save in the most extreme of circumstances, which are more improbable than not.

Second, the reasonable classification test could have been saved from being a mere logical threshold requirement if the Court had assumed some jurisdiction over the legitimacy of 377A.<sup>113</sup> The Court's argument that the doctrine of separation of powers prevented it from doing so is unconvincing because courts in other jurisdictions also operating under separation of powers frequently engage in such enquiries. The Court offered no extra justification why the doctrine of separation of powers is different in Singapore beyond asserting that it could not become a 'mini-legislature.'<sup>114</sup> Bearing in mind what was at stake in this case (i.e. the right to equality of gay men), it is disappointing that the Court declined to comment on whether 377A serves a legitimate purpose.

It is important to examine the underlying purpose of 377A in order to determine whether interfering with the right to equality is justifiable. One of the purposes of 377A is the enforcement of public morality<sup>115</sup> which revisits the question of whether it is ever legitimate for States to criminalise private acts between consenting adults that cause no harm to others in order to "preserve the moral fabric of society."<sup>116</sup> There are three points to be made for the argument that the enforcement of public morality is illegitimate per se because of its deleterious effects on the right to equality.

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113 It is incomprehensible that the Court rejected this, considering that the court below observed that a law which passes the reasonable classification test can still be unconstitutional if the purpose of the statute is illegitimate (see *Lim Meng Suang* at [76], referring to *Lim Meng Suang v Attorney-General* [2013] 4 LRC 473 at [114]-[116]) and that the respondent was willing to admit to a test of unreasonableness on this point (see *Lim Meng Suang* at [67]).

114 With respect, it appears that the Court committed a black-or-white fallacy here by presenting a menu of two extreme types of judicial review—judicial review à la the US Supreme Court that would allow it to strike down legislation, and a completely non-interference mode that the Court adopted here—and concluding that it can only choose one or the other. Judicial review is not necessarily confined to these two extremes. For instance, the United Kingdom Supreme Court issues a 'declaration of incompatibility' under Sec 4 of the Human Rights Act when it finds a piece of legislation is incompatible with the European Convention on Human Rights. However, Parliament is not bound by the declaration to amend or repeal the existing law. Nevertheless, the declaration of incompatibility "sends a clear message to legislators that they should change the law to make it compatible with the human rights set out in the Convention" ('Relationship with the European Court of Human Rights' The Supreme Court and Europe, available at <https://www.supremecourt.uk/about/the-supreme-court-and-europe.html>, accessed on 31 August 2015). Similarly, the Court could have commented in dicta on the legitimacy of the statute without necessarily overturning it, and fulfilled its role as the guardian of the Constitution without also becoming a 'mini-legislature.' Expressing a view on these 'extra-legal' issues does not necessarily lead to a usurpation of the legislature.

115 The Court uses the phrase 'societal morality' at [167] but it seems to be a matter of semantics. In addition, the Attorney-General relied on the argument that "section 377A gave effect to public morality" (at [167]). See also Chua, L, 'Rights mobilization and the campaign to decriminalize homosexuality in Singapore' *Asian Journal of Law and Society*, 2014, Vol 1, p 205 at 221: "... the legislative and executive reactions to repeal [377A] signalled that Parliament and the administration would not push through Section 377A's abolishment unless they perceived so-called mainstream values to have shifted in favour of doing so." This suggests that 377A was retained to give effect to public morality against homosexuality.

116 *Lim Meng Suang* at [164], summarising Lord Devlin's argument in the famous Hart-Devlin debate of the 1960s.

The idea that the State enforces ‘public morality’ when it criminalises sex between men suggests that the majority has adopted a ‘moral position’ against homosexuality. This assumption, however, cannot be taken at face value, because there is often a crucial

line separating morality from prejudice.<sup>117</sup> In fact, the government has stated that 377A will not be enforced in consensual, private situations; however, “their interests ... may not trump the majority who has yet to accept homosexuality.”<sup>118</sup> 377A’s non-enforcement substantiates Justice O’Connor’s observation in *Lawrence v Texas* that the lack of enforcement of a law means the law serves more as a statement of dislike and disapproval against homosexuals than as a tool to stop criminal behaviour.<sup>119</sup> Indeed, if a criminally prohibited conduct has adverse consequences for society, it is hard to fathom why a law against it would not be enforced. It therefore stands to reason that 377A serves a symbolic purpose – to signal to the conservative majority that the State does not officially sanction homosexuality. That ‘public morality’ is really prejudice is even more apparent since 377A’s repeal tomorrow would have no practical effect, and no physical or obvious harm would befall society.<sup>120</sup>

If 377A enforces prejudice against homosexuals, then 377A is premised on an illegitimate purpose. As a matter of principle, the law must embody objective values, not reflect the majority’s dislike towards a segment of the population at a particular moment in time. Laws against murder reflect the value of the sanctity of life, and constitutional rights such as the right to equality uphold the inherent dignity of every person by treating them as equals; in contrast, laws that serve to enforce ‘public morality,’

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117 Ronald Dworkin’s analysis of what constitutes a true ‘moral position’ is insightful and instructive. In short, a ‘moral position’ must be backed by reasons, but these reasons must not be based on prejudice, a personal emotional reaction, a false and implausible proposition of fact, or a parroting of the beliefs of others. More crucially, a person’s moral reasoning has to be internally consistent: if one claims to be morally against a religious text which forbids sexual acts, then this suggests an acceptance of the moral principle one’s reasons presupposes (i.e. that the bible is not a source of moral authority) – and he is only internally consistent if the reasons he offers for other moral positions reflect this same acceptance. Therefore, a moral position based on biblical injunctions is only internally consistent (and a true moral position) if one rejects homosexuality as well as adultery, the use of contraceptives, etc; otherwise, ‘some ground rule of moral reasoning’ would be offended and as a result, such positions need not be respected. See ‘Liberty and Moralism’ in Dworkin, R, *What Rights Do We Have? Taking Rights Seriously*, 2011, Bloomsbury, at pp 248-253.

118 Chua, L, ‘Rights mobilization and the campaign to decriminalize homosexuality in Singapore’ *Asian Journal of Law and Society*, 2014, Vol 1, p 205 at 219 (emphasis added).

119 *Lawrence v Texas* 539 US 558 (2003) at 583.

120 The appellant relied on John Stuart Mill’s ‘harm’ principle to substantiate the argument that their homosexual conduct caused no harm to others. The Millian concept of ‘harm’ is complex and an adequate discussion of it is beyond the limited scope of this chapter. In short, the principle states that “the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others” (Mill, JS, *On Liberty and Other Essays*, 2008, Oxford University Press, at p 14). The Court of Appeal observed, at [169], that the concept of ‘harm’ is not necessarily confined to physical harm but left the determination of how far its ambit should extend to the legislature. Nevertheless, it is worth pointing out that Mill took the view that mere offence does not constitute harm (at p 109), though his position was obfuscated by his view that public acts against decency that violate good manners came within the category of offences against others and may be rightfully prohibited (at p 109). For a contemporary and in-depth development of the ‘harm’ principle, see Feinberg, J, *The Moral Limits of the Criminal Law, Vol 1: Harm to Others*, 1987, Oxford University.

such as segregation and anti-miscegenation laws, legitimise societal prejudices, enable divisive worldviews, and perpetuate inequalities.

The effect of legitimising prejudices through 377A is not only that gay men are unfairly singled out for unequal treatment, but they are branded as criminals.<sup>121</sup> In *Lim Meng Suang*, the appellants correctly argued that 377A represented the tyranny of the majority,<sup>122</sup> which occurs when majority interests infringe upon minority rights. Quite alarmingly, the Court of Appeal contended that the majority could also argue that they ought not to be subject to the ‘tyranny of the minority.’<sup>123</sup> However, this idea is conceptually unsound because it implies that the majority has some rights that are at stake if 377A were repealed.<sup>124</sup> In fact, 377A’s repeal would involve no real interference with the rights of the majority; the mere knowledge that others do not adhere to one’s value system cannot be a legally cognisable interest.<sup>125</sup> Effectively, then, the law and the State have failed to treat gay men with equal concern and respect, sending a subliminal signal that their dignity is worth less than the prejudice of the majority.

### ***C. Treating the ‘Other’ with Dignity: the Rights of Migrant Workers***

Singapore’s infrastructure is built on the backs of its massive migrant labour work force.<sup>126</sup> As of December 2014, there are 991,300 migrant workers in Singapore, the majority of whom are male workers engaged in the construction industry.<sup>127</sup> These migrant workers make up about 18% of Singapore’s population and are regulated by the problematic pro-development work permit regime. Although amendments made

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121 *Lawrence v Texas* 539 US 558 (2003) at 581. The effect of the law branding homosexuals as criminals is that it makes “it more difficult for homosexuals to be treated in the same manner as everyone else” (per Justice O’Connor).

122 *Lim Meng Suang* at [159].

123 *Lim Meng Suang* at [159] (emphasis in original).

124 This is precisely what the Court suggested by saying that allowing gay men to triumph in this case would cause their rights to “trump those of the majority” (*Lim Meng Suang* at [159] at [160]).

125 *Bowers v Hardwick* 478 US 186 (1986) at 213, per Blackmun J (dissenting).

126 This workforce also includes live-in domestic workers, typically women hailing from countries like Indonesia and the Philippines. These foreign domestic workers make up about 20% of the migrant worker population. Singapore has a pervasive culture of hiring live-in foreign domestic workers, such that they sometimes occupy central roles in average Singaporean families; it is not at all uncommon for foreign domestic workers to develop strong bonds with the family’s children. Anthony Chen’s 2013 film, *Ilo Ilo*, is a good depiction of this phenomenon (available at <http://www.imdb.com/title/tt2901736/>). The darker side of the story, however, is that it is also not uncommon for employers to abuse their domestic workers, e.g. it was only in 2012, such workers were given a mandatory day off per week. While there are critical problems with the rights of domestic workers, these are structurally different from those faced by male migrant workers who typically work in construction; the limited scope of this chapter prevents a proper discussion of these issues.

127 ‘Foreign workforce numbers’ Ministry of Manpower (MOM), available at <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>, accessed on 26 August 2015. Male construction workers typically originate from Bangladesh, India, China, and the Philippines.

in 2012 to the Employment of Foreign Manpower Act<sup>128</sup> were positive developments, NGOs have criticised them for not going far enough to rectify the structural problems of the work permit regime.<sup>129</sup> This section will begin by setting out the regime before exploring its conceptual and practical problems.

The government has deliberately pursued pro-foreign labour policies to “enable [Singapore] to grow beyond what [Singapore’s] indigenous resources can produce.”<sup>130</sup> However, the State makes a marked distinction between skilled foreign labour and low-skilled foreign labour, or migrant workers. This ‘bifurcated labour’<sup>131</sup> policy is manifest in the three different work pass regimes that govern the foreign workforce: the employment pass for highly skilled foreign ‘professionals,’<sup>132</sup> the S pass for mid-skilled ‘technical staff,’<sup>133</sup> and the work permit for foreign ‘workers’ in the construction sector, etc.<sup>134</sup>

The State’s strikingly different attitude towards work permit holders is evident from the fact that they are the only group of foreign workers to whom passes for family members are not available. This differentiating factor effectively signals that work permit holders are mere “economic actors”<sup>135</sup> in the overall “neoliberal-developmental,”<sup>136</sup> “pro-business”<sup>137</sup> State, “whose other human attributes could be suspended for the duration of their economic engagement in Singapore.”<sup>138</sup> Work permit holders fulfil the economic function of serving the developmental aspirations of the State; as such, the

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128 Cap 91A (Rev Ed 2009). Among other issues, these amendments criminalised the collection of employment kickbacks and gave MOM the power to prosecute the syndicates setting up shell companies to illegally bring in foreign workers: ‘MOM tightens Employment of Foreign Manpower Act’ Asian One, 11 September 2012, available at <http://news.asiaone.com/News/Latest+News/Singapore/Story/A1Story20120911-370994.html>, accessed on 31 August 2015. These amendments were also partly the result of labour rights advocacy by non-governmental organisations such as Transient Workers Count Too (TWC2) and the Humanitarian Organisation for Migration Economics (HOME). For an analysis of the impact of migrant labour advocacy in Singapore, see Bal, CS, ‘Production politics and migrant labour advocacy in Singapore’ *Journal of Contemporary Asia*, 2015, Vol 45(2), p 219.

129 See e.g. TWC2’s shadow report to the Human Rights Council as part of Singapore’s upcoming Universal Periodic Review, available at [http://twc2.org/wp-content/uploads/2015/06/UPR\\_submission\\_2015.pdf](http://twc2.org/wp-content/uploads/2015/06/UPR_submission_2015.pdf), accessed on 31 August 2015.

130 Ong, Y, ‘Singapore’s phantom workers’ *Journal of Contemporary Asia*, 2014, Vol 44(3), p 443, quoting the Singapore National Employers Federation, ‘Manpower 21’ at 445.

131 Yea, S, ‘Trafficked enough? Missing bodies, migrant labour exploitation, and the classification of trafficking victims in Singapore’ *Antipode*, 2015, Vol 47(4), p 1080.

132 ‘Key facts on Employment Pass’ MOM, available at <http://www.mom.gov.sg/passes-and-permits/employment-pass/key-facts>, accessed on 31 August 2015.

133 ‘Key facts on S Pass’ MOM, available at <http://www.mom.gov.sg/passes-and-permits/s-pass/key-facts>, accessed on 31 August 2015.

134 ‘Key facts on work permit for foreign worker’ MOM, available at <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/key-facts>, accessed on 31 August 2015.

135 Neo, J, ‘Riots and rights: law and exclusion in Singapore’s migrant worker regime’ *Asian Journal of Law and Society*, 2015, p 1.

136 Yea, S, ‘Trafficked enough? Missing bodies, migrant labour exploitation, and the classification of trafficking victims in Singapore’ *Antipode*, 2015, Vol 47(4), p 1080 at 1083.

137 Ong, Y, ‘Singapore’s phantom workers’ *Journal of Contemporary Asia*, 2014, Vol 44(3), p 443 at 446.

138 Neo, J, ‘Riots and rights: law and exclusion in Singapore’s migrant worker regime’ *Asian Journal of Law and Society*, 2015, p 1 at 6.

“migrant workers’ issue” is not viewed from a human rights perspective, but on a “need basis,” i.e. “whatever factors would be able to help [Singapore] sustain the growth of the economy for the benefit of [Singapore].”<sup>139</sup>

Such a dehumanising view of work permit holders allows the State to enact regulations that restrict their rights with the *raison d'être* of “maximizing economic benefits whilst simultaneously minimizing economic costs.”<sup>140</sup> A work permit is issued to a worker only when he has a specific job offer from a company, and this ‘single-employer rule’<sup>141</sup> severely skews the balance of power in favour of the employer. This imbalance can be seen in two regulations which are particularly detrimental to the migrant workers’ employment security.<sup>142</sup> First, the foreign worker is only allowed to work for his work permit employer, and he has to obtain his employer’s consent if he wishes to switch jobs; the employer can withhold consent without giving any reasons.<sup>143</sup> This regulation unduly burdens the job mobility of the work permit holder and indirectly compels him to stay with an employer who does not pay his salary or foot his medical expenses.<sup>144</sup>

Second, employers have the power to unilaterally terminate a worker’s employment at any time, even without just cause.<sup>145</sup> This leaves workers vulnerable to the random whims of an unscrupulous employer who has little to no regard for the welfare of his

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139 Comment made by Yeo Guat Kwang, Member of Parliament and chairman of the Migrant Workers Centre, quoted in ‘Singapore’s exploited immigrant workers’ *The Daily Beast*, 11 August 2013, available at <http://www.thedailybeast.com/articles/2013/11/08/singapore-s-exploited-immigrant-workers.html>, accessed on 31 August 2015.

140 Yea, S, ‘Trafficked enough? Missing bodies, migrant labour exploitation, and the classification of trafficking victims in Singapore’ *Antipode*, 2015, Vol 47(4), p 1080 at 1083.

141 Neo, J, ‘Riots and rights: law and exclusion in Singapore’s migrant worker regime’ *Asian Journal of Law and Society*, 2015, p 1 at 7.

142 For an excellent analysis of the negative effects of the work permit regulatory framework, see Neo, J, ‘Riots and rights: law and exclusion in Singapore’s migrant worker regime’ *Asian Journal of Law and Society*, 2015, p 1. For a collection of stories on hardships and the problems faced by individual migrant workers, see TWC2’s website, <http://twc2.org.sg/category/articles/stories/>, accessed on 31 August 2015.

143 Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part IV, Reg 1, and Part VI, Reg 1.

144 Jolovan Wham, executive director of HOME, has said, “Whenever we talk to migrant workers and trafficked migrants, and whenever we try to encourage them to file complaints, one of the first things they ask us is, ‘Will I be able to switch employers or remain in Singapore to work?’ This is the main reason they have left their countries in the first place” (‘Comment: right to employment crucial in protecting migrant workers’ *Yahoo! Singapore*, 24 October 2014, available at <https://sg.news.yahoo.com/blogs/singaporescene/comment-right-to-employment-crucial-in-protecting-062201376.html>, accessed on 31 August 2015).

145 Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part III, Regs 12, 13 (which are silent on the conditions under which an employer can cancel a work permit). See also Ong, Y, ‘Singapore’s phantom workers’ *Journal of Contemporary Asia*, 2014, Vol 44(3), p 443, quoting the Singapore National Employers Federation, ‘Manpower 21’ at p 445 at 446: “Existing work permit conditions allow employers to terminate their foreign workers’ employment contracts or work permits unilaterally, without incurring liabilities such as retrenchment compensation” and TWC2 UPR report at para. 5.1: “A worker’s employment can be terminated by the employer for no just cause at any time.” The employer simply needs to log on to an online portal run by MOM and submit the cancellation request which will be processed within three working days: see MOM’s guidelines on cancelling a work permit available at <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/cancel-a-work-permit>, accessed on 31 August 2015.

workers.<sup>146</sup> Further, most migrant workers usually pay an agent's fee when they secure a job meaning they are in debt the moment they arrive in Singapore. An employer's arbitrary cancellation of a work permit leaves these workers stranded in Singapore without a job and saddled with debts they are unable to repay.

There is a larger conceptual problem with the work permit regulatory regime which has contributed to, or reinforced, the prevalent negative perception of migrant workers. The work permit policies discussed so far also point to a concerted effort by the State to keep these workers transient and separate from mainstream society.<sup>147</sup> This is evident from the differentiating language used by the MOM—'professionals' and 'staff' in contrast to 'workers'—which casts these workers in opposition to Singaporean society as the 'other.' Various conditions attached to the work permit to regulate migrant workers' social lives reinforce the general perception of these workers as of a lower class and socially undesirable. Work permit holders who wish to marry a Singaporean citizen or a permanent resident must first obtain permission from the MOM's Controller of Work Passes;<sup>148</sup> whether permission would be granted depends on the applicants' economic contribution and their ability to support themselves without being a burden to the State.<sup>149</sup> Work permit holders are also not entitled to apply for permanent residency.<sup>150</sup>

These regulations effectively stymie integration between work permit holders and Singapore society, thereby reinforcing prejudice against these workers. They are tolerated in Singapore if they contribute to the economy and help build the necessary infrastructure – but only if they are out of sight. Construction workers are typically housed in workers' dormitories either on construction sites, or in remote areas of Singapore, including next to the cemetery.<sup>151</sup> The enforced lack of interaction between migrant workers and ordinary Singaporeans does little to dispel the perception that these workers are of a lower class because they are employed in dirty, dangerous, and demeaning manual labour jobs that Singaporeans avoid.<sup>152</sup> As such, a 2008 proposal to locate a workers' dormitory in a typical Singaporean neighbourhood was met with

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146 See, e.g. Chang, YL, 'Kibria asks for his overdue salary, immediately sacked' TWC2, 10 June 2015, available at <http://twc2.org.sg/2015/06/10/kibria-asks-for-his-overdue-salary-immediately-sacked/>, accessed on 31 August 2015.

147 Neo, J, 'Riots and rights: law and exclusion in Singapore's migrant worker regime' *Asian Journal of Law and Society*, 2015, p 1 at 10.

148 See note 126 (EFMA), Sec 3. There is no such requirement for employment and S pass holders.

149 Neo, J, 'Riots and rights: law and exclusion in Singapore's migrant worker regime' *Asian Journal of Law and Society*, 2015, p 1 at 10.

150 In contrast, both employment and S pass holders are eligible to apply for permanent residency after a certain number of years.

151 'Singapore is keeping an eye on its migrant workers' BBC, 14 April 2015, available at <http://www.bbc.com/news/business-32297860>, accessed on 26 August 2015. While the dormitory complex laudably contains amenities for workers to engage in social activities, the fact it is housed in Tuas (an industrial estate close to the causeway to Malaysia) shows that the intention is to keep these workers as far away from mainstream society as possible.

152 Neo, J, 'Riots and rights: law and exclusion in Singapore's migrant worker regime' *Asian Journal of Law and Society*, 2015, p 1 at 14.



resistance by residents.<sup>153</sup> Although the government eventually went ahead with the dormitory, it was not without modifications, such as assigning the space to workers from the manufacturing industry instead of the construction industry.<sup>154</sup>

To conclude, work permit holders are one of the most vulnerable groups in Singapore: they are vulnerable to exploitation<sup>155</sup> and their plight is under-appreciated by society at large because of their invisibility and a prejudice against them. The Singapore government's calculated narrowing of the definition of human trafficking also prevents migrant workers from harnessing the powerful language of human trafficking to bring these structural problems and exploitations to light.<sup>156</sup> Contrary to the government's position, at its core, the plight of migrant workers is a human rights issue: an official policy that sanctions the view that these workers are economic actors undermines their dignity, rendering them vulnerable to exploitation, unequal treatment, and disrespect. Such Third World treatment of fellow human beings is unbecoming of a First World country, and reform of the work permit regulatory regime is long overdue.

### Part 3: Conclusion

Singapore claims to adopt a 'communitarian' approach to human rights. As the foregoing discussion shows, however, this term must not be used to justify disproportionate incursions into fundamental liberties. Dworkin's principle of equal concern and respect serves as a persuasive guiding principle for any government in its treatment of rights. Unfortunately, what the three most pressing human rights issues in Singapore reveal is that the State has a tendency to adopt an instrumentalist view of those in the minority, who do not conform to prevailing social norms or fall outside of mainstream society, in service of a larger social good: Amos Yee was charged and convicted to preserve religious harmony; gay men continue to be singled out for unequal treatment to appease the conservative majority; and migrant workers are subjected to an inherently unequal regulatory framework because they are here to serve Singapore's economic interests.

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153 1,600 residents signed a petition against it. See, e.g. Neo, J, 'Riots and rights: law and exclusion in Singapore's migrant worker regime' *Asian Journal of Law and Society*, 2015, p 1 at 13, and 'Wake-up call from dorm issue' *The Straits Times*, 17 October 2008, reproduced in <https://progressgp.wordpress.com/2009/07/19/serangoon-gardens-dormitory-saga/>, accessed on 31 August 2015. Among some of the residents' concerns were worries that these workers would "violate their children and womenfolk," a clear indicator of racism.

154 Neo, J, 'Riots and rights: law and exclusion in Singapore's migrant worker regime' *Asian Journal of Law and Society*, 2015, p 1 at 13, footnote 75, citing 'the them and us divide,' *The Straits Times*, 12 October 2008. The reason for this change of heart is fairly obvious: construction workers are usually from Bangladesh and India, and unfortunately, most racist tendencies held by Singaporeans are towards people of a darker skin tone, i.e. Bangladeshi and Indians.

155 See, Ong, Y, 'Singapore's phantom workers' *Journal of Contemporary Asia*, 2014, Vol 44(3), p 443, quoting the Singapore National Employers Federation, 'Manpower 21' at p 445 especially at 457: 180 foreign workers who were brought to Singapore with no real employment prospects were abandoned by their purported employers and "housed in an unhygienic and severely over-crowded dormitory." An outbreak of chickenpox occurred leading to the death of one worker.

156 For an analysis of this point, see Yea, S, 'Trafficked enough? Missing bodies, migrant labour exploitation, and the classification of trafficking victims in Singapore' *Antipode*, 2015, Vol 47(4), p 1080.

When reduced to its very bare essence, what lies at the heart of the human rights enterprise is recognition of the ‘inherent dignity’<sup>157</sup> of every human being, which demands that people be treated as ends in themselves. The special normative value that a human being possesses makes it more imperative that, in carving out exceptions to rights, a robust, philosophically coherent and honest balancing exercise is carried out. It is not enough for the State to expect near-unconditional trust from its people, and neither should the State continue to view human rights with suspicion. In striving to treat everyone with equal concern and respect, Singapore will go a long way to build a more equal and just society.

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157 Universal Declaration of Human Rights, Preamble.