Section 377A: Moving beyond slippery slopes to a rational consensus

Take a hard look at the science on homosexuality, and monitor public opinion closely, before deciding whether to repeal law criminalising gay sex

Simone Yap
For The Sunday Times

Deliberations about Section 377A of Singapore’s Penal Code after the 2008 Supreme Court decision that the law was not a fundamental belief do not, in the final analysis, determine its fate. There are strong indications that the law is coming to an end, with the government’s latest stance that Section 377A will be reviewed. But there are significant differences in the political logics of its advocates and opponents, and the issue is complex.

CONSTITUTIONALITY AND PROCEDURE

The Constitution and procedure

There is no doubt that the defence of Section 377A enjoys a constitutional and procedural shield. But there are significant differences in the political logics of its advocates and opponents. The advocates of Section 377A believe that the Constitution and procedure shield is strong enough to sustain the law, while the opponents argue that it is not.

The Constitutional Court has already struck down the law in two cases, but these decisions have been overturned by the Supreme Court. The advocates of Section 377A believe that the Constitutional Court’s decisions are not binding on the Supreme Court, while the opponents argue that they are.

The Supreme Court has yet to decide whether Section 377A is constitutional. The government has indicated that it will review the law, and the Constitutional Court has yet to rule on whether the government has the power to do so.

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