

2007 DEBATE ON SECTION 377A
AS PART OF PENAL CODE (AMENDMENT) BILL

Speeches by MPs

MP	Key Points Made
Christopher de Souza	<ul style="list-style-type: none"> • Removal of s377A would put homosexual lifestyles on par with heterosexual lifestyles, and “what is in private will not remain private”. • Would affect the institution of marriage, adoption policies, spousal rights (e.g. insurance coverage, intestacy), education policies. • Enforcement cannot be construed as the sole litmus test for an effective law, and natural predispositions (i.e. arguments that homosexuality is genetic) should not translate into exceptions from the law.
Zaqy Mohamad	<ul style="list-style-type: none"> • Status quo under s377A is for the benefit of society as a whole. • While Singapore was open and receptive to changes and diversity, society's majority view is still conservative in many aspects of life. • Conceded that current points of view, especially amongst youths, were changing to a more progressive one, but decriminalisation can be seen as an endorsement or support, and this would divide society.
Indranee Rajah	<ul style="list-style-type: none"> • S 377A was not unconstitutional: <ul style="list-style-type: none"> ○ Article 12(1) of the Constitution did not mean that that the same law applied to every group. In context of criminal law, it meant we did not look at sexual orientation in determining whether someone should be prosecuted or charged. ○ On rational nexus test for constitutionality, the purpose of the Penal Code to uphold safety and security includes public morals, public decency and public order. ○ The argument that public morality was the basis for discriminatory legislation to enforce slavery etc. proved that laws reflect the public morality of the time. It was therefore a question of what society was prepared to accept. The public reaction showed most Singaporeans did not agree with or accept homosexual behaviour. ○ As we had different groups in society, we must accept that there would be some restrictions on behaviour. In a secular state like Singapore, we should go with the majority view unless there is a particular reason to uphold the minority position.

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	<ul style="list-style-type: none"> • While most Singaporeans did not want to see somebody jailed for homosexual practices, most would not want to see any public demonstration of the conduct. The non-enforcement policy reflected general Singapore society's views. • Highlighted that SM made a statement some years back, that "the civil service would not discriminate against gays". This was taken by some as endorsing homosexual behaviour; society had not arrived at a stage where we could separate discrimination from endorsement. The Government did not want to send the wrong signal. • Highlighted that where there were two opposing groups that felt very strongly, the obvious decision was to maintain the status quo and, in the meantime, signal no active prosecution. This also recognised that later, the situation may evolve. This was a necessary compromise.
Alvin Yeo	<ul style="list-style-type: none"> • MPs should represent the views of those who placed them in this position of responsibility. This meant to account for not just the minority views but the majority views, including silent segments of the population. In this regard, a large portion of the population remained uncomfortable with homosexual behaviour. • Equality before the law was a fundamental concept, but it did not deprive Government of regulating what it considered to be proper and correct behaviour. • Changes that involve deeply held religious and moral beliefs take time and cannot be forced; we must not let it divide our society.
Hri Kumar	<ul style="list-style-type: none"> • Laws must be clear, consistent and concrete; but s377A falls short. • Legal position was unclear; non-enforcement invites questions on the integrity of the Penal Code. • The law was inconsistent, as it does not deal with lesbianism; it is also not fully related to the protection of family values. • The law had no real substance, due to small number of prosecutions and difficulty to enforce. The overall message sent by the provision is unclear. • The Government's decision to retain was not an endorsement of positions put forth against repeal, e.g. that homosexuality is an abomination, that it reflected Asian values, that it damaged the family.
Baey Yam Keng	<ul style="list-style-type: none"> • Hoped the Government would continue dialogue so that the public can achieve a better understanding of s377A, and that we would move with the pace of change around the world. • Highlighted the status quo [majority opinion to retain] was likely due to lack of understanding to make an informed opinion on s377A.

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	<ul style="list-style-type: none"> Argued that in a hypothetical situation where we were to introduce s377A, homosexuality should not be criminalised.
Ho Geok Choo	<ul style="list-style-type: none"> Appealed to all groups to discuss s377A in a calm and peaceful manner.
Ong Kian Min	<ul style="list-style-type: none"> Stated that he was not in favour of mainstreaming the homosexual lifestyle, and that the crux of the issue was whether Singaporeans were ready to openly accept homosexuality into mainstream society. Most Singaporeans rejected the vocal minority's appeal to repeal s377A and were not prepared to compromise on family values now. The majority wanted to preserve the family unit, have their children grow up in a traditional environment, and did not want the homosexual lifestyle to be promoted or celebrated.
Cynthia Phua	<ul style="list-style-type: none"> Supported retaining s377A in that Singapore must continue to protect and uphold the traditional core family structure and values. Quoted Prof Jayakumar, that the application of the rule of law must be in accordance with the social, cultural and political values of each society.
Muhammed Faishal Ibrahim	<ul style="list-style-type: none"> Feedback from MM community and majority of constituents was to retain s377A; a repeal would be against the mainstream approval of most Singaporeans. Did not think that the gay community's rights were being infringed; they had their private space in Singapore and, like other citizens, the rights to vote and enjoy the benefits that most Singaporeans are accorded.
Charles Chong	<ul style="list-style-type: none"> Rejected the slippery slope argument to retain s377A. If homosexuality were something persons were born with, it would be wrong to "criminalise and persecute" those different from us, especially if their actions did not cause harm to society. It was not the business of Government to regulate private acts between consenting adults with different sexual orientations. S377A also comes out short in signally an expression of conservative values, as it only criminalised sex between men, not women. S377A was only useful in one aspect; that is, to criminalise someone who procures or attempts to procure the commission of an act of gross indecency with another man. It protected men who were subject to unwanted sexual advances; but this should also be extended to women. The Government should exercise leadership and convince the majority to do what is fair, just and representative of the age we

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	live in; it did not make sense of have a law that was not proactively enforced.
Lim Biow Chuan	<ul style="list-style-type: none"> • The basic position of Parliament should be that we make laws to reflect the public morality of our times. • Disagreed with the practice of homosexuality – this was a personal view, but also the view of his residents. • Disagreed that there was conclusive evidence that homosexual behaviour is inborn, and that different scientists would have different views on the matter. • Majority of Singaporeans did not condemn a homosexual or a gay simply because of his lifestyle, nor did they wish to criminalise a homosexual. • MPs should send the message that Singapore was a conservative society where the family unit was still seen as the basic structure of society.
Seah Kian Peng	<ul style="list-style-type: none"> • Stated it was difficult not to be moved by the stories and quotes in the petition by Siew Kum Hong, but “accusations about the tyranny of the majority” were false. • As a nation, families were not ready to have open acceptance of gay lifestyle, including same-sex marriage and adoption of young children by same sex couples.

Speeches by NMPs

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Siew Kum Hong	<ul style="list-style-type: none"> • Referred to a petition to repeal s 377A, as s377A would be unconstitutional upon the repeal of s377: <ul style="list-style-type: none"> ○ The repeal of s377 legalised private, consensual anal and oral sex between heterosexual adults, but the same private and consensual acts between men will remain criminalised. ○ This was discriminatory towards homosexual and bisexual men, and thus unconstitutional under Article 12(1) of the Constitution. ○ In addition, the Government’s reasons for retaining 377A were that most Singaporeans disapprove of homosexuality, and 377A should be retained to reflect or "signpost" this majority view of Singaporeans. However, reflecting the morality of the majority is not a stated aim of the Penal Code nor was it an accepted objective of the criminal law. Therefore 377A has no rational connection with any legitimate aim of the Penal Code, and can be found unconstitutional. • Criminal laws should not always reflect public morality. It could lead to the discriminatory oppression of minorities, e.g. public

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	<p>morality used to justify slavery, discrimination against racial and religious minorities.</p> <ul style="list-style-type: none"> • Even if criminal law was to “signpost” morality, the Bill reflected public morality in a selective and discriminatory manner. While society disapproved of extramarital sex, prostitution and all types of discrimination, the Bill did not criminalise any of these. • Retaining s377A sets a precedent 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. This can weaken social cohesion. • The non-enforcement position risked the integrity of criminal law. • If the intent was to criminalise only the abuse of young persons and public acts through s377A, then 377A should be amended to do this. This is instead of capturing private consensual acts between adults. • S 377A had a human cost to gay persons and their families. This included people who left Singapore because of this law, and gay persons living under the threat of s377A (“a sword of Damocles that could fall with a change of policy by the Government of the day”). • A repeal was about upholding the fundamental protections afforded by the Constitution, and the values of fairness, justice, non-discrimination, openness, equality, tolerance, understanding and inclusiveness. • Signalling the majority’s disapproval of homosexuality can be done through other means. Repealing 377A does not mean that society endorses or approves of homosexuality. • Parliament should be leading by example and there was no wrong time to do the right thing. This is in contrast in arguments that “Singapore is not ready”.
Thio Li-Ann	<ul style="list-style-type: none"> • Supported the retention of s377A and said that “it was not desirable to repeal it in any event”. • Stated that “repealing section 377A is the first step of a radical, political agenda which will subvert social morality, the common good and undermine our liberties.” • No constitutional objections to retaining s377A while de-criminalising heterosexual oral and anal sex (s377) <ul style="list-style-type: none"> ○ No constitutional right to homosexual sodomy. It was not a facet of personal liberty under Article 9, nor under the right to "privacy." ○ The law does not recognise "sexual minorities", and does not grant them special rights/protections. ○ 377A does not breach the Art 12 guarantee of equality. S377A passes constitutional muster by serving the legitimate purposes of public health and public morality:

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	<ul style="list-style-type: none"> ○ Homosexual anal and oral sex were efficient methods of transmitting sexual diseases, which were public health problems. ○ Heterosexual sodomy, unlike homosexual sodomy, did not undermine the understanding of heterosexuality as the preferred social norm. Public sexual morality must support strong families based on a faithful union between man and wife, which was the best model for raising children. ● Rebutted three other philosophical/legal arguments: <ul style="list-style-type: none"> ○ <u>“Victimless crime”</u>: Argued that this “liberal argument” rests on “an idiosyncratic notion of ‘harm’”, when ‘harm’ can be both physical and intangible, and involve immediate parties and third parties. By legalising sodomy and signalling approval, it may change both attitude and conduct, and harm wider society. ○ <u>“Argument from consent”, “Radical individualism”, “radical egalitarianism”</u>: Argued that it every viable moral theory has limits to consent, but these arguments were hedonistic and involved satisfying desire without restraint as a matter of autonomy. However, some desires are undesirable, harming self and society. ○ <u>That non-enforcement of s377A erodes the rule of law</u>: This does not stand, as Singapore had 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. ● Argued that as fellow citizens, homosexuals were entitled to expect decent treatment, but they had no right to insist the majority surrender fundamental moral beliefs so that they could feel comfortable about their sexual behaviour.