



Same-sex Marriage under the Special Marriage Act, 1954

For Prelims: Supreme Court, Special Marriage Act, 1954, LGBTQ+ community

For Mains: Issues Related to Transgenders, Special Marriage Act, 1954.

Why in News?

Recently, the [Supreme Court](#) has issued notice to the Centre and the [Attorney General for India](#) on a plea by two gay couples seeking recognition of same-sex marriage under the [Special Marriage Act, 1954](#).

- As a result of several petitions, a two-judge bench headed by **Chief Justice of India D Y Chandrachud issued the notice.**
- The non-recognition of same-sex marriage amounted to **discrimination that struck at the root of dignity and self-fulfillment of LGBTQ+ couples.**

What are the Arguments of the Petitioners?

- The Act is ultra vires the Constitution to the extent it **discriminates between same-sex couples and opposite sex couples**, denying same-sex couples both legal rights as well as the social recognition and status that flows from marriage.
 - The Special Marriage Act of 1954 ought to apply to a marriage between any two persons, regardless of their gender identity and sexual orientation.
- If not, the Act, in its present form **should be declared violative of the fundamental rights to a dignified life and equality** as “it does not provide for solemnisation of marriage between same sex couple”.
- The Act should **grant same sex couple the same protection** it allowed inter-caste and inter-faith couples who want to marry.
- There has been **insufficient progress by simply decriminalizing homosexuality; equality must extend to all spheres of life**, including the home, the workplace, and public places, for LGBTQ+ individuals.
 - Current population of LGBTQ+ are 7% to 8% of the population of the country.

What is the Legality of Same-Sex Marriages in India?

- The right to marry is **not expressly recognized either as a fundamental or constitutional right under the Indian Constitution.**
- Though **marriage is regulated through various statutory enactments**, its recognition as a fundamental right has only developed through judicial decisions of India’s Supreme Court. Such declaration of law is binding on all courts throughout India under [Article 141 of the Constitution](#).

What are the Views of Supreme Court on Same Sex Marriages?

- **Marriage as a Fundamental Right (Shafin Jahan v. Asokan K.M. and others 2018):**

- While referring to **Article 16 of [Universal Declaration of Human Rights](#)** and the Puttaswamy case, the SC held that the right to marry a person of one's choice is integral to **Article 21** of the Constitution.
 - **Article 16 (2)** in the Indian constitution provides that there cannot be any discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
- The **right to marry is intrinsic to the liberty which the Constitution guarantees as a fundamental right**, is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty.
- **LGBTQ Community Entitled to all Constitutional Rights (Navjet Singh Johar and others v. Union of India 2018):**
 - The **SC held that members of the [LGBTQ community](#) “are entitled**, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution” and are entitled to equal citizenship and “equal protection of law”.

What is the Special Marriage Act (SMA), 1954?

- **About:**
 - Marriages in India can be **registered under the respective personal laws Hindu Marriage Act, 1955, Muslim Marriage Act, 1954, or under the Special Marriage Act, 1954.**
 - It is the **duty of the Judiciary to ensure that the rights of both the husband and wife are protected.**
 - The **Special Marriage Act, 1954 is an Act of the Parliament of India** with provision for civil marriage for people of India and all Indian nationals in foreign countries, irrespective of religion or faith followed by either party.
 - When a person solemnises marriage under this law, then the marriage is not governed by personal laws but by the Special Marriage Act.
- **Features:**
 - Allows people from two different religious backgrounds to come together in the bond of marriage.
 - Lays down the procedure for both solemnization and registration of marriage, where either of the husband or wife or both are not Hindus, Buddhists, Jains, or Sikhs.
 - Being a secular Act, it plays a key role in liberating individuals from traditional requirements of marriage.

Way Forward

- The LGTBQ community **needs an anti-discrimination law that empowers them to build productive lives and relationships irrespective of gender identity** or sexual orientation and place the onus to change on state and society and not the individual.
- Once members of the LGBTQ community “are entitled to the full range of constitutional rights”, it is beyond doubt that the fundamental right to marry a person of one's own choice has to be conferred on same sex couples intending to marry. **More than two dozen countries have legalized same-sex marriage.**

[Source: IE](#)

