

Why in News?

Recently, the Supreme Court sought response from the Central Government and the Attorney General of India on petitions filed under the Special Marriage Act (SMA), 1954, for permission on same-sex marriages.

What do the petitions say?

- ❖ Petitioners demand that LGBT community must be allowed for marriage under the Special Marriage Act (SMA) as other personal marriage acts debar them.
- ❖ **Navtej Singh Johar judgment, 2018** decriminalizes homosexuality and **Puttaswamy judgment, 2017** declares 'right to privacy' as a part of **article 21**.
- ❖ Similarly, rights to wages, gratuity, adoption, surrogacy etc. are also not available to LGBTQ+ citizens.

Special Marriage Act (SMA), 1954

- ❖ SMA has been enacted especially to recognize inter-religious and inter-caste marriages in India.
- ❖ It includes Hindu, Muslim, Christian, Sikh, Jain and Buddhist marriages.
- ❖ No religious formalities are required to be performed under the Act.
- ❖ This Act applies not only to Indian citizens of different castes and religions, but also to Indian citizens living abroad.
- ❖ Currently, the act denies same-sex marriage.

The Transgender Persons (Protection of Rights) Bill, 2016

- ❖ It defines a transgender person as a person who is partly female or partly male; or a combination of female and male; or is neither female nor male.
- ❖ The definition of transgender persons includes terms such as 'trans-men', 'trans-women' and 'persons with intersex variation'.
- ❖ A person whose sex does not match the sex assigned at birth and includes trans-men, trans-women, people with intersex variations, and gender-queer.
- ❖ A certificate of identity should be obtained as proof for recognition of identity as a transgender person.
- ❖ Provision for imprisonment of 2 years and fine has been included for offenses like forcing a transgender person to beg, refusing to go to public place, physical and sexual abuse etc.
- ❖ A person recognized as 'transgender' shall have the right to a 'self-perceived' gender identity.

IPC 377- According to this "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years." and shall also be liable to fine."

- ❖ Section 4 of the act allows marriage between any two persons with consent. But this section has been removed by the government and now, petitioners want it back.

Navtej Johar Case (2018)

- ❖ A five-judge bench of the Supreme Court termed IPC-Section 377 as unconstitutional, termed the "sexual orientation" of the LGBTQ+ community as "natural" and decriminalized consensual homosexuality.
- ❖ Discrimination on the basis of sexual orientation is a violation of freedom of speech and expression.
- ❖ Homosexuals have the right to live with dignity and bodily integrity.

Central government's stance

- ❖ The 1954 law allows marriage only between "biological male" and "biological female".
- ❖ The words 'same-sex marriage' are not mentioned in the Navtej Kaur case, 2018 judgment.
- ❖ "Marriage between two persons of the same sex is not recognized either under any personal law or statutory law."

Status of other countries

- ❖ Same-sex marriage is recognized legally in a total of 32 countries around the world. Several countries have been the first to recognize same-sex civil unions as a progressive step towards recognizing same-sex marriage.
- ❖ Civil unions provide legal recognition to married couples of the same or opposite sex to provide them with some other rights such as inheritance, medical benefits, employee benefits to the spouse, taxes and finances and in some cases even adoption.
- ❖ Netherlands was the first country to legalize same-sex marriage in its civil marriage law in 2001.

Barriers to LGBT communities

- ❖ They are considered immoral socially and ethically. For this reason, they face discrimination and inconvenience at workplace, institutions and public places.
- ❖ Indian LGBT community has cultural and ethnic diversity, so they are at risk if face any adverse circumstances.
- ❖ This community experiences extreme distress due to deep social stigma, discrimination and often abuse, which leads to self-loathing and suffering.

LGBTQIA-Lesbian, Gay, Bisexual, Transgender, Queer/Questioning (one's sexual or gender identity), Intersex, and Asexual/Agender

LGBTQIA+ What is flag?

The flag was first flown at a Pride parade in Phoenix in 2000. Light blue represents boys and pink represents girls. White is used to symbolize people who are transitioning, who feel they have a neutral gender or no gender and who are intersex.

LGBTQIP2SAA.

I-Intersex- This is a sexual perversion. This is the situation when a creature is born in the gender and while developing, suddenly, due to some reason, takes the form of another gender. This condition can be seen in eunuchs.

P-Pansexual - A person has a sexual or emotional attraction to people regardless of their biological sex or gender identity.

Measure

- ❖ A new category as a third gender has now been included for gender identity in government applications.
- ❖ New education policy adopts a sensitive approach towards this community.
- ❖ Any form of discrimination against them is considered criminal offence.
- ❖ A recent advisory from the National Medical Commission (NMC) emphasised to avoid derogatory references to LGBT community in medical textbooks or teaching methods, and underlined importance of institutional awareness on this issue.

Possible question

Q. Consider the following statements –

1. Navtej Johar Judgement 2018 provides for the right to liberty under section-377 of IPC.
2. Transgender has been defined in the Special Marriage Act, 1954.

Which of the above statement(s) is/are false-

- (a) 1 only (b) 2 only
(c) both 1 and 2 (d) neither 1 nor 2

Mains Exam Questions

Q. Discuss the challenges faced by the people of LGBT community. Also mention possible measures for the upliftment of this community. (250 words)

