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Thread summarizing the Court of Appeal's freshly released judgment on s 377A: but tldr; the law is unenforceable because of the Attorney-General's representations of non-prosecution in 2018 so the Court does not need to rule on its constitutionality

(1) PM Lee's assurance of non-enforcement in Parliament in 2007 did not have the force of law and do not bind the Public Prosecutor who exercises his prosecutorial discretion independently. However, the AG's 2018 press release and Straits Times article do.. 1/12

because they contain guidelines on the exercise of prosecutorial discretion, which is a matter within the PP's purview. Both PM and AG's statements reveal the political compromise that is relevant to the Court in deciding the constitutionality of the law. 2/12

(2) There are still uncertainties arising from the AG's non-prosecution policy because (a) it doesn't bind future AGs; (b) it only applies as to sexual conduct between consenting adult men in private; (c) it is unclear how other laws will apply 3/12 e.g. section 424 of the Criminal Procedure Code, which requires individuals who are aware of the actual or intended commission of conduct amounting to an offence under s 377A to report this to the police 4/12

(3) Such uncertainty leaves homosexual men unable to plan their lives adequately as they do not know, with reasonable certainty, how s 377A will be applied or enforced. 5/12

However, given the importance of the political compromise on s 377A that was struck in 2007, the court should strive to honour and give legal effect to that compromise as far as practicable. 6/12

(4) Given the AG's representations, homosexual men have a substantive legitimate expectation that s 377A will generally not be enforced (which is broader than the AG's policy which applies only to private consensual sex between adults). 7/12

In giving effect to the expectations of homosexual men that s 377A will generally not be enforced in respect of such acts, the court is giving effect to the political compromise on s 377A. 8/12

(5) Thus, the Court held that s 377A is unenforceable in its entirety, unless and until the AG of the day provides clear notice that he (a) intends to reassert his right to enforce s 377A proactively by way of prosecution; 9/12

and (b) will no longer abide by the representations made by AG Wong in 2018 as to the prosecutorial policy that applies to private sexual conduct between adult men. Further, laws requiring one to report offences cannot be prosecuted if the offence in question is s 377A. 10/12

(6) Because the law is unenforceable, unless and until the AG of the day signals a change in the prosecutorial policy, the appellants cannot be said to face any real and credible threat of prosecution under s 377A. 11/12

The Court therefore does not need to consider the constitutionality of the law itself but went on to do so in obiter (which means that they are made in passing and do not bind future decisions). 12/12

P.S. I might do a thread on the Court's discussion as to whether s 377A violates Articles 9 (right to life and personal liberty), Article 12 (right to equal protection and equality before the law), and Article 14 (right to freedom of speech and expression) later!

Here it is! A brief summary on the constitutional issues with some comparative discussion on how the US and Indian courts dealt with similar questions:

<https://t.co/oQAfTOlqFd>