Between Liberty and the Legal Abyss: Reassessing Article 9 of the Federal Constitution

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DOI: https://doi.org/10.47772/IJRISS.2026.100600061

Received: 21 May 2026; Accepted: 26 May 2026; Published: 17 June 2026

ABSTRACT

Article 9 of the Federal Constitution protects one of the core dimensions of constitutional liberty in Malaysia, namely the right of citizens to move freely throughout the Federation and to reside in any part thereof. It also expressly prohibits the banishment or exclusion of citizens from the Federation. However, the right to freedom of movement under Article 9(2) is not absolute. It is expressly made subject to laws relating to the security of the Federation, public order, public health, the punishment of offenders, and the special constitutional position of certain states. This article examines the scope and limitations of Article 9 by analysing five selected areas in which movement-related restrictions arise in Malaysia. These are the Movement Control Order during the COVID-19 pandemic, travel restrictions on PTPTN loan defaulters, travel restrictions on bankrupt individuals, movement restrictions imposed on prisoners and persons under supervision, and passport surrender as a condition of bail for accused persons. Using a qualitative doctrinal legal methodology, the article analyses the Federal Constitution, the Prevention and Control of Infectious Diseases Act 1988, the Police Act 1967, the National Higher Education Fund Corporation Act 1997, the Insolvency Act 1967, the Prisons Act 1995, the Prevention of Crime Act 1959, the Dangerous Drugs (Special Preventive Measures) Act 1985, and the Criminal Procedure Code. The article argues that restrictions on movement may be constitutionally justified where they are clearly authorised by law, pursue a legitimate public objective, and operate in a proportionate, targeted, temporary, and reviewable manner. The article proposes a five-stage constitutional control framework for assessing movement restrictions under Article 9, focusing on legal basis, legitimate purpose, contextual assessment, proportional limits and procedural safeguards. Conversely, such restrictions become constitutionally problematic when they are imposed automatically, indefinitely, administratively, or punitively without sufficient procedural safeguards. The article concludes that Article 9 should not be understood merely as a formal right subject to legislative limitation, but as a constitutional guarantee that requires continuous scrutiny of legality, reasonableness, proportionality, and fairness.

Keywords: Article 9, Federal Constitution, freedom of movement, constitutional liberty, legal restrictions, proportionality

INTRODUCTION

Freedom of movement occupies an important position within the broader architecture of fundamental liberties under Part II of the Federal Constitution. Together with the rights to life and personal liberty, equality, freedom of speech, freedom of religion, rights in respect of education, and rights to property, Article 9 reflects the constitutional commitment that personal liberty must not be left entirely to executive convenience. Article 9(1) provides that no citizen shall be banished or excluded from the Federation, while Article 9(2) guarantees that every citizen has the right to move freely throughout the Federation and to reside in any part thereof. However, the same clause immediately qualifies the right by making it subject to Clause (3) and to laws relating to the security of the Federation or any part thereof, public order, public health, or the punishment of offenders (Federal

Constitution, Art. 9(2)). This textual structure reveals that Article 9 is both protective and restrictive in nature. It creates a constitutional right but simultaneously recognises that the state may regulate movement when wider public interests are at stake.

The central difficulty lies not in recognising that movement may be restricted, but in determining when such restriction remains constitutionally legitimate. A legal restriction may be authorised by statute yet still raise constitutional concern if it operates too broadly, continues for an excessive period, or is imposed without meaningful review (Stone Sweet & Mathews, 2008; Möller, 2012). Article 9 therefore requires a careful examination of the relationship between constitutional liberty and statutory power. It also requires an assessment of how restrictions imposed under public health, public order, financial recovery, insolvency administration, criminal justice, and offender supervision frameworks should be evaluated in terms of reasonableness and proportionality. The phrase "subject to law" should not be read as granting unrestricted discretion to Parliament or public authorities. Rather, it should be interpreted in a rights-sensitive manner that requires movement restrictions to satisfy the principles of legality, legitimate aim, proportionality, and procedural fairness.

These questions have become increasingly relevant in Malaysia due to the variety of circumstances in which movement restrictions are imposed. During the COVID-19 pandemic, citizens experienced large-scale restrictions on interstate and inter-district travel through the Movement Control Order (Pang et al., 2021). The public health rationale was clear, yet the intensity of the restriction raised constitutional questions concerning necessity, proportionality, enforcement, and temporary justification. In another setting, section 22A of the National Higher Education Fund Corporation Act 1997 allows administrative action to prevent a student borrower from leaving Malaysia where the borrower is expected or likely to leave without paying amounts due to the Corporation or without providing satisfactory security (National Higher Education Fund Corporation Act 1997, s. 22A). This provision places freedom of movement within a financial recovery context, where the legitimacy of the restriction depends on whether it is viewed as a proportionate debt recovery measure or an excessive administrative punishment.

Similarly, the Insolvency Act 1967 allows movement restrictions on bankrupt individuals. Section 38 provides that a bankrupt shall not leave Malaysia without prior permission from the Director General of Insolvency or the court, while section 38A empowers the Director General of Insolvency to issue a notice to an immigration officer requesting that a bankrupt be prevented from leaving Malaysia (Insolvency Act 1967, ss. 38, 38A). In this context, movement restriction is linked to the administration of bankruptcy, cooperation with the Director General of Insolvency, and protection of creditors' interests. Nevertheless, the restriction also affects the ordinary liberty of the bankrupt, particularly if applied without proper assessment of travel purpose, duration, and repayment cooperation.

Movement restrictions also arise in the criminal justice and public order context. The Prisons Act 1995 subject's parolees to reporting requirements, residence conditions, employment arrangements, rehabilitation programmes, and restrictions on leaving the parole district without permission (Prisons Act 1995, s. 46K). The Prevention of Crime Act 1959 permits police supervision orders that may require a registered person to reside within a specified area, refrain from leaving that area without written authority, report to the police, remain indoors during specified hours, avoid certain areas, and even be attached with an electronic monitoring device (Prevention of Crime Act 1959, s. 15). The Dangerous Drugs (Special Preventive Measures) Act 1985 similarly permits restriction orders affecting a person's residence, movement, activities, and employment where detention is considered unnecessary, but supervision is regarded as necessary in the interest of public order (Dangerous Drugs (Special Preventive Measures) Act 1985, s. 6). These regimes show that movement restrictions are not confined to ordinary criminal punishment, but they extend to preventive, supervisory, and rehabilitative frameworks (Hassan et al., 2022).

Finally, movement restrictions may also arise before conviction. Under section 388 of the Criminal Procedure Code, a person accused of a non-bailable offence may be released on bail in certain circumstances, and the court or relevant officer must record reasons for releasing the accused on bail (Criminal Procedure Code, s. 388). Although section 388 does not expressly refer to passport surrender, passport surrender is commonly understood as a bail condition designed to secure attendance and prevent absconding. This raises a distinct constitutional

question because the person remains presumed innocent, yet their ability to travel abroad may be limited pending trial. The Malaysian position is also shaped by Government of Malaysia v. Loh Wai Kong, where the Federal Court held that the right to travel abroad was not expressly guaranteed under Article 9, which protects movement within the Federation rather than international travel. Nevertheless, passport surrender as a bail condition still affects liberty and must be justified by reference to necessity, proportionality, and the proper administration of justice (Hucklesby, 2012).

This article reassesses Article 9 of the Federal Constitution through these five areas. It argues that Article 9 should be read as a constitutional safeguard that allows lawful restrictions but does not permit unrestricted state discretion. The proper question is not merely whether there is a statute, but whether the statutory restriction is constitutionally defensible in its purpose, scope, duration, application, and review mechanism. In this sense, the "legal abyss" arises when liberty is restricted by law but without sufficient constitutional discipline. The article seeks to clarify that Article 9 is not a hollow liberty. It remains a living constitutional provision that requires an ongoing balance between individual freedom and legitimate public interests.

METHODOLOGY

This study adopts a qualitative doctrinal legal research methodology. Doctrinal legal research is appropriate because the article focuses on analysing constitutional text, statutory provisions, legal principles, and selected legal situations involving restrictions on freedom of movement. The primary sources analysed are the Federal Constitution and relevant Malaysian statutes. The Federal Constitution is examined principally through Article 9, which protects freedom of movement and prohibits banishment or exclusion from the Federation, and Article 4, which declares the Constitution as the supreme law of the Federation and renders post-Merdeka laws void to the extent of inconsistency with the Constitution (Federal Constitution, arts. 4, 9).

The statutory analysis focuses on five categories of movement restrictions. The first concerns public health restrictions under the Prevention and Control of Infectious Diseases Act 1988, particularly section 11, and police roadblock powers under section 26 of the Police Act 1967. The second concerns PTPTN travel restrictions under section 22A of the National Higher Education Fund Corporation Act 1997. The third concerns bankruptcy-related travel restrictions under sections 38 and 38A of the Insolvency Act 1967. The fourth concerns movement restrictions imposed on prisoners, parolees, registered persons, and persons subject to preventive supervision under section 46K of the Prisons Act 1995, section 15 of the Prevention of Crime Act 1959, and section 6 of the Dangerous Drugs (Special Preventive Measures) Act 1985. The fifth concerns bail-related movement restrictions under section 388 of the Criminal Procedure Code.

The article uses a constitutional evaluative framework based on legality, legitimate aim, rational connection, necessity, proportionality, temporariness, and procedural fairness. Legality requires that any restriction must be clearly authorised by law rather than imposed through vague administrative discretion. Legitimate aim requires that the restriction pursue a constitutionally recognised or socially necessary objective such as public health, public order, creditor protection, offender rehabilitation, or securing attendance in court. Rational connection requires that the restriction be connected to the purpose it claims to serve. Necessity requires that the restriction should not exceed what is needed to achieve that purpose. Proportionality requires that the burden imposed on individual liberty should not be excessive when weighed against the public objective pursued. Procedural fairness requires notice, reasons, opportunity to seek permission, review, or challenge where appropriate (Barak, 2012; Stone Sweet & Mathews, 2008).

Although this article is grounded in doctrinal legal analysis, it goes beyond a descriptive reading of constitutional and statutory provisions. It critically evaluates whether the existing legal framework governing movement restrictions adequately preserves the constitutional balance between individual liberty and state authority. In doing so, the analysis focuses on the principles of legality, legitimate aim, reasonableness, proportionality, and procedural fairness.

FINDINGS AND DISCUSSION

Article 9 and the Constitutional Structure of Qualified Liberty

Article 9 of the Federal Constitution must be understood in two parts. The first is the absolute-looking prohibition in Article 9(1), which states that no citizen shall be banished or excluded from the Federation. This provision protects the citizen's membership in the constitutional community. It prevents the state from treating a citizen as an outsider or removing them from the national territory as a form of political or administrative exclusion. Unlike ordinary travel control, banishment strikes at the legal identity of the citizen and their relationship with the Federation itself. Therefore, Article 9(1) reflects a deeper constitutional principle that citizenship carries a right of belonging.

The second part is Article 9(2), which protects freedom of movement and residence within Malaysia. The provision states that every citizen has the right to move freely throughout the Federation and to reside in any part thereof, but this right is subject to Clause (3) and to laws relating to the security of the Federation or any part thereof, public order, public health, or the punishment of offenders (Federal Constitution, Art. 9(2)). The wording is important because it does not merely say that movement may be restricted by any law. Rather, the law must relate to constitutional categories. Public health restrictions, public order controls, security measures, and punishment-related restrictions are expressly contemplated by the Constitution.

The qualification in Article 9(2) demonstrates that Malaysian constitutional liberty is not framed in absolute terms. However, the existence of a limitation clause should not be interpreted as giving the state unlimited power. A right that is "subject to law" remains a constitutional right. The function of the limitation is to allow necessary regulation, not to extinguish the right. The Federal Court's broader rights-sensitive approach in Sivarasa Rasiah v. Badan Peguam Malaysia is relevant because the Court emphasised that fundamental liberties should be interpreted generously and through a prismatic approach. Although Sivarasa concerned Article 10 rather than Article 9, its interpretive logic supports the view that restrictions on fundamental liberties should be examined in a manner that preserves the practical value of the right.

The distinction between internal movement and international travel also requires attention. In Government of Malaysia v. Loh Wai Kong, the Federal Court held that the constitutional right to movement under Article 9 did not include a right to travel abroad or a right to a passport. The decision has continuing importance for cases involving passport refusal, passport surrender, and travel bans. However, the narrow approach in Loh Wai Kong should not obscure the fact that travel restrictions still affect personal autonomy. Even if international travel is not expressly guaranteed under Article 9, administrative or judicial restrictions on leaving Malaysia may still require legal justification, especially where such restrictions are imposed by state authorities and affect livelihood, family life, education, medical treatment, or access to justice.

Since Government of Malaysia v. Loh Wai Kong held that Article 9 does not expressly guarantee a right to travel abroad, restrictions on leaving Malaysia should not be framed simply as direct violations of Article 9. However, such restrictions remain constitutionally significant because they affect personal autonomy, administrative fairness, access to livelihood, family obligations, and the broader rule of law.

The effect of Loh Wai Kong is that PTPTN travel restrictions, bankruptcy travel restrictions, and passport surrender conditions should not be analysed simply as direct infringements of the Article 9 right to move freely within the Federation. Their constitutional significance is more indirect but still important. These restrictions sit at the intersection of freedom of movement, personal autonomy, administrative fairness, access to livelihood, and the rule of law. The stronger argument is therefore not that every restriction on leaving Malaysia automatically violates Article 9, but that state-imposed travel restrictions require careful legal justification where they substantially affect important personal interests. This approach allows the article to respect the doctrinal limit in Loh Wai Kong while still treating travel restrictions as constitutionally relevant exercises of state power.

Article 4 of the Federal Constitution further strengthens the need for constitutional scrutiny. Article 4(1) provides that the Constitution is the supreme law of the Federation and that any post-Merdeka law inconsistent with the Constitution shall be void to the extent of the inconsistency (Federal Constitution, Art. 4(1)). Therefore, statutes

restricting movement should not be treated as constitutionally immune merely because they exist. Where a law falls within one of the permitted categories in Article 9(2), the next question is whether its application is constitutionally acceptable. A law relating to public health, for example, may justify restrictions during a pandemic. Yet enforcement of that law must still be reasonable and connected to the health purpose. A law relating to punishment of offenders may justify parole conditions. Yet such conditions should not be arbitrary or unrelated to rehabilitation and public safety (Abu Hassan, 2018; Hamin & Abu Hassan, 2012).

Although Article 4(2)(a) limits challenges to the validity of a law on the ground that it imposes restrictions on Article 9(2) without falling within the matters mentioned in that clause, this does not remove the need to examine how such restrictions operate in practice. The issue is therefore not confined to constitutional invalidity, but extends to legality, administrative fairness, proportionality, and the prevention of excessive executive discretion.

This distinction is doctrinally significant because Article 4(2)(a) changes the nature of the constitutional inquiry. It may prevent a challenge based solely on the argument that a law restricting movement does not fall within the express categories stated in Article 9(2). However, it should not be read as insulating every administrative application of movement restrictions from legal scrutiny. The focus should therefore shift from abstract constitutional invalidity to the legality, rationality, proportionality, and procedural fairness of the restriction as applied in practice. This is particularly important where movement restrictions are imposed through administrative mechanisms, such as PTPTN certificates, immigration enforcement, bankruptcy notices, or supervision orders, because the affected person may suffer a serious restriction of liberty without the same degree of judicial involvement normally associated with criminal punishment.

Therefore, Article 9 should be understood as creating a model of qualified liberty. The Constitution permits restriction, but it also requires justification. Movement restrictions should therefore be analysed by examining whether there is clear legal authority, whether the restriction pursues a legitimate aim recognised by the Constitution or by necessary governance, whether the restriction is proportionate in scope, duration, and intensity, and whether adequate safeguards exist against arbitrary or excessive application. These considerations frame the discussion of the five selected areas below.

Public Health and the Movement Control Order

The Movement Control Order imposed during the COVID-19 pandemic represents one of the most extensive restrictions on freedom of movement in Malaysia's modern constitutional history. Citizens were prevented from travelling across districts and states except in permitted circumstances. On its face, such a restriction clearly affected the Article 9(2) right to move freely throughout the Federation. However, Article 9(2) expressly permits restrictions imposed by law relating to public health. Therefore, the key constitutional issue is not whether public health may justify movement control, but whether the MCO was authorised by law, directed towards a legitimate aim, and proportionate to the health threat.

The Prevention and Control of Infectious Diseases Act 1988 provided the principal statutory foundation. Section 11(1) allows the Minister, if satisfied that there is an outbreak of an infectious disease in any area in Malaysia or that any area is threatened with an epidemic, to declare that area to be an infected local area. Section 11(2) allows the Minister to prescribe measures to control or prevent the spread of infectious disease within or from an infected local area. Importantly, section 11(3) permits an authorised officer to direct any person or category of persons in an infected local area to subject themselves to treatment or immunisation, isolation, observation or surveillance, or any other measures considered necessary to control the disease (Prevention and Control of Infectious Diseases Act 1988, s. 11). This statutory language is broad and clearly designed to permit urgent intervention during disease outbreaks.

The Police Act 1967 also supported the practical enforcement of movement restrictions. Section 26(1) empowers any police officer, where considered necessary for the maintenance and preservation of law and order or for the prevention or detection of crime, to erect or place barriers on or across any public road, street, or public place, and to take reasonable steps to prevent persons or vehicles from passing such barriers (Police Act 1967, s. 26). During the pandemic, roadblocks became the physical enforcement mechanism through which inter-district and interstate restrictions were implemented (Said et al., 2021). Section 26 therefore operated as an enforcement

tool, while section 11 of Prevention and Control of Infectious Diseases Act 1988 provided the public health rationale.

From a constitutional perspective, MCO restrictions were relevant and generally justified because they pursued the legitimate aim of preventing the spread of a contagious disease. Public health is expressly recognised in Article 9(2), and infectious disease control necessarily depends on limiting human contact and mobility. A movement restriction during a pandemic has a rational connection to the objective of reducing transmission. In this respect, the MCO differs from ordinary administrative inconvenience because the restriction was tied to a collective risk. The liberty of one person to travel could increase the risk of infection to others, particularly when the disease is transmissible through social interaction (Pang et al., 2021; Wiley & Gostin, 2025).

A possible counterargument is that public health restrictions during the MCO should receive a wide margin of administrative discretion because the state was responding to an exceptional collective risk. This argument has force because infectious disease control often requires rapid, general, and preventive measures before individual risk can be precisely assessed. However, wide discretion should not be equated with unlimited discretion. The constitutional issue is not whether the state may act during a pandemic, but whether the measures adopted were sufficiently clear, temporary, reviewable, and accompanied by reasonable exemptions. The constitutional threshold for public health restrictions should therefore be necessity during the existence of a genuine health threat, supported by periodic review, transparent enforcement, and flexible exemption mechanisms for urgent personal, medical, livelihood, and caregiving needs.

However, the justification for public health restrictions depends heavily on temporariness, clarity, and proportionality. A public health restriction is easier to justify when it is limited to the duration of the health threat, reviewed regularly, and adapted according to changing epidemiological conditions. The broader and longer the restriction, the stronger the need for clear criteria, transparent enforcement, and reasonable exemptions (Lebret, 2020; Sun, 2020). For example, restrictions affecting medical travel, family emergencies, livelihood needs, and caregiving responsibilities require flexible administrative mechanisms. If enforcement becomes rigid or inconsistent, the restriction may remain lawful in source but problematic in application.

The MCO also demonstrates the importance of differentiating between constitutional validity and administrative fairness. A statute may constitutionally authorise public health control, yet individual decisions under that statute must still be reasonable (Thambapillay, 2007). The constitutional value of Article 9 is therefore not exhausted once the state invokes public health. Instead, Article 9 requires continued scrutiny of whether the restriction is applied in a manner that is necessary and proportionate. Public health cannot become a blank cheque for indefinite control. The stronger view is that the MCO was constitutionally defensible as a temporary emergency public health measure, but its legitimacy depended on careful calibration, public communication, clear exemptions, and consistent enforcement.

Therefore, among the five areas analysed in this article, public health restrictions during the MCO represent the strongest case for limiting Article 9 movement rights. The restriction was expressly connected to public health, supported by statutory authority, and aimed at preventing serious harm. Nevertheless, the constitutional lesson is that even valid public health restrictions should be subjected to time limits, review, and proportional enforcement. Otherwise, a necessary public health measure may slide into excessive administrative control.

PTPTN Loan Defaulters and Financial-Based Travel Restrictions

The second area concerns travel restrictions imposed on PTPTN loan defaulters. Unlike the MCO, this restriction is not directly grounded in public health, public order, or criminal punishment. It is instead connected to the recovery of public educational loans. Section 22A of the National Higher Education Fund Corporation Act 1997 allows the Chief Executive to issue a certificate to the Inspector General of Police or Director General of Immigration if the Chief Executive is of the opinion that a student borrower is expected or likely to leave Malaysia without paying money due to the Corporation. The certificate may request that the borrower be prohibited from leaving Malaysia unless and until the borrower pays the amount due or provides satisfactory security for payment (National Higher Education Fund Corporation Act 1997, s. 22A).

This provision raises a difficult constitutional question because it restricts movement for a financial obligation. On one hand, the state may argue that PTPTN loans involve public funds and that repayment is necessary to sustain educational financing for future students. The restriction may therefore be justified as a debt recovery mechanism aimed at preventing borrowers from evading repayment by leaving the country. Section 22A also does not impose an absolute restriction because the borrower may leave Malaysia if payment is made or satisfactory security is provided. On this view, the restriction is conditional rather than punitive.

On the other hand, the restriction appears more constitutionally vulnerable than public health or offender-related restrictions. Article 9(2) expressly permits restrictions relating to security, public order, public health, or punishment of offenders. A PTPTN travel restriction is not easily classified within these categories. It is not about infectious disease, ordinary crime prevention, offender punishment, or national security. It is primarily a financial enforcement tool. This creates the risk that an ordinary civil debt may be transformed into a liberty-restricting mechanism. While the statute authorises the restriction, constitutional analysis must ask whether the restriction is proportionate to the objective pursued.

The proportionality concern is especially strong where the restriction operates automatically or broadly. If every borrower in arrears is treated as a flight risk, the measure becomes punitive rather than preventive. Section 22A uses the phrase "expected or likely to leave Malaysia without paying," suggesting that the Chief Executive should form an opinion based on some assessment of risk. If this assessment is not individualised, the measure may become excessive. A rights-sensitive reading would require PTPTN to consider the amount owed, repayment history, the borrower's attempts to negotiate, the purpose of travel, the availability of less restrictive recovery methods, and whether the borrower was given notice and opportunity to resolve the issue before being stopped from travelling.

The decisive issue is whether section 22A is applied as a targeted anti-evasion mechanism or as a general debt collection device. If a borrower is demonstrably attempting to avoid repayment by leaving Malaysia permanently, a travel restriction may be rationally connected to the statutory purpose. However, if the borrower merely has arrears but remains contactable, employed, willing to negotiate repayment, or travelling for a legitimate purpose, the same restriction becomes constitutionally harder to defend. In such circumstances, the restriction risks shifting from prevention of evasion to administrative pressure for payment. The constitutional threshold for PTPTN travel restrictions should therefore be evidence of genuine evasion risk, not mere non-payment.

The requirement of procedural fairness is also important. A borrower who is unaware of the restriction may only discover it at the point of departure. Such a situation may impose significant hardship, especially where travel relates to employment, education, medical treatment, family obligations, or religious duties (Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor, 2021). A constitutionally sound framework should include prior notice, accessible appeal or review, clear repayment options, and a mechanism for urgent permission. Without such safeguards, the travel ban may become disproportionate even if it has a statutory basis.

Compared with bankruptcy restrictions, PTPTN restrictions also appear less integrated into a judicial or quasi-judicial insolvency framework. Bankruptcy involves formal legal status, estate administration, and obligations to creditors under the supervision of the Director General of Insolvency or the court. PTPTN restrictions, by contrast, arise from an administrative certificate. The administrative nature of the decision increases the need for transparency and review. If the policy is applied as a blunt enforcement device, it risks undermining the constitutional character of movement liberty (Azmi et al., 2017; Lee, 2021).

Therefore, PTPTN travel restrictions may be relevant in limited cases where there is a genuine risk of avoidance, but they are constitutionally questionable if used broadly against ordinary defaulters. The better position is that financial-based travel restrictions should be exceptional, individualised, and accompanied by safeguards. They should not be used as routine punishment for debt. The restriction may be justified only where it is clearly necessary to prevent evasion and where less restrictive measures have been inadequate.

Bankrupt Individuals and Insolvency-Based Restrictions

Bankruptcy-related travel restrictions present a stronger justification than ordinary loan default restrictions because they form part of a structured insolvency regime. Section 38 of the Insolvency Act 1967 sets out the duties and disabilities of a bankrupt, including the requirement that a bankrupt shall not leave Malaysia without the previous permission of the Director General of Insolvency or the court (Insolvency Act 1967, s. 38). Section 38A further empowers the Director General of Insolvency to issue a notice to an immigration officer requesting that a bankrupt be prevented from leaving Malaysia. The immigration officer must take necessary measures to give effect to the notice and may seize and deliver the bankrupt's passport or travel document to the Director General of Insolvency if the bankrupt attempts to leave without permission (Insolvency Act 1967, s. 38A).

The rationale behind this restriction is to ensure that the bankrupt remains available to assist in the administration of the bankruptcy estate, disclose assets, cooperate with the Director General of Insolvency, and avoid frustrating creditors' rights. Bankruptcy is not merely a private debt relationship. Once a person is adjudged bankrupt, their financial affairs become subject to legal administration. The restriction on movement therefore serves a legitimate insolvency purpose. It helps prevent absconding, concealment of assets, and non-cooperation with the insolvency process.

From the perspective of Article 9, bankruptcy restrictions are constitutionally more defensible where they are understood as part of legal administration rather than punishment. The bankrupt is not being restricted because poverty itself is blameworthy. Instead, the restriction aims to protect the integrity of the insolvency process. This distinction is important (Ismail, 2023). A movement restriction based purely on inability to pay would be harsh and potentially excessive. A restriction based on the need to secure cooperation with a legal process is more defensible.

Nevertheless, the restriction should not be applied mechanically. Section 38 allows permission from either the Director General of Insolvency or the court. This suggests that the law contemplates discretion. A bankrupt who needs to travel for employment, medical treatment, family reasons, religious obligations, or income-generating opportunities should not automatically be refused. In fact, allowing travel may sometimes benefit creditors if the travel enables the bankrupt to earn income or settle debts. Therefore, the proportionality of the restriction depends on whether the authority considers the reason for travel, the bankrupt's cooperation, the risk of non-return, the value of the estate, and any security offered (Azmi et al., 2017).

The availability of court permission is a significant safeguard. Unlike the PTPTN context, where the travel restriction flows from an administrative certificate, bankruptcy restrictions exist within a broader legal framework. However, access to court should be practical and meaningful. If the process is slow, costly, or unclear, the formal safeguard may not sufficiently protect the affected person. The law should therefore be administered with clear guidelines on permission, timeframes, required documents, and appeal routes.

The constitutional analysis should therefore distinguish between the status of bankruptcy and the risk created by a particular bankrupt person. The mere fact that a person is bankrupt should not, by itself, justify every refusal to travel. What matters is whether the proposed travel would undermine estate administration, frustrate creditor protection, or increase the risk of non-cooperation. Where the bankrupt has complied with disclosure duties, cooperated with the Director General of Insolvency, and offered sufficient assurance of return, continued restriction may become disproportionate. The constitutional threshold for bankruptcy travel restrictions should therefore be non-cooperation, risk to estate administration, or prejudice to creditors, rather than the mere existence of bankruptcy status.

A constitutional concern may also arise if the restriction continues for too long without review. Bankruptcy can last for years. If a travel restriction persists throughout that period without individual reassessment, it may become disproportionate. The purpose of insolvency law is not to impose civil imprisonment in another form. The restriction must remain connected to the objective of administration. Once a bankrupt is cooperative and travel does not prejudice creditors, continued restriction may be difficult to justify.

Overall, bankruptcy travel restrictions are relevant and generally justified, but only when administered as a proportionate insolvency control measure. Their legitimacy depends on case-by-case assessment, access to permission, and connection to creditor protection. They should not be used to shame, punish, or unnecessarily

immobilise bankrupt individuals. A rights-based interpretation of Article 9 requires insolvency authorities to balance creditor interests with the bankrupt's residual liberty and ability to rehabilitate financially.

Prisoners, Parolees and Preventive Supervision

The fourth area concerns prisoners, parolees, ex-convicts, and persons subject to preventive supervision. Article 9(2) expressly permits laws relating to the punishment of offenders. Therefore, movement restrictions imposed as part of imprisonment or parole are constitutionally easier to justify than restrictions imposed for ordinary financial obligations. However, the difficulty arises when movement restrictions extend beyond the prison walls or operate through preventive supervision regimes that are not necessarily based on a fresh conviction.

The Prisons Act 1995 provides the clearest example of punishment-related movement control. Under section 46I, a parolee is deemed to continue serving the sentence of imprisonment during the parole period, and the period of parole is counted as part of the sentence (Prisons Act 1995, s. 46I). Section 46J places the parolee under the custody and supervision of a parole officer throughout the parole period. Section 46K then imposes duties on the parolee, including the duty to report to a parole officer, reside at the place specified in the Parole Order, seek permission before visiting a place outside the parole district, enter employment arranged or agreed by the parole officer, undergo rehabilitation programmes, comply with the Parole Order, and follow any other conditions or directions given by the Parole Board or parole officer (Prisons Act 1995, ss. 46J, 46K).

These restrictions are constitutionally relevant because parole is not a complete restoration of liberty. It is a conditional release mechanism. The parolee remains within the penal system and continues to serve the sentence outside prison. The restrictions serve legitimate purposes such as rehabilitation, community safety, reintegration, and monitoring. They may also be less restrictive than continued imprisonment. From this perspective, parole conditions can be seen as a liberty-enhancing alternative rather than a pure restriction.

However, parole restrictions must still be proportionate (Solomon et al., 2008). Conditions should be connected to rehabilitation and public safety, not imposed arbitrarily. For example, a residence condition may be justified to ensure supervision, while reporting requirements may help monitor reintegration. But overly burdensome restrictions may undermine employment, family support, and rehabilitation. If parole conditions become so restrictive that they prevent meaningful reintegration, they may defeat the purpose of parole. Section 46M, which allows suspension or revocation of a Parole Order when a parolee fails to comply with section 46K or other conditions, further shows the seriousness of such restrictions. The revocation mechanism is legitimate, but it should be exercised fairly because revocation returns the person to custody and affects the remaining sentence (Prisons Act 1995, ss. 46M, 46N).

Preventive supervision under the Prevention of Crime Act 1959 is more constitutionally sensitive. Section 15 allows the Prevention of Crime Board to direct that a registered person be subject to police supervision for a period not exceeding five years, renewable for further periods not exceeding five years at a time. The person may be required to reside within a specified area, refrain from transferring residence without written authority, refrain from leaving the area without written authority, notify the police of residence, report to the nearest police station, remain indoors during specified hours, avoid specified areas, use only approved communication facilities, avoid internet access, keep the peace, enter into a bond, and be attached with an electronic monitoring device (Prevention of Crime Act 1959, s. 15).

The Dangerous Drugs (Special Preventive Measures) Act 1985 contains similarly intrusive powers. Section 6(1) allows detention for up to two years if the Minister is satisfied that a person has been or is associated with activities involving drug trafficking and that detention is necessary in the interest of public order. Section 6(3) allows a restriction order where detention is unnecessary, but control and supervision are necessary. Such an order may restrict activities, freedom of movement, residence, employment, and require police supervision, reporting, residence within a specified area, permission before leaving that area, remaining indoors during specified hours, and compliance with a bond (Dangerous Drugs (Special Preventive Measures) Act 1985, s. 6).

These preventive regimes are constitutionally complex. On one hand, public order and security are legitimate objectives. Article 9(2) permits laws relating to public order, and Article 149 expressly contemplates legislation

against subversion, organised violence, and acts prejudicial to public order. The Prevention of Crime Act 1959 itself states that it was enacted pursuant to Article 149 of the Federal Constitution. On the other hand, preventive restrictions may operate without ordinary criminal conviction for the conduct that justifies the supervision. This makes procedural safeguards especially important.

The constitutional significance of preventive supervision lies in its hybrid character. It is not ordinary imprisonment, yet it may substantially control where a person lives, when a person may leave home, whom a person may contact, how a person may communicate, and whether a person may move without prior permission. This makes preventive supervision closer to controlled liberty than ordinary administrative monitoring. A possible justification is that such restrictions are necessary to protect public order and prevent serious harm before it occurs. However, the preventive character of the power also creates a heightened risk of overreach because the restriction may operate outside ordinary criminal conviction and may be renewed over time. The constitutional threshold for preventive supervision should therefore be demonstrable risk, evidence-based restriction, periodic review, and conditions that are no more intrusive than necessary to protect public order.

The legitimacy of preventive supervision depends on necessity, evidence, review, and proportionality. A person under supervision may not be in prison, but their daily life may be heavily controlled. Residence restrictions, curfews, reporting obligations, travel permission, internet restrictions, and electronic monitoring can deeply affect employment, family life, education, and dignity. Because the restriction may be renewed, there is also a risk of prolonged control. Therefore, preventive supervision should be treated as a serious interference with liberty, even if it is not formally imprisonment (Dziyaudin, 2018; Jeffrey, 2012; Naz, 2016).

The constitutional balance is strongest when restrictions are specific, evidence-based, and reviewable. It becomes weaker when restrictions are imposed broadly, renewed repeatedly, or insulated from meaningful challenge. The existence of public order concerns does not remove the need for fairness. In fact, because preventive regimes operate before or outside ordinary conviction, they require stronger procedural safeguards. The affected person should know the substance of the allegation as far as security permits, have an opportunity to respond, and have access to review mechanisms.

In summary, movement restrictions on prisoners and parolees are generally justified because they are closely tied to punishment, rehabilitation, and sentence administration. Restrictions under preventive supervision are potentially justified by public order, but they require closer constitutional scrutiny due to their breadth, intensity, and preventive character. Article 9 should therefore operate as a reminder that supervision must not become indefinite civil punishment without adequate safeguards.

Passport Surrender as a Bail Condition

The fifth area concerns accused persons who surrender their passports as a condition of bail. This category differs from parole and preventive supervision because the accused has not yet been convicted. The restriction is imposed pending trial to secure the accused's attendance and prevent absconding. It therefore engages both liberty and the presumption of innocence.

Section 388 of the Criminal Procedure Code provides that a person accused of a non-bailable offence may be released on bail by the officer in charge of the police district or by the court, except where there appear reasonable grounds for believing that the person has been guilty of an offence punishable with death or imprisonment for life. Even then, the proviso allows the court to release certain categories of persons, such as a person under sixteen, a woman, or a sick or infirm person. Section 388 also requires reasons to be recorded when a person is released on bail (Criminal Procedure Code, s. 388).

The purpose of bail is not to punish the accused. It is to balance the accused's liberty with the need to secure attendance at trial and protect the administration of justice. A passport surrender condition is therefore justifiable where there is a real risk of flight. It is less restrictive than detention because it allows the accused to remain free within Malaysia while limiting international departure. The condition is also rationally connected to the objective of preventing absconding (Stevenson, 2017).

The analytical difficulty is that passport surrender may appear mild when compared with detention, but it may still have serious practical consequences for an accused person who needs to travel for employment, family, medical, educational, or religious reasons. Since the accused has not been convicted, the condition should not be imposed merely because the charge is serious or because passport surrender is administratively convenient. A case-specific assessment is required to determine whether there is a real risk of absconding and whether less restrictive conditions, such as sureties, reporting requirements, undertakings, or temporary release of the passport, would be sufficient. The constitutional threshold for passport surrender should therefore be genuine flight risk, not the seriousness of the allegation alone.

Nevertheless, passport surrender should not be imposed automatically. If every accused person is required to surrender a passport regardless of risk, the condition becomes routine punishment. A proportionate approach requires the court to consider the seriousness of the offence, strength of evidence, likelihood of absconding, family and community ties, employment, previous compliance with court orders, travel history, and whether less restrictive conditions are sufficient. The court should also consider whether the accused needs temporary release of the passport for medical, employment, educational, family, or religious reasons. Where temporary travel can be managed with sureties, reporting, or additional undertakings, an absolute refusal may be excessive.

The Malaysian constitutional position is influenced by Loh Wai Kong. Since the Federal Court held that Article 9 does not guarantee a right to travel abroad, passport surrender may not directly violate Article 9 in the narrow sense. However, the condition still restricts liberty in practical terms. Moreover, where the passport surrender condition arises from bail, it must be assessed through criminal procedure principles. Bail conditions must secure attendance and should not be excessive. Section 389 of the Criminal Procedure Code states that the amount of every bond must be fixed with due regard to the circumstances of the case and must not be excessive (Criminal Procedure Code, s. 389). Although section 389 concerns bond amount, the principle against excessiveness can inform the broader evaluation of bail conditions.

The availability of electronic monitoring under section 388A further complicates proportionality. Where a court releases a person on bail under sections 387 or 388, it may order that an electronic monitoring device be attached to the person. Section 388A requires the court to consider the nature of the offence and circumstances of the case, and to give the accused and the Public Prosecutor an opportunity to be heard before ordering electronic monitoring (Criminal Procedure Code, s. 388A). This statutory framework shows that modern bail conditions can significantly affect movement and privacy. Therefore, judicial reasons and case-specific assessment are crucial.

Passport surrender is thus constitutionally justifiable when it is temporary, case-specific, and directed towards ensuring attendance in court. It becomes constitutionally problematic when it is imposed as a default condition without reasons, maintained for excessive periods due to trial delay, or used to pressure the accused. Since the accused is presumed innocent, pre-trial restrictions should be no more burdensome than necessary (Ashworth & Redmayne, 2010). The proper approach is not to reject passport surrender altogether, but to require courts to justify it through risk-based reasoning.

Reassessing the Five Areas Through Legality, Legitimate Aim and Proportionality

The five areas reveal that not all movement restrictions carry the same constitutional weight. Public health restrictions during the MCO fall within the express public health exception in Article 9(2), and such restrictions are generally more defensible where they are directed at controlling infectious disease and reducing collective risk (Wiley & Gostin, 2025; Pang et al., 2021). Bankruptcy restrictions are linked to insolvency administration and creditor protection, particularly where the restriction is aimed at ensuring cooperation with insolvency authorities and preserving the integrity of the bankruptcy process (Azmi et al., 2017; Insolvency Act 1967, ss. 38, 38A). Parole restrictions are connected to punishment, rehabilitation, and reintegration, although they must remain tied to public safety and the successful supervision of offenders in the community (Hamin & Abu Hassan, 2012; Prisons Act 1995, s. 46K; Solomon et al., 2008).

Preventive supervision is connected to public order but requires closer scrutiny because of its preventive, surveillance-based, and potentially long-term character (Hassan et al., 2022; Jeffrey, 2012; Naz, 2016). PTPTN

travel bans are the most constitutionally vulnerable because they restrict movement for debt recovery and do not fit comfortably within the express categories in Article 9(2), although Article 4(2)(a) limits challenges based solely on that ground (Federal Constitution, arts. 4(2)(a), 9(2); Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor, 2021). Passport surrender as a bail condition occupies a special position because it affects international travel and pre-trial liberty, although it may be justified where it is necessary to secure attendance in court and prevent absconding (Criminal Procedure Code, s. 388; Stevenson, 2017).

The principle of legality is satisfied where restrictions are clearly authorised by statute. The MCO was supported by section 11 of the Prevention and Control of Infectious Diseases Act 1988 and enforced through section 26 of the Police Act 1967. PTPTN restrictions are authorised by section 22A of the National Higher Education Fund Corporation Act 1997. Bankruptcy restrictions are authorised by sections 38 and 38A of the Insolvency Act 1967. Parole and supervision restrictions are authorised by the Prisons Act 1995, the Prevention of Crime Act 1959, and the Dangerous Drugs (Special Preventive Measures) Act 1985.

Bail restrictions are supported by the court's power to grant bail and impose conditions under the Criminal Procedure Code. However, legality alone is insufficient because a restriction may be legally authorised yet still excessive in its practical operation. Constitutional limitations must still be assessed by reference to legitimate aim, rational connection, necessity, proportionality, and safeguards against arbitrary power (Barak, 2012; Rautenbach, 2014; Stone Sweet & Mathews, 2008).

The strength of the legitimate aim varies according to the nature of the restriction. Public health is expressly recognised in Article 9(2) and is especially compelling during a pandemic, where movement control may be necessary to reduce disease transmission (Wiley & Gostin, 2025; Rajendran et al., 2021). Public order and offender supervision are also recognised grounds, particularly where the restriction protects the community, manages risk, or supports rehabilitation (Hamin & Abu Hassan, 2012; Hassan et al., 2022).

Insolvency administration is legitimate because bankruptcy law is designed to administer the bankrupt's estate, secure cooperation, and protect creditors, although it is less directly connected to the express language of Article 9(2) (Azmi et al., 2017; Insolvency Act 1967, ss. 38, 38A). PTPTN debt recovery may be legitimate as a matter of financial governance, but it remains weaker as a justification for restricting movement because it is essentially administrative and debt based. Bail conditions pursue a stronger legitimate aim because securing attendance at trial is central to the administration of criminal justice (Criminal Procedure Code, s. 388; Stevenson, 2017).

Proportionality is where most constitutional concerns arise. A restriction is more defensible when it is targeted, temporary, evidence-based, and connected to individual risk. It becomes more problematic when it is broad, indefinite, automatic, or unrelated to the actual purpose pursued (Barak, 2012; Möller, 2012; Stone Sweet & Mathews, 2008). An MCO may be justified during a pandemic but not after the public health risk has subsided. A PTPTN restriction may be defensible where a borrower is genuinely attempting to evade repayment, but not where all defaulters are treated as flight risks without individual assessment.

A bankrupt may be restricted where there is a risk of non-cooperation, but travel may sometimes be permitted where it assists repayment or benefits creditors. A parolee may be restricted for rehabilitation and supervision but should not be subjected to conditions that undermine reintegration (Hamin & Abu Hassan, 2012; Solomon et al., 2008). A person under preventive supervision may be restricted for public order reasons, but such restriction must be supported by evidence, review, and adequate procedural safeguards (Hassan et al., 2022; Jeffrey, 2012; Naz, 2016). An accused may be required to surrender a passport where there is a genuine flight risk, but this should not become routine pre-trial punishment (Ashworth & Redmayne, 2010; Criminal Procedure Code, s. 388; Stevenson, 2017).

Based on the above comparison, this article proposes that movement restrictions under Article 9 should be assessed through a five-stage constitutional control framework. First, the restriction must have a clear statutory basis and should not rest on vague or informal administrative practice. Secondly, the restriction must pursue a legitimate objective connected to a recognised constitutional or public purpose, such as public health, public order, offender rehabilitation, creditor protection, or securing attendance in court. Thirdly, the restriction must be based on an individualised or context-sensitive assessment unless the situation, such as a public health

emergency, genuinely requires a general measure. Fourthly, the scope, duration and intensity of the restriction must be proportionate to the risk addressed. Fifthly, the affected person should have access to notice, reasons, review, appeal, permission or exemption where the context permits. This framework allows Article 9 to accommodate necessary restrictions while preventing movement control from becoming an automatic or excessive exercise of state power.

The overall finding is that Article 9 operates as a constitutional balancing mechanism. It does not prohibit all restrictions, but it requires restrictions to be justified through legality, legitimate aim, necessity, proportionality and procedural fairness. The proposed five-stage framework provides a structured way to distinguish between restrictions that are constitutionally defensible and restrictions that are excessive in their practical effect. The state may regulate movement, yet it must do so with constitutional discipline. A restriction should be expressly authorised by clear statutory language, supported by a legitimate purpose, applied through individual or context-sensitive assessment, subject to proportionate limits, and accompanied by practical safeguards such as review, appeal, permission or exemption. Once the purpose of the restriction no longer exists, the restriction should end. (Barak, 2012; Craig, 2015; Rautenbach, 2014; Stone Sweet & Mathews, 2008).

CONCLUSION

Article 9 of the Federal Constitution reflects a careful constitutional compromise between liberty and authority. It protects citizens against banishment and exclusion from the Federation, and it guarantees freedom of movement and residence within Malaysia. However, it also recognises that movement may be restricted by law in circumstances involving security, public order, public health, punishment of offenders, and special constitutional arrangements. This article has shown that the legitimacy of movement restrictions depends not merely on statutory authority, but on whether the restriction is reasonable, proportionate, temporary, and procedurally fair.

The five areas examined demonstrate different degrees of constitutional justification. The MCO was strongly justified by public health necessity, provided it remained temporary and proportionate. PTPTN travel restrictions are more problematic because they transform debt recovery into a liberty restriction and therefore require strict individualised assessment. Bankruptcy restrictions are generally justified as part of insolvency administration, but they should not be used punitively or indefinitely. Parole and offender supervision restrictions are legitimate when linked to rehabilitation, public safety, and sentence administration, but preventive supervision requires heightened safeguards because of its intrusive and preventive character. Passport surrender as a bail condition is justified where necessary to prevent absconding, but it should not be imposed automatically on accused persons who remain presumed innocent.

The central argument of this article is that Article 9 should not be read as a weak right that disappears whenever a statute exists. Rather, it should be read as a constitutional guarantee that permits restriction only where the restriction remains defensible in law and principle. The phrase “subject to law” should not become an open door to excessive administrative power. It should be understood as requiring lawful, legitimate, proportionate, and reviewable limitations. In a constitutional democracy, freedom of movement may be restricted, but it should never be reduced to a privilege dependent solely on administrative discretion.

ACKNOWLEDGEMENT

The author expresses sincere appreciation to the Faculty of Law, Universiti Teknologi MARA, Cawangan Negeri Sembilan, Kampus Seremban, for its institutional support and academic environment in the preparation of this article. This article was prepared independently and did not receive any external funding.

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