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Time to give 'third sex' its legal rights

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Two years ago, a bearded Thomas Beatie and his wife Nancy — viewed by their neighbours as a happy couple deeply in love — explored the idea of becoming parents after a decade-long conjugal life. Thomas, a transgender, got pregnant and has just delivered a 'beautiful baby girl'.

Irrespective of whether the baby will call him 'papa' or 'mama', the event signals a revolution in social, political and legal thinking in countries where transgenders have significant population. Thomas is aware of this and admits that his pregnancy "sparks legal, political and social unknowns".

It sure does, especially in India, which is home to nearly 10 lakh transgenders — known as 'hijras', 'kothis' and other local epithets — who live asymmetrically within society. They are accepted as part of society yet refused many a legal right.

It is difficult to fathom public reaction to the audacious adventure of Thomas and Nancy in India, which recently saw a TV programme, *Ipadikku Rose*, hosted by a transgender — for, same-sex marriages, or those between transgenders, are still illegal.

Section 377 of the Indian Penal Code punishes those indulging in carnal intercourse 'against the order of nature' with a minimum imprisonment of 10 years that could be extended even to life term.

The legal battle for deletion of this section, termed discriminatory by human right activists, is on in the Delhi high court, which recently trashed objections to a massive rally taken out by gay activists in Delhi as well as several other cities across India.

Even if the HC rules in favour of transgenders and declares Section 377 of IPC unconstitutional, it would mean little if corresponding legal rights were not conferred on them through amendments to the Constitution, as well as personal laws, that require moving of appropriate bills in Parliament by the political class.

The laws relating to marriage, inheritance and succession would need necessary changes to give transgenders the right to put a 'T' in place of the conventional 'M' (for male) and 'F' (for female) in the appropriate boxes of the numerous forms that one fills in his/her lifetime.

The judiciary's response to the transgenders' right is a mixed one. On the positive side, the Delhi high court has agreed to adjudicate the legality of Section 377 on the request of the Supreme Court. However, the question — whether a transgender or a 'hijra' can contest from a seat reserved for women — is still pending decision before the Supreme Court for last five years.

India's social and political circles have accepted transgenders. Kamala Jaan became the first eunuch to be elected mayor of an Indian city, Katni in Madhya Pradesh, in January 2000. A month later, Shabnam Mausli, another transgender, created history by getting elected to the Madhya Pradesh assembly from Sohagpur constituency.

However, in February 2003, the MP high court struck down Kamala Jaan's election upholding a trial court's verdict that eunuchs were male and, hence, could not seek election to offices reserved for women. Kamala's appeal, though admitted by the apex court, is still pending.

If Kamala's plea gets accepted by the apex court, whenever it decides to hear her/his petition, it would definitely mark an advancement in the legal thinking for transgenders.

But apart from the legal rights, the social problems are plenty, as is summed up by Thomas Beatie. Despite being in the US, where personal liberties figure right at the top of the social priorities' menu, Thomas, while being pregnant, had summed up his experience: "We have only begun experiencing opposition from people who are upset by our situation. Doctors have discriminated against us, turning us away due to their religious beliefs. Health care professionals have refused to call me by a male pronoun or recognize Nancy as my wife. Receptionists have laughed at us."

It is no laughing matter that a bearded Thomas gave birth to a baby girl. It would not be a laughing matter when the legal pundits sit down to have a relook at the law, which till date dealt with the 'M's and 'F's, and try introducing the 'T's.

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