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THE FREEDOM TO MARRY AROUND THE WORLD

While none of the states in the US have yet recognized the freedom to marry of same-sex couples, other nations have made great strides towards full equality for their gay and lesbian citizens. In April 2001, the Netherlands became the first country to allow same-sex couples to marry, granting them all the rights of opposite-sex married couples. Belgium followed suit in January 2003. Many countries have enacted registered partnership legislation giving gay men and lesbians many of the protections of marriage. And gay citizens in a variety of nations are partially protected by other laws. The legal landscape internationally is changing to reflect the growing realization that same-sex couples are entitled to equal treatment.

Marriage

To obtain a Dutch marriage, neither member of the couple needs to be a citizen of the Netherlands, although one must be a resident. The Dutch law has eliminated all references to gender in laws covering marriage and adoption, and has amended the dictionary to remove references to “man and woman” in the definition of marriage. In January 2002, the last remnant of gender-based discrimination in Dutch marriage law was removed, when joint parental rights and responsibilities were granted to same-sex married parents just as they are to opposite-sex married parents upon the birth of a child.

In January 2003, the Belgian Parliament followed the lead of the Netherlands, overwhelmingly passing a bill to grant marriage rights to same-sex couples. When the bill becomes law in the Summer of 2003, gay and lesbian couples will be able to get married and receive all of the accompanying benefits on an equal footing with opposite-sex couples, with the exception, for now, of the right to adopt.

In Canada, two recent trial court decisions have affirmed the right of same-sex couples to marry. In July 2002, the Ontario Superior Court ruled that excluding same-sex couples from marriage violates the Canadian Charter of Rights and Freedoms, and in September 2002, the Superior Court in Quebec came to the same conclusion. Both courts declared that the Canadian Parliament must remedy the situation within 2 years. Previously, in October 2001, the Supreme Court of British Columbia had reached a different conclusion, ruling that, while denying gay and lesbian couples the right to marry is discriminatory, such discrimination is justified. It is expected that all of these decisions will be appealed, and that the issue will eventually be decided by the Canadian Supreme Court.

All But Marriage - Registered Partnerships And Other Alternatives

In 1998, the French government approved “PACS” (Pacte Civil De Solidarite), which allows cohabiting couples to receive certain tax exemptions, to make gifts to each other without tax consequences (after 2 years) and to receive joint taxation benefits (after 3 years). Someone entering into a PACS may also receive health benefits through his or her partner, and make contracts regarding financial and property arrangements in the event of death or break-up.

In August, 2001 the German “Registered Life Partnership” (Eingetragene Lebenspartnerschaft) went into effect allowing same-sex couples to share a surname, make decisions involving partner’s children (“small custody” status), make contracts regarding property and financial arrangements in the event of death or breakup, refuse to testify against each other, immigrate, and receive health benefits through their partner. This law survived constitutional challenge in July 2002, when three German states claimed that it violated constitutional provisions protecting marriage and the family. The German Supreme Court, however, upheld the law, thus allowing gay couples to continue to register their partnerships.

In addition, Norway, Sweden, Denmark, Greenland, Iceland and Finland have all enacted “Registered Partnership” laws allowing same-sex couples virtually all the rights of marriage except for adoption and access to reproductive technology (though those restrictions are loosening). One partner must be a citizen of the country, and the status of “Registered Partner” applies only within that country.

Other Protections for Gay and Lesbian Families in Other Countries

Many more countries, recognizing it is unfair to exclude committed, same-sex couples from all of the protections of marriage, have decided to extend certain benefits to those couples.

- * In the immigration context, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Sweden and the United Kingdom grant foreign partners of the country’s citizens rights that were previously allowed only to spouses.
- * The Victorian Parliament in Australia recently passed the Statute Law Amendment (Relationships) Act 2001, which replaced the term ‘de facto partner’ with ‘domestic partner’ so as to include same-sex couples. This will end discrimination against same-sex partners in areas such as property law, hospital visitation rights and mental health. This follows on from the similar wide-ranging law reform in New South Wales.
- * By government decree following a court decision, as of June, 2000, Brazil allows same-sex couples in a “stable union” the right to inherit from each other’s pension and social security benefits, and allows one partner to claim the other as a dependent on tax returns.
- * A court in South Africa ruled that a woman may name her female partner as a “dependent” for purposes of receiving medical aid even though that term had been defined as including only spouses. Archbishop Desmond Tutu has called ending discrimination against lesbians and gay men as the world’s next moral goal.

Consequences of Same-Sex Relationship Recognition

Numerous countries around the world have begun to recognize that same-sex couples are citizens, that they have families, and that they should share in the law’s protections and responsibilities.

Doomsayers about these developments have been proven wrong. Denmark, for example, has had a Registered Partnership law for over 12 years and there is widespread belief that it has been good for same-sex couples and society as a whole, and that marriage has not been weakened. There is no reason to believe that extending full marriage rights to committed same-sex couples, as the Netherlands and Belgium have done, would do anything but strengthen the institution.