

#### 4. Same-Sex Marriages can rock societal values: Centre

**Prelims Syllabus:** Governance

**Mains Syllabus:** GS-I Indian Society | Salient features of Indian Society



#### Why in News?

- The Centre in the Supreme Court expressed its disagreement towards same-sex marriage, citing traditional beliefs and values.

#### Here are the main points of the affidavit:

- Heterosexual marriage has been the norm throughout history and is “foundational to both the existence and continuance of the state.”
- Marriage in India is regarded as a “holy union,” a “sacrament,” and a “sanskar,” and is dependent on customs, rituals, practices, cultural ethos, and societal values.
- Any “deviation” from the “statutorily, religiously and socially” accepted norm in “human relationship” can only happen through the legislature and not the Supreme Court.

#### Basis of Centre’s opposition

- The 2018 Navtej Singh Johar judgment decriminalised homosexuality, but it did not mention/legitimise same-sex marriage.
- Same-sex marriage cannot be compared to a man and woman living as a family with children born out of the union.
- Registration of same-sex marriage would result in a violation of existing personal as well as codified law provisions.
- There is a “compelling interest” for the society and the state to limit recognition to heterosexual marriages only.

### Reasons behind centre's opposition

- **Legal revamp required:** The registration of marriage of same-sex persons also results in a violation of existing personal as well as codified law provisions — such as ‘degrees of prohibited relationship’; ‘conditions of marriage’; ‘ceremonial and ritual requirements’ under the personal laws governing the individuals”.
- **Definition of spouse:** In a same-sex marriage, it is neither possible nor feasible to term one as ‘husband’ and the other as ‘wife’ in the context of the legislative scheme of various personal laws.
- **Against cultural norms:** The social order in our Country is religion based which views procreation as an obligation for the execution of various religious ceremonies.
- **Property and other civil rights:** Property rights post marriage is a much-contested issues in India. Same sex marriage will not create any immunity for the law but increase complex interpretations.

### Issues with such marriages

**The issue of homosexual conduct to this fore in recent legal and political debate for main reasons, which are as follows:**

- **Morality:** This has brought with it a change in social attitudes, so that the stigma attached to homosexuality has to a greater extent disappeared.
- **Rising activism:** Campaigns for lesbian and gay rights taken on an increasingly radical character, arguing for an end to all forms of discrimination against homosexuality.
- **Religious sanctions:** Same sex acts are punishable by death in Arab countries. No religion openly embraces same sex marriage. More or less, they are considered un-natural everywhere.
- **Social stigma:** Apart from the harsh legal scenario, homosexuals face social stigma as well. Same sex marriages are still unimaginable as any instance of sexual relations between a couple of the same sex draws hatred and disgust.
- **Patriarchy:** It must not be forgotten that the Indian society is patriarchal in nature and the fact that certain women and men have different choices, which is not sanctioned by the ‘order’, frightens them in a way.
- **Burden of collectivity:** Our society is very community oriented and individualism is not encouraged in the least, any expression of homosexuality is seen as an attempt to renounce tradition and promote individualism.

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### Arguments in favor:

- **Pursuit of happiness:** Homosexuality is not an offence, it is just a way of pursuit of happiness, a way to achieve sexual happiness or desire.
- **Right to privacy:** The fundamental right to liberty (under Article-21) prohibits the state from interfering with the private personal activities of the individual.
- **Arbitrariness:** Infringement of, the right to equal protection before law requires the determination of whether there is a rational and objective basis to the classification introduced.
- **Issues with definition:** Section-377 assumes that natural sexual act is that which is performed for procreation. Hence, it thereby labels all forms of non-procreative sexual act as unnatural.
- **Discrimination:** Section-377 discriminates on the basis of sexual orientation which is forbidden under Article-15 of the Constitution. Article-15 prohibits discrimination on several grounds, which includes Sex.
- **Human rights:** The universal law of Human Rights states that social norms, tradition, custom or culture cannot be used to curb a person from asserting his fundamental and constitutional rights.
- **Many countries recognizing:** According to global think tank Council of Foreign Relations, same sex marriages are legal in at least 30 countries, including the United States, Australia, Canada and France.

### Way forward:

- **Dissociating from religion:** Such marriages are forbidden in almost every religion. Hence no single religion should be considered a hindrance in creating a legal sanction.
- **Doing away with discrimination:** The same-sex community needs an anti-discrimination law that empowers them to build productive lives and relationships irrespective of gender identity.
- **Letting the society evolve:** The society has to imbibe the doctrine of progressive realization of rights and it cannot be forcibly convinced by law.
- **Creating awareness:** Certainly this is not an overnight phenomenon. We are society where practice of Sati and Nikah halala was considered a religious order.