

**LAW AND CUSTOM : ON THE
SUPREME COURT'S VERDICT
ON SAME-SEX MARRIAGE****The Hindu**

Paper - II (Indian Polity)

The Supreme Court of India's refusal to accord legal recognition to marriages between persons of the same sex is a huge legal setback to the queer community in the country. Given the progress in law in recent years and the deepening of the meaning of individual rights, there was widespread expectation that the five-judge Constitution Bench would give the Special Marriage Act (SMA), a law that allows any two people to marry, a gender-neutral interpretation to include people belonging to the same sex. Over the years, the amplitude of Article 21 of the Constitution has been expanded to cover the rights of privacy, dignity and marital choice, but the highest court has stopped short of the extra step needed to allow marriages or civil unions that are not heterosexual. All five judges have chosen to leave it to the legislature to enact such a law. Chief Justice of India D.Y. Chandrachud and Justice Sanjay Kishan Kaul have ruled that queer couples have a right to seek recognition for their union, but declined to read down the provisions of the SMA to that effect. On the other hand, Justices S. Ravindra Bhat, Hima Kohli and P.S. Narasimha reject the position, holding that any such recognition can only be based on statute. In effect, the Court has accepted the government's view that any move to legalise same-sex marriages will fall in the legislature's domain.

In concluding that there is no fundamental right to marry, the Court has negated the expectation that it would not allow discrimination against same-sex couples in the marital domain to continue. Marriage is indeed a social institution, with its own legal requirements and conditions for what constitutes a valid marriage. The right to seek social and legal validation through marriage is a matter of individual choice protected by the Constitution, but the Court still views it as being subject to statutory limitations. The majority disfavours the position that queer couples have a right to adopt children, but agrees with the minority that there is no bar on transpersons entering into heterosexual marriages. There is no disagreement among the judges about the right of such same-sex couples to cohabit and be free from coercion and threats. Given that large sections of India may be opposed to the legalisation of same-sex marriages on religious and cultural grounds, the possibility of Parliament taking the initiative to do so is quite bleak. The LGBTQIA+ community may now have to take heart from the Court's direction that the government should form a committee to decide the rights and entitlements of queer couples. The community, however, still has quite a struggle ahead before the law catches up with its yearning for equality.

Supreme Court verdict on same sex marriages

A five-judge bench headed by Chief Justice of India DY Chandrachud has pronounced the verdict on marriage equality today.

More about the Judgement:

- ❖ A five-judge Supreme Court bench, led by Chief Justice DY Chandrachud, issued a unanimous ruling against legalizing same-sex marriage in India, also rejecting civil unions for non-heterosexual couples in a 3:2 verdict.
- ❖ They stated that Parliament should decide on the issue, emphasizing the inability of the court to alter provisions or interpretations of the Special Marriage Act.
- ❖ The petitions aimed for a gender-neutral reading of the Special Marriage Act to include same-sex marriages, but the majority view was that there is no fundamental right to marry.
- ❖ The court deliberated for ten days in April and May, considering various arguments related to equality, privacy, legal rights, and the impact on children.
- ❖ Opponents included the Central government, the NCPCR, and the Jamiat-Ulama-i-Hind.

What is Special Marriage Act?

- ❖ The Special Marriage Act of 1954 (SMA) provides an alternate route to religious laws for marriage.
- ❖ It governs a civil marriage where the state sanctions the marriage rather than the religion.

Expected Question

Que. Consider the following statements in the context of Supreme Court's recent verdict on same-sex marriage-

1. A bench of five judges has not given legal status to gay marriage by a majority of 3:2.
2. The bench has unanimously considered the right to marriage as a fundamental right.

Which of the statements given above is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Answer : a

Mains Expected Question & Format

Que.: "Any move to legalize same sex marriage must fall within the jurisdiction of the legislature." Analyze the legal journey of same sex marriage in India in the context of this statement.

Answer Format :

- ❖ In the first part of the answer, discuss the recent decision of the Supreme Court regarding gay marriage.
- ❖ In the second part, let us discuss the legal journey of gay marriage in India.
- ❖ Finally give a conclusion showing the way forward.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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