

Same-sex marriages

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Context- The Union government expressed its opposition to same-sex marriage, pointing out that it would disrupt the delicate balance between personal laws and societal norms.

Key Highlights

- In India, a biological marriage between a man and a woman is a “holy union, a sacrament, and a sanskar,” according to the government.

Same-sex Marriage

- Marriage between two men or women is a common practice.
- In the majority of nations on the planet, the practice of same-sex marriage is governed by law, custom, and religious beliefs.
- Starting around 2023, marriage between same-sex couples is lawfully performed and perceived in 34 nations, comprising a few 1.35 billion individuals (17% of the total populace), with the latest being Andorra.

Arguments of the Petitioners

- The Petitioners argued that the lack of recognition of same-sex marriage was discrimination that harmed the dignity and self-actualization of LGBTQ+ couples.
- It demanded that the Special Marriage Act of 1954 provide same-sex couples with the same safeguards as interfaith and inter caste couples.

Arguments of Governments

- According to the Center, despite statutory recognition of the relationship of marriage between a biological man and a biological woman, marriage must rely on societal values, cultural ethos, and age-old customs and rituals.
- Marriages between people of the same sex that are registered would also violate personal and codified laws.
- The legislature—not the Supreme Court—is the only avenue through which a “deviation” from the “statutorily, religiously, and socially” accepted standard in “human relationship” can occur.
- The public authority contended that the Court had just decriminalized sex between same-sex people in its 2018 judgment in Navtej Singh Johar, and not legitimized this “lead”.
- It is impossible to compare same-sex marriage to a man and woman raising children together as a family.

Legality of same-sex marriage

- None of India’s statutes explicitly mention homosexuality or homophilia.
 - For being homosexual or homophobic, a person cannot be prosecuted.
 - Sodomy is a sexual act that is illegal.
 - Section 377 of the 1860 Indian Penal Code (IPC) contains the main provisions for making same-sex acts illegal.
- The Navtej Singh Johar verdict of 2018 made homosexuality illegal, but it did not mention or allow same-sex marriage.
- Despite the court’s decriminalization of homosexuality, it had never recognized same-sex marriage as a fundamental constitutional right to life and dignity.
- Marriages between people of the same sex that are registered would also violate personal and codified laws.

Arguments in favour of legalising Same-Sex Marriage

- **The Special Marriage Act of 1954:**
 - It offers couples who are unable to wed under their individual laws a civil marriage.
- **Fundamental Right:**
 - Article 21 of the Indian Constitution guarantees the fundamental right to marry a person of one’s choice.
 - The LGBTQ+ community enjoys the same constitutional, fundamental, and human rights as other citizens.
- **Right to equality**
 - The petitioners have argued that restricting their ability to marry goes against their equality right.
- **Practice worldwide:**

- At least 30 nations, including the United States, Australia, Canada, and France, have legalized same-sex marriages, according to the Council on Foreign Relations.

Contentions against Same Sex Marriage

- **Social Stigma:** Homosexuals face social stigma in addition to the harsh legal environment.
 - Hatred and disgust are evoked whenever a couple of people of the same sex engage in sexual activity.
 - Closeness of any kind isn't endorsed except if it is legitimized as marriage where socially supported sexual access happens.
- **Increased activism:** Lesbian and gay rights campaigns have taken on a more extreme tone, calling for an end to all forms of discrimination against homosexuals.
- **Progeny Problems:** It is also against the law for gay and lesbian couples to use an Indian surrogate to have children.
 - The Central Adoption Review Authority only accepts adoption applications from LGBTQ+ single parents.
- **Society with Patriarchy:** Indian culture is man centric which accepts that heterosexual marriage was the standard since the beginning of time and are "essential to both the presence and continuation of the state.

Way Ahead

- Awareness campaigns are a must in order to sensitise society about the rights of all individuals.
- Constitutional rights to freedoms and liberties must extend to every sphere, including the life of a same-sex couple, as relationships change and society changes.

Special Marriage Act of 1954:

- *In India, the Hindu Marriage Act of 1955, the Muslim Marriage Act of 1954, or the Special Marriage Act of 1954 can all be used to register marriages.*
- *The Special Marriage Act of 1954 was passed by the Indian Parliament to allow for civil marriage between Indian citizens and all Indian nationals living in other countries, regardless of the religion or faith practiced by either party.*
- *30 days prior to the intended date of marriage, the couples are required to serve a notice on the Marriage Officer along with the relevant documents.*
- **Applicability:**
 - *anyone, regardless of religion.*
 - *Under the Special Marriage Act of 1954, Hindus, Muslims, Buddhists, Sikhs, Christians, Parsis, and Jews can also marry.*
 - *This Act permits marriages between people of different religions.*
 - *The intending spouses of Indian nationals living abroad are covered by this Act, which applies to the entire Indian territory.*
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