

Whats happening today to women's rights and citizenship

Majlis Legal Center- Negotiating the On-line

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I am no legal expert but deeply interested in the issue of norms and norm making. That is not surprising because as feminists all of us are interested in how norms and rules take birth and operate.

So, my presentation will focus on how norms arise in digital society, so that we can then see how to fix the challenges that arise in terms of women's participation and citizenship in this emerging social order.

I will start with the network data complex. To open up and examine the idea of women's citizenship today, we need to understand how the network-data complex works, that is, the coming together of the elite nexus in network society and of disembodied intelligence that is milked from personal information. We live in times when our ontologies are being defined by the network-data complex; we are what computational memory and machine intelligence that processes our data trails and footprints deem we are.

Factories hiring women are today asking for their Aadhaar numbers; a zero balance bank account needs an Aadhaar number

The unworthy poor must be verified by the network data complex on all counts – so Jio can get basic information about the 'low-income segment' using the Aadhaar biometric data base, for verification and authentication. It is least interested in the rights of the poor woman but most eager that her data profile on its servers, inaugurated with Aadhaar, can grow to become the almanac for data based intelligence, through which she can be targetted for financial products.

You can size up those who are at your service, like your "maid", examining if she is trustworthy or not, based on her ratings which use her Aadhaar.

The business of e-commerce is predicated upon having the data that will allow companies to target ads. Many players realise that you hardly make any money targeting ads and the more profitable thing to do is to generate complex data bases to be able to sell it. The big dream of small start ups is to have and own the precious currency that data is. Digital intelligence has become vital today for predicting and influencing social behaviour.

Now – in a country where social media usage is still very low, companies steal data from all sources and even share data so that new products can be offered.

You may not know it, but the medical transcription company that your hospital employs, will in all probability, sell your information to insurance and pharma companies and no one is to stop that.

Third world women and the farmer's movements may cry hoarse over the corporate take over of their farm lands – but Monsanto has detailed data on seeds and soil and is actively determining the choices farmers can make about their own crops. It is a data company that is dabbling in agriculture.

Now, all this is not about the online – or an external cyberspace that is out there. The digital is not the online. It is a seamless reality that is a composite of the physical-offline and virtual-online.

Paradoxically, this spatial seamlessness of human interaction produces a fragmentation of the self; breaking us into economic, social, political categories based on our data trails which create newer and newer markers of who we are. All because, intelligence resides not in any authentic, unified body, but is corporatised into a multiplicity of profiles (where the corporeal body still exists). And big companies claim that in the split second computational power of artificial intelligence systems that constantly optimise storage, they themselves don't know the physical location of a file! This is machine intelligence gone amok.

Internet behemoths often adopt illegal practices – evading taxes and assuming convenient and fluid definitions of their own business, so as to evade culpability in court cases. While powerful countries and regional blocks like the EU have evolved laws and policies to tackle this changing context, most developing countries are still playing catch up in being able to guarantee rights in the internet-mediated world.

In the current conjuncture, digitalization and datafication of all social activities and processes – concerning communication, governance, politics, economics etc. – is altering foundationally, social norms, practices and relations.

In terms of women's rights – one way to approach our understanding is to unpack what happens to speech and this is how most feminists have approached it so far – Is speech really free when we use online platforms that are private monopolies ?

- How can we imagine the liability of the platforms online – Youtube, Facebook, Twitter – corporations that refuse to respond to sexist content, but seem to be the first point of recourse for victims of harassment online? How do we ensure that Big capital does not become the adjudicator of our free futures (that is, the decision maker on what is harmful or not)? Can we look at a legal system that defines clearly corporate due diligence and internal policies on sexist speech, without privatising the rule of law and process of justice?

- What is the meaning of free speech when the avenues for such freedom – being the internet and digital spaces for self expression, opinion and association – are surveilled by the state? How can we rein in state power and impunity in this regard?

But speech constitutes one way to think about the online digital space. The seamlessness of digital space infiltrates our being and doing – even if you do not use gadgets, even if you are illiterate. For instance, your Aadhaar number has already made you a data point that is being used to discipline you. The recent elections in UP were won through Big Data analytics. The digital, as I mentioned before, is thus constitutive of contemporary ontologies. The fact that our identities are the sum total of our work, play and existence in the hybrid zones comprising the offline and online means that the emerging structures of society combine with and encompass the digital. It is this structural reality that needs to be addressed.

But for almost all of us, the datafied society seems like a Faustian bargain. We must have the Uber app. We do not mind trading our privacy because of the goodies we get in return. This is how much of current thinking, critical current thinking informs the debate. However, I would like to unpack this assumption to understand participation in the network society.

Today many platforms use your social media account as a means of verification – and if these platforms provide public services, then you cannot access those without firstly, having a Facebook account, and secondly, allowing the service to access your universe of social relationships.

This needs to be understood for its implications for democracy, sociality and the collectivity that we are. Foucault's path breaking work *Discipline and Punish* maps the historical transformation in the exercise of power, and as a corollary, the deployment of space, through an examination of the underlying principles, aims and organisation of the prison. It charts the changes in theory, practice and social function of disciplinary institutions and practices that emerged in Western society in the 18th and 19th centuries. In particular, it provides an insight into how space is used politically in relation to deviant and non-conforming others and focuses on a microphysics of power where bodies are targeted as the site in which the most mundane social practices and local power relations feed into the constitution of large scale social and institutional power relations. Foucault does not really focus on crime or punishment – he just looks at regulation, surveillance and control – as was constituted in a dialect of power and practice.

In his work, *History of Sexuality*, he focuses on 19th and 20th century genealogies of sexuality, and provides a greater insight into how individuals internalise norms laid down by the social sciences and truth discourses. The emphasis is on how people participate in their own subjectification and come to recognise themselves as particular types of

subjects, judging and monitoring themselves and others in an attempt to conform to social norms.

Foucault's work on the connections between knowledge, power and truth are really useful. However, even as we use what he says as a departure for a new theory to explain the contemporary, we must understand where the body fits in; the material, corporeal body that we, as feminists must restore to the endeavour of theory. What is underway on a planetary scale today, in terms of surveillance and the construction of subjectivity is different. It is not about the state and its raw power – it is a bigger plot. The digital, by reconstituting space and time has been able to provide the material physical architecture for capitalism to completely discard historical knowledge and truth discourses. Early cyborgian feminists thought of Internet space as emancipatory. But this was not to be. The incorporation of the body by digital capitalism into the material, experiential arena of deterritorialised digital space goes much further than '*reproducing*' sexism or racism or casteism or homophobia as *discursive* markers of social power. It actually *produces* agency and the collective ontology of our shared, real world. Through digital space that is uncontainable and digital time that is discontinuous, capitalism creates a separation between human beings and their natural ecosystems. Using machine intelligence that denaturalises the human person, it creates fragments of truth in which we are the bodies recoded as data. As data, not only individual subjectivity, but also our collectivity gets expressed in and emerges through a capitalist rendering of truth.

Because the digital is enclosed in this manner by capital, knowledge outside of the mainstream cannot create another truth nor another power. In this datafied narrative of truth, knowledge and power, we increasingly see a naturalisation of violent, patriarchal hypersexuality. The expression of sexuality and identity in digital times – and not merely their discursive meanings – arise from our location in the digital. Take the case of digital porn. Much of what drives the internet economy is porn and increasingly the industry is controlled by a few aggregators. What must be underlined in our analysis about digital porn is that the body never goes away. A rape video that circulates in the telecom markets of India is no longer about images and representation of patriarchal norms. It is about bodies – real bodies on the video and bodies of men implicated. It is also about the bodies of those performers, who, to survive in the industry, must offer more than mere sexual performance. They must become the kinky products of contemporary sexual performativity that blur the lines between (male) fantasy and aggression, and (male) aggression and violence. With the result, in the political-economy of porn today, we see a conflation between sexual expression and hypersexuality; a negation of female sexual desire and agency, and a mythification of desire as aggressive/violent fantasy.

The Faustian bargain – where we ostensibly give up our data for the goodness of digital capitalism and its wares – is actually a false Hobson's choice. It a move towards renditions of truth that strip the social value of normative thinking to nothingness, rendering our institutions irrelevant, and allowing data to present ever-moving fragments of fact. This is a huge crisis for democracy; it is a crisis *of* democracy in digital capitalism.

Jodi Dean – a political philosopher – sees the displacement of the traditional political realm by digital capitalism as an expression of the power of 'communicative capitalism', where 'the market becomes the site of democratic aspirations'. Taking Dean's argument forward, Robert Hassan a communications scholar says – "Ideas that look to the longer term, or reach back reflectively to the past for guidance, or ideas that simply need time to articulate and develop properly in order to reflect the inherent need of the idea itself, become marginalised as they literally take too much time". In this context, our analogous existence as a polity becomes increasingly ineffective. For our planet and our societies, we are no longer able to create a digital institutional environment adequate to our democratic interests. What is evident in countries like ours is that traditional parliamentary democracies seem to be dragged into the automatism of the technological. We are – as a political community, not able to provide the normative compass.

So what is to be done?

The regimes of data have brought a crisis of both publicness and privacy. They transgress the personal and marketise the public. A gender just information society must be able to provide women and people of non-normative genders the ability to scrutinise the world, interrogate existing norms, challenge social structures, construct alternative worldviews and occupy the public sphere, as equals.

For this, we need to invent an *a priori* ethics of sociality – matching it with the norms that are can recreate the course of the digital. This is about defining what kind of society we want to have or to be, a feminist referendum on the digital. Then we can re-purpose the digital towards this and make connectivity meaningful. Then we can decide what data regimes can correspond to such an idea of subjectivity and sociality.

Although it builds on the material conditions of industrial society, the digital has created a moment of discontinuity at a foundational, institutional level. It is clear that the industrial society consensus of the UDHR and then later, through CEDAW needs revisiting. For instance, we know that the human rights committees are struggling with the concept of ETOs, and CS movements are asking for a treaty on TNCs. The connection between global peace and digital surveillance, and the need for a global digital constitutionalism have also been articulated.

Unless we head into an institution building process, our Faustian deals on data for development will end up re-disciplining us – all over again, through data regimes. At national levels, we must tackle the implications for democracy, cognizant of the place of the digital in human society and presence of the human person in digital materiality.

One way, as Eben Moglen, leading legal thinker on the digital says, is to give up the data game altogether. Stop collecting any data – does not matter if we do not make strides in Artificial Intelligence. This of course does not mean something atavistic, but use computing power based on a feminist ethics of body, space and time. It is an open question, but it exhorts us to think of the *laissez faire* digital juggernaut not as immutable *fait accompli*, but rather as a political framework of contemporary life.