



Gender Watch

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COVER STORY

Transgenders in India: Issues and Challenges

Introduction

Ostracised from the mainstream society and victim of widespread discrimination, India's transgender population is one of the country's most marginalised groups. It is estimated that there are between 2-3 million transgender persons living in this nation. The social intolerance transgenders face in their everyday lives – in places such as schools, universities, workplaces, etc. – effectively violates their right to life and personal liberty, provided to them under Article 21 of the Indian Constitution.

Even though the Supreme Court has formally recognised their gender identity, right to vote and contest elections, transgenders in India are still forced to take a step back due to the unequal treatment they received from the society, debarring them from exercising these rights. The life of a transgender, then, seems to be a never ending fight for not only legal rights, but also for social recognition and respect in the society.

The failure on behalf of the parents to accept the real identity of their child as a transgender as opposed to the traditionally practised gender roles, in most cases, leads to the end of the relationship due to non-acceptance or might be the beginning of an unhealthy relationship that involves domestic or in extreme cases, a state of depression and isolation.

“I was in the 10th standard I realized that the only way for me to be comfortable was to join the hijra community. It was then that my family found out that I frequently met hijras who lived in the city. One day, when my father was away, my brother, encouraged by my mother, started beating me with a cricket bat. I locked myself in a room to escape from the beatings. My mother and brother then tried to break into the room to beat me up further. Some of my relatives intervened and brought me out of the room.” - Siddharth Narrain

Given this context, the present article attempts to provide a brief picture of the historical, social and legal landscapes that have shaped the lives of transgender in India. Starting with highlighting the colonial genesis of discrimination towards transgender in India, the article goes on to examine the current social and legal challenges that the transgender community in India faces today. The article finally suggests some measures that the state should adopt to bring transgender from the fringes of socio-economic growth to the centre.

Historical Picture

Scholarly evidence highlights that historically in India the social boundaries that divided transgenders from the non-transgenders were either blurred or missing. For instance, as Serena Nanda argues, Islam in India has historically provided a model of an “in-between gender” – which is not mythological, but “a true historical figure.”¹ During the Delhi Sultanate and the Indian Mughal Empire, eunuchs served as confidants, political advisors, *darwans*, and guardians of the harem.² The *hijras* also played a prominent role in the narratives of ancient Hindu mythology. In the epic *Ramayana*, Rama gifted the *hijras* the power to confer blessings on people on auspicious occasions like childbirth and marriage.³ According to Ruth Vanita, Puranic stories narrating the sex change of devotees such as Narada and Arjuna, highlight that in Hindu mythology, “gender, like the body itself, is seen as a garment, a disguise ... and is not rigid and unchangeable, nor does it fully determine the self.”⁴ Similar readings from literature and history indicate towards the prevalence of a vast degree of gender fluidity in the Indian subcontinent.

However, many have argued that after the advent of British rule, as the colonial state expanded, so did the sexual/gender dichotomy that was established in the West and was historically alien to India. As Ruth Vanita and Saleem Kidwai note, the British raj marked a “transitional phase” in the Indian society where “older indigenous discourses of same-sex love and romantic friendship came into dialog with the new Western legal and medical discourses of homosexuality as an abnormality or an illness.”⁵ This association of homosexuality with deviance was concomitant with legal interventions by the colonial state that penalised all non-heterosexual modes of living. Both section 377 of the Indian Penal Code and the 1897 amendment to the Criminal Tribes Act, 1871 solidified the link between sexual non-conformity and criminality. Under the amendment, subtitled ‘An Act for the Registration of Criminal Tribes and Eunuchs,’ the local government was required to keep “a register of the names and residences of all eunuchs residing in any town or place ... who are reasonably suspected of kidnapping or castrating children or committing offences under section 377 of the IPC.”⁶ It is pertinent to note that the colonial policing of transgenders was not only restricted to their sexual lives; even their social lives were rendered illegal, since the amendment decreed eunuchs as “incapable of acting as a guardian, making a gift, drawing up a will or adopting a son.” (ibid)

The Current Social Context

The legal norms established by almost a century of colonial rule continue to find their way into the social landscape of post-colonial India. Section 377, earlier repealed in 2009 but reinstated in 2013, stays firmly in place as ‘constitutional.’ In such a scenario, the landmark judgment by the Supreme Court in 2014, which created the third gender status for *hijras* and transgenders, was seen as a major sign of relief, as it was the first time that the third gender had got a formal recognition. Despite the legal and social efforts that aim to establish equality above gender, transgenders are still considered to be at the lowest rung of the society – largely subjected to extreme discrimination in every field of life whether it is health, employment, education, sexuality or social acceptability.



Source: <https://www.scoopwhoop.com/Laxmi-Narayan-Tripathi-Quotes/>

The restricted participation in the social and cultural environment eventually deprives the transgender of accessing minimum and formal education and they sometimes are forced to resort to begging or prostitution. The main reason behind this unequal treatment is the stigma and discrimination attached with their identity. As a result, of which they are left with fewer opportunities as compared to others. In terms of employment, The Universal Declaration of Human Rights asserts the rights of individuals to work at the job of their choice, receiving equal pay for equal work, without discrimination. Yet far too often, transgender people are denied these basic human rights.

“Access to education and consequently to employment continue to evade the transgender community. Transpeople continue to face the violation of their right to life, facing unreported and unregistered hate crimes. There is very poor access to health and medical care, and many transpeople continue to be pathologised as having ‘gender identity disorder’ due to inaction by the Medical Council of India.” - Vjayanti Vasanta Mogli, Transgender Activist

They also experience discrimination when accessing health care, and are subject to disrespect and harassment (sometimes leading to violence) and outright denial of service. Whether seeking preventive medicine or transgender related services, including counselling and hormone replacement therapy, access to appropriate restroom facilities, knowledge and accessibility of contraception and the lack of provision of separate wards for transgender person’s basic healthcare is an unachieved journey. The transgender communities also face several sexual health issues including HIV.

“The biggest lacuna in the system is that nobody knows the real definition of a transgender. Sensitisation will not help until people are ready to accept change and acceptance can come only through education.” - Manabi Bandopadhyay

Legal Challenges

Legal issues can be complex for transgenders or intersex people. The struggle begins with their fight for gender identity. The legal system of the country has entrenched the marginalisation and stigma of this community by failing to provide them their basic civil and human rights. It has perpetuated transphobia and encouraged the notion that they are 'not normal'. Despite international obligations towards basic human rights and non discrimination, the transgender community continues to risk constant violation of their rights and dignity. Their status as the third gender and recognition as an economically backward class entitled to reservation, although acknowledged by the Supreme Court in its 2014 judgement finds little relevance in everyday life since the bill tabled in 2016 omits these provisions from its ambit. This bill drafted by the Ministry of Social Justice in 2016 reflects a crippling apathy and ignorance towards the problems faced by this community and a general lack of understanding of their group dynamics. Even though attempts by the Parliament at enacting laws for protection of transgender rights have sought to address and curb offences against them, it has always fallen short of the required tenacity to implement them. The bill reflects the complacent attitude adopted by the legislature towards serious crimes committed against transgenders and the reluctance to address them at a comprehensive level. Transgender rights cannot be executed in isolation. It will require other laws of the country, especially cisnormative ones to be amended to specify a third gender without which it creates a limbo. Laws like IPC and personal laws including family matters do not have the provisions to include a third gender and thus, it is unclear as to the redressal available in case of sexual offences against transgenders or even in matters of marriage and divorce. Another major obstacle in the way of realisation of rights of this community is Section 377 of IPC which criminalises same sex relationships and compels them to live in fear of the law rather than seeking relief in it. It makes it difficult to approach the law in case of any sexual assault against them and subjects them to brutal police conduct. In the most fundamental sense, it is an arbitrary law used as tool of harassment by the police and is a denial by the State of a person's basic civil and political rights as is enshrined in all international human rights laws. But any debate along the lines of repealing or amending it has been deftly avoided by the government while the judiciary also looked away. Under these circumstances, it is impossible to bring about any meaningful change in the lives of this community. Several NGOs and non profit organisations have led the way in pressurising the state governments to enact laws in their own states for welfare of transgender communities. Tamil Nadu and Karnataka are states which have been exemplary in introducing schemes for the benefit of transgenders. Although Tamil Nadu has successfully constituted a Transgender Welfare Board in 2008, the absence of a statutory position has restricted the Board from making any lasting impact. Since the last few years, the functioning of the Board has stalled as a consequence of changing policies by subsequent governments, thus once again highlighting the necessity of a constructive dialogue and framing an effective law with statutory safeguards.

Although a legal developments in this field have taken small steps forward, it is only when the underlying issues of transphobia and social isolation are addressed will there be a tangible change. There are several challenges that a transgender has to overcome to be able to avail the benefits of any law. Sometimes these challenges are internal, reflecting the

group dynamics at play. Some of the transgenders are apprehensive about moving out of the fringes of society while others are unable to due to the coercion exerted by ring leaders who control sex work and organised begging among this community. These are roadblocks that are often neglected by the lawmakers while drafting a law, thus limiting its effectivity. It is essential that dynamics within the community as well as with the mainstream society is correctly perceived by the law makers to ensure that it is tune with ground realities. For this, it is necessary to engage community leaders as well as members of civil society so that the benefits can permeate to the lowest strata. There are several organisations like Sangama and V-Can that have been working with transgenders on their issues and rights and have been pushing for a more inclusive law that takes into account the opinions and perspectives of members of the transgender community. Amnesty International India's 'Transgenders Rights are Human Rights' movement also focused on approaching the rights of transgenders through the lenses of their community and rejected the notion of the State arbitrarily deciding the solutions to their problems. These organisations have underscored the fact that any law introduced for the welfare of a community should be contextualised in the perspective of their social, personal and economic aspirations. This is the only way to ensure that there is genuine transformation.

The Way Forward

The current environment of isolation, exclusion and prejudice that is inherent to a transgender's life is a confluence of several factors arising from the heart of the society. Addressing the root of the problem will involve tackling the mindset of the people which is rooted in deep seated prejudice against this community. However, their rights and liberty cannot be subject to society's approval and the State should intervene to bring about progressive changes and safeguard their dignity. There are several measures that can be taken apart from introducing statutory protection. The effort to create an inclusive environment should begin at school by introducing policies that respect and affirm gender diversity. Rather than handling each case of discrimination as an isolated case, schools should proactively foster an environment that is free of gender bias. Several schools in the USA have introduced their own elaborate transgender policies and the results have shown a downward trend in transgender students facing gender based harassment, undergoing depression, social exclusion and subsequently dropping out of schools. Similar efforts by educational institutes in India will have a two-fold benefit of giving space for transgender children to grow up in a positive environment as well as inculcate in other students the ability to accept gender non conforming behaviour. Good education will also empower them to find sources of employment and economic independence, thus ensuring that they are not forced to live on the fringes of society. Some other suggestions that have been frequently made to assimilate them into the mainstream society are-

- Introduction of gender neutral curriculum in school
- Policies against discrimination of transgenders in work spaces
- Provision for penalising abortions of intersex foeticide
- Providing exclusive HIV zero surveillance centres for transgenders

- Career guidance as well as counselling services to deal with trauma and violence should be provided.
- Employment opportunities with reservation for transgenders as a backward class as directed by the Supreme Court in the NALSA judgment

These are small steps that will enable the transgender community to gradually overcome the trauma and stigma that long term deprivation has caused and with better economic opportunities, the risk of forced prostitution and beggary also reduces. This country and its society has a long way to go before it can completely remove the bias it has against transgenders but the legislature and the judiciary should continuously aim toward progressive measures and not be influenced by prevailing prejudices.

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EQUALITY

India's gender employment gap will ease if working mothers are provided reliable caregivers

Anoushaka Chandrashekhar & Parul Agarwal, FirstPost

A research conducted by IMFR in Rajasthan's Udaipur district shows that more mothers will opt to work outside their homes if they are they found caregivers who could relieve them of their household duties. The survey revealed that women spend 9.4 hours each day doing unpaid home chores as opposed to only 17 minutes of paid work. The Global Gender Gap Report ranked India 136th out of 144 countries in terms of women's economic participation and opportunities. Researchers have attributed a steady fall in women's participation in economic activities to the prevalent socio cultural norms and the everyday household activities imposed on a woman as well as the rise in household income. Patriarchy also has its role to play in restricting women from engaging in work outside homes. However since the major constricting factor was found to be the time used in doing unpaid labour, it is possible that women can engage in more economic activities if there are alternate caregivers in the household. However the study emphasised that the alternate caregivers should be people trained for this very purpose and parents should not delegate this to their older children who may not be very old themselves.

Read more: <http://www.firstpost.com/india/indias-gender-employment-gap-will-ease-if-working-mothers-are-provided-reliable-caregivers->

'When a woman uses law, she is accused of misuse; when an Indian woman uses law, she is labelled with bad character'

Times of India

Indira Jaising, former additional solicitor general and senior SC advocate, spoke on why she thinks the Supreme Court's recent direction stopping arrests or coercive action against accused husbands or their relatives charged in anti-dowry complaints under Section 498A of the Indian Penal Code and setting up family welfare committees in each district to verify such complaints will adversely affect anti-dowry cases. "I agree that strong action must be taken against anyone who abuses law. I do not support elderly men and women being arrested and roped in for no reason by anyone. No law should be misused by anyone. An allegation by a woman is not enough to make an arrest. The police must investigate the matter and then register a complaint, under the sections they deem fit", she said.

Read More:

<http://blogs.timesofindia.indiatimes.com/the-interviews-blog/when-a-woman-uses-law-she-is-accused-of-misuse-when-an-indian-woman-uses-law-she-is-labelled-with-bad-character/>

Calling husband by name disrespectful? Women challenge the ban

Thomson Reuters Foundation, NDTV

In a campaign against patriarchy in rural India, a common custom that most women disclosed is the practice of not calling the husband by his name as a sign of respect. This passive manifestation of patriarchy is as potent as any other form of violence as they express a kind of power play and display the superiority of men. The campaign also focused on other restrictions like freedom of movement, covering their heads around male presence and the shame and stigma associated with openly discussing domestic violence. This is attributed as one of the main reasons for low reporting of crimes against women. As a part of this campaign, women were trained to question and resist patriarchy through gradual steps and also to report instances of violence.

Read more:

<http://everylifecounts.ndtv.com/challenging-patriarchy-rural-women-call-their-husbands-name-aloud-for-the-first-time-15929>

Beti Bachao: The declining sex ratios of Indian cities

Tarun Amarnath, India Spend

Recent research conducted has revealed that the common perception of sex ratio being lower in rural areas is a misplaced notion and that data from urban centres have reflected worse performances by major cities. The estimated sex ratio in Mumbai is 852 and while Delhi has 832 followed by Hyderabad with 942. In a survey conducted in 500 cities across India, the average sex ratio was found to be 902 as opposed to the sex ratio of 923 in rural India. This suggests that discrimination and female foeticide has little correlation with development of a region. Even though World Bank data in 2015 shows an improvement in India's child sex ratio, it still has the fifth worst sex ratio in the world.

Read more:

<http://www.indiaspend.com/cover-story/beti-bachao-the-declining-sex-ratios-of-indian-cities-58694>

Slowly but surely, Rajasthan winning fight against female foeticide

Harsha Kumari Singh, NDTV

The Rajasthan government has effectively curbed sex determination and is steadily witnessing an increase in its sex ratio. Implementation of the PCPNDT Act, the anti sex determination law, has been commendable in Rajasthan with the state being the only one in the country implement the Act by introducing a separate bureau, police station and a lock-up inside the health department. The Bureau comprises of nodal officers, health officers etc and is led by a deputy superintendent level police personnel who reports to an IAS officer. They have their lawyers who follow up the case in the court up till conviction. Doctors involved with the PCPNDT Bureau track sonography machines in Rajasthan. All the machines in the state are fitted with Global Positioning System or GPS device and other sensors that record the number of sonographies done. However, most officers have stated that the real challenge was not the implementation but changing the mindset of the people. For now, the efforts of the state officials can be seen in the promising trend of results which has undergone an immense rise in the sex ratio from 888 in 2011 to 938 in 2016.

Read more:

<http://everylifecounts.ndtv.com/slowly-surely-rajasthan-winning-fight-female-foeticide-16083>

DEMOCRATIC PARTICIPATION

MP CM Shivraj Singh Chouhan announces 33% reservation for women in all state departments excluding forests

Outlook

Madhya Pradesh CM Shivraj Singh announced two major developments in the education sector for women. The developments include 33% of reservation for women in all state departments excluding forests. "I announce 33% reservation for our daughters in all departments, except forest department," Chouhan said. Citing high dropout rates, Chouhan also announced sponsorship on behalf of the State Government for students who would score more than 75 per cent marks in the intermediate examination.

Read More:

<https://www.outlookindia.com/website/story/madhya-pradesh-cm-announces-33-reservation-for-women-in-all-departments-excludin/300558>

'Women need more space in Indian politics'

Tehelka

Women's rights activist Dr. Ranjana Kumari, Director of Centre for Social Research in a recent interview, shares her views regarding the present female representation in the Parliament and the State Assemblies and the possible hypocrisy behind its static growth. She also discusses the Women Reservation Bill and related issues and her plans to push the long pending Bill that she believes is the key solution for establishing equality in opportunity. "I think equal opportunity includes equal participation — be it in corporate house, educational institutions, health sector or political power. For a long time, accesses and opportunities have not been in equal ratio. In spite of efficiency and competence, women are not being able to get proper and equal access in all sectors, including politics." she said.

Read more:

<http://www.tehelka.com/2017/08/women-need-more-space-in-indian-politics/>



Source: <http://twocircles.net/2017feb07/404247.html>

VIOLENCE AND SAFETY

Statistically, Nearly All the Sexual Violence Indian Women Experience Is Within The Marriage

Huffpost

Both the Government of India and the Supreme Court reiterated that marital rape cannot be considered as a legal offence in India. During the recent criminal law amendment ordinance, the official reason for not making any changes to this marital rape law was that it would weaken the institution of marriage. According to a nationally representative household survey of women, just 2.3% of the sexual violence experienced by women in India was by men other than their husbands. Apart from that, last year, the United Nations Population Fund and the International Centre for Research on Women surveyed more than 9,200 men across seven Indian states. “One-third of them admitted to having forced a sexual act on their wives, while 60 percent said they’d used some form of violence to assert dominance over their partners”.

Read More:

http://www.huffingtonpost.in/2017/08/10/statistically-nearly-all-the-sexual-violence-indian-women-exper_a_23073165/

In India, less than 1% women report gender based violence

Kajol Runwal, The Indian Express

According to WHO, one third of the women experience violence during their lifetime and 30% of the time, the perpetrator is in an intimate relationship with the victim. The global average of reporting of such cases is extremely low at around 7% while India fares worse at just 1%. A study conducted by two nursing students of Ersta Sköndal University College, Sweden in India suggested that nurses play a pivotal role in the reporting or non reporting of such gender based violence. It also highlighted the importance of a nurse fostering a relationship of trust in these cases and to be able to distinguish cases of gender violence which requires handling of emotional and mental health along with physical injuries.

Read more:

<http://indianexpress.com/article/india/in-india-less-than-1-women-report-gender-based-violence-4755393/>

ACCESS TO EDUCATION

IGNOU opens up to 10 more transgender students in Lucknow

Hindustan Times

Last month, after the Indira Gandhi National Open University announced the exemption of fee for its transgender students of all programs, the university's Regional Centre in Lucknow gave admission to 10 more transgender students in various courses. It also organised an awareness camp on higher education to attract more transgender students, a step appreciated by Payal Kinnar, the local head of the community, who believes that the efforts of the university would help bringing transgenders into the 'mainstream' and would also empower them.

Read more: <http://www.hindustantimes.com/lucknow/lucknow-10-more-transgender-students-enrolled-in-ignou-courses/story-rzlmfkeJh6nZ93MFVy3KfO.html>



ECONOMIC OPPORTUNITY

Why Indian Workplaces are Losing Women: Our Nationwide Investigation Begins

IndiaSpend

The article analyses the declining rate of female participation in the Indian workforce. In between 2004-05 and 2011-12, nearly 19.6 billion women quit jobs in India. The author suggests that a complex web of social-cultural-patriarchal norms constrains the agency of women. It was found that girls and women, more often than not, have to take the permission of their fathers, brothers, husbands and, worse, village panchayats, in order to work or even learn skills that will make them employable. This also explains the broken logical link between education and employment in the case of Indian women. In rural India, 67% of girls who are graduates do not work; in towns and cities, 68.3% of women who graduate don't have paid jobs.

Read more:

<http://www.indiaspend.com/cover-story/why-indian-workplaces-are-losing-women-our-nationwide-investigation-begins-53927>

Women in MGNREGS in Telangana and Andhra Pradesh

Economic and Political Weekly

Abstract: Based on secondary data from the National Sample Survey Office and a household-level survey of four villages in Andhra Pradesh and Telangana, the study found that the Mahatma Gandhi National Rural Employment Guarantee Scheme has a number of direct and indirect benefits. Overall, it was found that, in both rural Andhra Pradesh and Telangana, women's participation in the MGNREGS has been encouraging and beneficial.

Read more:

<http://www.epw.in/journal/2017/32/notes/women-mgnregs-telangana-and-andhra-pradesh.html>

LEGAL DEVELOPMENTS

Parliamentary committee reopens the surrogacy debate, says commercial surrogacy should be allowed

Scroll.in

A report by the Parliamentary Standing Committee on Health and Family Welfare on The Surrogacy (Regulation) Bill, 2016, argues in favour of commercial surrogacy, noting that 'altruistic surrogacy' can amount to "forced labour." The Committee also criticised the government for not basing the proposal for 'altruistic surrogacy' on any "scientific criteria." While many women's rights activists agreed with the Committee's stance of allowing commercial surrogacy lest allowing only altruistic surrogacy pushes the surrogacy market underground leading to further exploitation, Lalitha Kumaramangalam, the chairperson for National Commission for Women and others have supported the provisions to ban commercial surrogacy, suggesting that instead of making surrogacy a tool of economic empowerment for poor women, the government should focus on "providing education, skill development and training so as to empower them (women)."

Read more:

<https://scroll.in/pulse/847458/parliamentary-committee-reopens-the-surrogacy-debate-says-commercial-surrogacy-should-be-allowed>

Take steps to get transgender rights bill passed in Lok Sabha: Madras HC tells govt

Firstpost

The Madras High Court issued notice to the Assistant Solicitor General asking the status of the Rights of Transgender Bill, 2014. As the Court was directing the Madras University and Anna University to change the name and gender in the education certificates of a person who underwent a sex reassignment surgery from female to male, the judge also suo motu impleaded the Centre, Health and Family Welfare Department Secretary, union secretary of Social Justice and Empowerment and Secretary, Ministry of Law and Justice department as respondents.

Read more:

<http://www.firstpost.com/india/take-steps-to-get-transgender-rights-bill-passed-in-lok-sabha-madras-hc-tells-govt-3943695.html>

LEGAL DEVELOPMENTS

Fight for rights of transgender people in Kashmir continues undeterred

Mudasir Ahmed, *The Wire*

Despite the prevalent practice of discrimination and isolation of transgenders throughout the years, the community is striving for the realisation of their rights. Aijaz Ahmed Bund, an LGBT activist and scholar from Kashmir University has filed a PIL in the High Court seeking for their social, economic and political rights including recognition as a backward class. Data regarding transgenders in the valley is scarce as there is hardly any documentation of their lives throughout the ages. Their existence has been historically denied here even though the Koran recognises the transgender community. The PIL was filed on the ground that sources of employment and livelihood for the transgenders especially the older ones, whose major source of income and social acceptance was through match making, gradually diminished. The petitioners have mentioned that even though this was an attempt to protect their basic human rights, many senior lawyers have refused to represent the case, reflecting the deep seated social prejudices they face. However, a move by the Kashmir University accepting transgender rights as a topic for study is seen as a positive step forward.

Read more:

<https://thewire.in/168941/transgender-community-kashmir/>

OPINION PIECES FROM THE MEDIA



Source: <https://thewire.in/166766/section-498a-domestic-cruelty-laws/>

The Dangerous, False Myth that Women Routinely Misuse Domestic Cruelty Laws

The Wire

Vimochana, a women's rights organization, conducted a study in Bangalore for the years 2012, 2013, 2014 and 2015 to understand the implementation and effectiveness of Section 498A and related offences like Sections 3 and 4 of the Dowry Prohibition Act, 1961. It was found that the National Crime Records Bureau clubs accused persons who get anticipatory bail in the same category of 'arrested persons.' This falsely inflates the number of arrested men, whereas, it was found that over 70% of the accused persons had paid anticipatory bail and only about 24% of the accused persons were arrested in 498A complaints. This, and other findings of the study, runs contrary to the ugly picture painted by men's-rights-activists of women repeatedly misusing the domestic cruelty laws.

Read more: <https://thewire.in/166766/section-498a-domestic-cruelty-laws/>

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