



Civil Union and Marriage

For Prelims: Right to privacy, right to marriage, Sec 377 IPC, Special Marriage Act.

For Mains: Legalization of same sex marriages in India and the challenges.

Why in News?

The Centre has contested the hearing of petitions seeking legal recognition of [same sex marriage](#) by the [Supreme Court](#) on the grounds of judiciary's right to confer legal recognition on the "socio-legal institution" of marriage.

- In his response to the Centre's objections, the [CJI](#) clarified that the hearing's scope would be limited to developing a notion of a "civil union" that finds legal recognition under the [Special Marriage Act, 1954](#).

What is a Civil Union?

- **About:**
 - A "civil union" is a **legal status that grants same-sex couples certain rights** and responsibilities that are normally given to married couples.
 - Although a civil union resembles a marriage and brings with it employment, inheritance, property, and parental rights, there are some differences between the two.
- **Civil Union vs Marriage:**
 - Civil Union is a marriage like legal sanction provided to two individuals generally of same sex.
 - Marriage is a religious institution recognized by law that allows two individuals (a man and woman) to marry.
 - Since same sex marriage is outside the scope of religion-based definition of marriage, **Civil Union is a tool devised to grant similar legal protection to the couples who opt for the same sex marriage.**
- **Other Countries that Allow Civil Unions:**
 - **USA:** In the year 2015, the Supreme Court of the United States (SCOTUS) legalised same-sex marriages across the nation with its landmark ruling in "**Obergefell v. Hodges**".
 - Prior to 2015, a majority of states in US had Civil Union laws that allowed same sex couples to marry.
 - **Sweden:** Before 2009, LGBTQ couples could apply for civil unions and enjoy benefits such as the right to adopt. Sweden legalised same sex marriages in 2009.
 - Similarly, **countries like Brazil, Uruguay, and Chile had also recognised the right of same sex couples** to enter into civil unions, even before they formally recognised their legal right to marriage.

What is the Status of Same Sex Marriages in India?

- Although, the Supreme Court in [Navtej Singh Johar vs Union of India \(2018\)](#) case decriminalised

homosexuality under [Sec 377 of IPC](#), but **same sex marriages are yet to get legal status in India.**

- Since then, several petitions have been filed before the SC and the judiciary has started hearing of such petitions and **looking up for the scope of Civil Unions under the Special Marriage Act, 1954.**
 - A marriage under the Special Marriage Act, 1954 **allows people from two different religious backgrounds to come together in the bond of marriage** which is not allowed under personal/religious laws.
- **Important SC Judgements on LGBTQ Rights:**
 - [KS Puttaswamy v Union of India, 2017](#): In this judgement on Right to privacy, the Supreme Court held that **Sexual Orientation of any individual comes under his/her Right to Privacy.**
 - This Landmark judgement became the basis of declaring Sec 377 of IPC – under which Homosexuality was a crime – unconstitutional.
 - **Navtej Singh Johar vs Union of India, 2018**: The Supreme Court struck down the **Sec 377 of IPC** to the extent it criminalized homosexuality.
 - It was also opined that there cannot be discrimination in law based on sexual orientation and gender.
 - **Deepika Singh vs Central Administrative Services, 2022**: In this case, the SC expanded the definition of a family and observed that **familial relationships may also include unmarried partnerships or queer relationships** and these atypical families should enjoy equal protection and benefits under the law.
 - Moreover, the Supreme Court in various judgements such as **Lata Singh vs State of UP (2006), Safin Jahan vs Ashokan (2018), Shakti Vahini vs Union of India (2018) and Laxmibai Chandarangi vs State of Karnataka (2021)** has held that [choosing a life partner is a Fundamental Right under Article 21](#).

What are the Arguments Regarding Legalising Same sex marriage?

- **Arguments in Favour:**
 - **'Gender' has a Wider Definition:** The SC has said that here is no absolute concept of a man or a woman. It is far more complex than just their physical anatomy.
 - **Change is Fundamental Law:** Society keeps on evolving with time and laws should also evolve with the change in society.
 - **Lesser Legal Complicacies:** The personal laws need not be amended, just a wider interpretation of Special Marriage Act, 1954 would be enough to legalize same sex marriage.
 - **Upholding Equality:** Homosexual couples must also be given privacy and freedom and they must enjoy the same rights available to heterosexual couples.
 - Also, they should not be treated as lesser mortals and asked to remain content just because homosexuality has been decriminalised.
- **Arguments Against:**
 - **Societal Acceptance:** It is argued that society may not accept that same-sex marriages ought to be on par with heterosexual marriages.
 - Acceptance of any relationship by society is never dependent on legislations or judgments.
 - **Issues with Widening the Scope: Conferring wider definition to the term 'Gender could be problematic;** if a man having a biological attribute of a man starts recognizing himself as a woman, it will be problem for the authorities **whether to treat him as a man or woman under the law.**
 - **Legal Complications:** Legalizing same sex marriage **could lead to several legal hurdles.** Like the [National Commission for the Protection of Child Rights \(NCPCR\)](#) has argued that granting legal status would go against [Juvenile Justice Act, 2015](#).
 - For example, Sec 5(2)A of the act prohibits a single male to adopt a girl child. This could also be problematic for a gay couple to adopt a child.
 - Moreover, **marriage is under the concurrent list**, legalisation would require lots of laws to be amended.

Q. Which Article of the Constitution of India safeguards one's right to marry the person of one's choice? (2019)

- (a) Article 19
- (b) Article 21
- (c) Article 25
- (d) Article 29

Ans: (b)

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