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NUS don warns of 377A fallout

By K. C. Vijayan

IF THE police, on a tip-off, raid a flat for suspected drug offenders and discover no drugs but gay sex instead, would they prosecute?

NUS law don Michael Hor says this scenario could arise from the government's stand that it would not be proactive in enforcing S377A.

'Does the non-enforcement policy cover this, for it might be argued that the police were not 'pro-active'?' he wrote in a new book of essays launched on Tuesday.

He cites a similar example in Texas, the United States, where the US Supreme Court had struck down a sodomy statute.

The book, titled ' Lives in the Law ', honours three luminaries in Singapore's legal academia - Mr Peter Ellinger, Ms Koh Kheng Lian and Mrs Tan Sook Yee -who recently retired from full-time appointments at the National University of Singapore's Law Faculty.

Jointly published by Academy Publishing and the NUS, the trio are described as 'Singapore's foremost experts in their specialised fields of study and teaching,' by Chief Justice Chan Sek Keong in his foreword to the book.

In his essay on the recent changes to the Penal Code, Professor Hor further argues there is also no indication that the policy of not prosecuting under the 377A will not change overnight and without prior notice.

After heated debate in and out of Parliament over changes to the Penal Code last week, Parliament retained 377A which outlaws homosexuality.

The government also indicated then it will not proactively enforce the section.

But Professor Hor notes that it is 'impossible to tell' if the courts are willing to hold the government from prosecuting against this declared policy.

Separately, another NUS law don has called for the courts to review aspects of entrapment in an essay on the issue of consent as interpreted under the Penal Code.

Professor Stanley Yeo plumbed for a practical approach to the issue of consent in cases involving entrapment, citing Professor Koh Kheng Lian, one of the three honorees of the book.

Prof Koh had said the law should be guided by 'what is fair or unfair conduct on the part of the entraper in his efforts to entrap the defendant.'

Prof Yeo said it would be unfair to prosecute a homosexual, for example, if he was enticed by a police officer posing as a gay, since it was the latter who freely gave his consent to the former's advances.

'Instead of imposing a blanket rule that consent is irrelevant whenever it is secured by entrapment, fairness to the accused requires the courts' to study the facts of a particular case to see if consent had been freely given, he said.