



SC Dismissed Review Petition on Same-Sex Marriage

For Prelims: [Same-Sex Marriage, Section 377, Indian Penal Code \(IPC\), Homosexuality, LGBTQ Community, Supreme Court, High Court, Constitution Bench.](#)

For Mains: Impact of [legalising same sex](#) marriage on social fabric and progress of Indian Society

[Source: TH](#)

Why in News?

The 5-bench **Supreme Court of India (SC)**, in a recent judgment **rejected review petitions** against its **October 2023 ruling** that had **refused to legalize same-sex marriage**.

- In the October 2023 ruling, the Bench headed by [Chief Justice of India](#) delivered a 3:2 majority **verdict against granting constitutional validity to same-sex marriages**.

What is Same-Sex Marriage?

- **About:**
 - Same-sex marriages refer to **marriages between two individuals of the same gender**, i.e. marriage between two men or between two women.
- **Legality in India:** India does **not recognize** marriages or civil unions **of same-sex couples**.
 - **Supreme Court Judgment 2023:** The **Supreme Court (SC)** ruled that the [Special Marriage Act \(SMA\), 1954](#), **does not apply to same-sex couples** and held that it is for [Parliament](#) and [state Legislature](#) to formulate laws on it.
 - SC held that there is **no fundamental right to marry** under the Indian **Constitution**.
 - However, SC upholds the **right of same-sex couples** to enjoy equal benefits and rights similar to those of live-in partners, as guaranteed under [Article 21 \(Right to Life\)](#).

Global Status on Recognition of Same-Sex Marriage

- As of 2024, **over 30 countries** worldwide including the US, Australia, Canada and France have **legalized same-sex marriages**.
- The **Netherlands** was the **first country in 2001** to **legalise same-sex marriage** by amending civil marriage law.
- **Taiwan was the first country in Asia** to legalize same-sex marriage.
- Several nations, such as **Iran, Afghanistan, Saudi Arabia, and Brunei**, not only prohibit same-sex marriages but also **impose severe penalties**, including the death penalty or corporal punishment.

What is the Special Marriage Act (SMA) 1954?

- **About:**
 - The **SMA, 1954**, provides a **legal framework** for marriage between **individuals of different religions or castes** in India.
 - It governs civil marriages, where the **state sanctions the marriage** instead of religious authorities.
- **Applicability:**
 - The SMA applies to **people of all faiths**, including Hindus, Muslims, Sikhs, Christians, Jains, and Buddhists across India.
 - Under the **SMA, 1954**, **foreigners can also register their marriage** in India if both parties have valid passports and **at least one has resided in India for a minimum of 30 days** before filing the marriage notice.
- **Key Provisions:**
 - **Marriage Recognition:** The Act facilitates the registration of marriages, granting **legal recognition and providing rights** such as **inheritance, succession, and social security benefits**.
 - **Notice Requirement:** According to Section 5, the parties must provide **written notice to the Marriage Officer** of the district, with at least one party having resided in the district for a minimum of 30 days prior to the notice.
 - Section 7 **allows objections to the marriage within 30 days** of the notice being published.
 - **Age Limit:** The minimum marriage age under the SMA is **21 years for males and 18 years for females**.

What are the Arguments in Favour of Same Sex Marriage?

- **Equality and Human Rights:** Denying same-sex couples the right to marry **creates** second-class status, **violating fundamental rights** under international human rights conventions.
 - The **UDHR** upholds the right to marry as a fundamental human right, emphasizing equality and dignity. In India, activists argue that this aligns with **Article 21 (Right to Life)** of the Constitution.
- **Cohabitation as a Fundamental Right:** The SC in judgments such as ***Lata Singh v. State of UP, 2006*** and ***Shakti Vahini v. Union of India, 2018*** has affirmed **cohabitation as a fundamental right** under **Article 21**, obligating the government to legally recognize relationships between same-sex couples.
- **Legal and Economic Benefits:** Legalizing same-sex marriage provides **equal access to the legal and economic benefits** associated with marriage, inheritance rights, and social security benefits.
- **International Principles:** Same-sex marriage is **legal in more than 30 countries**, aligning with global human rights principles that advocate for equality and dignity for all individuals, irrespective of sexual orientation.

What are the Arguments Against Same-Sex Marriages?

- **Religious and Cultural Beliefs:** Many religious and cultural groups assert that **marriage should be between a man and a woman**, arguing that redefining marriage challenges their foundational values and beliefs.
- **Against Natural Order:** Some oppose same-sex marriage on the grounds that **marriage's primary purpose is procreation**, which they believe same-sex couples cannot fulfill, thus **contradicting the natural order**.
- **Legal and Regulatory Challenges:** Concerns are raised about **potential legal complications**, such as adjustments needed in inheritance, and property laws which could involve complex legal changes.
- **Adoption Issues:** When same-sex couples **choose to adopt children**, they may face societal stigma, discrimination, and adverse effects on the child's emotional and psychological health, particularly in Indian society.

LGBTQIA+ and their Rights in India

- **About:** LGBTQIA+ is an acronym that represents lesbian, gay, bisexual, transgender, queer, intersex, and asexual.
 - The "+" represents the many other identities that are still being explored and understood. The acronym is constantly evolving and may include other terms like non-binary and pansexual.
- **Recognition of LGBTQIA+ in India:**
 - **2014:** The Supreme Court recognizes transgender people as a "third gender" in *National Legal Services Authority V/s Union of India Case*.
 - **2018:** In a historic decision, the Supreme Court strikes down **Section 377**, decriminalizing same-sex relationships in *Navtej Singh Johar v. Union of India*.
 - **2019:** The **Transgender Persons (Protection of Rights) Act, 2019** was passed, granting legal recognition and prohibiting discrimination against transgender individuals.
 - **2022:** In August 2022, the Supreme Court of India expanded the definition of family to include **same-sex couples and queer relationships**.
 - **2023:** In October 2023, A five-judge Constitution Bench of the Supreme court rejecting petitions to legalise **same-sex marriage in India**.

Way Forward

- **Legal Reforms:** Amendments to the **SMA, 1954**, could grant same-sex couples the same rights and legal benefits as heterosexual couples.
 - Alternatively, **contract-based agreements can be introduced** to ensure similar rights for homosexual individuals.
- **Dialogue and Engagement:** Engaging with **religious and cultural leaders can help bridge gaps** between traditional beliefs and evolving perspectives on same-sex relationships.
- **Judicial led Reform:** The LGBTQIA+ community can challenge existing laws that prohibit same-sex marriage in courts, potentially **setting legal precedents for its recognition**.
- **Collaboration:** Legalizing same-sex marriage requires **collective efforts from all stakeholders**, including the LGBTQIA+ community, government, civil society, and religious leaders, **to build an inclusive society** where everyone can have equal rights.

Drishti Mains Question:

Discuss the legalization of same-sex marriage in India and debate around it. What could be the possible way forward to address the legal and societal challenges related to this issue?

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q 1. 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)

Mains

Q 2. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. **(2017)**

PDF Refernece URL: <https://www.drishtias.com/printpdf/sc-dissmed-review-petition-on-same-sex-marriage>

