***Case Title: Ong Ming Johnson v. Attorney General***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: Originating Summons No. 1114 of 2018, Originating Summons No 1436 of 2018, Originating Summons No 1176 of 2019.
* **Corresponding Law Reference**: Ong Ming Johnson v. Attorney General, [2020] SGHC 63.
* **Date of decision**: March 30, 2020
* **Featured case**: N/A
* **Region**: Asia and Asia Pacific
* **Country**: Singapore
* **Type of expression**: Non-Verbal Expression
* **Judicial Body**: High Court of The Republic of Singapore
* **Type of law**: Constitutional Law/ Criminal Law
* **Main Themes**: Gender Expression
* **Outcome**: Law Upheld/Deemed Constitutional
* **Status**: Decided
* **Tags**: Gender Expression, Freedom to express one’s sexual-orientation

***Analysis:***

* **Summary and Outcome**:

The High Court of The Republic of Singapore upheld the constitutionality of Section 377A of the Penal Code of Republic of Singapore, stating that the right to express one’s sexual orientation or desires, either in public or in private, was not a part of the freedom of speech and expression as guaranteed under Article 14(1)(a) of the Constitution of Singapore. The court held that the term ‘expression’ within the phrase ‘freedom of speech and expression’ had to be read in light of the term ‘speech’, and was therefore limited only to verbal speech/communication. Accordingly, actions/homosexual conduct had to be denied the protection of the freedom of speech and expression under Article 14(1)(a).

**Facts**:

The Plaintiffs in this case filed individual applications before the High Court of The Republic of Singapore challenging the constitutionality of Section 377A of the Penal Code of Republic of Singapore on the touchstone of Article 14(1)(a), *inter alia*. Article 14(1)(a) is a constitutional guarantee which provides Singaporeans with the freedom of speech and expression. The plaintiffs maintained that Section 377A, which punishes any male person, who commits, inter alia, an act of gross indecency with another male, either in public or in private, is violative of the freedom to express oneself since it prohibited the ability of homosexual men to be able to freely express their sexual orientation and to exchange ideas pertaining to sexuality and sexual orientation. Accordingly, they prayed for the right of Singaporeans to engage in private, consensual acts of sexual intimacy with whomsoever they desire, to be declared as fundamental under Article 14(1)(a).

* **Decision Overview**:

While interpreting the true scope of “freedom of speech and expression”, the court stated that it had the duty to interpret the provision in a manner which gave effect to the intent and will of Parliament. The court first referred to the plain and ordinary meaning of the word “expression” to fathom the object and the purpose intended by the legislature. The court stated that even though the dictionary meanings (the plain meaning) of the term ‘expression’ do not rule out the possibility of sexual intercourse being a form of expression (since language is not the only medium to express), however the court should have regard to the context of a term as well. For this, while referring to the case of Tee Soon Kay v. Attorney General, the court stated that since the marginal note of Article 14(1)(a) mentioned “Freedom of speech, assembly and association”, the right to freedom of expression was contemplated to fall within the right to freedom of speech itself and hence the right to freedom of expression could not be divorced from the right to speech. Based on this, the court held that “expression” in the form of male homosexual acts would not qualify for protection under Art 14(1)(a). The court rejected the observations made by the Supreme Court of India in Navtej Johar v. Union of India, where it was ruled that the criminalization of male homosexual conduct violates the right to freedom of expression, as well as the Yogyakarta Principles, and held that expression did not extend beyond verbal communication of ideas/opinions/beliefs.

***Direction:***

* **Outcome**: Contracts Expression
* **Information**: The court contracts the right to freedom of expression by holding that “expression” in the form of male homosexual acts would not qualify for protection under Art 14(1)(a).

***Perspective***:

* **Outcome**: Law Deemed Constitutional
* **Related International and/or regional laws**:
* Yogyakarta Principles, Principle 19.
* **National law or jurisprudence**:
* Singapore, Const. (1965) art. 14.
* Tee Soon Kay v Attorney-General [2007] 3 SLR(R) 133.
* Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.
* **Other national law or jurisprudence**: N/A

***Significance***:

**Binding or persuasive precedent within jurisdiction:** The decision establishes a binding or persuasive precedent within its jurisdiction.

Judgments of the High Court of Republic of Singapore are binding within the jurisdiction of Singapore.

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:
* Ong Ming Johnson v. Attorney General, [2020] SGHC 63. (Attached in the email)
* **Reports, Analysis, and News Articles**:
* Fait Accompli: Singapore Again Upholds Section 377A Criminalising Homosexuality, at: https://blogs.cuit.columbia.edu/rightsviews/2020/04/28/fait-accompli-singapore-again-upholds-section-377a-criminalising-homosexuality/
* Round Two – Strike Two: Singapore and LGBT Rights (Ong Ming Johnson v Attorney General), at: https://blog-iacl-aidc.org/2020-posts/2020/4/30/round-two-strike-two-singapore-and-lgbt-rights-ong-ming-johnson-v-attorney-general