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Same sex marriages in India

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Why is in news? SC's marriage equality judgment unpacked: Two views on four key issues

About the verdict:

A five-judge Constitution Bench of the Supreme Court headed by Chief Justice of India (CJI) **refused to grant legal status to same-sex marriages.**

While two judges — the CJI and Justice Sanjay Kishan Kaul — recognised that queer couples can form “civil unions”, they were in the minority. The majority of three judges said that the issue lay exclusively in the domain of the legislature.

The CJI, in his opinion, concludes that **the court can neither strike down or read words into the Special Marriage Act (SMA) 1954 to include same sex members within the ambit of the SMA 1954.** The top court said **it is for Parliament and state Legislature to formulate laws on it.**

Other Observations:

However, at the same time, the SC says the **relationship of marriage is not a static one.**

SC holds that **queer persons have an equal right and freedom to enter into a “union”.**

All five judges on the Bench, **agreed that there is no fundamental right to marry** under the Constitution.

Same-Sex Marriage:

It is the practice of marriage between two men or between two women.

Same-sex marriage has been regulated through law, religion, and custom in most countries of the world.

As of 2022, marriage between same-sex couples is legally performed and recognized in more than 30 countries.

The most recent country legalising it is Mexico.

Timeline for Same Sex Marriage Right in India:

2001: The Naz Foundation filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of Section 377.

2009: Delhi High Court declared Indian Penal Code Section 377 unconstitutional and decriminalized homosexuality.

This decision of the High Court was overturned by the Supreme Court of India in 2013, which reinstated Section 377.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

2018: Supreme Court's constitutional bench, in Navtej Singh Johar v. Union of India judgment, overturned the previous decision and decriminalized homosexuality once again.

2023: Supreme Court ruled in a 3:2 verdict against legalizing same-sex marriage in India.

Important Supreme Court Decisions:

Marriage as a Fundamental Right (**Shafin Jahan v. Asokan K.M. and others 2018**): The Court recognized the right to marry as integral to Article 21 of the Constitution, emphasizing the fundamental right to choose one's life partner.

LGBTQ Community Entitled to all Constitutional Rights (**Navjet Singh Johar and others v. Union of India 2018**): The Supreme Court recognized the entitlement of the LGBTQ community to all constitutional rights, including the right to equal protection under the law.

Global Scenerio:

It's a 21st century feeling

33 countries recognise same-sex marriage and civil unions

The **Netherlands** was the first, in **2001**

Momentum is growing — **2022** has seen **Chile, Slovenia, Switzerland** and **Mexico** join the club

In November, the US Senate passed a same-sex marriage protection bill with bipartisan support — **70% of Americans** now support same-sex marriage



Also in November, **Singapore's** parliament



Japan is the only G7 country that does not allow same-sex marriage. But recently a Tokyo district court underlined the infringement of the human rights of same-sex families

Taiwan is the only Asian country to have legalised same-sex marriage. Its parliament approved the landmark decision in 2019. Its

Arguments for Same-Sex Marriages:

Equality: All individuals should have the same rights and opportunities, including the right to marry the person they love, regardless of their sexual orientation or gender identity.

Love and Commitment: Allowing same-sex couples to marry recognizes and affirms these relationships.

Social Acceptance: Legalizing same-sex marriages sends a message of social acceptance and inclusion, and can help reduce stigma and discrimination against the LGBTQ+ community.

Arguments against Same-Sex Marriages:

Traditional definition: Marriage has traditionally been defined as a union between a man and a woman, and changing this is seen as undermining the institution of marriage.

Religious Beliefs: Same-sex marriages go against the teachings of many religions, and legalizing them would infringe on the religious freedom of those who oppose them.

Parenting: Legalizing same-sex marriages is believed to harm children's psyche.

Slippery Slope: Legalizing same-sex marriages could lead to the recognition of other non-traditional forms of relationships, such as polygamy or incest.

Conclusion:

The legal status of same-sex marriage continues to evolve globally as societies grapple with issues of equality, human rights, and social acceptance. Laws are subject to change, and ongoing advocacy efforts aim to expand legal recognition in regions where it is not yet recognized.