

Sansad TV Perspective: Legalising Same-Sex Marriage

In the series Sansad TV Perspective, we bring you an analysis of the discussion featured on the insightful programme 'Perspective' on Sansad TV, on various important topics affecting India and also the world. This analysis will help you immensely for the [IAS exam](#), especially the mains exam, where a well-rounded understanding of topics is a prerequisite for writing answers that fetch good marks.

In this article, we feature the discussion on the topic: **Legalising Same-Sex Marriage**.

Video link: <https://youtu.be/YooWX0-Nzhk>

Anchor: Vishal Dahiya

Guests:

1. Priya Hingorani, Senior Advocate, Supreme Court
2. Reena Rai, Founder & Chairperson, Miss Trans Queen India (LGBTQ+ Activist)
3. Prof. V. Rajyalakshmi, Department of Sociology, JDMC, University of Delhi

Context: Legalising same-sex marriage in India.

Highlights of the discussion:

- Introduction.
- Background details.
- Rationale behind the demand.
- Counter arguments and sociological acceptance.

Introduction:

- The [Supreme Court](#) issued notice to the Central Govt on a plea by two gay couples seeking recognition of same-sex marriage under the Special Marriage Act, 1954.
- The petition drew on earlier landmark rulings including one declaring privacy a fundamental right and another that decriminalized gay sex in 2018.
- In 2021, the Central Government opposed same-sex marriage in the Delhi High Court stating that marriage in India can be recognized only if it's between a biological man and a biological woman capable of producing children.
- In its argument then, the Central government had also said that considerations of “societal morality” are relevant in considering the validity of a law and it is for the legislature to enforce such societal morality and public acceptance based upon Indian ethos.

- The Centre has to now file its response on this matter before the Supreme Court within four weeks of the notice.

For more information on Section 377 and its decriminalization, read here: [Section 377 of the Indian Penal Code \(IPC\)](#)

Background Details:

- Two different petitions were filed before the Supreme Court of India. These are:
 - In the first petition, a gay couple is living together for seventeen years and bringing up two children. According to them, the relationship with these children is not a normal parent-child relationship due to legal issues. They want the legalization of their marriage so that the children can also get their due rights.
 - In the second petition, the couple is looking forward to legalizing their marriage as their parents and families have accepted their relationship.
- Ever since Section 377 of the [Indian Penal Code \(IPC\)](#) was decriminalized, there is a surge in the number of cases filed to get acceptance for same-sex marriage and get their rights legalized.
- Though the matter is under the Kerala High Court, consideration by the Supreme Court can address wider aspects like the Special Marriage Act, Adoption, Surrogacy, and Property rights.
- It should be noted that in India, every religion is governed by its own set of rules/laws in case of marriage like the Hindu Marriage Act, Parsi Marriage Act, Christian Marriage Act, Muslim Marriage Act, etc. If same-sex marriage is legalized, it would come under the Special Marriage Act.

Rationale behind the demand:

- One of the major reasons behind the demand is the right to choose a life partner and the right to privacy.
- Legalising same-sex marriage would provide them legal backing and support in other associated issues like divorce, etc.
- It would further open opportunities for adoption and a child can be given love and care.
- Marriage is a matter of choice of the two individuals and how they want to live. Moreover, live-in relationships are also legally recognized, for example, in the [Domestic Violence Act 2005](#).
- A woman who is in a live-in relationship with a man and/or has children from such a relationship then both the woman and the children are entitled to certain rights like maintenance and property rights. But homosexual couples don't enjoy these rights. Once their marriage is legalized, they would also be able to access some other rights enshrined in the Constitution or laws.
- The decriminalization of homosexuality should be given a logical conclusion by legalising same-sex marriage.
- There are a lot of grey areas as far as the rights of this community are concerned. For instance, in cases of violence, there is difficulty in filing FIR and accessing grievance redressal mechanisms.

- Society has evolved a lot. For example, societies have moved from a joint family system to a nuclear family system, divorce is no longer considered a taboo, live-in relationships are accepted, etc.
- The definition of marriage should change. It should have a wider interpretation where there is a bond between two individuals (not necessarily of the opposite sex).

Associated sociological angle and counter-views:

- In 2021, the Central government in the Delhi High Court responded by citing ‘societal morality’ and ‘Indian ethos’ to be considered while dealing with the sensitive issue.
 - Marriage is defined in India as an institution where people of the opposite sex are tied in a relationship and there are certain rules and regulations guiding it. The children born out of this bond are legitimate. Moreover, marriage, apart from being part of private life, is also a public affair in society.
 - According to some sociologists, marriage and relationships are different. Privacy and choice in a relationship can be accepted, but when it comes to the institution of marriage, identity, caste, class, race, etc. become crucial parameters.
 - Though society has evolved economically, culturally there is not much change. For instance, caste still plays a crucial role in the identity of an individual, social interactions, and politics.
 - Moreover, for a change to take place majority of the citizens or a larger part of the society should openly accept it.
 - India is also diverse in terms of rural and urban areas. Though urban areas might accept same-sex marriage, rural areas will raise concerns.
 - However, privacy should be respected but it will have implications for society.
 - The acceptance of children from same-sex wedlock might face serious challenges in India, where even today, same-caste and class marriages are given more respect and priority.
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