

Malaysia: We must decriminalise sex between consenting adults - “Inclusiveness, equality, pragmatism and humanity”

Wednesday 19 September 2018, by [SOONG Kua Kia](#) (Date first published: 14 September 2018).

In recent days, Malaysia attained international notoriety for caning two women after their being convicted in a religious court of attempting to have sex in a car.

In striking contrast, on September 6, the Indian Supreme Court held that section 377 of their penal code, which criminalised consensual acts between adults of the same sex, was unconstitutional. That is a mature decision that gives 1.2 billion people in India the freedom to have consensual sex.

Were these two contrasting judicial responses in our two Asian countries a breakdown of Asian values? Certainly not. Both Malaysia and India have been using a British colonial-era law that legislated Britain’s Victorian-era contempt aimed at the LGBTI community.

All over the world, not just in the West, the times are changing. There are now more countries allowing consensual sex between adults than prohibiting it.

The Indian Supreme Court has shown the Asian world that it is high time to discard antiquated and prejudiced British colonial laws. The overwhelming reasons for doing so are based on the following:

Inclusiveness

The theme of inclusiveness in India’s Constitution has been quoted by many Indian jurists. Malaysia’s original Constitution at the time of independence likewise stressed inclusiveness. Article 8 provided that all persons are equal before the law and entitled to its equal protection.

Equality

In fact, the Malaysian Charter on Human Rights by Malaysian Civil Society in 1994 spelled this out even more specifically: “There shall be no discrimination in the rights and privileges of persons based on their ethnic origin, class, social status, age, sex, mental and physical being, language, religious belief, sexual identity or political conviction.”

The Delhi High Court had in fact ruled in an earlier case in 2009 that: “Indian constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs ... are. It cannot be forgotten that discrimination is the antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual...”

Pragmatism

The attitude of our southern neighbour, Singapore, to homosexuality is also changing — not so much based on human rights principles but rather based on pragmatism. In April 2007, Minister Mentor Lee Kuan Yew said in a Reuters report: “Let’s not go around like moral police ... barging into people’s [bed] rooms. That’s not our business... So, you have to take a practical, pragmatic approach

to what I see is an inevitable force of time and circumstances."

Lee said Singapore should no longer discriminate against homosexuals but must take a pragmatic approach. It is a bit like Deng Xiaoping saying: "It does not matter if the cat is straight or gay, as long as it catches the mouse!"

Lee's comments came at a time when many groups, such as The Singapore Law Society, were clamouring for a review of antiquated British colonial laws against homosexual sex, which they view as outdated and archaic.

Humanity

For a society that claims that our Asian values are far superior to Western values, such demeaning treatment of our LGBTI community is unacceptable. What happened to that old Malaysian slogan to create a "masyarakat penyayang" (a caring society)?

Thus, on the grounds of inclusiveness, equality, pragmatism and humanity, it is high time for all progressive Malaysians, political parties and organisations to stand up for the rights of all LGBTI people. Let us call for the review of our outdated laws and fight for equality of treatment for all consensual sex between adults.

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P.S.

- Greenleft, Issue 1196, September 14, 2018:
<https://www.greenleft.org.au/content/malaysia-we-must-decriminalise-sex-between-consenting-adults>
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