Section 377A: Science, religion and the law

Religious leaders may view homosexuality as a sin, like adultery and fornication, but there’s no reason for the state to make it a crime

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For The Straits Times

Singapore was part of the British empire. It was once administered by the British from Calcutta (Kolkata). Many of our laws, including the Penal Code, were imported from India. The Indian Penal Code, in Section 377, states: “Whoever commits sodomy against the order of nature shall be punished with imprisonment for life.”

Sodomy was considered a crime under Section 377.

Section 377A of the Singapore Penal Code makes it a crime for two consenting male adults to have sex with neither in private. It does not pose any serious concern or challenge to female adults. The first question is whether Section 377A should be repealed. The second question is whether 377A is consistent with our Constitution.

The scientific evidence Singaporeans are a rational people.

We make our policies and laws based on facts, science and reason.

What is the scientific evidence on homosexuality? Is it a normal aspect of human sexuality?

In 1876, the World Health Organization (WHO) declared homosexuality to be a Diagnostic and Statistical Manual of Mental Disorders (DSM) disorder. This decision was motivated by the growing recognition of HIV/AIDS when it spread to Africa.

HIV/AIDS is a serious health concern, and it is important to seek a cure. However, it should not be used to justify discrimination against people who are homosexual.

Scientists do not know what determines a person’s sexual orientation, but they theorize that it is caused by a complex interplay of genetic, hormonal and environmental influences and is not something that can be changed. They favor biologically-based theories, which posit genetic factors.

Scientific research has shown that there is no significant difference in the personal and natural variation in human sexuality and that it is not a source of negative psychological effects. They also believe that there is insufficient evidence to support psychological interventions to change sexual orientation.

SODOMY AND THE WORLD

The United Nations has 196 member states. The majority, 124 states, do not criminalize sodomy, homosexuality or adultery.

Which societies belong to the majority? All the countries of Europe, North America and South America do not criminalize sodomy. It is of interest to point out that China, Japan, South Korea, Hong Kong, Taiwan, the Philippines and Thailand also belong to the majority. It is therefore not the case of a liberal West versus a conservative East.

Societies make up 72 of which criminalize sodomy. They are the Arab states, Muslim-majority countries and, surprisingly, the former British colonies of Asia, Africa and the Caribbean.

Singapore is part of either of the majority because we inherited from the British a penal code which criminalizes sodomy. For a country which embraces science and technology, it is surprising that, on this one aspect, the law has not been updated to reflect the scientific evidence.

SIN AND CRIME

The National Council of Churches of Singapore, the Catholic Archbishop, and the Islamic authorities have led the campaign against the repeal of Section 377A. They regard homosexuality as a violation of their religious dogmas and therefore a sin.

My good friend, former attorney general Walter Woon, has pointed out that there is a fundamental difference between sins and a crime. He said that only regard as a crime what is illegal.

He concluded that sodomy may be a sin but it should not be made a crime. He also speaks about the composition of existing 377A and not enforcing it because it brings the law into disrepute.

There is an important point which we made to the Christian and Islamic authorities. I would respectfully remind them that Singapore is a secular state. It is not a Christian country or a Muslim country. It is a secular state and as such, the government and society should respect the separation of religion and the state. Church leaders and Islamic leaders should respect that separation.

RULES OF COURTS

In most cases, the antiquated sodomy laws were repealed by the legislatures of the respective states or countries. However, in the few cases, the laws were declared unconstitutional by the court.

In 1965, every state of the United States had a law criminalizing sodomy. By 2003, only 14 states, including Texas, had such laws. That same year, the US Supreme Court made a landmark decision in Lawrence versus Texas. The court, held by a majority of six-to-three, that the Texas law criminalizing sodomynull was unconstitutional. Speaking for the majority, Justice Anthony Kennedy said: “The petitioners are entitled to respect for their private lives. The state cannot demean or control their destiny by making their private sexual conduct a crime.”

The ruling in Lawrence overturned the anti-sodomy law in the other 33 states as well. Today, 15 years later, most of these states have not repealed the anti-sodomy law. However, it is considered unenforceable as the Supreme Court in 1967 overturned the state sodomy laws.

Earlier this month, the Indian Supreme Court overturned its earlier decision of 2013, and ruled that Section 377 of the Indian Code is unconstitutional, though it noted that it was not an automatic overturning of the law as a whole. It was an executive decision of the judge.

Chief Justice Dipak Misra said that: “It is necessary to ensure that the Constitution is not made to suffer violence.”

Another judge, Indira Malhotra, said: “There was an appeal to the QC people for rescuing them.”

In 2014, the island of the Caribbean nation of St Vincent and the Grenadines was considered by the Singapore Court of Appeal in the case of Lim Peng Hung versus Attorney General. The court ruled that the law was not unconstitutional. It is a case where the court’s judgment was wrong. One hopes that the case of Section 377A will be decided in the same way.

I will conclude with the following four propositions. First, the scientific evidence is that homosexuality is a normal and natural variation of human sexuality. It is not a mental disorder.

Second, Section 377A is an antiquated law, not supported by science, should be repealed.

Third, Singapore is a secular state, it is not a Christian or Muslim country. The leaders of the Christian and Islamic authorities should respect this fact.

Fourth, the Court of Appeal should reverse its decision and declare 377A to be unconstitutional.