

Bill No. 67 of 2022

**THE SPECIAL MARRIAGE (AMENDMENT)
BILL, 2022**

By

SHRIMATI SUPRIYA SULE, M.P.

A

BILL

further to amend the Special Marriage Act, 1954.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Special Marriage (Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force at once.

5 43 of 1954. 2. After section 4 of the Special Marriage Act, 1954, (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

Insertion of new section 4A.

“4A. Notwithstanding anything contained in this Act or any other law for the time being in force, a marriage between any two persons of same sex may be solemnized under this Act, if at the time of marriage,—

Solemnization of special marriages between same sex.

(a) in case both the parties are male, each has completed twenty-one years of age; or

(b) in case both the parties are female, each has completed eighteen years of age.”.

Amendment of section 15.

3. In section 15 of the principal Act, in clause (a), for the words “husband and wife”, the word “spouse” shall be substituted. 5

Amendment of section 22.

4. In section 22 of the principal Act, for the words “the husband or the wife”, the words “of the spouse” shall be substituted.

Amendment of section 23.

5. In section 23 of the principal Act, in clause (1), for the words “either by the husband or the wife”, the words “by either of the spouse” shall be substituted. 10

Amendment of section 27.

6. In section 27 of the principal Act, in clause (1), for the words “either by the husband or the wife”, the words “by either of the spouse” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

In the year 2018, the Supreme Court of India struck down an archaic, draconian legislation of the Indian Penal Code, 1860 namely section 377. Through this landmark judgement (*Navtej Singh Johar vs. Union of India*), homosexuality was effectively decriminalised. While this was a much needed, progressive leap forward, LGBTQIA individuals still face persecution, discrimination and social stigma within society.

Justice D.Y. Chandrachud in *Justice K.S. Pattaswamy (Retd.) vs. Union of India* observed that 'family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognizes an inviolable right to determine how freedom shall be exercised'.

While the determination of one's sexual orientation has been realised, LGBTQIA individuals are still unable to marry and create their own families. In addition, LGBTQIA couples have no access to rights that heterosexual couples are entitled to upon marriage, such as succession, maintenance and pensions, etc.

Therefore, it is of the utmost importance to amend the Special Marriage Act, 1954, to legalise same-sex marriage, and provide legal recognition to married LGBTQIA couples. It will ensure that article 14 and article 21 of the Constitution are upheld, and ensure that LGBTQIA couples are provided with the rights they are entitled to.

Hence this Bill.

NEW DELHI;
17 January, 2022.

SUPRIYA SULE

ANNEXURE

[EXTRACT FROM THE SPECIAL MARRIAGE ACT, 1954]

(ACT NO. 43 OF 54)

* * * * *

Registration of marriages celebrated in other forms.

15. Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

* * * * *

Restitution of conjugal rights.

22. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Judicial separation.

23. (1) A petition for judicial separation may be presented to the district court either by the husband or the wife,—

(a) on any of the grounds specified in sub-section (1) and sub-section (1A) of section 27 on which a petition for divorce might have been presented; or

* * * * *

Divorce.

27. (1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent,—

(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

* * * * *