

THE STRAITS TIMES INTERACTIVE

May 4, 2007

Decriminalising homosexual acts would be an error

By For The Straits Times, Yvonne C. L. Lee

READERS of The Straits Times have written in to question the rationale for the criminalisation of homosexual acts. It is imperative that we understand the legal and broader social implications, and that Parliament, in the forthcoming debate on the Penal Code reform, carefully considers these implications.

The Home Affairs Ministry has indicated that Section 377A of the Penal Code (S377A) will be retained. S377A prohibits the commission of gross indecency by one male person with another male person. Opinions have been expressed that S377A may be unconstitutional because it discriminates against homosexuals by criminalising homosexual sex and not oral and anal sex committed by heterosexuals or lesbians.

This is an over-simplistic reading of the equality clause.

Context

FIRSTLY, the legal meaning of equality must be understood within its social context. Equality is not an absolute value. Extreme applications of equality impair community interests and violate the rights of others. Furthermore, the Constitution does not prohibit all forms of discrimination.

Like cases must be treated alike, but Parliament may enact measures which differentiate between different groups. The courts hold that such measures must satisfy two tests to be constitutionally valid: Firstly, the classification must have a rational basis. Secondly, the law must serve a legitimate purpose which is reasonably related to the basis for the classification.

Each differentiating legal measure serves a social objective. For example, a married individual with four children enjoys higher tax relief than one without children. The public good is to encourage married couples to have more babies.

To view the issue of S377A exclusively as a matter of equality omits the broader context - that rights can clash with other rights and community values.

When they do, Parliament may pass laws which reflect the public good in preference over the rights of the individual or groups.

Any argument to decriminalise homosexual sex must consider the harmful social consequences. For example, would affirming homosexual sexual practices serve the common good? It is a known medical fact that homosexual intercourse or sodomy is an inherently unhealthy act that carries higher risks of a number of sexually transmitted

infections. The law should not facilitate acts which threaten public health.

Moreover, any reform to the Penal Code must preserve fundamental values which serve the public good, instead of abstract notions of equality or fashion.

Broader agenda

RECENT developments in foreign jurisdictions like Canada, Sweden, the United Kingdom and the United States indicate that the move to decriminalise homosexual sex is the first step in a broader homosexual rights agenda to transform social morality:

- If S377A is repealed, homosexual sex is legitimised, transformed from a crime into an 'alternative lifestyle'.
- The minimum age for sodomy must then be specified. This opens the door for homosexual lobbyists to pursue the next step of equalising the age of consent for homosexuals and heterosexuals. The current age of consent for homosexual sex in countries which have decriminalised sodomy ranges from 13 to 18, covering Singapore males from Secondary 1 to junior college.
- The third step is re-conceptualising homosexuality as a civil right in the name of equality. As an 'alternative lifestyle', homosexual lobbyists will seek for this to be endorsed and 'mainstreamed' into society (for example, arts, education, entertainment and media), beyond the privacy of the bedroom. The current view that 'sexual orientation' should not be a basis for discrimination is problematic. 'Sexual orientation' is a vague term covering a range of sexual expressions, including paedophilia and bestiality. Also, the assertion that one is 'born gay' is scientifically unproven.
- An active homosexual agenda has engendered clashes with fundamental liberties such as free speech and religious liberty. Christian pastors have been criminally prosecuted for sermons declaring that homosexuality is a sin, a view also held by Muslims and many non-religious people who consider homosexuality unnatural and morally repugnant. Attempts have been made to extend 'hate speech' laws to the Bible and Quran.

People who oppose the homosexual agenda are branded as intolerant, bigoted, homophobes, or hateful towards homosexuals who are merely 'different'. This does not promote free speech but seeks to censor it. If this intolerance against religion is imported into multiracial and multireligious Singapore, this will breed social divisiveness.

- The final step involves attempts to redefine 'marriage', the fundamental institution and bedrock of many civilisations. The redefinition is a radical reconstruction of 'marriage' - no longer a union between man and woman but includes 'same-sex marriage'. Homosexuals must then be allowed to marry someone of the same sex and be given the benefits of marriage such as tax benefits, adoption of children and/or state-funded access to alternative 'reproduction' methods.

The argument that decriminalising homosexual sex will not cause a change in moral attitudes is erroneous. It has been suggested that even after adultery was decriminalised, it remained morally reprehensible. So too, decriminalising homosexual sex will not cause a shift in moral attitudes.

While the law embodies a moral judgment, it is not always prudent for the law to punish all immoral behaviour. However, to draw an analogy between adulterers and homosexuals

is fallacious. Adulterers do not seek societal approval, but certain homosexual activists campaign to alter the public mindset and to gain legal and social endorsement of the gay lifestyle.

The fact is, under the proposed Penal Code reform, homosexuals wishing to lead private lives may do so, provided they do not foist their homosexual acts on the public.

S377A is a legitimate statement of the values of our society. In constitutional terms, equality claims operate within a broader social context.

Homosexuality is offensive to the majority of citizens. Allowing an aggressive homosexual rights agenda to dictate law reform ignores the nature of Singapore's multireligious, multiracial community. Such an agenda would be divisive. Therefore, the attention given to fundamental moral values of the majority of citizens by retaining S377A in its entirety strikes the right balance.

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DIVISIVE AGENDA

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