

Parliamentary debate on Penal Code (Amendment) Bill,

22 Oct 2007

Source: Hansard

PETITION

Mr Speaker: Order. The Nominated Member, Mr Siew Kum Hong, wishes to present a Petition. Mr Siew.

Mr Siew Kum Hong (Nominated Member): Mr Speaker, Sir, I present to Parliament a Petition under Standing Order No. 18. The Clerk has endorsed this Petition as being in accordance with the rules of Standing Order No. 18(5).

This Petition is presented on behalf on Mr George Bonaventure Hwang Chor Chee, Dr Stuart Koe Chi Yeow, Ms Tan Joo Hymn, and others of like opinion. Including the three petitioners that I have named, there are a total of 2,341 valid signatures.

Sir, the material allegations contained in the Petition concern the unconstitutionality of section 377A of the Penal Code. If and when the Penal Code (Amendment) Bill is passed, private consensual anal and oral sex between heterosexual adults will be permitted, but the same private and consensual acts between men will remain criminalised, due to the retention of section 377A.

The petitioners argue that this is an unconstitutional derogation from the constitutional guarantee of equality and equal protection of the law as set out in

Article 12(1) of the Constitution. The petitioners ask this House to repeal section 377A in light of this.

The petitioners pray, and I quote:

"By this Petition, the Undersigned pray that Section 377A of the Penal Code (Cap. 224) be repealed."

I will now hand the Petition* to the Clerk.

Petition handed to the Clerk of Parliament.

PENAL CODE (AMENDMENT) BILL

Order for Second Reading read.

The Senior Minister of State for Home Affairs (Assoc. Prof. Ho Peng Kee): Mr Speaker, Sir, I beg to move, "That the Bill be now read a Second time."

Sir, the Penal Code is the primary criminal statute in Singapore with more than 500 provisions. It is a key part of the corpus of Singapore's laws which have served us well in keeping our law and order situation under control all these years. As a major criminal law statute, its provisions reflect our society's norms and values. This review is the most comprehensive undertaken since 1984, when we amended the Penal Code to introduce mandatory minimum punishment for several serious offences. Now, we are amending the Code so that it remains effective in a dynamic and changing environment that remains challenging.

Working closely with the Attorney-General's Chambers, Ministry of Law and other Government agencies, we updated the Code's provisions to reflect present realities, addressing the changing nature of crime and ensuring that there is adequate protection for the more vulnerable members of our society, such as our young and mentally disabled. Stretching over two to three years, the process was a measured and deliberate one, taking into account, where applicable, legislative changes in other jurisdictions. In amending some provisions, we also took into account comments made by the Judges in their judgments.

Consultation process

Sir, the amendments now before the House have been refined through a robust process of public consultation, with inputs from members of the public, professional organisations, as well as stakeholders of our criminal justice system. During the consultation period, we received about 300 responses through multiple points of engagement, such as the REACH e-portal, letters and articles to the media, email messages, as well as input at three focus group discussions with people from different walks of life. And, thereafter, continued to receive more feedback. In addition, institutions, such as the Law Society, Subordinate Courts and Singapore Academy of Law, gave valuable input. It is heartening that Singaporeans took an active interest in this review. I say "thank you" to all of them for contributing time and effort to make this consultation exercise a very meaningful one.

We carefully considered every feedback received, holding discussions with the relevant agencies to explore the ideas, suggestions and views that surfaced. Indeed, as rightly pointed out by some contributors, this is a valuable process which has helped to further refine and improve the proposed amendments.

About 30 provisions were further amended as a result of suggestions received during this consultation period. In all, this review will see 77 provisions expanded, updated or clarified, four provisions repealed, and 21 new offences enacted to address identified gaps in the law, strengthen enforcement capability and accord better protection to vulnerable persons. In addition, we have undertaken a comprehensive and holistic review of all the penalties set out in the Code.

Let me now cover the key features of the Bill.

Penal Code will be updated to reflect current realities and crime trends - keeping pace with technology

Sir, there has been a wave of technological advancements since the Penal Code was last substantially amended. Increased use of the Internet, mobile phone and credit card has changed our lives dramatically. Unfortunately, there is a darker side to this phenomenon as law-breakers, criminals and terrorists also leverage on these tools to further their objectives. It is therefore critical for us to update the Penal Code to ensure that the scope of its provisions take into account these developments.

With Singapore's reputation as a financial hub and the increased use of electronic payment, including credit cards, it is vital that we take firm measures to tackle credit card fraud. We will therefore amend section 30 to put beyond doubt that the term "valuable security" is deemed to include credit cards, charge cards, stored value cards, automated teller machine (ATM) cards, and such other cards which have money or money's worth, or other financial rights attached. Following feedback from the Subordinate Courts and the Singapore Academy of Law, MHA has decided to remove the term "privileges" from the new definition of "valuable security", so as to exclude reward cards and discount cards as this would unnecessarily widen the scope of the offence.

In addition, a new section 31A defining "die" and "instrument" will be introduced to deal more effectively with card-based fraud. New sections 473A, 473B and 473C which relate to the making or possessing of equipment to make a false instrument have also been introduced to deal more holistically with credit card fraud.

In addition, Sir, these amendments recognise the fact that with the pervasive use of IT and the Internet, the world no longer operates solely in a "brick and mortar" or "paper" environment. Many of our messages are transmitted through the electronic medium, such as through emails, SMS messages and, for some, blogging. It is therefore the right thing to do to enhance the coverage of relevant Penal Code provisions to cover the various electronic means and media which can be used to perpetrate crime.

Hence, 18 provisions will be amended to reflect this development, by adding the term "electronic record" or expanding the definition of "document". In particular, the sale of any obscene object by a person through the Internet, the making of statements on a person's blog with the deliberate intention of wounding the religious or racial feelings of any person, or the sending of an SMS message that contains an incitement to violence or that counsels disobedience to the law would be criminalised under amended sections 292 (Sale of obscene books, etc), 298 (Uttering words, etc, with deliberate intent to wound the religious or racial feelings of any person) and section 151A, now renumbered section 267C respectively.

However, Sir, let me assure Members that Police has no intention to monitor what takes place online, such as the Internet. Neither should netizens, bloggers and the many of us who regularly send SMS messages worry that these provisions will inhibit our use of these communication channels. Law-abiding users should have no fear. Indeed, the underlying offences remain unchanged in substance although the means of transmission have now widened.

Also, to enable us to better deal with white collar crimes involving electronic or digital records and documents, we will update the relevant provisions to incorporate acts committed via the Internet and digital forms of document. This way, Sir, Police can more effectively deal with forgery offences involving, for example, the falsification of electronic records and documents, fabrication of email messages and use of forged electronic certificates. As of now, these pose challenges to the Police in terms of establishing an offence under the Penal Code.

Addressing threat of extremist terrorism

Sir, another key development that we have addressed in these amendments is the new security climate in the post-911 environment and the threat posed by extremist terrorism. While our security forces currently already possess the necessary powers to act in dealing with acts of terrorism, and also guidelines as to the proper exercise of these powers, MHA proposes to include additional illustrations to provide greater clarity with regard to the legitimacy of actions by our security officers under certain threat scenarios. This is particularly important, considering that the Penal Code was drafted primarily to deal with crime, not terrorism.

These illustrations will be inserted to existing sections 79 and 81 under chapter IV titled "General Exceptions". But let me emphasise that these illustrations do not grant additional powers to our security forces but rather aim to provide clarity in the law. More importantly, they give greater operational confidence to our officers on the ground in taking the necessary actions to neutralise security threats that confront them.

Inserted in consultation with MINDEF, they cover scenarios pertaining to potential suicide bombers, a hostile vessel ramming against another vessel, and an apparently hijacked vessel that appears to be on a "suicide mission" to cause harm to innocent human lives at a ferry terminal. We only need to recall the London Bombings of 2005 and the attack on USS Cole to know that these are plausible scenarios in today's security climate. Although the illustrations are not exhaustive, they are adequate to highlight the type of scenarios our security forces may have to contend with. The principles underlying these additional illustrations can be extrapolated to similar situations that may arise. In cases where there is credible intelligence received of a possible terrorist attack, security personnel on duty at these locations should factor such intelligence in determining their course of action when confronted with threatening situations.

But here, again, Sir, let me say that, notwithstanding the inclusion of these illustrations, it will ultimately be the Public Prosecutor, when deciding whether or not to prosecute, and the Courts, when determining the guilt or otherwise of an accused, to assess if any of the Defences or General Exceptions applies in the circumstances of the case.

Preserving religious and racial harmony in the new global security climate

Sir, the current security climate also necessitates a re-look at offences that aggravate religious and racial sentiments which are now more likely to yield graver consequences than before. The likelihood of extremists stirring up enmity or ill-will in a religious setting and fanning racist flames has increased tremendously. We have seen examples in other countries where a particular race or religion has come under fire in the aftermath of a terrorist attack. The need to tend carefully to the expression of religious and racial sentiments has become crucial today, in the context of a globalised world facing the threat of terrorism driven by religious extremism. Indeed, Inhope, the International

Association of Internet Hotlines, reports that monthly trends of reports processed worldwide over a 28-month period, up to December last year, showed that racism and xenophobia grew by 33%. All the more so, Sir, in multi-religious, multi-racial Singapore, maintaining religious and racial harmony is critical. We will only be able to continue enjoying racial and religious harmony if we practise tolerance and moderation as well as sensitivity. We should never take for granted the tolerance and mutual respect between the different religions and races which we have painstakingly nurtured over the past decades.

These amendments will strengthen our laws against those who promote enmity between different racial and religious groups on grounds of religion or race and doing acts prejudicial to the maintenance of harmony and those who utter words or gestures with deliberate intent to wound the racial or religious feelings of any person. Currently, Sir, section 298 criminalises words and gestures made with the deliberate intention of wounding the religious feelings of a person. The cases of the racist bloggers, Benjamin Koh and Nicholas Lim, who were charged and convicted under the Sedition Act, raised the question whether there was a need to prosecute the offenders under such a high signature Act. To provide for greater prosecutorial discretion, the scope of existing section 298 will be expanded to cover the deliberate wounding of the racial feelings of a person.

In addition, a new section 298A will be introduced to criminalise the deliberate promotion by someone of enmity, hatred or ill-will between different racial and religious groups on grounds of race or religion. This plugs a gap as currently actions that are likely to cause racial or religious disharmony between different racial or religious groups are not criminalised under the Penal Code. Section 298A therefore complements section 298. Both sections will cover online transmissions, especially as the impact of such transmissions is much wider than face-to-face or hard copy transmission.

Sir, whilst feedback received supported the need for these amendments, concerns were raised over the seemingly broad scope of the offences. To assuage these concerns, we have inserted the requirement of "knowingly promotes" in new section 298A that mirrors the requirement of "deliberate intention of wounding" in section 298. This is a clear signal that the bar set for these offences is a high one.

Words that are carelessly spoken will not be caught. It is not likely too that a journalist writing an article based on facts, notwithstanding that it may be racially or religiously sensitive, will be caught. A critical but rational and objective discussion of religion and religious principles will also not likely be caught. But, of course, ultimately, the Public Prosecutor exercises his discretion in deciding whether or not to prosecute, based on the particular facts of the case.

In addition, everyone has the right to hold his own religious beliefs and to accept or not to accept any religion. As such, it is not likely that a person who shares his testimony of his conversion from one religion to another in his personal Internet website, stating how he found fulfilment and meaning in life after he converted to the other religion, without denigrating another person's religion, would be caught.

Nevertheless, in multi-racial and multi-religious Singapore, Singaporeans should recognise the sensitivities of other religious groups. It is one thing to preach to a person who is interested to hear your views. However, it is quite another to try to convert a person to your religion by denigrating his religion, especially when he has no desire to be converted.

Sir, to underscore the seriousness of offences involving or motivated by hostility towards racial or religious groups, we are providing that enhanced penalties may be meted out to offenders who commit offences such as wrongful restraint, causing hurt, rioting or wrongful confinement that are racially or religiously aggravated. When the facts of the case warrant increasing the punishment, new section 74 will enable the courts to mete out up to one and a half times the maximum penalty for the offence concerned. This is similar to the approach we have taken for offences against foreign domestic workers. We are not alone in enhancing penalties for racially or religiously aggravated offences because other countries such as Canada, New Zealand, the UK and the state of New South Wales in Australia have also adopted such an approach.

Transnational nature of crime

Sir, increasingly, crimes have assumed cross-boundary dimensions. Just as economic activities have globalised, so too has crime. We are therefore amending the Penal Code to reflect this phenomenon.

New section 108B (Abetment outside Singapore of an offence in Singapore)

Currently, our laws provide for the punishment of a person who, whilst in Singapore, abets the commission of an offence overseas. However, the reverse situation is not provided for in the Code. Thus, a person who abets, whilst overseas, an offence which is committed in Singapore is not liable as an abettor. This does not make sense as harm is done to Singapore when the offence is committed here! Also, with advances in modern technology, it has become easier to abet offences in Singapore, whilst physically overseas.

This amendment will make it easier for our law enforcers to tackle crime more holistically by also targeting those who perpetrate their criminal intentions from afar. In this way, those who plan robberies or murders here, or send drugs from overseas to Singapore, or plan terrorist attacks here will be subject to this provision. If these people are apprehended in Singapore, they can be prosecuted. Here, again, we are not alone in adopting this approach as Australian states such as Queensland and Victoria have similar provisions.

New section 4 (Jurisdiction over public servants for offences committed outside Singapore)

Sir, whilst we ensure that those who do us harm by abetting, whilst overseas, offences committed in Singapore are caught by our laws, we must also address the situation where our own people commit crimes overseas that cause harm to Singapore. Because this is a departure from the widely-accepted territorial basis of establishing jurisdiction for criminal offences, we have scoped it appropriately. New section 4 will be enacted to enable our courts to try a public servant who is a Singapore citizen or Permanent Resident, and who commits an offence under Singapore laws while acting or purporting to act in his official capacity overseas. This will plug a gap that surfaced in a case involving a public servant posted to work in our High Commission in India. As the offence was committed outside Singapore, our courts had no jurisdiction to try him for the offence of dishonestly misappropriating property. He was

eventually charged under the Prevention of Corruption Act, which has extra-territorial jurisdiction effect with respect to Singapore citizens.

Sir, this provision is only applicable if the public servants concerned commit offences whilst acting or purporting to act in the course of their official duties. Criminal acts committed under such circumstances will have adverse effects on Singapore, thus justifying the state extending its criminal jurisdiction over them.

New section 376C (Commercial sex with minor under 18 outside Singapore)

Sir, another provision with extra-territorial application is the new provision on commercial sex with minors. Currently, Singaporeans who have sex with young persons in other countries cannot be prosecuted under our laws prohibiting sex with young persons, as these laws do not extend jurisdiction over them. In this review, we took cognisance of the fact that similar laws in countries such as Australia, Canada, Hong Kong, Japan, New Zealand, UK and US had extra-territorial effect.

The new section 376C will have extra-territorial effect so that it would be an offence for Singapore citizens and Permanent Residents to solicit or engage in commercial sex with minors under 18 in other countries. Sir, in doing so, we join other countries in doing our part to prevent the sexual exploitation of children around the world by denying sex tourists a safe haven back home if they exploit children in these countries.

It will not be easy to enforce this provision. Indeed, it will be challenging to gather the necessary evidence as foreign witnesses would have to be interviewed including, very likely, the victim concerned. This would be exacerbated by factors such as the language barrier, and the cooperation level of local officials. However, notwithstanding these constraints and difficulties, the new offence will be a strong signal that Singapore does not condone such heinous acts, an expression of societal value in this regard. But we know full well that the enactment of extra-territorial laws is only part of the solution. In order that we successfully reduce the incidence of child prostitution in other countries and worldwide, host countries must themselves enact tough laws against child prostitution and enforce them strictly. Other stakeholders must

also chip in with relevant publicity and education and extend counselling and practical help to victims who come forward or who are identified.

Penal Code to enhance protection of vulnerable persons as victims of crime

Sir, whilst the Penal Code protects society generally, we should be mindful that some amongst us are more vulnerable to crimes than others. These include persons of a young age and persons with mental disability.

Minors

The amendments we are making to our laws to further protect minors from sexual abuse received strong support from many quarters. Let me mention the key ones.

Sexual penetration of minor under 16

Feedback received highlighted concerns over female sexual abuse of male minors. On further consideration, we accept that these younger male children could be exploited by older women. Consequently, we have decided to make it an offence for a woman to engage in penile penetrative sexual acts with a male minor under 16 and to have commercial sex with a male minor under 18. Section 376A will be introduced to make oral and anal sex, whether consensual or non-consensual, with a minor under 16, an offence, attracting an imprisonment term of up to 10 years or fine or both. This new offence will also cover other penetrative acts such as penile-vaginal penetration and penetration of the anus or vagina by any part of the body or object. Causing a minor to penetrate or be penetrated by any person will also be an offence. Whilst there is some overlap with the Women's Charter and the Children and Young Persons Act, we believe that this new offence will provide the prosecution with greater prosecutorial discretion in deciding on the appropriate charge to prefer based on the circumstances of the case.

Commercial sex with minor under 18

Sir, whilst prostitution per se is not an offence, new section 376B will make it an offence for a person to solicit, communicate or obtain sexual services from a minor under 18 years of age. Young persons, because they are immature and vulnerable and can be exploited and, therefore, should be protected from providing sexual services. Although there is no evidence to suggest that we have a problem with 16- and 17-year-olds engaging in commercial sex in Singapore, we decided to set the age of protection at 18 years so as to protect a higher proportion of minors. By doing so, we join other countries such as the UK and Australia which have also adopted the approach of criminalising commercial sexual activities with persons under 18 years of age, in line with the United Nations Convention on the Rights of the Child 1989 and the Stockholm Declaration and Agenda for Action 1996 whilst maintaining the age of consent for consensual non-commercial sexual activities at the age of 16.

Commercial sex with minor under 18 outside Singapore

Sir, as mentioned earlier, new section 376C will be introduced to protect minors in other countries from being sexually exploited by our nationals. Many have welcomed this move. New section 376D will also be introduced to make it an offence for any person to make or organise any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of child sex tourism, whether or not such an offence is actually committed by that other person. It also criminalises a person who transports any other person to a place outside Singapore with the intention of facilitating the commission of child sex tourism by that other person, again, whether or not such an offence is actually committed eventually. This provision also makes it an offence for a person who prints, publishes or distributes any information that is intended to promote conduct that would constitute an offence under section 376C, or to assist any other person to engage in such conduct. This offence will discourage demand for child sex tourism. I note that the National Association of Travel Agents in Singapore has urged industry players to behave responsibly even if it means blowing the whistle on those who break the law.

Sexual grooming

Sir, even whilst we protect minors in the physical realm, we are mindful that surging Internet usage has created a new phenomenon - that of sex predators prowling the online landscape for prey under the guise of making friends. On 17th July this year, I informed the House that there has not been any significant increase in the number of Internet-related sexual crimes, but that this remained an area of concern as it involved young victims. I also informed the House that MHA was considering introducing a new offence of sexual grooming, taking into account feedback from both in and outside this House, and recognising that this tide will gather momentum rather than recede. Thus, we have decided to introduce a new section 376E on sexual grooming of a minor under 16.

Sir, this section, modelled after section 15 of the UK Sexual Offences Act 2003, provides that an adult of or above the age of 21 years who meets or travels to meet a minor, either male or female, under 16 years of age within Singapore with the intention of committing a sexual offence, will be guilty of an offence if the person had met or communicated with the minor on two or more previous occasions. Like the UK, we had set the bar at two or more communications or meetings as this signals repeat behaviour, that is to say, rather than being one-off, the offender is more likely priming the victim by gaining his or her trust and confidence for a "strike" later. These prior meetings or communications can take place face-to-face or over the Internet.

Besides the two prior communications or meetings, a key element in this new offence is that the offender possesses a criminal intent at the time of meeting the child or at the time of travelling to meet the child to commit a sexual offence against her. The meeting or travelling must take place in Singapore, even if the earlier communications or meetings had taken place outside Singapore.

Sir, this new offence will strengthen Police's hand in preventing any harm from befalling the victim. Currently, in order to secure a successful prosecution for an attempted sexual offence, it would require the offender to be caught in doing something very close in proximity to the sexual offence in question, for example, undressing the victim. This, of course, is not satisfactory. With the new offence, Police will be able to intervene much earlier. What is needed is for Police to show that there has been the requisite number of communications wherein the predator has prepared the ground, after which he acts with the intention of committing a sexual offence against the victim, ie, by travelling to meet her or actually meeting her. The penalty is a maximum term of imprisonment of three years, or fine or both.

In practice, what this offence does is to allow law enforcement authorities to step in when, for example, a child receives sexually suggestive communications over the Internet, or a child is seen being met by a stranger in suspicious circumstances. That law enforcement authorities can now intervene at an earlier stage would be sufficient to send a chilling effect on would-be sex predators. Besides being a deterrent, those who persist will be apprehended more easily. This is borne out from the experience in England and Wales where more of such predators have been caught. The UK crime statistics show an increase in the number of sexual grooming cases recorded by the Police: 185 in 2004/05, 237 in 2005/06 and 322 cases in 2006/07. Action was taken against the suspects in 43% of the 237 cases in 2005/06, and 39% of the 322 cases in 2006/07. Of some significance is that the percentage of sexual grooming cases where action was taken against the suspects is higher than the percentage for other types of sexual offences against minors, such as rape of female minors under 16. That is the UK experience.

Persons with mental disability

Now, let me move on to elaborate on how we are enhancing protection for another group of persons, ie, persons with mental disability who, as a group, are vulnerable to sexual exploitation. We are introducing new section 376F (Procurement of sexual activity with person with mental disability) which makes it an offence to procure sexual activities with a person with mental disability who is capable of consent, but where inducement, threat or deception was used to obtain that consent. While capable of consenting to sexual activities, the capacity of a person with mental disability to consent may be more easily compromised, making them vulnerable and more compliant to lower levels of inducement, threat or deception.

The introduction of the offence does not mean that persons with mental disability can no longer exercise their right to engage in sexual activities. A balance between the right of such an individual to enjoy sexual intimacy and the need to protect his vulnerability has to be struck. The mischief we are addressing here is the exploitation of someone vulnerable, who is impaired in his or her ability to make a proper judgment in the giving of consent to sexual touching, by reason of mental disability.

Sir, we received feedback expressing concern that there could be sexual abuse of male persons with disability by exploitative females. On reflection, we will now make it an offence for a female to engage in sexual activities with a male person with mental disability, to also include penile-penetrative acts.

Rape/marital immunity

Sir, now, let me touch on marital immunity. This is understandably an emotive topic for some, especially those who know of wives who may be

sexually abused by their husbands. Indeed, victims of sexual exploitation tend to be women due to their physiological make-up. This is why we are moving to accord them greater protection by lifting marital immunity under specified circumstances but not to abolish it altogether. We believe that such a balanced and calibrated approach is a better one.

Under existing section 375, a husband cannot be prosecuted for raping his wife who is not under 13 years of age. During the consultation, whilst we received fairly extensive feedback calling for marital immunity to be abolished, there were others like law academics Professors Leong Wai Kum and Debbie Ong Siew Ling, two family law experts, as well as the Law Society, who supported our practical approach. Together with others like the Subordinate Courts and the Singapore Academy of Law, they focused on improving the drafting of the exemptions; in particular, expanding the circumstances under which the wife's consent to the husband's conjugal rights may be deemed withdrawn.

Our calibrated approach affords the necessary protection to women whose marriages are, in practical terms, on the verge of a breakdown or have broken down, and who have clearly signalled that they are withdrawing their implicit consent to conjugal relations, so that their husbands are forewarned that marital immunity has been lifted. There is certainty and no second-guessing, which can be a problem if there is a general marital rape law, as it is almost never the case that both husband's and wife's desire for sex, whether articulated or not, is of the same intensity at any one time. With our measured and calibrated approach, we feel that we have struck the right balance.

Under such an approach, wives will receive the necessary protection. At the same time, a husband will also not be open to potential abuse by a vindictive wife who may have actually agreed to sex, perhaps reluctantly, but cries "foul" later. Indeed, as Professors Leong and Ong opined, this aspect of criminal law should take its cue from family law which exhorts husband and wife to act with mutual respect and consideration for one another. Thus, the approach we are taking strikes the right balance between the needs of women who require protection, general concerns about conjugal rights and the expression of intimacy in a marriage. Abolishing marital immunity altogether will likely change the complexion of marriage drastically with negative impact on the marital relationship between husband and wife.

Nevertheless, whilst keeping the basic approach, in view of the feedback we received, we have decided to widen the circumstances under which a wife's consent to sex within the marriage is deemed to be withdrawn. Pre-consultation, the circumstances were that:

(a) the wife is living separately from the husband under a judgment of judicial separation or an interim judgment of divorce not made final;

(b) there is in force a court injunction restraining him from having sexual intercourse with his wife; and

(c) there is in force a protection order or expedited order made against him pursuant to an application by his wife.

Post-consultation, we have included the following additional circumstances as follows:

(a) the wife is living apart from her husband under an interim judgment of nullity;

(b) the wife is living apart from her husband under a written separation agreement;

(c) the wife is living apart from her husband and proceedings have been commenced (and not terminated or concluded) for divorce, nullity or judicial separation; and

(d) the wife is living apart from her husband, and proceedings have commenced (but not terminated or concluded) for a protection order or expedited order for the benefit of the wife.

Sir, in addition, where there is a judgment of judicial separation or an interim judgment of divorce not made final, which are pre-consultation circumstances, just like the new circumstances I have just mentioned, the wife need not be living separately from her husband as long as she is living apart from him, ie, they can still be living under the same roof but are essentially living in separate households. I think lawyers amongst us would know that. And this indeed was the feedback that we hear and we have taken on board.

In order that this provision achieves maximum positive impact on the ground, it is important that wives are fully apprised as to how they can avail themselves of the enhanced protection afforded. The key therefore is on education, counselling and empowerment of women. In this regard, MHA will work with MCYS to achieve this goal.

The rights of family members to protection from family violence, including sexual abuse by a spouse, as well as the avenues for help, are currently covered under the Women's Charter and supported by a spectrum of family violence public education programmes. Public education materials, like pamphlets, posters and collaterals, would be distributed at key locations such as polyclinics, social service agencies, police stations, libraries and schools.

MCYS started a Co-Funding Scheme in 2003 under which the Government co-funds public awareness projects organised at the community level. Organisations seeking to explore ways to publicise the rights of couples under the new provisions can submit their proposals for consideration. At the same time, through the National Council of Social Services, the existing 36 Family Service Centres (FSCs) can also gear up to help abused wives more effectively.

Sir, there were concerns expressed that wives did not know where to seek legal advice. Recently, the Ministry of Law and the Law Society initiated two legal clinics at North-West and South-East CDCs. These will operate over four week days. Troubled wives can turn to these legal clinics for help by calling 65360650. In addition, they can turn to the Legal Aid Bureau for legal advice and assistance.

Sir, we will also publicise more widely how abused wives can apply for Personal Protection Orders at the Subordinate Courts. I think that is the key point. This is a well-established process where no lawyers need be engaged. I understand that the cost to the complainant is just \$6. So PPOs are accessible and affordable for those in need.

Penal Code will be tightened to enhance the course of justice

Genocide

Sir, let me now turn to another set of amendments. Let me now deal with a few offences that enhance the course of justice. Firstly, we are introducing a new offence of genocide. This is intended to give greater effect to the Convention on the Prevention and Punishment of the Crime of Genocide, which Singapore acceded to in 1995. As section 302 already covers murder, this new provision would cover actions that extend beyond the killing of individuals per se, such as acts committed with the intention of destroying, in whole or in part, a national, ethnic, racial or religious group, eg, imposing measures intended to prevent births within the group.

Section 204A (Obstructing, preventing, perverting, or defeating course of justice) and section 204B (Bribery of witnesses)

Second, we are introducing a new section 204A to plug gaps arising from the general offence of perverting the course of justice, which can be committed in various ways. The new section 204A will plug this gap. Situations covered include deliberately assisting a person to evade lawful arrest; destroying or falsifying potential evidence, whether or not legal proceedings have already been instituted or pleading guilty to an offence committed by another person, in order to shield that other person.

A new section 204B creates several offences in relation to bribery and other means of influencing witnesses. It is more specific than the provisions in the Prevention of Corruption Act, as it focuses on bribery of witnesses. We have also taken in feedback that section 204B should be scoped such that it would only apply to offences where a person has a legal duty to report under section 22(1)(a) of the Criminal Procedure Code.

Section 94 - Act to which a person is compelled by threats (defence of duress)

Sir, another suggestion arising from the consultation which we have taken on board, this time from Ms Sylvia Lim, is to expand the scope of the defence of duress under section 94, to include the threat of instant death to any other person other than the person himself. This makes sense as when a person is compelled to do something by a threat which reasonably causes the apprehension that instant death to any other person will otherwise be the consequence, the person should be allowed to raise the defence of duress.

Section 377D (Mistake of age)

Sir, we had proposed to introduce a young person's defence, where in the case of a person below the age of 21 years, the presence of reasonable cause to believe that the minor was above the age of 16 years would be a valid defence on the first occasion he is charged, similar to that provided under existing section 140(5) of the Women's Charter. This defence will be introduced for the offences of sexual penetration of minor under 16 and prostitution of minor under 18 in Singapore and overseas.

On this, Sir, we have accepted the Law Society's suggestion that this defence be denied only if, at the time of the offence, the person charged for that offence had previously been charged in court for an offence under the relevant section. This is fairer as an accused who is charged with, for example, two charges (which because the offences involved different dates, time, places and victims, he could not be jointly tried) would now not be denied the defence on the second trial on the second charge.

Certain provisions in the Penal Code would be rationalised and clarified

MHA will also be clarifying the scope of certain offences to reflect existing case law

Next, Sir, we are taking the occasion of this review to amend section 141 in line with how the Court of Appeal has interpreted it. In *Tan Meng Khin v PP*, Yong CJ (as he then was) held that an offence of unlawful assembly would be constituted if the common object of the assembly is to commit any offence (punishable with at least six months imprisonment for non-Penal Code offences), whether or not it relates to public tranquility. Sir, Yong CJ put it this way, "...it is the very fact of an assembly of a number of people coming together and forming an intention to commit any criminal offence that is a threat to public tranquility...wherein members of the assembly mutually reinforce their criminal intentions, intimidate those who may choose to leave their membership or intimidate those who are affected by the assembly...".

Section 141 will not apply if the assembly's common object is to commit a minor non-Penal Code offence punishable by law with imprisonment for a term below six months. Hence, people gathering to participate in an unlawful assembly or procession in contravention of the Miscellaneous Offences (Public Order and Nuisance) Act, will not be caught as these participants may be fined only. The section will also not apply if people gather to meet with no intention of committing any offence, and the onus of proving this common object is on the Prosecution. So, this, Sir, should reassure civil society groups who have expressed concern that this amendment may restrict their activities.

Sir, we will be enhancing the punishment from a maximum imprisonment term of six months to two years. This is not excessive and is justifiable. Firstly, six months is too low for such an offence which impacts Singaporeans' sense of safety and security. And, secondly, if not checked in time, unlawful assemblies would likely escalate to the commission of other offences, some of which could have serious and violent consequences such as rioting.

Updating Penal Code provisions to reflect societal norms and values

Sir, next, section 498 which criminalises the enticing, taking away, detaining or concealing with criminal intent a married woman will be repealed as it is an archaic offence. The section was enacted at a time when a wife was considered a chattel belonging to the husband. This provision does not cover a situation of two consenting adults delighting in a consensual tryst. Quite the contrary, the offender here entices a woman from her husband with intentions of himself or some other person having illicit sex with her. Therefore, contrary to what some may think or even attempt to argue, the repeal of this provision does not decriminalise adultery or extra-marital sex. Indeed, when the provision was enacted in 1892, I believe, adultery was not an offence in England.

Section 377

Next, Sir, we will be removing the use of the archaic term, "Carnal Intercourse Against the Order of Nature" from the Penal Code. By repealing section 377, any sexual act including oral and anal sex, between a consenting heterosexual couple, 16 years of age and above, will no longer be criminalised when done in private. As the Penal Code reflects social norms and values, deleting section 377 is the right thing to do as Singaporeans by and large do not find oral and anal sex between two consenting male and female in private offensive or unacceptable. This is clear from the public reaction to the case of *PP v Anis Abdullah* in 2004 and confirmed through the feedback received in the course of this Penal Code review consultation.

Sir, offences such as section 376 on sexual assault by penetration will be enacted to cover non-consensual oral and anal sex. Some of the acts that were previously covered within the scope of the existing section 377 will now be included within new sections 376 - Sexual assault by penetration, 376A - Sexual penetration of minor under 16, 376B - Commercial sex with minor under 18, 376F - Procurement of sexual activity with person with mental disability, 376G - Incest and 377B - Sexual penetration with living animal. New offences will be introduced to clearly define unnatural sexual acts that will be criminalised, that is, bestiality (sexual acts with an animal) and necrophilia (sexual acts with a corpse).

Section 377A

Next, Sir, section 377A which criminalises acts of gross indecency between two male adults will be retained. Public feedback on this issue has been emotional, divided and strongly expressed with the majority calling for its retention. Sir, Singaporeans are still a largely conservative society. The majority find homosexual behaviour offensive and unacceptable. Neither side is going to persuade or convince the other of their position. We should live and let live, and let the situation evolve, in tandem with the values of our society. This approach is a pragmatic one that maintains Singapore's social cohesion. Police has not been proactively enforcing the provision and will continue to take this stance. But this does not mean that the section is purely symbolic and thus redundant. There have been convictions over the years involving cases where minors were exploited and abused or where male adults committed the offence in a public place such as a public toilet or back-lane. Sir, whilst homosexuals have a place in society and, in recent years, more social space, repealing section 377A will be very contentious and may send a wrong signal that Government is encouraging and endorsing the homosexual lifestyle as part of our mainstream way of life.

Penalties reviewed to give the Courts greater discretion and to reflect crime trends

Principles of review and overview of recommendations

Sir, another major focus of this review is the updating of the penalty regime. In this regard, a key objective is to provide our Judges with greater sentencing discretion to mete out appropriate sentences in the cases they hear. In this vein, we are also amending the Criminal Procedure Code to enable the courts to mete out any combination of penalties, ie, imprisonment, fine or caning, where the court deems appropriate.

Out of a total of some 360 offences reviewed, we are maintaining status quo for the penalties of 208 which is about 60%. A total of 56 offences with stipulated fine amounts will be revised to today's value, using the Consumer Price Index (CPI) to take into account changes in the purchasing power of money. Increasing the fine quantum will give the Courts greater flexibility to impose heavier fines and shorter imprisonment terms if the facts of the case warrant it, and this is something our Judges had commented on in their judgments.

Sir, the principles we adopted were as follows:

First, the type and quantum of punishment should provide sufficient flexibility to the Courts to mete out an appropriate sentence in a particular case;

Second, the prevalence of the offence;

Third, the proportionality of the penalty to an offence, taking into account its seriousness;

And, fourth, the relativity in punishment between related offences.

In particular, we sought to reduce the number of offences carrying mandatory minimum punishment and the gap in imprisonment terms for double-limb penalties.

Review of mandatory minimum penalties

Sir, we will remove mandatory minimum imprisonment terms for four offences. These are sections 379A, 411 and 414 relating to theft or concealment of stolen property where it involves motor vehicle or components, and section 454 relating to lurking house trespass or housebreaking in order to commit an offence punishable with imprisonment. In addition, we are removing the mandatory minimum disqualification for section 379A relating to theft of motor vehicle or component part. Responding to feedback that more mandatory minimum sentences should be removed, we reviewed all the remaining offences with such sentences and added section 454 to the list. Also, instead of imposing mandatory disqualification from driving for sections 411 and 414 relating to dishonestly receiving stolen property or assisting in concealing stolen property, we will now make it discretionary.

Introduction or removal of life imprisonment

Life imprisonment will be removed for 13 offences, such as those relating to the counterfeiting of coins and Government stamps and forgery offences. These offences are neither prevalent nor serious. It will however be introduced for two offences as optional sentences. These are section 121A relating to offences against the President and section 124 relating to assaulting the President, Cabinet Member or MP with intent to compel or restrain the exercise of any lawful power. These are very serious offences, deserving of a higher punishment tariff.

"Double-limb" penalties

Sir, heeding comments made by our Judges, we have reviewed all the existing double-limb penalties to calibrate them more appropriately to reflect the seriousness of the offence and give the Courts greater flexibility in sentencing. The Law Society has welcomed this move. We have decided to keep this approach because doing away with double-limb penalties will have the tendency of enhancing imprisonment terms as the punishment tariff will then only reflect the upper limit.

Others

As I have continually illustrated, we took on board many inputs from the consultative process. One other example is by differentiating between penalties for compelling the Government (which attracts a higher punishment) and any person (which attracts lower punishment) to do or abstain from doing any act by way of kidnapping or abduction.

Consequential and related amendments to other legislations

As a result of the amendments to the Penal Code, consequential amendments are proposed for other legislation such as the Criminal Procedure

Code (CPC), the Women's Charter (WC) and the Children and Young Persons Act (CYPA). With the changes to the Penal Code, we also reviewed Schedule A of the CPC including whether the Police may ordinarily arrest without warrant or not and by what court triable besides the High Court.

Conclusion

Sir, in conclusion, this review has taken two to three years because we wanted to be thorough. Not only have we examined every provision in terms of its substantive coverage and scope by updating, clarifying and enhancing some of them, we have also introduced new offences to plug identified gaps, especially in view of latest technological developments and crime trends. We have also combed through all the sections to ensure parity and coherence in their assigned punishment tariff, doing this not only within the Penal Code itself but also, where applicable, cross-checking them with related provisions in statutes such as the Women's Charter and Children and Young Persons Act. And, finally, we took the opportunity to do some house-cleaning work and have removed references to archaic terms such as "bullock", "carriage", "chariot", "schoolmaster", "ice-house" and "*penghulu*".

Finally, Sir, I assure Members that even though the review is over, we will continue to monitor how these amendments will work out in practice. And, if necessary, we will finetune the provisions to ensure that they achieve their desired outcomes.

Sir, I beg to move.

Question proposed.

4.40 pm

Dr Teo Ho Pin (Bukit Panjang): Mr Speaker, Sir, I rise in support of the Bill.

Sir, the proposed changes to the Penal Code will provide more protection to the vulnerables in our society, especially young children. These changes are long overdue as the last major revision of the Penal Code was in 1984. Over the last 23 years, Singapore has seen changes in our societal norms. Today, there is extensive use of new technologies such as Internet, mobile phones, and electronic devices by our people. New crimes have also emerged due to these societal changes and new technologies.

As such, the existing provisions in our Penal Code are inadequate to provide a comprehensive framework to prevent new crimes, and punish these new offenders appropriately. I fully support the amendments to provide further protection to minors from sex predators, additional measures to maintain racial and religious harmony among our people, and the provision of more discretion to our courts to mete out appropriate punishments for different offences.

Sir, let me discuss the details of the Bill as follows:

(1) Sexual acts against minors

Sir, sexual act committed against minors, especially young children, is one of the most despicable crimes in any society. Child sex abuses will not only destroy the lives of young children but leave them with emotional and physical scars for a lifetime. In a report by *The Daily Telegraph* (London) on 12th June 2007, it was highlighted that over the last five years, almost 8,000 people (including rapists and child molesters) who admitted to sexual offences had not been proceeded against in court. These included 1,600 offences involving children (350 of them aged under 13 years and 250 rape offences). Very often, the Police cannot obtain evidence to bring the cases to court as the victims are not able or will not testify. As such, many of these offenders were not punished and were given only a warning. This is a serious loophole in the law.

Although the number of child sex abuse cases in Singapore is low, I wish to ask the Minister as to how many cases of child sex abuse were not prosecuted in courts due to the lack of evidence by the Police over the last five years. With the provisions of section 376, will these new sexual offences provide adequate protection to minors and deter sex predators?

Sir, in Scotland, the Parliament has passed a legislation which provides jail sentences of up to 10 years for paedophiles who groom children for unlawful sex. But the new section 376E of the Bill only provides a penalty of a maximum term of imprisonment of three years for sex grooming. This may be inadequate to deter sex

predators from grooming minors for sex. Furthermore, section 376E stipulates that the offender must at least meet or communicate with the minor twice before action could be taken against him. Sir, why is there a need to have at least two contacts to prove sex grooming? In today's context, an offender can spend hours grooming a child through a single Internet chat, and thereafter, lure her for sex. I do not think it is necessary to impose the two contacts requirement to prove sex grooming. Evidence from the Internet communication will be sufficient to reveal the intention of the sex predator, and he should be punished accordingly, irrespective of the number of times he meets or communicates with the victim. Therefore, we should remove the two contacts requirements as stated in section 376E.

Sir, I would like to propose to the Minister to reconsider the three years' maximum sentence for sex grooming offenders. We should instead impose mandatory jail sentence for such offences. This will serve as a strong deterrence for sex predators of minor in Singapore.

As for commercial sex against minor under 18, I fully support that we should send a clear message to curb the demand for child prostitution both in and outside Singapore. Sections 376B, C and D will enhance the protection of child's rights, and hopefully, reduce child trafficking or abduction for sexual services. As reported in today's *Straits Times*, the child sex industry is thriving in South-East Asia, despite some high profile prosecution of child sex abuse cases. The key failures are due to homegrown demand for child sex and the lack of co-operation among governments. Sir, I am indeed very concerned about the effectiveness of sections 376B, C and D. We must do more to curb demand for child sex and punish child sex offenders heavily. Thus, I propose we increase the maximum two years' sentence under section 376B. Can the Minister provide more details as to how we can effectively enforce section 376C on commercial sex with minor under 18 outside Singapore?

(2) Marital immunity for rape

Sir, I share the concerns expressed by AWARE (Association of Women for Action and Research) with regard to section 375 of the Penal Code. Rape is indeed a serious crime and should not be condoned under any circumstances or relationships both within and outside marriages. Sex between adults must be consensual and non-violent.

But the sexual relationship between husband and wife is a very private matter. It is also difficult and not practical to identify circumstances where sex between them is non-consensual unless explicitly expressed by the husband or wife. Therefore, I support the Ministry's approach to take a calibrated approach to protect the rights of women and privacy of marriages.

Sir, a report by *The Times* (London) on 26th November 2002 revealed that conviction rate for rape had fallen over the years (8% in 1999-2000) while the acquittal rate had risen (60% in 1999). One contributing factor of the fall is the difficulty faced by forensic medical examiner to collect evidence of rape. It will be even more difficult to collect evidence of rape for married couples especially when there is a need to determine whether consent was given. Consent for sex may not

necessarily be given just before sex between married couples. Thus, it will be difficult to gather evidence on marital rape.

Sir, removing marital immunity for rape will not address the problem of husbands who force their wives to have sex. We should instead focus on helping women in marriage to exercise their rights to protect themselves, and not suffer in silence by having forced sex in their marriages.

Women in strained marital relationships should exercise their rights to express their non-consent for sex with their husbands through divorce, separation or court injunction order. These procedures provide clear intention of no consent for sexual activities between married couples, and thus will remove the immunity of husbands under section 375. I would propose that the Ministry provide more flexibility in section 375(4) to allow the Minister to add new circumstances where no consent for sex was expressed by wives, thus removing marital immunity for rape. In this way, we will be able to accord more protection for women in marriages.

(3) Maintaining racial and religious harmony

Sir, I support that the amendment of section 298 will further promote racial and religious harmony among our people. The new section 298A will also set OB markers for people who have ill intention to cause friction among races or religions. Race and religion are sensitive matters and should be dealt with carefully, especially in a globalised and cosmopolitan society like Singapore. We must continue to provide choices for Singaporeans to choose their religious beliefs.

Sir, there is a thin line between promoting religion and promoting enmity between different groups of people on grounds of religion. Believing in a religion must be a "draw" instead of a "push" initiative by individuals. The Government should focus its efforts to further increase the awareness of our people on the different types of religions in Singapore, and allow free choices among our people. The aggressive promotion of religion by any religious group will usually result in unhealthy competition, and tension among different religious groups, thus disrupting our national unity. I would propose that the Home Affairs Ministry work closely with the Ministry of Community Development, Youths and Sports to provide guidelines to all religious organisations to comply with section 298.

Sir, I wish to clarify with the Minister whether cracking casual jokes on races or religions among friends will constitute an offence under section 298. Very often, casual racial or religious jokes or remarks are used in the arts and cultural performances as a form of entertainment. These jokes are usually not intended to hurt the feelings of any races, religions or persons, but purely for entertainment purposes. In fact, cracking such jokes in casual settings among friends sometimes helps to strengthen friendships among people of different races or religions. May I ask the Minister whether words or acts on races or religions under such circumstances will also be a punishable offence under section 298?

Sir, I support the Bill.

4.53 pm

Mr Christopher de Souza (Holland-Bukit Timah): The retention of section 377A is a non-amendment. Yet, its retention has attracted the most press. Some argue to repeal it and provide reasons to support their position. Others say repeal because the law is archaic, not abreast with the times, displays Singapore to be inflexible.

I do not agree with this position and provide a number of arguments in support of retaining section 377A and, in so doing, record my support for the Bill.

Consequences of repealing section 377A

The first argument is a basic one. It involves the possible consequences of appealing section 377A. A repeal of section 377A will not merely remove an offence. It is much more significant than that. Because of the concept of negative liberty, the removal of section 377A puts homosexual lifestyle on par with heterosexual lifestyle. It is to accord both lifestyles a sense of parity.

As a result, homosexual lifestyle no longer remains private but travels into spheres traditionally reserved for heterosexual couples. The point I make is this. It is a misconception to argue for the repeal of section 377A on the ground that "what goes on behind closed doors will not affect us, so no point criminalising it". It is also a misconception to argue that "what is private, will stay private" and therefore there is no harm repealing section 377A. Such arguments are incorrect.

The truth of the matter is that if we do repeal section 377A, what is in private will not remain private. There are far-reaching consequences. If it is repealed, arguments can be made that rights accorded to heterosexual couples must be accorded to homosexual couples. This has happened in many jurisdictions - the United States, UK, Canada, Denmark, Netherlands, to name a few. In Singapore, we have had recent calls by lobby groups advocating the trumping of minority interests over wider society's preferences and priorities.

This argument is attractive. But, really, what are the consequences? What if section 377A is repealed? Surely, the answer to this must be weighed in the balance. So, let us consider the consequences of repealing section 377A.

Marriage

One major consequence is the effect that such an appeal may have on the institution of marriage. Take Massachusetts, for example. In the case of *Goodridge v the Department of Public Health*, the US

Massachusetts court ruled that a law denying marriage licences to same-sex couples was unconstitutional. The court disagreed with the argument that child-rearing was best performed under the care of a heterosexual couple.

It is the same situation in the United Kingdom, except that gay marriages are termed same-sex civil partnerships. In fact, the law in the UK is entrenched in the Civil Partnerships Act of 2004. Under that Act, a civil partnership is defined as a relationship between two people of the same sex which is formed when they register as civil partners of each other. Perhaps, some supporting the repeal of section 377A may say, "Well, that does not matter. That marriage relationship can still be private. It does not pervade common space." Unfortunately, that is incorrect. There has been recent judicial opinion in the United Kingdom that the Civil Partnership Act 2004 grants the same-sex couples the same legal recognition that the law grants to opposite-sex couples. It allows them a formal status with virtually identical legal consequences to those of marriage. Incidentally, the United Kingdom is the jurisdiction with which Singapore law has the most intimate relationship. What happens there could happen here, if section 377A is repealed.

So, this is not a private matter between two consenting male adults. It is a public matter, the effects of which will be felt by all in the wider community.

Adoption

Adoption by same-sex couples may be the second consequence of a repeal of section 377A. Is this far-fetched? No. The UCLA School of Law reported in March 2007 that, to date, 10 states in the US allow same-sex partners to adopt children as couples. About the same number either implicitly or explicitly state that sexual orientation cannot legally prevent homosexual persons from adopting. The same 2007 report from Williams Institute, UCLA, states that gay and lesbian parents are raising 4% of all adopted children in the United States. Is this just a US phenomenon? No. The *International Journal of Law, Policy and the Family* stated in a 2002 report that the Danes have since removed the prohibition on same-sex couples adopting, while the Netherlands has expressly legislated to permit such adoptions. This has forced societies to accept what some academics called the modern family in its many variations. Do we want our family-centric culture and the traditional definition of family to be threatened? They will be, if section 377A is repealed. This is not just a private matter.

[Mr Deputy Speaker (Mr Matthias Yao Chih) in the Chair]

5.05 pm

Spousal rights

Another consequence, if section 377A is repealed, is the effect it will have on spousal rights. Same-sex partners may be statutorily entitled to benefits because of their new-found spousal status. This is already the position in some states in the US. Where Massachusetts is concerned, the Goodrich decision now permits same-sex spouses to take advantage of statutes allowing an employee to include his or her spouse in the health insurance coverage. How will we cope in Singapore, where traditional definitions of family and marriage had been the bedrock of the HDB policies? How would it affect the laws of intestacy? Would we then change the definitions of spouse under, say, the CPF Act or Income Tax Act? These are far-reaching consequences.

Education

The last consequence of a repeal of section 377A is its effect on how we may have to educate our children. It flows that with changes in how marriage, the family nucleus and spousal rights are defined, there will be pressure to change our curricula in our schools. Do we want to see our children being taught that homosexuality is an acceptable lifestyle choice? This is something that we should all think carefully about.

In the light of these consequences, I ask that we do not treat these calls for the repeal of section 377A lightly. It is a misconception to think that repealing section 377A is simply the repealing of an outdated and obsolete offence. Instead, such a repeal would have far-reaching consequences.

Harm

Some say that the retention of section 377A does not shield society from harm. I do not think that line of argument is defensible in light of the possible consequences the repeal may bring.

Lack of enforcement

The lack of enforcement is another argument put forward by those advocating a repeal. Whether section 377A is enforced or not is the decision of the Executive. In fact, the Ministry has just confirmed in the Second Reading of the Bill that it has been enforced in certain circumstances. By retaining section 377A, the consequences listed above can be prevented. In any event, enforcement cannot be construed as the sole litmus test for an effective law. The effectiveness of section 377A is seen in what it prevents beyond the act criminalised. For example, to attempt suicide is an offence in Singapore. Yet, how many are prosecuted for it? I dare say a negligible percentage of those who do attempt to commit suicide. Yet, the offence remains on the books even after this amendment because it conveys the message that we do not want people taking their own lives. Will that message become weaker if the offence is taken off the books? Of course, it will. That is why we cannot only be fixated with enforcement.

Scientific arguments that homosexuality is genetic

In recent years, by comparing identical twins to fraternal twins, scientists have attempted to prove a genetic basis for homosexuality. However, such studies are now called into question because the scientists drew their subjects from non-representative samples. Indeed, the earlier twin studies were criticised as being "ascertainment-biased", in that homosexuals with gay siblings were more likely to volunteer for studies. Later twin studies have been drawn from broader, more representative samples. In a recent large-scale study by two universities, ie, Yale and Columbia, researchers concluded that "We find no support for genetic influences on same-sex preferences net of social structural constraints."

However, even if we take the argument that homosexuality is genetic at its best - I do not agree with it - but even if we take that argument at its best case, does that merit a repeal of section of 377A? It does not. Natural predispositions should not translate into exceptions from the law. Genetic or natural predispositions do not translate in removal of related offences. For example, it is a known fact that some members of our society suffer from a medical condition known as kleptomania. However, this does not merit repealing all the offences in the Penal Code relating to theft.

The open letter

I have read the open letter to the Prime Minister seeking the repeal of section 377A. Several points are worth highlighting.

Firstly, the letter states: "a gay man should have exactly the same rights as a straight man or woman," and "Singapore will be woefully out-of-step with the rest of the world should it retain this legislation." I have just read the Petition which was put on the seat, and it seems that the Petition takes the same position. It seems from these words that the letter seeks not just a repeal but an unreserved embracing of the homosexual lifestyle, ie, marriage, adoption, spousal rights and so on.

Secondly, the letter seems to adopt the position that section 377A should be repealed even if "those who disapprove of gay people outnumber those who support them."

Thirdly, the letter claims that section 377A contravenes Singapore's Constitution. Any analysis of the relevant Article, ie, Article 12, must come with a study of the authoritative judgment in *Ong Ah Chuan*. To my mind, this case will not support the letter's position.

For these reasons, I support the Government's retention of section 377A.

The review of the Penal Code has also seen several timely inclusions of new offences, improvement of existing ones and a rethink of sentences, including a significant review of the concept of "mandatory minimum sentences." I aim to deal with three amendments which display the comprehensiveness of the review.

First, the new section 108B criminalises the abetment outside of Singapore of an offence in Singapore. To date, we only criminalise the converse, ie, abetment in Singapore of offences committed outside of Singapore, which meant that we protected other countries from crimes which were manufactured in Singapore. It is timely that section 108B is introduced due to the rising transnational nature of crime which allows crimes to be planned in one country but executed in another. Section 108B, therefore, assists in crystallising culpability for acts done abroad, the effects of which are felt in Singapore. This also takes into consideration advances in modern communication technology, which has made it easier to abet offences in Singapore while being physically in another country.

Second, the new section 376E makes it an offence to meet or travel to meet a minor under 16 years of age after sexual grooming. Again, this is timely as the new offence seeks to protect minors from the rising number of sexual predators who prowl in the Internet to coax or attempt to coax them into performing sexual activities. There are two mechanisms built into the section to ensure culpability is not imputed arbitrarily. Importantly, there must have been (i) a prior meeting or communication, which can take place within or outside Singapore, on at least two occasions as an indication of the offender's

intent of grooming the minor for sexual activities, and (ii) the offender has to travel to meet or intentionally meet the victim in Singapore, with the intent to commit a sexual offence with the minor. I seek clarification from the Minister in relation to the second limb. Presuming an offender is overseas when he communicates with the minor, would he have fulfilled the second limb if he flies to Singapore to meet the minor? I ask this question principally on the same grounds as Dr Teo Ho Pin, because I think limb (ii) should be fulfilled if there is an attempt to meet and should not be conditional on a meeting. This is so in order to prevent the harm which may arise out of the meeting.

Third, the revised section 304(a) is a sentencing provision and it allows the Court to sentence an offender who was convicted for culpable homicide not amounting to murder to either (i) up to 20 years' imprisonment, or (ii) life. This is an immense improvement over the old section 304(a) which allowed judges the discretion to sentence an offender up to 10 years or life, but nothing in between. What made the old position even more ineffective was the wide gap between life imprisonment (interpreted as the remainder of the offender's natural life) and the relatively short alternative of "up to 10 years". The amendment has remedied this. It gives the Court flexibility when sentencing offenders, especially those who need to be imprisoned for a length of time between 10 and 20 years. The judgments in the case of *Tan Kei Loon Allan* [1999] 2 SLR 288 and the more recent case of *Chee Cheong Hin Constance* [2006] 2 SLR 707/[2006] 2 SLR 24, displayed the need to give the Courts more discretion to deliver punishments which match culpability. The new section 304(a) achieves this.

Apart from the new offences introduced in the Bill, a sum total of no less than 360 penalties have been reviewed. Of these, there have been 56 increases in maximum fines, two introductions of life imprisonment, 110 increases of maximum imprisonment terms, 13 removals of life imprisonment and four removals of mandatory minimum imprisonment. This is a massive review, and has involved immense efforts and diligent work by the officers of MHA, MinLaw, and members of the investigative and enforcement agencies of the Police, AGC and the Courts. They are to be complimented on their achievement.

I support the Bill, Mr Deputy Speaker, Sir, because the amendments are timely and ensure the continued safety and protection of our citizens.

5.11 pm

Mr Zaqy Mohamad (Hong Kah): Mr Deputy Speaker, Sir, I will begin my speech in Malay.

*(In Malay): [For vernacular speech, please refer to [Appendix A](#) *.]* Mr Deputy Speaker, Sir, the Penal Code amendments are timely and even necessary, with various developments in society, crime patterns and our social situation. Basically, these legislative amendments aim to continue to preserve Singapore's well-being and security, and tighten our protection. From some changes suggested, we can see how the amendments aim to respect our daily lives as well as our multi-cultural and multi-religious culture. It also ensures our children are safely raised. It is our responsibility to protect our young children as they have the right to grow in a safe situation in this country.

*Cols. 2313-2316.

Overall, I support the Government's effort to update the Penal Code to protect our interests. However, there are a few areas that raise concerns and need further refinement. We have to look at the Penal Code changes in totality to bring the benefits and effectiveness of law to all levels of society. I hope that the focus of debate on this Bill will not be dragged into too much attention to heated arguments on homosexual activities under section 377A.

In my view, the Government's status quo stand on homosexual activities under section 377A is for the benefit of society as a whole. The fact is, even though our country is open and receptive to changes and diversity, our society's majority view is still conservative in many aspects of life. But I concede that current points of view, especially amongst youths, are changing to a more progressive one. Homosexual activities, although undoubtedly exist, are still considered a lifestyle outside the mainstream society. From a secular point of view, it is something personal and I feel that it is good to leave it as such. But many of my constituents and community leaders have given feedback that by

making the activity not considered as an offence, it can be seen as an endorsement or support and this will divide society. They believe that the Government will make the appropriate decision that will reflect our social situation in Singapore. And this includes the consideration for the Petition presented by NMP Siew Kum Hong in Parliament just now. I feel we should not make the issue a big one, and let us look at the Penal Code amendments from a bigger perspective and for the benefit of the majority of Singaporeans.

I will now talk about section 298A that covers racial discrimination offences. I support the suggestions regarding punishment for offences with racial and religious motives, including rioting, causing hurt, molest and criminal threat. These changes make such offences have clearer definitions and it does not solely rely on the Sedition Act that may have limited scope. One area that may be hard to monitor under section 298A is the new media activities with regard to racial and religious threats or instigations. Not all countries see this as an important issue and a criminal offence. The Internet has a wide content and some involving religions, and some contents, especially amongst foreigners, are uploaded to divide religion. Certain movements may take advantage of the new media's freedom to promote their agenda. However, I concur that the new media's influence and trend is not something that can be easily dealt with. We need time. At the same time, we must increase our society's knowledge and awareness. So amendments to the Penal Code on racial discrimination issues are the correct move and show that we do not take lightly racial and religious issues to maintain our harmony.

Mr Deputy Speaker, Sir, I will now continue my speech in English.

(In English):

Sexual grooming of minors (section 376E)

Mr Deputy Speaker, Sir, I support the changes to the Penal Code, and I feel comforted that it covers a broad spectrum which is aimed to protect all facets of society, including the preservation of our multi-racial society and protection of minors. The more we are becoming an increasingly open society, the more the

need for us to take stock of our laws to ensure that they remain relevant to the times, changes and social developments around us. Here, I would like to touch on changes that seek to provide greater protection for children, particularly against sexual grooming of minors and commercial sexual exploitation.

Let me begin with the introduction of section 376E which concerns the sexual exploitation of minors under 16 years of age after sexual grooming. I believe that this new inclusion reflects Singapore's progressiveness to address the evolving threat of sexual crimes against minors - taking into consideration the dark activities arising from Internet access, mobile technologies and social networking sites.

According to a recent newspaper report, the number of molestations and rapes in which the victims met their perpetrators over the Internet or phone chat lines has increased. Teenagers made up 64% of molestation victims and 84% of rape victims last year.

The landscape has certainly changed today. Adults from unknown backgrounds now have access to our children anywhere - even in our homes. This makes it easier for our children to be influenced and sexually groomed. In the past, parents had control over who their children meet. Today, I too speak as a concerned parent with two children who are already exposed to the Internet.

Thus, I fully support this measure, given the rising trends of sexual crimes arising from minors meeting strangers over the Internet. This law sends a deterrent signal to Internet prowlers and predators that legal provisions have been made to take pre-emptive actions against them.

While the law criminalises an adult, aged at least 21, with the intent of grooming, meeting up with a minor to sexually abuse him or her, however, the law is not clear on the definition of sexual grooming. At least, with crimes like theft and murder, their outcomes are so obvious. Many, including professionals in the legal industry, often give me a puzzled look and ask, "Sexual what?" or "Grooming what?" Many did not have a good sense of what this crime constituted because of a lack of a clear definition. So this makes it difficult to prove and provide evidence because the law does not explicitly explain how

any prior communication or meeting with a supposed child victim could amount to sexual grooming.

There is also a grey area on the criteria to show sufficient evidence or motive to convict sexual grooming offenders. As such, perhaps the Minister can clarify on these boundaries and measures put in place to protect the accused in a 'cry wolf' situation. It seems that section 376E today only requires proof of meetings and past records of communication, and does not need proof that "the defendant went beyond committing merely preparatory acts". Of course, the advantage with this new section is that it raises awareness for adults to be more concerned on whom they interact with and get to know on the Internet.

Given the deterrent nature of the law, there has also been feedback that the focus on sexual grooming should not be confined to just the new media and mobile communications. The positioning of the new law certainly gives rise to this impression.

The 'offline' aspect of sexual grooming is just as important. Many incest and sexual violations also happen as a result of sexual grooming while the children are in the care of trusted persons. They could suffer abuses from their own family members or caregivers. Thus, the Government should broaden the methods in which sexual grooming is performed and not confine it simply in the context of online grooming.

Sir, I am aware that current provisions exist, based on circumstantial evidence, to convict potential perpetrators with the current laws. However, given the inclusion of section 376E, consistency in the approach and definition of sexual grooming will make it clearer on deterrence and enforcement.

So, going beyond legislation, I also believe that there is a greater role that the Government can take to create awareness and intensify our education process. The Government should do more to ensure - through education, social awareness and enforcement - that children are educated about their rights and the dangers of sexual grooming. At the same time, let us do more to create

awareness so that the public can help in spotting these threats and protect our children because this is the first line of defence against such violations.

I understand that MHA will monitor the progress locally as well as in other countries such as the UK which have enacted similar laws to refine the enforcement of the law. Therefore, I welcome the changes to this section which are committed to deal with such crimes from becoming commonplace. The new laws are certainly a good first step taken to signal intent and to show deterrence.

Commercial sex exploitation of minors (sections 376A, B and C)

My last point concerns the protection of minors from commercial sex exploitation under new sections 376B and C of the Penal Code.

Mr Deputy Speaker, Sir, I welcome the greater protection provided by the law to cover minors below 18 as well as extending the law beyond our shores to make it criminal for Singaporeans and Permanent Residents from procuring, purchasing or soliciting sexual services from minors under the age of 18.

We live in South-East Asia where many human rights reports cite us as a region that draws sex tourists. The recent arrest of teacher suspect, Christopher Paul Neil, in Thailand last week draws attention to the fact that minors are readily available in South-East Asia for sexual predators who travel to the region for the sole purpose of having sex with minors. He is accused of sexually assaulting 12 boys and posting 200 pictures of the crimes on the Internet. Such is the extent of the nature of the crime today.

On section 376B, I think the issue concerning commercial sexual exploitation involving Singaporean minors and the extent of the industry in Singapore is perhaps not commonplace, due to the strict control and tight Police enforcement action within our shores. The enhanced protection signals our intent to better protect our young against the backdrop of this demand of commercial sex tourism in the region, given the risks and premiums placed by sex tourists on minors. Perhaps, the Minister can also update us on the current

statistics involving local minors and those trafficked to Singapore from overseas in his response.

Section 376C, in my opinion, reflects a more realistic picture of the extent of the commercial sex trade demand by Singaporeans and PRs in the region. We know that sex tourism involving young children or teenagers in and around popular tourist destinations in the region exists. It is no secret that some Singaporeans patronise sex tourist spots overseas, and the mention of going to places like Batam and Bangkok for a good time has become the butt of jokes amongst many heartlanders.

But this is no laughing matter when sex exploitation of minors is concerned. Sex trafficking and sex tourism are heinous crimes that victimise the most vulnerable among us. The latest Penal Code amendments give prosecutors tools to bring those who commit these crimes to justice.

Those who profit from victimising children in the sex trade are only one half of the problem. The other half are those who patronise this exploitive industry. These new changes hold those who travel to do so, and those who benefit from arranging that travel, accountable.

While we protect our young, we cannot practise double standards when it comes to minors in other countries. It is also about our principles and we must be tough against exploitation wherever it occurs. Perhaps, there could also be studies to see if the patronage of these services overseas by Singaporeans and PRs is linked to the number of sexual abuses of children here. Given these, I think the Government should do more to strengthen its collaboration with law enforcement agencies in the region to make sure that these tools are used to their fullest extent.

Therefore, I believe that more can be done to address this, so that our laws are not just seen as token legislation, just to stay politically abreast and aligned with the rest of the world. Many countries have implemented these changes and enforced them to take a serious view. So, I think we can also do more, given our position and social values.

Mr Deputy Speaker, Sir, I support the Penal Code amendments.

5.26 pm

Mr Chiam See Tong (Potong Pasir): Thank you, Sir, for allowing me to join in this debate.

The last amendment to the Penal Code was 22 years ago, in 1985. The amendments that we are making today must be one of the most extensive provisions in the Penal Code, mostly enhancing the punishment sections.

The use of caning has been expanded. Cesare Beccaria, the Italian philosopher, in 1766, wrote:

'The objectives of the penal code system of a country should be to devise penalties only severe enough to achieve the proper purposes of security and order. Anything in excess is tyranny.'

I think if he were alive today, he would brand the majority of the punishment section meted out in the Penal Code as tyrannical, eg, under section 338, a person commits a negligent act. A negligent act usually is one which does not have an intention. It is only due to carelessness. As in law, they say it has got no *mens rea* or no intention to harm anyone. Yet, one who commits a negligent act, although the act is a dangerous act, it is punished severely with two years jail, or \$5,000 fine or both. I think the sentence is too severe for a negligent act.

The Bill has amended the definition of "imprisonment for life", to mean imprisonment for the duration of a person's natural life. This is in contrast to the old definition of "imprisonment for life", to mean imprisonment for 20 years. Judges can now lock up a person for good without any chance of parole or early release. With this amendment, are we looking forward to the abolition

of capital punishment for certain less serious crimes, like drug trafficking, whilst retaining it for more heinous crimes like murder and treason?

Great Britain abolished the death penalty in 1965 and has since not restored it. Nearly all the EU members agreed to do away with the death penalty. Those countries which have abolished the death penalty consider it as inhuman and very cruel as a punishment. As a deterrent, the death penalty has its use. Singapore has used the death penalty for drug trafficking because the Government believes that it is a good deterrent. Actually, the traffickers who are caught and hanged are only the petty runners. The syndicate bosses are not caught. They still exist and the drug problem is still with us. The Government should give it a try and abolish the death penalty for drug trafficking, say, for four or five years. And if the situation deteriorates and does not improve, the death penalty can be restored.

Under the new definition, once a trafficker is caught and he is sentenced to imprisonment for life, he shall be put out of circulation permanently. For that person, it is as good as being hanged. With such an enlightened law, Singapore shall be viewed in a better light. We shall not be branded an "uncivilised" country and more Europeans shall be coming to Singapore as their holiday destination.

I am glad to see that there are so many amendments in the Bill which stop the exploitation of young girls. These crimes now attract enhanced punishment and longer prison terms. Rape is a serious crime. The jail sentence remains at a maximum of 20 years and to a fine. When the crime is committed against a woman of under 14 years against her consent, there is a minimum jail sentence of eight years and also mandatory caning of 12 strokes. I think this sentence is right. If a young girl under 14 is sexually attacked, her whole life may be ruined.

There are amendments against commercial sex and minors below 18 years of age outside Singapore. Tour operators of commercial sex with minors under 18 are also caught under the new section 376D. The Government takes these crimes seriously because any person caught having sex with minors, whether inside or outside Singapore, shall be liable to a maximum jail sentence of two years. And for tour operators who organise such tours outside Singapore, they shall be liable to a jail sentence which may extend to 10 years or with a fine or

both. This heavy jail sentence shows that the Government is taking these crimes seriously.

5.34 pm

Ms Eunice Elizabeth Olsen (Nominated Member): Mr Deputy Speaker, Sir, thank you for allowing me to speak on the Bill.

Ever since the Bill was introduced to the House, I have been concerned about two things; first, whether I could plough through the entire 181-page document; and, second, whether I would accidentally mispronounce the word "penal". I have to admit that I have not done so for the former. So I hope that the odds of the latter happening are slim too.

To begin, I find that the key changes to the Penal Code broadly come under three categories, namely, laws on terror, laws on racial harmony and laws on sexual crimes. I would like to focus on the latter in my speech. In that regard, I have both credit and criticism for the amendments. Criticism because for all the modernising the updated Code is meant to reflect, there are some laws that need to be abolished entirely, in particular, marital immunity for rapists.

With the latest revisions, husbands can no longer plead immunity for raping their wives under some circumstances, such as when the couple is waiting for their divorce to be finalised. According to the Ministry, total abolition of marital immunity would be too radical a step, as there is a general concern about conjugal rights and intimacy in a marriage. Total abolition would change the whole complexion of marriage in our society, according to media reports of the Ministry's stand.

Sir, I can understand how and why the Ministry might arrive at such a conclusion. But it is a conclusion for which the underlying assumptions are flawed, and the key considerations need to be re-based.

Let us go through the issue step-by-step. First of all, before we can approach the issue of marital rape per se, we have to start with the basics, with first principles, and we have to ask: what is society's view on rape, in general? Under the very same Penal Code, a man who is guilty of rape shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning. Contrast this to the act of voluntarily causing grievous hurt, an offence under section 325, for which a person shall be punished with imprisonment for a term which may extend to seven years, which is 13 years less, and shall also be liable to fine or to caning. Acts such as permanent disfiguration of the face, permanent privation of the hearing of either ear, destruction or permanent impairing of the powers of any member or joint, would constitute such an offence, for example. These are serious crimes, but the laws reflect that the State and, by extension, society still adjudges rape to be a worse crime.

With this in mind, only then should we consider that the issue of whether rape is no longer a crime if it occurs within a marriage. The logical question that must be asked is: does the union of marriage eliminate the criminal nature of violent behavior such as rape or, therefore, behaviour that would be ordinarily considered criminal? Let us see. If a husband were to assault his wife and disfigure her permanently - a far less heinous crime ordinarily according to the law - does the Ministry give marital immunity? The answer is no. A husband can even be charged with stealing from his wife, and vice versa, I am sure. So, marriage does not grant the husband or wife immunity from the rule of law. But right now, the Ministry is effectively saying a woman has a right to protect her purse but not her body, or at least not when it comes to rape.

So, the question must be asked: why the exception for marital rape? If it is about preserving and respecting intimacy in a marriage, why is it that one of the amendments in the Bill is to repeal section 498, which makes it an offence to entice, take away or detain a married woman with the intention of having illicit intercourse with her, which according to the Ministry is an archaic offence and no longer relevant in today's context? Why is one law archaic and another not? Why is one law which was meant to symbolise the State's respect for marriages repealed while another purporting to do the same is kept? So, marital rape immunity cannot truly be about preserving and respecting intimacy in a marriage.

Those who object to the abolition of marital rape immunity have invariably cited conjugal rights and, with that, the associated arguments about implied consent or the marriage contract, the unity of persons theory, which is based on

Judeo-Christian doctrine, and the property theory. Sir, Singapore is known for its pragmatic, practical approach to problems, based on a realistic view of the world. There is no better issue than marital rape immunity where such an approach is needed. Do we honestly believe that in modern Singapore, where women are as educated as men, the vast majority of husbands are forcing themselves on their wives, insisting on conjugal rights, and disregarding the wishes of their wives? Do we not think the realistic view is that in the vast majority of cases, there is give-and-take in various aspects of marriage, including intercourse? Sir, do we really think that a tidal wave of wives are waiting for nothing more than a law to be put in place so they can gleefully have a headache for a month, thus turning the Ministry's worst fears about changing the complexion of marriage into reality?

Since we are a realistic people, and if it is true that the vast majority will not be affected by the abolition of marital immunity, then for whom is the change needed? It is for the small group of vulnerable, likely lowly-educated or possibly foreign wives who are dependent on their husbands and trapped in the marriage. Sir, these are women who are most likely not in a position to divorce or leave their husbands. The abolition of marital immunity is not going to solve the problem of loveless marriages. But in such marriages, what is crucially needed is to stop husbands from legally raping their wives. The Deputy Prime Minister and Law Minister Prof. S Jayakumar said last week that there is a core set of fundamental principles undergirding the rule of law that should exist in every society, one of which is the right to personal safety and security. Wherefore is the personal safety and security of these women?

I urge the Ministry not to see the abolition of marital immunity as a quasi battle of the sexes. This is not about women asserting their sexual rights, and I hope the women see it that way too. I urge the Ministry not to give in to fears, stemming understandably from our patriarchal society, that women will use this as a weapon against men. It is misplaced unless there is no love in the vast majority of marriages.

For the isolated vindictive cases that may arise, surely they can be ably dealt with in our criminal justice system. I urge the Ministry not to let such isolated cases stand in the way of protecting vulnerable women. Of course, the law is not a panacea, or a silver bullet, that will put an end to all marital rapes. But abolition of immunity is one form of deterrence. It sends a signal that will

surely also be reinforced by education, and it is a more accurate reflection of the principles in our society and what we stand for.

Of course, it would be far better if, in this debate, a few good men in this House were to speak up against marital immunity. Marital rape was made a crime in all 50 states in the United States in 1993, while the United Kingdom removed the marital exemption in 1994. Is it too radical a step for Singapore to protect the group of vulnerable women in its society?

Sir, on another note, I would like to commend the Government for finally introducing a law to prohibit sex with minors overseas and finally befitting Singapore's status as a developed and advanced nation. I hope that this is not just a token move to vault Singapore back into tier 1 in the trafficking in persons report issued by the US government after we were demoted to tier 2 this year.

In an *ABC* news article in July, according to US Attorney General Alberto Gonzales' 2006 trafficking report, there have been 55 child sex tourism cases and 36 convictions brought under the Protect Act, despite difficulties in making arrests.

I understand that there are difficulties in apprehending these paedophiles. But recent cases like the arrest of Christopher Paul Neil in Thailand show that it is not a lost cause and it is a worthy law and not just one that is in the Statutes symbolically but it is one that can be put to use to catch these despicable fiends.

In an article in *Today* on 27th April 2005, it was reported that Singaporean sex tourists make up the largest number of sex tourists visiting Indonesia's Riau Islands where many of those they sexually exploit are under the age of 18. Knowing this and with the law in place, without the arrests being made soon, one would think that the Ministry will need to do something to convince the public that they are serious about making a change for the better in the region.

Therefore, I would like to ask the Minister the following:

Firstly, what capabilities is the Government developing in order to enforce the new laws on the prohibition of sex with minors overseas?

Secondly, what role can the public play to help society to weed out paedophiles?

Thirdly, how will MHA go about enforcing this law?

And, fourthly, I would also like to ask the Minister how did the Ministry decide on what should be the appropriate sentence. How do the penalties compare to other developed countries, like the United States?

Sir, we are walking the right direction by introducing a law that condemns sex with minors overseas. How we act on this law is imperative and will determine the sincerity that we have towards protecting the lives of children in other countries. Singapore has always been known to punch above its weight on the international stage and now we have a law that allows us to do so in the issue of child sex tourism. I urge the Ministry to do it justice.

5.45 pm

Ms Sylvia Lim (Non-Constituency Member): Mr Deputy Speaker, Sir, the Ministry of Home Affairs first floated the Bill for public consultation a year ago, and I am glad to see that in this version tabled before Parliament, some of the feedback have indeed been taken into account. Nevertheless, there were still many areas of concern. And, today, I would like to address the following aspects of the Bill:

(1) Increases in punishment;

- (2) Laws on unlawful assembly;
- (3) Combination of imprisonment, fine and caning for the same offence;
- (4) Defences concerning security operations;
- (5) Law on extortion; and
- (6) Why the Bill should be sent to Select Committee.

First, increases in punishment. Generally, I have no quarrel with the increase in fines as it reflects the change of value of money due to inflation in the past decades. To pay a fine of \$500 in the past hurt people more than to pay \$500 in today's dollars. So, the increase in fines is understandable. However, I have deep concerns about the increase in the maximum jail terms. The loss of liberty 20 years ago does not cause less today. As MHA has acknowledged, there have been increases in the maximum terms of imprisonment for 110 offences. Besides the broad sweep, the extent of the increases for each offence is significant. Some offences have their maximum terms quadrupled; some tripled. To take some examples, punishments for several offences have doubled. For example, for distribution of pornographic material, it has been increased from six months to one year; harbouring offenders, from 10 years to 20 years; causing hurt, from one year to two years. In some cases, the punishment has been tripled or worse, for example, assault on a Minister or MP, from seven years to life imprisonment; and unlawful assembly from six months to two years, quadrupling of the maximum sentence. I shall say more about unlawful assembly later.

Another group of offences seem to be attracting heavier punishments is offences committed by public servants and offences committed against public servants. Jail terms are up under sections 221 and 222 where a public servant facilitates escape of persons in custody. The same is true of offences committed against public servants. For example, under section 225, the punishment for someone who tries to obstruct an arrest is being doubled and can go up to 20 years' jail.

The general justification given by the Ministry is that it has taken into account trends in society from 1984 to now and that punishments have not been increased unnecessarily. The Senior Minister of State earlier mentioned proportionality and prevalence of the offence, but, Sir, I do not think this general statement is sufficient to justify disturbing these penalties which seem to have worked for years.

First, punishments reflect how seriously society views a particular crime. Hence, we punish murder more seriously than theft. By quadrupling or tripling the maximum jail term, is the Ministry saying that from 1984 to now, these crimes have become three or four times more serious in their nature? Increased punishments can sometimes be justified because certain offences are prevalent and we would like to deter people from committing these crimes. Are we facing soaring crime rates? We should also remember that our population numbers have gone up from 2 million to 4.7 million. Any statistics used to show crime increases must be adjusted for population since we can expect more crimes when there are more people. Therefore, even if there is an increase in the number of offences, it does not mean that we have a bigger crime problem on our hands.

The Senior Minister of State has said that the maximum jail term does not mean that the judge must give the maximum sentence. That is true, but it will increase the exposure and, generally, sentences will go up once the maximum point is increased. Once maximum sentences go up, accused persons, even the innocent, may face pressure to plead guilty. This is because under sentencing practice, a guilty plea usually attracts a discount in sentence as it is supposed to indicate some remorse. A person who claims trial and is found guilty after a trial would generally get a higher sentence than one who pleads guilty.

Now, how does a higher maximum affect this calculation? To illustrate, an unlawful assembly may have gathered and a passive bystander is also rounded up by the Police. Currently, this person will have to ask himself, "If the judge does not believe that I am a passive bystander, then I will face a maximum of six months' jail, and I'm willing to take the risk and fight the case."

Now, after the amendments proposed, this person will have to ask himself whether he is prepared to face a maximum of two years' jail. If he is not, then

he may consider pleading guilty even when he is not. Let us not forget that the vast majority of people hauled before our courts have no lawyers to speak for them and may have no confidence that they can successfully mount their defence.

So, unless there is a compelling need to raise the maximum sentences, we should bear in mind this unacceptable side effect of doing so. Sir, I do find it somewhat regressive that in this day and age when we have many more sentencing options at our disposal, including community-based sentences, we still seem to be relying on sending people to jail as a response. What about rehabilitation and reintegration? Already, according to the International Centre for Prison Studies, Singapore has the second highest rate of imprisonment in Asia with 350 inmates out of 100,000 persons, excluding the population in our drug rehabilitation centres.

Sir, we must also be very careful that we maintain a sense of proportion in dealing with pegging punishment for offences. Parliament had over-reacted in the past, with over-harsh punishments under the Immigration Act, sending pastors and elderly landlords to mandatory minimum jail terms for unintentionally harbouring illegal immigrants. Then, in 2004, the Act was amended to make it more reasonable. Similarly, today, we should be wary of subjecting our people to excessive punishment before realising years later that we were over-zealous.

Sir, my next point is the law on unlawful assembly. This refers to clauses 29 and 30 of the Bill. By clause 29 of the Bill, we are removing the heading, "Offences Against Public Tranquility", and replacing it with "Offences Relating to Unlawful Assembly". By clause 30, we will be deleting "Mischief or Trespass or Other Offence" and replacing it with "to commit any offence". As the Senior Minister of State has pointed out, section 141 is being amended to bring it in line with the recent Court of Appeal case of *Tan Meng Khin*. Now, an assembly will be unlawful if people intend to commit an offence punishable with imprisonment of six months or more, even if it is peaceful and does not disturb public tranquility. Under our law, a person who organises a procession or assembly after the Police rejection of a permit, can be punished with a maximum six months' jail under the Miscellaneous Offences Act. Hence, five or more people who gather to do so will become members of an unlawful assembly.

Sir, the decision in *Tan Meng Khin's* case overturned another Court of Appeal's decision, *PP v Foo Son Hing*, one year before that. In the earlier case, the Court of Appeal considered the words of section 141 and determined that it was aimed at gatherings which threatened public tranquility or a breach of peace and hence peaceful gatherings would not be punished as unlawful assemblies. In the later case of *Tan Meng Khin*, the Court of Appeal changed its mind and read section 141 to cover gatherings to commit any offence even if there is no threat to public tranquility.

Connected with this, offences connected to unlawful assembly show drastic increase in the maximum jail terms under the current amendments. Being a member of such an assembly will see stakes rise from six months to two years, and joining an unlawful assembly, knowing it has been commanded to disperse, will go up from two years to five years.

Sir, we should bear in mind that there are already many laws in place which can punish people who attempt or collaborate with others to commit any offence. The prosecution has enough to choose from to charge groups of people who collaborate to commit crime, for example, abetment, conspiracy, or attempt.

Sir, Article 14(1) of the Constitution supposedly enshrines the right of citizens to assemble peaceably and without arms. Although Article 14(2) allows Parliament to set limits to this freedom, it is stated that it should be for the security of Singapore and public order and no more than that.

Sir, it is important for us to distinguish between gatherings which are violent, such as rioting, and those which are peaceful. The constant refrain of fearing law and order problems makes a mockery of the licensing law. Why have a law saying a permit is needed when it is seldom granted? The Minister for Law mentioned on Friday that Singapore needs controls as we are a densely populated country - but so is Hong Kong where peaceful protests are frequently seen.

Sir, as our society continues to evolve, the time is surely ripe for us to allow peaceful outdoor protest as a form of expression. By all means, we can have laws about how, where and when such processions may be held. But a

wider law reform is needed. Section 141 should be restricted to offences which threaten the public peace, and other laws, such as the Miscellaneous Offences Act which require permits for peaceful assemblies, should be modified.

Sir, my third point concerns combination of jail, caning and fine for the same offence. The amendments will allow, for the first time, a combination of jail, fine and caning for certain offences. This has not been allowed up to now because the Criminal Procedure Code has a section disallowing the High Court from imposing all three punishments in one case. Up to now, the sections of the Penal Code also state that only two forms of punishment may be combined in any one case. The Ministry is proposing to remove the restriction to two punishments and says that this proposal to allow combination of all three punishments will give flexibility to the sentencing judge.

But we should go back to first principles. What are the purposes of jail, fine and caning? Caning is controversial internationally, but if one must justify why we cane offenders, it is just deserts for pain which the offender has caused to the victim, for example, hurt, injury or the threat of violence. Caning is a severe punishment, and it is always combined with jail as the offences tend to be serious and to make it easier, administratively, to arrange for the caning to take place. On the other hand, a fine is usually meted out for less serious offences or can be combined with jail usually for non-violent offences.

Sir, the offences which the Ministry has identified for all three forms of punishment include abduction, voluntarily causing hurt with weapon, culpable homicide and outraging of modesty. But what kind of scenarios would justify combining caning with a fine and jail? Would there be an overkill? Clarity is needed on this point.

Sir, next, I move on defences concerning security operations. Section 79 of the Code deals with a defence of justification. It provides that a person has a valid defence if he commits an offence thinking, rightly or wrongly, that he was justified to do the act. A typical scenario is where a Police officer arrests someone, having information that he is a suspect which information later turns out to be wrong. The Police officer has a defence in that he acted in good faith at the time of the offence.

Clause 17 introduces three new illustrations to explain this defence in the context of counter terrorism operations. While MHA has explained that these are not intended to expand the defence, illustration (c) seems to suggest that Police are given large latitude to shoot to kill. In illustration (c), the scenario is that information is received that someone is attempting to plant a bomb at an MRT station and a profile of the suspect is given. A person who fits the profile is spotted carrying a backpack and behaving suspiciously.

When the Police officer approaches and orders him to stop, the person runs towards a crowd. The Police officer exercising judgement in the circumstances decides that the suspect has the bomb and shoots the suspect.

Sir, this scenario seems similar to a fatal shooting which occurred in London at Stockwell tube station in July 2005. There, the Police mistook a Jamaican student for a suicide bomber and shot him at least five times in the head. According to some versions, he was seen running away. Despite intelligence, the Police still found an incorrect match between the profile and the subject they shot. Transplanting that to the scenario here, the Police can tell you that many people run from them, not just suspected terrorists, people who have committed minor offences, overstayers, foreign workers afraid of the law or even the mentally unstable may do so. Reading the illustration, I would worry if this indicates a "shoot to kill" policy especially since we do not know how specific the profile given to the Police is. Will certain demographic stereotypes be more vulnerable to being mistakenly killed? MHA has said that in any court case, the judge will still need to decide if the shooting was justified. But this illustration is supposed to give our security officers and, I quote, "greater operational confidence to take necessary actions" which, read in another way, may be a signal that if one has not much information or when in doubt, one should shoot. May I ask the Senior Minister of State whether the intention is to entrench such a "shoot to kill" policy and what safeguards there are to prevent mistaken shootings?

Next, Sir, I move on to the point on the extortion law. Sir, this relates to amendments to section 383 of the Code which, in my view, completely change the nature of the crime of extortion. For many decades, extortion referred to someone threatening to do something illegal and demanding money in order not to carry out the threat, for example, "Pay me \$10,000 or I will burn your house." Burning the house is something illegal. By clause 73 of the Bill, section 383 is to be amended to cover situations where the threatened action is

legal. A new illustration C is a scenario where a Police officer threatens to report someone who has actually committed an offence. The Police officer in that scenario demands money not to report the matter.

Sir, in my view, the amendment clearly confuses extortion with corruption. There have in fact been court cases such as *PP v Chua Boon Teck* where it was ruled that Police officers demanding money so as not to exercise lawful powers of arrest are not guilty of extortion, but are guilty of corruption. I do not know the rationale for merging the two concepts which, in my view, should be distinct.

Sir, next, I would like to say a few words on the Petition presented by the Nominated Member on section 377A. Sir, the Workers' Party leadership, several months ago, discussed extensively the issue of whether section 377A should be retained or repealed. After much deliberation, we were unable to arrive at a consensus that it should be repealed and, as such, we would not be calling for its abolition.

Sir, my last point relates to why the Bill should be sent to a Select Committee. A Bill of this nature which introduces significant amendments to our main criminal legislation should be referred to a Select Committee. Sir, a Select Committee comprising Members familiar with the administration of criminal justice and social affairs should do a comprehensive review of the criminal law. They should scrutinise each clause to see if each change is justifiable and what else should be changed. MPs should receive expert opinions from legally-trained persons on whether the drafting or wording of the provisions requires finetuning. The Committee should also revisit court decisions interpreting certain important provisions in order to clarify the intent of those provisions and make amendments, where necessary.

Although there has been a round of public consultation before the First Reading, the weakness of that process is that the feedback given by the public is not a matter of public record and will not be accessible. Also, views submitted in the public consultations are filtered by civil servants. Parliament, as the law-making body, should allow MPs or a selected group of them to have direct access to representations by people on very important legislation such as this. There may also be groups from the public who would like their concerns recorded in an official parliamentary report of the Select Committee, for example, those concerned with spousal violence or sexual orientation.

Recording such input in an official document is a testament to the vibrancy of our public discourse and participation.

Sir, the Penal Code is our main criminal law and expression of society's barometer of what is criminal and what is not, the relative seriousness of offences and how citizens are to be punished. I strongly urge the Government to put this Bill to a Select Committee.

Column No : 2242

Column No : 2242

PENAL CODE (AMENDMENT) BILL

Debate resumed.

6.04 pm

Mr Siew Kum Hong: Mr Deputy Speaker, Sir, I rise to speak on the Penal Code (Amendment) Bill, and on the petition I had presented to Parliament earlier. I will first speak on two aspects of the Amendment Bill not related to section 377A and then on section 377A and the Petition.

The Penal Code is one of the most important statutes that we have because the criminal law touches so many people so intimately. This Bill represents the first review of the Penal Code in 22 years. It seeks to do a lot and yet it leaves so much undone.

The Bill introduces some positive changes. For instance, there is a new offence of sexual grooming. Going by the experience in the UK, this could well become an important weapon in the arsenal against sexual predators, especially those on the Internet.

Another important change is the criminalisation of child-sex tourism, extending to acts performed overseas. Notwithstanding potential issues of enforcement, this will help greatly in closing the door on Singaporeans engaging in such despicable practices.

But, Sir, some aspects of the amendment Bill are not so positive. I will focus on three in my speech.

General increase in maximum imprisonment sentences

Firstly, clause 105 of the Amendment Bill increases the maximum sentences for a number of offences. I echo Ms Sylvia Lim's comments on this increase and would add to them. Sir, depriving a person of his or her liberty is a very serious matter. We should not be hasty in increasing the maximum sentences for so many offences. The general increase in maximum fines is clearly justifiable, even necessary, given that they were last reviewed in 1952.

But while money loses its value due to inflation, there is no equivalent concept when it comes to imprisonment. The intrinsic value of a person's liberty does not diminish over time. If anything, with a higher standard of living and greater economic opportunities today, the opportunity cost of a day in jail is arguably a lot higher now than in the past.

In addition, an excessive maximum sentence could well be oppressive towards accused persons in the manner described by Ms Sylvia Lim. This insidious effect is undesirable, unfair and detrimental to the balance of the criminal justice system.

MHA should therefore provide adequate justification for each increase in maximum sentence. In its public consultation paper last year, MHA has stated that it has "avoided increasing imprisonment terms unnecessarily". It should disclose the different factors considered for each maximum sentence increased, and why it had concluded that the existing maximum sentence was inadequate. It has not done so.

To my mind, it is dangerous to increase the maximum sentences of so many offences, without proper justification. It seems to pay insufficient respect to the fundamental importance of a person's liberty. In the absence of such justifications, I have no choice but to disagree with this aspect of the amendment Bill.

Marital immunity

I now turn to the issue of marital rape. The Penal Code has historically provided an absolute defence of marital immunity. A husband is legally incapable of raping his wife. In other words, regardless of whether or not she consents to sex, regardless of whether or not he forces himself upon her, it is simply impossible in law for a husband to rape his wife.

The Amendment Bill proposes to take a "calibrated approach" in limiting this defence. Marital immunity will now not apply where divorce or separation proceedings have been commenced or completed, or where the wife has applied for or obtained an injunction or protection order against the husband.

MHA's stand is that total abolition of marital immunity would be "too radical" and would change "the whole complexion of marriage in our society", citing "a need to strike a balance between the needs of women who require protection and the general concerns about conjugal rights and the expression of intimacy in a marriage."

Sir, I was flabbergasted when I read that. Perhaps, it is because I am young and unmarried and hold the romantic view of marriage untarnished by its reality. But surely, that is the conception that we should still uphold. The proposed change still sends the message that, in most circumstances, a husband cannot be considered to have raped his wife even if he knew that she did not consent. Under this change, the critical issue for rape in a marriage is not consent, but whether the wife has taken certain legal steps.

MHA talks about "conjugal rights", suggesting that a husband has some sort of right to sex from his wife. This is derived from the archaic view that the wife, by marrying the husband, has irrevocably consented to sex with her husband. This is linked with a view that a wife is the property of a husband.

Sir, such a view has no place in a modern society, not even in a limited form. A man does not have the right to demand sex from his wife at any time. Sex without consent is rape, whether it takes place within or outside a marriage.

To me, it is simple: no means no, and rape is rape. Rape within a marriage is the same as rape outside marriage. In a modern society, marriage is a partnership of equals. We are a modern society. So why are we still retaining this defence, even in a limited form? I cannot fathom that.

MHA also cites "the expression of intimacy in a marriage". Sir, if sex without consent is seen as a permissible expression of intimacy in a marriage, then I fear for marriages and married people in Singapore. What sort of conception of marriage do we have, if the law recognises sex without consent as being legitimate? That cannot be right.

I can do no better than to quote the response of the Association of Women for Action and Research to last year's public consultation paper:

"Rape is not sex, it is violence. No wife who has been raped considers the act to be merely sex. It is a form of violence, aimed at violating the victim in one of the most humiliating manners. To equate sex with rape is to equate a caress with a beating.

Throughout the eighties and beyond, girls were continually warned in schools to be alert for sexual predators, and given the message that rape was the worst possible violation against a woman. It is truly ironic that these same girls, now adult women, are told that they have to subject themselves to this most humiliating of assaults by none other than their husbands."

The Amendment Bill effectively penalises the most vulnerable of wives: those who have no choice but to continue in a marriage, for whatever reason. It says that if a woman has the wherewithal to leave, then we will protect her from rape, but not if she is completely dependent on her husband. That again cannot be right.

For all of these reasons, I disagree with the proposed change to section 375 of the Penal Code. Instead, I urge the Government to repeal marital immunity in its entirety. That is what a modern society needs, that is what fairness requires, and that is what justice demands.

Sir, I now turn to the Petition I presented to this House earlier which argues that section 377A would be unconstitutional upon the repeal of section 377. For ease of convenience, I would refer to section 377A as 377A and section 377 as 377.

The Amendment Bill amends 377 to legalise private, consensual anal and oral sex between heterosexual adults. But 377A which criminalises the same acts between men is retained.

This discriminates against homosexual and bisexual men. The amendment of 377 without also repealing 377A is therefore unconstitutional under Article 12(1) of the Constitution which provides that all persons are equal before the law and entitled to the equal protection of the law. That is because it does not satisfy the legal requirements for derogating from Article 12(1). A valid derogation from Article 12(1) must satisfy the rational nexus test, ie, it must be rationally connected to a legitimate purpose of the statute in question. So we must first consider the purposes of the Penal Code.

The preambles of both the Penal Code and the Amendment Bill are silent on this. So let us turn to what MHA has said. Its public consultation paper on the draft Amendment Bill dated 8th November 2006 stated that: "The review is intended to make the Penal Code more effective in maintaining a safe and

secure society in today's context." So, according to the Government, the objective of the Penal Code is to maintain a safe and secure society. But 377A criminalises consensual sexual acts between men even if it takes place in the privacy of their own homes. How does the private sexual conduct of consenting adults make Singapore unsafe or less secure? Furthermore, criminal lawyers generally accept that the criminal law should be concerned with two elements, and two elements only - harm and culpability - of which, only harm is relevant here.

Professor Michael Hor teaches criminal law at the NUS' Faculty of Law. In a recent article, he explained that criminal activity must entail harm to others that is recognisable and tangible. In other words, if an act does not harm others, then it should not be a crime. This is taught to first-year law students in their first few weeks and, indeed, I recall being taught this over 10 years ago. Professor Hor went on:

"The Government has been strangely silent about the harm that section 377A is intended to prevent. Indeed, consistent statements over a number of years from the highest officials of the land lead any reasonable observer to think that the Government no longer believes, if indeed it did before, that the sort of activity contemplated by section 377A is harmful at all. If corroboration were required, it lies in the repeated assurances of the Government that section 377A will not be enforced - apparently because there is no harm to be prevented, no offender to be rehabilitated, no potential offender to be deterred, and no victim to be satisfied.

One might, of course, disagree with the Government's position on the harmfulness of section 377A activity, but once that position is taken, how can it be right for section 377A activity to remain a crime?"

The Law Society, in its submission to MHA on the draft Amendment Bill, similarly noted:

"... the criminal law's proper function is to protect others from harm by punishing harmful conduct. Private consensual homosexual conduct between adults does not cause harm recognisable by the criminal law. Thus, regardless

of one's personal view of the morality or otherwise of such conduct, it should not be made a criminal offence."

Private consensual sexual acts between adult males do not impact on the safety and security of society. Furthermore, it is accepted that the criminal law addresses activities that harm others, but the Government seems to think that the activities governed by 377A do not cause harm. So how can 377A possibly be linked to a legitimate purpose of the Penal Code? The answer is that it does not and it cannot. And the Government has effectively admitted this. It does not seek to justify the retention of 377A on grounds of societal safety and security or of harm to others from the conduct contemplated by 377A. Instead, its reasons for retaining 377A are that the majority of Singaporeans disapprove of homosexuality and so 377A should be retained to reflect or "signpost" this majority view of Singaporeans. But reflecting the morality of the majority is not a stated aim of the Penal Code nor is it an accepted objective of the criminal law.

Clearly, then, 377A has no rational connection with any legitimate aim of the Penal Code. Its retention, which leads to different treatment of men engaging in oral and anal sex, and of heterosexual adults doing the same, without any legally acceptable justification, must therefore be unconstitutional. I would even argue that there can be no legitimate aim of the Penal Code with which 377A can be rationally connected so as to justify its retention. The amendment of 377 permits heterosexual adults to engage in private, consensual oral and anal sex. By definition then, we are saying that there is no harm arising from such private and consensual acts between heterosexual adults.

Why should it be any different when those acts are performed between adult men? What is the differentiating factor that leads to harm? There is none. There is no harm that would be recognised by the criminal law. It is not harm that results from such acts being performed between adult men, but the moral disgust that the majority says it feels. But there is a very good reason why the criminal law should not reflect public morality. And that is because doing so can lead to the discriminatory oppression of minorities.

In times past and in other countries, public morality and disgust have been used to justify slavery; discrimination against racial and religious minorities; and discrimination against women, including not permitting them to work or to

vote. All of these are now universally recognised as being wrong and immoral. Let us not perpetuate or repeat the mistakes of others in the past.

Sir, the "signposting" argument is fundamentally flawed. It is couched in the language of "the majority". But let us not forget another phrase involving the majority: the tyranny of the majority. That is precisely why the constitutional guarantees of equality and equal protection are entrenched as a fundamental liberty in Article 12(1).

Even if we accept the "signposting" argument, the Amendment Bill seems to reflect public morality in a selective and discriminatory manner. It is surely undisputed that society views extramarital sex as immoral. And, surely, most Singaporeans disapprove of prostitution and all types of discrimination, such as age, racial and gender discrimination. But we have not criminalised any of these.

Indeed, the Amendment Bill even repeals section 498, which makes it an offence for a man to entice, take away or detain a married woman with the intent of having illicit intercourse with her. The reason given is that it is an archaic offence which is no longer relevant in today's context.

But public morality in today's society remains firmly opposed to extramarital sex. So why do we selectively reflect public morality with respect to private, consensual acts between adult men, but not public morality on adultery? Why are we not "singposting" society's disapproval of adultery by retaining section 498, without proactively enforcing it? The Senior Minister of State has argued that repealing section 498 is not an endorsement of adultery or pre-marital sex. In the same way, repealing 377A is also not an endorsement of homosexuality. The inconsistency is discriminatory. And taking the signposting argument to its logical conclusion, if we repeal section 498, are we then telling the world that seducing a married woman, hence leading to adultery, is acceptable? By lifting marital immunity in limited circumstances, are we endorsing marital rape in the other circumstances?

Signposting is all or nothing. We cannot signpost selectively, with some provisions reflecting public morality and others not. It does not work that way. It is a fundamentally flawed argument that does not stand up to logic or

reason or the principles of a democratic society, and so we should shy away from it.

Sir, Mr Cheng, a Singapore graduate student in the US, emailed this to me:

"Retaining section 377A on the basis that the 'conservative' majority is uncomfortable with homosexuality sets a dangerous precedence for our society.

It suggests that any majority group can now regulate the private activities of a minority group because it is uncomfortable with it or feels threatened by it.

Imagine what this means for the many majority-vs-minority faultlines within the Singapore society - Chinese vs others, citizens vs non-citizens, heartlanders vs cosmopolitans, a majority religious group vs a minority one.

Breeding the majority group's self-righteousness to demand deference from the minorities will weaken the social cohesion of our society based on mutual respect and tolerance.

The repeal of section 377A will make a clear statement on how, in Singapore, we will always have to find ways to live harmoniously with people who are not like us."

Sir, many people have described the repeal of 377A as a "slippery slope". I think Mr Cheng has identified the true slippery slope that we face today.

For all of these reasons, I believe the continued retention of 377A to be unconstitutional. I think the arguments in the Petition are valid and correct in law, and so I presented it to Parliament. I humbly ask my fellow Members to consider these arguments and to acknowledge their cogency in this debate.

Sir, that was the Petition. I will now speak on why I support the repeal of 377A, quite apart from its unconstitutionality. Contrary to how many have sought to frame the issue, the repeal of 377A is not a gay issue. It is not about gay rights. It is not just for gays, friends or relatives of gays. No. It is about fairness, justice and non-discrimination. It is about tolerance, understanding and inclusiveness. It is about upholding the fundamental protections afforded by the Constitution, the basic pillars underpinning our country. These are issues for all Singaporeans.

The response to the Petition bore this out. The signatories were a broad and diverse group, showing that the issues cut across all lines and resonated universally with people. Straight and gay, male and female, young, middle-aged and old, civil servants, professionals and students, religious and non-religious, they all signed the Petition. They all understood the guiding light of treating others as you want them to treat you. They were united by the common belief that 377A is unfair, unjust and wrong, and hence should be repealed. And such lengths they went to, to convey the strength of their belief. So many, including straight men, went out to collect signatures on their own accord, without being asked, completely voluntarily. An 18-year-old student collected 70 signatures. Two others collected 150 signatures each. Madam Tan, a 63-year-old mother of two heterosexual sons, collected signatures from her peers. She took it upon herself to do so. She believed that she needed to do it, "for a healthy attitude towards life". She collected five signatures.

Apart from the Petition, there was also an online open letter to the Prime Minister calling for a repeal of 377A. This open letter, which collected 8,120 signatures, was handed to the Prime Minister's Office earlier today. A Mr Goh signed it, and he articulated the universality of the issue when he wrote:

"I must admit that I am somewhat 'homophobic', but I believe that nobody should be discriminated against for his belief or, in this case, sexual inclination. If they make me uncomfortable, I just don't mix in their social circle."

I do not know anything about Mr Goh, but I am humbled by his principled stand against discrimination. It is the right and noble path, standing fast to our

principles even in the face of personal dislike. Surely, we can all learn from him.

Sir, the Government has stated that it will not proactively enforce 377A. This may be meant as a compromise, but it is unsatisfactory and problematic. The Law Society has pointed out that this position is an admission that 377A is out of step with the modern world, adding that it risked "bringing the law into disrepute".

I also quote Professor Michael Hor:

"The moral force of the criminal law is blunted if there are crimes which are, the Government assures the public, never to be enforced, and its 'perpetrators' never brought to court and punished.

The criminal laws are the ground rules of our society and if it is to be accorded the respect it deserves, it must be reserved for conduct which the Government considers to be clearly harmful to society."

Sir, the Senior Minister of State has noted that there have been convictions under 377A for cases involving abuse of young persons and acts performed in public. And I completely agree that such instances and such acts should remain criminalised. But 377A, as it now stands, is not limited to those situations and it covers private consensual acts between adults as well. If the Government intends to criminalise only the abuse of young persons and public acts, then 377A should be amended to do this. But it is not being amended.

Furthermore, not proactively enforcing 377A does not mean that its retention is without cost. The Government says that it seeks to reflect the moral values of the majority, but what about the human cost to gay persons and their families? What about the cost to Singapore from those who leave Singapore because of this law? What price, this reflection and endorsement of public morality?

The majority of Singaporeans seem to speak as if the non-enforcement of 377A means that everything is fine. But the majority would say that because they are not the subjects of discrimination, because they are not the minority who have to live under the threat of 377A, which is a sword of Damocles that could fall with a change of policy by the Government of the day.

Sir, let me share with this House the pain voiced by some signatories of the online open letter. Madam Mak is a 69-year-old mother of a gay 40-something son. He and his partner have lived with her for over 13 years. She called them "the best things" that had happened to her in her 69 years in Singapore. She wrote:

"Please tell me, Mr PM, why are you teaching me to be ashamed of them? If this country doesn't want them, where can they go? Please tell me."

Madam K, a civil servant, wrote:

"My son is gay. He came out to me when he was 22. And I was upset and I blamed myself for why my son is gay... I blamed myself all the time. But he is my son. He has not changed since the first day I gave birth to him or

the person he is today. I love him for who he is, for what he is. It sickens me that people think suggests that just because he is gay, our family is not what it is. We are a family. What people do in their private lives should not be an issue to anyone as long as it does not harm anyone else. He does not know I am doing this but I support this repeal. He is my son and he is not a criminal. If I can accept him, his mother who gave birth to him, who are these people who so quickly judge him and condemn him?"

A doctor, who signed off only as "criminal doctor", wrote:

"I am a doctor. People tell me that is a noble profession. My parents are proud of me. My teachers are proud of me. But I am ashamed of myself. Why so? Because I am gay. It does not matter how many lives I save, it does not matter how much suffering I relieve, it does not matter how much good I do, it does not change one shameful fact. I am a criminal doctor."

Sir, please bear with me as I quote one last person. Mr Choo questioned the consequences of repealing 377A. He questioned whether, if 377A was abolished, those who supported its retention would suffer. He asked if they would be, and I quote,

"... "living in constant hardship, hysteria, agony and pain, distress and shame, fear of marriage breakdown, upset with public safety and order", simply due to the knowledge that someone else is legally behaving in what they regard as "gross indecency" in some other bedroom?"

Mr Choo went on:

"Let us be honest and look where the tears and wounds really are. Talk is cheap, anger is free, but pain is costly. And often, such truly divisive loss as section 377A cost lives."

And then, there are those who leave. If we truly believe that every Singaporean counts, if we truly believe that every Singaporean matters, and surely we must when people are our only natural resource, then have we counted the cost of all of those who have left us? I will cite only one example, to show how heavy the cost to Singapore can be.

Mr Alex Liang emailed me a few months back. He is a former Singaporean who has renounced his citizenship and is now a UK citizen. By all objective measures, Mr Liang is someone who would have served the country very well. We had invested heavily in him. He received a sports award for three years running, and was also a humanities scholar. He represented the country in gymnastics, receiving generous training allowances. He speaks eight languages and had excellent academic results. But the moment he completed National

Service, he left for Europe and he stayed there. He had long decided to leave Singapore, as he did not see a viable future for himself in Singapore as a gay man.

Sir, I ask again, "What price, this effort to "signpost" the views of the majority?"

Even if we want to signal the majority's disapproval of homosexuality, we do not need to retain 377A. It can be done through other means. Repealing 377A does not mean that society endorses or approves of homosexuality.

Let us learn from the example of the Censorship Review Committee. Its 2003 report noted the distinction between "allowing" and "endorsing", stating that allowing certain content is quite different from, and should not be misinterpreted as, an endorsement. The same reasoning applies here.

In any event, this House should be leading and not following. We should lead by example. We should be doing what is right, fair and just, what is constitutional and keeping in spirit with Singapore's cherished principle of equality and non-discrimination. We pride ourselves on doing the unpopular but right thing, so why are we abdicating our responsibilities now?

Sir, I get a little emotional when I hear the "signposting" argument. That is because it claims to signpost values held by this House and by Singaporeans. It purports to proclaim the values that I, as a Member of this House and, as a Singaporean, believe in and want to proclaim.

But what are these values? What is this majority view, what does the majority whose values we want to "signpost" think and say?

For that, I turn to the keep377a.com website. It was set up to solicit signatures for an online open letter in support of 377A. Let me just read some of the messages that have been posted on this website.

Mr Deputy Speaker: Order. Mr Siew, you have three minutes more. Please wind up.

Mr Siew Kum Hong: Yes, Sir. Instead of reading their comments, I will just talk about what I feel that this House should do. I ask this House to "signpost" the values of fairness, justice, non-discrimination, openness and inclusiveness, which are values fundamental to a secular democracy. I ask this House to endorse the view that our people should feel free to express diverse views, pursue unconventional ideas, or simply be different, that ours must be an open and inclusive Singapore, and that we should build a nation where every citizen has a place, where all can live in dignity and harmony. And if those words sound familiar, that is because those were the very words of the Prime Minister in his swearing-in speech in August 2004.

These are the right things to do. Some have said that Singapore is not ready, that this is not the right time. I disagree. I say that there is no wrong time to do the right thing. Now is the time, not to do the pragmatic or easy thing, but to do the right thing. Now is the time, to turn our backs on prejudice, discrimination, intolerance and hatred. Now is the time, for this House, which represents all Singaporeans, to lead by example. Now is the time, to uphold the noble ideals of our founding fathers, ideals upon which our country was founded and which hold our society together. The ideals of a democratic society, based on justice and equality. The ideal of all persons being equal before the law, and all persons having the equal protection of the law. Now is the time, to do the right thing and repeal 377A.

Sir, with that, and for all the reasons I have stated in my speech, namely, the increase of so many maximum sentences without adequate justification, the retention of the marital immunity, albeit in a limited form, and the failure to repeal 377A, I oppose the Penal Code (Amendment) Bill.

6.33 pm

Ms Indraneel Rajah (Tanjong Pagar): Mr Deputy Speaker, Sir, I rise to speak in support of the amendments in the Bill. Before I go on to my main points, may I just address some of the points that have been raised by Mr Chiam See Tong as well as by Mr Siew Kum Hong.

First, Mr Chiam made the point that the penalty for negligence was too harsh and he equated it to just being negligence. The point I would like to make is that negligence under the Penal Code is not mere negligence. It is criminal negligence, and criminal negligence carries with it a higher degree of negligence than civil negligence. For that reason, the penalties that go with criminal negligence have to be higher and have to be reflective of the fact that it is criminal, not civil.

Mr Chiam then made the point that now that life sentencing has been clarified to mean an actual life sentence, perhaps, we ought to reconsider the death penalty. He cited the example of Great Britain which has done away with the death penalty as well as countries in Europe. Yet, it always amazes me that when people point to Great Britain and Europe and they talk about the doing away of the death penalty, they never, in the same breath, also talk about their crime rates. They should compare the crime rates in Great Britain and the crime rates of countries in Europe, with the crime rates in Singapore, crime for crime. I think it cannot be disputed that the crime rates in Europe are higher than ours and that the incidences of violent crimes are much more than ours.

Mr Chiam also called for the abolition of the death penalty for drug trafficking. He suggested that we should instead have life imprisonment and he pointed to Europe again. I would like to say in response that in Europe, I think, in many countries, it is considered that they have lost the battle against drugs. In Singapore, that is not the case. We have more than held the line, we have pushed back the frontiers and we have, in fact, managed to make great inroads into containing the drug problem. So for those reasons, I would not agree that the death penalty should be done away with.

I turn now to the comments made by Mr Siew Kum Hong, both in respect of his Petition and section 377A itself. I think I can have some sympathy with the concerns that the gay community or the homosexuals in Singapore have, but I would like to address some specific legal points made by Mr Siew. The entire

basis on which the Petition rests is that it is a violation of Article 12(1) of the Constitution which provides that all persons are equal before the law and are entitled to the equal protection of the law. But actually, the submission that has been made by Mr Siew is not quite correct in its interpretation and taken out of context. What Article 12(1) really means, by way of an illustration, would be this. If somebody is charged with theft, for example, you cannot say that, " I will prosecute you if you are a homosexual, but I would not prosecute you if you are a heterosexual." That would be an unequal and discriminatory application of the law. So that is what it means when you say that all persons are equal before the law. We do not look at your sexual orientation in determining whether or not you should be prosecuted or you should be charged.

Article 12(1) of the Constitution and the provisions on equal protection do not mean that the same law applies to every group. An example of this is section 376A on sexual penetration of a minor under 16, irrespective of consent. Because, for someone above 16, you look at consent and you see whether or not that person consented, and then it is fine. But in the case of a minor under 16, there is no consent. The minor may well say, "But the law says that all persons are equal before the law. I am under 16. I give my consent. You should treat me equally as an adult." But we do not argue with that. And why do we not argue with that? We do not argue with that because we recognise that minors are a special group and have to be treated differently and they require certain protection.

Of course, that comes to the issue of whether or not you should treat homosexuals differently. I would come to that in a moment, but I just want to address another legal submission made by Mr Siew which is that we can have a departure from Article 12(1) if there is a rational nexus or legitimate purpose for the statute in question. Then, he went on to say that the purpose in question for the amendments in the Penal Code is that Singapore is a safe and secure society and there is no rational nexus between the keeping of section 377A to this stated purpose.

The first thing I would say is that that purpose was a purpose stated in the public consultation paper of the proposed Penal Code amendments. It does not come from a statute and it is not part of legislation. It is very obviously a summary of the purpose of the amendments. But if you want to take that sort of argument, then what about the distribution of pornographic material? You could, if you want to take the same argument, say that distribution of pornographic material has nothing to do with a safe and secure society as it is

not a threat to persons and property. But all of us accept that distribution of pornographic materials is something that should be regarded as an offence. So in exactly the same way, it is the broader concept of what we regard to be a safe and secure society. When we look at the safety and security of Singapore, we also look at the question of public morals, public decency and public order.

Mr Siew also talked about public morality as being the wrong touchstone. I think he said that public morality has been cited as the basis for legislation to enforce slavery, discrimination against racial and religious minorities, discrimination against women, etc. But in a way, that exactly proves the point. At the time when they had slavery, there were laws in place which reflected the public morality of that time. If you had been in America at that time when they had slaves and you had said to somebody, "You should not have slaves because slavery is wrong", nobody there, at that time, would have agreed with you because the society was such that that was the correct thing at that time. And that is precisely the point because societies do evolve. Clearly, we have evolved to a stage where we now regard slavery as wrong. We certainly regard discrimination on racial and religious grounds as wrong. But in some places, that is still regarded as correct, which just brings us back to the point that in each case, it is a question of what society is prepared to accept.

I come to what is Singapore prepared to accept. I do not think we want to have a situation where we demonise homosexuals. We certainly do not want to regard them as anything less than Singaporeans. But the point is: what does our society want for itself? Societal rules are not purely a matter of free choice. A murderer could say he is free to kill but society disagrees. Murder is a crime. The right to free speech, for example, does not extend to vilifying another race or religion. And once you have different groups that live in a society, you have to accept that there will be some restrictions on behaviour, and particularly so in Singapore, where we have a small land area and a population of diverse races, religions and beliefs. If we have a difference of views then, what do we do?

One group says, "I want this". Another group says, "No, I want that." How do we decide? We have to come down to a decision one way or another and, in most cases, we would go with the majority view, unless there is a reason to protect the minority position. So, under the Constitution, for example, there is no discrimination on the basis of race or religion. Why? Because society as a whole accepts that there should be no discrimination on the basis of race or

religion. But that is not the universal principle. That is something we accept here, but there are some countries where there is institutionalised discrimination on the basis of either race or religion as part of their official policy. And for those countries, they consider it right. But in Singapore, we do not. So, in each case, we have to consider what the society regards as the correct or the right way to decide for that society, and particularly so in a State like Singapore which is a secular state. A secular state's position should be that we go with the majority view unless there is a particular reason to uphold the minority position, and legislation has to be a reflection of the societal norms and what is acceptable to that society.

In this case, the public reaction has shown that the majority of Singaporeans do not agree with or accept homosexual behaviour. I think it will be fair to say that most Singaporeans do not want to see somebody jailed for homosexual practices, but most would definitely not want to see any public demonstration of the conduct. They may be prepared to tolerate it if it is done in private, but they do not wish to see it in public and, very importantly, they do not wish to have their children see it in public. Then, of course, the argument comes, "OK, fine, if we do not do it in public, what if we just do it in private?" And that is where the signalling concern comes in, because people are concerned about the impact that a repeal of section 377A would send.

Many Members may recall that some years back, the Senior Minister had made the statement that the civil service would not discriminate against gays. And that was a progressive statement because it indicates that the civil service would not discriminate against employing a homosexual just because he is a homosexual. That was already an advance of a public position from what we had 20 years ago. I do not think the Government would have made such a statement like that 20 years ago. That shows that we have evolved to some extent where a statement like that can be made. But immediately after that statement was made, I had a number of pastors coming to speak to me to say, "Why is the Government endorsing homosexual behaviour?" The Government was not endorsing. The Government was saying that we would not discriminate against a homosexual in terms of employment because he is a homosexual. But the immediate public perception, at least for many people, was that it is just not discrimination, it is an endorsement. And our society, obviously, has not arrived at the stage where we can just separate the two. It is not as easy as that, and people see it as an important form of public signalling. Therefore, the stance which the Government is taking is, in fact, an exact reflection of what Singapore society in general think, which is that if you really have to do it in private, the Government and the Police will not take a proactive enforcement policy but, at the same time, we do not want to send a message to

everybody that this is correct, because we have to take into account the majority view. And I think that many liberal groups have, for a long time, thought that the Government was exaggerating the extent of the conservatives in Singapore, but that is not so. I appreciate Mr Siew's point that there were many people who would have written, emailed or given support to the Petition on the Internet. But I can tell you that for every one of those, there was someone who emailed us as Members of Parliament to say, "Do not repeal. Keep it. We thank the MPs, we thank the Government for keeping this law."

Sir, when we have a situation like that, when we have one group that feels very strongly to keep the law, and another group that feels strongly to do away with it, what do we do? We have to make a decision. And the obvious decision in such a situation is to maintain the *status quo*, and to recognise that somewhere along the line, the situation may evolve. It may well change, just as the position on slavery changed, just as the position on a woman being a chattel changed, thank goodness, just as many other things have changed along the way.

Actually, we think about it, that was the conclusion that the Workers' Party arrived at. Members will recall that Ms Sylvia Lim said that the Workers' Party had debated it for a long time, and they basically could not arrive at a consensus. And because they could not arrive at a consensus, they figured that they should let the *status quo* remain. And until such time when society is ready to move, the Government's position is the correct position, which is - let things develop but, in the meantime, obviously, they have signalled that they will not actively prosecute, although that may be different if the act is done in public, and it certainly may not be the case if a minor is involved. In that way, it is a compromise of sorts, but we always have to have a compromise when we live in a society where there are diverse groups.

Having dealt with section 377A, I just want to make two other points. I want to comment on the sexual offences which protect minors, especially vulnerable ones, and this is what I call the 376 series. I think these are laudable amendments.

I just want to make a comment on section 376B, which is commercial sex with a minor under 18 overseas. I think this is a particularly good and timely amendment. And I think that at the time it was being considered, one of the considerations was the difficulties of enforcement and whether or not

something like that could be effectively enforced. The recent case of the paedophile Christopher Neil who was caught in Thailand after cooperation by the public and with the use of technology and the Internet. I think this is an indication of promise that we can have effective enforcement of this particular section. With technology, with public cooperation, I think it would be easier to have enforcement of this section than we had previously thought. And that would be a very good thing, because for far too long, we have people who are living in Singapore who do not do anything wrong here as far as commercial sex with minors is concerned, but they go into the neighbouring region and they perform these acts with minors which are heinous, reprehensible and abhorrent. For too long, they have been able to maintain that hypocrisy of staying here and maintaining a perfectly respectable facade whilst going overseas and conducting these abhorrent activities. This, in my view, is a particularly apt amendment and one that I would certainly support.

The last point I just want to talk about is on section 375 and marital immunity. On this, I think I would have to align myself with all the others who have spoken before to ask the Government to reconsider and still have retention of parts of marital immunity. The fact that certain inroads have been made into marital immunity is good. But I think the point is that the reality is violence would have occurred before any of these exemptions would have come about before someone gets an interim judgment for divorce, before he gets interim judgment of nullity or before he gets a personal protection order, there would have been occasions where there have been domestic violence and very often a case of marital rape. In many instances, women are afraid to step forward and take the formal steps of estrangement, which may result in all these formal orders taking place. So, I would strongly argue that whilst marriage is a *prima facie* indication of consent, it does not mean that when the marriage is ongoing, the wife must be deemed to have consented on all occasions. And in my respectful view, removing marital immunity altogether would send a strong signal that sexual relations in a marriage should be based on mutual consent and be an incentive for both partners to conduct themselves accordingly.

With that, Sir, I support the amendments.

6.50 pm

Prof. Thio Li-ann (Nominated Member):

Sir, two camps championing two distinct criminal law philosophies are polarised over whether to retain or repeal section 377A, which criminalises public or private acts of gross indecency between two men, such as sodomy.

The "liberal" camp wants section 377A repealed. They offer an "argument from consent", "Government should not police the private sexual behaviour of consenting adults." They opine that this violates their liberty or "privacy". They ask, "Why criminalise something which does not "harm" anyone; if homosexuals are born that way, isn't it unkind to "discriminate" against their sexual practices?"

These flawed arguments are marinated with distracting fallacies which obscure what is at stake. Repealing section 377A is the first step of a radical, political agenda which will subvert social morality, the common good and undermine our liberties.

The "communitarian" camp argues from "community values". These social conservatives want section 377A retained, to protect public health, morality, decency and order. A "Keep 377A" online petition attracted over 15,000 signatures after a few days.

Like many, I applaud the Government's wisdom in keeping section 377A which conserves what upholds the national interest. "Conservative" here is not a dirty word connoting backwardness; environmental conservation protects our habitat; the moral ecology must be conserved to protect what is precious and sustains a dynamic, free and good society.

The welfare of future generations depends on basing law on sound public philosophy. We should reject the "argument from consent", as its philosophy is intellectually deficient and morally bankrupt.

Sir, the arguments to retain section 377A are overwhelmingly compelling and should be fully articulated, to enable legislators to make informed decisions and not be bewitched by the empty rhetoric and emotional sloganeering employed by many radical liberals, which generate more heat than light.

The real question today is not "if" we should repeal section 377A now, or wait until people are ready to move. This assumes too much, as though we need an adjustment period before the inevitable. The real question is not "if" but "should" we ever repeal section 377A. It is not inevitable; it is not desirable to repeal it in any event. Not only is retaining section 377A sound public policy, it is legally and constitutionally beyond reproach. Responsible

legislators must grapple with the facts, figures and principles involved; they cannot discount the noxious social consequences repeal will bring.

Debate must be based on substance and not sound-bites. Let me red-flag four red herrings.

First, to say a law is archaic is merely chronological snobbery.

Second, we cannot say a law is "regressive" unless we first identify our ultimate goal. If we seek to ape the sexual libertine ethos of the wild wild West, then repealing section 377A is progressive. But that is not our final destination. The onus is on those seeking repeal to prove this will not harm society.

Third, to say a law which criminalises homosexual acts because many find it offensive is merely imposing a "prejudice" or "bias", boldly assumes that no reasonable contrary view exists. This evades debate. The liberal argument which says sodomy is a personal choice, private matter and "victimless crime" merely asserts this. It rests precariously on an idiosyncratic notion of "harm". But "harm" can be both physical and intangible; victims include both the immediate parties and third parties. What is done in "private" can have public repercussions.

Fourth, legislators are urged to be "open-minded" and decriminalise sodomy. However, like an open mouth, an open mind must eventually close on something solid. Legislators are urged to be "objective" and to leave their personal subjective beliefs at home, especially if they hold religious views that homosexuality is abhorrent. This demand for objectivity is intellectually disingenuous, as there is no neutral ground, no "Switzerland of ambivalence" when we consider the moral issues related to section 377A, which require moral judgment of what is right and wrong - not to take a stand, is to take a stand! As all law has a moral basis, we must consider which morality to legislate. Neither the majority or minority is always right, but there are fundamental values beyond fashion and politics which serve the common good. Religious views are part of our common morality. We separate "religion" from "politics", but not "religion" from "public policy". That would be undemocratic. All citizens may propose views in public debate, whether influenced by religious or secular convictions or both; only the Government can impose a view by law.

By the way, one does not have to be religious to consider homosexuality contrary to biological design and immoral; secular philosopher Immanuel Kant considered homosexuality "immoral acts against our animal nature", which did not preserve the species and dishonoured humanity.

The issues surrounding section 377A are about morality, not modernity or being cosmopolitan.

What will foreigners think if we retain 377A? Depends on which foreigner you ask. Many would applaud us! Such issues divide other societies as well! A group of Canadians were grieved enough to issue an online apology to the world "for harm done through Canada's legalisation of homosexual marriage", urging us not to repeat their mistakes. These debates are not closed locally or globally. Singapore is an independent state, we can decide our own laws; we have no need of foreign or neo-colonial moral imperialism in matters of fundamental morality.

Sir, there are no constitutional objections to retaining 377A while decriminalising heterosexual oral and anal sex. Three legal points are worth making.

First, there is no constitutional right to homosexual sodomy. It is not a facet of personal liberty under Article 9. Nor is there a human right to homosexual sodomy though some like to slip this in under the umbrella of "privacy." Human rights are universal, like prohibitions against genocide. Demands for "homosexual rights" are the political claims of a narrow interest group masquerading as legal entitlements. Homosexual activists often try to infiltrate and hijack human rights initiatives to serve their political agenda, discrediting an otherwise noble cause to protect the weak and poor. You cannot make a human wrong a human right.

Second, while homosexuals are a numerical minority as a social fact, there is at law no such thing as "sexual minorities". Activists have coined this term to draw a beguiling but fallacious association between homosexuals and legally recognised minorities like racial groups. Race is a fixed trait. It remains controversial whether homosexual orientation is genetic or environmental, perhaps both. There are no ex-Blacks but there are ex-gays. The analogy between race and sexual orientation or preferred sexual preferences, is false. Activists repeat the slogan "sexual minority" *ad nauseam* as a deceptive political ploy to get sympathy from people who don't think through issues carefully. Repetition does not cure fallacy.

Science has become so politicised that the issue of whether gays are "born that way" depends on which scientist you ask. You cannot base sound public philosophy on poor politicised pseudo "science".

Homosexuality is a gender identity disorder; there are numerous examples of former homosexuals successfully dealing with this. They claim a right of sexual reorientation. Just this year, two high profile US activists left the homosexual lifestyle, the publisher of *Venus*, a lesbian magazine, and an editor of *Young Gay America*. Their stories are available online. An article by an ex-gay in the *New Statesmen* this July identified the roots of his emotional hurts, like a distant father, overbearing mother and sexual abuse by a family friend; after working through his pain, his unwanted same-sex attractions left. While difficult, change is possible and a compassionate society would help those wanting to fulfill their heterosexual potential. There is hope.

Singapore law only recognises racial and religious minorities. Special protection is reserved for the poor and disadvantaged; the average homosexual person in Singapore is both well educated, with higher income, that is why upscale condo developers target them! Homosexuals do not deserve special rights, just the rights we all have.

"Sexual minorities" and "sexual orientation" are vague terms covering anything from homosexuality, bestiality, incest, paedophilia. Do all these minority sexual practices merit protection?

Third, 377A does not breach the Article 12 guarantee of equality. While all human persons are of equal worth, not all human behaviour is equally worthy. We separate the actor from the act. In criminalising acts, we consider their wrongfulness, the harmfulness and consequences on society.

Parliament has the power to classify; this involves a choice, like distinguishing murder and manslaughter. Classifications which satisfy the constitutional test of validity are called "differentiation"; only invalid classifications are called "discrimination". Criminalising same-sex sodomy but not opposite-sex sodomy is valid "differentiation". 377A does not target any specific actor; it would cover a heterosexual male experimenting with male sodomy.

Valid classifications must have a clear basis and be rationally related to a legitimate purpose. In serving public health and public morality, 377A passes constitutional muster with flying colours.

Sir, public health and safety is a legitimate purpose served by the 377A ban on homosexual anal and oral sex. Both these practices are efficient methods of transmitting sexual diseases and AIDs/HIV which are public health problems. These are not victimless crimes as the whole community has to foot the costs of these diseases.

Anal-penetrative sex is inherently damaging to the body and a misuse of organs, like shoving a straw up your nose to drink. The anus is designed to expel waste; when something is forcibly inserted into it, the muscles contract and cause tearing; fecal waste, viruses carried by sperm and blood thus congregate, with adverse health implications like "gay bowel syndrome", anal cancer. "Acts of gross indecency" under 377A also covers unhygienic practices like "rimming" where the mouth comes into contact with the anus. Consent to harmful acts is no defence, otherwise, our strong anti-drug laws must fall as it cannot co-exist with letting in recreational drugs as a matter of personal lifestyle choice.

Opposite-sex sodomy is harmful, but medical studies indicate that same-sex sodomy carries a higher price tag for society because of higher promiscuity and frequency levels. The *New York Times* reported that even informed homosexuals return to unsafe practices like bare-backing and bug-chasing after a health crisis wanes. A British Study showed that the legalisation of homosexual sodomy correlated with an upsurge of STDs among gays. Common sense tells us that with more acceptance, any form of consensual sexual behaviour increases. Sodomy laws have some deterrent effect.

It is rational for the state to target the most acute aspect of a problem. The legal issue is not whether the state should be concerned with heterosexual sodomy but it is reasonable to believe same-sex sodomy poses a distinct problem. Medical literature indicates that gays have disproportionately higher STD rates, which puts them in a different category from the general public, warranting different treatment.

The onus rests on opponents of 377A to negate every conceivable basis for treating homosexual and heterosexual sodomy differently. They cannot, because classifications do not need to be perfect and can be under-inclusive;

valid classifications only need to 'go some way' to serve the legislative goal, which 377A clearly does.

Sir, the power to legislate morality is not limited to preventing demonstrable harm. The Penal Code now criminalises the wounding of both religious and racial feelings. 377A serves public morality; the argument from community reminds us we share a way of life which gives legal expression to the moral repugnancy of homosexuality. Heterosexual sodomy, unlike homosexual sodomy, does not undermine the understanding of heterosexuality as the preferred social norm. To those who say that 377A penalises only gays, not lesbians, note there have been calls to criminalise lesbianism too.

Public sexual morality must buttress strong families based on faithful union between man and wife, the best model for raising children. The state should not promote promiscuity nor condone sexual exploitation. New section 376D criminalises the organisation of child-sex tours. Bravo!

The "argument from consent" says the State should keep out of the bedroom, to safeguard "sexual autonomy". While we cherish racial and religious diversity, sexual diversity is a different kettle of fish. Diversity is not licence for perversity. This radical liberal argument from consent is pernicious, a leftist philosophy based on radical individualism and radical egalitarianism. It is unworkable because every viable moral theory has limits to consent.

Radical individualism would demand decriminalising consensual adult incest; but the Penal Code is not based on consent as section 376F reflects. The State has always retained an interest in regulating conduct in the bedroom - the issue is, which type?

Radical egalitarianism applied to sexual morality says the State should not morally distinguish between types of consensual sex. It exudes a false neutrality but actually sneaks in a substantive philosophy: hedonism which breeds narcissism. This extols satisfying desire without restraint as a matter of autonomy. But some desires are undesirable, harming self and society.

The argument from consent ultimately celebrates sexual libertine values, the fruit of which is sexual licentiousness, a culture of lust, which takes, rather than love, which gives. This social decline will provoke more headlines like a 2004 *Her World* article called: "Gay guy confesses: I slept with 100 men, one of

them could be your hubby." What about the broken-hearted involved? If you argue from consent, how can you condemn any form of sexual self-expression, no matter how selfish or hurtful? No man is an island. Ideas, embodied in laws, have consequences. Do not send the wrong message. Clearly, the issues raised in the Petition fall apart on rigorous analysis.

Sir, Government policy is not to pro-actively enforce 377A. Some argue that just keeping this law on the books will erode the rule of law. I disagree. It is not turning a blind eye on the existence of homosexuals here; it is refusing to celebrate homosexuality while allowing gays to live quiet lives. This is prudent, as enforcing "bedroom" offences is difficult and such powers must be used judiciously.

We have other hard-to-police laws which embody communal standards of decency, such as laws against nudity visible to the public eye, even if you are at home. Law is a moral teacher and makes a moral statement; six years ago, Singapore symbolically blocked access to 100 Internet porn sites, as a "statement of our values." We value our values, while remaining realistic. A non pro-active policy does not mean 377A will never be enforced, who knows what another season may require? Policies can change.

Sir, citizens are not just concerned with the rule of law but with the rule of good law. Laws which violate core moral values will alienate many and bring the system into disrepute. Indeed, many citizens see keeping 377A as evidence the Government is defending the right moral values, which lends legitimacy.

Sir, it is true that not all moral wrongs, such as adultery, are criminalised; yet they retain their stigma. But adulterers know they have done wrong and do not lobby for toleration of adultery as a sexual-orientation right.

Conversely, homosexual activists lobby hard for a radical sexual revolution, waging a liberal fundamentalist crusade against traditional morality. They adopt a step-by-step approach to hide how radical the agenda is. Liberals never ask: what happens next if you repeal 377A? Responsible legislators must see the big picture.

Pro-gay academics identify five main steps in this agenda in foreign country studies.

Step 1: repeal laws criminalising homosexual sex. They consider this pivotal to advancing the homosexual agenda. Why? Without this, they cannot advance in the public sphere or push for government funding and support for special programmes, such as the New York Gay High School. Governments do not promote criminal activities. You need to change the criminal law before changing civil law.

But decriminalising sodomy is only "*bing shan yi jiao*", the tip of the iceberg, 12% of an ice mass. We must see what lies beneath the water to avoid a Titanic fate.

Step 2 is to equalise the age of consent for heterosexual and homosexual sex; in some countries, this is as low as 13. Do we want to expose Secondary 1 boys to adult sexual predators? To be sexually creative?

Step 3 is to prohibit discrimination based on "sexual orientation". But would this not include all sexual behaviour? "Sex before 8 or else it's too late", is the motto of the North American Man Boy Love Association. Should we judge paedophilia or be relativist and promote "anything goes" sexual experimentation?

Sir, to protect homosexuals, some countries have criminalised not sodomy, but opposition to sodomy, making it a "hate crime" to criticise homosexuality. This violates freedom of speech and religion; will sacred texts that declare homosexuality morally-deviant, like the Bible and Quran, be criminalised? Social unrest beckons. Such assaults on constitutional liberties cannot be tolerated.

Steps 4 and 5 relate to legalising same-sex marriage and child adoption rights. This subverts both marriage and family, which are institutions homosexuals seek to redefine beyond recognition. Will MOE then commission a book copying the American, "Heather has 2 mummies" called "Ah Beng has 2 daddies"? What if parents disagree with their kids studying homosexual propaganda?

Is legalising same-sex marriage progressive? It is, if you want a genderless planet where "husband" and "wife" are considered discriminatory terms, to be replaced by "spouse". We want to be able to say, Majulah Singapura, not Mundur Singapura!

Repealing 377A will further batter the institution of "marriage" which we must bolster! This is because the arguments raised to challenge a distinction between heterosexual and homosexual sodomy, equally apply to challenge legal distinctions between lawful heterosexual marriage between man and wife and unlawful homosexual unions.

To reinforce the moral foundations of a pro-family policy that permits only heterosexuals to marry, it is permissible to differentiate between heterosexual and homosexual sodomy. To say that section 377A discriminates is effectively to say that marriage laws discriminate and are unconstitutional.

Legalising sodomy would set a bad example; by signalling approval, it may change both attitude and conduct; coupled with sexual hedonism, it makes a mockery of strong family values. Section 377A helps to protect against this harm.

Academic supporters of the homosexual agenda, like my colleague Michael Hor, argued online that even if section 377A was not enforced, discriminatory policies against homosexuals could be built on the logic of its existence. But taking his logic, repealing section 377A would mean the Government would be less able to resist claims for homosexual marriage or for promoting homosexuality as a desirable lifestyle in schools, as this would be "discriminatory". These foreign developments warn us that the advance of the homosexual agenda here is not remote.

To slouch back to Sodom is to return to the Bad Old Days in ancient Greece or even China where sex was utterly wild and unrestrained, and homosexuality was considered superior to man-women relations. Women's groups should note that when homosexuality was celebrated, women were relegated to low social roles; when homosexuality was idealised in Greece, women were objects not partners, who ran homes and bore babies. Back then, whether a man had sex with another man, woman or child was a matter of indifference, like one's eating preferences. The only relevant category was penetrator and penetrated;

sex was not seen as interactive intimacy, but a doing of something to someone. How degrading.

It was only when marriage was invented by the Jewish Torah that the genie of sexual impulses was forced into the marital bottle, so that sex no longer dominated society - this discipline provided the social base for the development of western civilisation. Family is also the building block of our society.

As fellow citizens, homosexuals are entitled to expect decent treatment from the rest of us; but they have no right to insist we surrender our fundamental moral beliefs so they can feel comfortable about their sexual behaviour. We should not be subject to the tyranny of the undemocratic minority who want to violate our consciences, trample cherished moral virtues and threaten our collective welfare by imposing homosexual dogma on right-thinking people. Keep 377A.

Sir, we Singaporeans will continue to debate and disagree over controversial moral issues as they arise. We should make substantive arguments and not think about our feelings; the media should present both sides fairly, without bias.

However, I have noted a disturbing phenomenon over the 377A debate - the argument by insult. Instead of reasoning, some have resorted to name-calling to intimidate and silence their opponents. People with principled moral objections to the homosexual agenda are tarred and feathered "homophobes", "bigots", to shut them up. This strategy is unoriginally imported from foreign gay activists, which stifles creative thinking and intellectual enquiry.

When you shout and call your opponents nasty names, this terminates public debate. No one wants to be called a bigot. But think about it - if I oppose incest, am I an incestophobe? If I oppose alcoholism, am I a winophobe? If having an opinion means you are a bigot, then we are all bigots! What is your phobia?

Where certain liberals accuse their opponents of being intolerant, they demonstrate their own intolerance towards their opponents! They are hoist on their own petard, guilty of everything they accuse their detractors of! Full of sound and fury, signifying nothing.

One of my colleagues, a young professor, suffered these vicious tactics when the *Straits Times* published an article this May where Yvonne Lee argued

against repealing 377A. This well-researched, cogent article so incensed homosexual activists that they flooded her with a torrent of abusive, lewd emails and wrote to her Department Head calling for her to be removed from her job. This appeared to be a coordinated campaign.

We academics are used to disagreement, but why write to her employer and threaten her livelihood? Why vilify someone and seek to assassinate their personal and professional reputation? I hope this House joins me in deploring these malicious attacks which also assault academic freedom. She is owed an apology. I would be ashamed to belong to any academic institution that cravenly bowed down to such disgraceful bully-boy tactics.

This August, I had my own personal, unpleasant experience with this sort of hysterical attack. I received an email from someone I never met, full of vile and obscene invective which I shall not repeat, accusing me of hatemongering. It cursed me and expressed the wish to defile my grave on the day 377A was repealed.

I believe in free debate but this oversteps the line. I was distressed, disgusted, upset enough to file a Police report. Does a normal person with a conscience to filter impulses, go up to a stranger to express such irrational hatred?

Smear tactics indicate the poor quality of debate and, also, of character. Let us have rational debate, not diatribe and deception, free from abusive rhetoric and childish tantrums. As Singapore approaches her Jubilee, my hope for the post-65 generation is that we will not become an uncivil civil society born from an immature culture of vulgarity which celebrates the base, not the noble.

Mr Deputy Speaker: Order. You have three minutes left, Prof. Thio.

Prof. Thio Li-ann:

Thank you. I speak at the risk of being burned at the stake by militant activists. But if we do not stand for something, we will fall for anything. I was

raised to believe in speaking out for what is right, good and true, no matter the cost. It is important in life not only to have a brain, but a spine.

One of my favourite speeches by PM Lee, which I force my students to read, is his Harvard Club speech two years ago where he urged citizens not to be "passive bystanders" in their own fate but to debate issues with reason and conviction. I took this to heart. To forge good policy, we need to do our homework and engage in honest debate on the issues. Let us also speak with civility, which cannot be legislated, but draws deep from our character and upbringing. Before government can govern man, man must be able to govern himself.

Sir, let speaking in the public square with reason, passion, honesty, civility, even grace, be the mark of a Citizen of Singapore. [*Applause.*]

7.20 pm

Mr Alvin Yeo (Hong Kah): Mr Deputy Speaker, Sir, thank you for allowing me to take part in this debate at this late hour. After such powerful moving speeches from our two Nominated Members of Parliament, one is tempted to remain silent. But allow me to respectfully add my perspective.

In the run up to this debate, I read an interview or feature in the *New Paper* where Mr Siew Kum Hong was asked for his personal background and his reasons for bringing this parliamentary Petition. He replied that his personal background was irrelevant to the issue and that he was bringing this Petition as he supported the principle of equality of treatment, including for those who engage in homosexual conduct.

I should say that I agree with Mr Siew that one's personal background is simply not relevant to the issue and, personally, I applaud Mr Siew for his willingness to subject himself to intense media and public scrutiny for a principle he subscribes to. I say that one's own background and indeed one's own personal views are not what is really important. Because our role as Members of this House is to represent not so much our own views, but those who have placed us in this position of responsibility. This means that one has to take account of not just the minority views but the majority views as well, to not just listen to the vocal, the articulate, the high profile spokesmen for their

various causes, but to try and discern the views of the vast and silent segments of the population whose views and feelings run just as strong.

It is generally accepted that a large portion of the population remains uncomfortable with, even troubled, by homosexual behaviour. The *Straits Times* ran a poll where something like 70% expressed discomfort with these views. Those of the Muslim faith, many with Christian beliefs, oppose the condoning of homosexual conduct. Do their views not have to be taken into account? Is this tyranny of the majority? Some commentators think that it is outmoded for our laws to reflect the moral and social values of the people it governs. I disagree.

In our nation which has, as one of its ingrained principles, the rule of law, indeed it is usually considered one of our competitive strengths as well, the law stands, not just as a boundary line of what conduct will or will not be prosecuted, but as a moral compass of what we stand for. It is a benchmark of our values, our beliefs, not just a reference book to determine when we can sue and when we can be sued. That is why our courts, in interpreting the law, have always required parties to observe not just the letter of the law, but also its spirit and its purpose.

In this regard, I do take issue with the two points that Mr Siew, notwithstanding his forceful and loquacious arguments, has made. The first is that, because the Ministry has said that section 377A will not be proactively enforced, it is an admission that no harm results from it. I think other speakers, more eloquent than me, have spoken of the social and psychological and moral harm that can result from embarking or slipping down the slippery slope. I prefer to think that the stand of the Ministry is not because they recognise that there is no harm, but because they wish to show some degree of tolerance to those who subscribe to different views to give them some space in their personal lives. But they are standing firm on what the principles and beliefs that our society stands for in continuing to have this law on the statute books.

Mr Siew also says that he does not agree with this "signposting" argument because, to him, signposting is an all-or-nothing approach. Again, I have to respectfully disagree. There are certain key markers in all our laws which resonate through the fabric of our society more than others. For instance, how many of you have heard of section 498 which has to do with enticing a married woman, and how many of you consider that doing away with that law means

that this House is permitting adultery or promiscuity? Certainly, from all the press reports, none of them seem to labour under the misimpression that the non-repeal of section 377A was what that particular signpost was about.

One of the points made is about equal treatment for all before the law, including homosexuals, which I think is the central plank of the petition that has been presented. Equality before the law is a fundamental concept. But it cannot be looked at in vacuum. It does not deprive a state, a government, of regulating what it considers to be proper and correct behaviour. It is equal rights for all, as measured against the values and beliefs of our society. And our society is a multi-religious, multi-racial and multi-cultural one. So, for instance, we have an Administration of Muslim Law Act which imposes a separate regime on Muslims in family and estate matters. Yet, we do not hear complaints about unequal treatment from either Muslims or non-Muslims. It is accepted as part of our multi-cultural, multi-religious Singapore.

To take another more recent example, the Human Organ Transplant Act (HOTA), where Muslims are not subject to the same opting-out provisions on account of their religious beliefs.

Even then, discussions and consultations are going on within the Muslim community and outside, to remove this particular difference. Again, the principle of equal treatment of all has to be moderated by our aim of preserving harmony among our different races, of mutual respect for each other's beliefs. I do not believe that anyone seriously contends we should not continue to uphold this.

Having said that, there may be something to be learnt from HOTA and the discussions relating to its possible change. To those who support the removal of section 377A, it is an object demonstration that laws can and do change based on a reconciliation of different views. But such changes, particularly where they involve deeply-held deep-seated religious and moral beliefs, do take time and they cannot be forced. Indeed, I hope that all concerned in this particular lobby effort will be patient and understand that the views of others do count as well and try to give this issue more time and not let it be something that divides our society.

Overall, Mr Deputy Speaker, Sir, the changes to the Penal Code may keep it more relevant to this day and age and are to be welcomed.

Mr Deputy Speaker, Sir, I support the Bill.

7.29 pm

Mr Hri Kumar Nair (Bishan-Toa Payoh): Mr Deputy Speaker, Sir, thank you for allowing me to join in this debate at this very late hour. I promise to be very brief.

I rise to support the Bill. A major overhaul of the Penal Code was timely, and the Ministry of Home Affairs has obviously put in much effort and thought to the amendments. I particularly commend the new laws to protect minors from sexual predators, whether here or abroad, and I support the amendments fully.

Let me touch briefly on the issue of section 377A. As Professor Ho pointed out, this is one debate which will not see people switching sides easily. Both proponents and opponents of the law have deeply entrenched views on the subject, and that is unlikely to change for some time. I have personally asked many people, both young and old, what they think of this issue, and the almost common consensus is that they do not want this law to be repealed and that is consistent with the feedback the Government has received.

So I do not wish to engage in a moral debate, and certainly not a long one, and I have no rousing speech to deliver. What I wish to do is to approach it from a lawyer's point of view and how I see Parliament and Parliament's role in making laws.

Sir, as a lawyer, the power of Parliament to make law is of particular interest to me. When judges and lawyers interpret laws, they are, in certain instances, permitted to refer to Hansard to determine the intention behind any word, phrase or provision in a piece of legislation. Parliamentary debates, therefore, play an important role not just in the passing of laws but how they will be understood by those who later apply them. What we say here or do must be consistent with the law we promulgate and also make sense to those who will scrutinise our words perhaps years from now. In my submission, laws must meet the three Cs, ie, be clear, consistent and concrete, meaning that they must be substantive, effective and make sense. What I find difficult about this issue before us is that while the majority do not wish a repeal for good reason, intellectually, section 377A does, in some respects, fall short of what a good law is or should be.

Sir, first, it is unclear what the current legal position is. In a statement on 7th of November 2006, the Ministry of Home Affairs said that, with respect to section 377A, it will not be proactive in enforcing the section against adult males engaging in consensual sex with each other in private. But what does that mean? 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? That puts the Attorney-General in a difficult position because selective prosecution will give rise to more issues. But if the intention is not to do anything at all, then what is the purpose of having the law? Does it not hurt our credibility that we have laws that are toothless? The Penal Code is an important piece of legislation and, in the long run, making some conduct criminal under our Penal Code whilst stating that the law will not be enforced, simply invites attacks on the integrity of the Code.

Second, we are not being consistent. The retention of section 377A is often justified as being consistent with the importance society places on family values. But society has done away with criminalising a whole host of other conduct, which is far more damaging to family values, such as adultery, which carries a more direct threat to the integrity of the family. And adultery was one of the original Ten Commandments. Further, it is not always true that laws always reflect society's or the moral position. Marital rape is a good example. I cannot imagine any Member of the House believing that it is acceptable for a man to force himself on a woman under any circumstances, regardless of whether they are married. But we do not completely outlaw marital rape. The Bill here certainly protects a woman more by prescribing circumstances under which her husband can be charged with rape, but the protection is not absolute for wives. Why? Over and above the reasons that have been given - and in this

respect I share NMP Ms Eunice Olsen's criticisms of those reasons - more importantly, the law knows its own limits and it is practically impossible to properly enforce a law by giving a wife absolute protection. So, likewise, we also accept that the Penal Code is not the appropriate tool to legislate or regulate the private heterosexual behaviour of consenting adults. Indeed, it is almost impossible to effectively do so. In addition, the question arises also why section 377A does not deal with lesbianism. Over and above the legal basis for discriminating between men and women, where is the consistency?

Thirdly, Sir, the law has no real substance. Through a 15-year period, ie, 1988 to 2003, there were only eight convictions under section 377A involving seven incidents. Two convictions were for the same incident. Moreover, it has not been invoked in respect of consensual sex since 1993. So this law is rarely applied or, if applied, it applies to minors or acts in public. Does that mean that private consensual homosexual acts do not happen in Singapore? To believe that would be naive. The truth is that it is virtually impossible to enforce this law. Now that the MHA has said that it will not actively pursue offenders, we are not likely to see any prosecutions in the future, certainly not many.

Sir, I accept that even if a law is difficult to enforce, it can still serve a legitimate purpose in its underlying message, and section 377A sends the message that those who engage in homosexual activities are criminals. But at the same time, we have been saying that our society will not reject those with alternative lifestyles. We have even said that such individuals have a place in our civil service.

It has also recently been said that homosexuality may be genetic, and the debate on this issue is still raging on. Now, the MHA says that it will not prosecute offenders. So what is the message we are sending? Are we for or against it? What do we stand for? While this may be an uncomfortable issue, we should at least make our position clear. Just to cite an example by Mr Christopher De Souza, he says, messaging is important, and he cites the example of suicides, that if we do not make it an offence to commit suicide, we are sending the message that suicide is acceptable. But there is no inconsistent messaging for suicide. So it is not such a clear issue.

Sir, my second issue is with the arguments put forward by the opposing camp. The opponents of the repeal have expressed concern that any repeal may be construed as endorsement by the Government in favour of alternative

lifestyles. That is a fair point. However, likewise, I hope that any decision not to repeal will not be regarded as an endorsement for some of the reasons that have been advanced to oppose it. What are some of these reasons?

First, the argument advanced by some religious groups that section 377A should be retained because homosexuality is an abomination. I respect their right to express their views, and I do not think this is the appropriate time or place for me to discuss it. But we must remind ourselves that we are a secular state, where every one is equal in the eyes of the law, and it is important to assure all citizens of Singapore that decisions will always be made on secular grounds.

Second is the notion that section 377A reflects our Asian values. But section 377A is not even Asian in origin. Section 377 was originally based on an English criminal law which sought to prohibit sodomy, and was incorporated into the Indian Penal Code in late 1862. It was also adapted for the Straits Settlements Penal Code in 1871. Section 377A was later added under the sub-title "Unnatural offences" in 1938. Both sections were absorbed unchanged into the Singapore Penal Code when the latter was passed by Singapore's Legislative Council on 28th January 1955. In short, we inherited this from the British. There is nothing distinctly Asian about it.

Third is the argument that repealing section 377A will lead to a rampant increase in homosexuality, and thereby increase HIV rates. First, retaining the law can make no difference because offenders have already been told that they will not be prosecuted. Second, Sir, it is stretching logic to suggest that the repeal will lead to a sudden proliferation of homosexual activity. Thirdly, making something illegal only forces it underground. That will restrict the ability of the Government to respond to the HIV threat through promotion and education, when Government agencies feel that they cannot engage with the gay community in any way except a condemnatory one.

Finally, Sir, is the argument that the repeal is a slippery slope, that it will herald the end of the family unit. As I have said earlier, there is no consistency in our laws to support this argument. Further, while society may frown on homosexuality, that, by itself, does not justify criminalising it. A number of speakers, at least one of them, have highlighted the surveys in the *Straits Times* where the public was polled and 70% were said to frown on homosexuality. I can understand that. Seventy percent frowned on it. But

how many actually said that they were willing to criminalise it? That question was not even asked, and that is a serious question because that is the issue we face today.

Some Members have mentioned the possibility of same-sex marriages occurring here. That, no doubt, will be an issue which gay activists will push further down the road. But that involves the Government actively endorsing and passing legislation to recognise same-sex marriages. So the arguments here do not apply.

Sir, can I end by putting the question in another way? I say there is another way to test the issue: assume we are here debating whether to include section 377A into our Penal Code, would we do it? I am not sure we would, because we would hesitate about passing laws to deal with private acts in the bedroom. But because it is already there, we are comfortable living in there.

Sir, it may well be that our society today is not ready to debate this issue. I hope that it will not be too long before we feel ready to do so, because I think that is a sign of our growing maturity. But when we do debate this issue, I hope that the debate will be calm and measured as that typifies the way we do things in Singapore. Certainly, we do not wish to see any proliferation of hate messages of mails and other things which Professor Thio Li-ann has talked about. That is certainly not the way we do things in Singapore, and long may that continue. Ultimately, laws should be passed or repealed not only because the majority wants it that way, but because it makes sense and it is in the interests of Singapore as a whole, including the interests of all minority groups.