Supreme Court's Verdict on Same-Sex Marriages

Why in news?

A five-judge bench of the Supreme Court has ruled against legalising same sex marriage in India.

What are the arguments of the petitioners?

Themes discussed	Arguments of the petitioners
Fundamental Rights	• The petitioners argued that the right to marry for non-heterosexual couples is implicit in - Article 14 (Equality) - Article 15 (Non-Discrimination) - Article 16 (Equality of Opportunity in Public Employment) - Article 19 (Freedom of Speech) - Article 21 (Right to Life)
Special Marriage Act (SMA) 1954	• They referred the Section 4, SMA, refers to a marriage in gender-neutral terms, between 'any two persons'. • It was advocated to remove the 30-day notice period under Section 5 of the SMA, which requires parties to give a 30-day public notice of their intention to marry.
Minimum Marriageable Age	• For lesbian couples, the minimum age could be prescribed as 18 years, while for gay couples, it could be 21 years. • For transgender couples, the same ages would apply based on the gender they identify with.
Foreign Marriage Act (FMA) 1969	• Under the FMA, only a marriage against international law could be denied recognition. Since that wasn't the case here, recognition of same-sex couple marriage was advocated.
Positive Declaration	• They sought a positive declaration from the court to solemnise queer marriages, along with a negative declaration binding the State to not discriminate against them.
Transgender Persons Protection Act 2019	• Asserting that queer persons' right to marry has already been recognised by the *Transgender Persons Protection Act, 2019,* flowing from the *2014 NALSA judgement,* petitioners argued that all queer identities are part of this term.
Queer couples' right to adopt a child	• The petitioners argued that the *Central Adoption Resource Authority (CARA)* guidelines, which does not allow unmarried couples to jointly adopt children, is discriminatory against queer couples who cannot legally marry. • Individually, queer persons can adopt as single people (However, a single male is not eligible to adopt a girl child)

What the respondents argued?

- The respondents, including the Central government, the national child rights body NCPCR, and a body of Islamic scholars called the Jamiat-Ulama-i-Hind, opposed the petitions.

Themes	Arguments of the respondents
Concept of family	• It is argued that legalising queer marriages will destroy the concept of family, which is the "fundamental building block of society."
On maintainability & SMA	• It was argued that 160 laws would be impacted in the process of bringing marriage equality. • Under the SMA, the court cannot give rights to non-heterosexual couples that heterosexual couples don't have.
Legitimate state interest in regulating marriages	• It was argued the State has a 'legitimate' interest in regulating marriages. • They also cited the future issue where freedom of sexual orientation and autonomy could be raised to challenge the prohibition of incest (sexual intercourse between closely related persons).
Impact on children	• The State is justified in treating heterosexuals and homosexuals differently considering the welfare of children.

What is the view of the judges?

All 'aye'	Majority vs. minority opinions
• Same sex couples do not have a right to marry. • Transgender persons have a right to marry under the current framework. • Same-sex couples have a right to choose their partners and cohabit with one another.	• Queer couples do not have the right to adopt (3:2) • Couples do not enjoy a right to a civil union (3:2)

- In a 3:2 verdict, the Supreme Court ***refused to grant legal status*** to same-sex marriages.
- **Same sex marriage** - The judgment noted that the *gender of a person is not the same as their sexuality.*
- The ruling means that Indians will now be free to engage in same-sex relationships, assured of constitutional protection but marrying someone of the same sex remains forbidden.
- Since marriage rights are denied, they have *no legal status in terms of family matters*, like succession, inheritance or even hospital visitation rights.
- **SMA -** The court could *not interpret the SMA to include same-sex couples* since the objective of the legislation is not to include same-sex couples within the realm of marriage.
- **State regulation** - In the absence of any central law, the judgment holds that *State legislatures can enact laws* recognising and regulating same-sex marriages.

The Constitution under Articles 245 and 246 empowers both the Parliament and the State to enact marriage regulations.

- **Adoption** - The judge noted that adoption regulations at present are *discriminatory to the queer community* but refused to strike down the CARA regulations that restrict queer couples from adopting a child.
- **Entitlements -** The Court put on the record the Union Government's submission that it will form a *committee* to decide the benefits and entitlements of persons in queer unions.
- The judges concurred that not providing queer couples equal rights to heterosexual couples in these contexts did amount to discrimination.
- **Natal family violence and protection** - The CJI recognised *"atypical families*" and has issued directions to the police department to not force queer persons to return to their family.

A civil union refers to the legal status that allows same-sex couples specific rights and responsibilities normally conferred upon married couples.

Prior Verdicts of Supreme Court about the Right to Marry
• ***2014 NALSA judgment*** - Affirmed transgender people's fundamental rights. • ***KS Puttaswamy and Anr. vs. Union of India (2017)*** - Upheld the fundamental right to privacy. • ***Navtej Singh Johar vs. Union of India (2018)*** - Decriminalised homosexuality by striking off Section 377 IPC. • ***Shafin Jahan v Union of India*** - Recognized the right to choose one's partner as a facet of the fundamental right to liberty and dignity. • ***Shakti Vahini v Union of India*** - Recognized the right to choose a life partner as a fundamental right. • The right to choose life partner have sanction of the constitutional law under Articles 19 and 21. • ***Deepika Singh vs Central Administrative Tribunal*** - Recognized "atypical" families, including queer (LGBTQ) marriages, which could not be confined in the traditional parenting roles.

What do international precedents say?

- **Universal Declaration of Human Rights** (*India is a signatory)* - Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and are entitled to equal rights as to marriage, during marriage and at its dissolution.
- **International Covenant on Civil and Political Rights (ICCPR)** *(ratified by India*) - Right of men and women of marriageable age to marry and establish a family.
- **United Nations Human Rights Council's (UNHRC)** - In *Toonen v. Australia (1994),* it widened the contours of 'sex' under the ICCPR to include 'sexual orientation'.
- **Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act of South Africa** – It was passed to guarantee social security,

employment, and taxation benefits to same-sex couples.
- **The Marriage (Same Sex Couples) Act 2013 in England and Wales** – It allows same-sex couples to marry in civil ceremonies or according to religious rites.
- In 2015, the **US Supreme Court** ruled that same-sex couples had the same basic right to marry as heterosexual couples.

What lies ahead?

- The Supreme Court of India's refusal to accord legal recognition to marriages between persons of the same sex is seen as a huge legal setback to the queer community in the country.
- 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.
- There is hope that the government might grant more rights to same-sex couples, delivering on promises to set up a committee to look into obstacles they face, such as obtaining ration cards and accessing pension rights.

Quick facts

The Special Marriage Act, 1954 (SMA)

- It 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 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.
- **Objections** - 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.

References

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2. Indian Express | Supreme Court’s same-sex marriage verdict
3. The Hindu| Same-sex marriage

