PRIVACY INTERNATIONAL

Gender and Privacy

From Oppression to Liberation: Reclaiming the Right to Privacy



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Introduction

Privacy International has been defending the right to privacy across the world for the past 28 years. The foundation of our work is the concept that privacy is a protector of human dignity and an enabler of autonomy. We believe that the ability to enjoy and exercise the right to privacy enables people to establish space and boundaries, and thus grants them freedom to define themselves through self-actualisation and development of their identity and free thought. Privacy also creates a space to challenge power dynamics: strong standards of privacy provide a tool for the vulnerable to counter those with power.

But whose privacy are we talking about? Feminist scholars like Lindsay Weinberg from Purdue University warns against the risks of talking about rights in the abstract. Interviewed by Privacy International, she added, "When we treat the right to privacy as an absolute or inalienable right, we sometimes end up not able to grapple with the complexities and the ways that concept gets appropriated or abused."[1]

In her paper "Rethinking Privacy: A Feminist Approach to Privacy Rights after Snowden," she describes how the privacy rights discourse perpetuates the myth of the "sovereign subject," a model that presupposes that individual subjects are "free, self-possessive and equally able of entering into contracts." This model fails to acknowledge both "the exploitation of contractual relations" and "the historical exclusion of women from the category of individuals."[2]

Our series of interviews with privacy and gender rights activists across the world reflect nuanced and context specific experiences of the right to privacy. Bishakha Datta from the organisation Point of View in India, which aims at bringing women's voices in the public domain, said: "The notion of privacy varies from context to context. There is no universal definition of privacy. When we go to digital rights conferences, we are all talking about a shared notion of privacy that we all more or less agree on. And when we go back to India, if we do [a] workshop with urban middle-class women or more affluent teenage girls and women their notion of privacy will be somewhat similar. But the minute we start doing workshop with women coming from below a certain income level, we definitely find that the context changes and the understanding of privacy changes dramatically."

Class and income level are not the only factors in how we understand privacy. National identity, communities, and other factors also play a role. Datta added: "Sociologically, if we look at a country like India, while it doesn't hold for everybody, the level of individualisation[3] is not that high. There are many community identities or collective identities."

As Privacy International fights for the establishment of the highest standards for privacy protection for all, we must not overlook the singularity of the empirical

experiences of privacy: we must step away from the abstract to hear and take into consideration the stories of women, trans and gender diverse people. This report is an attempt to contest the concept of the sovereign subject and take into consideration the intersectional realities and experiences of privacy for women, trans and gender diverse people in different countries.

Looking beyond the abstract and lived experiences of privacy means taking note of the way privacy has been abused and appropriated by patriarchal systems of oppression. The first part of this report will examine how the concept of privacy has been exploited as a tool to enforce oppression, with a particular focus on patriarchal systems.

We have also chosen to explore the uniqueness of the experience of surveillance for women, trans and gender diverse people. Surveillance generates and magnifies power, and thus goes hand in hand with systems of oppression. We believe intrusions on privacy present oppressors with an opportunity to exert control: the more intelligence is held about individuals and groups, the more the surveilled subjects' thoughts and actions can become predictable and manipulatable.

As we will show, scholars and thinkers have documented how surveillance disproportionately affects those in the most vulnerable positions in societies, and have highlighted how surveillance has been used to enforce a heteronormative vision of society. For instance, benefits and other forms of state support can turn into systems of surveillance and exclusion. The second part of this report details the various layers of surveillance women, trans and gender diverse people's experience: from the social surveillance they are exposed to at home and in their communities, to state and corporate surveillance.

We believe that the response to the surveillance of women, trans and gender diverse people – and part of the broader response to their oppression – can come in part from the reclaiming of the right to privacy. Far from being an abstract right reserved to a mythical sovereign subject or a tool of oppression exploited by a patriarchal society, we aim to defend a privacy, as a concept which can be appropriated by women, trans and gender diverse people and marginalised groups in their fight for equality.

We write this report in the hope that those fighting patriarchy and intersecting systems of oppression will feel empowered to reclaim and reinvent privacy as a tool for their liberation. This is the privacy we want to fight for.

Methodology

From May to September 2018, Privacy International undertook a scoping process on gender and privacy. We interviewed 23 individuals and organisations who are working on the right to privacy, on gender issues and on the intersection of the two topics. The following organisations and individuals were interviewed:

Africa

Dorothy Mukasa (Unwanted Witness) – Uganda

Latin America

Jeannette Torrez (Asociación por los Derechos Civiles) – Argentina
Mariana G. Valente (Internet Lab) – Brazil
Marianne Díaz (Derechos Digitales) – Chile
Romina Garrido (Datos Protegidos) – Chile
Paz Peña – Chile
Amalia Toledo (Fundación Karisma) – Colombia
María Ximena Dávila (Dejusticia) – Colombia
Lucía Canjura – Guatemala
Gisela Pérez de Acha – Mexico
Maricarmen Sequera (TEDIC) – Paraguay

North America

Sarah Jamie Lewis (Open Privacy) – Canada
Lindsay Weinberg – USA

Asia

Ambika Tandon (Centre for Internet & Society) – India
Bishakha Datta (Point of View) – India
Smita Vanniyar (Point of View) – India
Blandina Lintang Setianti (ELSAM) – Indonesia
Shmyla Khan (Digital Rights Foundation) – Pakistan
Naomi Fontanos – Philippines
Jessamine Pacis (Foundation for Media Alternatives) – Philippines
Thina Lopez (Foundation for Media Alternatives) – Philippines

Europe

Clara Gonzales – France
Ellie Cosgrave (UCL) – UK
Catherine Murphy (Amnesty International) – UK
Leonie Tanczer (UCL)– UK

The interviews were conducted by Eva Blum-Dumontet, Researcher at Privacy International and the questions focused on the experience of the organisation/ individual in working on gender rights, the local context, and current discourse around gender and feminism in their country, and areas of friction and empowerment between the privacy and gender rights.

We also reviewed the work that academics, journalists, and NGOs have done on the topic. While our exploration of the field cannot claim to be exhaustive, we highlight some of the important research and commentaries on particularly pressing issues.

On September 13th and 14th, 2018, we organised a workshop on gender and privacy where members of the Privacy International Network were joined by experts to discuss this report, as well as their own research, and explore avenues for strategy and future collaboration. We are very thankful for the guidance the Privacy International Network has given us during this process, and for their time and commitment to supporting our efforts.[4]

Privacy International also benefitted from the input and expertise of Kalyani Menon-Sen from Gender at Work, and we are grateful for her support and assistance.

Definitions and premises

Feminist discourses have given rise to debates and diverging views on gender and its implications. In our effort to promote privacy as the right to establish one's own boundaries, we align ourselves with a feminist tradition that understands **gender** as a socially- and culturally-constructed interpretation of biological sex. As Judith Butler wrote in *Gender Trouble*: "Gender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being."[5]

Gender norms, as imposed by societies, limit space, freedoms, opportunities, possibilities and rights of persons in general but in particular of persons that do not "fit" established binary and cis gender norms.

Drawing on our understanding that gender identity falls under the realm of privacy – where privacy is understood as the right to self-define or the right to choose how to present segments of one's identity – we believe individuals should be free to define their own gender.

As such we define **woman** as any individual choosing to identify as a woman. Likewise, we define **man** as any individual choosing to identify as a man. We will also use the terms "trans" and "gender diverse" to acknowledge individuals who do not identify themselves within binary gender roles.

We understand **gender rights** as the right to equality in regard to responsibilities and opportunities.[6] We define **feminism** as the fight for gender equality among all genders and the dismantling of patriarchy.

We define **patriarchy** as the system of oppression which structures the world we live in, in which women, trans and gender diverse people are largely excluded from power, and heteronormativity is enforced.

We appreciate that the experience of every woman, trans and gender diverse person is unique and complex. The diversity of women, trans and gender diverse people's experience is impacted – among other things – by racial, cultural, societal, geographical and economical context as well as their health and age. For that reason, understanding patriarchy alone is not a sufficient framework to reflect on the experience of, for instance, a disabled woman or the experience of a working-class woman. This is why Privacy International adopts an intersectional approach to gender rights. 'Intersectionality' was coined by Kimberlé Williams Crenshaw "to highlight the overlapping vulnerabilities that are at play in shaping the life chances of some of society's most vulnerable populations: women who are poor, of color, or who are undocumented."[7]

The Association for Women's Rights in Development describes an 'intersectionality analysis' as aiming to "address the manner in which racism, patriarchy, class oppression and other systems of discrimination create inequalities that structure the relative positions of women."[8] To the best of our knowledge and capacities, we attempt to take into consideration the various factors which contribute to people's oppression. In our work we will be talking about **patriarchy and systems of oppression** in order to address the other systems of oppression (e.g. racism, imperialism, capitalism, ableism, ageism…) which, combined with patriarchy, define the experience of oppression that women, trans and gender diverse people are subject to and experience.

In this report, we define **surveillance** broadly as the gaze of people, corporation and institution used to exert control over individuals and group of people. It is a power generator and magnifier.

In the first instance, the purpose of this report is to challenge a notion of the right to privacy which has been promoted and exploited by patriarchy and intersecting systems of oppression. This report will explore how the right to privacy has been exploited by patriarchy and systems of oppression to sustain themselves as well as isolate and exclude women, trans and gender diverse people populations and their realities from the public discourse. The legal and philosophical appropriation of privacy has led to narrow definitions that have revolved around the right to be left alone, the inviolability of homes, or the secrecy of communications.

This report is an opportunity for us to offer a more holistic and inclusive understanding of privacy. Whilst definitions of privacy may vary – defined by each of us through the singularity of our backgrounds and experiences – the right to privacy is one which allows us to manage boundaries, a barrier which protects who we are from others in society, from governments and corporations, so that we retain control. It is the right to define and segment our identity to decide who is allowed to see which side of it and where our identity is extended to our physicality. It is a protector of human dignity and an enabler of autonomy.

In this first part, we look at the appropriation of the right to privacy by patriarchy

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and systems of oppression, both from a legal and from a cultural standpoint. We will also explore how anonymity may be used to silence and exclude others from the public discourse.

Whose privacy is the law protecting?

In the English-speaking world, the first legal reference to privacy appears to go back to 1361, with the Justices of the Peace Act in England, which provided for the arrest of 'peeping toms' and eavesdroppers. Early references to the right to privacy have one thing in common: the concept is inextricably linked to the notion of private property and ownership.[9]

In 1765, British Lord Camden invalidated a warrant to enter a house and seize papers, writing: "We can safely say there is no law in this country to justify the defendants in what they have done; if there was, it would destroy all the comforts of society, for papers are often the dearest property any man can have."[10]

In 18th century Britain, Parliamentarian William Pitt wrote: "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow though it; the storms may enter; the rain may enter – but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."[11]

At the same period in France, the French revolution would lead in 1792 to the proclaiming of the Declaration of the Rights of Man and the Citizen, which remains to this day the foundation of the French constitution. Article 2 of the constitution establishes the right to property as a "natural and imprescriptible right of Man": "The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression." Article 17 defines property as "inviolable and sacred": "Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid."[12]

A century later, the right to privacy was addressed as such in law, with American lawyers Samuel Warren and Louis Brandeis defining it as "the right to be let alone."[13]

In international human rights law, the right to privacy as we know it is provided for in

Article 12 of the Universal Declaration of Human Rights:

> **No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.**[14]

From 1361 to 1948 some themes associated with the right to privacy have remained in essence the same throughout the ages. The right to privacy is linked to private property, the "home" and "family."

Until recently, laws have largely been written by men, and for men. This is reflected in the wordings of those pieces of legislation, in which the word "man" and male pronouns are used: "papers are often the dearest property any man can have"; "The poorest man may in his cottage bid defiance to all the force of the Crown"; "the natural and imprescriptible rights of Man"; "No one shall be subjected to arbitrary interference with *his* privacy." The criticism of the male focus in legal text is not new: in 1791, French feminist Olympe de Gouges published "The Declaration of the Rights of Woman and the Female Citizen" to call attention to the failure of "the Declaration of the Rights of Man and the Citizen" to address gender inequality.[15]

It is worth bearing in mind that to this day many women are excluded from having private property: laws which protect the inviolability of the home were not meant to apply to women. As argued by Engels in his 1884 work, *The Origin of the Family, Private Property and the State*, patriarchy cannot exist without private property. Men own property, and what they do with it is their prerogative, falling under their right to privacy – and the married woman is part of a husband's property.[16]

With the right to privacy designed to ensure men would be free to do as they please in their own homes, without having to fear interference or consequence, it is no surprise then that the right to privacy has been used by men in cases of domestic violence. In "The Violence of Privacy," law professor Elizabeth M. Schneider explores how the right to privacy has been used to support violence. She writes that "notions of marital privacy have been a source of oppression to battered women and have helped to maintain women's subordination within the family." When homes become a lawless place, the right to privacy becomes a "get out of jail free card" for perpetrators of domestic violence. "For women in the United States, intimacy with men, in and out of marriage, too often results in violence. The concept of freedom from state intrusion into the marital bedroom takes on a different meaning when it is violence that goes on in the marital bedroom," writes Schneider.[17]

In countries where marital rape is not recognised, marriage becomes a means of removing women's rights inside their homes. In explaining why marital rape should not be considered as rape in a submission to the Delhi High Court, the Indian government argued the risk that marital rape would "become a phenomenon which may destabilize the institution of marriage" and that women would use it as "an easy tool for harassing the[ir] husbands."[18]

While women have been traditionally excluded from enjoying and exercising a right to privacy, they have historically been restricted to 'the private sphere': "the home" protected from the state on the basis of the right to privacy were determined as women's territories. The private sphere is understood as a theoretical space where one escapes the eyes of those outside of our intimate friends and close relatives. There is a long feminist tradition that has focused on reclaiming the public space and escaping the "private life." Interviewed by Privacy International, French feminist and co-founder of La Fondation des Femmes, Clara Gonzales said:

> **"Feminists have worked a lot on the dichotomy between the public and the private. They have shown that it was very convenient for the patriarchal system to claim that everything that pertains to relationship, sexuality, violence but also the decision to have children or not falls under the realm of the private life and doesn't belong to the public sphere."[19]**

One of the key aims of feminist progress has therefore been the breaching of the private sphere in order to reach the public space. In the words of Internet Lab Director Mariana Valente: "Feminist movements have been trying to bring the private sphere into the public sphere." She highlighted the importance of feminist and critical theorist Nancy Fraser's work in articulating how women have been relegated to the private sphere. "Gender issues should not be private. There are issues that should be brought to the public sphere. Otherwise it is just discrimination if other subjects are considered in the public sphere and gender issues are considered private."

Valente discussed the importance of this debate in her own work on non-consensual image-sharing (commonly referred to as "revenge porn"): "This is still what it is about when we talk about non-consensual image-sharing, because this is something that is so hard to discuss in schools or with parents or in certain communities because sexuality is considered an issue of the private sphere."[20]

In her book *Unpopular Privacy: What Must we Hide?*, Professor Anita Allen reflects on the privacy which women do not want: "History shows that women have fought against lives in the shadows, kept there by privacy-related expectations that they dress modestly, stay inside the home, and keep their mouths shut. Unsurprisingly, the problem of unwanted, unpopular privacy that is mandated, imposed, or coerced has constituted a major theme within feminist thought."[21] She also evokes the work of Charlotte Perkins Gilman, who dealt with women's seclusion in family homes, and Catherine MacKinnon's critique of privacy as an inadequate legal basis for abortion (see below section on abortion for more details). She ties the work of those feminists to the criticism of early 21st century feminists – whom she calls "cyberfeminists" – and their critique of online anonymity, a topic addressed below.

Home bitter home: the privacy trap

Escaping the privacy of the private sphere to enter public life means escaping the physical space of the home. In *The Home: Its Work and Influence*, Perkins Gilman defined homes – for human beings and other animals alike – as the space where women raise children: "Wherever the mother feeds and guards her little ones,—more especially if the father helps her,—there is, for the time being, home." The home comes with clearly assigned gender roles: in 1903, Perkins Gilman wrote that, despite progress, homes had remained immutable: "In all this long period of progress the moving world has carried with it the unmoving home; the man free, the woman confined; the man specialising in a thousand industries, the woman still limited to her domestic functions."[22]

This perception of the home as a place where gender roles are strongly assigned can be seen in the architecture of houses, and this notion was not confined to particular cultures or geographic locations. In *Women and Gender in Islam*, Leila Ahmed looks at the treatment of women in pre-Islamic societies. She writes about Ancient Greece, where "architecturally speaking, the sexes were segregated in separate quarters, with women inhabiting the rooms away from the street and from the public area of the house." The construction of houses designed to keep women hidden from the public is a phenomenon also found in India, described by architect Madhavi Desai in *Gender and the Built Environment in India*, in which she details the role of architecture as a tool for the enforcement of patriarchy and systems of oppression and reached similar conclusions.[23]

While different in context and impact, office spaces reflect a similar trend of being designed by men and for men. Most offices set their temperature based on a model of thermal comfort designed in the 1960s, at a time when offices where still male-dominated. Thus, despite more women joining the workforce, office spaces are still managed with men in mind.[24]

Away from homes and offices, and other spaces defined as private, even women who cannot afford shelter, and do not live in the confinements of a home as such, experience the walls of patriarchy. Feminist researcher Kalyani Menon-Sen mentions her work with 'pavement-dwellers' in Calcutta, during which one woman told her: "If your husband beats you, he does it behind closed doors and he can hide it from everyone. I don't have that choice – if my husband beats me, everyone can see him doing it." Yet, as Menon-Sen says, "The police would be equally unwilling to intervene in her case as in mine, as marital violence would be considered a private matter."[25]

Similarly, reflecting on contemporary discourse around gender and privacy in Pakistan, Shmyla Khan, project manager at the Lahore-based organisation Digital Rights Foundation, says: "Privacy is deeply embedded in larger conversations about the policing of women and how the four walls of the homes should be protected. Privacy is very integral to the way women's place in society is constructed."[26]

Summarising the 'privacy problem' of women in the U.S., A. Allen writes in *Gender and Privacy in Cyberspace*, that "a traditional predicament of American women was

too much of the wrong kinds of privacy. Women often had too much privacy in the senses of imposed modesty, chastity, and domestic isolation and not enough privacy in the sense of adequate opportunities for individual modes of privacy and private choice."[27]

But is the privacy of domestic isolation actually privacy at all? Perkins Gilman questions what she believes is the myth of privacy inside the home for both men and women in the early 20th century:

> **Let us begin with one especially dominant domestic myth, that fondly cherished popular idea—'the privacy of the home.' In the home who has any privacy? Privacy means the decent seclusion of the individual, the right to do what one likes unwatched, uncriticised, unhindered. Neither father, mother, nor child has this right at home.[28]**

With her context in mind (she wrote in 1903 England), she explains that only young men in their "chambers" or young women in their college rooms may experience it, but those spaces are hardly "homes" as defined by Perkins Gilman. She contrasts the experience of the economically disadvantaged, who do not experience privacy in their homes because their houses are too crowded, with the rich who equally fail to experience privacy but because they rely on servants, "a factor so absolutely prohibitive of privacy that the phrase becomes a laughing-stock."[29]

While, according to her, no one inside their home truly experiences privacy, she however argues that women are the ones who are the most deprived of any notion of privacy, so much so that they cannot understand the very concept of it anymore:

> **The mother—poor invaded soul—finds even the bathroom door no bar to hammering little hands. From parlour to kitchen, from cellar to garret, she is at the mercy of children, servants, tradesmen, and callers. So chased and trodden is she that the very idea of privacy is lost to her mind; she never had any, she doesn't know what it is, and she cannot understand why her husband should wish to have any 'reserves,' any place or time, any thought or feeling, with which she may not make free.[30]**

Feminist theorists push us to interrogate the concepts of the public and private sphere: the public sphere is not genuinely public, open and inclusive, insofar as women are excluded from it. Where the private sphere should normally offer shelter and protection from the public space (where one, regardless of gender identity, can be observed and judged), it fails to do so for many women as it constitutes a space where they are constrained, as we explored in the previous section of this report. But it is also not genuinely private either – at least not for women who remain subjected to the patriarchal gaze of father or husband, or other male relatives who play the role of the guardian or hold power in the household or family structure.

Silencing women, trans and gender diverse people in the public discourse: is anonymity the enemy?

The phenomenon of restricting women to the private sphere has taken on a new dimension in the age of social media, where trolls are silencing female, trans and gender diverse public figures in an effort to prevent them from entering the public sphere or punish them for having done so. In this section we will look at the way online harassers enforce patriarchal rules on social media, and we will look into the limitations of an often-suggested solution to online harassment: the end of anonymity online and the implementation of real-name policies.

Mary Beard, professor of Classics at Cambridge University, illustrates in *Women & Power – A Manifesto* the ties between the millennia-old efforts to silence and exclude women from public discourse, and the abuse women face on social media. She places online gender-based harassment at the end of a "long line of largely successful attempts stretching throughout Greek and Roman antiquity not only to exclude women from public speech but also to parade that exclusion."[31] She draws on the classics to demonstrate the effort that was made to silence women. "Classical writers insisted that the tone and timbre of women's speech always threatened to subvert not just the voice of the male orator but also the social and political stability, the health, of the whole state." Writing about her own experience of abuse she says:

> **"It doesn't much matter what line you take as a woman, if you venture into traditional male territory, the abuse comes anyway. It is not what you say that prompts it, it's simply the fact that you're saying it. And that matches the detail of the threats themselves. They include a fairly predictable menu of rape, bombing, murder and so forth [...]. But a significant subsection is directed at silencing the woman. "Shut up you bitch" is a fairly common refrain. Or it promises to remove the capacity of the women to speak. 'I'm going to cut off your head and rape it.' Was one tweet I got." Online gender-based violence therefore becomes a new tool in an ancient effort to "reposition women back into the domestic sphere.[32]**

To quote Anita Allen: "In the early twenty-first century, feminists [...] have a beef with privacy, too."[33]

A lot of this "beef" has been centred on the public debate of anonymity, and whether anonymity has enabled harassment of women, trans and gender diverse people online. This debate has been dominated by female public figures documenting their experience of abuse from anonymous accounts on Twitter. In the UK, for instance, it has largely been led by female Members of Parliament, including Jess Phillips and Diane Abbott, who has been particularly exposed to abuse as a woman of colour.[34]

These experiences are not confined to particular countries or regions: feminist activist and digital rights lawyer Gisela Pérez de Acha said that, in Latin America, female politicians, sports anchors, feminist activists, and human rights defenders are the main target.

She explained:

> **It's been really interesting to see in the Mexican and Latin American debate – and also in the US with Gamergate – how every woman that steps out of really strict gender norms – and I do believe they are stricter here in Latin America, as the majority of the population come from a conservative, catholic background – get harassed. The women that get harassed the most are human rights defenders, feminists who speak out openly, women who have strong opinions about politics, and female sports anchors. The violence that they receive is remarkable because they have over 5 million followers on Twitter, so they receive hundreds of threats every day.**[35]

Pérez de Acha noted that the nature of the abuse that women receive differ based on the way they step away from traditional gender norms: "While female politicians will get messages along the lines of 'you're so frigid, you need to get fucked, you look like a lesbian' the sports commentators will get 'you're a whore, go back to the kitchen, you don't know anything about sports' and they will get a lot of rape threats. It's the same phenomenon but from two different perspectives: one will be called frigid and the other one will be called a whore."[36]

In France, the case of Nadia Daam – a famous journalist targeted by an army of trolls for her feminist positions – attracted a lot of attention. Two men accused of harassing her were ultimately given a six-month suspended sentence.[37] The Digital Rights Foundation has also highlighted in a report the cases of female journalists in Pakistan and their experiences of social and state surveillance. Among the seven journalists interviewed: "All the female journalists said that they experienced abuse in online spaces from individual audience members, supporters of political parties, religious groups and militant organizations. Not only did many of the experiences exhibit similar patterns, they were seen as a natural consequence of having an online public presence."[38]

With companies failing to find responses to online harassment, these high-profile cases have led some feminist groups to request the adoption of real-name policies online.[39] But is anonymity the real problem?

For Datta, the anonymity debate is a red herring. She argues that stigmatised communities cannot survive without some form of anonymity, but also asks whether it is in fact the real problem:

> **What we are seeing more and more is, for instance, right-wing male trolls in India, who are seriously abusive. And frankly they couldn't care less if the whole world knows their name because they are so firmly convinced that what they are doing it is right. More than anonymity, it's the disinhibiting factor of being behind a screen that allows people to behave in a way they wouldn't if you were to meet them face to face.**[40]

This idea is reiterated by Violet Hargrave in "The Myth Of The Anonymous Troll", which argues there is a "performative" element to trolling, and that anonymity is not something that abusers seek: "The persistent sources of abuse – the organisers, the stalkers, the performative types who compete with each other to see who can make the most outrageous posts or provoke the strongest reactions, almost always do so under their real names, or at least under professional names they can't simply step away from."[41]

Datta and her colleague Smitta Vanniyar also pointed out that online gender-based harassment takes different forms. In the cases of non-consensual image-sharing, the abuser is generally known to the person affected. Vanniyar pointed to cases of non-consensual videos that are sold as pornographic material, which have the faces of abusers fully exposed.[42]

Several of our interviewees reported that online gender-based violence often takes the form of abuse perpetrated by a *known* harasser. Internet Lab's Mariana Valente, who has conducted research on non-consensual image sharing in Brazil said that in every case she has encountered, the perpetrator was known to the victim.[43] Similarly, Shmyla Khan told us that the type of online harassment that the Digital Rights Foundation has handled usually takes place on Facebook and involves ex-partners.[44]

Clara Gonzales, who has worked both with female public figures and other victims of online abuse as part of her work with La Fondation des Femmes in France explained:

> **"At La Fondation des Femmes, when we were contacted by women who reached out to say they were harassed by someone, in most cases that 'someone' was a person they knew: an ex-partner, in 99% of cases I have observed. They reproduce the traditional pattern of domestic violence, but they extend it onto the online sphere. It will take the form of revenge porn blackmail – that is something we see more and more often – but also the very classical threats that have traditionally come from abusive men, as in 'if you don't do x, I will come and hurt you and your children.[45]"**

Gonzales also argued that, while in cases where the abuser is known, anonymity may not be the problem, as it may still be difficult to prove the identity of an abuser, if they are using a VPN for instance. This is an issue she has observed in several cases.[46]

Gonzales also warned against dismissing anonymous trolling as an issue affecting women with a public profile only. Any feminist activist with the slightest media exposure will be met with a campaign of online harassment and that there is no distinction between famous and unknown women: any woman who is politically active, in particular feminist and gender rights activists, will be exposed. According to her, this form of harassment poses a real threat to freedom of expression as it curtails the feminist discourse.

In most interviews we conducted, in all regions of the world, a lack of police training was highlighted. The police were sometimes described as actively hostile to women reporting online abuse, but appeared in all cases uninformed and/or unequipped to respond to the complaints.

Datta argued that the focus on anonymity and real-name policies is part of our failure to address the root causes of online harassment:

> **If we take the cases of rapes in India the red herring is that women are told they should change the clothes they wear. It's a distraction that takes us away from the main root cause. I feel like anonymity may be a factor in a number of cases but the root cause is the power dynamics in society, which allows men the space to inflict this kind of violence on women. Overthrowing patriarchy seems too big a thing, so we are always looking for other factors we can focus on, but they are not the root causes. Online violence will not disappear by enforcing real-name policy.**[47]

Just like the right to privacy more generally, anonymity has been used both to oppress women and to protect their attackers. Yet, Privacy International aligns itself with the position that anonymity itself is not what we should be campaigning against.

In the next part of the report, we will demonstrate how anonymity can actually play a role in tackling the surveillance and privacy violations which are inherent to patriarchy and systems of oppression.

Privacy: a Tool Against Systems of Oppression

In this second part of the report, we explore why the right to privacy – more than ever – can support gender equality and empower women, trans and gender diverse people. We will look into the many ways in which patriarchy and other systems of oppression rely on surveillance – at a social, corporate or state level – to self-perpetuate, and crush dissent and alternative power structures.

Online gender-based violence: beyond the anonymity debate, the violation of privacy

Whilst ending anonymity cannot be the solution to online harassment, we nevertheless need – as advocates of privacy – to reflect on the nature of online harassment and why it is relevant for us.

This following section is a second-look at online harassment using a different lens: as a violation of women, trans and gender diverse people's right to privacy.

As we highlighted above, online gender-based violence has many shapes. We identify its main manifestations as: non-consensual image-sharing, doxxing (the publication of someone's personal information), harassment on social media, and hacking into the accounts and/or devices of a person for the purpose of stalking them. The diverse forms of online gender-based violence reflect different realities, but all have in common a violation of the targeted person's right to privacy.

In a report on online violence against women and girls from a human rights perspective, Dr. Dubravka Šimonovic, UN Special Rapporteur on violence against women, its causes and consequences insists on this very aspect: "Many forms of online violence are *per se* acts of gender-based violence that violate women's and girls' rights to privacy; for example, the publication or posting online, without consent, of intimate photographs, or Photoshopped images that are sexualized or have been created to humiliate, shame or stigmatize a woman is a violation of a woman's right to dignity and to live a life free from violence."[48]

The right to privacy encapsulates the right for each of us to define our own boundaries and is therefore unique to each of us and contextualised by our own singular experience. This reality is one of the reasons why online-gender based violence has been difficult to restrain. Shmyla Khan, for instance, explained to us the grey areas of policing online gender-based violence: in Pakistan, a selfie of a woman with a man, who is not her husband or a relative for example, may be enough to put a woman at risk. Yet, for a platform like Facebook such a picture would not normally violate their terms and services.[49]

Pérez de Acha qualified the online harassment on social media that female public figures receive as a "social sanction against people who step out of traditional gender roles."[50]

The idea of online gender-based abuse as an enforcement of patriarchal rules is also something Mariana Valente noted in the Brazilian context. Explaining why she decided to focus on the non-consensual sharing of images, she spoke about her interest in this particular type of abuse as it affects women in general and not specifically activists:

> **"I realised only recently it is a bigger issue in Brazil and Latin American countries than it is in other countries. Of course, it is an issue all around, but our sexism is very different. One thing that is very specific to Brazil: we have a tension between the pressure to show off symbols of sexualisation – to 'show yourself' – it is very present in our popular culture, where women are expected to be comfortable with showing their bodies. And there is a very thin line that divides that and what women should not be doing. It is very cruel to teenagers because it is very hard to know when you have crossed that line of gender norms."**[51]

Online harassment is a privacy issue: every time a woman, trans and gender diverse person is harassed, it is their personal space and boundaries that are invaded and violated, even when it takes place on what is perceived as a public platform. This understanding of online harassment shows the need for an understanding of privacy that is broad and encompassing for women, trans and gender diverse people, as patriarchy relies on those privacy violations to enforce its power. Indeed, in this light, privacy violations in the form of online gender-based violence become a way to punish women who step away from the private sphere they are restricted to, both directly and indirectly, by family, community, and society more generally.

Social surveillance: when Big Brother is your big brother

While we often hear about surveillance in the context of state surveillance or corporate surveillance, for many women, trans and gender diverse people those are not necessarily the forms of surveillance about which they are primarily concerned. In fact, surveillance starts at home and come from your relatives. In his essay *Privacy On The Margins*, Morgan Potts writes: "I've had many closeted trans people message me semi-privately (on insecure channels like Facebook messenger or Twitter DMs) about their genders and transness. Like me, in the past, their primary threat isn't the state but rejection by their immediate social group; they don't care if the state reads their messages about gender as long as their parents and partners don't find out."[52]

The unique experience of surveillance by queer persons is described by Sarah Jamie Lewis in her book *Queer Privacy*: she writes about the failure of current privacy-enhancing technologies to address the needs of queer communities.

"Much of the modern rhetoric around these tools is focused on state surveillance. Queer communities often wish to hide things from some of their family and friends, while also being able to share parts of their life with others. Making friends, dating, escaping abusive situations, accessing healthcare, exploring themselves and others, finding jobs, engaging in safe sex work are all aspects of queer lives underserved by the modern privacy community."[53]

Sex workers are particularly exposed to social surveillance. The need to remain anonymous on online platforms is particularly heightened for them, as they still have to face the stigma around their professional activities in many parts of the world. Datta, whose non-profit platform *Point of View*, among other projects, conducts privacy and security training for sex workers, reflected on the key role of privacy and anonymity in sex workers' lives:

> **"Women who are in sex work have a very different notion of privacy from many other women, simply because sex workers are so stigmatised by society and their families. It leads them to develop a deep notion of privacy even if they don't call it that. Most sex workers have two names: a professional name and a personal name; similarly, many of them have two mobile phones: one for work and one personal because they want to keep these two worlds separate. They want to keep their sex work lives private from their families and from communities who look down upon them. And anonymity is very important to them because if they can't remain anonymous they face a lot more stigma, discrimination and violence. This is why we value anonymity on the internet as a fundamental right."[54]**

Thus, one of the main risks for sex workers when using the internet is to be 'outed'.

"An environment of being publicly shamed and publicly outed is a global phenomenon for sex workers that does not just happen online. It happens in communities. The shame of being a so-called prostitute is something used against sex workers,"[55] explained Catherine Murphy, Senior Advisor on Gender at Amnesty International. This is why the "People You May Know" feature on Facebook has been so problematic for sex workers as some have had their private profile suggested as a potential friend to their clients, or their professional profile suggested to their friends or family members. Gizmodo journalist Kashmir Hill documented the case of sex workers being outed this way in the U.S.[56]

Beyond the cases of LGBTIQ+ population and sex workers, social surveillance is encountered in every country by almost all persons. Reflecting on the diverse experiences of privacy across different social backgrounds in India, Datta explained the cases of families who have to share a single phone: she said that girls are treated differently from boys. While boys will be trusted with the phones, parents are more inclined to check the call and messaging history of the phone when it has been used by their daughters. She also added that when families can afford more than one phone – but not one phone per family member – the extra phone

will be handed to the son. Even in families wealthy enough to afford phones for their daughters, Datta said that they encounter many cases of parents expecting to check who their daughters communicate with, something they do not expect regarding their sons.[57]

The culture of social media usage adds an extra layer of surveillance. While it can be used by women, trans and gender diverse people to frame their own identity and explore some aspects of their identity online which they may not be ready to claim offline, it may also create a dynamic of self-surveillance, in which women, trans and gender diverse people are expected to match a certain idea of gender roles and images displayed on social media. In 'Social Surveillance: Feminist Implications for Online Privacy, Self-Disclosure and Gendered Agency', Trevor Scott Milford and Ciara Bracken-Roche describe the dual pressure to comply with the privacy, detailed in the first part of this report, and on the other hand the expectation that women should present themselves in a certain way:

> **"It is common for women to gain social capital from publicly self-presenting as well-liked and socially-accepted, which involves posting photos and having many online friends – in direct contrast to expectations of privacy and self-censorship. These incompatible expectations are enforced by social surveillance, where women who do not conform face negative judgment or even harassment from other users."[58]**

Social media platforms are merely a reflection of offline spaces. In their 2010 paper "Panoptical Web: Internet and Victimization of Women," Nadera Shalhoub-Kevorkian and Tamar Berenblum identify two contradictory approaches to the "the internet's influence on power relations between the sexes." One is the "technological theory, according to which the internet helps to eliminate social gaps," while the second one is the "social approach, which claims that the internet reflects power relations in society and reproduces them."[59]

Reflecting on the early hopes that the internet would eliminate social gaps, Leonie Tanczer, lecturer at UCL's Department of Science, Technology, Engineering and Public Policy, told us: "The initial idea that the internet would be this post-gender world does not actually hold because women are far more affected by harassment, hate speech and sexism online than often thought of.[60] And while there was this idea that behind the keyboard nobody knows you are a dog, that does not hold either because we have semantic analysis,[61] artificial intelligence (AI) systems that can detect speech and writing patterns, so in that regard existing stereotypes can become more ingrained through technology."[62]

In a context where half the global population has internet access, and the internet has become inescapable for many of our everyday interactions – as we enter the era of smart cities and the Internet of Things (where the objects in our homes or that we carry around are connected to the internet) social surveillance will find new forms of expression. Tanczer is the lead researcher for the interdisciplinary "Gender and IoT" research project,[63] of which Privacy International is a partner. The research

looks at the impact of the Internet of Things technologies on domestic violence and abuse. Drawing on this work, Tanczer warned against a future where harassers will be able to hack more than just our social media accounts:

> **We need to move away from thinking purely about the internet as 'this thing' on our laptops and smartphones. This is the 1990's idea of the internet. The internet is actually everywhere. We are online 24/7 and it is only going to become more prevalent and our engagement with it even more fluid. While now harassment can take place on platforms such as Twitter or through the interference with very distinct devices such as my tablet, in the very near future one will be able to tamper with my connected driverless car, my smart lock, or just troll me through my dozen Internet-connected devices and literally impede onto my day to day life. Because nowadays, I can still kind of decide not to look online or not to check Facebook. But, when harassment is following me across so many and often so personal systems, it is getting far harder to withdraw myself from abuse.**

In this context, anonymity takes on a new meaning. No longer the tool of harassers on social media, it can be seen as the tool that allows trans, gender diverse and queer people to create and partake in a space where they are able to freely explore their sexuality without having to be exposed to their family and friends.[64] For sex workers, who tend to have separate social media accounts, anonymity online means being able to separate their work life from their private life.[65] Paz Peña, co-creator of Acoso Online, a platform aiming at providing a response for victims of non-consensual image sharing in Latin America, said that survivors of domestic violence also rely on anonymity to report the abuse they have experienced.[66]

The case of Palestine is particularly interesting in that it highlights the way women, trans and gender diverse people experience various layers of surveillance: from the social surveillance they face at home, to state surveillance by Israel. Shalhoub-Kevorkian and Berenblum describe the experience of the use of the internet by young women in a society which is traditional and patriarchal - they argue that the political hardship endured by Palestinian people have produced "new patriarchal power holders and enhanced masculinities" - but where women are also heavily exposed to the surveillance of the Israeli state. In *Panoptical Web: Internet and Victimization of Women*, Shalhoub-Kevorkian and Berenblum quote the testimonies of Palestinian women's experience of surveillance. On social surveillance, one of the women, Suhad, said:

> **Men in our society will use any opportunity to oppress us. They want us to marry early, they want us to stay at home and never move, they want us to deliver babies and lose our ability to be free and move freely, they want to control every step we do ... and the internet became another way in my father's hands to control me and my movements.**

A college student, Ilham, evokes her concerns with the control of servers by the Israeli state: "We (Palestinians in the West Bank and Jerusalem) use Bezeq, Walla, Selcom, and Orange servers. The occupying powers control all these servers, they are all Israeli servers, so we are always under surveillance, and women suffer the most under such conditions. The question is how to protect ourselves, if we can at all!"[67]

The case of Palestine is an extreme example that reflects the overlap between social surveillance – the surveillance conducted by our peers – and state surveillance.

In the next section of this report we will look at the case of state surveillance through the mechanism of ID systems.

ID systems: patriarchy in your wallet

If the experience of social surveillance is particularly familiar to women, trans and gender diverse people, the experience of state surveillance is no less pervasive and impactful on their lives. ID systems, as a form of state surveillance, are particularly interesting in that regard. While ID systems are often presented as a way to assert one's identity and to prevent others from usurping that identity, they are primarily a way for the state to control and monitor the population. From birth to death, states create a record of our existence, imposing criteria (name, gender, date, and place of birth, amongst others depending on the country) that are meant to define our identity. Depending on nationality, this identity will grant or deny us access to healthcare, work, benefits, and allow us to travel - or not.

Different countries use different ways to identify individuals within their populations. In some countries, ID cards - whether regional or national - are mandatory; in others they are not. Yet, even when they are not, it does not mean the population escapes the gaze of the state: civil registration documents (birth, death, marriage certificates etc), a driving license, or a healthcare card can stand as forms of identification. Even our social media profiles serve as a form of ID, as we can see from companies asking us to log in using our social media or email credentials and accounts. In most cases, gender will be a categorisation found on ID systems, and it is often a mandatory and rigid binary field.

The criteria chosen to define our identity reveals a lot about our societies: in some countries, religion is mentioned on the ID documents, in others it is tribe or ethnic group. Looking at data categories featured on birth certificates in the U.S., Lisa Jean Moore and Paisley Currah write in their essay "Legally Sexed": "These categories highlight social desires for the organisation of human populations based on beliefs about sex, gender, race, and class: binary sexed, biologically driven, heterosexual, racially homogenous, married families."[68]

Gender appears to be a universally-used criterion for identification. In most countries, the choice is binary: male or female. Even when it is not binary – for instance India now offers the option of having an X instead of male or female – it is still expected to be "fixed": IDs do not allow for a fluid understanding of gender,

not taking into account that one could have more than one gender at a time or that it could change over time, for instance. In *Not-Seeing: State Surveillance, Settler Colonialism and Gender Violence,* Andrea Smith looks at the way the United States used heteronormative structures in attempts to control native people, whose family structures and gender identities are approached differently:

> **Since they pose a threat to the colonial order, native nations are broken up into heteronormative individual family units in order to facilitate their absorption into the colonial state. This absorption occurs through a colonialist surveillance strategy by which the sexual and gender identities of native peoples must be constantly marked and policed.[69]**

Thus, by asserting that certain criteria represent an undisputable definition of our identity, states push a pervasive heteronormative and patriarchal agenda to which people are exposed from birth. This agenda has been so efficient that in the U.S. that there is no existing legal definition of male and female, as if the concepts were so deeply understood that they need not be defined.

However, the idea that names and genders are immutable elements which define us simply does not match the reality of individual experiences. A 2015 survey in the U.S. found for instance that only 11% of trans respondents had their preferred name and gender on their official ID.[70] Women, trans and gender diverse people are the first to be affected. In many societies, women are traditionally expected to take their fathers' and then husbands' names. It is therefore accepted by societies that half of the population – by virtue of following patriarchal rules – will have a "fluid" approach to naming: adopting a new name when they get married. However, rigid patriarchal ID systems fail to accommodate this reality for other demographics.

For trans people, the consequences of having their birth name and gender on their ID, as opposed to the name and gender they self-identity, often has serious consequences. Interviewed by Privacy International, AR Arcon, founder of the Pioneer Filipino Transgender Men Movement, talked about the debilitating experience of gender dysphoria that comes from a situation where giving his ID is required (in the Philippines there is no gender recognition law, which means that trans people cannot have their gender changed on their ID). Having an ID that does not match one's gender also has consequences when it comes to accessing healthcare. Arcon and Naomi Fontanos, executive director of GANDA Filipinas, an organisation which defends trans rights in the Philippines both discussed in interviews with Privacy International how trans people are discouraged from accessing healthcare in the knowledge that they will be forced to deal with an identity that is not theirs.[71]

In the UK, a trans activist interviewed by Privacy International, also mentioned how the binary system of the National Health Service failed to consider the specificity of trans people health. She for instance received alerts reminding her to get a regular smear test – a test that would be irrelevant for her – and feared she might miss alerts that could have been relevant for her such as prostate cancer.

Incarceration facilities are another area of particular concern for trans people whose legally recognised identity does not match their gender. Sent to a ward that does not match their identity, they can be exposed to heightened risks and levels of rape and other types of violence.[72]

Once 'outed' as a trans person, people are generally exposed to a wide range of risks. "When people find out you are a trans woman, you lose your rights," said Naomi Fontanos, who mentions the example of border control in Hong Kong. She says that because many trans women go there to do sex work, when border officials see a woman whose ID does not match her gender, she is often taken away and harassed under the pretence of searching for drugs.[73]

In *Legally Sexed*, Moore and Currah examine the main reason behind the City of New York's refusal to update transgender people's birth certificates: fear of fraud. A meeting held in 1965 to consider the topic invoked the New York Penal Code at the time, which stated: "Nobody is allowed to dress in such a way to hide his true identity." This preoccupation with the idea that transgender people are merely attempting to 'hide' their true gender gives states a new 'duty': outing transgender people to 'protect' the population. "The public was protected by ensuring that the state would 'out' transsexual people by listing their birth sex on the birth certificate."[74]

Thus, simply being able to change one's gender and name on an ID is not adequate. It's essential for states to ensure that their civil registration systems allow for changes in gender and name without leaving a trace that could allow for outing and abuse in the future. Changing gender on one's ID should not come with the price of more surveillance: in many countries where gender recognition is available, the process still entails an invasive process. The state becomes the arbiter of gender, and once again transgender people are expected to submit themselves to state surveillance in order to claim their own identities.

When the criterion for gender recognition is surgery, a whole new set of issues arises. There are various different kinds of surgery and treatment that trans people may or may not choose to undergo as part of their transition, yet it is often only one type of genital surgery that states take into consideration, again placing themselves in a position of arbiter, deciding – despite the absence of legal definition for the terms – who gets to be male and who gets to be female. And in countries where the surgery is not covered by public healthcare, wealth becomes a factor in whether one's identity is recognised: the type of genital surgery that states recognise is extremely expensive.[75]

However, demands from the trans and queer communities in the past decades have helped create a dynamic new discourse which has been challenging governments and public opinion: positive change has emerged, in particular when it comes to gender fluidity.

As we mentioned above, in India, the recently established national ID system Aadhaar offers the option of a third gender.[76] However, a group of NGOs and individuals have challenged the constitutional validity of the Aadhaar Act in front of

the Supreme Court, arguing that providing this information exposes trans people to violence. Advocate Jayana Kothari invoked a recent judgement which upheld the right to privacy as a fundamental right, arguing that it includes the right to informational privacy, granting individual control over the dissemination of personal data, including gender identity.[77] The case demonstrates the complexity tied to the questions of gender and ID systems: positive change for self-identification could lead to greater surveillance.

Following a campaign from the Gender Free ID coalition in Canada, Kori Doty's child, Searyl, was the first to be born with "U" (unspecified or unknown) on their health card. Doty argued: "I do not gender my child. It is up to Searyl to decide how they identify, when they are old enough to develop their own gender identity."[78]

In Europe, Germany introduced an 'indeterminate' option on birth certificates in 2013, to address the needs of the 1.5% intersex children who are born.[79] In 2018, in the UK, the High Court ruled unlawful the Government's refusal to issue gender neutral passports.[80]

In Argentina, the Gender Identity Law was voted through in 2012 to facilitate the recognition of diverse gender identities. The law is exemplary, as it allows trans people to change their gender on their birth certificate and identity card without having to "prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychological or medical treatment has taken place."[81]

While the option of a third gender and the facilitation of gender recognition are positive developments it is also worth questioning why gender has remained a categorisation on ID systems at all when it does not provide a relevant or useful metric to identify a person.

Benefits and government allowances: when Big Brother helps to pay the bill

ID systems are not the only way for governments to maintain control over their populations while imposing a certain patriarchal and heteronormative agenda. As illustrated by feminist theorists working on surveillance studies, the process of claiming benefits places the most vulnerable in a position where they are forced to submit to an extra layer of surveillance.

In *Feminist Surveillance Studies*, Rachel Dubrofsky and Amielle Magnet put together a series of essays which examine the wide-ranging nature of surveillance as experienced by women, trans and gender diverse people. While the issues explored in their work are diverse, at the core of their argument is the idea that, in North America, surveillance is facilitating systems of oppression which enforce a vision of the world dominated by whiteness, able-bodiedness, capitalism, and heterosexuality.

Beyond gender, this narrative allows us to perceive how surveillance primarily affects key populations subject to vulnerable situations. In her essay "Not Seeing

– State Surveillance, Settler Colonialism, and Gender Violence," mentioned in the previous section, Andrea Smith describes the role of surveillance in the objectification – and ultimately the control – of Native people by settler colonialists, primarily in the US but also drawing on examples from Australia and Israel.

The more marginalised a person is within the patriarchal structure, the greater the risk that they will be exposed to any sort of surveillance, be it from the state or other actors such as corporations. Indeed, the mere act of claiming benefits involves a relationship of surveillance and control between the state and the claimant. Smith quotes Patricia Allard, noting that: "Women of colour who receive public assistance are not generally deemed worthy of privacy – they are subjected to the constant surveillance of the state. Of course, all women seeking public services can be surveilled, but welfare is generally racialised in the public imaginary through the figure of the 'welfare queen'."[82]

We have explored in this and the previous section how the state relies on different mechanisms – ID systems and benefits – to keep control over population, while imposing a cis gender agenda. We will look in the next section at the way healthcare systems control female bodies through the question of abortion and reproductive rights.

Surveilling the female body

Bodily autonomy and sexual and reproductive rights, such as access to abortion, have long been inextricably linked to the right to privacy - evidenced by the U.S. Supreme Court decision on the Roe v. Wade case. In this 1973 case which saw the decriminalisation of abortion, the Supreme Court held that the right to privacy included the right to have an abortion. Justice Harry A. Blackmun, who represented the majority judgement , stated at the time: "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[83] While the use of privacy as the legal basis for abortion – as opposed to equality – was then a topic of controversy among feminist scholars, the right to privacy nevertheless remained intertwined with the concept of bodily autonomy.[84]

For Marianne Díaz, Public Policy Analyst at Derechos Digitales in Chile, the question of privacy and reproductive rights comes down to the issue of ownership of women's bodies:

> **"In Latin American societies, our bodies are not really ours. This comes down to who we belong to. It is very complex because it comes from systemic social issues that stem from centuries of social imbalances and patriarchy. The issue that women's bodies don't belong to us is not just a Latin American issue, it's also present in Europe and Asia but the volume, the level and the shape of the issue is different: the**

> **local colour is different, the consequences are different. In Latin America for instance we have cases of forced sterilisation. While women still cannot freely abort, others are sterilised against their will. It seems to be two very different issues, but it comes down to the same problem - we can't decide over our own bodies."[85]**

While in many countries, access to abortion has been emblematic of women's struggle to reclaim control over their bodies, Ambika Tandon – a policy officer working on gender-based research at the Centre for Internet and Society in India – reminded us that in India, abortion has a different history: the reasons to conduct ID checks reflect this particular history.

> **"A union minister proposed the policy to link Aadhaar numbers to abortion to curb the number of female foeticides. Sex determination is currently illegal in the country, but the argument is that if they make it legal and doctors are able to track how many abortions are being done on female foetuses, they will be able to curb it. Abortion in India has never been linked to bodily autonomy; it is another form of surveilling female bodies that is being used for population control."[86]**

Though the intention of preventing female foeticide is laudable, it is concerning that the response offered is an increase in surveillance of female bodies.

Asking for ID as a mandatory condition to undergo an abortion creates a dangerous context in which abortion gets "special treatment," distinct from other medical interventions. It also creates the risk that women will decide against asking for abortions for fear of surveillance if it is recorded and tied to their ID that they have undergone such a procedure. The development of ID systems provides a new barrier to accessing abortion services. Indeed, some countries expect women to show their ID in order to obtain an abortion. Even without a national ID system, in most of the countries where we have conducted interviews, access to contraception or to abortion cannot be gained anonymously, as they need to be registered with the healthcare system under their legal name.

In India, the case of a 28-year old domestic worker who had to be hospitalised for a blood transfusion after she had an abortion with an unqualified local physician caused outrage among public health organisations. She had been denied an abortion to which she was legally entitled from a reputable government hospital, as she did not have an Aadhaar card.[87]

New ID systems that feature biometrics and may be connected to our online identity demonstrate the obsolescence of the online/offline and informational/physical divides in our understanding of privacy: increasingly we live in an era when control over one's own body can be limited through the implementation of those forms of identification.

My data, my body: the exploitation of female, trans and gender diverse people bodies

The surveillance of women's bodies is not only carried out by the state; in the era of data exploitation, when companies glean highly personal information from the massive amount of data produced by our digital interactions, corporations have become key actors in and proponents of the surveillance of the female, trans and gender diverse bodies.

Our data, as well as information and intelligence inferred from that data, reveals a lot about us – our health, finance, desires, and hopes. From gathering it, companies make profiles that can be sold to advertisers and other interested parties for the purpose of generating a profit. What we see online, the price we pay for what we buy online, our credit rating, and how much we might pay for health insurance, are all influenced by those profiles. A major issue, which recent data protection laws like the European General Data Protection Regulation (GDPR) are trying to address, is the lack of transparency, as companies fail to explicitly declare what data they gather about their customers, who they sell it to, and for what purpose.[88]

Corporations have also financially exploited the surveillance of women's bodies, in particular when it comes to pregnancy and birth control. A wealth of apps are being developed to cash on the data that can be collected from and about women's bodies: period trackers are designed to help women keep a record of their periods and identify the days when they are most fertile. And in order to provide women with more accurate services, they build ever more invasive profiles by gathering data on the most intimate aspects of women's lives.

As the feminist Brazilian organisation Coding Rights, which looked at the data collection practices of several menstruation apps, put it: "Monitoring your cycle using a menstruapp means telling the app regularly if you went out, drank, smoked, took medication, got horny, had sex, had an orgasm and in what position, what your poop looked like, if you slept well, if your skin is clear, how you feel, and if your vaginal discharge is green, has a strong odour, or looks like cottage cheese."

While women may find tracking their period empowering, those apps nevertheless raise serious concerns about the commodification of women's body that becomes a source of profit for companies. The issue is all the more serious when women lose control over their data or when they 'consent' to the privacy policy of a company that fails to be transparent about what data it collects, what information and intelligence it or its potential partners infer, and who it sell those profiles to. The apps currently also reinforce a certain idea of heteronormative femininity that is focused solely on pregnancy and the imperative of having – or indeed avoiding children.

The notion of consent in the age of data exploitation is also a problematic one: freely given, unambiguous and explicit consent can only happen when we are given the opportunity to make a free and informed choice. For consent to be freely given, unambiguous and explicit, one should be able to refuse without any negative consequences. If the choice being given to consumers is "you have to consent or you cannot use our service" users are hardly consenting, but are instead being

forced into an often shadowy contract; sometimes the mere action of downloading an app is taken as consent.

Menstruation apps are not the only ones in the market of the commodification of women's bodies. Many fitness apps are targeted at women, as women are often subject to more pressure regarding ideals and norms attached to female bodies. The data collected by those apps and fitness trackers can then be used by menstruation apps in a loop of further exploitation. Women have also called attention to the way fitness-tracking apps and devices could be used by harassers to stalk their victims. The app *Strava,* for instance, was publishing where its users were running as its default setting.

Ambika Tandon from CIS in India underlined the trend of 'safety apps' which emerged in India, following the 2012 protest movement after a woman died from the injuries she endured while being gang-raped. These safety apps can constitute another form of surveillance and create additional risks, as they provide a way of tracking women's movement, thus subjecting them to surveillance and thereby further oppression instead of addressing the root cause of the issue: violence against women.

In the era of data exploitation, the commodification of women's body through systemic data collection is all the more concerning. In order to process the 2.5 quintillion of data we produce every day, advertisement companies rely heavily on the use of profiling and AI to decide what we get to see online. Not unlike the states which use gender on our ID cards, companies rely on gender we have disclosed or is inferred from our online interactions and transactions to classify us and put us into marketable categories. Surveillance aims to classify, and heteronormative structures are used as the standards to classify people, with gender as the basis for that division.

Thus, profiling us is about guessing or presuming someone's gender, their relationship status, their lifestyle, and making them fit into ready-made categories. Research from the University of Cambridge and Microsoft has shown that, with Facebook 'likes' alone – which is, by default, information easily accessible by third parties – information including gender and sexual orientation can be predicted. Gender could be correctly predicted in 93 per cent of cases, while sexual orientation was predicted 88 per cent correctly for men, and 75 per cent correctly for women.

In supermarkets, products targeting women are more expensive than those targeting men. In the UK, equivalent products cost 37% more for women. It is thus concerning that, as more and more people turn to online shopping, gender remains the basis of profiling.

But corporate surveillance does not just affect women, trans and gender diverse people when it comes to how much they are paid. With the development of AI, women, trans and gender diverse people may see more doors closing. Indeed, far from being a neutral decision-making process, we know that AI reproduces the biases of the datasets it is being fed. In other words, in a prejudiced world, AI will

reach prejudiced conclusions. ProPublica illustrated the issue with their finding on a software that was meant to help courts determine whether people should be sent to jail or set free. The software was – for the same type of crime – disproportionately suggesting that people of colour should be sent to jail, while white people could be released. Race was not in and of itself a data point entered in the process, but the biases in the data collected by the U.S. justice system led the AI to systematically conclude that people of colour are more likely to become repeated offenders.

Similar patterns are already happening in relation to gender: women are less likely to be shown advertisements for high-paid jobs on Google. In her book *Weapons of Math Destruction*, Cathy O'Neil mentions the company Gild, which was assigning a score to job applicants based on their engagement with influential industry contacts. Visiting a certain Japanese manga website frequented by talented engineers would increase your score, as the AI would perceive you as 'well connected.' However, women were unlikely to visit that website because of its sexual nature.

Thus, without a radical new approach to the way we develop AI, we will carry on training AI with datasets embedded with the biases of patriarchy and other systems of oppression. The outcome of those decisions will be detrimental to women, trans and gender diverse people, and AI will contribute to the perpetuation of oppression.

These developments in data exploitation transform our experience of the public space, with smart cities – i.e. the use of data and information technologies by local governments in infrastructure and structures of governance – becoming the new norm. As we are tracked on public transport and in the streets, as cities rely on our data to organise rubbish collection or fix the road, streets are becoming a space where inhabitants are expected to interact or at least be seen. As we discussed above, those transformations raise new questions regarding the issue of consent: smart cities place us under surveillance before we even get to tick a consent box, and we are not even informed.

This model brings new actors into the design of our public space: tech companies that sell smart city infrastructure. With this new model comes a new question: who are smart cities going to be smart for? Cities have been designed by men and for men, leaving women a space they struggle to appropriate. Ellie Cosgrave, lecturer in urban innovation and director of UCL City Leadership Laboratory, works on translating feminist theory to engineering practice:

> **"In engineering we reduce the world to categories so that we can create safe infrastructure. For example, we reduce people to a weight and pace of walking when we design a bridge, so we can make sure proper processes and procedures are followed to ensure that bridge does not fall down. But I try to open the door to a broader understanding of the people who use that infrastructure. They do not just have a weight and a trajectory but an experience and fear and the possibility of violence and socially imbued patterns of movement."**

Without this broader understanding of individual experience, smart cities risk perpetuating existing inequalities in how persons experience and engage with their environments. Early development of smart cities in India have already had consequences for women. Indeed, in an attempt at 'beautification', working class communities have been relocated away from the centre and street vendors have been removed from the roads. However, it was their very presence that, according to some reports, helped make the streets safer for women, by ensuring that they were not deserted.[89]

Conclusion: Reclaiming Privacy for Women, Trans and Gender Diverse People

The feeling of safety – or insecurity – eventually impacts women, trans and gender diverse people in many aspects of their lives and even limits their economic opportunities according to Cosgrave:

> **We have got three million people moving to cities every week across the world. People are moving to cities because of economic opportunities and quality of life opportunities. At the moment most cities across the world are unsafe for women. When women move to cities they are more likely to experience violence, they are more likely to feel unsafe in public spaces and therefore not fully access the possibilities and the resource that cities offer. So beyond the issue of women feeling scared and unsafe it also limits their economic freedom and their ability to make the most of a city.**

The case of smart cities shows the impact that developments in data exploitation and AI will have on women, trans and gender diverse people: beyond the perceived online/offline divide, the consequences will affect their day-to-day lives and prospects.

In the first part of this report, we started by acknowledging the role privacy has played historically in the oppression of women, trans and gender diverse people because of the way it was exploited by those in power. A distorted notion of privacy emerging from patriarchy and other systems of oppression has been used to restrict women to the private space, where family life takes place and where they are meant to stay. The legal discourse around the right to privacy was very much created to protect men and the sanctity of their homes, thus creating impunity for the violence perpetrated against women and children inside those homes. In more recent developments, anonymity has been increasingly used online to silence women who join in the public discourse.

We also concluded that privacy cannot be reduced to this narrow conception, promoted only when convenient and only benefitting the sovereign subject, a fallacy in itself. And the reason it cannot – and must not – be reduced to this is that more than ever women, trans and gender diverse people need privacy in order to reclaim their fundamental rights and freedoms, to live in a secure and safe environment, to be empowered and liberated from patriarchal controls and systems of oppression.

The second part of this report looked at surveillance as a tool for the enforcement of patriarchy and systems of oppression. While everyone is, to an extent, under the eye of state and corporate surveillance, there is nevertheless a singular experience,

that women, trans and gender diverse people and other oppressed groups will undergo. This experience both deprives those individuals from their rights and freedoms, and prevents them from accessing remedies for the denials of those rights.

With recent developments in data exploitation and new automated forms of decision-making such as seen with the use of AI by companies and states, the demand for strict and normative categories to place people in will increase even more. If left unchallenged, systems of oppression will be perpetuated through the biases and prejudices inherited in the datasets upon which AI is trained. Further research is needed in this field to properly understand the risks and impacts of AI on those forced into vulnerable positions, often due to already vulnerable positions in society. This is why developing an intersectional feminist methodology to researching data exploitation is essential.

Privacy must be reclaimed by women, trans and gender diverse people as a protection against the patriarchy and other structures of oppression which must to be challenged. It should be embraced as the basis for the ownership of our bodies and our freedoms to choose to have children, to access contraception, or have abortions. It should also be embraced as the basis for the freedom to define ourselves: defining one's gender identity in particular should be up to each of us –not be jeopardised by an imposed heteronormative vision of the state. To that extent, the Supreme Court ruling in India establishing privacy as a fundamental right in 2017 was key: a year later that ruling became the basis for the decriminalisation of homosexual sex.[90]

Women, trans and gender diverse people have already started writing the next chapter of the fight for gender equality: anchored in the modern world, they have been defending a fluid approach to gender, one where violence against women, trans and gender diverse people is no longer tolerated. This next chapter cannot ignore the new threats and realities of the modern world, where the economy is based on the data we produce, where companies and political parties pay for the profiles made about us, based on what we read, like and share. This new world is a world where the offline versus online divide no longer exists – if it ever did. The right to privacy will need to be adapted, and we hope that it will become a tool for the liberation of women, trans and gender diverse people from patriarchy and intersecting systems of oppression.

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