

Ms Indranee Rajah's remarks during the debate on amendments to the Penal Code.

Mr Deputy Speaker Sir, I rise to speak in support of the amendments to 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 negligent. 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 to 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 of 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 crime 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 conceded that they have lost the battle against drugs. In Singapore, that is not the case. We have held the line, 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 understand, have some sympathy with the concerns that the gay community or the homosexuals in Singapore have but I think I would like to address some specific legal points made by Mr Siew.

The first, I think 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 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 illustration would be this: if somebody is charged with theft, for example, you cannot say I will prosecute you if you are a homosexual but I will 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 don't look at your sexual orientation in determining whether or not you should be prosecuted or you should be charged.

Section 12(1) or Article 12(1) of the Constitution and the provisions on equal protection does not mean that the same law applies to every group. An example of this is Section 376(a) – 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 that person consented and then that's fine.

But in the case of a minor under 16, there's no consent. The minor may well say, 'But the law says that all persons are equal before the law. I'm under 16, I give my consent; you should treat me equally as an adult'.

But we don't argue with that. And why don't we argue with that? We don't argue with that because we recognise that minors are a special group and have to be treated differently and they require certain protections.

Then of course that comes to the issue of whether or not you should treat homosexuals differently.

I will come to that in a moment but I just want to address another legal submission made by Mr Siew which is that you can have a departure from Article 12(1) if there is a rational nexus for the legitimate purpose of the statute in question, and 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 that there's no rational nexus between the keeping of Section 377A to this stated purpose.

Now 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 wanted to take the same argument say that distribution of pornographic material has nothing to do with a safe and secure society. It's not a threat to person, it's not a threat to property. But all of us recognise or accept that distribution of pornographic material 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, public order.

And I think 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 you had slavery, there were laws in place which reflected the public morality of that time. If you had been in America at the 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's 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 you back to the point that in each case, it's a question of what society is prepared to accept.

Then I come to what is Singapore prepared to accept.

I don't 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 societal choice, of free choice.

A murderer could say he's free to kill, but society disagrees. Murder is a crime.

The right to free speech, for example, doesn't 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, diverse religions and diverse beliefs.

If you have a difference of views then, what do you do? One group says "I want this". Another group says "No, I want that." How do you decide? You have to come down to a decision one way or another, and in most cases you will go with the majority view. Unless, unless there is a reason to protect the minority position.

So under the Constitution, for example, there's 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's not a universal principle. That's 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 the official policy, and for those countries they consider it right.

But in Singapore we don't. So in each case, you have to consider what the society regard as the correct or the right thing to do for that society. And particularly so in a state like Singapore which is a secular state. The secular state's position should be that you go with the majority view unless there is a particular reason to uphold the minority position.

And your 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 would 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's done in private but they don't wish to see it in public and very importantly they don't wish to have their children see it in public.

Then, of course, the argument comes: okay, fine, if we don't do it in public, what if we just do it in private?

And that's where the signalling message comes in, or the signalling concern comes in, because people are concerned about the impact that a repeal of Section 377A would send.

Many of you may recall that some years back Senior Minister (Goh Chok Tong) had made the statement that the civil service would not discriminate against gays. And that was a very progressive statement because it indicates that the civil service will not discriminate against employing a homosexual just because he's homosexual. That is already an advance of a public position from what you would have had 20 years ago.

I don't think the Government would have made such a statement like that 20 years ago. The fact that we have evolved to some extent, 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 come speak to me to say, "Why is the government endorsing homosexual behaviour?"

The government wasn't endorsing it, the government was saying we won't discriminate against you in terms of employment because you're homosexual but the immediate public perception or at least for many people was it's not just non-discrimination, it is endorsement. And our society obviously has not arrived at the stage where you can just separate the two. It's not as easy as that and people see it as an important form of public signalling.

And, therefore, the stance which the Government is taking is in fact an exact reflection of what Singapore society in general thinks, which is that if you really have to do it in private, the Government and the police will not take a pro-active enforcement policy.

But at the same time, we don't want to send a message to everybody that this is correct because you have to take into account majority views. 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 or e-mailed or given support to the petition on the Internet. But I can tell you that for every one of those there was someone who e-mailed us as Members of Parliament to say, "Do not repeal. Keep it. We thank the MPs, we thank the Government for keeping this law."

So when you have a situation like that when you have one group that feels very strongly to keep the law and another group that feels strongly to do away with it, what do you do?

You have to make a decision and the obvious decision in such a situation is to maintain the status quo and to recognise that somewhere down along the line the situation may evolve. It may well change, just as the positions on slavery changed, just as the position on a woman being a chattel changed; just as many other things have changed along the way.

Actually if you think about it, that's the conclusion that the Workers' Party arrived at. You will recall that (Non-Constituency MP) 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 couldn't arrive at a consensus they figured that they should let the status quo remain.

And until such time as I think 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.

And in that way it is a compromise of sorts. But you will always have to have a compromise when you live in a society where there are diverse groups.

Having dealt with Section 377A, I just wanted to make two other points. I wanted to comment on the sexual offences which protect minors, especially vulnerable ones ...

I think these are laudable amendments. I just wanted 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 at the time that 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 signals, or is an indication of promise that you can have effective enforcement of this particular section.

With technology, with public cooperation, I think that 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, you had people who are living in Singapore who don't do anything wrong here as far as commercial sex with minors are 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 wanted to talk about was Section 375 and marital immunity.

I think on this, I would have to align myself with all the others who have spoken before to ask the Government to reconsider having complete, or at least to still have that retention of part 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 (that) violence would have occurred before any of these exemptions would have come about.

Before you get an interim judgment for divorce, before you get interim judgment of nullity, or before you get a personal protection order, there would have been occasions where there has 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 would result in all these formal orders taking place.

So I would strongly argue that whilst marriage is a prima facie indication of consent, it doesn't mean that when a marriage is ongoing, the wife must be deemed to have consented on all occasions, and in my respectful view, removing marital immunity altogether will 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.