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# **REPRODUCING INJUSTICE**

Pregnancy and the Claim of Fetal Personhood

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# ABSTRACT

Ahalya Ganesh: Reproducing Injustice: Pregnancy and the Fetal Personhood Discourse

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Feminist activists and thinkers have long been attentive to the ways that class, gender, race etc. intersect with reproduction. In fact, multiple overtly feminist paradigms have been evolved over the last half century that address concerns about sexual and reproductive health rights. But with the rise of anti-gender and similar conservative movements, many of the gains of the feminist and women's movements have been at risk. The threat that they are facing is the repeal or erosion of reproductive rights such as abortions and access to reproductive healthcare. One such movement that is gaining prominence in the US, in India and in the rest of the world is that of the personhood movement. The personhood movements seeks to extend human rights and constitutional rights to pre-born entities such as fetuses, embryos and gametes.

This study explores the implications of the invocation of fetal personhood on the lives of pregnant people. It also investigates how the pregnant person is framed within the personhood discourse and asks how such a framing affects people's ability to realize reproductive justice. The study employs a comparative case study research design, and the situational analysis methods to analyze media accounts of the legal trials of two women—Safoora Zargar from contemporary India and Cornelia Whitner from 1990s' United States.

The study findings illuminate that pregnant people are more likely to become the focus of the personhood movement when they are multiply-marginalized in their sociopolitical context. Once inducted into the center of the discourse, the pregnant people are 'motherized' by public perception and made to abide by the selfless mother ethic, lest they should be penalized and disenfranchised because of the effects of the personhood discourse. Finally, the study also finds that becoming the center of the personhood discourse entails that the pregnant person forfeit their ability to realize reproductive justice because their ability to make meaningful choices regarding their own body becomes mediated by the discourse and the motherization it engenders.

Keywords: personhood movement, reproductive justice, mother, pregnancy

The originality of this thesis has been checked using the Turnitin OriginalityCheck service

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# LIST OF SYMBOLS AND ABBREVIATIONS

GTM	Grounded Theory Method
SA	Situational Analysis

# 1. INTRODUCTION

The world we currently live in is rife with political battles around topics such as sexual and reproductive health rights, where people with and without institutional authority fight tooth and nail for their political persuasion to be realised in the form of laws and/or policy. Take for example, how *Roe v Wade* is now being challenged once more in the United States. Opponents of the judgement, which legalized abortions in the US, make many claims as to why *Roe* should be overturned. One such claim is that since people now have better access to contraception than ever before, the legitimacy of abortions is no longer a necessity (Talbot, 2021). In this claim, the speakers are essentially arguing that since sexual health rights are now more robust than they were in 1973 when *Roe* was put in place, the reproductive right of access to abortions should be weakened. In another example, the Indian legislature notified the latest amendment to the Medical Termination of Pregnancy Act, 1971 on the 24th of September 2021. This amendment allowed pregnant people to access abortions for up to 20— and in some cases 24— weeks of gestation with the approval of one registered medical practitioner. Despite being a progressive amendment, one thing was conspicuously absent— people with uteri were still not given the right (or an autonomous choice) to terminate their pregnancy without needing a medical professional’s approval.

What examples like the ones above show is that while there might be some gains that have been made in the attainment of reproductive rights because of feminist and allied movements, there are still complexities in the landscape of people’s access to reproductive care that need to be addressed. This thesis is one attempt to understand how fetal personhood<sup>1</sup>— one claim that affects people’s access to reproductive rights— makes reproductive healthcare contingent on the amorphous rights of the fetus.

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<sup>1</sup> I use ‘fetal personhood’ when talking about the claim; and ‘personhood’ when speaking about the movement or discourse, because the movement is more expansive and includes personhood for embryos and gametes as well.

In terms of the scientific tradition, my thesis sits at the intersection of the study of reproduction and its position in the carceral system. More specifically, my study is an attempt to understand how the claim that the fetus or embryo is a person affects the people who are carrying that fetus or embryo. I use the carceral system as the point of entry for this study because of the way in which the carceral system conducts people's reproductive conduct through the use of laws, policy and surveillance. It will analyze two case studies which center around a pregnant person in whose pregnancy the claim of fetal personhood was animated.

I found the first case— that of a woman named Safoora Zargar— in early to mid-2020. Zargar had come to be spotlighted by the media because she had gotten arrested by the New Delhi Police for charges that are used to put away terrorists. But the reason that her case had caught the media's attention more than others was that Zargar was pregnant during her arrest and subsequent imprisonment. Zargar's lawyers were engaged in the endeavour to give their client temporary respite in the form of bail, but were unsuccessful time and time again. That is, until they argued before court that Zargar's 'unborn child' was an individual that the state was duty-bound to protect and that Zargar's confinement during a pandemic was putting the 'child's health at risk. With this, Zargar was freed.

What stuck with me throughout the proceedings of Zargar's legal case was the profound discomfort I felt when her fetus was called a child. This was compounded finally by the fact that Zargar only attained bail because of her 'child' and not on the humanitarian grounds that she should be protected from contracting a potentially deadly virus. This led me to begin work on this thesis. I wondered at the outset whether there were other cases like Zargar's where the fetus was deemed more worthy of protection than the pregnant person. During one of my searches on the internet about fetuses being deemed children, I stumbled onto the case of Cornelia Whitner. A Black woman from South Carolina, Whitner was charged with child abuse for consuming drugs while pregnant. But in Whitner's case, the fetus' being labelled a child was the reason she was imprisoned for the greater part of a decade. This pushed me to wonder: one, how a pregnant person's imaginary is constructed in the minds of the public when their fetus is deemed to be a child; and two, how this image-construction or framing affected their realization of reproductive justice.

In already-published Feminist literature, there has been quite a lot of work done in the areas of reproduction and incarceration. In such studies, a commonly used theoretical



framework is that of reproductive justice. Reproductive justice is a fairly recent paradigm that was evolved by Black feminists after the International Conference on Population and Development which took place in Cairo, Egypt in 1994. In a nutshell, the framework has human rights at its core and advocates that people should have the authority and the ability to decide when and whether to have children and to raise those children in environments that are free from violence. The framework acknowledges that very few people have the privilege of privacy and truly free and meaningful choice. Furthermore, it is cognizant of how the various axes of oppression come together to marginalize different groups of people. Because of these reasons, reproductive justice is a framework that goes a few steps further than the pro-choice narratives which dominate public discourse and allows people to realize that justice is not merely the choice to gestate or abort one's own fetus, but the ability to have control over all of one's own reproductive faculties.

This framework has been crucial in studies that shed light on incarceration and the way the carceral system regulates people's reproductive conduct. Understanding how the system governs people's reproductive conduct is especially crucial because of the number of people of reproductive age who are housed in prisons and jails in the US and in India (see Sufrin, 2015). Some studies have shown how incarceration impedes the realization of reproductive justice in that prisoners are not given adequate access to menstrual health and other hygiene products (Kraft-Stolar, 2015), and others reflect on how prisoners are not permitted to have abortions (Roth, 2017) or even access to contraception (Hayes et al., 2020). Prisons have even been known to violate tenets of reproductive justice by shackling prisoners while they give birth (Ocen, 2012).

Of consequence to the large prison population in countries like India and the US is the issue of fetal/embryonic personhood that was mentioned earlier. By claiming that a gamete, embryo or fetus is a person, what personhood advocates seek to do is to argue that it (the fetus, embryo or gamete) should be given rights commensurate with that of 'born' human beings. The ultimate goal of such advocacy is to make abortions a thing of the past. The movement is spearheaded by conservatives, nationalists and religious groups who view the pregnant person with suspicion and regard them as potential harm-doers to the 'unborn child' they claim to want to protect. This movement is as dangerous as can be to reproductive rights, especially in the context of the world we live in currently, because *Roe v Wade*

is not only an important foundation for abortion rights in the 50 states of the US but also in countries like India in cases like Zargar's where it was referenced. Furthermore, if the personhood movement is able to succeed in scrapping *Roe*, it could lead other groups engaged in anti-gender movements to be emboldened to pursue similar actions in the nation states they operate out of.

Despite its very real dangers, little is known about the operation of the personhood movement or the claim of fetal personhood. For instance, while there are studies that address how personhood rights could eclipse the rights of pregnant and impregnable people (McCollough, 2012) little is known about what happens once an individual pregnant person becomes enmeshed in the discourse. How they are framed in the media, and what politics emerges out of that framing are as yet understudied. Therefore, my thesis' objective is to answer these pressing questions. Put differently, my thesis asks:

1. How does the pregnant person become enmeshed in the personhood discourse?
2. How are they framed in media narratives?
3. How does this framing impact their realization of reproductive justice?

My thesis contributes to existing scientific literature by answering these three topical questions and by thus giving an insight into how and in what ways the personhood discourse is dangerous for the status of our collective sexual and reproductive health rights.

The thesis was carried out using a comparative case study research design. The two cases I analyze are that of Safoora Zargar and Cornelia Whitner, which I referenced earlier in the chapter. Zargar's case is based in India and in the year 2020, and Whitner's case is from South Carolina in the United States and the year 1992-1998. They are both women who are multiply-marginalized in that Zargar was a Kashmiri muslim woman living in India and Whitner was a drug-using Black woman living in the US. Since they are both sufficiently similar, a comparison between their two cases ought to be possible. However, despite the claim of fetal personhood being invoked in both Zargar and Whitner's cases, the legal ramifications of the claim were starkly different for the two women. Given this contrast, I believe that it will be possible to distill the politics engendered by the discourse of personhood, independent of the two cases.

As with the studies referenced above, I used reproductive justice as my primary theoretical framework for analyzing the two cases. The personhood discourse and its various assumptions also guided the analysis. The methodological framework I used in the thesis was situational analysis, which is an iteration of the grounded theory method. In addition to situational analysis, I also used frame analysis. By and large, all of the frameworks for the research work I used are explicitly feminist in nature, and so this thesis project too can be considered to have been a feminist exercise in knowledge production.

The chapterwise flow of the thesis is as follows. The next chapter, i.e., chapter two contains descriptions of the two cases in their respective political contexts. Chapter three consists of a review of relevant literature. Chapter four presents the reader with the type of materials used for theorization and the method used to do the same. Chapter five contains sections analyzing Zargar and Whitner's cases and a final section which compares the two cases to draw theoretical conclusions. The final chapter, i.e., chapter six is the concluding chapter which appraises the limitations of the study and contains recommendations for future research.

## 2. THE CASES

In this chapter, I will revisit the two cases introduced in Chapter 1 and describe them in greater detail. The goal of writing this chapter is to situate both the cases in their respective contexts. This will pave the way for me to do a contextualized reading of the cases, and avoid being ahistorical in their treatment.

### 2.1 Safoora Zargar

#### 2.1.1 *Islamophobia in India: A History*

Islamophobia is a phenomenon that is hardly a novelty in India. Dating back to the founding of the *Rashtriya Swayamsevak Sangh* (meaning: national volunteer organization; henceforth RSS) in 1925, the Hindutva ideology was one of the most important originators of islamophobic thought (Deshmukh, 2021). Hindutva and the RSS gained currency in the 1980s. During this period, champions of the ideology established themselves as stalwarts of Hinduism and vanguards of the era of Hindu power (Kaul, 2020). They did this by holding chariot processions (called '*rath yatra*') across the country for the cause of 'reclaiming' the land they announced as being the birthplace of the Hindu deity Ram and by fighting for the construction of a Ram temple at this site. However, this reclamation was not a process for merely the construction of a temple. Instead, what these leaders claimed was that muslim rulers had previously barbarically destroyed an age-old Hindu temple to construct the Babri mosque (called '*Babri Masjid*') and that that symbol of "muslim aggression" must be torn down for the construction of the Ram temple.

This goal was partially accomplished in 1992. Hindu mobs came together to the town of Ayodhya, scaled the mosque, vandalized it and claimed it as theirs to destroy. In this process, leaders of the Hindutva movement successfully manufactured an 'other' to the Hindu in order to reify the image of who and what a Hindu is. The ideology effectively mobilized tens of thousands of people into supporters of the Hindutva cause. It also ensured that instances of anti-muslim pogroms were either conveniently forgotten or glorified (Engineer,

2005). These were the precipitating factors that led to the election of the Bharatiya Janata Party (henceforth, BJP) to power in the union government in 2014.

### **2.1.2 *Islamophobia in contemporary India***

Since the election of the BJP to the center, there has been a steep increase in the episodes of violence against muslims (Siyech & Narain, 2018). Muslim shopowners have been boycotted, beef-related lynchings have skyrocketed, and public calls to rape and murder muslims have been sanctioned by elected officials. It was in this climate, where muslim citizens have been termed “Pakistani” (in itself derogatory) and traitorous, that two legal instruments were born. These were the National Register of Citizens (NRC) and the Citizenship Amendment Act (CAA), 2020. Inter-read and implemented, these laws could result in the loss of citizenship of millions of already disenfranchised or marginalised people, especially muslims.

Multiple groups, muslim and non-muslim, took to the streets to express their opposition to the implementation of these laws. The protests against these laws were spearheaded in many cases by students— particularly muslim women. Since the demonstrating parties were fundamentally demanding the repeal of these laws, and accountability from the governing dispensation that enacted them in the first place, they were met with violent suppression which resulted in the loss of many lives and livelihoods. Acts of suppression in these cases included, but are not limited to, charging dissenters with colonial-era sedition, and draconian anti-terrorism laws, and the issuance of orders that prohibit the public assemblies of people. When such measures proved to be inadequate to curb the movement, riots were sparked in different cities through clarion calls against ‘enemies of the state’ (which is a long-standing euphemism for muslims, to the ilk of the party in power at the Union level).

One such riot took place in late February 2020 in the National Capital Territory (NCT) which injured over 500 people, most of whom were muslim. It has thus been dubbed an anti-muslim riot. Instead of charging and bringing to justice those who publicly called for such riots, or the state and non-state actors who oversaw (and indulged in) the violence, the State has named anti-CAA/NRC protestors as the perpetrators of the riot. Thanks to the back-

logged judicial system, and to criminal codes under which individual persons can be incarcerated as terrorists without trial for years on end, multiple dissenting parties have been imprisoned in over-crowded jails, with little to no legal recourse.

### **2.1.3 *The Case of Safoora Zargar***

One such individual is Safoora Zargar. As a muslim research scholar at the central university, Jamia Millia Islamia, who was concerned about the legislations and what they stood for, she founded the Jamia Coordination Committee. She and her colleagues took to the streets and sat in peaceful protest against the CAA and NRC at various sites of demonstration in the NCT, and participated in sloganeering against and demanding accountability from the ruling dispensation. These actions by Safoora were the ones which the National Investigation Agency and Delhi Police deemed illegal. They charged her with felonies related to blockading roads, and for violation Section 144 of the Code of Criminal Procedure which relates to unlawful assembly. As soon as Safoora secured bail for these counts, she was also charged under the Unlawful Activities Prevention Act (UAPA) for the same actions, which deemed her a terrorist. It is this egregious Act under which she was imprisoned from April through June 2020.

At the time of her arrest, that is on 10th April 2020, Safoora was confirmed as being in her second trimester of pregnancy. But bail or any other leniency was denied to her by the State citing that “exceptions cannot be carved out for pregnant inmates... merely because of their pregnancy” (Delhi Police, 2020: 22). However, it is important to note here that while bail under humanitarian grounds had been sought for Safoora, they were not applied for “merely because of her pregnancy” as the status report suggests, but because Safoora’s pregnancy made her susceptible to becoming infected with COVID-19 (amidst a pandemic) in the overcrowded Tihar Jail. When her application for bail was finally accepted, after multiple failed attempts for the same, the reasons for granting bail seemed to be of a suspicious nature. Safoora was granted bail pursuant to her advocate’s appeal that even though Safoora may be accused of committing “heinous” crimes (a term used by representatives of the State), her fetus could be deemed a person due to various interpretations of international laws and Indian judicial precedences, and that they (the fetus) is entitled to State protection from the pandemic. Thus, since fetal personhood was the claim that allowed for Safoora’s temporary respite from incarceration, and because she was the only defendant who has

been granted bail (on humanitarian grounds) among all of those accused of the same charges as her as of one and a half years after her initial arrest, it became important to evaluate how fetal personhood affects the realisation of reproductive justice when an AFAB person is enmeshed in the carceral process. This, therefore, is the aim of my research.

## **2.2 Cornelia Whitner**

### **2.2.1 *The War on Drugs***

During the presidency of Richard Nixon, there was what has now been admitted as a deep antagonism towards two groups of people— Black people, and those who were considered the “anti-war left” (Baum, 2016). It was in this context that the Nixon Presidency declared a ‘war on drugs’ in 1971. The goal of this ‘war’, was to vilify anti-war leftists (known colloquially as ‘hippies’) and Black people by creating a strong public association of the two groups with cannabis and heroin, respectively. It was also a way to break up the gathering of these groups, to instill fear of arrest and home-raids in the leadership and to generally use drugs as the facade behind which these otherwise unconstitutional acts could be carried out with legal sanction (Kraska & Kappeler, 1997).

Nancy Reagan’s ‘Just Say No’ campaign following her husband, Ronald Reagan’s ascent to the presidency was begun in order to further this very legacy of Nixon. With the Reagan administration’s approval and expansion of the war on drugs in the 1980s, this legal manhunt of supposed drug users and their subsequent incarceration was increased on a war-footing. Furthermore, media portrayals of people who used crack, a smokeable form of cocaine, augmented public concern about drugs. This concern combined with the political posturing to exterminate drug use translated to law enforcement’s adoption of draconian practices to clamp down on drug users. A Los Angeles Police Department chief has even been recorded as saying that “casual drug users should be taken out and shot” (as quoted in Moraes, 2001: 11). This resulted in the growth of the prison population of nonviolent drug offenders from 50,000 in 1980 to about 400,000 in 1997 (*A Brief History of the Drug War*, n.d.).

Fundamentally, what all of these policies led to was mass hysteria about nonviolent drug use and the touting of inconclusive scientific work as evidence of its destructive potential.

Parallely, there was also a significant increase in the number of people— especially Black women (Reynolds, 2008)— who were penalised, imprisoned, and had their life and community relations altered for consuming drugs.

### **2.2.2 *The case of Cornelia Whitner***

One such victim of the war on drugs was Cornelia Whitner. Whitner was a Black woman who moved to the city of Easley, South Carolina in 1989 and shortly thereafter began using crack cocaine. She was able to afford her drug habit through sex work and stealing, and was subsequently charged with neglect of her second child (of two children) while she was pregnant, in December 1991. Having pleaded guilty to the accusation, Whitner was sentenced to probation and ordered to abstain from drugs and alcohol, the violation of which would result in her imprisonment for up to ten years. Both her children were separated from Whitner and placed with family members, due to the sustenance of these charges.

Her third child, whom she was pregnant with during this ordeal, was tested for cocaine metabolites on the day of his birth in February 1992. Upon testing positive the child was taken away from Cornelia Whitner by social services. Whitner, herself, was arrested on the very same day under the charge of child neglect. On the day of her arraignment in April 1992, Whitner once again pleaded guilty to criminal child neglect before Judge Eppes, and was sentenced to eight years in prison. Her infant child was separated from Whitner, and was sent to live with his great aunt.

An American Civil Liberties Union (ACLU) lawyer named Rauch Wise heard about Whitner's case and took it up voluntarily. Heeding his counsel, a detained Whitner applied for post-conviction relief. This petition was based on two arguments. The first was that her initial lawyer had provided ineffective counsel. The second, and more pertinent, argument was that Judge Eppes' court's conviction of Whitner under the South Carolina Children's Code was baseless. Wise postulated that since Whitner's third child was a fetus at the time of her alleged abuse, the Children's Code was not applicable in Whitner's case. Acknowledging that Whitner could not have pleaded guilty to a non-existent crime, and admitting that she did indeed have ineffective counsel, Judge Patterson of the thirteenth state circuit court granted the petition. After spending nineteen months in prison, Whitner was freed in November 1993 (Tantibanchachai, 2014).



However, the incumbent and incoming State Attorneys Generals of South Carolina, Travis Medlock and Charles Condon, disagreed with the overturning of the conviction and appealed to the South Carolina Supreme Court to reinstate Whitner's sentence. Their argument had two bases. First, that Judge Patterson had committed an error in annulling the initial ruling of Judge Eppes, as the latter's court did have a right to hear Whitner's appeal. Second, they argued that Whitner's counsel was in fact effective and that her petition for post-conviction relief had no ground to stand on (Whitner v South Carolina, 1997) In response to this, Wise and his colleagues from Center for Reproductive Law and Policy, Lynn Paltrow and Lisa Tankoos, made the case that a fetus cannot fall under the purview of the Children's code, and that Whitner was not given "fair notice" that her behaviour was prohibited. They also advocated that prosecuting Whitner for the use of crack cocaine while pregnant infringed upon her right to privacy (Abrahamson, 1998)

The Supreme Court agreed with the State on both its counts. It substantiated this by citing the precedence that since it had held that the fetus was a person in a homicide ruling, it would be inconsistent to not treat the fetus as an individual for other matters. It rebutted Wise and colleagues on their 'right to privacy' argument by saying that since the State was protecting the life and health of a viable fetus, Whitner's rights had not been violated (Abrahamson, 1998). One judge even made a remark against the argument which spoke of the lack of fair notice and said that since it was common knowledge that cocaine use was harmful to a viable fetus, no prior notice was required (Toal as quoted in Gaulden, 1997). And thus, on 15th July 1996, Whitner's eight remaining years of imprisonment were reinstated. The United States Supreme court refused to hear the appeal submitted by Whitner's lawyers; and Whitner did indeed serve the remainder of her time.

### **2.3 Inter-reading the Cases**

Zargar and Whitner's cases, when juxtaposed with each other, tell a very interesting story. On the one hand, they are so similar in that both of these women were being marginalized because of their ethnic/racial identity. They also undergo some similar forms of structural oppression because of the time period in which they lived; for Whitner, this was the war on drugs, and for Zargar it was rampant islamophobia and the suppression of dissent. These structural marginalizations render both Whitner and Zargar as 'deviant'-- they deviate from the norms set by the dominant classes in their context and are made hypervisible because

of said deviance. This is a major point of similarity between Whitner and Zargar, and one that makes the comparison of the two possible.

Despite these similarities, both the cases are also unique in their own way in that both of them endured legal trials that were the first of their kind in their respective contexts. Whitner's case was unique in that it set a precedent for categorizing fetuses under the legal ambit of the word 'child'; and Zargar's was unique in that hers was one of the only cases to be given bail by the state. It shows how the State grants Zargar, Whitner and others like her, who are marked, with conditional citizenship, which can be snatched away as easily as they were given, in order to bring them in line with the prevailing norms and values of the time.

## 3. THEORETICAL FRAMEWORK AND REVIEW OF LITERATURE

The objective of my thesis is to decode the ways in which pregnant people enmeshed in the personhood discourse are framed in media narratives and how it affects their realization of reproductive justice. In order to meet those objectives, I will be basing my analysis on the theoretical framework of reproductive justice and an understanding of the personhood movement.

Much of the available literature on the topics of fetal personhood and the framework of reproductive justice are based in the US context, and therefore, a majority of the literature reviewed in this chapter reflects that context.

### 3.1 Unpacking Reproductive Justice

In 1969, Betty Friedan and other abortion rights activists founded the National Abortion Rights Action League with the goal of consolidating and strengthening the efforts of state abortion-rights groups under the aegis of the first national pro-choice organization. By advocating for women's right to choose, the abortion rights movement argued that the government should not dictate or control whether a woman<sup>2</sup> has children. Essentially, they advocated for the right to privacy from the government, and for the ability of people with uteri to be able to terminate their pregnancy, should they so wish. Actionable steps taken by the organization included lobbying in states and organizing grassroots demonstrations for the realization of reproductive choice— i.e., the choice to carry on or to terminate the pregnancy— for women (Fried, 2013)

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<sup>2</sup> 'woman' is used as a stand-in to meet person with uterus, because it was the original term used by the scholars.

But despite this undoubtedly important, even feminist, fight, women of colour among others took issue with the pro-choice movement and hesitated to join its ranks for a multitude of reasons. For one, the pro-choice movement did not offer much in the way of providing all people with uteri with reproductive rights. According to Solinger, by aligning itself with the ideal of providing women with more choices, the movement advocated not for all women but for women who already had access to resources and whose choices were imbued with legitimacy because of their privilege. She argued that this created a hierarchy among women which then dictate who could have access to certain rights and who could not (Solinger, 2001). With this critique, Solinger and other skeptics of the pro-choice movement opined that since poor women, women of colour, disabled women and other people with uteri do not always possess the necessary resources to be able to make 'legitimate' choices, the abortion rights movement was not advocating on their behalf.

Yet another critique by Solinger reads that "'choice' masks the ways that laws, policies and public officials punish or reward the reproductive activity of different groups of women differently" (as quoted in Ross, 2006). Here, Solinger is referring to how coerced decisions are often legitimated using the metaphor of choice. For example, if people from the inner cities are told that they will avail more food subsidy if they have fewer than 3 children, then the 'choice' of having fewer than three children is not made agentially. Furthermore, certain choices are inherently labelled superior to others, and this is because those who make those choices have more social power than others. This also evokes skepticism from women of colour and Black feminists because it means that the idea of choice conceals how people's agencies are determined to some extent by their circumstance and social position.

Due to these reasons, many women of colour (especially Black feminists) were hesitant to align themselves with the pro-choice movement. Instead of joining the ranks of the mainstream women's movement, these feminists started organizing among themselves and started to create their own reproductive health organizations. These organizations were critical of neoliberalism, neocolonialism, the carceral system and other oppressive institutions which they believed affected people's ability to exercise their reproductive rights. In exercising this criticality, these organizations moved past the single issue of abortion rights, which

was the sole focus of the pro-choice movement. Instead, their focus was on ending reproductive oppression whether it came in the form of “coerced sex and reproduction” or “coerced suppression or termination of fertility”. (Ross & Solinger, 2017: 17).

Parallel to this effort to establish their own organization, these feminists were engaged in the search for a conceptual framework that engendered the multitude of values and issues they deemed important. This search culminated in the conceptualization of ‘reproductive justice’. Born after the International Conference on Population and Development in Cairo in 1994, reproductive justice was a human rights framework envisioned by Black feminists. As such, reproductive justice was developed as “an intersectional theory emerging from the experiences of women of color whose communities experience reproductive oppression” (Ross, 2006: 1). It was defined as a combination of ‘reproductive health’ and ‘social justice’. But soon, this definition of reproductive justice was expanded and the goals of reproductive justice were distilled into three human rights that all people must be accorded. They are: (1) the right to bear children in conditions that were chosen by the individual; (2) the right to not have children through the use of contraception, intraception or abstinence; and (3) the right to parent children in safe and healthy environments free from violence by individuals or the state (Ross & Solinger, 2017).

### **3.2 Reproductive Justice and the Carceral System**

Reproductive justice acknowledges that an individual’s control over their fertility is complex and cannot be understood outside of their socio-economic context which necessarily affects every facet of their lives (Hayes et al., 2020). Being part of a system of mass incarceration is thus also one factor that affects the realization of reproductive justice. It is a given that as an inmate in prison, one forsakes many of the rights that they would otherwise be entitled to. However, literature on incarceration has revealed that incarcerated persons are often made to spend their time in the prison bereft of even the most basic human rights which are considered inalienable. Such rights include the right to access healthcare. Roth (2017: 386) asserts that “at the most basic level, prisons strip people of dignity and the means to take care of themselves”. It has been recorded that even access to even the most basic reproductive health care (like menstrual hygiene products) has been routinely denied within the carceral system (cf. Kraft-Stoler, 2015). The process of childbirth is another pain-point for incarcerated persons. Shackling prisoners while they give birth (see Ocen, 2012;

Clarke & Simon, 2013), denying them regular access to OB-GYNs (Roth, 2017), and forcing them to give birth alone in isolated (and often unsanitary) jail cells (Roth, 2012) are all violations of their SRHR.

There is also an array of literature that specifies how abortion needs are unmet in prisons, because the authorities within the institution have discretionary power to place obstacles in the way of letting the inmate access pregnancy termination services (see Roth, 2004; Kasdan, 2009). There are also papers that have highlighted how incarceration of AFAB people disproportionately affects their ability to parent their children (see Gordon, 1998; Aiello & McQueeney, 2016). Due to the fact that single parent households often have AFAB people at the helm (Mumola, 2000), their incarceration often results in an disruption of the parent-child relationship. All of these violations of the tenets of reproductive justice thus merit the conclusion that incarceration is indeed reproductive injustice.

Having discussed how incarceration and reproductive justice are fundamentally incompatible for the inmates who are undergoing incarceration, it is also useful to discuss how mass incarceration, and the looming threat of re-incarceration that it festers, governs the conduct of AFAB people who stand to be imprisoned. Studies (cf. Haney, 2010) have shown how short of convincing the State of their 'worthiness' as mothers by making the 'right choices', pregnant people's bodies would be utilised as a mere tool to carry to term and produce babies for individuals outside prison. Sufrin titles these prisoners whose reproductive labour is exploited for the general populace's use as "carcerally-crafted gestational carriers" (2018: 60). In this way, we can see how reproductive conduct is often governed by prisons by coercing normative motherhood out of decidedly atypical structures for kinship. This sort of everyday, subliminal violence (Ganesh, 2017) orchestrated by the State also contradicts the third tenet of reproductive justice which was the right to be able to parent children free from interpersonal and State-sponsored violence.

While Reproductive Justice as a theoretical framework (and as a social movement) is robust and thorough, there are still gaps within what has been understood using the framework as a lens. For example, Sufrin's article entitled "Making Mothers in Jail" (2018) has explored how the reproductive justice framework could be a lens through which to investigate carcerality and reproductive technology. However, the question of how certain framings of pregnant people affect their ability to realize reproductive justice is understudied.

### 3.3 Fetal personhood

Antithetical to the pro-choice movement which I discussed earlier in the chapter is the pro-life or anti-abortion movement. The modern antiabortion movement was born as a response to the abortion reforms that took place in various US states in the 1960s. At the time, the movement consisted primarily of Catholic doctors, nurses, housewives and lawyers among others, who came together to oppose abortion reform, or what they termed as 'liberalization'. Despite starting as a movement to uphold catholic values, the antiabortion movement pivoted to projecting itself as a rights-based movement in the early 1970s during which the *Roe v Wade* verdict was passed. The rights they claimed to be advocating for was the right to life of the fetus, which they believed to be an entity of its own. They made the case that abortion was murder, by stating that any immoral action that impacts others "should be a serious crime under the law" (Crum & McCormack, 1992: 28). They used the figure of the fetus in-utero as a rallying tool, implying it to be an 'unborn' or 'preborn' baby that was fully-formed (Daniels, 1993). This was the origin of the personhood discourse.

The pro-life movement's argument is hinged on the idea that the fetus is a life, and that the sanctity of all life must be protected. The personhood movement incorporates this fundamental argument and extends it by "adopting a 'thin' unqualified, and biological definition of personhood that would attach full moral status and legal protection to the life of the preborn and place them on equal footing with the born" (Will, 2013: 583). By arguing for embryos and fetuses to be recognized as fully-human, the movement seeks to foreground: (1) that any harm to the fetus must be a punishable offense; and (2) that fetuses should be accorded all the rights that would otherwise be given to born humans.

However, the personhood movement goes beyond the anti-abortion activism of the pro-life movement by arguing that not only abortions but any possible harm to the fetus should be considered a contravention of the law. Here, the definition of harm is quite amorphous and therefore the codification of the personhood argument into law would mean that pregnant people can be taken to court for the smallest of missteps during their pregnancy. Examples of potential harm to threats could include pregnant people choosing to not heed their physicians' instructions and having a miscarriage as a result (see Will, 2013) or the use of alcohol or other substances that can cause birth defects.

Proponents of the movement thus advocate for the surveillance of pregnant people to ensure that the fetus does not come in harm's way. They condone the operations of the "pregnancy police" (McNulty, 1987) due to which the pregnant person's interior space is thus made into a "public space" that is "kept under surveillance and... controlled" (McCulloch, 2012: 17). This surveillance comes in many forms, and while it threatens everyone who is impregnable, people who are considered deviant or those who are minoritized are more likely to be targeted (Howard, 2020; Roberts, 1997). For example, Doan and Schwarz (2020) explain how state surveillance in the form of laws go hand in hand with the social control of pregnant people to ensure that they are behaving in ways that are in alignment with the normative idea of a good mother. Additionally, there are also studies that show the causal link between increased state or legal surveillance of pregnant people and the adoption of surveillance policies by hospitals and healthcare centers (Howard, 2020). Finally, surveillance is also carried out by pregnant women upon themselves (Wetterberg, 2004). This is done by perusing material on how to be a 'good mother' and 'choosing' to act in accordance with that (Wetterberg, 2004). Embedded within all these types of surveillance is the understanding that the object being surveilled is not just pregnant people's contravention of the law. Instead surveillance is done in order to punish their transgression of gender norms (Flavin, 2008), one of which dictates that impregnable people need to act as selfless and inherently maternal figures and therefore not consume drugs or alcohol during pregnancy (Doan & Schwarz, 2020).

As a result of this surveillance, pregnant people are made subject to certain regulations of what is good conduct. The rationale for what constitutes good conduct then is framed in one of two ways— (1) as "an effort to find a balance between the rights of individual women against a concept of a societal good, such as the state's interest in the quality of offspring; the state's interest in protecting maternal health; the state's interest in what kind of people give birth and when." (Howard, 2020: 349); or (2) as an effort to balance the rights of two individuals— in this case, the fetus and the mother. This kind of framing and legislative conundrum where either the pregnant person's or the fetus' rights have to be eclipsed for the other has come to be called the maternal-fetal conflict.

The maternal-fetal conflict was a term first used in obstetrics (Fasouliotis & Schenker, 2000) to describe how as a result of technological advancements wherein the fetus could



be directly accessed, it became yet another patient in the eyes of the physician (see: Casper, 1998). This received some attention from feminist scholars, who adopting Barad's (2007) concept of intra-action, argue that the maternal-fetal distinction is unfounded (Takeshita, 2017; Yoshizawa, 2016). Nevertheless, the idea of the maternal-fetal conflict migrated to legal scholarship due to the personhood movement, and is used in the context of regulation to adjudicate on whose rights take primacy in a legal set-up (Scott, 2002).

Due to this conflict and the gradation of rights it engenders, pregnant people could be prosecuted for violating the rights of the fetus. Even in cases where the law rules in favour of the woman, a "broader public culture may continue to endorse resentment toward women and more subtle forms of social coercion against those who transgress the boundaries of traditional motherhood" (Daniels, 1996: 7). Therefore what the personhood movement has been able to accomplish is not only the animation of the figure of the fetal person in public imagination, but also to portray the fetuses or "tiniest citizens" as they call them as potential victims of the pregnant person exercising their rights.

Due to this, the pregnant people are directed to concede some of their rights for the protection of the fetus'. And we know from existing literature that the more rights that are conferred upon the unborn, the fewer rights the pregnant person is entitled to (McCulloch, 2012). See for example this statement made by a personhood advocate about fetus' exposure to a risky workplace: "Since the fetus derives no primary benefit from its unknown or known presence in the work-place, it should not be exposed to excessive risks...This is a small price for mothers,potential mothers, and society to pay" (as quoted in Bayer, 1982: 644). What the personhood movement is thus insisting is that in the case where the rights of the fetus can only be affirmed by the violation of the rights of the mother, the fetus' rights should take precedence. In reality, this also means the operationalization of 'pregnancy exceptionalism' which is when "policies and attitudes have the effect of legally defining pregnant people as a class with diminished rights relative to other, similarly situated people." (Howard, 2020: 349) The justification that personhood advocates give for this condition where the fetus has greater rights than the mother is that that the fetus is defenseless and vulnerable, and therefore in need of more protection.In this case the protection for the fetus also includes protection from its pregnant host as well.

This reasoning is one of the attempts of personhood advocates to use the language of social justice in order to counter the reproductive justice that pregnant people ought to be able to realize. The personhood movement has appropriated the language of social and racial justice to situate the fetal person as a victim of racist and other oppressive systems in order to garner support for their cause. They liken fetuses and embryos to enslaved people who are battling for their right to be recognized as full persons, using what historian Evelyn Higginbotham calls the “metalanguage” of race (1992). This language calls upon people to end the non-personhood of the fetus on the basis of the ideals of racial justice, while undermining the racist histories which denied enslaved people personhood.

The actors and organisers within the personhood movement are multiple and varied. They consist of typically right wing (conservative) actors, religious nationalists, among others, White Christians (Ginsburg, 1993; Mason, 2002), like the pro-life movement that originated it. But, as Paternotte and Kuhar (2018) argue in the context of the larger anti gender movement in Europe, it is important that we do not conflate these groups of people into a single monolith, as that leads to reductionist thinking about who could be proponents of personhood.

As with the case of the reproductive justice paradigm, there has been quite a lot of scholarship on the personhood movement, its strategies, the language it employs and the way in which personhood proponents are entrenched in the system. However, little has been said about the pregnant person when they are caught in the middle of the personhood discourse. Wetterberg’s article titled “My Body, My Choice... My Responsibility: The Pregnant Woman as Caretaker of the Fetal Person” (2004) is for instance one attempt at trying to understand the figure of the pregnant person. But what is missing from existing literature is the public appraisal of the pregnant person at the center of the discourse and politics that that appraisal puts into motion.

### **3.4 Fetal personhood and reproductive justice**

Reproductive justice and fetal personhood are fundamentally incompatible frameworks as is plain to see. While one emphasizes the importance of people’s ability to exercise their reproductive rights, the other uses the language of fetal rights in order to eclipse the

pregnant person and legitimate the surveillance of their bodies and their actions. But they are both immensely useful as tools with which to understand and contextualize one another.

Reproductive justice has been used as a theoretical framework in many studies to investigate whether people were able to realize the three interconnected human rights it espouses— that of the pregnant person being able to decide whether and when to have children and to raise those children free of violence from the state or individuals. This is the case because reproductive justice provides the researcher with the tools and language they require for inquiring into the experiences of pregnant people with the various institutions that govern pregnancy and gestation.

Reproductive justice is also useful in that it provides the researcher guidelines for assessing to what extent pregnant and impregnable people are able to exercise their reproductive rights within their respective contexts. This is precisely the function it serves in my thesis. Reproductive justice allows me to see beyond dichotomies of abortion or gestation and enables me to appraise the situated reality of pregnant people which is affected by their framing within the personhood discourse.

In the case of fetal personhood, reading the literature written about it allows me to understand the 'grammar' or logic that will be used to define the pregnant person, and it gives me a peek into the progression of other cases where fetal personhood was invoked.

### **3.5 Conclusion**

Much of the literature reviewed in this chapter has been in the context of the United States. There are a few reasons for this. First is that the theoretical framework of reproductive justice was originally coined by Black feminists in the US. The Sister Song collective that was founded for the cause of reproductive justice was cognizant about how global power imbalances were at play in the landscape of reproductive health rights, and so they believed that they must make their scholarship and activism relevant beyond just their 'constituents'. Thus, much of the literature on reproductive rights is based in the US context, but because of the criticality it employs to analyze power differentials and marginalizations in the reproductive health landscape, it is relevant also to countries in the Global South like India.

Secondly, when it comes to the personhood movement, it too emerged as a distinct movement with collectives and resources dedicated to it in the US context. Personhood USA is one example of such a collective. While other countries like Australia (see Anolak, 2014) have seen personhood mobilizations and law-making efforts and scholars from other country contexts (like India) have written on fetal personhood (Nehra & Rajput, 2019), all of the literature seems to refer back to the US context of the personhood movement. Therefore, since there seems to be some sort of consensus that the personhood movement originated and is theorized about largely in the US, I too am making the assumption that the arguments made in the US context are applicable across both the cases I am studying.

## 4. MATERIALS AND METHODS

Research on reproductive justice has been conducted in a vast variety of ways. Some have been ethnomethodological (see Sufrin, 2018), others were theoretical (Hayes et al., 2020). Even legal scholarship has been employed to research reproductive justice. However, there is a dearth of studies which employ the reproductive justice framework to read media texts. In this chapter, I will justify my use of situational analysis and media texts for researching the realization of reproductive justice.

I will first outline the constitutive parts of the chapter and the way in which the chapter's flow is organised. The first section of the chapter will pertain to the materials I parsed in order to draw the conclusions that I do at the end of the thesis. Here, I will be describing the sources, types and contextual information about the materials, and justifying why said material was included as data. Following this is a section that introduces the methodological frameworks used in the thesis, where I will talk about the principles that my chosen method is rooted in and describe what the framework itself entails. This also includes a brief glance into the philosophy of the method, its assumptions. As with the preceding section, this one will also justify why this methodological framework was deemed appropriate.

The assumptions of the framework will be outlined next. Finally, this section will go into the techniques used for the analysis of the materials. The next section, entitled 'the researcher', contextualizes the research work by foregrounding relevant details about my positionality and how it affects the research contained in the thesis. What follows this, is a section on how the methodological framework was put in action. It will present how the material was organised and collated on the basis of the method, so that the reader is also well-acquainted with my thought processes which aren't otherwise elaborately discussed in the thesis. The final section of the chapter is a brief one containing the limitations of the method and an examination of how they could affect the analysis of the materials and the final conclusions drawn.

## 4.1 The Materials

In order to answer the research question which seeks to explore how the pregnant person is framed within the personhood discourse, I decided to employ a comparative case study research design. More specifically, I chose two cases from different geo-political and temporal contexts which both saw the animation of the personhood discourse. The cases, as mentioned before, have similarities in terms of the social positions of the persons they are centered around; but they also have several differences between them, which allow us to see the nuances and tensions of the personhood discourse. The cases were the legal trials of Safoora Zargar which took place in 2020 in the national capital region in India and that of Cornelia Whitner from 1992-1998 South Carolina. I selected the cases on the basis of my readings on fetal personhood, and in doing so, the sampling method I followed was non-probabilistic. Since the cases were already differently situated in terms of their context, it was important that they bore some resemblance to each other in terms of the elements that they were composed of, in order to allow for their comparison.

Given that the cases had a disparity in the number of articles written about them (mostly because one case was written about from the 1990s, and the other was written about only from the last year), I felt it best to select textual media and legal material about the cases as the materials for my thesis. The reason for choosing media and legal materials about the case was based on the assumption that reading the media discourse on the two cases would allow me to glance at the prevailing public opinion on the two protagonists and their trials.

The materials that the thesis was founded on were extracted from news publications and State reportage about the cases. In the case of the material collected from media houses' publications, the data set broadly consisted of news articles, opinion-editorials, columns about various aspects of the cases. The published pieces were found via searches conducted in Google search and in Nexus Uni using Zargar and Whitner's last names as the search terms. Most of the articles read were published in the country in which the trials happened; ie. India and the United States, respectively. But, articles published by media houses of global repute such as *The Guardian*, *BBC*, *the New York Times*, et cetera were also included. Of the articles that were generated as search results with these criteria in

place, those that were speaking about Zargar and Whitner's cases in some detail were included. This meant that articles that simply mentioned Zargar and Whitner's names or their cases in passing were excluded.

In the material collected about Whitner, the articles chosen for reading were also limited by their date of publication, in that only pieces published between 1992 and 2000 were included for review. The reason behind this exclusion criterion was that since Whitner's was a landmark case tried in 1992 and 1998, there has since been a lot of writing about her case that do not necessarily reflect the public perception about her or her legal trials that were prevalent at the time. Including articles that were published only up to three years after her final legal battle also ensured that there was some semblance of balance between the quantity of data read for Whitner and for Zargar.

In order to understand how much the State was in agreement with the media perception of the people the thesis focuses on, the States' own publications were also read. This meant reading transcripts of the trial (where available), in which the judiciary is implicated. It also meant parsing documents that were used in the trials such as the First Information Reports, Status Reports, police and prosecutors' statements, and documents presented as evidence. Statements by State officials as given to media outlets or written about in academic publications were also included. The statements falling into this category of data were found through Nexus Uni and Google search; but no particular keywords were used in order to find them. Instead, citations in articles that were found through such searches were explored in order to find similar data points. Most of these pieces were written in 2019-2020 and 1992-2000, and published in India and the United States, respectively. Others were published during the same time frame in well-known international media outlets like *The Guardian* and *New York Times*. I read a total of 133 media publications and 1 legal document on Zargar's case, and 90 media publications and an amicus curiae brief on Whitner's case. The legal documents are few in number because they were not readily available for perusal on the internet. They were included in the list of readings despite this, because of the relevance of the material they furnished.

As mentioned previously, all of the data collected for both cases were textual in nature. They ranged from being under a thousand words to upto two thousand words in length at the most, and contained both descriptions and impressions about the two people whose

cases this thesis analyzes, as well as statistical information about them. They were all also published in the English language and were available on the public domain in an electronic format. The list of articles per publication for each case is contained in Appendix I.

## **4.2 The Methodological Framework**

The methodological framework was chosen on the basis of how well it could capture the essence of the materials I opted to analyze for the thesis. This meant that the framework had to be able to decode complex phenomena which involved numerous social actors without resorting to oversimplification.

For this reason, it was important that I look for frameworks that could guide the collection and analysis of material that enumerated the long and complex process of the pregnant people becoming enmeshed within the personhood discourse. Since the materials I had at my disposal for the study pertained to two cases, the framework also had to be amenable to the case study mode of doing research. Furthermore, it had to be implementable within the time and resource limitations posed by a master's thesis without diluting the nuances contained in the material. All of these needs were met by a variant of the Grounded Theory Method (GTM) called Situational Analysis.

Situational Analysis (hereby, SA) was developed by Feminist Science and Technology Studies scholar Adele E Clarke. It is deeply rooted in the work of Michel Foucault and Anselm Strauss, and in the principles of feminism and symbolic interactionism. The primary goal of situational analysis is to “understand the situatedness and relations of action and interaction in the phenomenon of interest—the case being studied” (Clarke, 2005: 871). SA argues that the context is not separate from the content or event, but that both must be studied holistically as a unit; it terms this unit the ‘situation’. Therefore, this analytical model contends that the situation comprises many kinds of elements— human and non-human—and that all of them need to be given their due weightage in the analysis irrespective of their relevance to the event itself. By advocating for this, SA rejects arbitrary binaries between the event and its context. It thus allows for the conceptualization of a large, overarching phenomenon while still foregrounding the nuances within it.



As a framework for conducting research that evolved after the interpretive turn, i.e., after social constructionism gained popularity, SA actively demands reflexivity of the researcher. It asks not only that the situation be fleshed out and that openness be held sacrosanct in that process, but also that the researcher make their own politics— their assumptions, motivations, inclinations, etc.— clear and known to the reader. This makes SA amenable to the principles of transparency and situatedness that are now considered integral to any academic endeavour.

Due to the reasons articulated above, situational analysis is especially applicable also to the case study research design, which is defined as being:

holistic in nature, following an iterative-parallel way of proceeding, looking at only a few strategically selected cases, observed in their natural context in an open-ended way, explicitly avoiding (all variants of) tunnel vision, making use of analytical comparison of cases or sub-cases, and aimed at description and explanation of complex and entangled group attributes, patterns, structures or processes (Verschuren 2003: 137).

Since SA is a variation of the Grounded Theory Method (hereinafter, GTM), doing SA involves many of the same steps as grounded theory. In a nutshell, SA is a method which enables theory-building through an inductive and iterative process. It involves close, deep readings of the data over the period of data analysis. However, this reading is not done merely once or twice. Instead, the process of ‘reading’ the data is repeated over and over again through the analytic process. This allows for the analysis of the data to be emerging throughout the data process. In this sense, it is a method that readily concedes that results are always partial. What is elicited from this analytic process could be of two forms— codes and memos. Codes in SA, as in other methods, refer to the “word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data” (Saldana, 2009). In other words, they are the themes-to-be in the study that emerge from the data. In the case of the data for this study, since it is text material, the codes are derived from the words, phrases and headings of the articles. Memos, which are the second product of the analytic process, are methodological tools which form the fundamental link between the data and the emergent theory. They pose questions to the data. Examples of such questions are: ‘what does it mean?’, ‘What are the

instances of it?', 'What is the variation within it in the data?', 'What does and doesn't it seem to "take into account?' (Lempert, 2007), where 'it' refers to a code.

By coding and memo-ing, the GTM believes that theory can be discovered from the data. This approach has been challenged by scholars like Kathy Charmaz (Clarke et al, 2015), who take issue with the "discovery" of objective theory from data to be misleading because all theories emanate the research material, design and the researcher themselves. In this sense, theory can never be objective according to Charmaz et al (2015).

Clarke's (2015) situational analysis corrects this epistemic fallacy through the use of maps. By using Clarke's maps, which are reflexive and relativist, and the use of memos, theory can be said to be created through the process of SA instead of being something that can be objectively found. The maps, which are therefore the cornerstones of the SA method, are visual graphic representations of the data which guide the creation of memos for theory building. They are of three types— situational maps, social words/arenas maps, positional maps (Clarke et al., 2015).

1. Situational Maps:

Situational mapping involves picturing all of the elements of the case being analysed. These can be human, non-human, historical, political, discursive, etc. Once these elements have been identified, the situational map is drawn such that the relationships among the elements are visible. The dense complexities of the situation and the ways in which those interact get captured thanks to the creation of such a map. The situational map thus intentionally works against the oversimplification of the situation; thereby ensuring that nuance is present throughout the analytic process.

2. Social Worlds/Arenas Map:

The collectivities or actors and their arenas of interest are mapped out in the social worlds/arenas map. By doing this, the map seeks to answer empirical questions like 'who cares about what?', and 'what do they want to do about it?'. Note, however, that the social words/arenas map does not tell the researcher the direction in which an actor-collective is engaging with the arena. By creating this map, the meso-level interactions between the collectivities become known. By this, I mean that this map allows the researcher to get a glimpse of the situation at the level of social action— where "individuals become social beings again and again through their actions of

commitment to social worlds and their participation in those worlds' activities, simultaneously creating and being constituted through discourses" (Clarke, 2005, 110) The researcher will be able to visualize which actors have (or wish to have) influence in what arenas.

### 3. Positional Map:

The positional map is akin to the corollary of the social worlds/arenas map. In it, the positions or stances taken (or conspicuously not taken) in the situation are mapped out without delineating which actor-collectivities are taking which position. Positional maps allow multiple and even contradicting positions taken in the discourse which the map is charting out. The goal of such a map is to make explicit to the researcher that there are complex ways with which to engage with the phenomenon or process being studied. It also allows the researcher to encounter surprising overlaps or divorces in the positions taken by numerous actors and propels researchers to examine the assumptions of difference or similarity of positions of actor-collectives.

My choosing SA over GTM also has to do with reasons other than the professed objectivity of the latter. SA lends itself to the analysis of discursive data explicitly, unlike grounded theory which was developed primarily in relation to field data. SA also addresses two other shortcomings of the GTM— that of lack of reflexivity and a tendency for oversimplification— via the use of the maps. Furthermore, SA is explicitly feminist in its methodology. It is feminist "at least" in the following ways according to Clarke:

1. Acknowledging researchers' embodiment and situatedness
2. Grounding analysis in the lived material and symbolic situation itself
3. Conceptually foregrounding complexities and differences in the data
4. Mapping all the actors and discourses in the situation regardless of their power in that situation (2015: 135)

Given the nature of the material and the feminist roots of the theoretical frameworks I employed, it seemed but natural to ensure that the methodology is feminist as well.

Due to the nature of the materials I had chosen to analyze for this study, it was necessary that I combine situational analysis with another research method to produce thorough

research work. This was because much of the media discourse that each case had had nuances within it— such as words that were used as proxies for others, which could not be understood through their mapping alone. Therefore, I also chose to employ another method— namely, frame analysis— for reading the materials. Frame analysis was chosen out of other methods that have regularly been used to analyze media texts due to the reason that framing (unlike agenda setting or similar methods) “suggests more intentionality on the part of the framer and relates more explicitly to political strategy” (Reese, 2007:148). Because the questions I asked of the material were about why certain messages were being propagated and how it contributed to a larger framing, frame analysis seemed an apt strategy to use.

Frame analysis was coined by Erving Goffman (1974/1986) in his attempt to understand how different realities are socially organized. Frames are defined as “organizing principles that are socially shared and persistent overtime, that work symbolically to meaningfully structure the social world” (Reese, 2001, p. 11). In other words, frames are heuristics that people use in order to interpret new information; and because of this quality, frames do not inform the researcher about objective facts. Instead, frames allow the researcher to peek into the “second level matters” (Berger & Luckmann, 1966) or how an event is experienced subjectively by people. Framing can be understood as the process by which people make choices about what to convey and how to convey it, but because of the interpretive nature of frames, framing is not done to work on audiences. Instead, framing is a process that is done with the audience and the cultural assumptions that are present at that given time (Allen, 2017).

In my study, frame analysis was used to decode how certain words and phrases worked over time to conjure an image of Zargar and Whitner, respectively. It involved asking the materials questions like “why are these particular words used in this place? Why not others?”, “what is the cultural relevance of highlighting some attributes in certain contexts?”. The analytic method was thus able to provide me answers about what words and phrases were ‘doing’ and how their organization impacted the image that was being rendered.

### 4.3 Researcher's Positionality

I explained in the previous section that reflexivity is a crucial point of difference between GTM and SA, and that the influences of the post-positivist turn had indeed cemented the idea for Clarke that reflexivity is key to the research process. That the researcher is part of the data, and not just a tool to discover data, is thus enshrined in the SA method. It is therefore important that I am transparent about my positionality and how it could have impacted my work. I will attempt to do that and explain my own politics with respect to the cases and the phenomenon in this section.

I am a femme person who holds Indian citizenship and resides in Finland. Although I am more privileged compared to Zargar in terms of my caste location and domicile, I too led protests against the same causes that Zargar was incarcerated for and feared some kind of retribution or penalization from the state. For this reason, I was compelled to write about her case in my master's thesis project. My primary motivation for including Whitner as the second case was because of the parallels I saw between Zargar and Whitner's case in terms of their socio-economic precarity in their respective contexts.

I am someone who believes that research is important to catalyze social transformation. Therefore, this project was, for me, an amalgamation of my activist work and the learnings I derived from it and my research skills. Because of this, it is possible that I empathize with the causes of both of my cases' protagonists more than someone would if they were not trying to use academia as a medium for activism. Another reason I might identify and empathize with Zargar and Whitner is because my politics align with the tenets of reproductive justice, and because I firmly believe that personhood (and concomitantly, fetal rights) are mobilizations which threaten to erode away decades of feminist lobbying.

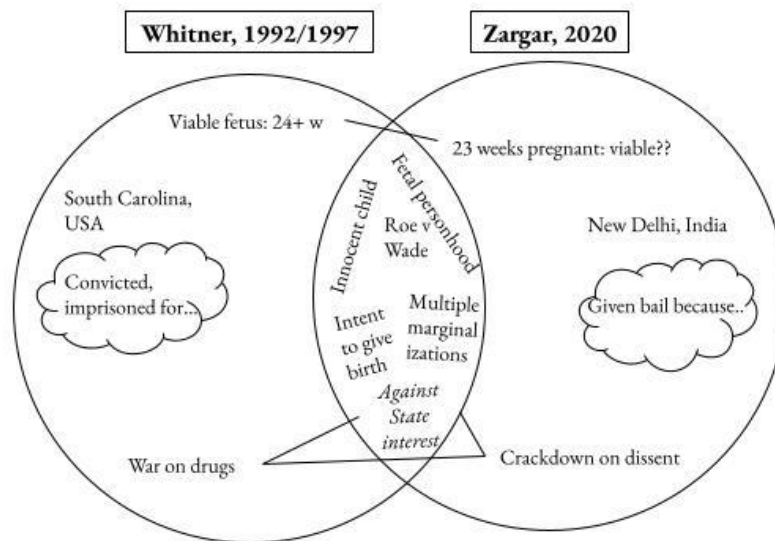
Because of this positionality, it would be quite possible that I paid closer attention to the ways in which media houses and the State 'naturalized' Zargar and Whitner's pregnancy by making them out to be maternal figures. I am also sure that my politics propelled me to use disqualifying language while reading and talking about the personhood movement. However, given the number of people whose agency has been or stands to be snatched because of the discourse of personhood, I feel that my dismissal of fetal rights is justified.

## Method in Action

In this study, the case study research design was used in conjunction with the SA method to arrive at the results. As explained in the previous section, the cases were not chosen at random. They were carefully selected because of the resemblance they bore to each other. This was because their similarities and dissimilarities would dictate the extent to which their cases can be inter-read. Whitner and Zargar's cases were similar in that:

1. They are both multiply marginalized women in their time-space contexts
2. Both of their cases gained public visibility after their fetuses were considered as 'viable' in their context
3. Both of their cases are closed tied in with the law, due to the trials the women themselves had to face
4. The political context in which these women were fighting their respective legal battles was one in which their ethnic identity was being targeted and harassed.

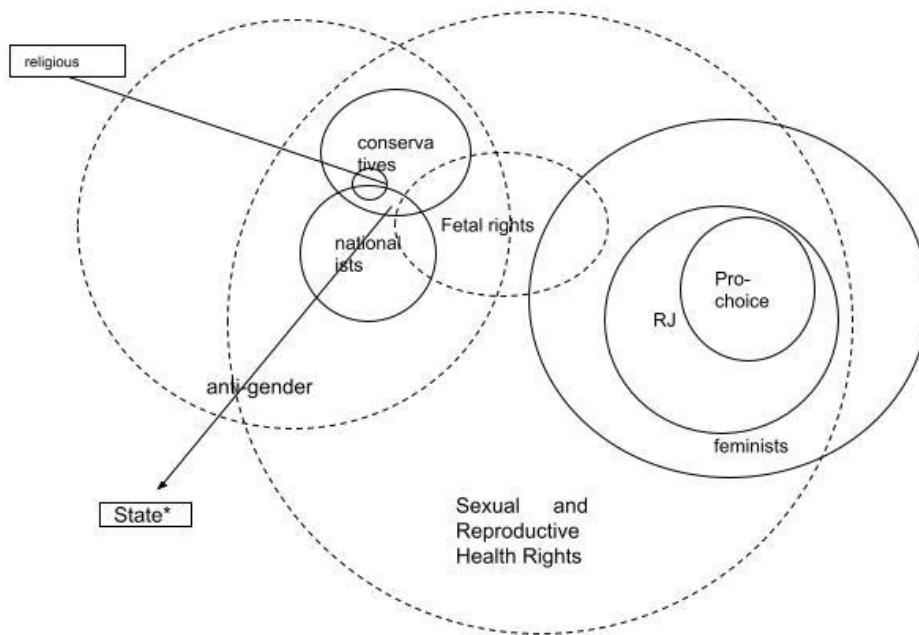
Upon selecting the two cases, I moved on to creating the maps on the basis of academic and non-academic readings around the two cases. The following are the maps that I drafted:



Situational Map

Figure 1

The above map (figure 1) shows the various elements of the two cases and pictorially represents the relationship among the elements using a venn diagram as its base. One can see the similarities listed above come to life in this diagram. The words inside the cloud-like object show the key point of difference between the two cases— that Whitner was convicted and imprisoned due to her fetus being hailed as a person and that Zargar was given some semblance of freedom because of the same cause of fetal personhood. In the bottom-center of the diagram are the socio-political contexts that were salient for both cases. In both cases, the contexts marginalize the person in question. In the case of Whitner, it was the war on drugs, and in the case of Zargar, it was the crackdown on dissent. In the intersection of the two circles are the commonalities between the cases.

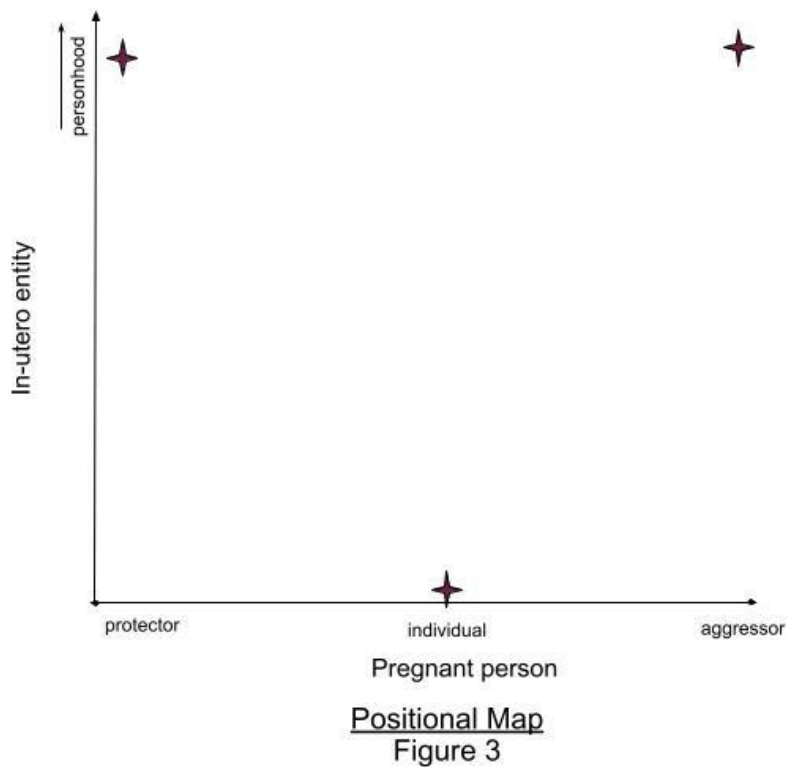


Social worlds and Arenas map

Figure 2

Figure 2 shows the different social actors and the arenas that they are interested in affecting a change. The arenas are mapped in dotted lines and the social actors/collectives are mapped in circles with non-dotted lines. To understand which actors are invested in which arenas, one need only look at the particular arena and see which actors' circles have an overlap with it. For example, the arena of fetal rights is something that conservatives, nationalists and feminists are interested in.





This map (Figure 3) is like the corollary to the previous (i.e., the social worlds/arenas) map. It spells out the various positions taken by the actors without mentioning who took which position. I chose to make the positional map similar to a cartesian plane because it allowed me to understand the relationship between the fetus/fetal person and the pregnant person. For example, in Zargar's case, as the fetus was becoming phrased more and more as a fetal person or child, the public opinion of her relationship to it became more pronounced. Finally, as I will make clear in the analysis chapter, she was understood as a protector or caregiver of the 'child'. In Whitner's case, the more that the fetus was ascribed personhood, the more she was judged as an aggressor or harm-doer to the child.

#### 4.4 Limitations

Despite its advantages and suitability to the study, the SA method and case study design do come with their own set of limitations. Firstly, due to the thoroughness of the SA method and the way in which it asks the researcher to incorporate nuance, enacting the method becomes tedious. This limitation was mitigated by my choosing to analyze particular

cases and to limit the materials collected to a particular time-frame. The corollary is the disadvantage with using the case study research design. The design is limiting to the researcher because one or two cases cannot capture the entirety of the phenomenon being researched. However, even if only two cases were analyzed, what my research has enabled is the engendering of new knowledge pertaining to the working of fetal personhood, and that is a significant contribution to feminist literature.

## 5. FINDINGS AND DISCUSSION

Having already established the research questions in the previous chapters, this chapter will attempt to familiarize the reader with the media discourse of the two cases—that of Safoora Zargar and that of Cornelia Whitner. Then, I will explain why I am assuming the invocation of the fetal personhood claim within these cases. Finally, I will illustrate the impact of this claim on their ability to realize reproductive justice.

The chapter will be divided into three sections. The first section will be an engagement with the legal and media trial of Safoora Zargar. The second section will discuss the discourse around the cases of Cornelia Whitner. And, finally, there will be a section that compares the two cases in order to extract a more abstract understanding of the phenomenon of fetal personhood.

### 5.1 Case 1: Safoora Zargar

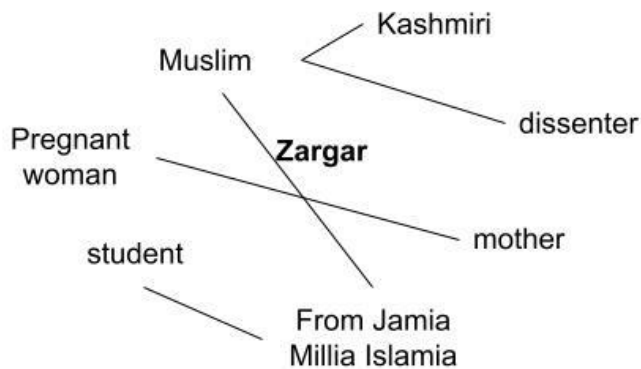


Figure 4

Zargar's entry into the media limelight took place in the early months of 2020. Her becoming a household name was a result of her leadership in and attendance of the protests against the Citizenship Amendment Act, 2019 and the National Register of Citizens. In these protests, Zargar was hailed as a leader of sorts because of her membership in the Jamia Coordination Committee (JCC) which was an outfit within the Jamia Millia Islamia central university in New Delhi that was expressly created for the purpose of coordinating the

demonstration of opposition against the two legal instruments mentioned above. As a part of this committee, Zargar had delivered speeches at multiple locations around the national capital and had participated in sloganeering, sit-ins and road blockading in the locations decided by the JCC. All of this had been taking place from December 2019 until mid-2020 when the COVID-19 pandemic prevented the gathering of large groups in public spaces.

In February 2020, around the same time as the anti-CAA/NRC protests, there had been a pogrom in the national capital against muslims. Dubbed as the riots in North-East Delhi, this pogrom erupted on February 23rd 2020 as a result of a clash between supporters and opponents of the CAA in the areas of Jaffrabad and Chand Bagh, New Delhi. It claimed the lives of 53 people and injured 200 others— primarily muslims. Due to the religious affiliation of the victims of the riots, these riots came to also be termed as being anti-muslim communal riots by most media outlets. However, there were also other publishing houses that disagreed with the riots being termed as anti-muslim, and they claimed that the riots were instigated by anti-CAA protestors like Zargar and her colleagues. They furthered this claim by arguing that anti-CAA protestors had plotted the outbreak of violence and had come armed with iron rods and other weaponry with the intent of causing physical violence in the path of their protest march.

As a leader in the demonstrations, Zargar got entangled with law enforcement authorities who had been specifically deputed to curb anti-CAA/NRC protests around the country. She had become known to the police as a key member of the JCC and had therefore become a target against whom to level multiple civil and criminal charges. This is how Zargar acquired her first criminal charge— that of instigating a communal clash. With this, Zargar was labelled as one of the conspirators of the anti-muslim riots in February. She was arrested for this charge on April 11th 2020.

Following the arrest, Zargar became a household name thanks to the news media's reportage about her involvement in the anti-muslim riots of February 2020, whether sympathetic or accusatory in nature. This is the reportage that I have analysed for the purpose of this thesis. The timeline of reportage that I read for the analysis started on April 11th 2020 and went on till June of 2021. I chose this period in order to capture the bulk of the reportage of Zargar which featured her as the protagonist. For reasons of cohesion, I have divided the reportage into 3 topics— arrest, bail and motherhood. These three topics together comprise

all of the writing on Zargar and her case and will allow me to address the research questions that I sought to answer in this thesis.

### 5.1.1 Arrest

The first topic comprises the articles written on Zargar's arrest. All of the excerpts included in this discuss the circumstances that surround her arrest, the factors that precipitated this, the reasons behind her arrest and the anxieties related to it. Although the excerpts that informed this section were organized by the subject it holds at its epicenter, the excerpts in it also correspond to the first few days of reportage which featured Zargar. Because of this reason, all of the excerpts used for analysis in this frame were published in the month of April 2020. They were news articles, statements by collectives and opinion pieces. All of these were published either in international media outlets (i.e., those which report news from all over the world and are generally well-known) or in Indian publications.

In the publications about Zargar on the first two days following her arrest, she is discussed only with respect to the facts of the case and her involvement in it. She is mainly described by a few characteristics in the early reportage— that of being a part of the JCC, of being active in the protests and that of being a student of Jamia Millia Islamia. All of these details can be read initially as merely being furnished for the contextualizing Zargar's alleged involvement in the riots. But on day 3 of the reportage, i.e. 14th April 2020, the details of Zargar unrelated to the legal charges themselves come to be spoken about. See, for example, the following excerpt from *The Hindu*, an English language daily which usually publishes Left of Center reportage and is read primarily by an educated, urban-dwelling middle class audience:

Zargar, who hails from Kashmir, is currently an MPhil scholar of Sociology and is married. She lives with her family near the university campus.

In February this year, following a protest near Holy Family Hospital, Zargar had been taken to the university health centre after she alleged two policemen suffocated her. (Manral, 2020 in Appendix II)

In this news report, the author takes it upon himself to contextualize Zargar beyond simply the facts of the case; prompting the reader to ask why her area of research or relationship status are pertinent to discuss in a case about her involvement in a riot. This can be said to be the first instance of ‘humanizing’ Zargar. By marking her as a productive member of society (a research scholar) and by divulging her marital status and living arrangement, what Manral does is create an image of Zargar that is relatable and sympathetic to the average reader of the daily. By stressing her role as a student/researcher and by positioning her as a “married woman, living with her family”, Manral manages to create an air of respectability for Zargar. The addition of the instance of her having to be taken to the hospital due to police brutality reinforces the sympathetic image by positioning her as having already been targeted by law enforcement.

This insistence on Zargar’s respectability is done by other authors aiming to further her cause as well. In the statement penned by students from her alma mater (Tanveer, 2020 in Appendix II), they emphasize the victim role that Zargar occupies by appending their demand for her release for trumped up charges with a note on how worried Zargar’s family are because of her being pregnant. The same is done by *Kashmir Times*’ Subhash Gatade who reiterates the worry that Zargar’s pregnancy will be imperiled by her imprisonment. But Gatade also goes one step further in his article. By speaking about the targeting of muslims in the same breath as speaking about Zargar’s “unwarranted” arrest, Gatade also paints Zargar’s arrest with a communal colour and indirectly insists that her arrest is a result of the powers that be’s islamophobia and targeting of muslim individuals and organizations. Other public figures seem to also be in agreement with Gatade’s diagnosis of Zargar’s arrest as being a result of islamophobia. A statement by members of the film industry, published in the *Free Press Journal*, reads:

A riot in which the minorities suffered the maximum damage both in terms of lives and livelihoods, has now become a pretext for the Delhi Police to further witch-hunt activists, most of whom also come from the minority community. (Bhat et al., 2020 in Appendix II)

From these instances where Zargar’s persona has been described, it is possible to see a few patterns. One such pattern is that the progressive media’s reportage of Zargar is largely sympathetic. They attempt to frame Zargar as a respectable woman aspiring for a

career in academia while still being rooted in family life, and as a victim of her circumstances. It is in the context of this pattern that one can also see the introductory sentences of the reportage on Zargar by *The Guardian (London)* on 22 April 2020 which read:

Delhi police have been accused of slapping two Muslim student activists with "bogus" charges of conspiring to incite the recent riots, the worst religious violence in India's capital for decades, and in which the police were accused of being complicit.

Meeran Haider and Safoora Zargar, students at Delhi's Muslim-majority Jamia Millia Islamia University, were charged under the Unlawful Activities Prevention Act, which is usually reserved for terrorist activity and means they can be held for six months. (Ellis-Petersen, 2020 in Appendix II)

This excerpt also makes another connection evident: that of Jamia Millia Islamia University being a signpost for conveying that the religious affiliation of its students is Islamic. Therefore, all mentions of the university at which Zargar conducted research could potentially be seen in this fashion— as a stand in for describing that the student is Muslim, and therefore also marginalized by the state authorities. This framing of Muslimness and affiliation to Jamia Millia Islamia University as being an allusion to the victimhood of Zargar is pertinent to my analysis. Zargar is therefore being described as a member of a persecuted minority community. As such, she is seen as deserving of the readership's sympathy and support, and of freedom from imprisonment. However, due to the narratives around Muslimness in India which label the community as being treacherous, Zargar does not enjoy the privileges of being an ideal victim for all kinds of readers. Her victimhood is minimized by her religious affiliation and the negative associations with it.

### **5.1.2 *Bail and Pregnancy***

Chronologically following the reportage of Zargar's arrest were the news articles and opinion pieces on her application for bail. These articles were primarily interested in asking "has Zargar got bail? Why or why not?". But in their writing, they hold a lot more complexity than one would imagine these straightforward questions to elicit. This is because along with being a legal trial, Zargar's was a media trial. Articles mentioning her were published multiple times every week, in every major English news publication in India. These articles appraised

Zargar's character, the validity of the allegations levelled against her, the merits that her bail applications held, among other such complex questions.

Having initially got bail in lower-tier crimes such as road blockading, Zargar was charged with the Unlawful Activities Prevention Act (UAPA) by the police. Immediately following this Zargar and her counsel moved the court for bail, with the reasoning that the case against her was baseless and that she had multiple health conditions and was 13 weeks pregnant at the time of her arrest. The way that this was reported in the news is curious. All but one newspaper neglected to explain the grounds on which bail was being applied. They only stated that a bail application was filed despite having reported for 10 days about Zargar's arrest in some detail. The one outlet to report the grounds for bail application was *The New Indian Express*, a reputed English daily newspaper. It reported Zargar's pleading for bail on the grounds of pregnancy in the following way in its 'news' section: "The court's order came on Zargar's application seeking bail on the ground that she has been falsely implicated in the case, and that she is entitled to the relief *being a woman*." (Singh, 2020 in Appendix II; emphasis mine). In a nutshell, this newspaper equates Zargar's pregnancy with her womanhood; and despite it being the only of its kind to make such a leap in interpretation, it is worthwhile to note how even fact-based reporting was perceiving Zargar's pregnancy as being synonymous with her womanhood.

But once Zargar's bail application was moved, the media's reportage suggested that there was a concerted effort to continue to imprison Zargar. A news article that gives the impression that the police and other law enforcement were vindictive towards Zargar:

The suspects Meeran Haider and Safoora Zargar are in judicial custody in connection with the case registered against them in February. A senior police officer, requesting anonymity, said when Zargar moved a bail application the police informed the court about the inclusion of the UAPA as a ground to deny bail. "The two students have already been booked for sedition, murder, attempt to murder and promoting enmity between different groups on grounds of religion and rioting," the officer said. (2020 in Appendix II)

In line with the quote from the senior police officer, Zargar was indeed denied bail after the charge under UAPA was added to her list of allegations. They dismissed Zargar's



bail with the statement that the magistrate didn't deem that it was appropriate to grant Zargar bail at the time given the sections she was charged under were of a "grave and serious nature" (Chhaunkar in Singh, 2020 in Appendix II). While no comment was made on the other rationale behind praying for bail (i.e., that of Zargar being pregnant), what can be distilled from this response by the magistrate essentially is that at this moment, Zargar was being treated like any other individual being implicated in the crimes that she is alleged to have committed and that her gender (or pregnancy) were immaterial to her bail application's rejection. The law was therefore still treating Zargar as they would any of her contemporaries.

After the rejection of the bail, following the penning of the initial reports of the bail rejection were published, the first of the reports noting Zargar's pregnancy were made public. The first such report, published in *Al Jazeera*, quotes her husband as saying that her "advancing pregnancy" was a matter of "concern" for Zargar and that she had begun "limiting her physical movement" (Singh, 2020 in Appendix II). Another article published in *Siasat Daily* on 27th April 2020, a progressive Left-leaning newspaper based in central India, was titled "JMI scholar who is pregnant spends first day of Ramadan in jail" where Zargar's predicament in jail is described. In it, they chose to highlight how despite her pregnancy, she was "kept in the overcrowded jail". They also stated that Zargar was denied communication with her husband and lawyer at this time. Further attempts to position Zargar as a model minority were also made in this report as it added the following with virtually no context or explicit reasoning:

"Kausar Jan, an art student described her as the strongest voice in the JCC. Meanwhile, her teacher said that she is a hardworking student" (*Siasat Daily*, 2020 in Appendix II)

The next report centering on Zargar appeared on the 28th of April in *The Pioneer*, which is a newspaper owned by a sitting minister of the Hindu nationalist BJP which is in power at the union level. The fact that she is pregnant is mentioned twice in a 307-word report. Furthermore, the report states a rationale for her being kept in a separate cell and explains that she is under doctors' supervision and that her needs as a muslim woman observing fasting were also being fulfilled. This article can be read therefore, as a response to the one quoted before it.

Zargar's pregnancy becomes a staple of any report about her after this juncture. But there is something markedly different about the mention of her pregnancy. Where her pregnancy was previously evoked to explain her health status; now it starts to be framed as one of her identities. She is lauded as a "bright student" (Krishnan, 2020 in Appendix II), "assertive, articulate and academic to a core" (Pathak, 2020 in Appendix II) "kind-hearted... and a true intellectual" (Pathak, 2020 in Appendix II) and as an "activist" (Amnesty International, 2020 in Appendix II) but all the while, her name is always succeeded by the status of her pregnancy.

It is also at this time that her muslimness is highlighted in nearly every article. Starting from the *Siasat Daily* article quoted above, all the reports about Zargar mention her religious affiliation along with her pregnancy. It is possible that this is done due to her arrest being termed as an attack on "muslim students" by the JCC. But this image-creation (or frame-building) of Zargar as a pregnant muslim student is near-ubiquitous..

The image of her being a sympathetic victim is reinforced time and again as well, through the reports which delve into her stint at the jail while pregnant. Some reports do this by publishing quotes from her loved ones. For example, her husband is quoted as saying "When we spoke today, it was mostly about the food she's getting and if her nausea is under control. She asked about our parents. It has been difficult because I haven't seen her since April 13 and have only spoken to her twice. Even money orders and letters can't go through as jail authorities are citing COVID restrictions." (Shankar, 2020 in Appendix II). Others achieve the same goal by highlighting the vile comments that were passed about Zargar's pregnancy by Hindu nationalists online. While the approach to positioning Zargar as a victim are different, both methods are able to achieve this by referencing her religious affiliation and pregnancy.

It is possible to read into this victimization process more closely by asking why it is successful as a strategy. For one, Zargar's muslimness allows her to be positioned as a persecuted minority, as previously explained. But more than this, Zargar's pregnancy as a muslim woman is also pertinent to examine, for she does not exist even in the media reports merely as a pregnant woman or muslim woman, but indeed as a pregnant muslim woman. A few articles allow us to peek into this and see what being pregnant and muslim mean in terms of the treatment meted out to Zargar. Published on June 4th is an opinion piece on

the accidental killing of a pregnant elephant in India's Malappuram district. In it, the author asks why Zargar's pregnancy isn't given the same weight as that of the elephant that lost its life, rhetorically implying that the reason for this oversight is that Zargar is muslim and thus a less-sympathetic victim than the elephant. Another article, on June 12th in *Kashmir Times*, asks a similar rhetorical question, where the author makes a less covert allusion to Zargar's religion being the cause of a lack of concern for her:

At the time of writing, while the major focus of the ruling party is to practice divisive politics, the need is to formulate norms for the use of animals, which are kind and compassionate. Incidentally when all this is being talked about in the society, one appreciates the concern for the pregnant, would be mothers and the unborn child, one is reminded of Gujarat where [during the anti-muslim pogrom of 2002] the pregnant mothers' womb was pierced and the unborn child was hung on Trishul (Trident). Also one is deeply concerned about another would be mother, Safoora Zargar, an M Phil Student at Jamia, who is behind the bars, denied bail for participating in the anti CAA protests. Where is our compassion? Is it reserved only for elephants of Kerala? (*Kashmir times*, 2020 in Appendix II).

Having discussed these excerpts, I believe it to be possible to see how Zargar's religious/ethnic marginalization and her pregnancy play into one another and ultimately cause tensions in the way that she is treated. It is here that we can also see how Zargar's sympathetic framing slips through the cracks, and she falls just short of being an ideal victim. Had she been a non-muslim, the implication from the previous two quotes is that she would have been sympathized and identified with more broadly than she was. Her intersecting identities thus play off of each other in the construction of her image. Her framing in the above extracts is therefore not just that of a muslim woman— which might evoke either sympathy or hostility, depending on the audience. Nor is she just a pregnant woman, which would evoke eulogization irrespective of the audience. Instead, her image is fraught with tensions; vacillating between being that of a near-ideal victim and that of a woman whose identity is agreeable in some ways and apathetic in others.

### 5.1.3 *Motherhood*

In the month of June, after multiple failed attempts to procure bail for Zargar, her lawyers were under some duress to make a successful case for her bail. In the failed attempts for bail, the lawyers had tried to argue that there wasn't enough evidence against Zargar to keep her imprisoned. They also argued on humanitarian grounds that Zargar ought to be given bail due to her pregnancy which increased her susceptibility to COVID 19. In response to the latter argument, the Delhi Police (who made the arrest) stated that “the very fact of rearing life ought to have been a check on [her] activities” (Delhi Police, 2020). This is an interesting submission from the police, who were so far denying that she required any special treatment due to her pregnancy. By talking about “rearing life”, the police are giving a nod to yet another conversation about Zargar which was in the offing— that of Zargar as a mother.

In the course of the reportage on her, Zargar started to be ascribed a maternal role. See, for example, this article which was penned by senior journalist Monobina Gupta on *The Wire*:

The continued imprisonment of 27-year-old Safoora Zargar, an expectant mother, has once more laid bare the hypocrisy of the official as well as popular narrative built around motherhood. The refusal to grant bail to Zargar has yet again reminded us that not all motherhoods are equal. Not in the eyes of the state, the political classes, or society. Lest we forget, we must remember that like most celebratory and politically expedient euphemisms, motherhood too is selectively used to reward the obedient and punish the deviant. (Gupta, 2020 in Appendix II).

Yet another person who was sensitive to Zargar's cause, and used the language of motherhood to describe Zargar is politician Mohan Kumaramangalam. His tweet reads:

We seem to live in a country now where its ok to communalise the death of a pregnant elephant while we keep a pregnant mother in jail accusing her of inciting communalism. Have we stopped thinking altogether or lost the ability to empathise? (2020 in Appendix II)

But it wasn't just supporters of Zargar who termed her as a mother. Even those who advocated for Zargar's imprisonment viewed her through the lens of motherhood at this point in time. See, here, a quotation from the far Right, Hindu nationalist website *OpIndia*, which was written as a response to the article by Gupta quoted above:

While the article published on 'The Wire' lays a strong groundwork arguing in favour of Zargar's release and pitting the prized notion of motherhood held by Indians against the Jamia Islamia student's continued imprisonment, what it fails to grasp is that motherhood is not an official sanction to commit a felony with impunity. It is not an approval authorised by the state to commit crimes without having to face the consequences. Moreover, it would not bode well for the law and order in the country if offenders are granted clemency on the account of their pregnancy. (Jain, 2020 in Appendix II)

In the excerpt, author Jinit Jain writes with the express purpose of delegitimizing *The Wire's* defence of Zargar. He engages in whataboutism to fare well in the task. But the fact that even he, an author who has a vested interest in Zargar's imprisonment, agrees with Gupta, goes to show how fact-like Zargar's motherhood had come to be.

In framing Zargar as a 'mother', as opposed to an individual who was pregnant, the media discourse found itself aligned with the legal arguments that were being made by her counsel. In their last bail attempt, Zargar's lawyers framed Zargar as a concerned mother and not just a pregnant inmate whose health was at risk of being compromised. They submitted that "incarceration as an undertrial is both unnecessary and harmful to her health and the health of the foetus – which the state is duty bound to protect" (Ramakrishnan, 2020 in Appendix II). Upon hearing this argument, the Delhi high court judge, Rajiv Shakhdher asked Ramakrishnan to submit a note highlighting the legal regimes on the rights of the unborn, and with that, the personhood discourse became explicit.

In this note, Ramakrishnan waxed eloquent about how the fetal person is one with rights and privileges that it cannot be denied. This is puzzling, given that she could have instead argued on the basis of sections in the law which protect the pregnant prisoner, like the Draft Prison Manual, whose paragraph 45 reads:

childbirth in prison should be avoided as far as possible and measures of temporary release/parole including suspended sentence should be made to enable expectant prisoner to have her delivery outside prison. (National Expert Committee on Women Prisoners, 1987)

But because the note relied on fetal personhood to obtain interim freedom for Zargar, Delhi Police dropped their resistance to Zargar's release on humanitarian grounds. With this, Zargar was afforded bail, not due to her own rights which would have been compromised in the prison, but because her fetus was said to be a person who would be adversely impacted by Zargar's incarceration.

#### **5.1.4 *Fetal Personhood and Zargar***

It would be ahistorical to claim that the personhood discourse was borne out of Justice Shakhdher's requisition of a note on the rights of the unborn. Therefore, it becomes pertinent to judge at which point in Zargar's case fetal personhood had become a factor in order to be able to glean its effects on the framing of Zargar.

When I see the way Zargar is framed throughout the time that her name was still making headlines, there are some shifts in her description. Initially, she was viewed as a student aggrieved by legal instruments that could jeopardize millions' citizenships, who was being witch-hunted. Following this, she is seen as a pregnant (and therefore immunocompromised) muslim woman being persecuted by the state for dissenting against it during a pandemic. And finally, she is seen as a pregnant mother who is worried for the health of her child and herself. In the first two descriptive stages, Zargar's individuality is not questioned—she is viewed primarily as someone who is being made an example of for decrying the decisions of the State. She is seen as someone who made agential choices. But as time went on, and as her bail applications on the basis of the merits of her case encountered failure after failure, Zargar became enshrouded by the 'mother' identity. This mother identity is only possible when there is a child to mother. By framing Zargar as a mother (like the elephant that came in harm's way), the personhood discourse came into existence in Zargar's context. Zargar's 'mother' status is therefore a result of the personhood claim, whether made explicitly or otherwise.

Until Zargar and her lawyers brought up the health of the fetal person, Zargar can be said to have been a “bad mother” in the eyes of the general public, who was concerned only with her own health and did not perform motherhood in the ideal way. Her political deviance, too, likely added to the ‘bad mother’ image. The Delhi police at this time had remarked that since multiple deliveries had taken place in their jails, Zargar’s case merited no exceptional treatment. But by limiting her movement (and therefore also her dissenting politics) “in light of her advancing pregnancy” (Singh, 2020) and asking that the court take into account the possible harm to the ‘child’, Zargar was able to perform motherhood (before the court and the general populace) the ideal way. Therefore, not only was the fetal personhood discourse discreetly part of the media and legal trials of Zargar, but also the operationalization of the mother identity in its context is what granted Zargar the interim freedom that she sought.

## 5.2 Case 2: Cornelia Whitner

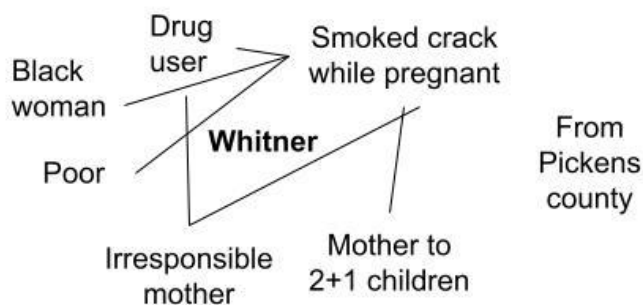


Figure 5

Whitner’s earliest appearances on news media outlets started on the 1st of June, 1995. At this time, she and her lawyers had appealed her imprisonment for child abuse thanks to a 1992 ruling. The contested ruling was one in which Whitner was tried and sentenced for child abuse due to her third child being born with cocaine metabolites in his system because she had smoked crack cocaine while pregnant. In the trial, the words “child abuse” had come to be defined as the neglect or abuse of anyone under the age of 18. This definition is what was being contested by Whitner’s lawyers. They argued that the definition of “anyone” could not include fetuses or embryos. In saying this, they implied that ‘child’ should include any

person under the age of 18 who lives ex-utero; and that Whitner had therefore been imprisoned for a crime that didn't yet exist.

### **5.2.1 *The Apparition***

The two newspaper articles penned about Whitner in 1995 were identical and were published in the month of June. They were published in *Post and Courier* and the *Charlotte Observer* respectively and contained the following sentences about Whitner:

Drug-addicted women who bear babies with drugs in their system should not be prosecuted for neglect because it doesn't apply to the unborn, Cornelia Whitner's lawyer told the state Supreme Court Wednesday. Whitner, who was not at the hearing, was sentenced to eight years in prison for child neglect in 1992 after her newborn tested positive for cocaine. A judge freed the Pickens County woman 19 months later, saying child-abuse laws don't apply to prenatal actions. (Holland, 1995 in Appendix II)

The rest of the 467 word article contained statements from the attorney general prosecuting her case and her defence attorney; where each stated their stance on Whitner's case. The attorney general of South Carolina, a figure who looms large in her 6-year battle with the law, Charles Molony Condon, had this to say about Whitner's case:

They would have you believe that before the umbilical cord is cut, South Carolina has no interest or motive in monitoring prenatal conduct," Condon told the justices." But the court has a proud longstanding tradition of protecting South Carolina's unborn children. (Holland, 1995 in Appendix II)

Here, Condon does not offer an opinion specifically about Whitner's case. He speaks instead for a whole class of cases like Whitner's where "unborn children", as he so called them, were being harmed by the likes of people like Whitner.

Whitner's own attorney's statements were as follows:

The legislature seems to have made its wishes well-known, because they have rejected 12 bills since 1989 that would have broadened the scope of the law...Women would end up spending the duration of their pregnancy



worried about prosecution once their child was born, keeping them from getting needed health care. (Holland, 1995 in Appendix II)

Notice here how both the defence attorney and the attorney general have taken overarching positions on the issue and have not quite commented on Whitner's case, or on her particular predicament at all. They instead make arguments about "pregnant women" and their "pre-natal conduct" in general.

Whitner, in both their statements and in the article, seems to have taken the role of a placeholder, an apparition— who is both present and absent at the same time. I say this because nowhere does anyone attempt to describe Whitner as a person, contrary to Zargar. She is present in the news article as a placeholder or signpost for someone who occupies the role of the pregnant woman. She is present therefore insofar as her appeal is concerned, but her presence— in terms of her voice, a description of her person, her feelings etc.— is remarkably nowhere to be found. This represents the first kind of reporting on Whitner and her case— where she is but an apparition in a legal trial that determines her fate.

The next set of articles about Whitner appeared in July of 1996, after the South Carolina Supreme Court ruled against the appeal for Whitner's release. Even here, her description is limited to a cursory sentence or two, and contains information on the year in which she was first tried, the county to which she belongs, the fact that her son was born healthy (despite the crack metabolites in his system), her guilty plea, the sentencing she received and how much of it she had served. See, for example, the following excerpts describing Whitner from two different news publications (*The Post and Courier* and *The Associated Post*):

The ruling came in the 1992 case of Cornelia Whitner, a Pickens County woman who had pleaded guilty to criminal child neglect. She was sentenced to eight years in prison for smoking crack cocaine while pregnant and giving birth to a baby who tested positive for cocaine. (Heilprin, 1996 in Appendix II)

The decision reinstates an eight-year prison sentence given to Cornelia Whitner, whose son, now a healthy 8-year-old, tested positive for cocaine after he was born. She and her son live in Pickens County, in the state's

northwestern corner. Her lawyer said she would appeal. (Tanner, 1996 in Appendix II)

Other than Whitner's apparition-like presence in these articles, there are a few elements that give away the frame with which people like Whitner were perceived by the media. First, there is the fact that multiple news stories, like Tanner's, committed the mistake of saying that Whitner's child was eight years of age in 1996. That a number of journalists reporting for reputable news agencies like the Associated Press in Tanner's case, neglected to even double-check the facts of Whitner's case before writing about it is telling. Second, there are sentences like this one below, from Tanner's article, which are telling of the prevalent opinion of Whitner:

South Carolina's child abuse law and previous court rulings clearly consider a viable fetus a person, Justice Jean Toal said, writing for the majority. Since 1984, South Carolina prosecutors have been able to charge *other people* with injuring or killing a woman's viable fetus. And for 26 years, the courts have said families could sue if a viable fetus was hurt or killed. (Tanner, 1996 in Appendix II; emphasis mine)

By saying that "other people" were charged for the murder of or injury to a woman's viable fetus, what Tanner's article is doing is indirectly implying that abortion is murder. By doing this, the article aligns itself, albeit covertly, with Justice Jean Toal and the other two judges who ruled that Whitner's sentence needed reinstatement because of the conclusion that a viable fetus is a person.

The personhood discourse is therefore something that was present from the very beginning of Whitner's case. Participating in the shaping of the discourse were all the Supreme Court judges, lawyers, journalists and most importantly Whitner and the figure of her third child. There were two positions being taken by these actors/actor collectives. On the one hand, they could side with Whitner and her lawyer Lynn Paltrow in thinking that to prosecute people like Whitner who had problems with substance use would reduce their health seeking behaviour including antenatal care. On the other hand, they could side with Condon and Judge Toal who believe in the incarceration of pregnant or recently-pregnant people who used drugs during their pregnancy.

Tanner's widely-published piece also contained the statement of one judge whose dissenting opinion favoured Whitner's release. Justice James E Moore had this to say about reinstating Whitner's prison term:

Is a pregnant woman's failure to obtain prenatal care unlawful? Failure to take vitamins and eat properly? Failure to quit smoking or drinking?  
(Moore, as quoted in Tanner, 1996 in Appendix II)

Tanner also describes that Moore noted that

a woman would be better off to illegally abort her third-trimester fetus and face a two-year sentence rather than give birth to a baby after taking drugs and face a 10-year sentence for child abuse. (Tanner, 1996 in Appendix II).

With this, he argues that there was now a precedent with which virtually anything that a pregnant person does that inadvertently caused harm to the fetus would be grounds for their prosecution. This is so since intent to harm is not something that the judgment took into account in Whitner's case. Moore argues, that it would greatly affect health-seeking behaviour from pregnant people and cause them to favour late-term abortions over having and raising a child.

This is especially relevant to the thesis because if Moore's argument holds true, then those whose newborns are tested for drugs at birth would be at risk of a ten year sentence. We know from existing literature that the war on drugs specifically targeted and surveilled Black people, and stereotyped the average drug user as being Black. We also know that Black women are ten times more likely to be tested for prenatal drug use than white women (Appel, as quoted in *The Economist*, 1998 in Appendix II). So in a sense, what Moore's line of argument could imply is that by reinstating Whitner's sentence, Black pregnant drug users are more likely to favor having an illegal termination of pregnancy to giving birth. This racialized understanding is important to bear in mind in order to understand for whom these precedents are dangerous or life-altering, because Condon stated openly that he would "instruct prosecutors and social workers to begin monitoring and punishing pregnant women who abuse drugs" (Tanner, 1996 in Appendix II).

### 5.2.2 *Morally dubious*

The next two articles about Whitner that I will discuss were those that typecasted her as morally dubious. But they were not written about Whitner, specifically. Instead, they too didn't talk about Whitner at all, and instead used Whitner's apparition as a placeholder around whom to discuss the figure of the drug-using pregnant woman. This mainly consists of opinion pieces or commentary.

The first article which casts a cloud of doubt over figures such as Whitner's is one entitled "educate mothers, don't jail them for healthy babies" written by Joan Beck, and published on July 21st, 1996 in the *Chicago Tribune*. While taking, what can be termed as a speculative tone, Beck admits:

It's easy to see what tempted the judges to push the legal envelope. Women who use crack cocaine during pregnancy may be harming the health and mental abilities of their unborn children, perhaps for all of their childhood, even all of their lives.

Women who feed their babies or young children cocaine would be guilty of child abuse, of course. Giving it, even second hand, to an unborn infant can do far more harm.

Babies who aren't born normal and healthy because of what they are exposed to during pregnancy may need costly neonatal care. They may lag behind in their physical and mental development, have problems learning in school, need special education, never succeed. Life is harder for them and their families. The cost to society is high. No child should start life with such a preventable handicap. (Beck, 1996 in Appendix II)

Despite entitling the article with a seemingly anti-prison stance, Beck goes on to speak about women who use crack as harming their children and impairing them for life. Notice here that Beck is talking specifically about children of "mothers" who use crack cocaine, and not any other drug. This is yet another indication of how the discourse around Whitner was rooted in racial stereotypes. Furthermore, Beck makes a peculiar conflation in her article— that of terming pregnant people as 'mothers' and fetuses as "unborn infants". This conflation is

further proof of how the fetal person acquires a cultural image of its own, independent of the mother.

In the rest of the article, Beck once again makes references to the “unborn infant” while talking about the scientific advances that have cropped up in order to protect them from “devastation”. She then laments about how heartbreaking it is “to see a mother inflicting possible permanent damage on her unborn child because of a habit she can’t or won’t give up”. At the close of the article, Beck reveals more of her opinion about the figure that I have termed as Whitner’s apparition. She says:

Millions of caring pregnant women have followed the accumulating research and take the precautions that can help. They don't drink alcoholic beverages. They don't smoke. They don't use any medication without a doctor's specific order, especially illegal drugs. They try to avoid infectious diseases. They make sure they eat all the necessary nutrients. They get early and regular prenatal care. Now the challenge is to make this knowledge universal and to persuade all pregnant women to use it for the benefit of their offspring, even if giving up dangerous habits is difficult. (Beck, 1996 in Appendix II)

By talking about the counterpart of Whitner’s apparition as being that of a “caring pregnant woman”, the article constitutes Whitner as the other— the uncaring pregnant woman. The article assumes in this case that if given proper education and persuaded successfully, all—the caring and the uncaring— pregnant women would give up their “dangerous habits” and discontinue “inflicting possible permanent damage on her unborn child” (Beck, 1996 in Appendix II).

The next article was written by staff writer Lynn Smith of the *Los Angeles Times*. It was published on September 3rd, 1996. She opens her article by describing how a woman named Barbara Harris had adopted four “drug-exposed” children in the last six years and wanted to press child abuse charges against the woman who bore four children in addition to Harris’ adoptees. Harris is quoted as saying that “if [drug using women] are that irresponsible, somebody has to take control.” The article goes on to echo Harris’ frustration with the “small group of women” who were “disproportionately responsible for the babies’ tragic cir-

cumstances”. In the very next section, Smith cites statistics about the percentage of newborns exposed to drugs, alcohol and cigarettes prior to their birth. Despite the exposure to alcohol and cigarettes being significantly higher than that to drugs, Smith carries on talking about, whom she calls, “crack babies” and the trope of calling drug-using impregnable people irresponsible continues throughout the rest of the article.

However, Smith also quotes Dr. Stephen Kandall, a neonatologist, in the very same breath in saying that most often (85% of the time), the people prosecuted for being “drug mothers” are women of colour. This juxtaposition of terming women as “irresponsible drug mothers” while acknowledging that the group most affected by people holding such views are people of colour is interesting. It gives the reader the impression that the journalism has been balanced, while still pandering to the stance that is most expansively written about in the article— which is that of drug mothers’ irresponsibility and their propensity to reproduce like a “cat trying to replace a lost kitten” (Smith, 1996).

Articles like these by Beck and Smith, respectively, allow the reader to see the tensions in the framing of the pregnant person in the fetal personhood discourse in the case of Cornelia Whitner. On the one hand, there is some level of sympathy for the woman (here, Whitner), where her lack of education and chemical dependence are considered possible causative factors in her continued drug use. On the other hand, there is still this individual responsabilization and stigmatization of her and others like her as “irresponsible drug mothers”. And that all of these portrayals happen against the backdrop of racialized persecution for drug use complicates this framing even further.

### **5.2.3 *In the eyes of the law***

This section contains an appraisal of Whitner from the vantage point of the attorney general and one of the judges who reinstated her sentence. It is based on three articles, all published in the year 1997. The articles appeared in *The New York Times*, *Post and Courier* and *Charlotte Observer* respectively; and they provide insight into how the prosecutor and the judge who aligned with him characterized Whitner.

During the 1990s, Whitner’s case had been transferred from court to court in search of justice. After her initial conviction and sentencing by Judge Eppes’ circuit court, Whitner’s appeal was heard and granted by Judge Patterson’s courtroom. At the behest of the State’s

appeal, the case was then transferred to the South Carolina supreme court where the 3-2 majority verdict was passed to reinstate Whitner's sentence. This is the court at which Judges Toal and Moore (from earlier excerpts in the chapter) were present. Lawyers from the American Civil Liberties Union (ACLU) appealed to the US Supreme Court, following this reinstatement, and they did so on behalf of Whitner and Melissa Ann Crawley, another woman with a similar predicament as Whitner. The US Supreme Court turned down the case. As a last resort, Whitner's lawyers asked that a federal district judge to grant Whitner's habeas corpus petition which is as a concession to the fact that her constitutional laws were being violated. This too was ultimately unsuccessful.

During this long legal battle, the attorney general, Charles Molony Condon, was Whitner's most important opponent. He was a pro-life Republican man whose stance on the carceral system is made clear by his proposal for there to be "electric sofas" instead of electric chairs to expedite executions. He saw fetuses as "fellow South Carolinians" (Bragg, 1998 in Appendix II) and drug-using pregnant people as "crack mothers". His position on pregnant drug users is best exemplified by a dedication written to Condon which reads "To Charlie Condon, who is saving lives while others prattle on about the rights of drug addicts." (Buchanan as quoted in Bragg, 1998 in Appendix II). Condon made contradicting statements about women he thought of as drug addicts. On the one hand, he states (in news pieces like Bragg's) that if women sought treatment for their drug problem, they could avoid punishment; and on the other, he decried "social leniency", because of which "the law could not have any control over the child so long as the umbilical cord is attached" (Bragg, 1998 in Appendix II). And he held that this social leniency, as he termed it, was creating a world where children were "at risk from their mothers' drug habits" (Bragg, 1998). He too echoed Smith in calling pregnant drug-users irresponsible when he said that what the law was asking for "was the barest minimum of responsibility" (Bragg, 1998 in Appendix II) from pregnant people. He also agreed with critics who claimed that he was singling out poor Black women, and said "'I can't help the fact that it's the drug of choice for blacks. But, do we do nothing? If anything, black children deserve enhanced protection" (Bragg, 1998 in Appendix II). It is derivative from the callousness of his statement that he does not regard either Black drug users, in general, or Whitner, in particular, as a fellow South Carolinian as he does the 'un-born children'.

From the vantage point of Judge Toal, who was instrumental in the reinstatement of Whitner's statement, her constitutionally mandated right to privacy was not being breached by the charge of child abuse being brought on her. Furthermore, he claimed "it [was] common knowledge that use of cocaine during pregnancy can harm the viable unborn child" and that given that fact, he couldn't see how Whitner could claim that she did not know that her behaviour constituted "child endangerment" (Toal, as quoted in Gaulden, 1997 in Appendix II). He therefore views Whitner as someone who willfully endangered the life or health of her 'child'.

The image of Whitner as an irresponsible mother with an intent to cause harm was reinforced by both Judge Toal and by attorney general, Condon, both of whom were abreast of how their interpretation of the law would disproportionately affect Black people and Black women, specifically. She is not even afforded any leniency from Toal for the fact that "the fact that it took five judges 29 months to decide the meaning of the word child" (Wise, as quoted in Holland, 1997 in Appendix II). It also becomes clear that when Condon talks about providing enhanced protection for Black children by including Black fetuses under the ambit of the child abuse statute, the statement implies that Black children need to be protected from their mothers, even if they are born unaffected by the drug-exposure, as Whitner's child was.

### ***Fetal Personhood and Whitner***

In Whitner's case, the personhood discourse was more obviously present than in Zargar's case. It took root from the very first time that she was charged with child abuse. She was enmeshed in the discourse as an irresponsible mother who had wilfully caused harm to her child, and this characterization of Whitner was nearly constant throughout the time period that we are observing her case. But even still, there was some dynamism in how her characterization was done by the media over time. This was mostly in the way her race was spoken (or conspicuously not spoken) about.

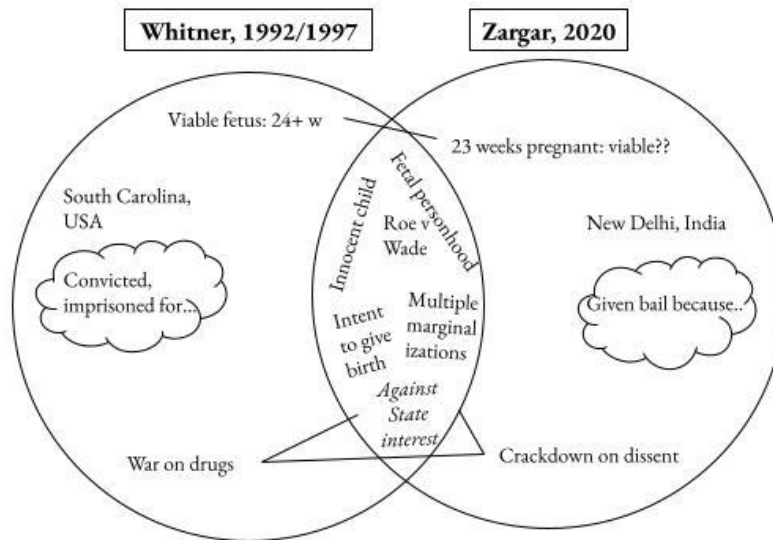
Initially, Whitner was framed as a "crack mother" — someone who had neglected to stop using crack even despite it being common knowledge that its ingestion harms fetuses. Her individual personhood (outside of her mothering three children) was hardly acknowledged throughout this period and she was viewed mainly via the lens of her third child and his health condition. At this juncture, Whitner is not overtly referred to as a Black woman but



articles like Beck's do allude to her racialized identity by using the proxy of crack cocaine as her drug of choice. In the next stage of reporting, once Condon begins to loom large as a "defender of God, South and the unborn" (Bragg, 1998), indirect referrals to her Blackness are replaced by Condon's need to provide enhanced protection for Black children through the policing of Black women's pregnancy. Even during this stage, save for one 1900-word article written by Arlene Levinson and published by the *Associated Press* (1998), Whitner is not written about favourably by media outlets. Her character appeared as an afterthought in articles written about her case, and even there, she was not written about sympathetically. There seemed to be a tacit agreement across the articles that she is guilty of the crimes she is accused of; whether that crime exists in law or not seemed to be the only thing in question for the media.

In doing this, the media discourse seemed to have been in agreement with the narratives championed by Judge Toal and attorney general Condon. They portrayed Whitner as an irresponsible mother and as a child abuser for having smoked cracked cocaine prior to the birth of her third child. In fact, Whitner's characterization is captured perfectly by Anne Overbeck who, while analyzing the figure of the Black mother during the War on Drugs, wrote: "Two characteristics could be found repeatedly in the description of these ["crack mothers"] women: their passivity and their lack of maternal instinct... The drug abusing women have lost their ability and right to act as mothers. In breaking clearly with ideal notions of motherhood, they were described as putting their own comfort before the well-being of their children." (2012: 165). As historian Rickie Solinger wrote about Black drug-using mothers, "there was no redemption possible" (2000: 25) for women like Whitner, in the eyes of the media. Her prosecution by the state was thus a move that the state deemed necessary to take in order to protect her child, and other children and fetal persons like her child, from Whitner and her ilk's less than ideal mothering.

### 5.3 Inter-reading the Cases



Situational Map

Figure 1

Whitner and Zargar, as previously mentioned, saw the personhood discourse be mobilized in two completely different ways with entirely different outcomes. However, the way in which they became enmeshed in the discourse and the way their characterization was animated did share commonalities. This section will be an inter-reading of their two cases in order to distill how the personhood discourse makes itself visible on the basis of a common ‘logic’ irrespective of context. In it, I will be making explicit the patterns that emerged from both cases in terms of how each protagonist was made to become the center of the personhood discourse, how their characterization was affected by the assumptions of the discourse and how the outcome of their legal cases was heavily impacted by the personhood discourse. This will allow me to create a concrete understanding of the effect that the personhood discourse has on the pregnant person at its center.

#### 5.3.1 *Initial Entanglement*

The cause of Zargar and Whitner’s getting enmeshed in the personhood discourse was their respective legal trials. Given what has already been explained in Chapter two

about the history of Zargar and Whitner's cases and the context in which they are situated, it goes without saying that their legal trouble had much to do with their markedness. And since the personhood discourse is explicitly invoked primarily in legal trials (outside of anti-abortion propoganda that is directed at nobody in particular), it is imperative that we take a closer look at how Zargar and Whitner's marginalizations contributed to their getting into legal trouble. This will allow us to also see which factors precipitated their getting enmeshed in the personhood discourse.

In Zargar's case, the charges that landed her in legal trouble were a result of her participation in and leadership of the movement against CAA and NRC. However, this arrest of hers is not something that can be examined in isolation. Her being charged under the anti-terrorism law of UAPA can largely be explained by her being muslim and leading the dissent against the government in power.

The UAPA is "an extraordinary law that criminalises the fundamental freedom to associate and assemble by allowing the government to simply ban political organisations that question the status quo" (Singh, 2012: 14). Since its amendment in 2019, it is also an instrument with which the State could, with little in the way of evidence, deem individuals as terrorists for associating with any organization that is considered to be threatening to the "unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in people or any section of the people in India or in any foreign country" (Unlawful Activities Prevention Act, 2012: Section 15). As a law that defines terrorist and unlawful activities in such broad and vague language, it has mainly helped the government "specifically target those whose voices it considers as "threatening" or those whose identity makes them vulnerable in front of the ruling elite" (Singh, 2012: 17). This is evident from the very fact that most of the thousands of people arrested and jailed under the law have been Muslim or from the dalit (the most oppressed) castes (South Asia Research Institute For Minorities, n.d.). It is obvious then that Zargar's arrest was not a consequence of her 'illegal' actions alone, which themselves were acts of dissent against the government. Instead, her arrest had largely to do with her unbelonging to dominant strata of society. Zargar's anti-government politics and muslimness were thus the reason that she became entangled with the law and eventually also with the fetal personhood discourse.

For Whitner, her entanglement with the law was a result of the state's surveillance of pregnant people, especially those with a history of drug use. Whitner lived in a spatial-temporal context where the war on drugs was being implemented with some force. This brought with it an increase in the amount of surveillance conducted on pregnant people in order to regulate their conduct. Dubbed the 'pregnancy police', what policies such as this aim to do is to bring in punitive legislation in order to intervene in the affairs of drug-addicted pregnant people (see McNulty, 2012). Given the focus on crack cocaine during the war on drugs, and the higher propensity to test poor Black women and other women of colour for drug use (Krauss, 1991; Solomon, 1991), Cornelia Whitner was made particularly vulnerable to getting entangled with the law.

In both Zargar and Whitner's cases, their run in with the law was therefore a derivative of their already marginalized status in society as a muslim woman dissenter in India, and a poor Black drug user in the US, respectively. Their multiple marginalizations therefore had indirectly contributed to their getting pulled into the center of the personhood discourse in their respective contexts. This is the first piece of the puzzle with respect to personhood and someone's initiation into the discourse— that being a multiply-marginalized person acts as a catalyst to one's becoming disenfranchised and surveilled by the personhood discourse (Howard, 2020). This is not to say that the discourse is inapplicable to those who aren't marginalized in the same way. Instead, the assertion is that multiply-marginalized people are more susceptible to being made an example of as a consequence of the discourse, as in the cases of Zargar and Whitner.

### **5.3.2 *Characterization***

Once a person is initiated into the discourse, the question of how their characterization is affected by it becomes of consequence. In Whitner and Zargar's cases, the commonality with how they were each characterized by the media lies in their earning the title of 'mothers'. I call this process motherization. Irrespective of the appraisal that both of them received— i.e., without regard to what kind of mothers they were perceived to be—their being "mothers" was an identity that was inescapable to both Zargar and Whitner during their respective media trials.

What is more interesting than simply their superficial characterization as ‘mothers’ — which can merely be due to a lack of word for someone who is performing the role of a “gestational carrier” (Sufrin, 2018)— is how this motherhood role is constituted by the personhood discourse itself. Once that constitution is understood, it will become clearer how ‘mother’ was not merely a placeholder term or a substitute for calling these people “caregivers” (Wetterberg, 2004). Instead the term “mother” is a benchmark with which to measure the character of Zargar, Whitner and others like them.

Here I want to caution the reader about my usage of the term “mother”. There has been rich scholarship on the idea of motherhood and becoming a mother in feminist studies. In these studies, the “mother” identity is irreducible to a dichotomous binary. Instead, the identity can be seen as a symbol and cause of oppression (de Beauvoir, 1953), but also as a tool with which political change can be brought (Sinha, 2016). There are also numerous studies that talk about what it might mean to be a good mother (see Hays, 1996) and whether that is even always desired (Donath, 2017). However, in my analysis I will be referring to the dichotomy of motherhood as manufactured by the personhood discourse (Daniels, 1993); while that dichotomy certainly conceals more than it reveals, it is often used within the discourse and is therefore useful in the context of this thesis.

To understand how the figure of the ‘mother’ is animated in the personhood discourse, we can first look at how the personhood proponents viewed abortion rights. The right to an abortion was seen as flying in the face of the ethic of “selfless motherhood” which impregnable people were expected to adhere to. This selfless motherhood was one where women held themselves individually responsible for the health of the fetus and made the right choices for the fetus’ well-being, even if it meant subordinating their own wellbeing for that of the fetus (see: Wetterberg, 2004). In this case, the fetus was not seen as an entity dependent on another human being, but instead as a fully-formed but preborn baby (Daniels, 1993), whose health largely depended on the pregnant people who were hosting them.

The constitutive other of the selfless mother was also manufactured by the proponents of the personhood discourse by creating the image of the anti mother. They argued for fetal rights on the grounds of the ‘maternal-fetal conflict’. This argument drew on the violation of the selfless motherhood ethic to say that since the pregnant person was able to put the ‘child’'s health at risk through her possibly-risky actions, which the fetal person was

defenseless against, there was always an inherent conflict between the mother and the child. The mother is thus a threat or an aggressor for the fetus unless she proves herself worthy by acting in accordance with the selfless mother ethic. This potential harm-doer was then labelled the “anti-mother” (Daniels, 1993: 106).

Framed in this way, it is clear that there are two possible kinds of mothers according to the logic of the personhood discourse: the selfless mother, who subordinates her own needs to that of the fetal person and the anti-mother who, by transgressing the selfless mother ethic, puts the vulnerable fetal person at risk. Zargar and Whitner’s characterization as mothers (either selfless mothers or anti-mothers) thus betrays the effect of the personhood discourse on their portrayal. They were no longer pregnant women or individuals who happened to be pregnant. They had instead become ‘mothers’ in the way that the personhood discourse had come to constitute the term, and their characterization as individuals can be seen as being rooted in this ‘mother’ role.

### **5.3.3 Outcome**

Given the existence of the dichotomy of the selfless mother and the anti-mother due to the evolution of the fetal personhood discourse, it is possible to see how the legal and media trials of the Zargar and Whitner were mediated through the characterization of the two women as “mothers”.

Zargar’s legal arguments for release relied on her pregnancy. By foregrounding the pregnancy and fetal health and the possibility of the fetus being affected by Zargar’s contracting the virus, what Zargar and her attorneys were able to do in the limited agency the personhood discourse allowed them to have, was to conjure an image for Zargar that was similar to that of the “selfless mother”. She was also able to do this by “restrict[ing] her physical movement” on account of “her advancing pregnancy” (Singh, 2020). By doing this, the need for the state to take up a paternalistic role in protecting the fetus was made obsolete. Therefore, by performing the selfless mother role, Zargar was able to escape the punishment that is otherwise wrought by the pregnancy police upon women who were without maternal instinct.

In Whitner’s case, the opposite was true. Having become characterized as an irresponsible “anti-mother” who had been robbed off her maternal instinct by her drug habit,

Whitner was disadvantaged by the personhood discourse. The discourse's effect on her characterization allowed for the State to deem her an abuser and to take over the paternal role for her child from someone who could not tip the scales in the favour of being viewed as a selfless mother.

## **Conclusion**

The personhood discourse engenders the creation of a particular role for the pregnant person at the center of it— that of the 'mother'. By ascribing this role to the pregnant person, it enables the pregnant person to be appraised on the basis of the good mother-bad mother or "selfless mother"- "anti-mother" dichotomy. Since this appraisal has material consequences for the person, whether in the form of public perception or that of judges presiding over legal cases which see the invocation of the fetal personhood discourse, it is something that needs to be carefully dissected. It also bears noting that unless this dichotomous "mother" role is made redundant, multiply-marginalized people like Zargar and Whitner stand to lose their reproductive rights by becoming imprisoned. But even without the loss of specific reproductive rights, both Zargar and Whitner had to reckon with the inability to realize reproductive justice. Whitner lost her right to free movement and her ability to parent her three children free of state violence. Zargar, too , was robbed of her right to express herself freely, and to make key decisions regarding her body and reproduction— such as terminating her pregnancy which she had the right to do before 21 weeks of gestation. Therefore, fundamentally, the personhood discourse at least grossly undermines, if not violates, the tenets of reproductive justice for pregnant people, especially those who are already marginalized due to other identities they hold.

## 6. CONCLUSION

The research objective of this thesis centered around decoding the framing of the pregnant person in the personhood discourse. This decoding was done by inter-reading two case studies from different geo-political and temporal contexts using the methodological framework of situational analysis. The reading also imbibed the strategies of frame analysis to understand how the frames in each case evolved over time. Reproductive justice and the history and assumptions of the personhood movement were the theoretical frameworks which guided the analysis. Ultimately what was sought from the thesis process were the answers to three questions:

1. How does the pregnant person become enmeshed in the personhood discourse?
2. How are they framed in media narratives?
3. How does this framing impact their ability to realize reproductive justice?

I started the analysis by reading the media reportage of the legal cases of the two protagonists— Safoora Zargar and Cornelia Whitner— in order to get a sense of the different words and phrases used to describe them across the timelines that were chosen for each case. This helped me construct an intentionally disordered situational-positional map amalgam for each of the cases which contained the descriptors used for them over time and seeing how the two maps thus created linked to each other when they were superimposed.

In both Zargar and Whitner's cases that were being analyzed, a significant reason for the protagonists' entanglement in the personhood discourse was due to the surveillance of their bodies as marginalized women. This is in line with Howard's (2020) contention that although all pregnant people stand to be surveilled by the "pregnancy police" (McNulty, 1987), bodies that are considered deviant are much more likely to be targeted by them.

Coming to how Zargar and Whitner were characterized or framed by the media narratives, I argue that both Zargar and Whitner were 'motherized'. The motherization process, which evolved from the material and is firmly rooted in the personhood discourse, positions



the pregnant person as a care-giver of the fetus (Wetterberg, 2004) so long as she errs on the side of being perceived as a “selfless mother” (Daniels, 1993; Doan & Schwarz, 2020). On the flip side, if the person is thought of as being an intentional harm-doer, they are deemed an “anti-mother” (Daniels, 1993). This “anti-mother” identity is a heavily racialized characterization following the “crack baby” epidemic, and is usually used in the context of Black women (Daniels, 1993: 146). But given the way Zargar’s fellow protestors were called child murderers for the death of children that happened because of the cold weather at the protest site, one can see how the racialized characterization could have been applicable to her as well.

In this framing, because of Zargar’s sympathetic image and her conveyance of the concerns she had for her ‘unborn child’s’ health, she emerged as being closer to the selfless mother position in the identity spectrum mentioned above. But because of Whitner’s drug use in the era of the war on drugs, and her history of child neglect, Whitner came to occupy the position of the anti-mother in the media narratives.

In both cases, the framing of the protagonists greatly affected their ability to realize reproductive justice. In Zargar’s case, she was ‘motherized’ so early on in the media narratives about her, and this caused all of her actions to be seen through the lens of the ‘mother’ identity as defined by the personhood discourse. She thus could not engage in less-than-selfless acts that cast her person as deviant in the eyes of the law. She also did not have the meaningful choice to terminate her pregnancy, because of motherization, for if she had done that, her media-constructed model minority image would likely have been shattered. In Whitner’s case, the motherization process and the personhood discourse deprived her of freedom of movement and the right to raise her own children free of state violence.

Ultimately, what the personhood discourse engenders is that multiply-marginalized pregnant people will be subjected to scrutiny on the basis of a mother identity they did not consent to take on, and penalized legally or socially for transgressing the norms that the personhood discourse celebrates. Moreover, because of the surveillance that is done on the bodies of multiply-marginalized people, they are inducted into and expected to conform to the norms of the personhood discourse. This compliance effectively depoliticizes them by making them comply with motherhood norms, or incarcerates them and deals with their de-

viance using the criminal justice system. What ultimately is achieved through the personhood discourse's operationalization is the taming of the deviant bodies to fit dominant norms and ideals.

As with all research projects, my study too has limitations. Other than the methodological limitations I outlined in chapter four, I would argue that my study is limited since it compares only two studies. Because of this, I think the soundness of the motherization process would need corroboration from future researchers. Another limitation, especially in the case of Zargar, was that I only considered articles written about her in English. Had I widened the search to include more vernacular languages, it is possible that the media portrayal of her would have changed.

I believe that my thesis lays the foundation on which future work on the personhood movement in parts of the world other than the US could be carried out. At the moment, most of the literature on the subject seems to be America-centered. My study could also be used by researchers of law, especially case law, to trace the intricate ways in which the personhood movement has taken root in India. Feminist researchers could also expand upon the scholarship on the fetal person in places such as India where there has been little discourse on the subject.

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## 8. APPENDIX I

Table 1

### Materials for Safoora Zargar

	Publication	Number of Articles	Year
1	India Today	2	2020
2	Zee News	2	2020
3	Asian News International	9	2020
4	Times of India	13	2020
5	The Telegraph	5	2020
6	The New Indian Express	12	2020
7	Siasat Daily	12	2020
8	Free Press Journal	2	2020
9	Kashmir Times	6	2020
10	IANS-English	6	2020
11	Hard News	1	2020
12	The Pioneer	5	2020
13	Youth Ki Awaaz	6	2020
14	Hindustan Times	7	2020
15	The Financial Express	1	2020
16	The Guardian London	1	2020
17	Gulf News	3	2020
18	Kashmir News Service	1	2020
19	Radio France Internationale	1	2020
20	Kashmir Observer	1	2020
21	The Sunday Guardian	1	2020
22	Newstex	4	2020
23	Mirror Now	1	2020
24	The Economist	1	2020



25	The Hindu	1	2020
26	Tehelka	1	2020
27	The Indian Awaaz	2	2020
28	The Conversation	1	2020
29	Education World	1	2020
30	Indian Media News	2	2020
31	Bar & Bench	1	2020
32	Economic Times	1	2020
33	The Northlines	3	2020
34	The News International	1	2020
35	IBNS	3	2020
36	News Point	1	2020
37	MINT	1	2020
38	Indian Muslim Observer	1	2020
39	Business Line	1	2020
40	The Wire	8	2020
41	Al Jazeera	1	2020
	Total	133	

Table 2

## Materials for Cornelia Whitner

	Publication	Number of Articles	Year(s)
1	The Post and Courier	10	1995, 1996, 1997, 1998
2	Charlotte Observer	8	1995, 1996, 1997, 1998
3	Associated Press	11	1995, 1997, 1998
4	Telegraph Herald	2	1995, 1997
5	News and Record	1	1996
6	The Columbian	1	1996
7	The Philadelphia Inquirer	3	1996, 1997

8	Orlando Sentinel	1	1996
9	Philadelphia Daily News	1	1996
10	Milwaukee Journal-Sentinel	1	1996
11	Los Angeles Times	2	1996
12	Chattanooga Free Press, Tennessee	1	1996
13	Chicago Sun times	1	1996
14	The Miami Herald	2	1996
15	The New York Times	4	1996, 1997, 1998
16	St Louis Post- Dispatch	1	1996
17	The Tampa Tribune	1	1996
18	The Advertiser	1	1996
19	Chicago Tribune	3	1996, 1998
20	The Augusta Chronicle	4	1996, 1997, 1998
21	Omaha World Herald	1	1996
22	Pittsburg Post Gazette	2	1996, 1997
23	Providence Journal	1	1996
24	The Sunday Oregonian	1	1996
25	Jet	1	1996
26	The Toronto Star	1	1996
27	The Boston Globe	1	1996
28	Plain Dealer	2	1996, 1997
29	The Baltimore Sun	2	1996, 1997
30	USA Today	1	1997
31	The Herald	3	1997, 1998
32	The Independent, London	1	1998
33	The Guardian London	1	1998
34	Seattle Post-Intelligencer	1	1998
35	The Houston Chronicle	2	1997, 1998
36	The Times Union	1	1998
37	The Economist	1	1998

38	Times-Picayune	1	1998
39	The Patriot Ledger	1	1998
40	The Dallas Morning News	1	1998
41	Charleston Gazette	1	1998
42	Buffalo News	1	1998
43	Christian Science Monitor	1	1998
44	The Denver Post	1	1998
45	The Herald-Sun	1	1998
		90	

## APPENDIX II

### LIST OF REFERENCED NEWS ARTICLES IN THE ORDER OF APPEARANCE

Cited As	Full reference
Manral, 2020	Delhi: Jamia Student Arrested Second Time In 3 Days, Mahender Singh Manral, Indian Express, (April 14, 2020 Tuesday)
Tanveer, 2020	An appeal by the students of Jamia Millia Islamia, Tanveer. Siasat Daily (India). (April 18 2020)
Bhat et al, 2020	Delhi Police Arrest 2 Jamia Students For February Riots; Mahesh Bhatt, Anurag Kashyap And Co Demand To Stop 'witch-Hunt' Amid Lockdown, Fpj Web Desk, Free Press Journal (India), (April 19, 2020)
Ellis-Petersen, 2020	Two Muslim Students Face 'bogus' Charges Of Inciting Delhi Riots; Lawyers Say Pair Were Peacefully Protesting Against Indian Citizenship Act, Hannah Ellis-Petersen In Delhi, The Guardian (London), World News; Version:2, (April 22, 2020 Wednesday)
Singh, 2020	Delhi: Charged Under Uapa, Jamia Panel Member Denied Bail, Pritam Pal Singh, Indian Express, (April 23, 2020 Thursday)
Hindustan Times, 2020	2 Jamia Students Booked Under Uapa In Riots Case, Hindustan Times, (April 22, 2020 Wednesday)
Singh, 2020	Delhi: Charged Under Uapa, Jamia Panel Member Denied Bail, Pritam Pal Singh, Indian Express, (April 23, 2020 Thursday)
Singh, 2020	India: Charged With Anti-Terror Law, Pregnant Woman Sent To Jail, Valay Singh. Al Jazeera (April 26 Sunday)
Siasat Daily, 2020	Jmi Scholar Who Is Pregnant Spends First Day Of Ramadan In Jail, Siasat Daily (India), (April 27, 2020 Monday)

Krishnan, 2020	India May Day - State Using Covid-19 Lockdown Laws In India To Arrest Activists, Murali Krishnan In New Delhi, Rfi (English), (May 1, 2020 Friday)
Pathak, 2020	The Scholar In Dungeon: 'a Gem Of A Person, A True Intellectual', Mrinal Pathak, Kashmir Observer, (May 1, 2020 Friday)
Shankar, 2020	Pregnant Jamia Student In Jail For 3 Weeks, Family Says Believe In Judiciary, Aranya Shankar, Indian Express, (May 6, 2020 Wednesday)
Kashmir Times, 2020	Palakkad, Kerala And Death Of Pregnant Elephant: Communalization Of A Tragedy, Kashmir Times (India), (June 12, 2020 Friday)
Kashmir Times, 2020	If Only I Were A Pregnant Animal..., Kashmir Times (India), (June 14, 2020 Sunday)
Gupta, 2020	Safoora Zargar Case Lays Bare How Superficial India's Respect For Motherhood Is. Monobina Gupta, The Wire. (June 9, 2020)
Kumaramangalam, 2020	We seem to live in a country now where its ok to communalise the death of a pregnant elephant while we keep a pregnant mother in jail accusing her of inciting communalism. Have we stopped thinking altogether or lost the ability to empathise? [Twitter.com]. Twitter. Mohan Kumaramangalam (June 5 2020) <a href="https://twitter.com/MKumaramangalam/status/1268818507988262912">https://twitter.com/MKumaramangalam/status/1268818507988262912</a>
Jain, 2020	The Wire Denigrates Indian Culture, Claims Its Shallow Regard For 'motherhood' Responsible For Safoora Zargar's Incarceration. Jinit Jain, Opindia. (June 10, 2020)
Delhi Police, 2020	Delhi Police. (2020). Status Report [Status Report]. High Court of New Delhi. <a href="https://www.livelaw.in/pdf_upload/pdf_upload-376819.pdf">https://www.livelaw.in/pdf_upload/pdf_upload-376819.pdf</a>
Ramakrishnan, 2020	In Considering Bail For A Pregnant Woman, The Personhood Of Her Fetus Has To Be A Factor. Nithya Ramakrishnan, The Wire. (June 24, 2020)
Holland, 1995	Is Prenatal Drug Use Child Abuse?. Jesse J. Holland, The Charlotte Observer (June 1 1995)

Heilprin, 1996	Drug Users Face Fetal Abuse Charges. John Heilprin, The Post And Courier. (July 16, 1996)
Tanner, 1996	S. Carolina Court Says Fetus Protected By Abuse Law; Mom Can Be Prosecuted. Robert Tanner, Associated Press (July 16, 1996)
The Economist, 1998	Abortion. When A Fetus Is A Person. The Economist (January 10 1998)
Tanner, 1996	Threat To Fetus Child Abuse, Court Rules S.C. Decision Unprecedented. Robert Tanner, The Miami Herald. (July 17 1996)
Beck, 1996	Educate Mothers, Don't Jail Them For Healthy Babies. Joan Beck, Chicago Tribune. (July 21, 1996)
Smith, 1996	Punish Or Protect?; Addicted Moms Bearing Addicted Or Substance- Exposed Babies: It's A Situation That Some Say Warrants Prosecution. But Others Favor A Softer Approach. Lynn Smith, Los Angeles Times.(September 3, 1996)
Brag, 1998	Defender Of God, South And Unborn. Rick Bragg, The New York Times. (January 13 1998)
Gaulden, 1997	Pregnancy Drug Abuse Law Upheld. Sid Gaulden, The Post And Courier. (October 28, 1997)
Holland, 1997	Mom's Fetal Child-Abuse Conviction Is Upheld. Jesse J Holland, Charlotte Observer. (October 28, 1997)
Levinson, 1998	Crack mom serving 8-year prison term pins hopes on U.S. Supreme Court. Arlene Levinson. The Associated Press. (March 14 1998)