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Headline: Why repeal v remain is a hot issues in Singapore



Law that criminalises sex between men

# Why repeal v remain is a

The Penal Code's Section 377A, which criminalises sex between men, is in the spotlight again. Insight examines why the issue continues to stir up strong debate between opposing camps.

Yuen Sin and Amelia Teng

Keep or repeal Section 377A of the Penal Code? This debate has been reignited in Singapore after a similar colonial-era ban on gay sex in India was struck down.

The issue came to the fore when Ambassador-at-large Tommy Koh, in a Facebook comment on a post by National University of Singapore law school dean Simon Chesterman earlier this month, suggested that Singapore's gay community bring a class action to challenge the constitutionality of Section 377A.

Last Monday, deejay Johnson Ong Ming, 43, filed a case at the High Court arguing that the law is unconstitutional.

Another group led by film-maker Glen Goei and legal trainee Johannes Hadi, whose petition against Section 377A has got more than 41,000 signatures since Sept 9, are appealing to the Ministry of Home Affairs for the statute to be included in an ongoing review of the Penal Code.

At the same time, a petition to retain 377A has gathered more than 102,000 signatures since it was launched on Sept 8.

Churches here have also expressed their concern and maintained their stance that the "homosexual lifestyle" is not acceptable, and the traditional family unit must be kept intact. Among those in favour of keeping 377A, some have shared videos or messages about the possible implications of making gay sex legal.

#### WHY IS 377A SO EMOTIVE?

Section 377A, says Singapore Management University (SMU) law don Eugene Tan, has become "valorised as being the last frontier for both camps".

"The 'retain' camp sees it as a high-water mark or 'safe harbour' for societal values they regard as desirable and wholesome."

This does not necessarily mean they want the law to be actively enforced or for the LGBT (lesbian, gay, bisexual and transgender) community to be discriminated against in other ways, he says. For some, the retention of 377A is "more of a shield, rather than a sword, for their values".

For the repeal camp, the presence of 377A on the statute books "is a clear sign of discrimination", adds Professor Tan. "A complete victory for either camp will be seen as a complete annihilation of the other, and that's not an outcome that is desirable. There will be a very strong pushback from the camp that lost or is seen to have lost."

Observers also point out how opposing sides have become more vo-

cal in recent years. The annual Pink Dot rally, which supports the LGBT cause, has gained traction over the years and marked its 10th anniversary in July. The movement has encountered religious opposition from Christian and Muslim circles.

As Prime Minister Lee Hsien Loong noted back in 2007: "The more gay activists push this agenda, the stronger will be the pushback from conservative forces in our society."

#### DOES INDIA'S RULING CHANGE ANYTHING?

Attempts to overturn 377A in Singapore have been made before. In 2014, the highest court in the land rejected that the provision was unconstitutional after gay couple Gary Lim and Kenneth Chee, and another plaintiff, Mr Tan Eng Hong, argued it was discriminatory.

Among other things, the Court of Appeal ruled that Section 377A fell outside the scope of Article 12 of the Constitution, which forbids discrimination of citizens on grounds including religion, race and place of birth. The court observed that Article 12 did not contain the words "gender", "sex" and "sexual orientation".

And in the last comprehensive review of the Penal Code back in 2007, a petition filed by Nominated MP (NMP) Siew Kum Hong on behalf of a group of activists to repeal Section 377A stirred an emotional debate in Parliament.

That bid was unsuccessful, with PM Lee saying that while Singapore should recognise homosexuals as part of society, they should not set the tone for society or be considered a minority like Malays and Indians.

He also said that Singapore is "basically a conservative society" and that a "heterosexual, stable family is a social norm".

Has the latest Indian decision changed anything?

Legally, no, says National University of Singapore (NUS) law professor and former attorney-general Walter Woon, explaining that it is not binding in Singapore.

NUS law professor Thio Li-ann adds that Singapore's courts in matters of public law "do not blindly follow other courts", particularly when other judiciaries deal with politicised and highly controversial issues. "That would violate the separation of powers - the matter falls within the ambit of Parliament as the people's representatives. An overly politicised court degrades the rule of law."

In remarks to the media last week, Law and Home Affairs Minister K. Shanmugam said a decision on whether a piece of legislation



Participants at the Pink Dot event in June 2016. The rally, which supports the LGBT cause, has gained traction over the years and marked its 10th anniversary in July this year. ST FILE PHOTO

should be amended or repealed would be a matter for the Executive and the Parliament to decide.

But the Indian decision has also set a fresh stage for the matter to be discussed again, given how Section 377A has similar colonial origins as India's Section 377, a law in-

troduced by British rulers in 1861, NMP Kok Heng Leun, who is for repeal, points out.

This time, prominent members of the public, such as former senior diplomat Kishore Mahbubani, have also come forward to add their voice for change.

Mr Shanmugam said his personal view is that care has to be taken against criminalising lifestyles and sexual attitudes, and treating people involved as criminals. But he added that it would be wrong for him to impose his personal views on society or as a policymaker.



# hot issue in Singapore

## 'REPEAL IT'

**DJ who filed court challenge says Section 377A further humiliates already marginalised people**

The man who launched the legal challenge to the law criminalising sex between men, disc jockey Johnson Ong Ming, has told Insight why he wants it repealed.

Ong, who performs as DJ Big Kid, grew up believing he was "less than everyone else" because he was attracted to men. And it was made worse when family members and friends pointed to Section 377A to prove that his homosexuality was also illegal under the law.

"Where the law should have protected me, it reinforced and gave them the legitimacy to create in me (even if well-meaning) a deep-rooted sense of guilt which I took years to overcome," he says.

Last week, the 43-year-old filed a High Court challenge against the law on the grounds that Section 377A is unconstitutional. Though the law is not enforced, he says it reminds him that he is a "lesser citizen".

"It has no function other than to further discriminate and humiliate an already marginalised segment of society," he tells Insight.

Prominent names are also listed as signatories of a petition to repeal Section 377A that was launched by Singapore filmmaker Glen Goei and legal trainee Johannes Hadi last Sunday.

They include former senior diplomat Kishore Mahbubani,

Yale-NUS College president Tan Tai Yong, and former Nominated Members of Parliament (NMPs) Kanwaljit Soan and Janice Koh, as well as Ms Koh's husband, former Singapore Tourism Board chief executive Lionel Yeo.

The petition, which is supported by several lesbian, gay, bisexual and transgender (LGBT) groups including Pink Dot SG, has garnered more than 41,000 signatures.

It will be sent to the Ministry of Home Affairs by Sept 28, amid an ongoing public consultation on a wide-ranging review of the Penal Code. Section 377A was excluded from the review.

In the petition, Mr Goei and Mr Hadi wrote that they have a vision of a "more inclusive, more equal Singapore".

"Yale-NUS' Professor Tan believes that Section 377A is "an archaic, colonial-era law that has no relevance in modern Singapore". He does not see why a law that is not enforced should be kept.

A petition arguing for the retention of Section 377A claims that a repeal will "normalise" homosex-



Disc jockey Johnson Ong Ming says Section 377A reminds him that he is a "lesser citizen".



Comedian Kumar hopes 377A will be repealed eventually, but understands the concerns of conservative Singaporeans.

ual behaviour and lead to a greater push for other "rights" by the LGBT community.

But Ms Koh, who was an NMP from 2012 to 2014, suggests that getting rid of the section "does not stop anyone from holding on to their personal beliefs, or prevent parents from teaching their children the values they want to teach".

"Videos circulated on Facebook also warn that same-sex marriages will follow next, and religious lead-

ers could be arrested if they refuse to allow such marriages in churches or mosques. It is unclear who is behind these videos.

Reverend Miak Siew of the Free Community Church, which accepts same-sex relationships and supports the repeal petition, says such videos are trying to import "the culture wars from the United States".

"No LGBT couple here has ever demanded that religious organisations have to perform same-sex marriages. That has been a lie perpetuated all over."

Gay comedian Kumar, 50, says that while he hopes that Section 377A will be repealed eventually, he understands the concerns that conservative Singaporeans have.

"If you ask my mother, she will tell you, 'No way', even though she knows that I'm her son. We need to understand that we are a country not made up of one religion alone, and it can be difficult to navigate this issue. What you don't want is for this debate to lead to name-calling and open conflicts."

Yuen Sin

**Mr Janadas Devan, chief of government communications at the Ministry of Communications and Information, said in a Facebook post that the "uneasy compromise" to keep but not enforce Section 377A – a term used by PM Lee during a BBC interview last year – "remains the only viable position" for Singapore at the moment.**

is the purpose of having the law?"

During the same debate, Holland-Bukit Timah GRC MP Christopher de Souza pointed out that enforcement alone could not keep how effective a law was. He highlighted how, despite a lack of prosecution, attempting suicide is an offence because it conveys the message that people should not take their own lives.

He added that it is a misconception to argue for the repeal of Section 377A on the grounds that "what goes on behind closed doors will not affect us, so no point criminalising it". Any repeal, he argued, "puts homosexual lifestyle on (a) par with heterosexual lifestyle".

Insight contacted seven People's Action Party MPs for comment on the 377A issue but they declined to comment or did not respond. During the 2007 377A debate, the Workers' Party had said that its leadership was divided on the issue and, therefore, would not push for the law to be repealed or kept. WP media chair and Non-Constituency MP Daniel Goh says the party has not changed its position.

SMU law professor Tan Seow Hon tells Insight that if the long-standing law against gay sex is abolished, it would send the signal, as PM noted in 2007, that "our stance has changed".

She adds that "laws shape the moral ecology within which people live and make their choices", citing the example of the Media Development Authority's decision in 2013 to ban extramarital dating website Ashley Madison.

Given the divide in views, it will be difficult to build consensus. But Mr Kok believes that both sides should "sit down and have conversations, instead of accusations".

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## 'KEEP IT'

**Religious groups, conservatives fear repeal will weaken family unit**

Repealing a law that criminalises sex between men could have wider consequences for the traditional family unit, conservatives and those with religious convictions tell Insight.

In response to the renewed calls for Section 377A to be revoked, churches said they are firm in their stance that the law should be kept to send a signal that families and marriage between a man and a woman are the building blocks of society.

More than 102,000 people have

signed an online petition to keep the law since it was set up a week ago.

Several churches here have also shared videos on Facebook, warning of what could happen next if the section is repealed, from same-sex marriages to lawsuits against people who do not agree with the homosexual lifestyle.

Reverend Yang Tuck Yoong, senior pastor of Cornerstone Community Church, says: "We see 377A not just serving as a restraint from wrongdoing, but also as a cel-

ebation of right moral values which our Government has sought repeatedly to uphold and promote: values such as family cohesion and societal integrity."

Reverend Dominic Yeo, chairman of the Alliance of the Pentecostal-Charismatic Churches of Singapore, which has about 50 churches, says: "A repeal of Section 377A on the basis of it being outdated removes from consideration the reason for its genesis."

"While our position may be viewed as 'conservative' or 'outdated', the church remains committed to upholding and promoting traditional family values that are the building blocks of our nation."

The Roman Catholic Archdiocese of Singapore and the Islamic Religious Council of Singapore did not respond to queries from Insight.

Besides religious groups, there are others who are wary of what repealing 377A would mean for



Reverend Yang Tuck Yoong sees 377A as a celebration of right moral values that the Government has tried to uphold.



Reverend Dominic Yeo says a repeal of 377A on the basis of it being outdated ignores the reason for its genesis.

the traditional family unit.

Administrative executive Lance Kuan, 55, says: "As a parent, I believe that a heterosexual family unit provides the best environment to conceive children and bring them up. Both the father and mother play an important role in children's upbringing. There is a

lot of social research in the past decades to back this up.

"Although the Government has said Section 377A will not be strictly imposed, the significance of it remaining in the statute reflects the conservative nature of Singapore's society."

Others, like Mr Tann Chee, take a more nuanced stance. The 48-year-old, who works in the finance industry, says: "I am fine with the lesbian, gay, bisexual and transgender community as long as it does not impose its choices and ideology on others."

"(It) can fight for its rights to simply allow the law to formally decriminalise what is done in its private enclosed space."

"But if it is fighting to repeal 377A so that it can next openly fight for gay marriage and inclusion of gay materials in schools, then I won't agree."

Amelia Teng

Former NMP Kanwaljit Soan, who has signed Mr Goei's petition to repeal Section 377A, says: "India is a traditional society which is very family orientated and they have repealed 377. (If 377A is repealed here), we are therefore not following the footsteps of Western liber-

als but in the footsteps of an Asian society."

**WHY DO WE HAVE A LAW THAT IS NOT USED?**

On Sept 8, Mr Janadas Devan, chief of government communications at the Ministry of Communications

and Information, said in a Facebook post that the "uneasy compromise" to keep but not enforce Section 377A – a term used by PM Lee during a BBC interview last year – "remains the only viable position" for Singapore at the moment.

Still, in 2007, former MP Hri Ku-

mar Nair, in giving what he said was a "lawyer's point of view", noted how Section 377A falls short of what a good law is or should be in some respects.

On the issue of not pursuing the law proactively, he asked: "Does it mean that the police will not act on

complaints or that suspects may be investigated but ultimately not arrested or prosecuted? Or is it the case that the Attorney-General, who has prosecutorial discretion, may prosecute some but not all offenders?.. But if the intention is not to do anything at all, then what