

Gender Justice Behind Prisons:

**A Study of Women in Pre-Trial Detention and their Legal Safeguards
in the State of Madhya Pradesh, India**

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DECLARATION

I, Vikram Amrawanshi, the author of this research, do hereby declare that, except for the references to the author's work, which were duly acknowledged, this assignment was done solely by me under the supervision of Randi W. Stebbins.

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LIST OF ACRONYMS

BNSS – Bharatiya Nagarik Suraksha Sanhita

CDA – Critical Discourse Analysis

CrPC – Code of Criminal Procedure

MHA – Ministry of Home Affairs

NCRB – National Crime Records Bureau

TA – Thematic Analysis

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ABSTRACT

The criminal law is built on the foundational principle of the *presumption of innocence*, i.e. a person is presumed innocent until proven guilty. To strengthen this, the national legal framework and the judiciary in India have constantly emphasised 'jail as an exception and bail as a rule.' However, in practice, the default rule has been otherwise. The criminal justice system and its institutions – police, prisons and courts have, over the years, extensively used pre-trial detention as a measure of weaponisation. This research proposal examines the inappropriate and widespread application of this measure on women and highlights the far-reaching social, economic and emotional impact it causes to them. This exposes the gendered and intersectional barriers that restrict women's access to legal aid and bail. It draws on the ever-expanding body of feminist scholarship to argue that the pre-trial custody operates as a form of gendered oppression that reinforces structural inequalities, thus reproducing harms for women, their families and communities. The proposal concludes that there is an urgent need for investment in gender-sensitive, non-custodial, abolitionist and community-based measures to advance women's decarceration and fulfil the idea of transformative justice for them.

Keywords: Prisons, Women, Pre-Trial Detention, Intersectionality, Systemic Violence, Abolitionism, Transformative Justice

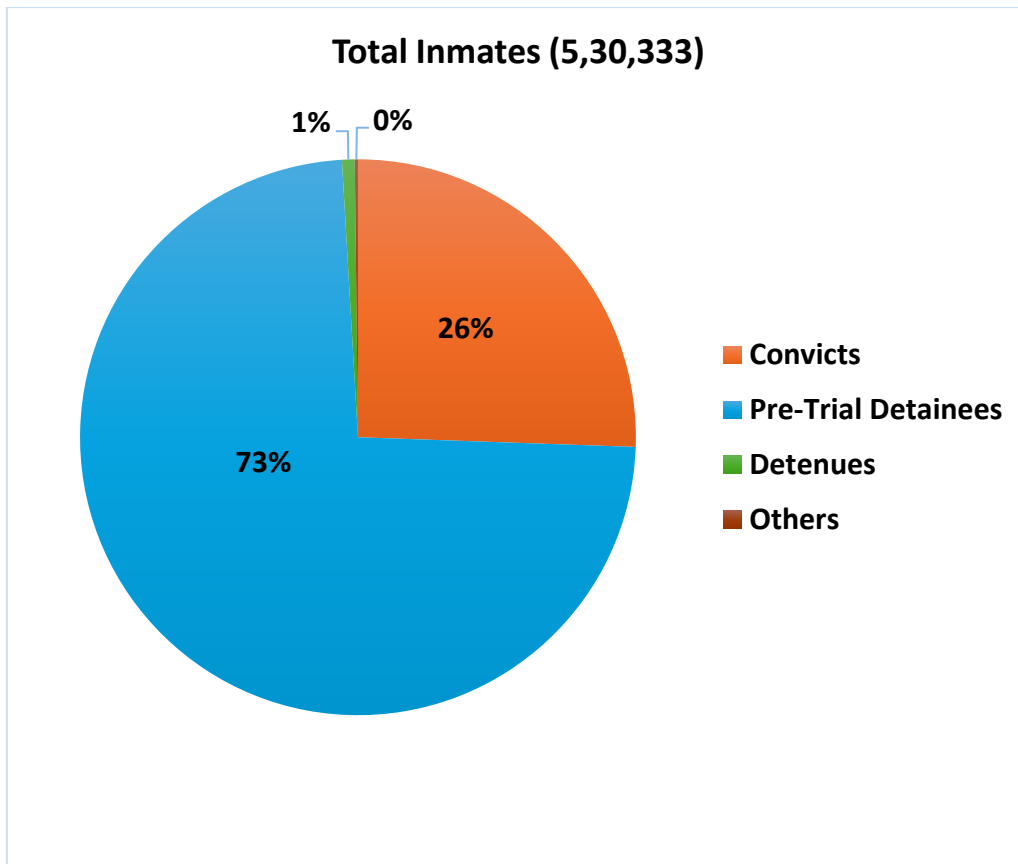
CHAPTER ONE: INTRODUCTION

1. Background of Research

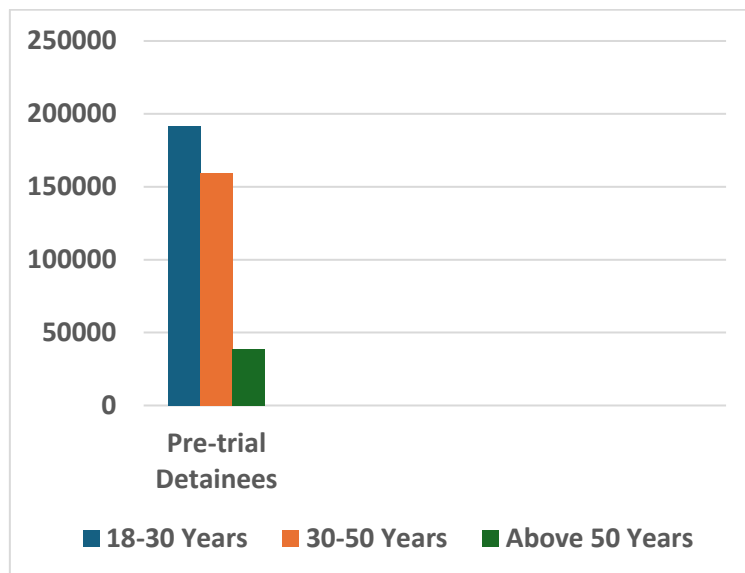
Rani (name changed) was lodged in Adharwadi Prison, Kalyan, Maharashtra, under Section 302 of the Indian Penal Code in 2019. During her custody, she left her son, then aged five, and a daughter, then aged eleven, under her sister's care. While in pre-trial detention, she had a strong desire to meet her children, as she had not known about them since her detention. But the simple process of a mother meeting her child took a long and complex turn due to the perception of relatives and fear towards prisons and detainees. Another challenge in Rani's case was that she was allowed a cash bail, but she did not have any identification proof to show, as she had submitted it to the police station during her arrest. After a long struggle, the court issued her bail to meet her children (Minchekar, 2025).

When Rani met her daughter, she found that her sister used to beat her. She was not allowed to complete her education and was kicked out of the home. After being kicked out, she was living with her so-called uncle, where the living conditions were poor. There was no electricity or bed, and she used to sell vegetables and hand over the hard-earned money to her uncle. Rani also has a three-year-old daughter, who was born inside the prison in 2020. However, her daughter was not issued a birth certificate by the concerned hospital till 2022 (Minchekar, 2025). Rani's case is a typical example of the emotional trauma that prison life takes on women in pre-trial detention, who live in continuous worry for their children.

As per the National Crime Records Bureau (NCRB) Report (2025), there are a total of 5,30,333 individuals who were confined in various jails across the country. Out of them, the number of people in pre-trial detention is 3,89,910. Therefore, the total percentage of people in pre-trial detention is nearly around 73.5% (p. 33). Out of the total pre-trial detainees, the highest number and percentage of them were kept in District Prisons, i.e. 50.5% or 1,97,047, followed by Central Prisons, i.e. 37.6% or 1,46,749 and Sub-Prisons, i.e. 9.1% or 35,625 (p. 35). A total of 92,964 pre-trial detainees were illiterate, and 1,57,461 were educated below class X standard. These two categories have accounted for 64.2% of the total pre-trial detainees (p. 38). Further, the largest number of pre-trial detainees belonged to the age group of 18-30 years. This was followed by detainees in the age group of 30-50 years, and the least number of them were aged 50 years and above (p. 40).



*Figure 1: Share of Different Types of Prisoners
(Source: NCRB Report 2025)*



*Figure 2: Age-group-wise type of Pre-Trial Detainees
(Source: NCRB Report 2025)*

By confining individuals who are yet to be convicted of a crime, pre-trial detention presents a serious challenge to their lives and restricts their constitutional and legal rights.

Although the criminal justice system in India intends to apply it as a last resort, i.e. when necessary to ensure justice and public safety, in reality, it has become a default rule. It is often imposed without any sufficient justification or procedural safeguards. The misuse of pre-trial detention undermines the fundamental principle of criminal law, i.e., the presumption of innocence, and exposes detainees to significant harm.

2. Women and Pre-Trial Detention

Based on the gender-disaggregated data provided by the report, there are around 21,510 women who are incarcerated in prisons in different capacities. Out of them, 15,825 or 73.50% are kept as pre-trial detainees. Out of all the women in pre-trial detention, 4148 are kept in central prisons, and 7486 are kept in district prisons. Further, 4595 women in pre-trial custody belong to the age group of 18-30 years, 7750 are in the age bracket of 30-50 years, and 2475 are 50 years and above (NCRB, 2025). Most of them are illiterate, possess limited legal knowledge and belong to marginalised caste groups (Sadiq, 2011). Strikingly, in relation to men, their numbers are significantly small. But, historically, they have been largely overlooked and treated as an afterthought, making them an often invisible and forgotten group within the criminal justice system (Owen et al., 2017). As a consequence, the criminal justice system has shown limited gender sensitivity in both policy and practice. This has resulted in discrimination and social marginalisation of women and violated their constitutional and legal rights. The lack of gender-informed approaches creates a system that is structurally unresponsive to the specific needs and oppression experienced by women (Jefferies & Owen, 2025).

The impact of pre-trial confinement on women is extensive, as they face gender-specific challenges within the carceral spaces. This is due to the patriarchal nature of the criminal justice system and its institutions, which were largely built by men and for men (Jefferies & Owen, 2025). The heavy dependence on custodial sanctions recreates and reestablishes the gendered oppression experienced by women in their pathways to detention. Carceral spaces have failed to enhance community safety and inflict further harm on those who are imprisoned but awaiting their release or trials to be concluded (Owen et al., 2017). Therefore, gendered experiences and their intersectionality with other forms of inequality must receive greater attention, deeper understanding, and meaningful merger with laws, policies, service delivery and infrastructure (Jefferies & Owen, 2025).

3. Significance of the Study

This research work holds promise in light of the growing number of women in pre-trial detention worldwide, and in particular in India. It aims to examine the harmful impact of pre-trial detention on women through a feminist lens. Drawing on the national legal framework, different concepts of violence and feminist scholarship, it will explore the unique gendered experiences of women in pre-trial custody and identify structural and intersectional barriers in getting legal aid and bail. It will highlight that the regular detention of legally innocent women contravenes their constitutional and legal rights and also reproduces and deepens structural gendered domination. Ultimately, it will attempt to argue for urgent, gender-responsive reform to reduce the misuse of pre-trial detention and promote alternative recourse that upholds the idea of transformative justice and respects women's rights.

4. Research Objectives

2.1 General Objective:

The research explores the experience of women in custody inside the prison system in India and the gender-specific issues encountered by them. It will contribute to gender-responsive criminal justice reforms that advance gender justice and protect the rights and dignity of women in custody.

2.2 Specific Objectives:

- To identify the key challenges faced by women in custody and understand why they are overlooked and forgotten inside the prisons.
- To analyse the key constitutional and statutory provisions dealing with women in custody, evaluate prison policies and practices, and compare them with international standards.
- To examine important judicial interventions and case laws concerning women in custody.
- To provide evidence-based analysis of women's custodial experiences and gendered injustices.

5. Research Questions

3.1 Main Research Questions

- How do gender inequalities shape women's experiences within prison?

- How do the important theoretical frameworks help in understanding the conditions of women in custody?
- What role has the Indian Judiciary played in protecting the rights of women in custody?
- What key reforms are required in the criminal justice system to make it gender inclusive for women in custody?

3.2 Sub-questions

- What are the key challenges faced by women in custody, and why are they overlooked or forgotten?
- How can free legal aid be made more effective and accessible?

6. Hypothesis

This research work involves two key hypotheses:

- **Hypothesis 1:**

Despite various constitutional and statutory safeguards in India, gender justice for women in custody remains poorly implemented in practice.

- **Hypothesis 2:**

India's prison system lacks an intersectional, gender-sensitive and inclusive approach while dealing with women in custody.

7. Structure of the Proposal

The research begins with a clear introductory paragraph, which situates the reader on the topic of gender-related issues inside the prison system in India in the context of women in pre-trial detention. It covers the background of the research and states the key objectives and research questions it seeks to address.

Chapter II talks briefly about the legal system in India, focusing particularly on the common law system. Further, it talks about the prison system in India and discusses the national legal framework governing pre-trial detainees.

Chapter III discusses the concept of violence and focuses on its various types, such as systemic violence, institutional violence, legal violence, and symbolic violence. Furthermore, it connects the concept of symbolic violence to the area of language and identity construction.

Chapter IV is focused on the feminist legal theories and discusses in detail the idea of intersectionality and carceral feminism. Under intersectionality, it further focuses on the concept of structural intersectionality.

Chapter V is on methodology, and it talks about the type of research methodology, data collection and data analysis techniques that will be used to further carry out this proposed research. It also elaborates on the ethical considerations of conducting such sensitive research.

Finally, the concluding chapter is a reflection of the entire research and what outputs the researcher wants to achieve by doing this research.

CHAPTER TWO: INDIAN LEGAL SYSTEM

1. Introduction

The legal system in India follows the common law model, and it was introduced through British colonisation (Singh & Kumar, 2019). The salient features of this system are an adversarial system of legal proceedings, the doctrine of precedents or *stare decisis*, the rule of law, codification of law and hierarchy of courts. The Constitution of India (1950) has set up three branches of the State, i.e. the legislature, the executive and the judiciary. These branches of the State are demarcated by their respective areas of jurisdiction (Srikrishna, 2008). The legislature is entrusted with the power of making laws, the executive is responsible for the enforcement of the law, and the judiciary is invested with the power to ensure that all organs of the State act within their respective constitutional limits. It is also the sole interpreter of the Constitution.

The Indian Constitution further divides the legislative branch into two parts, i.e., the Union Legislature or the Parliament and the State Legislature or the Legislative Assembly. The Union Legislature is responsible for making laws on the subjects enumerated in List I (Union List) under the Seventh Schedule of the Constitution. Whereas, the State Legislature is responsible for making laws on the subjects enumerated in List II (State List) of the Seventh Schedule (Constitution of India, 1950, Article 246). Prisons as a subject are listed in Entry 4 of List II. This means that the management and administration of prisons fall completely in the hands of the respective state government. The state government has the primary responsibility and authority to change its prison laws, rules and regulations.

Further, as a part of the common law model, India follows the adversarial system of legal procedure. This means that the judge acts as a neutral umpire, upholding the balance between contesting parties (Srikrishna, 2008). The Indian Judiciary is further divided into three parts and is based on a hierarchy. At the apex or union level, there is the Supreme Court of India. At the state level, there is a High Court in every state and at the district level, there is a district judiciary in each district. The Supreme Court is entrusted with the power to adjudicate on constitutional issues and also acts as the final court of appeal in certain civil and criminal matters. It can also exercise extraordinary constitutional powers to issue extraordinary writs in cases where there is an infringement of fundamental rights guaranteed by Part III of the Constitution (Article 32).

As stated above, one of the features of the common law system is the doctrine of judicial precedent or *stare decisis*. The term *stare decisis* is a Latin maxim that means: 'to stand by things decided'. The doctrine of judicial precedent is a legal principle which directs courts to follow previous judgments of the same court or judgments of higher courts, while resolving a matter with similar facts, as it holds persuasive and binding value. The concept is further divided into two components, *i.e.* vertical and horizontal. A court that upholds the principle of horizontal *stare decisis* will follow its own earlier decisions. On the other hand, the vertical *stare decisis* binds a lower court to strictly obey the decision given by a higher court (Solanki, 2024). Therefore, under the common law system, the body of law is formed through court decisions. When there is no authoritative statement of the law, the court has the authority and duty to make law by creating a precedent. The body of the precedent is binding on future decisions.

2. Prison System in India

Prison administration is an important aspect of the criminal justice system as it plays the role of incapacitation, retribution, deterrence, rehabilitation, safety and justice. Prisons as an institution are known by different names in different jurisdictions, such as correctional facilities, detention centres, jails, etc. In India, the prisons exist at three levels, *i.e.* sub-divisional level, district level and zonal level. The most common and standard forms of prison institutions at these levels are called sub-prisons, district prisons and central prisons, respectively. Generally, capacity in terms of infrastructure, available prison staff, security and facilities such as medical, educational and rehabilitation, etc., are progressively better from sub-prisons to central prisons (NCRB, 2025).

However, there are other forms of prison establishments as well, such as women's prisons, open prisons, special prisons, etc. The parameter for a prison to be classified as a central prison varies from state to state. But a common feature observed throughout the country is that prisoners who are sentenced to imprisonment for more than two years are confined in the central prisons, as they have a larger capacity. Further, they are also equipped with rehabilitation facilities. District prisons serve as the main prisons in the states or union territories where there are no central prisons, and sub-prisons are smaller institutions situated at a sub-divisional level within a state.

Further, the prison system in India is governed by the prison manuals of the respective states. For example, the State of Madhya Pradesh has its own prison manual called the MP

Jail Manual of 1987. However, there is a central legislation enacted during the British rule, i.e. the Prisons Act, 1894, that serves as the foundational legal framework for prison management in India. It focuses on the custody and discipline of prisons, but doesn't have any provision regarding rehabilitation and reform. The role of the Union Government is limited to assisting the states in improving the security of prisons, modernising the infrastructure and training the prison personnel. In 2023, the Ministry of Home Affairs (MHA) came up with the Model Prisons and Correctional Services Act, which is a comprehensive and non-binding framework. It aims to replace the existing colonial law and focus on prisoners' rehabilitation, reform, modernisation of security and infrastructure and reintegration of prisoners into society.

3. National Legal Framework

3.1 Constitutional Provisions

In theory, the legal system in India has developed and formulated an extensive framework to protect the rights of people in pre-trial detention, and in particular, women. The Indian Constitution, under Article 21, protects every person's right to life and personal liberty and the word 'person' includes individuals who are detained in prisons. It protects them against torture and inhumane treatment and also ensures timely trials for them. Additionally, Article 39A, which is part of the directive principles, aims to secure equal opportunity for justice by providing free legal aid to pre-trial detainees, who lack the resources to afford legal representation. At the same time, Article 14 has ensured "quality before the law" and "equal protection of law" for all persons and Article 15 prohibits the State from discriminating against any citizen on the grounds of sex, religion, race, caste, etc. It allows the state to make special provisions for women, children and socially or educationally backward classes.

3.2 Statutory Provisions

In the erstwhile Code of Criminal Procedure (CrPC), 1973, there was a provision inserted in 2015¹, which stated that where a person has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence he/she is under investigation, inquiry or trial for, the person shall be released by the Court on bail, either with or without surety (Section 436A). This section was inserted with an aim to deal with the issue of overcrowding and prolonged detention of people in pre-trial custody, and contemplated the right to a speedy trial for them by prescribing the maximum period for which such a person

¹ Section 36, Code of Criminal Procedure (Amendment) Act, 2005.

may be detained. The word used in this provision is 'person', and therefore, it is gender-neutral and applicable to women in pre-trial detention as well.

Despite the vast amount of literature developed over the years on bail being the rule and jail being an exception, the Bharatiya Nagarik Suraksha Sanhita (2023), which replaced the CrPC, rather than increasing the scope of this provision, has restricted it under Section 479(1). This provision has inserted a proviso which states that a person who is a first-time offender, i.e. never convicted of any offence in the past, shall be released on bail if he/she has undergone a third of the maximum sentence prescribed. A significant exclusion from the ambit of this provision is a person accused of offences punishable by life imprisonment or death, or against whom an investigation, trial, or inquiry is pending in more than one offence or in multiple cases.

CHAPTER THREE: INCLUSIVITY AND VIOLENCE

1. Concept of Systemic Violence

As per Ruggiero (2019), systemic violence refers to the harm people suffer from the social structure and the institutions sustaining and reproducing it. This type of violence prevents its victims from satisfying their basic needs and is an unavoidable impairment of the fundamental means necessary for human existence. This type of violence includes institutionalised ageism, classism, elitism, ethnocentrism, nationalism, anthropocentrism and sexism. Although it does convey an image of direct physical aggression, it is the cause of suffering. It is ingrained in social injustice, affects people and groups differently and can be closely interdependent with police violence, state violence, etc. (Galtung, 1969).

However, systemic violence is found in the smooth functioning of economic and political systems, and is termed 'objective', as it appears not to require specific deliberations by individuals exerting it. On the other hand, 'subjective' violence is performed by a clearly identifiable actor and is likely to be perceived as such when it appears to be an irregular, visible deviation from a social context characterised by non-violence (Zizek, 2008). Systemic violence is also non-behavioural, i.e. it cannot be ascribed to decisions made by individuals or groups.

Arrangements are systemic or structural because they are embedded in the specific organisation of a certain socio-economic and political order. At the same time, they are violent because, through independent processes and forces, they determine personal and collective injury. These processes and forces can exclude people from the benefits of civil, social and scientific progress. Further, they present themselves as the outcome of choices made by those who are excluded. It is found among the pathologies of power that emerge in several spheres of life (Farmer, 2004). Systemic violence is lawful, although its outcomes are harmful and at times dangerous and deadly.

2. Concept of Institutional Violence

On the other hand, institutional violence contains an unsatisfiable core, leading to harmful and deadly activity that transcends what is allowed by the law (Ruggiero, 2019). Economic and political institutions are the major source of harm, injury and violence, which exceeds the systemic damage caused by the routine running of states. Therefore, it is the outcome of violations committed by individuals and groups against their official principles and philosophies which allow them to hold positions of power and privileges. State agents

violating their own written norms who engage in abuse or torture are perfect examples of this (Tombs, 2018).

Systemic violence feeds on and is fed by institutional violence, as the harm inflicted by the latter will result in new social and political arrangements and deepen inequality. This will, in turn, prove more harmful or dangerous. Therefore, the two types of violence increase each other's lethal strength (Ruggiero, 2019).

2.1 Intersection with Women in Pre-Trial Detention

The intersection of systemic violence with women in pre-trial detention explains a cyclical problem where the system's structural failures act as a form of silent violence against these women who are yet to be convicted of any crime. They face systemic violence rooted in poverty, gender inequality and the patriarchal nature of the system designed for men, and are at a high risk of physical, sexual and psychological violence at the hands of prison staff and other inmates. Further, the violence these women experience is not always physical but is often structural and institutional. This intersectionality can be broken down into three primary layers. The first layer is the institutional violence or the process of punishment, the second layer is the structural violence or prison conditions, and the third layer is the symbolic violence or the stigma of labelling.

The institutional violence is manifested through the indefinite confinement of these women, as they spend more time in prison awaiting trial than the maximum sentence provided by the law for the alleged crime. Further, the legal system requires financial sureties for granting bail. As many of these women are impoverished or come from a poor socio-economic background, they are often stuck in a poverty trap where freedom is tied to money or wealth. Their incapacity to pay is a form of systemic exclusion that leads to long-term incarceration. Apart from this, poor quality or lack of access to legal aid or representation ensures that these vulnerable groups remain invisible to the judiciary.

Inside the prison, women in pre-trial detention are subjected to an environment designed for punishment rather than detention. As most prisons in India, including those in the State of Madhya Pradesh, operate beyond capacity, this leads to competition for basic necessities such as floor space to sleep, clean water and sanitation. This rupture of time and space causes deep psychological trauma. Women in pre-trial detention face the constant anxiety of an unknown future without the closure of their sentence. Further, in many prisons, by keeping the pre-trial detainees with the hardened convicts, the system forces them into

social hierarchies where they must adopt violent behaviour to survive, ultimately criminalising the innocent.

3. Concept of Legal Violence

The concept of legal violence refers to the systemic harm, insecurity or structural exclusion inflicted on individuals, such as people in custody, through the enforcement of laws and policies. It reflects how legal status, or the lack of it, creates fear, facilitates exploitation, and restricts access to basic rights and services. It is a form of violence which moves beyond physical violence and is sanctioned by state policy, often leaving people vulnerable, in a liminal state and, in certain cases, with limited legal options. Thus, it includes within its ambit symbolic violence and structural violence. The former one internalises social inequalities, whereas the latter systemically excludes the population from resources.

The concept of legal violence has been put forward by sociologists, such as Leisy Abrego, Cecilia Menjivar and others with the intention of understanding how law and policy impact individuals and communities (Menjivar & Abrego, 2012). They have explored legal violence as an “analytical category” to understand how certain legislation makes it possible and increases various forms of violence which are mutually reinforcing and experienced as “normal” or “regular” effects of law (Menjivar & Abrego, 2012, 1380 & 1384). Abrego et al (2017, 695) state:

“Instead of narrowly focusing only on the physical injury of intentional acts to cause harm, this concept broadens the lens to include less visible sources of violence that reside in institutions and structures, without identifiable perpetrators or incidents to be tabulated.”

Therefore, the focus of legal violence is on how structures, laws, institutions and practices, similar to acts of physical violence, can leave unremovable marks on individuals and social suffering (Abrego et al, 2017, 695). The emphasis of this concept is both on immediate social suffering as well as potential long-term harm with specific outcomes (Menjivar & Abrego, 2012, 1384-85). Menjivar & Abrego (2017, 1387) further state:

“Legal violence captures the suffering that results from and is made possible through the implementation of the body of laws that delimit and shape an individual’s life on a routine basis. Under certain circumstances, policymakers and political leaders enact laws that are violent in their effects and broader consequences. Although their effect may be considered a form of both structural and symbolic violence, we refer to it as legal violence because it is embedded in legal practices, sanctioned, actively implemented through

formal procedures, and legitimated – and consequently seen as “normal” and natural because it “is the law.”

The concept of legal violence is also closely tied to women awaiting trials in prisons. This connection analyses how the power is exercised by the justice system, which is technically lawful but still deeply harmful or unjust in practice for this group of women. These women are detained for years without conviction, and the system punishes them before proving guilt, thus undermining justice. Further, the structural inequality, such as poverty or lack of legal aid, makes them more vulnerable. In this sense, prolonged detention can be considered a form of legal violence, as the suffering is produced through lawful procedures but still violates the spirit of justice.

3.1 Law, Violence and Legitimacy

There is also a relationship between law, violence and legitimacy from a theoretical perspective. The first issue that arises is why people obey the law, and the role that legitimacy plays in voluntary compliance. There are various doctrinal theories to deal with this issue, such as the ‘habit of obedience’, ‘risk of punishment’ or the role of authority (Ninet, 2012, 90). The conceptual study of legal violence is segmented into four main groups. The first group is conceptual legal violence, focusing on the theoretical construction of law and its violent nature. The second group is the legal meaning, dealing with how legal violence affects the process of codification. The third group is interpretative violence, and the last one is law enforcement, *i.e.* examining how legal violence affects the law’s enforcement process (Ninet, 2012, 91).

4. Concept of Symbolic Violence

The concept of symbolic violence was developed to explain how social hierarchies and inequalities are maintained by forms of symbolic domination, rather than physical force. Bourdieu (2001, p. 2), a prominent scholar, defines it as “a form of violence that is exerted for the most part...through the purely symbolic channels of communication and cognition...recognition or even feeling.” The systems of symbolism and meanings are imposed on groups or classes of people “in such a way that they are experienced as legitimate” (Jenkins, 1992, p. 104). Thus, the gradual acceptance and internalisation of ideas and structures that tend to subordinate certain groups of people masks the underlying power relations (Connolly and Healy, 2004). For instance, the dominance of men is legitimised as the natural order of things, in which women are consigned to inferior social positions (Bourdieu and Wacquant,

1992, pp. 168, 173). Similarly, the dominance of prison authorities is legitimised, in which women pre-trial detainees are kept in inferior social positions.

Symbolic violence is unnoticeable, hidden and invisible. Invisibility of the violence constitutes an effective tool of silent domination and silencing the dominated. Silence can't be overcome by allowing the marginalised to speak or voice their concerns. Such actions are useless in overcoming the silence. Rather, systemic/structural change needs to take place to make sure that they are actually heard and given agency (Bhambra and Shilliam, 2009). It is about identifying the structural complicity in silencing particular sections of society. Along with recognising the workings of institutional silence, 'silence also operates in the very construction of our reality by framing dialogues of inter-subjectivity' so that one particular voice becomes monolithic and, thus, naturalised (Bhambra and Shilliam, 2009, p. 6). Language itself is a form of domination, constitutes violence and can be co-constituted by it. It includes and excludes, frames discussions through which social reality is constructed, and, as a result, has implications for power.

Domination is a product of when those who are dominated stop questioning existing power relations, and perceive the world and the state of affairs in a social activity as natural, given and unchangeable. It is not a product of direct coercion (Bourdieu, 1977; Bourdieu & Passeron, 1977). Symbolic violence and domination are exercised over individuals through everyday social habits, and are generated through 'the subtle inculcation of power relations upon the bodies and dispositions of individuals' (McNay, 1999, p. 99). Thus, the symbolic violence can occur through the mundane process and everyday practices.

In specific social fields, such as carceral spaces, both forms of violence, i.e. physical and symbolic, co-exist simultaneously. Kraus (1993) understands these distinctions in terms of 'elementary' and 'complementary' modes of domination. Elementary modes of domination are relations of domination 'made, unmade, and remade in and by the interactions between people' (Bourdieu, 1977, p. 184). However, these interactions have to be understood along with the 'complementary' mode of domination, which is invisible, such as the domination of particular institutions and discourses. They seem to be neutral, apolitical and impartial, but are in fact intersected by particular forms of racialised, gendered, classed power relations and structures (Kraus, 1993). Whenever overt physical and economic violence is negatively sanctioned or meets with collective disapproval, symbolic violence becomes the safest mode of domination (Bourdieu, 1977, p. 192). Thus, it lacks the intentional and instrumental quality

of brute and coercive physical force. It works through bodies rather than directly on them (Topper, 2001, p. 47).

Even if acquitted, the system inflicts long-lasting harm on pre-trial detainees through the labelling theory. The long-term detention cuts their family ties and employment chances. Further, the system often labels them as criminals or prisoners and equates them with other prisoners who have been convicted. This labelling remains and produces social punishment for them even before the final judgment is delivered by the courts. They are stigmatised even before their conviction and face rejection from family and community. Due to this symbolic exclusion, women in pre-trial detention find it difficult to re-integrate themselves into society. Isolated from conventional society, they may identify themselves as members of an outcast group.

4.1 Social Reaction Theory

The Labelling Theory, also called Social Reaction Theory, explains how the creation of criminal careers rests on social interactions and encounters. Its roots are found in the symbolic interaction theory of sociology, as propounded by sociologists Charles H. Cooley, George H. Mead, and later, Herbert Blumer (Blumer, 1969; Cooley, 1964; Mead, 1934, 1938). How people view reality depends on the content of the messages and situations they encounter, the subjective interpretation of these interactions, and how they shape future behaviour. These symbolic messages and their interpretations also determine how people view themselves or develop their self-image. An individual's view of self is formed by interpreting how others in society view him or her. People shape their self-concepts based on their understanding of how they are perceived by others (Cooley, 1964).

Social reaction theory rests on the concepts of interaction and interpretation (Link, 1989). Throughout their lives, people are given a variety of symbolic labels and ways to interact with others. These labels represent behaviour and attitude characteristics and help define not just one trait but the whole person. People who are labelled with positive traits help them in improving their self-image and social standing, whereas negative labels help stigmatise people and reduce their self-image (Adams, 2003). It can be quite damaging to a person's well-being. Stigma can harm and diminish both the public and private self. Public stigma occurs when there is a prejudice about a group that stigmatises members, such as people in pre-trial detention, sex workers, mental patients, etc. and excludes them permanently from social opportunities such as housing, jobs and conventional careers. On the

other hand, self-stigma occurs when negative social attitudes are internalised, later on harming a person's self-esteem and inducing shame.

Social reaction theory also focuses on the characteristics of offenders who are labelled. The theory maintains that relatively powerless people who are unable to defend themselves against the negative labelling are considered offenders. The law is applied differently, benefiting those who hold economic and social power and penalising the powerless. From the police officer's decision on whom to arrest to the prosecutor's decision on whom to charge, for how many and what kind of charges, to the court's decision on release or bail, to the judge's decision on the length of the sentence, discretion often works against the minorities or socially and economically disempowered groups (Steen et al, 2005). This aspect of the theory can perfectly be applied to women in pre-trial detention, who are mostly from disempowered groups, having no means to defend themselves or get bail and often find themselves at odds with the criminal justice system.

5. Language and Identity Construction

The process of identity construction is our capacity for self-reflection and self-awareness. This kind of self-oriented act is normally manifested through the use and uptake of verbal and non-verbal factors or the interplay between language use and language comprehension. Various self-reflective questions like "Who am I?", "Who are you?", and "Who are we?" are framed for identifying the construction process and differences between "self" and "other". It is reasonable to say that language is one channel through which social beings express, communicate and, ultimately, negotiate their identities (Locher, 2011).

Examining the definition of "self" and "others" implies inclusionary and exclusionary processes regarding identity construction. Identity is always recreated or produced in interactional settings, and everyone can have several identities which are typically fragmented, dynamic, and changeable. An individual's identities are social in nature since the identity is manifested through the meaning expressed or the use of language. In turn, an individual's identity may determine his or her use of language in a specific context. Therefore, a dialectic relationship between language and identity is formed (Wodak, 2012).

From the sociocultural linguistic perspective, identity is the "social positioning of self and other" (Bucholtz & Hall, 2005). For the positioning of "self", self-representation can be distinguished from three levels, *i.e.* the "personal self" from the individual level, the "relational self" from the interpersonal level, and the "collective self" from the group level

(Brewer & Gardner, 1996). Therefore, on one hand, identity can be cognitively presented by viewing identity as a deterministic trait of an individual, which is unalterable, static, and authentic. On the other hand, identity is always constructed and negotiated in the interaction as a dynamic concept.

Language and identity construction are applicable in the case of women in pre-trial custody. They face social stigma despite not being convicted, a power imbalance with police, lawyers and courts, a limited voice in legal processes, and suffer loss of social identity, such as family role, occupation and community status. As they stand between innocence and guilt, language plays an important role in shaping how they are perceived or how they see themselves. Language does not just describe identity; it constructs identity. For people in custody, identity is formed through institutional language, media narratives, prison discourse and self-narratives. These forms of language redefine a person and label them as suspect, undertrial, accused or criminal. Such a labelling influences how society treats them, even before they are convicted.

Criminal justice institutions, *i.e.* police, courts and prisons, use specialised language that carries authority, positions them as subordinate, limits their ability to narrate their own stories and creates an official identity that most often overrides their personal identity. Such language is mostly found in legal jargon, formal documents and interrogation discourse. Similarly, narratives created by the media can strongly influence public opinion or perceptions and affect the family reputation and self-identity of the accused. The media often use sensational language, which creates presumed guilt.

CHAPTER FOUR: FEMINIST LEGAL THEORY

1. Framework of Intersectionality

The concept of 'intersectionality' was coined in 1989 by African-American legal scholar and civil rights advocate Kimberle Crenshaw. It was coined to deal with the experiences of discrimination faced by Black women in the United States of America (Crenshaw, 1989). Over the years, the concept gained importance throughout the world and is very helpful in understanding the hard realities and experiences of women and disempowered groups. It has laid the foundation for situating our knowledge that oppression is not additive and every person, in particular women in pre-trial detention, experiences it differently. It is an analytical framework for understanding how a person's social and political identities, such as race, gender, class, caste, sexuality, ability, etc., overlap and intersect and create unique forms of discrimination or privilege.

Before her breakthrough work of using an intersectional lens to critique everyday issues, many feminist scholars used to treat the issue of oppression as separate and universal. These scholars focused on patriarchy as the main framework for understanding the systemic inequalities that women experienced. For example, Walby (1990, p. 20) defined patriarchy as "a system of social structures and practices in which men dominate, oppress and exploit women", which became the cornerstone for every feminist framework. However, the idea of a universal female experience overlooked the diversity and complexity of women's lives and experiences as they are shaped by intersecting axes of social hierarchies (Hooks, 1984). This revealed the limitations of examining gender inequality in a universal manner and called for a broader concept capable of capturing how multiple systems of power intersect and interact in the identity and experiences of women.

The oppression against women cannot be understood as a singular issue affecting all women in the same way. Crenshaw (1989) argues against systemic discrimination and oppression of women as one-dimensional and describes this as the "single-axis framework" of analysis. This framework answers why some definitions of oppression focus only on power and control, thus making it look like a universal experience. Different social hierarchies are treated differently, and it often hides the experiences of those whose lives are shaped by several forms of marginalisation simultaneously. Charusheela (2013, p. 33) states, "...we cannot analyse the effect of the axes of power if we examine them in isolation." As per

Crenshaw (1991), multiple systems of oppression intersect to shape people's lives in very complex ways. "Through an awareness of intersectionality, we can better acknowledge and ground the differences amongst us and negotiate the means by which these differences will find expression in constructing group politics" (Crenshaw, 1991, p. 1299).

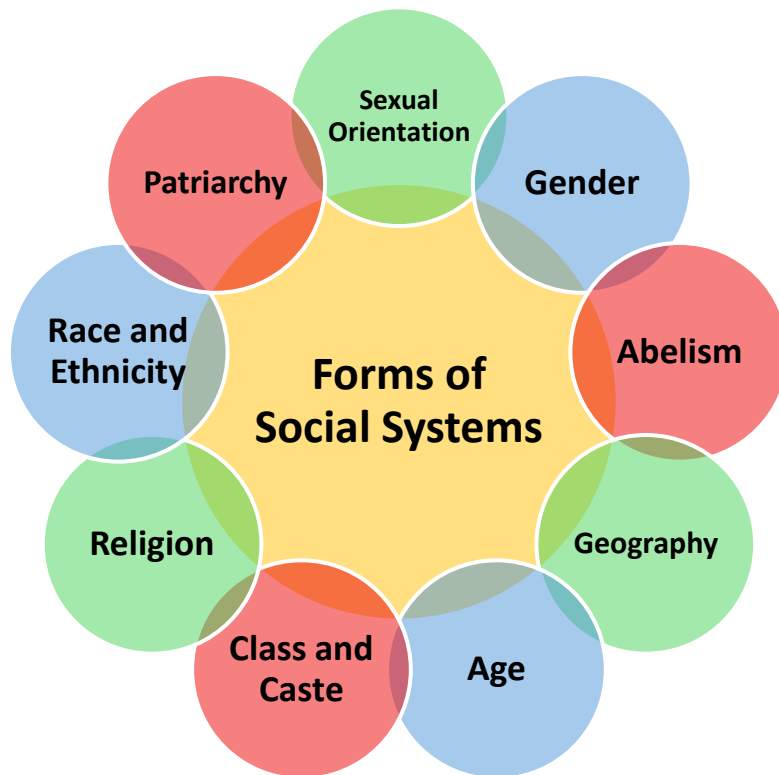


Figure 3: Intersecting Systems of Power

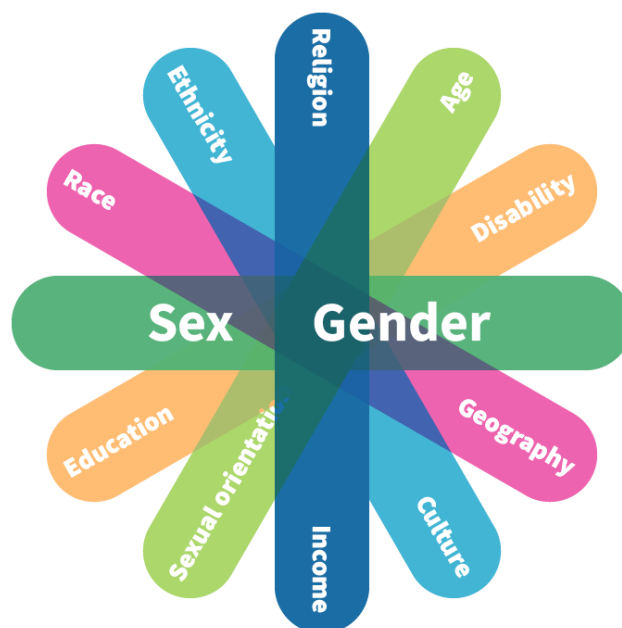


Figure 4: Framework of Intersectionality

1.1. Structural Intersectionality

In addition to understanding how different powers work together to shape a person's journey towards justice, the framework of intersectionality is also important in critiquing the institutions and legal systems a person experiences. The problem is that these institutions and systems make the experiences of specific groups or categories of people invisible. Temkin and Krahe (2008, p. 24) mention, "the law is significant not just for what it says but for what it doesn't." When the legal systems have unclear or contradictory framings, axes, or languages used in their frameworks, the oppressed person faces structural inequality. Therefore, there is also a need to understand this complexity through the lens of structural intersectionality.

Crenshaw (1991) distinguishes intersectionality in three ways: structural, political and representational. The concept of structural intersectionality is defined as the ways in which the broader structures of power, i.e. legal, social, economic and institutional, come together to qualitatively produce different modalities of oppression and reinforce its effects on women and marginalised groups. These systems of power organise vulnerability and the inaccessibility of resources. The prison and police authorities, judicial systems, legal aid institutions and NGOs are different institutions that a pre-trial detainee has to interact with while seeking justice through the formal way. In other words, oppression unfolds along with other forms of multiple marginalisation and social systems.

When the criminal justice system categorises harm in a simplistic way and reduces the severity of these actions through the power of language choice or legal wording, the realities of the sufferers who live on the margins of multiple intersections may go unrecognised or inadequately addressed. It is within this context that Collins (1990) builds on the framework of intersectionality and extends the analysis of power, domination and inequality by showing us how multiple systems of power operate simultaneously to shape the experiences of women and marginalised groups. She deepens our understanding of the concept of power by exemplifying the interconnected nature of systems of domination. The social structures, such as race, class, caste, gender, sexual orientation, etc., are not isolated forces but are interrelated and mutually reinforcing within the system. She conceptualises this relationship through a 'matrix of domination', which explains how multiple forms of power interact to produce different experiences of marginalisation (Collins, 1990).

Women as pre-trial detainees in India occupy different social positions within this matrix. For instance, they are not just "women"; many of them are poor, uneducated, from

oppressed class groups or marginalised communities. This multitude of social positions shapes the extent and depth of their vulnerability, privilege and inaccessibility to resources. They cannot afford bail or legal representation, may lack social support networks or face discrimination within the criminal justice system. This gives a nuanced understanding of why, despite 'bail being the rule, jail being an exception' in India, women's journey towards justice varies within the carceral spaces based on their intersecting identities placed on their bodies.

2. Concept of Carceral Feminism

"Will you follow me there, to the place where the breathing walls quietly exhale a low freedom song?"

(Wang, 2018, p. 298)

The term 'carceral feminism' was coined by sociologist Elizabeth Bernstein in 2007. It was coined to describe the connection between feminism and law and order, more so within anti-trafficking and anti-domestic violence movements in the United States of America. The problem was that innocent women were being forced into sexual slavery and prostitution by men, and later on, prosecuted by the police and kept in prison for longer durations or given harsher punishments (Bernstein, 2007). The term is a critique of the heavy reliance of the feminist groups on the criminal justice system and its coercive institutions, i.e. police, prisons and courts, as a primary mechanism to deal with gender-based violence and inequality (Canessa, 2022).

Carceral feminism focuses on criminalising gender-based violence through aggressive law enforcement measures, such as longer prison sentences, increased policing and tougher laws as elements of criminal justice. Further, it also highlights how stricter laws, which are meant to protect women and deter male abuse, often lead to increased incarceration of women themselves, reinforce harmful carceral systems, cause unintentional harm to them and ignore systemic causes of violence. This strengthens punitive state institutions and often reproduces inequality. The poor and marginalised communities are unevenly surveilled and investigated, thus causing harm to them rather than protecting and empowering them. Therefore, the term is a complex object of critique and points to multiple directions.

The relationship of women in pre-trial detention with carceral feminism is a complicated one. Often, the support for stricter enforcement of laws results in broader police powers, mandatory arrest and limited judicial discretion. On the one hand, these measures

are justified as important for women's safety, but they also draw more innocent women into the penal system. Further, these women also face unique difficulties. As reflected in the story of Rani in Chapter 1, many are primary caregivers; therefore, their detention can destabilise families and place their children at risk. Pregnant women and mothers of young children often lack adequate healthcare, nutrition, and support within prison facilities. Sometimes, women are also detained for non-violent offences linked to poverty, such as theft, informal economic activity, etc., under coercive situations.

As a part of neoliberalism, carceral feminism adopts the idea of individual responsibility, according to which the structural causes of violence, such as heteropatriarchy, poverty, or lack of education, are ignored and pathologised into deviant individuals. The principle of individual responsibility functions by dismissing the systemic forces and institutions that create violence altogether (Canessa, 2022). Oufemi (2020), in her work, talks about the idea of 'sexist state', i.e. a collection of institutions that function by continuing sexist oppression from an uneven allocation of resources to the control over women's and disempowered bodies and lives. By invoking the exercise of 'sexist state', carceral feminism has made things even worse for those women or groups who are already at the peripheries and vulnerable to heteropatriarchal violence, such as women in pre-trial detention, women of colour, women with poor socio-economic backgrounds, queer subjects, etc. For instance, as many women in pre-trial detention are already marginalised by their identities and do not meet the notions of victim, many of them end up facing additional assault at the hands of the criminal justice system. The harmful consequences of carceral feminism for women and disempowered groups are depicted through its flawed claim to justice.

As most of the women in pre-trial detention come from lower socio-economic backgrounds, they cannot afford bail, legal representation, or sureties necessary for their release. As a result, they remain in prison for a longer duration before trial, and often, it is longer than any eventual sentencing. Therefore, the idea of carceral feminism has been criticised for ignoring these structural realities, as it fails to deal with the root causes of gendered harm, such as economic dependency, lack of housing, caste discrimination, poor access to education, and insufficient social welfare systems. Additionally, policing and prisons in themselves can be sites of violence, humiliation and abuse for these women.

Carceral feminism, unlike abolitionist feminism, also discourages alternative approaches to gender-based violence, such as transformative justice. Transformative justice

imagines a future free from heteropatriarchal violence and the carceral state, while working in the present to change the harms of systemic forms of violence. This approach aims to prevent, respond to, and ultimately transform the conditions that create harm by tackling state violence, e.g. prisons and policing (Law, 2014; Taylor, 2018). Thus, the idea of accountability is important in this approach, i.e. the concept of individual responsibility hides the systemic forces that produce heteropatriarchal violence. In other words, if sexism is systemic, then the responsibility is also collective, rather than individualistic (Canessa, 2022). Furthermore, carceral institutions, as spaces where gender norms are socially and institutionally reinforced, exacerbate dominant masculinities, which lead the perpetrators to commit further acts of violence (Harris, 2011).

CHAPTER FIVE: METHODOLOGY

1. Research Design

This study will apply the qualitative methods of research to explore the nuances of the problem faced by women in pre-trial custody behind prisons in India. Taking into consideration the socio-legal contexts surrounding the topic, this method of research is suitable as the lived experiences and emotions of women in pre-trial custody and systemic complexities cannot be captured by the quantitative methods of research or numbers alone. The qualitative methods will help to uncover some harsh realities faced by women in pre-trial detention, such as socio-economic marginalisation, gender-based discrimination, power control, delayed justice processes, family separation and stigma.

The relevant qualitative research approaches used in this study will be: phenomenological approach, case-study method, grounded theory, and ethnographic approach. The phenomenological approach will focus on how women in pre-trial detention experience incarceration, how it impacts them emotionally and psychologically, and what their perception is of justice and legal systems. The case-study method will explore in depth specific prisons and individual cases of women awaiting trials inside them to understand institutional practices and individual trajectories. The ethnographic approach will be used to study prison culture and observe daily routines, power structures and relationships. Lastly, the grounded theory will be used to develop theories from data, such as how institutional and social factors interact with each other behind the prisons or why the custody of women affects them disproportionately inside the prison.

2. Research Area

The research will be conducted in the researcher's home state in India, *i.e.*, the State of Madhya Pradesh. The researcher has selected his own state for conducting this research for two important reasons: one, there is no proper or systematic study on the situation of people-in-custody, in particular women, in the State of Madhya Pradesh. Second, it will be convenient for the researcher to collect data from various stakeholders, keeping in mind my familiarity with the language and area. As of June 2025, there are 133 operational prisons in the State of Madhya Pradesh, and it consists of the following correctional facilities: 11 central prisons, 41 district prisons, 73 sub-prisons and 8 open prisons.

The researcher intends to cover at least 5 central prisons that are based in different parts of the State, i.e., Bhopal, Jabalpur, Indore, Gwalior and Rewa. Among the district prisons, the researcher intends to cover at least one-third of them as part of his research. Similar to central prisons, the district prisons will also be selected from different parts of the State to bring out a holistic study. The researcher has intentionally selected both central and district prisons as a part of his research area, as it will allow him to examine and compare the institutional facilities provided by different types of prisons.

3. Methods of Data Collection

In terms of data collection, the primary method will be in-depth semi-structured interviews with women in custody. These interviews will be in the form of one-on-one conversations with them. This approach will allow a flexible, yet systematic exploration of all relevant themes, allowing the conduction of follow-up questions based on their response. This adaptability is particularly important for deeper insights into their individual and unique perspectives and for unpacking complex issues, such as access to legal aid, overcrowding of prisons, intersectionality of gender, poverty and criminality, power control, language, identity construction and labelling.

The other primary ways of data collection will be interviews of key informants, such as prison officials, legal aid officials, NGO and social workers. Another technique adopted for data collection will be participant observations, such as observing daily prison life and interactions among inmates and staff. The secondary ways of data collection will be document analysis, such as prison records, court documents, government reports, and policies. The sampling strategy used in this research work will be non-probability sampling, such as snowball sampling, i.e. referrals within prison networks and purposive sampling, i.e. selecting women based on their age, type of offence or duration of their detention or custody.

The semi-structured interview schedule will be carefully prepared in advance for all the key stakeholders. The questions will be open-ended and specifically designed to suit the needs and perspectives of different target groups. To ensure inclusivity and accessibility, interviews will be conducted in person and, if required, online, depending on the location and availability of the participants. The process of data collection is especially important for me, as it reflects my values and stands towards this topic. As a lawyer and a researcher coming from a country that has experienced many problems related to overcrowding of prisons, I bring personal and academic investment into this research.

4. Methods of Data Analysis

4.1 Critical Discourse Analysis (CDA):

It is an interdisciplinary field within the humanities and social sciences with an approach to the study of the social use of language in an explicit political perspective. It is manifested in different approaches which differ in theory, methodology and the type of questions it deals with. The three main approaches of CDA are: the dialectical-relational approach by Norman Fairclough; the socio-cognitive approach by Tenu A. van Dijk, and the discourse-historical approach by Ruth Wodak.

CDA provides a general theory of how discourse figures as a specific form of social practice, as well as analytical concepts for discourse analysis on multiple scales, ranging from detailed linguistic analysis of certain texts/conversations to the complex networks of social interactions. The starting point of this analysis is social theory, and it moves in two different directions, i.e. theories of power and ideology (Blommaert, 2005). The main principles of this analysis are: it addresses social problems, power relations are fluent and expansive, discourse constitutes society and culture, discourse is historical, discourse does ideological work, the link between text and society is mediated, discourse analysis is interpretative and explanatory, and it is a form of social action (Fairclough & Wodak, 1997).

Comprehension of discourse as a form of social practice implies a dialectical relationship between a particular discursive event and the situations, institutions and social structures which frame it. Discourse is socially constitutive as well as socially shaped. It constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people (Fairclough & Wodak, 1997). Discourse is used in various senses, such as the meaning-making element of social process, the language associated with a particular social field of practice, and as a way of constructing aspects of the world associated with a particular social perspective. Each of these aspects of discourse implies the key importance of context, which figures at different levels and is accordingly defined in multiple ways.

Critical Discourse Analysis pay special attention to context, analysing the relationship between texts, processes, and social conditions. It analyses both the immediate conditions of the situational context and the remote conditions of institutions and social structures (Flowerdew & Richardson, 2018). The notion of context is important as it clearly includes social, political, ideological and cognitive components in analysis and thus states an

interdisciplinary procedure. Discourses are socially constitutive in the double sense: they contribute to sustaining and reproducing the social/political status quo, but also to transforming it. The social influence of discourses is based on the fact that they are underpinned by ideologies, which give rise to issues of power. Therefore, both ideology and power are common macro-analytical concepts in CDA.

Discourse also does ideological work by continuously producing and reproducing ideology as constructions of reality, such as the physical world, social relations and social identities (Fairclough & Wodak, 1997). It is built into various dimensions of the forms of discursive practices, and contributes to the production, reproduction, or transformations of relations of domination (Fairclough, 1992). Discourses are not just systems of ideas of belief but ways of thinking. In this, historically short-lived exploitative forms of social organisation are represented as eternal, natural, inevitable or rational (Flowerdew & Richardson, 2018).

The main problem with ideology is that it is not transparent and is deeply rooted in language use. Through constant reproduction and naturalisation, it becomes a common-sense assumption, whereby particular representations of the world, systems of ideas and values are insensibly imposed as general, universal and rational. Thus, ideology becomes a suitable tool for the pseudo-legitimation of the power of dominant groups in society, *i.e.*, for the establishment of hegemony. Hegemony is power exercised not only through physical coercion, but also secretly, through ideology and discourse. In this way, the contrasting nature of discourse is presented. It is a consequence of power and domination, but also a technology to exert power (Wodak & Meyer, 2016). Therefore, one of the goals of CDA is to demystify discourses by decoding ideologies (Wodak, 2001), *i.e.* to deconstruct discursive hegemony (Flowerdew & Richardson, 2018).

Another significant element of CDA is critique. It emphasises the need for interdisciplinary work to gain a proper understanding of how language functions in constituting and transmitting knowledge in organising social institutions or in exercising power (Wodak & Meyer, 2016). Additionally, the CDA should adhere to the emancipatory agenda in trying to produce and convey critical knowledge that enables people to empower themselves from forms of domination through self-reflection.

4.2 Thematic Analysis

Grounded theory also contributes to thematic analysis (TA). Thematic analysis is one of the widely used methods for analysing qualitative data. It offers a structured yet flexible

framework for identifying, analysing and interpreting patterns of meaning within datasets (Ahmed et al., 2025). Braun and Clarke (2006) propose a six-phase TA framework. It starts with *familiarisation with the data*, with an aim of identifying initial codes, i.e. concepts and categories. Under this, the researcher will immerse himself in the raw data, such as transcripts or notes, by reading and rereading. The second step is *generating initial codes*, and it systematically works through the data to identify meaningful features. The third step is *searching for themes*. Here, the researcher will begin grouping codes into broader patterns, distinguishable themes or develop theories. Tools like mind mapping will be used to organise themes. This stage involves interpretative thinking (Braun & Clarke, 2006).

The fourth stage is *reviewing themes*, where each theme is reviewed and refined continuously to ensure that each of them is clear, unique and supported by the data. At this stage, the researcher will return to the data to ensure accurate representation. The fifth stage in thematic analysis is *defining and naming themes*. Here, the research will refine the essence of each theme and align these themes with the research questions to provide a clear, detailed and critical overview of the data collected. This is done through axial coding to establish the relationship between categories. The last step is writing the report. At this point, the researcher, by using selective coding, will present his findings through a clear theoretical narrative. This process will ensure that the findings are deeply entrenched in the lived experiences of primary participants, i.e. women in pre-trial detention (Braun & Clarke, 2006). Thus, overall, thematic analysis as a method of data analysis is iterative and evolving.

Steps of Thematic Analysis
(Braun & Clarke, 2006)

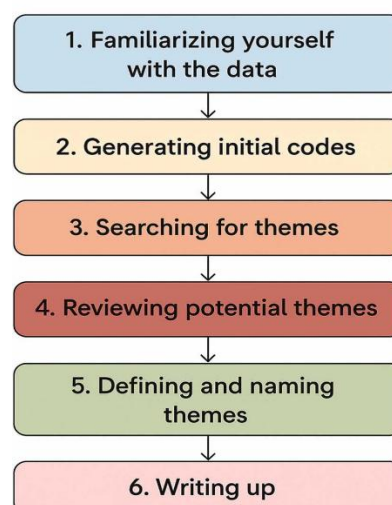


Figure 5: Six Phases of Thematic Analysis

5. Positionality Statement

Reflexivity, also known as positionality, is a defining feature of feminist research and can be used as a tool by researchers to reflect on the “assumptions, investments and decisions that shape the research process” (Bailey, 2012, p. 397). Therefore, it is important that I remain aware of and continuously reflect on my positionality throughout this research work. Research is political “both in conceptualisation and effect”, necessarily making the idea of a neutral, objective researcher, or even universal academic knowledge, a fantasy (Kiguwa, 2009, p. 226).

No researcher can “claim to be removed from the subject [under investigation], as their worldview has most likely influenced [the] development of [every aspect of the project, from the] specific research question [to the development of the analytical themes]” (Parry, 2020, p. 9). Furthermore, I must remain aware that my choices as a qualitative researcher are intimately tied to my positionality. In fact, all methodological choices, including the choice and implementation of analytical methods, are inherently shaped by the researcher’s lived experiences and insights (Khan and MacEachen, 2021). This is also true in the context of my positionality as a researcher.

As a researcher, I stand in a position of relative social and institutional privilege in relation to women in pre-trial custody. My freedom of movement, gender identity being a male, good socio-economic background, understanding of legal knowledge, institutional backing and dominant religious position clearly contrast with the restricted position of my participants. Women in carceral spaces have restricted mobility, limited agency and dependency on institutional authorities. They often come from marginalised socio-economic positions or belong to minority religious and caste groups. This asymmetry between the participant and the researcher will shape how questions are asked, and responses are understood and analysed. The interpretation of agency, victimhood, or systemic injustice inside carceral spaces will be filtered through the researcher’s prior assumption about gender, criminality, marginality and the functioning of the criminal justice system in India.

This positionality helps me in designing the research questions carefully and will enhance my sensitivity during the interviews, in particular when engaging with vulnerable or marginalised participants. My familiarity with the legal system and local language will facilitate access to different stakeholders in obtaining important information for the research. Rather than neutrality, I acknowledge that my perspective is part of the research process, and it seeks to amplify the voices of the excluded ones from the dominant narrative.

Acknowledging this, the research work will adopt a reflexive approach by recognising that the analytical themes generated will not only emerge from the statistical data but will be co-constructed through the interaction between researcher and participant. This reflexivity is particularly important in a carceral setting, where access and interaction will be mediated by institutional authorities, such as prison administrators and the State Legal Services Authority, further shaping the production and interpretation of knowledge. Reflexivity is, therefore, about the “position of the critic, about the effects that position has on the knowledge that the critic produces, about the relation between the critic and the people or materials they deal with, and about the social effects of the critic's work” (Rose, 2012, p. 183).

6. Ethical and Security Considerations

Given the sensitive nature of my research area, as it involves discussion on prison reforms, gender inclusivity, and intersectionality in the context of women in pre-trial custody, ethical and security considerations are a crucial part of this research work. All the primary participants, *i.e.* women in pre-trial custody, will be interviewed only with the permission of the relevant prison authorities. Participants' anonymity and confidentiality will be strictly maintained throughout the research work. Informed consent, without any coercion, will be obtained from the interviewees, with the right to withdraw at any point without any consequences.

Special care will be taken while interviewing women in pre-trial custody from marginalised or disadvantaged communities, ensuring that no harm, such as legal, social or psychological, or re-traumatisation comes to them as a consequence of their involvement. The researcher will also remain attentive to power imbalances and control, and approach all conversations from a feminist and human rights lens perspective. Additionally, considering the likelihood of social and cultural sensitivities around the topic, all data collected will be securely kept and coded to hide and replace the personal identification of the participants.

I am also aware that my presence may be interpreted as connected to authorities in the criminal justice system, such as prison administration, police, courts and legal aid institutions, or it may also be connected to academic institutions imparting legal education, NGOs, and government bodies or authorities, influencing how the participants engage in my research study. To mitigate this challenge, I will emphasise voluntary participation and maintain transparency about the limits of my role throughout the research process. At the same time, I have to be ethically considerate about the fact that I am not giving my participants

any false hope of early release or legal help. Further, informal chats and casual talks with the participants may help them to be at ease with me and respond to my questions without any hesitation.

7. Limitations of Research

This research work is situated within a specific socio-legal context, i.e., the position of women in pre-trial custody in the State of Madhya Pradesh. Due to the limitations of human and financial resources and time constraints, it will not be practically possible for the researcher to cover all the prisons within the State. While the qualitative nature of this research work will offer depth and contextual richness, it will be empirically limited. Therefore, the findings of this study do not intend to generalise it at the state or national level. Rather, it attempts to amplify the voices of the marginalised and bring their issues to the forefront.

Further, I am aware that my understanding of incarceration is shaped by external observation rather than lived experience. As my participants hold a contrasting position within the carceral space, it might create inherent power asymmetry during interviews and interactions. At the same time, as access to participants will be facilitated through institutional authorities, there is a likelihood that it may influence my participants' willingness to speak openly, moderate their responses or not participate at all. The researcher will mitigate these limitations through continuous reflexivity and methodological transparency by emphasising confidentiality and conducting interviews in private settings. Finally, ethical considerations around privacy and consent further complicate and constrain which data can be included and how it might be analysed. Despite these limitations, this research work offers a critical entry point for understanding the problem of overcrowding of prisons in India and why women are at the margins of it.

CONCLUSION

Although international human rights obligations and national legal framework require pre-trial detention to be used as a last resort, it remains widely prevalent across the criminal justice system in India. Despite bail being the rule and jail being the exception, the ground reality of carceral spaces in India is always otherwise. For women in carceral spaces, many of them are kept in custody but are never convicted. If they are convicted, their offence is small and non-violent in nature, and it hardly needs any custodial sentencing. The wide and inappropriate practice of pre-trial detention for women is due to well-established systems of patriarchal and structural marginalisation.

This structural oppression reflects and reinforces deeply established gendered and intersectional inequalities. Difficulties in securing bail due to feminisation of poverty, heteropatriarchal control, and inadequate access to legal aid increase their vulnerabilities to pre-trial detention and bring out disastrous consequences, such as disruption in caregiving, worsening of physical and mental health, increase in economic insecurity, and cutoff of ties from family and community. Thus, attention is also required to face the structural conditions that bring women into conflict with the law, along with the intersecting social and institutional forces that channelise them into pre-trial detention.

While the need for gender-responsive criminal justice is widely recognised, its implementation is largely focused on improving women's conditions inside the prisons. Less attention has been given to the idea of transformative justice, as advocated by abolitionist feminist scholars. Avoiding women's incarceration in the first place, through redirecting investment into the expansion and use of gender-sensitive, non-custodial and community-based measures, will uphold the idea of transformative justice. It will also provide strong support for women and prevent unnecessary harm from incarceration.

Through this promising research work, the researcher aims to create a holistic impact at the institutional, community and academic levels. At the institutional level, it aims to create a political will that brings or redefines policies that confront the gendered and structural forces to support women's decarceration and contribute to gender-responsive criminal justice reforms. At the community level, it will try to create a space for belongingness for pre-trial detainees and destigmatise their multiple identities. Finally, at the academic level, this research will provide an evidence-based analysis of women's experiences and gendered injustices in the Indian context. Further, it will contribute to and strengthen the existing

literature on gender issues within the carceral spaces by publishing this work in peer-reviewed national or international journals and presenting this work in international or national conferences.

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