

Centre Opposes Same-Sex Marriage

For Prelims: Navteji Singh Johar Case, Fundamental Right, Personal Laws, LBTQIA+ Rights.

For Mains: Arugments in Favour of Same Sex Marriage, Arugments Against Same Sex Marriage.

Why in News?

The Centre has opposed <u>same-sex marriage</u> in the <u>Supreme Court</u>, stating that <u>marriage between a biological man and woman is a holy union</u>, a sacrament, and a <u>sanskar in India</u>.

 A Bench led by <u>Chief Justice of India</u> refers petitions to legally recognise same-sex marriages to a <u>Constitution Bench</u> of <u>five judges</u> of the <u>Supreme Court</u>

What is the Stand of Government Regarding Same Sex Marriage?

- The government argued that the Court had **only decriminalised sexual intercourse between same-sex persons** in its 2018 judgement in **Navtej Singh Johar v. Union of India,** and not legitimised this "conduct".
 - The court, while decriminalising homosexuality, did not accept same-sex marriage as part of the <u>fundamental right to life and dignity</u> under **Article 21 of the** Constitution.
- The government argues that **marriage depends on customs**, rituals, practices, cultural ethos, and societal values.
 - Same-sex marriage cannot be compared to a man and woman living as a family with children born out of the union.
- The <u>Parliament</u> has designed and framed the marriage laws in the country to recognise only the union of a man and a woman.
 - Registration of marriage of same-sex persons would result in a violation of existing personal as well as codified law provisions.
 - The **Special Marriage Act of 1954** provides a civil form of marriage for couples who cannot marry under their personal law.
- The government argued that any deviation from this norm can only be made through the legislature, and not the Supreme Court.

What are the Arugments in Favour of Same Sex Marriage?

- **Equal Rights and Protection Under the Law:** All individuals, regardless of their sexual orientation, have the right to marry and form a family.
 - Same-sex couples should have the same legal rights and protections as opposite-sex couples.
 - Non-recognition of same-sex marriage amounted to discrimination that struck at the root of the dignity and self-fulfillment of <u>LBTOIA+ couples</u>.
- Strengthening Families and Communities: Marriage provides social and economic benefits to couples and their families. Allowing same-sex couples to marry strengthens families and

communities by promoting stability and security.

- **Global Acceptance:** Same-sex marriage is legal in many countries around the world, and denying this right to individuals in a democratic society goes **against the global principles.**
 - In 133 countries homosexuality decriminalised, but only in 32 of them same-sex marriage is legal. Countries legalised same sex marriage:



What are the Arugments Against Same Sex Marriage?

- Religious and Cultural Beliefs: Many religious and cultural groups believe that marriage should only be between a man and a woman.
 - They argue that changing the traditional definition of marriage would go against the fundamental principles of their beliefs and values.
- Procreation: Some people argue that the primary purpose of marriage is procreation, and that same-sex couples cannot have biological children.
 - Therefore, they believe that same-sex marriage should not be allowed because it goes against the natural order of things.
- **Legal issues:** There are concerns that allowing same-sex marriage will create legal problems, such as issues with **inheritance**, **tax**, **and property rights**.
 - Some people argue that it would be too difficult to change all the laws and regulations to accommodate same-sex marriage.

Way Forward

- Cultural Sensitivity: India is a culturally diverse country with different religious and societal values.
 - Any legislative or judicial decision on same-sex marriage must consider the cultural sensitivities of different communities while also ensuring that the fundamental rights of individuals are protected.
- Social Acceptance and Education: India still has a long way to go in terms of social acceptance
 of the LGBTQ+ community.
 - Education and awareness campaigns should be developed to promote acceptance and understanding of heterosexuality then same-sex marriages should be considered on table.
- International Obligations: India is a signatory to various international human rights treaties and conventions, which require it to protect the rights of all individuals, including the LGBTQ+ community.
 - As many other countries such as Canada, the United States, and Australia have recognized same-sex marriage, it is imperative that India legalizes it to ensure equal rights and opportunities for all individuals regardless of their sexual orientation.

UPSC Civil Services Examination, Previous Year Question:(PYQ)

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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