
INFLUENCE OF MISOGYNY ON SOCIAL MEDIA: HOW MUCH FREEDOM OF SPEECH IS TOO MUCH FREEDOM OF SPEECH?

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ABSTRACT

The rapid awakening of social-media platforms has fundamentally altered the architecture of public discourse, simultaneously democratising expression and furnishing new trajectory for gendered hate speech, online harassment and misogynistic abuse. This paper examines the complex legal tension that arise when the constitutional and human rights guarantee of freedom of speech creates an intersectional war with the widespread and documented harm caused by online hatred directed at women. This paper examines the doctrinal, socio-legal, and comparative legal analysis. Additionally, this paper examines the adequacy of existing legal frameworks in India, the United Kingdom, the United States and Australia in addressing gender centric online violence while preserving legitimate, expressive and reasonable freedoms. It argues that existing legal frameworks reflects a fundamental asymmetry; vocal rights are robustly theorised and procedurally under-utilised, while the harms suffered by women online remain systematically underreported, under-regulated, trivialised and inadequately remedied. The paper critically examines the role played by platform intermediary liability, the doctrinal ambiguities surrounding the definition of 'hate-speech' and the procedural barriers faced by women seeking redressal. It further considers feminist jurisprudential critiques of the liberal free-speech traditions and offers a framework for contextual, gender-sensitive regulation that neither silences political dissent nor immunises misogynistic harm. The paper concludes that substantive equality demands more than just formal neutrality in governing the rights regarding freedom of speech.

Keywords: Freedom of speech, hate speech, online harassment, gender-based violence, social media law, intermediary liability, Article 19, digital rights, Information Technology Act, Constitution of India.

1. INTRODUCTION

The rapid emergence of social media platforms like Facebook, Instagram, X (previously known as ‘twitter’), etc. as the dominant infrastructure of public communication in the 21st century has generated one of the most contested problem in contemporary legal theory: the extent to which the state may, or must, regulate speech that is harmful without compromising the freedom of speech guaranteed by the Constitution which gives democratic discourse its legitimacy. This complication is nowhere more acutely manifested than in the domain of gender-centric online harassment or hate speech, where the systemic, pervasive targeting of women through misogynistic abuse of language, threats, non-consensual intimate imagery, doxxing and co-ordinated harassment campaigns facilitated by media outlets, content generators, online intermediaries, etc.

Women who participate in the ecosphere of social media, such as politicians, journalists, lawyers, academics, actors, entertainers, activists face disproportionate amount of hostile, sexualised and threatening comments and messages online that not only questions the mere incivility but the structural inefficacy of immediate actions by the legal enforcement. Research by Amnesty International found that women on twitter received abusive or problematic tweets at rates significantly greater than men. Additionally, the rate for women of colour was disproportionately higher still. The United Nation Special Rapporteur on Violence Against Women has documented the chilling effect of online violence, noting that such abuse marks a dire impact on women and drive them out of civic participation altogether. Therefore, online hatred towards women does not merely cause individual harm, it rather constitutes a systemic denial of women’s equal participation in the emerging digital public sphere.

Yet the legal response to this phenomenon remains deeply fragmented, conceptually uncertain and often procedurally inadequate. Liberal legal theory has historically constructed freedom of speech as a foundational right, essential for the preservation of individual autonomy, self-governance premised on the marketplace of ideas and the structural distrust of state censorship. These foundations are principally articulated in the constitutional jurisprudence of the United States and reflected its principles on the legal frameworks of India, the United Kingdom and Australia, however, it generates a significant resistance to content-based speech regulation even when the content in question is demonstrably harmful to identifiable groups.

This paper examines the adequacy of existing legal frameworks of India. It proceeds with a

brief introduction, situates the problem conceptually, examines the nature of misogynistic online speech and its legal characterisation. It conducts a comparative doctrinal analysis of freedom of speech frameworks and their treatment for hate speech in India, the United States, the United Kingdom and Australia. Additionally, it examines the specific legal mechanisms, such as criminal law, civil remedies, platform regulation and intermediary liability deployed to address gender-based hatred. Lastly, it develops a feminist jurisprudential critique of the existing frameworks and propose principles for a more adequate regulatory approach and ends with a conclusion.

2. MISOGYNY, HATE SPEECH AND THE PROBLEM OF ONLINE GENDER BASED VIOLENCE: A CONCEPTUAL FRAMEWORK

2.1 Defining the Phenomenon

Online hatred towards women is not a monolithic phenomenon but a cluster of harmful communicative acts united by their gendered targeting and at its most severe, it encompasses credible death and rape threats, non-consensual pornography (also known as revenge porn), doxxing (the public disclosure of private personal information to enable further harassment), and ‘swatting’ (making false emergency reports to provoke police intervention). Less severe but pervasive forms include: sustained campaign of abuse or mass trolling, sexually coloured remarks or insults and the algorithmic amplification of hostile content through platform engagement mechanics.

The term ‘hate-speech’ itself is contested in legal ecosystem. In its classic formulation, hate speech refers to expression that incites hatred against group or individuals defined by protected characteristics such as gender, race, caste, sex, religion, etc. However, this definition inadequately captures the specificity of online harm which frequently targets individual women rather than women as an abstract class. It leaves a psycho-social damage on the victim which is often beyond repair. Citron and Norton have argued for a broader concept of ‘cyber-harassment’ that attends to the cumulative, systemic nature of online violence as a form of discrimination, recognising that coordinated harassment campaigns targeting individual women are structurally equivalent to discriminatory acts in employment or housing.

The concept of ‘technology-facilitated gender-based violence’ (TFGBV), endorsed by United Nations (UN) Women and adapted in academic literature, captures this broader register. It

encompasses any form of violence against women against women that is perpetrated through digital medium and it foregrounds the relationship between online harm and broader patriarchal structures of power. This framing is essential for legal analysis because it shifts the inquiry from individual expressive acts to systemic patterns of gendered harm, therefore engaging the state's obligations under international human rights law to ensure substantive gender equality.

2.2 Why Free Speech Doctrines Struggle with This Problem?

The free speech doctrine in India struggles with online misogyny because it relies on an analog, constitutional framework under-equipped for digital realities. Article 19(1)(a) of the Indian Constitution protects free speech and expression, while Article 19(2) allows reasonable restrictions on grounds like 'decency' or 'public order.' However, online misogyny is not a simple offence against morality, it is a direct assault on a woman's right to dignity guaranteed under Article 21. Because gender equality is not an explicit ground for restricting speech under Article 19(2), courts hesitate to curb abusive speech without fearing constitutional overreach.

Furthermore, India's criminal laws, codified in the Bharatiya Nyaya Sanhita (BNS), treat harassment as an isolated, physical act. Provisions against stalking or insulting the 'modesty' of a woman assume a single, identifiable offender. They completely break down against asymmetric, coordinated online trolling, where thousands of anonymous accounts weaponize memes, doxxing and deepfakes. This algorithmic, decentralised abuse clears the high legal threshold required for criminal incitement, allowing systemic gender-based hostility to proliferate unchecked under the shield of free speech.

This doctrinal failure creates a severe chilling effect, violating the transformative spirit of the Constitution. When women face vicious, targeted vitriol, they routinely self-censor or withdraw from digital realm. While landmark judgments like *Shreya Singhal v. Union of India, 2015*, protected free speech by shielding social media intermediaries from arbitrary takedowns, they also placed an immense bureaucratic burden on victims. Women must secure formal court orders while viral abuse spreads instantly. Ultimately, the legal system faces a deadlock, treating speech purely as freedom from state intervention leaves the law blind to private, digital violence effectively denies women their constitutional right to equal democratic participation.

3. COMPARATIVE LEGAL FRAMEWORKS: FREE SPEECH AND HATE SPEECH REGULATION

3.1 India

The Indian constitutional framework for freedom of speech is guaranteed under Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression to all citizens. However, unlike the absolutist tenor of the United States First Amendment, the Indian constitutional framework explicitly contemplates reasonable restrictions. Article 19(2) allows parliament to impose restrictions on grounds including the sovereignty and integrity of India, public order, decency and morality, contempt of court, defamation and incitement to an offence. This structure reflects the Constituent Assembly's deliberate choice to embed a rights-and-limitations architecture, partly in response to the communal sensitivities of Post-Partition India.

The Supreme Court of India, through a substantial body of jurisprudence, developed 'reasonable restriction' standard that balances free speech against other constitutional values. In *Shreya Singhal v. Union of India*, 2015, the court struck down Section 66A of the Information Technology Act, 2000, which had criminalised the sending of 'grossly offensive' messages online, on the grounds that its terms were overbroad and constitutionally vague. *Shreya Singhal* is celebrated as a landmark decision for online free expression. However, it simultaneously created a doctrinal lacuna, it dismantled an overbroad provision without mandating a constitutionally adequate replacement, leaving significant regulatory space unoccupied.

India's hate speech framework is contained primarily in Sections 153A, 153B, 295A, 298, 505 and 509 of the Indian Penal Code (IPC), now recodified in part in the Bharatiya Nyaya Sanhita, 2023, Section 509 IPC, which penalises words, gestures or acts intended to insult the modesty of a woman is most directly applicable provision to online misogynistic content. However, it has practically focused on 'insult to modesty' rather than 'harm to autonomy or equality.' It reflects a Victorian conceptual framework that has been severely criticised as both paternalistic and practically ineffective. The provision has been successfully invoked in the content of social media abuse, partly because it engages archaic concepts of 'modesty' that sit uneasily with women's equal citizenship.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, impose due diligence obligations on social media platforms, including grievance redressal mechanisms. However, critics note that these rules are primarily oriented towards

national security and public order concerns and provide inadequate specific protections for gender-centric violence. The lack of a standalone legislative framework specifically addressing online gender-based harm represents a significant gap in India's digital rights architecture.

3.2 United States

The United States presents the most permissive free speech framework among major liberal democracies, anchored in the First Amendment's guarantee that 'Congress shall make no law establishment of religion, or prohibiting the exercise thereof; or abridging the freedom of speech.' The Supreme Court has interpreted this provision to require content-based restrictions only in narrow categories of 'unprotected speech', such as, true threats, incitement to imminent lawless action, obscenity, defamation, etc. Hate speech as such is not an unprotected category in United States constitutional law. In the case of *Matal v. Tam*, 2017, the court unanimously reaffirmed that offensive speech is protected expression.

The consequence for online gender-based harm is profound. While credible 'true-threats' may be prosecuted under federal and state law, the vast majority of misogynistic online speech is abusive, degrading and designed to intimidate falls within the constitutionally protected zone. Section 230 of the Communication Decency Act, 1996, compounds this difficulty by granting social media platforms near-complete immunity from liability for third-party content. Section 230 is a famous immunity clause, it has been described as 'the law that created the modern internet,' but feminist scholars argue that it has also created a permissive environment for the systematic abuse of women online.

At the federal level, there is no comprehensive statute addressing online gender-based harassment. The Violence Against Women Act (VAWA) has been updated to include cyberstalking provisions, but prosecutorial threshold remains high. Several states have enacted specific cyberstalking, cyber-harassment and non-consensual pornography statutes with varying degrees of effectiveness. The United States model thus demonstrates the limits of a purely liberal framework, such as, stronger speaker-centric protections are purchased at the price of inadequate remedies for gendered harm.

3.3 United Kingdom

The United Kingdom's framework represents a more interventionist approach, grounded in the

European Convention of Human Rights (ECHR) as domesticated by the Human Rights Act 1998. Article 10 of the ECHR guarantees freedom of expression but explicitly permits proportionate restrictions to protect the rights and freedom of others. The UK's hate speech law is contained in the Public Order Act, 1986 and Racial and Religious Hatred Act, 2006, though neither statute specifically covers hatred on the grounds of sex or gender, a significant omission documented by the Law Commission in its 2021 review.

The Online Safety Act, 2023 constitutes the most significant recent development in UK digital law. The Act imposes on 'Category 1' platforms (the largest social media companies) a 'duty of care' to protect users from both illegal and harmful content. It includes provisions specifically addressing violence against women and girls as a priority category of harm. Platforms are required to conduct risk assessments for gender-centric harms and to take proactive steps to prevent them. The Act also creates new criminal offences of sending communications that are false, threatening or designed to cause distress, replacing the older Communications Act 2003 offence that had been criticised as overbroad in some respects and under-inclusive in others.

The UK model is significant because it deploys a regulatory rather than purely criminal architecture, imposing ex ante obligations on platform rather than relying solely on ex post criminal prosecution of individual speakers. This approach acknowledges the structural dimensions of online harm and locates responsibility at the level of platform design and governance. However, critics raise concerns about the potential for over removal of legitimate speech by platforms seeking to avoid regulatory liability.

3.4 Australia

Australia's approach combines statutory hate speech provisions at the federal and state levels with a common law tradition that lacks a constitutional free speech guarantee comparable to the First Amendment or Article 10 of the ECHR. The High Court of Australia has recognised an implied freedom of political communication in the Constitution but this is structurally distinct and more limited protection than individual rights-based frameworks. The Online Safety Act, 2021 established a new framework for online safety regulation, including a Cyber Abuse Scheme for Adult Australians that provides a mechanism for removing 'seriously harmful' content targeting specific individuals. The e-Safety Commissioner is empowered to issue removal notices to platforms and in limited circumstances to providers.

State and territory laws supplement this framework with specific provisions on cyberstalking, harassment and non-consensual image sharing. The Australian model is notable for its creation of a specialised regulatory authority with proactive enforcement powers rather than relying solely on criminal prosecution or civil litigation. However, the standard of ‘seriously harmful’ content remains contested and critics note that the enforcement mechanism is primarily reactive rather than structural.

4. LEGAL MECHANISMS FOR ADDRESSING ONLINE GENDER-BASED HATRED

4.1 Criminal Law

Criminal law constitutes the traditional response to the most severe forms of online based violence. Most jurisdiction maintain criminal offences applicable to online threats, harassment, stalking and non-consensual intimate image sharing. In India, Section 354D IPC (cyberstalking) and Section 67A of the Information Technology Act, 2000 (transmission of sexually explicit material) are among the relevant provisions. In the United Kingdom, the Protection from Harassment Act, 1997, the Malicious Communications Act, 1988 (now replaced by the Online Safety Act, 2023 provisions) and the Voyeurism (offences) act 2019 address specific forms of online abuse. Australian state criminal code has progressively introduced offences for cyber based gender-centric violence.

Despite the legislative landscape, criminal law has demonstrated limited effectiveness due to various structural factors. First, the threshold criteria: credible threat, intent, jurisdictional link (it omits numerous online abuses that are still deeply damaging. Secondly, probing and legal action demand considerable police resources that numerous departments have not utilised in gender-based online incidents, partly due to an institutional underappreciation of these issues. Third, the global aspect of social media allows offenders to often act across different jurisdictions, resulting in enforcement gaps that domestic criminal law struggles to close. Fourth, the extent of online harassment aimed at women far surpasses the capacity of the criminal justice system, resulting in selective prosecutions that often rely on the persistence of the victims.

4.2 Civil Remedies

Civil remedies including defamation, harassment torts, privacy torts and data protection claims

offer an alternative or complementary avenue. Defamation law is available where abusive content makes false statement of fact, but it is largely inaccessible to most women facing online harassment, litigation is expensive, the falsity requirement excludes opinion-based abuse and the availability of anonymity to perpetrators creates significant identification difficulties. The development of ‘harassment tort’ in UK law following *Majrowski v. Guy’s and St Thomas’s NHS Trust, 2006* and its online extension offers some promise but it requires sustained conduct rather than single incidents.

Non-consensual intimate image (NCII) torts have been recognised in several jurisdictions with courts in the UK and Australia awarding damages against both individual perpetrators and in limited circumstances, social media platforms. India lacks a specific civil remedy for NCII, though tortious and constitutional remedies have been invoked with mixed success. Privacy based claims founded on Article 21 of the Indian Constitution (which encompasses a right to privacy following *K.S Puttaswamy v. Union of India, 2017*), the UK’s developing privacy tort and data protection law are increasingly available but remain technically complex and financially inaccessible to most women.

4.3 Platform Regulation and Intermediary Liability

The most consequential emerging area of legal development concerns the regulatory obligations of social media platforms as intermediaries. Platforms occupy a structurally unique position, they do not generate harmful content but they design the system that amplify and distribute it, they profit from engagement that harmful content generates and they possess the technological capacity to identify and remove it. The question of whether and how to make platforms legally responsible for hosted content is the central battleground of digital law.

The United States Section 230 model, as noted above, provides near-absolute immunity. The European Union’s Digital Services Act, 2022 (DSA) adopts a sharply different approach, imposing risk assessment obligations on Very Large Online Platforms (VLOPs), transparency requirements, user empowerment tools and enforcement by national Digital Services Coordinators. The DSA explicitly identifies gender-based violence online as a systemic risk that VLOPs must assess and mitigate. This represents the most developed regulatory framework currently in operations for platform level accountability for online gender-based harm.

India's IT Rules 2021 require significant social media intermediaries to appoint a Grievance Officer, provide monthly compliance reports and enable traceability of originating sources of the messages. The Supreme Court in the landmark case of *Facebook Inc. v. Union of India, 2019*, upheld the Government's power to regulate intermediaries in the public interest. However, the regulatory framework has been criticised for privileging governmental control over the protection of individual users from private harm. The absence of an independent regulatory authority with mandates focusing on gender-based harm is a significant structural deficiency.

Platform self-regulation, community standards, content moderation policies and trust and safety teams has been the predominant mechanism to date, but its inadequacy is well documented. Inconsistent enforcement, opaque decision-making, inadequate resources for languages other than English, language moderation and the fundamental conflict between engagement maximisation and harm minimisation all undermine reliance on platform self-governance as an adequate response to systemic misogynistic abuse.

5. FEMINIST JURISPRUDENTIAL CRITIQUE AND THE CASE FOR CONTEXTUAL REGULATION

5.1 The liberal Free Speech Model and Its Feminist Critics

Feminist legal scholars have mounted sustained and powerful critiques of the liberal free speech model as applied to misogynistic speech. Catherine MacKinnon's foundational agreement, that pornography and hate speech against women constitute acts of sex discrimination that silence women's speech rather than facilitating it. It challenges the foundational premise that the speech market is a level arena in which more speech is always the adequate remedy for harmful speech. For Mackinnon, the invocation of free speech in defence of misogynistic content is not a content neutral principle, it is a substantive choice to protect speech that perpetuates male dominance over women.

Mari Matsuda and Richard Delgado, renowned feminist jurists, in the context of Critical Race Theory (CRT) and its application to gender, have argued that hate speech inflicts psychological injury of a peculiar severity precisely because it communicates to its targets and that they are despised by their reason of membership in a subordinated group. The liberal response 'more-speech' fails to address this harm because it places the burden of response on the target, who

is already psychologically injured and practically disadvantaged from resources and reach relative to coordinated harassment campaigns.

Flavia Agnes and Vrinda Grover, among renowned Indian feminist scholars, have drawn attention to the ways in which the Indian constitutional framework, despite its structural openness to restriction of speech, has in practice been deployed asymmetrically, the speech of women, activists, journalists and dissidents has frequently been criminalised under provisions like Section 66A and Section 295A, while misogynistic abuse directed at women has been tacitly tolerated. This asymmetry reflects not a principled application of constitutional values but the gendered exercise of regulatory discretion.

5.2 Towards a Framework of Contextual, Gender-Sensitive Regulation

The inadequacies of both the absolutist liberal model (which immunises misogynistic abuse) and crude content-based prohibition (which risks suppressing legitimate expression) suggest the need for a principled middle framework. Building on feminist jurisprudence, equality theory and comparative regulatory experience, this paper proposes five interconnected principles for a more adequate legal approach.

First, the principle of substantive equality requires that free speech doctrine explicitly reckon with the unequal distribution of expressive power and harm. A legal framework committed to substantive equality cannot treat misogynistic speech systematically silences women as equivalent in value to the political, artistic and epistemic speech that free speech doctrine is designed to protect. Courts and legislators should be guided by the effect of speech on women's equal participation in public life, not merely by the formal content of the message.

Second, the principle of platform responsibility requires that intermediaries be treated as active agents in the production of online harm, not merely passive conduits. Platform design decisions, algorithmic qualifications, anonymity architecture, engagement incentives, content moderation resourcing, materially determine the scale and severity of online gender-based harm. Legal frameworks must impose substantive, enforceable obligations on platforms to conduct gender impact assessment, report on enforcement transparency and bear proportionate liability for systemic failures of harm prevention.

Third, the principle of contextual harm assessment rejects the binary between protected and

unprotected speech in favour of a contextual analysis that attends to the specific communicative context, the target's vulnerability, the cumulative effect of speech campaigns and the presence or absence of power asymmetry between speaker and target. The distinction between a single offensive tweet and a coordinated month-long harassment campaign is legally significant and must be reflected in doctrine.

Fourth, the principle of accessible remediation requires that legal mechanism be practically accessible to women who are targets of online abuse. This demands attention to legal aid, anonymity for complainants, expedited procedures for removing harmful content and cross-jurisdictional enforcement mechanisms. The existence of a legal remedy in theory is of limited value if it is financially and procedurally inaccessible in practice.

Fifth, the principle of democratic accountability requires that speech regulation operate through transparent, independent and democratically accountable institutions rather than through unreviewable platform algorithms or governmental discretion. The experience of India's IT Rules, 2021, demonstrates the danger of regulatory frameworks that primarily serve governmental content-control interests while leaving women's protection unaddressed. Specialised, independent regulatory bodies, like the UK's Ofcom in its Online Safety Act role and Australia's e-Safety Commissioner represent a more structurally appropriate institutional design

5.3 International Human Rights Law as a Framework

International human rights law provides a normative framework that transcends the limitation of domestic doctrine. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees freedom of expression but permits restrictions 'provided by law' and 'necessary' for the respect of others or for the protection of national security, public order, health or morals. The UN Human Rights Committee, in General Comment No. 34, has emphasised that restrictions must be proportionate and must not be used to silence dissent.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by India, the United Kingdom and Australia. It obliges state parties to take all appropriate measures to eliminate discrimination against women in all fields. The CEDAW Committee's General Recommendation No. 35 of 2017, updated General Recommendation No. 19 on violence against women, explicitly addresses online and technology facilitated

gender-based violence and calls on states to adopt comprehensive, multi-sectoral and adequately resourced responses. States' CEDAW obligations thus generate positive duties to regulate online gender-based violence that go beyond the negative liberty framework of classical free speech doctrine.

The Beijing Platform for Action, the Sustainable Development Goals (particularly SDG 5 on gender equality and SDG 16 on peaceful and inclusive societies) and the work on the United Nations Special Rapporteur on Violence Against Women and Girls collectively constitute a normative environment that increasingly treats online gender-based violence as a public policy priority of the first order. Domestic legal system that failed to respond adequately to this challenge are not merely deficient by the standards of feminist-jurisprudence, they are in breach of their international legal commitments.

6. CONCLUSION

This paper had examined the complex and contested relationship between freedom of speech on social media and hatred towards women. The analysis demonstrates that the dominant legal frameworks, whether the absolutist liberal model of the United States, the rights and limitations structure of India, the duty of care architecture of the United Kingdom, or the regulatory model of Australia, all exhibit significant inadequacies in protecting women from systematic online gender-based violence while upholding the core values of free expression.

The inadequacies are not merely technical; they are structural. They reflect the historical construction of free speech doctrine by and for speakers who were disproportionately male, propertied and public in contexts that did not anticipate the algorithmic amplification of misogynistic abuse at platform scale. They reflect a systemic under-evaluation of the harms suffered by women, treated as private, psychological or merely offensive rather than as public, constitutional and discriminatory and they reflect the institutional capture of regulatory space by platforms whose commercial incentives are structurally misaligned with harm prevention.

The way forward demands doctrinal innovation anchored in substantive equality. Free speech must be theorised, not merely as the freedom of the speaker to transmit but as the freedom of all citizens, including women to participate in democratic discourse without being driven out by coordinated campaigns of gendered abuse. Platform regulation must be treated as a matter of public law, not private governance. Remedies must be made accessible and the International

human rights obligations of states under CEDAW and the ICCPR must be treated as operational constraints on domestic regulatory design, not aspirational declarations.

The argument is not that misogynistic speech should be prohibited by reason of its offensiveness or immorality. It is the more precise and legally defensible claim that speech whose demonstrable, systematic effect is to exclude women from equal participation in public life crosses the threshold from expression to discrimination and that a legal system committed to substantive equality has both the power and the obligation to address it. The silence of the law in this domain is not neutrality, it is a choice and its costs are borne disproportionately by women.

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