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# Historic verdict holds hope for same-sex marriages, adoption

The onus is now on the government to formulate legislation in light of the Supreme Court judgement

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Shaswati Das

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While the verdict has now opened the doors for several changes to be introduced to marriage, adoption and inheritance laws for same-sex couples, it does not automatically translate into a seamless transition to equality for the LGBTQ community. Photo: Pradeep Gaur/Mint

**New Delhi:** The Supreme Court's historic verdict decriminalizing homosexuality, has now paved the way for same-sex couples to legally cohabit and conduct their personal affairs without fear of persecution.

While the verdict has now opened the doors for several changes to be introduced to marriage, adoption and inheritance laws for same-sex couples, it does not automatically translate into a seamless transition to equality for the lesbian gay bisexual transgender queer (LGBTQ) community.

Legal experts said that even though the judgement was historic, same-sex couples still have an uphill task ahead of them. "This verdict is indicative of consequential revolutionary changes, but factors such as marriage, adoption and property inheritance don't follow automatically. The government now needs to act on this and frame laws to allow same-sex marriages or adoption by LGBTQ couples," said Colin Gonsalves of the Human Rights Law Network.

While the Special Marriage Act of 1954 provides for people of India and all Indian nationals in foreign countries, irrespective of the religion or faith, to marry, there is no provision for same-sex couples to marry.

The same holds true for adoption: In August 2014, the Union cabinet, while considering amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000, decided to stop same-sex couples from adopting children.

"There are several petitions on marriage pending with the courts. But adoption is a complex issue because adoption is also governed by anti-trafficking laws and, in cases, even heterosexual couples can find it challenging. But as far as marriage and inheritance go, people can continue filing petitions," said Subhojit Moulik, founder of the Civilian Welfare Foundation (Kolkata), a non-profit organization.

Lawyers added that although the onus is on the government to formulate legislation permitting LGBTQ couples to marry, adopt and inherit their spouse's property, Thursday's verdict lays down the legal basis for the formulation of such legislation. At the same time, individuals who face discrimination because of their sexual orientation can now mount a challenge in a court of law.

"This judgement sets the rules of the game. Any discrimination on the basis of orientation will be a violation of fundamental rights. However, as for marriage or adoption, if there are any pending petitions, they will be considered on the basis of this verdict. This judgement aims to safeguard the LGBTQ community and the onus is on the government to bring in legislation," said Pavan Duggal, a Supreme Court advocate.

The judgement scrapping section 377 was pronounced by a five-judge bench headed by Chief Justice Dipak Misra and comprising Rohinton Fali Nariman, A.M. Khanwilkar, D.Y. Chandrachud and Indu Malhotra.

The Rashtriya Swayamsevak Sangh, the ideological parent of the ruling Bharatiya Janata Party, however, came down against the concept of same-sex marriages. "Like

Supreme Court, we also do not consider this to be a crime. Same-sex marriages are not compatible with norms of the nature, so we do not support such relations. Bharatiya (Indian) society also does not have the tradition to recognize such relations,” the Sangh said in a statement.

The United Nations said it hopes that the court’s ruling will be “the first step towards guaranteeing the full range of fundamental rights to LGBTI persons” and “boost efforts to eliminate stigma and discrimination against LGBTI persons in all areas of social, economic, cultural and political activity, thereby ensuring a truly inclusive society.”

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