



Mains Practice Question

Q. Critically examine the arguments for and against legalising same sex marriage in India. What are the constitutional and social implications of such a move? (250 words)

24 Oct, 2023 GS Paper 2 Social Justice

Approach

- Begin with a brief introduction to the topic, providing a context.
- Discuss Arguments in favor and arguments against legalization of Same-Sex Marriage. Also, discuss the constitutional and social implications.
- You can conclude with a way forward approach.

Introduction

Legalisation of same sex marriage in India is a long pending demand of LGBTQ+ community. Recently, in a verdict, the Supreme court refused to pass a judgment that legalizes the homosexual marriages, it passed on the baton to the parliament and state legislatures to formulate the law for the same.

Body

Arguments for legalizing same-sex marriage in India:

- **Equality and Human Rights:** The Constitution of India guarantees equal protection before the law to all citizens. The Supreme Court has also recognised that the right to life and dignity under Article 21 of the Constitution includes the right to sexual orientation and identity.
- **Personal Autonomy and Choice:** The Supreme Court in Hadiya case and Lata Singh cases has ruled that Right to choose light partner is a Fundamental Right. Therefore, same-sex couples should have the freedom to choose their partners and form their own families without being subjected to legal or social sanctions.
- **Social Justice and Inclusion:** Legalizing same-sex marriage would grant same-sex couples the same legal rights and benefits as heterosexual couples. This would reduce stigma and discrimination, ultimately leading to improved well-being and happiness for the LGBTQIA+ community.

Arguments against legalizing same-sex marriage in India:

- **Morality and Religion:** Many individuals in India hold strong religious or moral beliefs that deem homosexuality as unnatural or sinful. They fear that legalizing same-sex marriage would legitimize homosexuality, potentially eroding traditional moral values and religious teachings.
- **Legal Complexities:** Opponents also argue that legalizing same-sex marriage would necessitate significant changes to existing laws, policies, and social structures that are currently based on heterosexual marriage. This could lead to legal complexities and challenges in implementation.
- **Practicality and Feasibility:** It is also argued that if a man starts recognizing himself as a female then how will he be treated before the law.

Constitutional and social implications of legalising same-sex marriage in India

- **Constitutional Implications:** Legalizing same-sex marriage can be seen as a constitutional right and a way to uphold the dignity and equality of the LGBTQ+ community.
 - However, the Constitution also grants the freedom of religion under Article 25, which allows different religious communities to have their own personal laws governing matters such as marriage, divorce, inheritance, etc.
 - Therefore, legalizing same-sex marriage in India may face opposition from some religious groups who consider homosexuality as sinful or unnatural.
- **Social Implications:** Legalizing same-sex marriage in India has significant and diverse social implications. It can reduce LGBTQ+ stigma, improve mental health, promote inclusion, and grant legal rights. However, it may also provoke backlash, create conflicts, and challenge cultural values, potentially affecting societal harmony and evolution.

Conclusion

Legalizing same-sex marriage in India is a complex matter with constitutional and social impacts. It demands thoughtful consideration, respectful dialogue, and a decision grounded in democratic, just, and dignified principles outlined in the Indian Constitution.

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