Legalising Same-Sex Marriage

Why in news?

A Supreme Court Bench issued notices to the Centre and the Attorney General of India, seeking their response to petitions filed by gay couples to allow solemnisation of same-sex marriage under the Special Marriage Act.

What are the key features of the Special Marriage Act (SMA)?

- The Special Marriage Act, 1954 (SMA) was enacted to facilitate the marriage of couples professing different faiths and preferring a civil wedding.
- **Conditions -** The marriage of any two persons may be solemnised under the SMA, subject to the man having completed 21 years of age and the woman 18.
- Neither should have a spouse living.
- Both should be capable of giving valid consent and should not suffer from any mental disorder of a kind that renders them unfit for marriage.
- They should not be within the degrees of prohibited relationship in such a way that their religion does not permit such marriages.
- **Procedure** - Parties to an intended marriage should give notice to the marriage officer of the district in which one of them had resided for at least 30 days.
- The marriage has to be solemnised within 3 months of the notice, and if it is not, a fresh notice will be needed.
- **Objections** - The law also provides for objections to the marriage.
- Any person can object to the marriage within 30 days of the publication of the notice on the ground that it contravenes one of the conditions for a valid marriage.
- The marriage officer has to inquire into the objection and give a decision within 30 days.
- If he refuses permission for the marriage, an appeal can be made to the district court and the court's decision will be final.
- **Severance** - When a member of an undivided family who professes Hindu, Buddhist, Sikh or Jaina religions, gets married under SMA, it results in his or her severance (breaking off) from the family.

To know about the issues with Special Marriage Act (SMA), click here

What is the petition about?

- The recent pleas seek to recognise same-sex marriage in relation to this Act and not personal laws.
- **First petition** - The petition argued that the SMA was "ultra vires" (beyond the powers) the Constitution as it discriminates between same-sex couples and opposite-sex couples.

- It stated that the Act denied same-sex couples both legal rights as well as the social recognition and status that came from marriage.
- It argued that about 15 legislations which guaranteed the rights of wages, gratuity, adoption, surrogacy, etc. were not available to LGBTQ+ citizens.
- **Second petition** – It argued that the recognition of same-sex marriage was only a continuation of the **Navtej Singh Johar judgment** of 2018 and the **Puttaswamy judgment** of 2017.
- The petition only sought to make the 1954 Act gender-neutral.
- It argued that the use of gendered language such as the terms male'/'female', 'husband/wife', 'bride/bridegroom' in the Act limit the accessibilty.

> *In the **NALSA vs Union of India judgment (2014)**, the Court held that the fundamental rights such as equality, non-discrimination, life, freedom, etc. could not be restricted to those who were biologically male or female.*

What is the government's stand?

- In 2021, Solicitor General had said that as per the law, marriage was permissible between a biological man and biological woman.
- He had argued that the Navtej judgment merely decriminalizes homosexuality and does not talk about marriage.
- The Centre had said that the acceptance of the institution of marriage between two individuals of the same gender is neither recognised nor accepted in any uncodified personal laws or codified statutory laws.

What about other countries?

> *The Netherlands was the first country in 2001 to legalise same-sex marriage by amending one line in its civil marriage law.*

- A total of 32 countries around the world have legalised same-sex marriages.
- In some countries, the decriminalisation of homosexuality was not followed for years by the recognition of same-sex marriage.
    - For instance, in the U.S., decriminalisation of homosexuality happened in 2003 while recognition of same-sex marriage happened in 2015.

Quick facts

Navtej Singh Johar judgment, 2018

- Decriminalised homosexuality and held that the **Section 377** of the Indian Penal Code was unconstitutional.
- It had noted that homosexuals
    - Has the right to live with dignity
    - Are entitled to protection of equal laws

    - Are entitled to be treated as human beings without any stigma
- It had stated that a person's bodily autonomy be constitutionally protected and that sharing intimacy in private with a person of choice formed a part of the individual's right to privacy.

Puttaswamy judgment, 2017

- Affirmed the Right to Privacy as a fundamental right

References

1. The Hindu | Toward legalising same-sex marriage
2. The Hindu | States opting for legislation on freedom of religion

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