INTERNATIONAL POLITICS AND THE RIGHTS OF INDIGENOUS CHILDREN: A COMPARATIVE STUDY OF RECONCILIATION IN AUSTRALIA AND CANADA

Thesis submitted to Jawaharlal Nehru University
in fulfillment of the requirements for the
award of the degree of

DOCTOR OF PHILOSOPHY

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2017

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Date: 11th August 2017

DECLARATION

I declare that the thesis entitled **"INTERNATIONAL POLITICS AND THE RIGHTS OF INDIGENOUS CHILDREN: A COMPARATIVE STUDY OF RECONCILIATION IN AUSTRALIA AND CANADA"** submitted by me for the award of the degree of **DOCTOR OF PHILOSOPHY** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

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ACKNOWLEDGEMENT

I am extremely grateful to my supervisor Prof. Jayati Srivastava, for guiding me through the thesis. I am grateful to Prof. Brenda Green and Prof. Alexander Blair Stonechild, for sharing their valuable thoughts and time. The thesis owes its submission to the support of family and friends. The CIPOD office and the staff at the Central Library has been most helpful throughout this enterprise. I thank the team at the SIS photocopy place for diligently compiling and binding the document.

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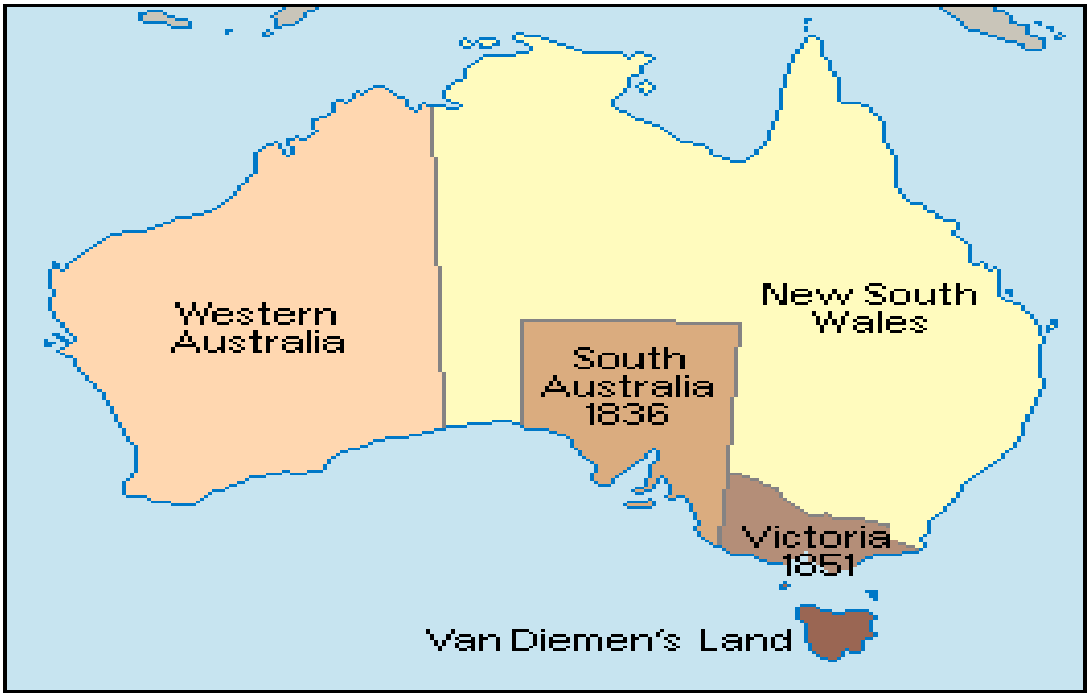
LIST OF ABBREVIATIONS

ACICWG	Aboriginal Children in Care Working Group
ACT	Australian Capital Territory
ADR	Alternative Dispute Resolution
AFN	Assembly of First Nations
AHF	Aboriginal Healing Foundation
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
ATSIC	Aboriginal and Torres Strait Islander Commission
BID	Basic Interests Determination
CAHWCA	Crimes Against Humanity and War Crimes Act
CCLA	Canadian Civil Liberties Association
CEP	Common Experience Payment
CHRA	Canadian Human Rights Act
COAG	Coalition of Australian Governments
CRC	Convention on the Rights of the Child
CRCF	Centre for Research on Children and Families
DAA	Department of Aboriginal Affairs
DIAND	Department of Indian and Northern Affairs
FAR	The Forgotten Australians: A Report on Australians who Experienced Institutional or out of Home Care as Children
FCAATSI	Federal Council for the Advancement of Aboriginal and Torres Strait Islanders
FNCFCSC	First Nations Child and Family Caring Society of Canada
IAP	Individual Assessment Process
ICC	Indigenous Coordination Centre

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INAC	Indigenous and Northern Affairs Canada
IRSSA	Indian Residential Schools Settlement Agreement
JPWG	Jordan's Principle Working Group
MB	Manitoba
NAC	National Aboriginal Conference
NACC	National Aboriginal Consultative Committee
NAHO	National Aboriginal Health Organisation
NHS	National Household Survey
NISATSIC	National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children
NT	Northern Territory (Australia)
NT	Northwest Territories (Canada)
QC	Quebec
QLD	Queensland
RAATSICC	Remote Area Aboriginal and Torres Strait Islander Child Care
RCAP	Royal Commission on Aboriginal Peoples
RPA	Regional Partnership Agreement
SPRC	Social Policy Research Centre
SRA	Shared Responsibility Agreements
TAS	Tasmania
TIOG	The Institute on Governance
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration on Human Rights

UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGC	United Nations Convention on the Prevention and Punishment of the Crime of Genocide
UNHCR	United Nations High Commission for Refugees
VIC	Victoria
WA	Western Australia
YT	Yukon

Colonial Map of Australia (1836)

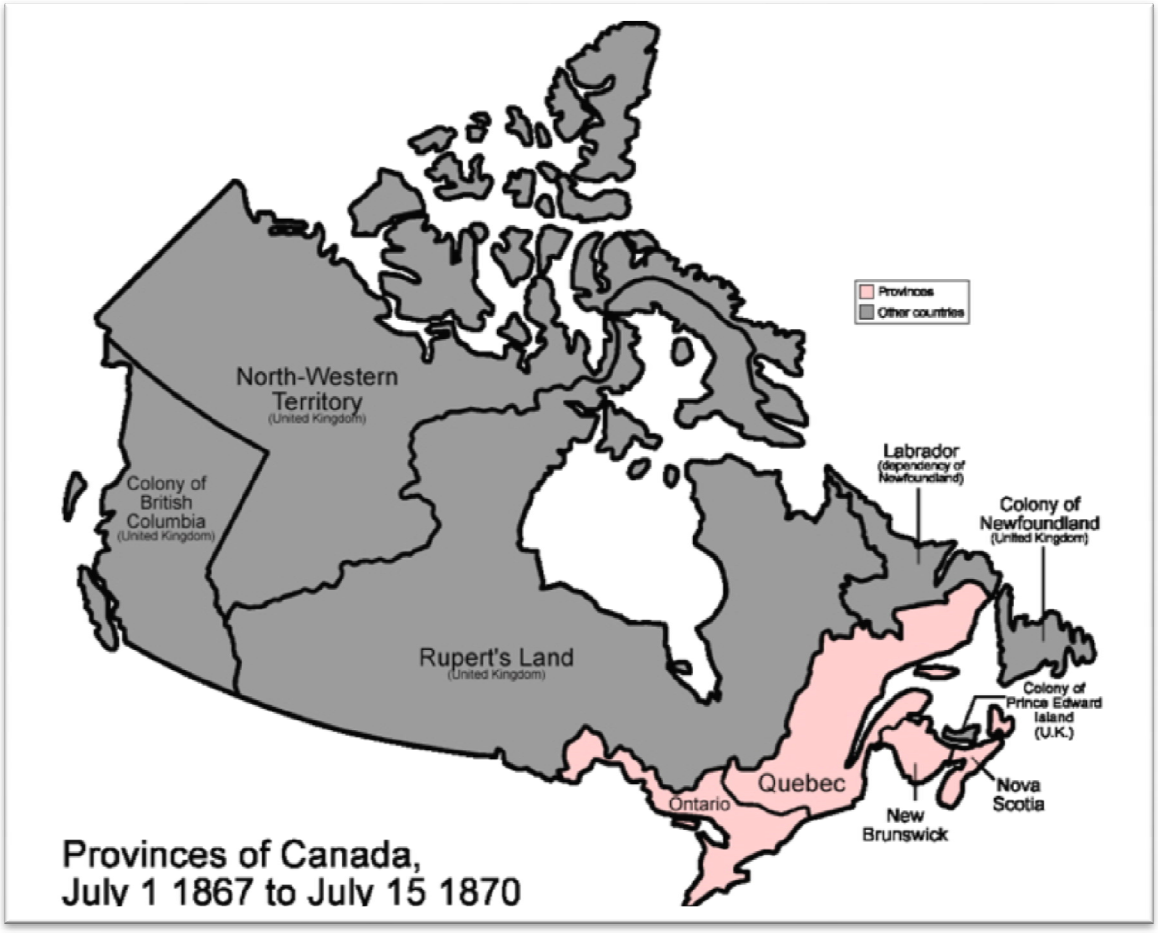


Source: uni-due.de

Present Day Map of Australia

Source: emapsworld.com

Colonial Map of Canada



Source: britishempire.co.uk

Present Day Map of Canada

Source: canamaps.info

CHAPTER ONE

INTRODUCTION

The term Indigenous peoples is a generic term that has been used to refer to the wide range of Aboriginal, Islander, First Nations, Métis and Inuit peoples in Australia and Canada in this study. Indigenous peoples are defined as those who identify themselves as Indigenous, possess a certain sense of belonging to particular place. The word Indigenous carries with it notions of origin. Therefore Indigenous peoples are the first inhabitants of a particular place. They are characterised by being historically prior to the nation state and are marked by cultural uniqueness (ILO C169; UNDRIP 2007). As a people they are enshrined to a set of rights in international law.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) called for the rights of Indigenous peoples to enjoy freedoms enshrined in the Universal declaration of Human Rights and international human rights law both as individuals and as a collective. They have a right to be free from all forms of discrimination, including those that stem from prejudices against their origins and identity. They also have a right to self-determination and pursue their political, social, cultural and economic development. Self-determination in the UNDRIP refers to self-government and autonomy in regulating internal affairs, financing and performing autonomous functions. Each Indigenous individual possesses a right to participate in economic, social and political aspects of the state; while retaining a right to maintaining their own social, legal, political and economic institutions. However the Declaration in Article 45 stipulates that no terms within the document permit any action by individuals, peoples, or groups that would violate the UN Charter or violate the territorial integrity, sovereignty or dismember any state. Pertaining to children Article 22 specifies that attention must be paid to the needs of children, the elderly and persons with disabilities. Article 22(2) enshrines states with the responsibility to protect women and children against discrimination and violence. Since the UNDRIP is a declaration it is not legally binding upon states that adopt it. However United States of America, New Zealand, Australia and Canada had objected to the document

as they were apprehensive about the Indigenous demands regarding self-determination, control of land and resources along with customary law (Fontaine 2016).

Nonetheless, Australia adopted the Declaration in 2009 primarily because it cannot override domestic law and is not legally binding (ABC News 2009). In 2016 Canada removed its objector status from the Universal Declaration on the Rights of Indigenous Peoples and vowed to adapt it to the Canadian Constitution. Indigenous leaders at this point called for greater say in administrative and legislative measure that influence their lives (Fontaine 2016).

Australian Bureau Of Statistics (2016) states that Aboriginal and Torres Strait Islanders constitute 3% of the population or 6,69,900 people as of June 2011. This indicates a large increase in estimates from June 2006 that were close to 5,17,000. The largest population of Indigenous peoples lived in New South Wales (NSW), followed by Queensland (QLD). While the smallest numbers live in the Australian Capital Territory (ACT). The survey of 2011 also stated that one-third of Aboriginal and Islander peoples lived in major cities, while 1,47,700 lived in Inner Regional Australia and 1,46,100 lived in Outer Regional Australia. While the share for Remote Australia stood at 51,300 people and Very Remote Australia at 91,600.

Statistics Canada (2016) states that 14,00,685 people constituting 4.3% of the Canadian population were Indigenous. Ontario had the largest numbers of Indigenous peoples followed by Manitoba, Saskatchewan, Alberta and British Columbia. Of these numbers 60.8% were First Nations, while 32.3% counted as Métis and 4.2% as Inuit. Other Indigenous identities made up 0.8% of the population. Each of these groups have a number of sub-communities or bands. None of these are homogenous in nature and each has a unique lineage and culture (Filipetti 2016).

In 2011, 16.6% of the Indigenous population lived in British Columbia, followed by 15.8% in Alberta. 14.0% of the population lived in Manitoba and 11.3% in Saskatchewan. Indigenous peoples make up the largest shares of the population of Nunavut, with 86.3% of the population and the Northwest Territories with 51.9% of the population. In Yukon, their numbers accounted for 23.1% of the population.

Archaeological facts state that Indigenous peoples came from north of Asia between 12,000 and 20,000 years ago. The second wave of largely Inuit peoples migrated from what is now known as British Columbia to the northern regions. Their numbers ranged close to 2 million. As a people they were primarily hunters and fur traders, while some bands even took up agriculture. Their social relations were characterised by complex familial and inter-band relations; closely intertwined with nature. The consisted of twelve major linguistic units.

To cite a few examples the Australian Aboriginal and Torres Strait Islander Commission Act 1989 concerns itself with inhabitants who existed prior to the European settlement. Similarly the Cree Peoples of Quebec Canada state that they have lived and governed themselves for more than 9000 years on the same land (Thornberry 2002; Debelo 2011). Indigenous peoples are a part of political and social communities that cannot be termed as minorities. They are the descendants of the first occupants of a territory and have been historically overpowered by people from different cultural and technological backgrounds (Varennes 1996).

Settler Colonialism in Australia and Canada

European colonists settled over Australia with the first penal colony to be established in 1788 by Captain Arthur Phillip on the shores of Botany Bay, which is now Sydney (Pettmen 1995; Schaffer and Smith 2004). Prior to the British colonial invasion of Australia, four hundred distinct cultural groups of Aboriginal and Torres Strait Islander peoples lived as distinct sovereign nations that inhabited the land for 50,000 years, with unique set of laws, political organisations, and relationships of trade. These peoples spoke in 250 different languages and followed customary systems of spiritual beliefs that were closely linked to their geographical locations and ecology. During the nineteenth century Australia was colonised through six British colonies with each expanding hinterland from a port city and instituting a different set to rules to govern Indigenous inhabitants. At the commencement of colonisation numbers of Indigenous peoples ranged between 2,50,000-7,50,000. (Altman and Sanders 1995; Stasiulis and Jhappan 1995; Varennes 1996).

The nineteenth century saw an enormous expansion of colonial enterprise in Australia. Economic basis of Indigenous society was destroyed to introduce pastoral and agrarian land use (Docker 2015). Subsequent geographical displacement of Indigenous peoples occurred with greater fervour in the south of Australia, while the north and the centre were less affected because of their remote location. Their political marginalisation was premised upon their perceived primitive ways of being. Unlike Canada and New Zealand, the British did not negotiate a treaty with Indigenous peoples in Australia and did not establish a Bill of Rights (Renes 2011). Protections and rights accorded to Indigenous peoples were thus limited. With subsequent colonisation and spread of diseases their numbers continued to decrease culminating in a meagre 3.5 million when the Commonwealth of Australia came into being in 1901. The six state governments continued to follow the precedent in governing Indigenous peoples through separate jurisdictions (Brennan 2004; Lewis 2011).

Since its inception for the next two centuries the nationalist political enterprise in Australia focused on an Anglophone subject, dispossessed Indigenous peoples from their land. Social hierarchies inspired by eugenics of late Victorian era, were marked through melanin, with Indigenous peoples with mixed lineage were prioritised over those with Indigenous roots (Pettman 1995). The latter were expected to perish, ignored in policy directives, and forced to live in segregated reserves; while those with mixed lineage were the target of governmental intrusion and institutionalization (Renes 2011). The Commonwealth Franchise Act 1902 and the Commonwealth Electoral Act 1918 excluded any ‘Aboriginal native’ from franchise. The term ‘Aboriginal native’ remained in use in official language. Discriminatory policies were followed at the state level in order to deny citizenship rights to Indigenous peoples. A Chief Protector appointed by executive was supposed to govern the lives of Indigenous peoples by ordering unwarranted medical treatment of ‘half castes’ or move people away from townships to reserves and order the police to investigate the employment and living conditions of any Indigenous person. Throughout the 1940s schemes of social benefit were denied to both the ‘Aboriginal native’ and the ‘half caste’ or Indigenous persons of mixed lineage. In 1962 all adult Indigenous peoples were enfranchised (Chesterman and Galligan 1997).

In Canada the French established a colony in what is now known as Quebec in the first half of the seventeenth century. They did not aim for large scale colonization and focused on utilizing Indigenous labour for the fur trade. British Crown's rivalry with France over the American empire, ended with the Peace of Paris. Wherein France ceded what remained of its territories in Canada to Britain (Slattery 1984).The Royal Proclamation of 1763, along with the treaty of Niagara 1764 sealed a nation to nation relationship or a band to colonial power relationship through treaties; in colonial Canada. Indigenous bands were therefore recognised as nations with sovereign powers that in the process of negotiating treaties acceded the ultimate sovereignty to the British Crown. Subsequently Britain did not adhere to the Royal Proclamation and the settlement process did not allow Indigenous peoples to freely determine their relationship with the Canadian state (Stasiulis and Jhappan 1995; See 2001; Riendeau 2007; Gunn 2015).

The Canadian state came into being in 1867 and extended its sovereignty over Indigenous peoples through so called voluntary cession of political rights negotiated through treaties, by Indigenous peoples to the British Crown. However Canada extends its political jurisdiction over Indigenous peoples even in the province of British Columbia where there is no history of conquest or treaties (Asch 2005).

The Indian Act 1876 claimed exclusive claimed exclusive legislative authority of the federal government over Indian lands and reserves. It controlled what constituted as Indigenous in Canada for over a century with its roots in legislation brought about in 1850 that gave rights to the settlers to own land and restricted Indigenous peoples to the so called Indian reserves. The Gradual Civilization Act 1857 brought in provisions for reserve land to be owned by non-Indigenous persons when a first Nations, Métis or Inuit person became enfranchised and lost their status. Similarly the 1869 Gradual Enfranchisement Act stated that an Indigenous woman who married a non-Indigenous man would lose her status. Such acts and legislations were beyond the control of the people it affected the most as they did not have the right to vote for the federal government until 1960. Such laws remained in place until the Indian Act was amended in 1985; allowing for a minimum level of self-governance under provincial authority (Erasmus and Sanders 1999; Lawrence 2003).

Settler societies share common attributes of European migrant entities founding states through political domination of Indigenous peoples and seeking independence from the metropole (Stasiulis and Yuval-Davis 1995). Australia and Canada have a common colonial past in the form of extermination of Indigenous peoples. Colonial policies of domination and paternalism over the so called 'primitive' Indigenous peoples resulted in the removal of Indigenous children from their families and placement in state sponsored missionary schools in the two countries. In both Australia and Canada policies pertaining to residential schools and later foster care span from the 1860's till the late 1980's, and demonstrate similarities pertaining to both structure and the outcomes (Engel et al. 2012). These policies were followed in the post-independence period by the two states governments, but have been brought under scrutiny in contemporary times. The two are developed welfare states functioning on a legal system largely derived from the British common laws; with evidence of ongoing intervention in the lives of Indigenous peoples through a network of family and child welfare services. Indigenous peoples are challenging policies of assimilation as implemented in the form of social welfare policies particularly those pertaining to children (Haskins and Jacobs 2002; Jacobs 2009).

State Policies towards Indigenous Children in Australia and Canada

State policies of cultural assimilation culminated in the removal of Indigenous children from their families in Australia and Canada during the colonial period. In both the countries residential schools were set up by missionaries throughout the 19th century with the financial support of respective colonial authorities. This policy was rooted in the idea of doing away with Indigenous languages and cultures (Cassidy 2006).

In Australia the process of child removal began in the late eighteenth century. This was achieved through surveillance and control of Indigenous familial life within the protectorate system of the colonial rule (Palmiste 2008). In colonial Australia children of mixed parentage received special focus as subjects of complete assimilation into the British Commonwealth, as they were considered more mouldable and could be easily absorbed into the settler population. Under the Aboriginal Protection and Restriction of the Sale of Opium Act of 1897, all Indigenous children were placed

under the guardianship of the Chief Protector in Australia. By 1911 all states had completed the process of legislation regarding the same. The process of their removal from their families was supervised by officers in charge of the protection of aboriginals, holding the office of the Minister, Governor, or the Director of the Natives (Robinson and Paten 2008). This policy was aimed at containing Indigenous threats to the colonial enterprise and exploiting their labour. The entire process marked the segregation of Indigenous children of mixed lineage from those belonging solely to Indigenous backgrounds. This segregation further perpetuated racism within the discourse of assimilation into the mainstream (Cassidy 2009). Parental rights of Aboriginal and Islander peoples regarding the upbringing of children were given no value till the 1940's (Armitage 1995).

The years spanning 1950s and 1960s witnessed removal of Indigenous children to distant foster homes through policies of assimilation by the state authorities in Australia. Discrimination and racism were rampant as non-Indigenous children could be removed from their families only after procuring judicial approval, unlike their Indigenous counterparts. Indigenous families were left with little or no legal means to oppose governmental actions. The perception that, only white families can take care of the best interests of Indigenous children, led to their segregation into poor and unsafe institutions; and foster families (Palmiste 2008). Despite growing public criticism, the practice of forced removal continued till the 1970's after which residential institutions were phased out and foster care became the government's primary focus (Martin OP 2011; Fernandez and Atwool 2013). Muriel Bamblett and Peter Lewis (2007) aver that a racially prejudiced perception of the notion of what constitutes 'best interests' of Indigenous children led to their removal from their families in Australia in the colonial era and continued post the birth of the Commonwealth through practices of child welfare only to culminate in what were later termed as the 'Stolen Generations'.

In August 1995, the Attorney-General of Australia Michael Lavarch called upon the nation's Human Rights and Equal Opportunity Commission (HREOC) to investigate cases of Aboriginal child removal between 1910 and 1970. The consequential report titled 'Bringing them Home' brought forth massive scale of government ordered Indigenous child removal (Haebich 2011). During the 20th century close to 40,000

children were forcibly removed from their families. The policy of child removal became a part of national Aboriginal and Islander mainstreaming, which paradoxically took the form of state sponsored discrimination culminating in familial trauma and loss of identity; and deprived Indigenous children of cultural mooring and positive self-recognition. The report emphasised that the process of dispossession continues as Aboriginal and Islander children are still more likely to be moved into foster or alternative care as compared to the non-Indigenous children (HREOC 1997).

Prime Minister Kevin Rudd apologised to the 'Stolen Generations' in Australia eleven years later in February 2008 as a belated follow up to the recommendations of the 'Bringing Them Home' report (Auguste 2010). The apology addressed the historical wrongs and injustice meted out to the 'Stolen Generations'. However, its content was framed in a manner that privileged the loss of childhood over the overarching issue of cultural genocide and did not address the growing presence of Indigenous children in child welfare (Cuthbert and Quartly 2013). The government insisted that compensation would not be granted on the basis of historical wrongs as it would be unfair to punish the current establishment for the wrongs committed by the leadership of the past. Monetary compensation can do little to ameliorate the loss and injustice meted out to the victims. However the denial for the same exacerbates psychological trauma and obliterates the possibility of governmental participation in making any material difference to the lives of victims in the form of an apology. The government also obliterated the possibility of a Reparations Tribunal (Vijeyarasa 2007; Cassidy 2009).

The number of Aboriginal and Islander children in foster care is continuously rising, into figures that are bigger than those observed just before the Australian state terminated the policy of forced removal in 1969 (Malkin 2009; Safi 2014). Heather Douglas and Tamara Walsh (2013) that inter-generational cycles of child removal continue and note Indigenous children form 24% of total number of children placed in alternative care despite constituting a meagre 3% of the population in Australia. The years between 2007 and 2009 saw a 41% increase in the number Indigenous children in out-of-home care in Australia. The Australian Government and the Australian Institute of Family Studies in the June 2013 fact sheet, states that in 2011- 2012, Aboriginal and Torres Strait Islander children are ten times more likely to be placed in

out of home care as compared to their non-Indigenous counterparts (Australian Government 2013).

Elizabeth Fernandez and Nicola Atwool explain that,

> there is an over representation of Indigenous children in child protection notifications and substantiations. Indigenous children were 8 times as likely to be the subject of a child protection (41.9 per 1000 Indigenous children compared with 5.4 per 1000 non-Indigenous children). This disproportionality is due to the legacy of past highly interventionist policies of forced removal, socio-economic disadvantage and Eurocentric perceptions of child rearing practices (Fernandez and Atwool 2013: 177).

Placement of parents in child welfare institutions as children, is a crucial factor in determining child removal in cases that are reviewed. Intervention by child protection services is inter-generational in nature, therefore children of parents who have grown up in foster care have a greater chance of being investigated by welfare agencies of the state. Historically imposed victimhood has resulted in familial dysfunction. Research has concluded that children who are conditioned at these welfare institutions often find themselves on the wrong side of criminal justice. Familial history of incarceration is therefore high across various Indigenous communities. This also becomes a contributing factor in child removal. The problem is compounded by the fact that child welfare personnel are untrained in acknowledging cultural differences between the mainstream environs of upbringing, and that of Indigenous communities. Problems are compounded in cases where Indigenous persons lacking in education and legal support can hardly communicate with personnel over the government directions, legal demands expected for child care (Bamblett and Lewis 2007; Douglas and Walsh 2013).

As Canada shares the colonial legacy of Australia, within the colonial discourse, Indigenous poples were regarded as those in need of paternalistic care and supervision (Armitage 1995; Leeuw 2009;). Children were yet again regarded as the primary subjects of colonialism. They were treated as a resource to be exploited as “de-Indiginesized Canadian citizens” (Leeuw 2009: 123). Starting from the seventeenth century residential schools were established by the missionary churches. By the nineteenth century the Canadian government was managing the administration of these residential schools along with Christian missions (Snow and Covell 2006; Engel et al. 2012).

As Sarah de Leeuw (2009) explains, it is the legal enterprise of the government that marginalises a few in order to privilege the rights and supremacy of others. It is this legal discourse that is used by colonial powers to maximise control over the colonised. She uses the analogy provided by Edward Said to explain that colonialism legitimizes the production of a socio-legal discourse that rationalises violence of occupation, conquering land and terminating people. The construction of the Indigenous person as a savage within the legal framework served the same purpose in both Australia and Canada. This process of assimilation was sustained by legal frameworks that guaranteed legal occupation of land and legal dispossession of Indigenous peoples. The Bagot Report of 1845 spelt out the need to direct colonial resources to the benefit of the Indigenous race in Canada. However, it patronisingly categorised Indigenous peoples as embodiments of unbridled violence and mental ineptitude. It deemed the colonisers as guardians of their race and their habitat (Leeuw 2009).

The federal government specifically brought about the Indian act of 1894 to focus on the compulsory education or moulding of Indigenous children in residential schools. Subsequent to this policy other legal measures guaranteed the removal of Indigenous children from their families and their placement in residential schools (Swain 2014). In 1920 the Indian Act was amended in order to criminalise parental failure in send the Indigenous child to school. The policy on Indigenous education was closely linked to the acquisition of land for establishing residential schools (Armitage 1995; Leeuw 2009).

Residential schools assumed the character of what Julia Rand explicates as “Total Institutions” (Rand 2011: 61). The scholar uses the analogy provided by Erving Goffman wherein total institutions are sites founded as an extension of political motives and ideology. These institutions prevent the individual from attaining self-actualization or an independent sense of the self and restrict connections with the outside world and with the individual’s family and community. The individual is psychologically conditioned to feel inefficient, invalid and lacking in capabilities to lead a productive life. Distinct cultural, familial and social identities are usually destroyed in favour of the singular identity of the resident of the concerned institution. In tandem with the objectives of a total institution the political goals of residential

schools were threefold. The first aimed at doing away with the use of Indigenous languages in favour of English, the second focused on the replacement of Indigenous religious practices with Christianity and the third aimed complete absorption of Indigenous people into Euro-Canadian culture (Rand 2011).

Residential schooling deprived children of their families as they were geographically located far away from their homes. The policy structure of the schools bread fear with little or no space for freedom and a consequence these residential campuses turned into sites of severe emotional, sexual and racial abuse. Indigenous children died due to disease, malnutrition, deprivation or suicides (James 2012). Education and vocational training provided at these schools rarely equipped the children for employment, enterprise or acceptance in a discriminatory society. These children were left to their own devices in order to deal with personal trauma and found it difficult to engage with their own culture due to the colonial conditioning of rejecting the same. As a result individuals brought up in these institutions were rendered completely dependent on authority in terms of welfare agencies or correctional homes (Nagy 2013).

Written accounts of students who experienced the horrors of residential schools are a testimony to the inter-generational impact on the lives of Métis, Inuit and First Nations peoples in Canada (Mascio 2013). Children who grew up in these residences never had any parental role models which severely stunted their capacity and emotional know how as parents (Richardson and Nelson 2007). Domestic violence, substance abuse and high rates of suicide within the Indigenous population have their roots in the residential school system. Societal response to inter-generational trauma has been punitive in nature, leading to high proportion of Indigenous population in prisons (Friedland 2009).

Between 1867 and 1996, 135 Residential schools operated by Catholic and Protestant Churches along with the federal government housed 1,50,000 children (Milloy 2013; Nagy 2013). Abuse meted out to the children was brought to the fore by Aboriginal agencies, however little was done to address the same by the aid societies and voluntary groups that existed since early 20th century. The provincial and federal governments along with the churches failed to prevent death and diseases in these

residential schools, the last of which was shut in 1996 in Canada (Trocme et al. 2004; Tourigny et al. 2007). Residential schools have been replaced by foster homes as of today (Nagy 2012).

During the 1960s the Canadian government carried out its policy of cultural assimilation through child welfare. As a result a large number of children were removed from their families and put into the care of non-aboriginal foster parents abroad or in European-Canadian homes. These foster homes were strikingly similar to residential schools in terms of impact on children, however the government found these easier to fund and manage (Trocme et al. 2004). This removal of Indigenous children from their families as a result of the policy on assimilation came to be known as the 'Sixties' Scoop' (Varley 2016).

During this time hardly any measures were taken to address the poverty, social marginalization that formed the reason for these removals. The Canadian government addressed the demand for First Nations child and family services as late as the 1980's. The establishment of these agencies aid the cause of Aboriginal children by ensuring, that they avail maximum opportunity to stay within the community. The operation of these agencies is often curtailed by lack of funding and provincial legislation that limits their outreach within communities. The policy gap in aiding the stay of Indigenous children with their families becomes evident in the disparity of funds allocated to the Indigenous agencies in comparison to the complete absence of a funding cap with respect to non-Indigenous children in out-of-home care in Canada (Blackstock 2009).

The report of the Royal Commission on Aboriginal People (RCAP) (1996) brought forth massive scale of abuse meted out to Indigenous children in both residential schools and Euro-Canadian foster homes. It pointed out that the placement of children in the cross-cultural atmospheres robbed them of their cultural lineage and psychologically conditioned them to feel ashamed of the same (Richardson and Nelson 2007; Engel et al. 2012).

Like Australia, a similar historical trajectory can be traced in Canada wherein the present practice of social work results in "complete severance of parental

responsibilities to the child" within Indigenous communities in Canada. This stands in deep contrast with Indigenous beliefs regarding community life and child care (Blackstock 2009: 29). Indigenous over-representation in child care centres remains largely ignored during governmental distribution of the resources for child welfare. Family welfare funding for children living with their kin on the reserves in Canada, remains inadequate combined with a lack of consensus between provincial and federal governments over responsibilities of budget allocation (Wien 2007).

Cathy Richardson and Bill Nelson (2007) analysed the practices of child welfare while working with a welfare agency in Canada. They observe that cultural and familial ties of Indigenous children are rarely taken into consideration while reviewing foster care arrangements. As a result, removal of children deprives Indigenous populations of their kinship ties and their communities of members. Children are also deprived of familial ties in order to privilege adjustment into adoptive life, this in turn is perceived as pivotal to their interest. Aboriginal welfare agencies are allotted meager resources in order to make up for the individual losses produced by policies of state sponsored assimilation. In case of spousal violence or poor living conditions or substance abuse the policy practice of the welfare agents is rarely directed at addressing the issues at hand. Often concerned parents who approach governmental agencies for financial help are deemed as psychologically unfit to take care of their children. In such cases children are marked out as those in need of alternate care due to lack of parental care, thereafter parental rights are dissolved. During this entire process Indigenous parents in Canada are rarely given a chance to negotiate with the welfare agency, culminating in the deprivation of familial ties.

This cycle of oppression continues unabated as Indigenous peoples who had been culturally deprogrammed at residential schools face the same colonial language of oppression that underlies the working of governmental welfare agencies. Indigenous parents are perceived to be deficient in addressing the physical and psychological needs of their children primarily due to lack of skills and resources. This in reality is a consequence of inter-generational trauma due to historical wrongs and lack of governmental support for Indigenous facilities. The act of Indigenous child placement in non-Indigenous foster care is guided by a sense of duty that builds on the

institutional superiority of welfare personnel which in turn convinces them of their better judgement with regard to the child (Bennett and Blackstock 2007).

Child welfare services have been dependent on non-Indigenous families for the adoption of Indigenous children. Close to eleven thousand Indigenous children were placed in out-of-home care between 1960 and 1990 in Canada (Trocme et al. 2004). During this period child protection services never bothered to address the ill-treatment of Indigenous children in foster care. The number of Indigenous children in foster care is on the rise as both federal and provincial governments fail to address issues of poverty, substance abuse and lack of health care facing their communities. Child welfare agencies rarely have personnel trained in addressing these underlying issues (Blackstock 2011). In the Canadian province of Manitoba, 80% of 9,700 children in alternate care happen to aboriginal. In the case of Winnipeg, Indigenous children constituted 83% of 5,291 in alternate care, while in British Columbia their numbers stand at 53% of 4,500 children (Meissner 2014). This state policy of assimilation was acknowledged as cultural genocide in 1985 by Justice Edwin Kimmelman (Blackstock 2011).

Cindy Blackstock (2009) explains that there is an urgent need for social workers to acknowledge the right of the Indigenous peoples to take the best possible decisions regarding circumstances that affect them. The scholar highlights that non-aboriginal social services must ensure adequate policy space for Indigenous communities, to avail resources and implement solutions to their problems. This in turn needs to be supplemented by adequate support to the concerned communities that can build on safe and healthy socio-economic environment for children. This argument is supplemented by scholars like Cathy Richardson and Bill Nelson (2007) who invoke human dignity, right to personal sovereignty, psychological assurance as pivotal in the interaction between child welfare professionals and Indigenous families.

Genocide and Reconciliation

Forced removal of Indigenous children followed by the government of Australia and a similar policy of compulsory presence of Indigenous children in residential schools followed by the government of Canada amounts to cultural genocide (Harris-Short

2012). Shamiran Mako (2012) uses Raphel Lemkin's argument to state that culture forms a crucial component of an individual's identity and well-being within a group or community. Therefore violations of a community's culture along with the threat of such violations eventually lead to its disintegration. This argument is explained further by stating that genocide has two phases. The first involves destruction of the lived pattern of the target group and the second entails the imposition of an external order. Arguably, the legal structure of the state in both Australia and Canada was purposively used to transform and in extreme cases eliminate all Indigenous cultural links. These policies have also been termed as "inherently ethnocidal in character" (Mako 2012: 178). These policies set in a cycle of abuse which is reaffirmed by legislation that is ethnocentric in nature, and is practiced through the policy of non-Indigenous child welfare agencies in both the countries till date. Cultural dispossession marked itself across generations when children who had been removed from their families became parents themselves. Despite the closure of state sponsored dormitories, institutions, residential schools and missions the process of child removal continues through state sponsored foster care (Hammil 2003; Harding 2008; Grugel 2013).

The acknowledgement of the wrongs committed by the Canadian government against the Stolen Generations was followed by the setting up the Aboriginal Healing Foundation in 1998. This Foundation was run by the Indigenous community with subsequent funding from the state government for community healing projects aimed at addressing the physical and emotional abuse meted out to the inmates of the residential schools. The initial acknowledgement of the past had fallen short of an apology. This drawback was amended subsequently in the Report on physical and sexual abuse in residential schools by the Justice Department in 2005. This report acknowledged the need for an apology by the government in order to move ahead with a sense of responsibility and trust towards the Indigenous peoples (Cassidy 2009).

In June 2008, the Prime Mister of Canada Stephen Harper issued a formal apology to the Parliament for the government's actions in the past that had severely wronged Indigenous children and the community in general. The Canadian government acknowledged the consequences of instituting residential schools and emphasised on

the deep sense of regret for the crime of physical and emotional abuse of Indigenous children in these spaces (Dorrell 2009). This acknowledgement of the wrongs meted out due to mistaken perceptions of cultural inferiority of Indigenous peoples was followed up by the assurance of the complete removal of the same in the policy and practice of the government (Tager 2014). Canada's Indian Residential Schools Truth and Reconciliation Commission (TRC) began its work in 2009 (James 2012).

Observers of the reconciliation process in Canada remark that reformation and reconstruction of the relationship between the state and Indigenous communities cannot take place in the absence of the acknowledgement of the colonial/settler dominance over ways of knowing and a complete absence of Indigenous tradition in the socio-legal structure of the state (MacDonald 2013). Hadley Friedland (2009) argues that the interests of Indigenous children should be viewed in conjunction with the interests of Indigenous communities, as individual losses are not removed from the collective loss experienced by the community.

In Australia, the apology by Prime Minister Kevin Rudd, in 2008 for the loss of the 'Stolen Generations', relegated the discriminatory policies to the past. Critics have pointed that the ill-treatment of Indigenous children is on-going and cannot be framed as purely historical in nature (Auguste 2010). The apology focused on the victimization of innocent children by a society that turned them into a source of cheap labour. This apology portrayed childhood as a neutral category devoid of racism and historical connotations of imperialism. The invisibilization of difference in the genealogy of the victims and their history rendered the official apology incomplete (Cuthbert and Quartly 2013). This apology was followed by an official denial of compensation for the victims of forced removals. Australia does follow the practice of observing National Sorry Day on May 26th since 1997 to acknowledge the loss of the 'Stolen Generations', however, this gesture is yet to see a solid policy imprint in the form strengthening of Indigenous child welfare and contextualised practices of care (Bessarab and Crawford 2010).

The acknowledgement of past wrongs and the recognition of the same in the form of an apology aids the process of reconciliation. The definition of the term reconciliation however, goes beyond the statement of an apology. It entails a larger initiative in

terms of compensation that is direct and immediate. Monetary compensation forms a crucial element of reconciliation. As a process reconciliation entails a vision for the future that is based on the recognition of truth, the offer of formal apologies, establishment of bridges of communication between the oppressor and the oppressed. Such lines of communication are brought to the fore by addressing the ongoing wrongs or systemic injustice against the victims and the eventual formulation of a shared history (Beresford and Beresford 2006).

Vulnerability of Indigenous children in the present is linked with historical violations of their human rights. The colonial policy of forced placement of children in residential schools and missions, coupled with institutional neglect and abuse; manifested in loss of life, culture and identity. Colonial policies were then followed up by state sanctioned policies of cultural assimilation in the garb of child welfare. Indigenous children were placed in state sponsored foster care homes in the more recent years in both Australia and Canada. High rates of removal of children from their families continue to challenge Indigenous communities in the two countries. In Canada there are more Indigenous children in governmental care today than at the height of the residential school system. They are twice as likely to be placed in alternate care, than their non-Indigenous counterparts (Engel et al. 2012; Fraser et al. 2012). Similarly in the case of Australia, in 2013-14 Aboriginal and Islander children were 7 times more likely to receive state sponsored child protection services than non-Indigenous children (AIHW 2015).

Disruption of familial ties, loss of language, religious practice and identity have manifested in inter-personal violence, substance abuse, and consequent sense of loss and victimisation within Indigenous communities in both Australia and Canada (Leeuw 2009; Blackstock 2011; Nagy 2013). Poverty induced neglect of children, discrimination within society and familial dysfunction are common within Indigenous communities in Canada (FNCFCSC 2006; Bennett and Blackstock 2007). Rights of Indigenous children have to be understood in conjunction with their relationship to their community. Indigenous communities demand greater control over child welfare stems for providing a culture specific approach to child protection and care. This in turn is perceived as a tool in stemming the perception of constant victimisation and powerlessness amongst the communities. Such community practises provide a greater

sense of control over child care and ensures better delivery of welfare schemes (Harris-Short 2012).

Australia and Canada share similarities pertaining to state apologies to Indigenous children and families for their forced removal in the past and their approach towards UN conventions on the matter (Cassidy 2009; Auguste 2010; James 2012; Tager 2014). The two states have ratified the Convention on the Rights of The Child (CRC) that guarantees children their right to a unique cultural identity. The CRC ratified by Australia in December 1990, is the only document pertaining to human rights of the Indigenous people that has been ratified by the country (Libesman 2007). Canada ratified the CRC in December 1991 (UNICEF Canada). It becomes crucial to look within the discourse on child rights and the impact of its current form on the practice of child welfare especially in the context of ongoing separation of Indigenous children from their families.

Rights of Indigenous Children

United Nations Convention on the Rights of the Child (CRC) came into being in 1989 calling states to protect child rights. The convention defined children human beings below the age of 18 years, unless the law of the native establishes an earlier age. It does not protect the unborn child and is restricted to live, born children (United Nations GA Res. 1989).

The Convention established that all state parties shall ensure the rights of children irrespective of discrimination on the basis of race, religion, language, sex, social origins and beliefs of parents. Article 3 of the convention details that the 'best interests' of children shall determine all actions undertaken by public and private institutions of social welfare. The same article expects states to ensure safety and protection of children through trained personnel at such institutions and ensure that children get adequate care and facilities (GA Res 44/25).

Scholars highlight the ambiguity regarding the notion of 'best interests' of the child in the CRC. The Convention states that the state must take into consideration the 'best interests' of the child in the cases where such a separation is inevitable. The

convention clearly states that proceedings regarding the removal of children from their families must entail equal participation of all the parties involved (United Nations GA Res. 1989). The convention does not spell out the basic factors that constitute the 'best interests' of the child; however it regards the same as crucial in the judicial review regarding separation of a child from its family against their will (Libesman 2007; Long and Sephton 2011). The application of the principle of 'best interests' remains highly subjective and its indeterminate content affects the practice of human rights, child and family welfare in the context of Indigenous children. Different views on what constitutes best interests brings forth the importance of non-governmental institutions and their functioning in response to child rights in diverse cultural contexts (Freeman 2011; Long and Sephton 2011).

The universal appeal of the CRC remains challenged by cultural relativism and inherent contradictions. Article 3 of the CRC does not prioritise the retention of Indigenous children within their communities over and above the state acknowledged best interests of the child. While Articles 9 and 30 of the Convention outlaw separation of the child from the parents against their will. The convention also makes it mandatory for states to respect the unique identity of the child and the concomitant right to maintain family relations. Article 30 in the CRC clearly states that an Indigenous child or a child belonging to an ethnic, linguistic minority cannot be denied the right to culture, religion or language (United Nations GA Res. 1989). Ambiguities within the CRC go beyond the notion of best interests. The document gives ample room for state interpretation especially when looking at the basic minimum requirement of non-discrimination and equal treatment of all children. The document states the basic minimum social benefits to be accorded to all children; however it overlooks political questions such as the size of the resource share accorded to children and its prioritisation pertaining to other policies (Khadka 2013).

Michael Freeman (2011) remarks that rights in general are indispensable to human beings, and are interdependent in nature in terms of civil, political, social, cultural and economic attributes. Rights are crucial as they acknowledge bearers of rights in a manner that assures their dignity. Conceptualisation of human rights has gone beyond individual civil and political rights to include collective, social and cultural rights (Thornberry 2002; Castellino 2010; Quane 2012). By implication therefore child

rights that establish a global standard need to acknowledge multiple locations of childhood and their social and cultural implications. Rights of children acknowledge that children are beings but also recognise their potential to become and grow into adults hence assert that they are 'becomings'. Their inherent capabilities depend upon adequate familial and community support which are inherently dependent upon socio-economic conditions, ethnic background and cultural practices. Thus there can be no uniform and fixed category of childhood (Invernizzi and Williams 2011). Protection of children along with the preservation of their cultural ties to the family and the community form the core of the CRC. These are placed along with political rights pertaining to freedom of speech and expression, right to education and health care and freedom from exploitation (Gran 2010). Children's rights are termed in a general fashion within the convention; this gives specific communities the space to interpret norms according to its context (Kaime 2010). Therefore, crucial "interventions on rights and culture invite us to make a choice between universalism and cultural relativism" (Kaime 2010: 639).

The cultural rights of Indigenous children need to be understood in the larger context of cultural rights of Indigenous peoples. Culture is understood an activity that is a fundamental component of human freedom and dignity (Gilbert 2007; Wiessner 2011). Cindy Holder (2008) explains that culture is a manner of living therefore, cultural rights include the right to communicate in a particular language, envision a world view, and write one's history and have agency over the expression of the same. This connection between Indigenous rights and basic human expression is founded in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Articles 15, 29, 32 and 33 in the UNDRIP vouch for the right to manage institutions of the community pertaining to cultural expression and development, right to interact within the community and with other groups, and right to establish and run educational institutions and those relating to juridical customs and traditions (Engle 2011).

Definition, Rationale and Scope of the Study

In the view of the discussed above, the comparative study of rights of Indigenous children in Australia and Canada is based on their shared colonial history, and similar

policies of cultural assimilation followed by the two states in the post-colonial era. It analyses the process of reconciliation with regard to Indigenous children in the two countries and closely examines state policy initiatives regarding the same. The study also looks into the discourse on human rights of the child in the context of Indigenous children. Forced removal of Indigenous children in both Australia and Canada in many ways stands in contrast with the rights of child and Indigenous rights in particular. This study looks into the policy and practice of the disproportionately high rate of Aboriginal child removal from the family that continues as a manifestation of colonial prejudice in both the countries till date. In this regard, the comparative study also looks into the colonial foundation of state level policies of cultural assimilation that are inextricably linked with child welfare in both the countries.

The analysis caters to state directed policies of cultural assimilation that result in familial disruption and exacerbate mental and physical illness in Indigenous children. This study assesses the cyclical processes of familial and societal dispossession. Along with the mounting presence of Indigenous children in child welfare and foster care facilities in Australia and Canada especially after their endorsement of the UNDRIP.

Adherence to the Convention on the Rights of the Child with respect to the rights of Indigenous child is viewed through the lens of state practice with respect to international law regarding the same. The core issue here is be the response of respective governments to the impact of colonial history on current policies of assimilation of Indigenous children into the essentially white settler population. The focus of the study therefore, is on the negligence of settler dynamics between the non-Indigenous/settler population and the Indigenous peoples within the institution of child welfare; that continues to disrupt Indigenous families and deprives children of their right to the pursuance of their unique cultural identities. The ongoing practice of Indigenous agencies in child welfare and the challenges they face have also been assessed. The study would explore the gaps within the discourse on child rights. It looks into the rights of Indigenous children in context of state power, and international agencies like the United Nations monitoring state progress regarding the implementation of the Convention on the Rights of the Child in its current form; in the two countries.

Research Questions

1. How do state policies of cultural assimilation impact the rights of the Indigenous children in Australia and Canada?
2. Where do Australia and Canada stand in terms of their implementation of the rights of Indigenous children?
3. Does the colonial past have an impact on the present situation of Indigenous children in the two countries?
4. How does the current process of reconciliation in Australia and Canada address historical wrongs?
5. To what extent do apologies help in the process of reconciliation? Does the process of reconciliation take into account the disproportionately high presence of Indigenous children in out of home care in the two countries?

Hypotheses

1. State policy of cultural assimilation continues to hinder the rights of Indigenous children in Australia and Canada in violation of the Convention on the Rights of the Child.
2. Policies of reconciliation more comprehensively address the concerns of Indigenous children in Canada in comparison with the case of Australia.

Research Methodology

The study is comparative in nature and draws from literature on policies of Indigenous child welfare in Canada and Australia and the interface between Indigenous and child rights. The study engages with the discourse on cultural assimilation in the two countries. It is inductive in nature and looks into the colonial history of forced child removal and the effects of the same variable on current policy of child welfare resulting in rising presence of Indigenous children in alternate care. Scholarship on Indigenous and child rights along with literature on cultural assimilation, settler colonialism and genocide is looked into. The thesis also draws from the accounts of scholars working with child welfare in Australia and Canada. Official statements of apology and available documents regarding the history of the process of reconciliation in the two countries have been referred to. The international

debate on the Indigenous right to self-determination with respect to safeguarding the rights of Indigenous children have been studied in the context of the Convention on the Rights of the Child.

The theses sought narratives of Indigenous peoples through various means by contacting departments of Indigenous studies, welfare agencies, writing to Indigenous leaders in both Australia and Canada. However such attempts remained unsuccessful due to un-responded correspondence with these persons. Academicians related to the field were largely apprehensive to talk about child rights, primarily because it remained an area they had little information about. In this entire exercise, Prof. Brenda Green of First Nations University of Canada, Saskatchewan was of great help. A long drawn conversation about her experiences with community health of Indigenous peoples provided great insight into Indigenous responses to ongoing attempts at addressing socio-economic disadvantages. Prof. Alexander Blair Stonechild, an author and a former student of the residential schools system and an exponent of Indigenous spiritual studies; was very kind in sharing his views on reconciliation. The study learnt about the lived experiences of Indigenous children through autobiographical narratives on the same in both the countries.

This thesis divided into six chapters, including introduction and conclusion. The current introductory chapter gives an overview of the concepts used in the study and the purpose of taking up the study on the rights of Indigenous children in international politics followed by chapter two titled Settler Colonialism and Indigenous Children: Tracing Forced Separation. Settler Colonialism and Indigenous Children: Tracing Forced Separation, views the socio-legal practice of forced removal of Indigenous children and its consequences for the community during the colonial period in Australia and Canada. The practice of the colonial powers is explored along with its rationalisation through the denial of Indigenous knowledge and violence against Indigenous agency. This section delineates the subsequent imprint of colonial policy on state approved legal structures that perpetuate familial disruption in Australia and Canada. Chapter three on Reconciliation and Indigenous children, in Australia and Canada, looks at the nature of the apology by the governments of the two states and the concomitant process of reconciliation. This chapter also explores the history of reconciliation pertaining to state internment of Indigenous children in Australia and

Canada and its effectiveness in ensuring the rights of these children. Chapter four, on the Rights of Indigenous Children in a Comparative Framework, deals with current literature on the rights of the child and looks into the state implementation of the norms pertaining to the Indigenous child. It also explores the acknowledgement of and adherence to Indigenous rights within the Australia and Canada in relation to the practice of child welfare. State policies in both the countries and their manifestation in cultural disruption and the subsequent terming of the same as ongoing cultural genocide by observes, are also studied. The practice of non-Indigenous agencies of child welfare and the diminished strength of Indigenous social agencies are analysed in the context of rising presence of Indigenous children in foster care in both the countries. This chapter analyses Indigeneity as a concept in international politics and how it affects the implementation of the rights of Indigenous children. The concluding chapter five summarises and revisits the arguments of previous chapters in light of the hypotheses and research questions proposed in the study.

CHAPTER TWO

SETTLER COLONIALISM

AND INDIGENOUS CHILDREN: TRACING THE FORCED SEPARATION

Settler colonialism is the larger context in which the forced separation of Indigenous children continues to take place. The settler colonial intention to invisibilise Indigenous peoples, and dispossesses them, gives way to more acceptable forms of racism through assimilation and eventually multiculturalism. The adaptability of this concept and its costs borne out by Indigenous children are crucial to understanding ongoing separation of Indigenous children from their families.

History of Violence Against Indigenous Children: The Case of Australia

Intervention of child protection agencies should be seen in the context of historical abuse, intergenerational trauma and marginalisation that have manifested in chronic poverty, unemployment, poor education, and substance abuse amongst Indigenous peoples (Cunneen and Libesman 2000). Indigenous people had lived in Australia for 40,000 years, before the beginning of the colonial enterprise. Their communities were characterised by rich diversity of language and customs. The British came to Australia in the early years of the 19th century. The very first contact between British and Aboriginal and Islander peoples in Australia was characterised by conflicts that killed large numbers of Indigenous peoples, and destroyed their communities (Moses 2000; Docker 2015).

Notions of racial superiority of European settlers, based on Darwin's conceptualisation of natural selection; were applied to human relations to justify the oppression of Indigenous peoples. The settler doctrine of 'Terra nullius' or land that is empty, negated the very existence of Indigenous peoples in Australia and its cultural and historical underpinnings. Colonial and later state control over Aboriginal and Islander peoples manifested itself through loss of sovereignty over land and resources, institutionalisation, detention and imprisonment. They were required to carry

passports to travel to their own lands, these passports were in turn conditional upon giving up hunting, and all aspects of the economy associate with their lands. With the formation of the federation at the beginning of the 20th century governmental policy envisioned greater control over their vast lands and peoples (McGrath 1995; Dafler 2005). As Anne McGrath observes,

> one of the first Bills passed became known as the 'White Australia Policy' and one of the earliest Royal Commissions which followed was into the white birth rate. Racial exclusion became central not just to the takeover of the land but to the self-image of the new nation. Although Aborigines were excluded from citizenship in this nation, white Australian saw fit to appropriate Aboriginal words, bush craft skills and local knowledge and later their traditional art and symbolism. But the Aboriginal people were excluded from an active role in culture making. Aborigines were literally a 'captive audience' forced to look on as white Australians narcissistically admired themselves, constructing and defining the nation as a young country, as superior, as blessed (McGrath 1995: 5)

Removal of Indigenous children from their families in a way anticipated both cultural and biological extermination of Indigenous peoples. The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (NISATSIC) 1997, called 'Bringing Them Home', traced the separation of Indigenous children from the colonial to the contemporary times. The inquiry states that Indigenous children were forcibly removed from their families from the beginning of European colonisation of Australia. In the battle for land and natural resources between European and the Indigenous in Australia, children were the first casualty (HREOC 1997; Short 2010). Kidnapping and separation of Indigenous children from their families for exploitation as slave labour was an important tool of colonial violence in 1820s and 1830s. Such incidences have been well documented in case of New South Wales (NSW) wherein Wuliam Shelly sought permission from Governor Lachlan Macquarie to build an institution at Parramatta where Indigenous children could be trained in menial jobs (Robinson 2013).

In 1838, the Aborigines Protection Society came into being in London. The British Government of the day ordered a Select Committee Inquiry into the matter which culminated in a protectorate system calling for self sufficient agricultural communities on reserve land based on British system of villages. This report called for the appointment of missionaries, schooling for children and laws to protect Indigenous peoples (Flood 2006). This system had failed by the middle of the nineteenth as

Indigenous peoples were forced out of their land and many perished due to hunger, deprivation and diseases. The protectorate system continued none the less and missionaries made in charge of educating Indigenous children, converted many of them to Christianity and were provided financial support by the government (Jacobs 2009).

Western Australia (WA) and Northern Territory (NT) did not have laws that removed Aboriginal children from their families in the earlier parts of the 19th century. However the case of Queensland (QLD) was quite different in the same time period. Protectors could charge any Indigenous child as neglected and transfer them to an industrial school. Uniformity in legislative powers of the Chief Protectors was achieved through the Aboriginal Act of 1897 which gave sweeping powers to the authorities to forcibly transfer Indigenous children to any location or mission within the state (Manne 2004; Robinson and Paten 2008).

Shurlee Swain (2014) explains that removals of Indigenous children required no justification unlike the case of non-Indigenous children where parental negligence had to be proved before a court of law. In QLD any child born to a woman of mixed descent had to be taken away. The middle of the nineteenth century also saw removal of all individuals of missed descent from reserves in Victoria (VIC). What followed was state institutionalisation of Indigenous children in both VIC and Tasmania (TAS). In 1901 when the Commonwealth of Australia came into being, Indigenous Australians were not even counted as persons in census (Barta 2008). This form of systematised racial discrimination was practiced through legislation like Neglected Children and Juvenile Offenders Act 1905 (NSW) wherein any child without a permanent place of living, nutrition, medical care could be removed from her/his family (HREOC 1997). The Aborigines Act 1905 gave state governments the authority of guardianship over Indigenous children and forced children of mixed lineage into state missions (Dafler 2005). Western Australian Aborigines Act of 1905, South Australian Aborigines Act of 1911 and the Northern Territory's Aboriginals Act of 1911 made the government administrator the legal guardian of all Indigenous children less than twenty-one years old (Ellinghaus 2006).

By 1911, the NT and all states except Tasmania had 'protectionist legislation' authorising the Chief Protector or the Protection Board unhindered control over the lives of Aboriginal in Australia. In some States the Chief Protector was made the guardian of all Indigenous children, in complete erosion of parental rights. These children were made to stay in dormitories and had limited contact with their families. In QLD and WA the Chief Protector used his authority to remove children as young as four from their mothers and sent them to missions to work. The inquiry highlighted that Indigenous girls on reserves were sent away as domestic help in non-Indigenous households. Indigenous families with European descent were usually denied rations and were forced off land reserves to live on the edge of cities, they were denied benefits of social security and were made the primary subject of assimilation into settler Australia. The reserves were characterised by poor funding and so were institutions and dormitories that housed children. This stood in sharp contrast to the spending on non-Indigenous schemes of social welfare (HREOC 1997; Sims 2012).

Chief Protectors who were the in charge of all Indigenous children often took to kidnapping and transferred children to schools without the knowledge of their parents. The report clearly states that Indigenous children were failed by the state as standards of care were starkly poor as compared to children of non-Indigenous origins. Indigenous children experienced brutal physical punishments, emotional abuse, fear and sexual abuse. Parents had no say in the upbringing of their children, and residential schools often misinformed its pupils regarding their families. The policy of forced removal continued despite the fact that Australia had on paper adhered to treaties that outlawed racial discrimination and genocide. Laws that were racially discriminatory remained effective in Western Australia till 1954, in Victoria till 1957, till 1962 in South Australia, until 1964 and 1965 in WA and QLD respectively. The forced removal of children amounted to depriving Indigenous communities of parental rights, liberty, human rights and consistent abuse of power. Court scrutiny that had been a norm for the removal of non-Indigenous children was denied to Indigenous children who could be removed on the recommendation of a government officer (Swain 1993; HREOC 1997; Turner 2013).

A. Dirk Moses (2004) asserts that the British had full knowledge of the effects of their presence in Australia, that included mass disappearance of Indigenous peoples in the

nineteenth century, through diseases and violent extermination. In the nineteenth century British colonial office warned governors against extermination of Indigenous peoples, yet their population continued to decline due to diseases like small pox, starvation and malnutrition. The colonial office approved and actively supported measures that prevented Indigenous peoples from negotiating over land rights, exploited their labour and elimination of their presence from fertile lands. British colonisation was an attack on Indigenous cultures and active elimination of Indigenous peoples. Indigenous persons were legally forbidden from testifying in proceedings though there were equal subjects under British law. Prosecution of those charged with murder of Indigenous persons was very rare, the execution of those responsible for the massacre of Indigenous peoples at Myall Creek, NSW was one rare example of the law taking its course. Settler colonialism in Australia was genocidal in intention, which was reflected in its structure that was characterised by violence and support for social Darwinism.

Towards the beginning of the twentieth century legislation calling for protecting Indigenous persons was brought forth to coincide with creation of the Commonwealth of Australia. Through legal measures Indigenous communities were confined within reserves under various forms of discriminatory legal provisions; that advantaged the colonisers who got free access to fertile farmlands at the cost of Indigenous dislocation. Massacre of Indigenous persons by the police in 1926 and 1928 highlighted the continuing extermination of the race. During this period official policies of various states called for absorption of Indigenous persons into non-Indigenous races through the process of social engineering and simultaneous segregation of persons who did not belong to a missed lineage. Aboriginal groups that were politically active lobbied for citizenship and policies for empowerment (Moses 2004).

Indigenous children of mixed descent were made the primary subjects of this exercise whose education and grooming was supposed to accelerate their complete absorption into the settler society. Their isolation from Indigenous communities became a policy priority. As early as 1909, Robert Donaldson initiated removal of part-Indigenous children from their communities in NSW, in order to initiate their absorption in industrial work force (Read 2002). In NSW, the aim of government boarding schools

in the 1920s was to completely uproot the Indigenous life from the minds of the young who were not allowed to return to their homes till they turned eighteen. Many could not return at all and parents were discouraged to meet their wards. At the institutions, kind officials were rare and malnourishment was common. Children were often deprived of food as punishment and had to face the wrath of semi-trained or untrained teachers. Physical and sexual abuse were common; children were also overworked with physical labour such as taking care of barns and fields (Read 2006).

During the late 1930s NT, QLD and WA spent least funding on the welfare of Indigenous peoples despite their large numbers. The financial resources and the bureaucratic force required for the enterprise were meagre (Manne 2004). As a result many children perished due to hunger and lack of basic healthcare. In Tasmania similar protectionist policies were put in place in the 1930s that made the Indigenous population completely dependent on the authorities (HREOC 1997). The first Commonwealth-State Native Welfare Conference was held in 1937 in Canberra wherein Chief Protectors A.O. Neville- WA, J W Bleakley- QLD and Dr Cook-NT; gathered to evaluate the so called "Aboriginal Problem" (HREOC 1997: 26). The conference was amenable to the idea of absorption of Indigenous peoples of mixed race as advocated by A.O. Neville. The underlying theme was how the Indigenous peoples of mixed descent would eventually blend into the non-Indigenous population, as Indigenous culture was perceived as devoid of any intrinsic value. It was assumed that Indigenous people sans any European blood would ultimately perish irrespective of any policy or governmental action (Chesterman and Douglas 2004; Dafler 2005).

A. O. Neville in 1931 stated that, "Are we going to have a population of 1,000,000 blacks in the Commonwealth, or are we going to merge them into our white community and eventually forget that there were any aborigines in Australia?" (Krieken 2000: 297). Shurlee Swain (2013) avers that, the so called benevolent settler Australians legally adopted a number of children of the 'Stolen Generations' since the 1920s. Most of the records regarding the same have been lost to time and very often Indigenous adoptions were made in secrecy, therefore carried no record. Very often forced incorporation of Indigenous children into European families occurred outside the legal system of the day therefore remains largely undocumented. The newspapers of the colonial times spoke of European families as sites of Aboriginal betterment and

places where children of mixed lineage could be effortlessly mainstreamed into white Australia (Robinson 2013).

Child removal at this point was a product of coercion, wherein children were taken away either in the absence of parents or forced away from their loved ones. Many parents gave up their children to missions in order to prevent them from being taken away from the legislative officer and losing any trace of them. Lutheran mission, Koonibba, in South Australia was one such church mission that parents would opt for under times of 'duress'. Similarly the officers in charge for the protection of Aboriginal and Islander peoples would exercise undue pressure to ensure that children are placed in church and residential missions. Many a times children that were placed in hospitals or educational institutions on a temporary basis never returned to their homes (HREOC 1997).

An understanding of racism is essential to analyse the colonial enterprise and the subsequent Indigenous child removal in Australia. The naturalist view of racism assumes that the white race is inevitably superior to all the other races, that are perceived as sub-human. The historicist view of racism is paternalistic in nature as it calls for reforming the so called other races. The historicist perspective is benign and projected as benevolent in nature, as a result it is difficult to combat and entails institutional management (Bretherton and Mellor 2006). The shift from a naturalist perspective to that of historicist is evidenced in policy change from absorption to assimilation. While the colonial discourse on settler children centred around innate innocence, Indigenous children were considered to be of a wild or criminal orientation and in need of urgent reform in the form of manual labour (Jacobs 2009). This policy aimed to turn Indigenous peoples of mixed racial origins into a working class, to serve settler Australians (Fejo-King 2011).

Until the 1930s coerced assimilation was complex to define as it had overlapping meanings. It entailed both absorption in biological terms, wherein Indigenous blood-line and physical characteristics were to be gradually done away; and integration in social terms wherein distinct Indigenous cultural identities would be wiped out (Moran 2005). This changed through the passage of time. During and after the Second World War policies of assimilation focused on greater integration of Indigenous

persons into non-Indigenous society. While previously absorption was centred around the biological aspects of genes, focused on Indigenous people of mixed lineage; new forms of assimilation had socio-economic and cultural underpinnings (Manne 2004; Moses 2004).

Assimilation through child welfare soon came into being, with NSW taking the lead in 1940 wherein removal of Indigenous children came within the jurisdiction of child welfare laws and state sponsored institutions got an increase in financial grants. The 1940s marked an era wherein Aboriginal Australians were subjected to both the welfare board and child welfare. 400 out 1000 Indigenous children from New South Wales lived away from their families during this period, many were placed with European families (Armitage 1995). Under the new legislation Indigenous children found as "neglected" or "destitute" or "uncontrollable" were to be housed in institutions (HREOC 1997: 27). This policy marked a continuity with the earlier patter as Indigenous children were assumed to fall in the above mentioned categories by the virtue of being Indigenous. Aboriginal children not only lost on their families but also their communities which are pivotal in their culture. In residential missions children were often separated from their siblings (Robinson 2013).

However during this time some positive changes also took place in the social security system for Aboriginal and Torres Strait Islander children. The 1940s saw child endowment made available for the care of all dependent Indigenous children. However children belonging to Indigenous peoples who moved their locations continuously were denied these benefits (Altman and Sanders 1995).

Cultural Assimilation in Australia

During the 1950s and throughout the 1960s, the policy framework of Australian governments focused on creating a culturally and socially homogenous nation. This notion of homogeneity was founded on fears of Indigeneity in a modern Australian nation. Post Second World War, notions of cultural homogeneity as symbolic of national cohesion took centre stage. International condemnation of racism and discourse on eugenics gradually transformed settler nationalism. Social disadvantages came to replace racist perspectives on inherent incapabilities, in attributing causes for

poverty, illiteracy and ill-health. The official policy of assimilation henceforth aimed at the eradication of racial discrimination, guaranteeing equality of opportunity and achievement of a uniform standard of living. This policy of assimilation had an inherent contradiction while Indigenous peoples were to attain similar standard of living as settler Australia, official policies focused on the need for regulating the lives of Aboriginal and Islander peoples for their own benefit. The Director of Welfare had the power to regulate Aboriginal and Islander means of livelihood, location and housing, association and consumption habits; and upbringing of children. The Indigenous were also denied the right to vote, crucial for exercising citizenship central to the Australian official narrative (Haebich 2002; Moran 2005)

Public consensus for the same, was built through mass dissemination of pamphlets by the government under the ministerial supervision of Paul Hasluck. These pamphlets aimed at eliminating racial prejudice against Indigenous peoples in Australia and adhered to depictions of Indigenous peoples living in peace and prosperity in the suburbs as a desired outcome of the policy of assimilation. The Australian nation in the post war era was being defined in terms of a community that sought Indigenous inclusion; wherein notions of colour had taken a backseat (McGregor 2009).

However the official dissemination of this sense of community contained an overarching imagery of white, settler notions of nuclear family, health, hygiene and professional choices. This in turn rebuilt and reaffirmed consensus regarding internment of Indigenous children in white families instead of authoritarian institutions like residential schools and churches. This official narrative of assimilation presented a picture of smooth transition from an Indigenous past to one of comfortable urban domesticity; that in reality had not been achieved. Newspapers carried out similar campaigns of presenting images of Indigenous children living happily with white families with no connection with their communities. These reflected government policies of holiday placements, fostering and adoption of Indigenous children with white families in contrast to poorly funded and derelict institutions. At that time even holiday placements of Indigenous children led to illegal adoptions, as white families refused to send them back (Haebich 2002; Haebich 2007).

The state's priority of regulating Indigenous childhood in the latter half of the 20th century was evident through the replacement of institutions, and reformatory missions by families of Aboriginal assimilation. The Native Welfare Conference in 1951 lauded the strategy of assimilation and its judicious application across all States in Australia. These policies continued unhindered throughout the 1950s till 1965 (HREOC 1997; Swain 2014). Family and child welfare was under state's jurisdiction till 1967 after which both the state and the Commonwealth shared the responsibility. Each state followed a different trajectory regarding Aboriginal child welfare. In 1968 the Department of Aboriginal Affairs stated that as many as 300 illegal adoptions took place in Victoria alone. All this while, structural inequality and Indigenous opposition to assimilation remained unacknowledged (Armitage 1995; Haebich 2002).

During the 1950s and 1960s, the forced removal of Indigenous children amounted to violation of human rights, norms pertaining to racial discrimination and genocide as Australia had already subscribed to the concerned treaties. Legislative measures discriminated against Indigenous children and remained in force till 1954 in Western Australia, 1957 in Victoria, 1964 in the Northern Territory, 1962 in South Australia and 1965 in Queensland. These laws exacerbated victimization amongst Indigenous children and their families and embedded a sense of suspicion of the authorities (Cunneen and Libesman 2000). The term 'Stolen Generations' refers to Indigenous children who were forcibly removed from their families as a part of this official policy on assimilation (Murphy 2011).

Other reports along with the 'Bringing Them Home' report have also looked into the status of Indigenous child care and vulnerability. The Forde Inquiry Report (FIR) 1999 stated that contemporary legislation and practice do not protect Indigenous children from abuse. Another report released in August 2004, titled 'The Forgotten Australians: A Report on Australians Who Experienced Institutional or Out of Home Care as Children' (FAR). These reports studied 100 years of Australian history, throughout the States and Territories and documented the removal of children and their placement into different types of care, including government- and church-run institutions, foster care, and juvenile detention centres. All these report bring forth generational injuries cast upon on the most vulnerable in Australia by the government, institutions, and individuals. Policy worked in coordination with the legal and social

system, to contribute to the inhuman treatment of Indigenous children. These reports also exposed the underlying misnomer that the policy of removing children from their families and placing them in the care of strangers benefits all the parties involved. The reports noted that physical, sexual and emotional abuse by teachers, staff and other students were rampant. Residential schools festered a system of violence aided and abetted by the administration. Complaints by students were seldom considered seriously. Most complainants were threatened with further violence and seldom received counselling or institutional justice. Lack of funding exacerbated the problem of hunger, disease and dejection. Many students died and were buried without informing their families on most occasions (Atkinson 2006).

Acts of violence against Indigenous children were both structural and direct in nature. At the macro level structural violence was meted out through state led institutions and agencies. An important testimony to the fact is that Indigenous in Australia were included in the census as late as 1967. Policy structure and the police enabled forced child removal as a result Indigenous children as small as a few days old, could be interned at institutions. Children were often lied to about their families and how they ended up at these institutions. Some were told that their parents had passed on while some were told they were abandoned. These institutions often became sites of psychological and physical and torture. In the most benign forms children lacked parental support and warmth and grew up without any emotional support (Bretherton and Mellor 2006). Indigenous children were made to feel ashamed about their culture and were forbidden to speak in their own language or practice their cultural customs. They were never called by their names and were only addressed by specific numbers for identification. Children were often shocked by this erasure of identity and sudden exposure to new systems of being. New forms of prayer, food, strict routine and physically and emotionally draining manual labour. Children were separated from their siblings at these missions and were forbidden from any contact with their families. Children from these missions lacked the basic skills needed to emotionally engage with adulthood and many faced severe psychological problems, substance abuse and violent behaviour. Since they were removed from their families and communities at an early age, they had little clue of their unique identity and; had few elders to look up to (Atkinson 2006; Swain 2014).

Many scholars have undertaken the mammoth task of documenting the number of children involuntary removed however many records have been lost to time. Peter Read studied official records of child removal in NSW from 1883 to 1969 and the number stood at 5,625 despite the acknowledgement that a number of records were missing. Christobel Mattingley and Ken Hampton found that 350 children were enrolled at Colebrook Home in South Australia within the time frame of 54 years. National Survey of Indigenous Health in 1989 concluded that 47% of Indigenous respondents of all age groups had experienced separation from their families in childhood. This figure stood in sharp contrast to 7% of non-Indigenous respondents who reported forced removal in their childhood. One in three Indigenous Children were removed from their families between 1910 and 1970 (HREOC 1997). In the 1950s and 1960s the government programme of assimilation over-crowded state run residential schools. Non-Indigenous foster families were seen as a cheaper alternative. Soon enough it became evident that the policy goals of completely assimilating Indigenous peoples were failing as discrimination against them was rampant and their cultural identities remained resilient (Short 2008).

From 1930s till late 1970s Indigenous child removal primarily occurred when families were unable to take care of children due to financial hardship, lack of governmental support, illness of a parent, or abandonment by a bread winner. Other reasons were neglect by parents and behavioural problems. In these cases of removal the term 'neglect' was often a euphemism for hunger, lack of proper housing and education. Behavioural issues pertained to parental inability to bring up the child either due to due to socio-economic strains or exhaustion (Commonwealth of Australia 2004).

In 1965 Native Welfare Conference aimed to bring about an element of choice in the process of assimilation. The objective was to make Indigenous peoples desire assimilation into settler society. Commonwealth of Australia was given legislative power over Aboriginal Affairs in 1967, whereby a Federal Office of Aboriginal Affairs came into being (HREOC 1997). Till this time different welfare systems existed for white and Aboriginal children in New South Wales. In 1969, the department for Child Welfare became accountable for all children and no records were kept for Indigeneity of families, in order to avoid discrimination. However

Indigeneity could not be seen as reason enough for child removal, abuse or abject neglect were to be sighted in official procedure. From 1973, the federal government began to partly fund assistance to single mothers after which the rates of removal dropped significantly during this period in NSW. Much was similar in the case of QLD with the exception of the official policy of assimilation which continued till late 1980s and Indigenous welfare agencies were given less room in official integration. In 1985 Department of Family and Child Services adopted a policy of consultation with Aboriginal and Islander community for child placement and care. In NT the presence of Indigenous Australians is much higher than the other states, however its trajectory has been similar to NSW and QLD (Armitage 1995).

Fiona Murphy (2011) states that Aboriginal children were largely invisibilised until the 1980s. Public curiosity and the subsequent outcry was witnessed in the late 1990s. Through settler Australia's horror and outrage, many individuals of the 'Stolen Generations' found the support to seek answers for their past. The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (NISATSIC) or the 'Bringing Them Home' report (HREOC 1997) brought forth that "between one in three and one in ten Indigenous children were forcibly removed from their families", from 1910 till the late 1970s (Murphy 2011: 482). Chris Cunneen and Terry Libesman (2000) interrogate the removal of Indigenous Children in 20th century Australia through interventions in child protection with respect to the NISATSIC. They assert that the inquiry highlighted a continuance in colonial policies of Aboriginal child removal in the later era, wherein Indigenous families are seldom protected by the inbuilt safeguards of child protection accorded to their non-Indigenous counterparts. Aboriginal families are regulated by eight different child welfare systems across Australia and communities that geographically overlap different states are subjected to several legal systems at the same time. Often official failure to address cultural differences results in high rates of intervention. Australia followed policies of assimilation similar to that of Canada, with the policies of self-government not finding a mention till 1990 (Nobles 2008).

The Beginning of Change

After the extension of electoral franchise to Aboriginal and Islander peoples in 1965 in Australia, a constitutional referendum was passed in 1967 that removed exclusionary sections with respect to Aboriginal peoples. The first had deprived Indigenous peoples of federal funding regarding social services and education and the other prevented their inclusion in the national census (Altman and Sanders 1995; Clark 2008). As a consequence Indigenous peoples were included in the Australian census for the first time in 1971. A federal Department of Aboriginal Affairs (DAA) also came into being (Behrendt 2012).

The 1970s saw Aboriginal self-determination manifesting in the form of legal services defending Aboriginal children against removals by child welfare agencies. This led to a decline in the number of removals. Aboriginal and Islander Child Care Agency (AICCA) in Victoria, was the first to offer an alternate to Aboriginal child removal. In 1976, a presentation at the First Australian Conference on Adoption focused on exceedingly large numbers of Indigenous children in non-Indigenous foster care and its disruption of Indigenous childhood (HREOC 1997).

Indigenous organisations vociferously protested discriminatory practices of governmental agencies and advocated for a re-evaluation of Indigenous child removal and placement throughout the 1980s (HREOC 1997). The Aboriginal Child Placement Principle was adopted during this time by NT. This principle substantively reversed all previous legislative principles operating till this point (Swain 2014). In the 1980s major changes were brought about when the Commonwealth sponsored Aboriginal Child Welfare Services and brought about changes in mainstream child welfare services across Australia. The two sets of agencies worked separately and in tandem to provide assistance to Indigenous children. Child Protection Act 1999, brought forth a section on Aboriginal Child Placement Principle stating that Aboriginal and Islander children should be placed in prioritised order with a member of the family, or within the community and language group, in case both these options do not work out the child should be placed with another Indigenous group compatible with its community and culture. In case all these options are unavailable the Aboriginal and Islander child must be placed with an Aboriginal person. Only when

all these options are exhausted should the Indigenous child be placed in non-Indigenous foster care. This Act entailed an end to Indigenous adoption by non-Indigenous parents and was adopted into legislation by all the states (Armitage 1995).

Agencies like Link-Up in New South Wales, trace separated families and are supported by the Commonwealth. The Secretariat of National Aboriginal and Islander Child Care (SNAICC) which was established later has grown into an umbrella agency supervising 100 non-governmental bodies working on day care, counselling, parental guidance, preventing avoidable child and family separations and preventing misunderstandings that prevent Indigenous households from becoming foster families (HREOC 1997).

Aboriginal and Islander Child Care Agencies (AICCAs) help in ensuring the implementation of Aboriginal Child Placement Principle in urban as well as rural and remote areas and help with access to governmental and institution records in reuniting Indigenous children with their families and communities. They also work in cooperation with individual states and the extent of the same may vary over time place and case. Aboriginal and Torres Strait Islander Commission (ATSIC) was established, which in turn paved the way for greater Indigenous participation in decision making and administration than its less effective predecessors in the form of National Aboriginal Conference (NAC) and National Aboriginal Consultative Committee (NACC). The ATSIC dealt with both delivery and advocacy, with elected representatives voicing their community concerns on regional councils. Eventually overburdening of the two services led to its dissolution in 2004 (Altman and Sanders 1995; Clark 2008).

Australia witnessed a tussle between assimilation which entails constituting a homogenous society and integration that favours acceptance of multiple cultural orientations. Originally the British colonist aimed at absorbing Indigenous peoples into the settler fold through conversions to Christianity. This was followed by more pessimistic reading of Indigenous in Australia as a dying people, followed by surge in numbers of children of mixed lineage. The coerced placement of these children in foster families and state run institutions was founded on two reasons (Krieken 2012). The first, entailed the well established rationality of Social Darwinism that entailed

racially inferior conceptualisation of the Indigenous person, whose culture and lineage would eventually die out. The second called for rescuing whatever was white in child's lineage in order to prevent them from degrading, "into barbarism and moral depravity" (Krieken 2012: 502). Initial focus on absorption of children of mixed lineage gave way to discourse centred around citizenship and their welfare. As Robert Van Krieken avers

> It was this organisation of citizenship and identity as 'Australian' around Aboriginality as its negative opposite, as primitive barbarism in opposition to white civilization, which itself underlay barbaric, uncivilised responses to Indigenous Australians... If civilising processes are organised around a self-perception of oneself and one's group- the 'we-image'- as 'civilised' without a corresponding identification with the different humanity of others adhering to different civilizational standards, it is accompanied by aggression and violence towards those who remain uncivilized, largely because of the threat they pose to fragility of the achievements of civilization, and it is this aggression which then underlies the associated civilizing offensives. The state monopolization of violence in fact involved the exercise of that violence on groups seen to lie outside the prevailing standards of civilization, so that civilizing processes involve not simply the reduction of violence and aggression but their rearrangement (Krieken 1999: 309).

Civilizing processes have always been violent and cruel, therefore decolonization of human social relations is urgently needed in order to relate better to those whom we identify as different from ourselves. This would prevent the occurrence of those violent offences that are sustained by objectifying the other as inferior to oneself (Krieken 1999).

History of Separation and Abuse: The Case of Canada

Like Australia, history of child care in Canada is one of state owned residential schools, administered by the church. Aboriginal Child removals through forcible removal followed by eradication of Indigenous cultures through education, religious and linguistic control characterised colonial domination in both the countries. In Canada, residential schools were either boarding houses located inside or close to reserves, or were large industrial schools in urban areas aiming at training children in rudimentary language and trade (TRC 2015c). Before the advent of colonization, Indigenous families and communities cared for their children in accordance with their traditions, laws and cultural practices. Unlike European notions of nuclear families

grandparents were the primary caregivers and the larger community played a pivotal role in the upbringing of children (Sinha and Kozlowski 2013).

Colonisation of Canada entailed treaties between the European and Indigenous peoples who approached education and treaty making with different purposes. In the process colonists eliminated traditional practices of landholding. However the approach to the process of treaty making was different in perspective. While the British viewed the same as a measure of advancing the colonial agenda, the Indigenous in Canada wished to retain control over their resources and the upbringing of children in an era of colonial control over education (TRC 2015b; TRC 2015c).

In 1763, a British proclamation claimed the right to buy land through treaties with Indigenous Nations. This was followed by coming into being of the confederation in 1867. Just prior to the same the Indians Land Act was brought into being in order to force Indigenous peoples to live on reserves. These were remote swathes of land without much access to resources. After forcing them into geographical exclusion Indigenous peoples were subject to humiliating laws that denied them their cultural practices. The nineteenth and the twentieth centuries saw several Indian Acts come into being. Indian Act of 1885 made all Indigenous ceremonies illegal, and in 1914 compelled them to seek prior permission before adorning traditional clothing. Education on reserve was mostly negligible and leaving the reserve meant losing Indigenous status (Filipetti 2016). It must be noted that assimilation is a process that is continuous in nature and can vary in degree over time. It is evidenced in the regulation of Indigenous peoples in Canada (Raymond and Nelson 1974). The Indian Act represented an overarching authority that classified, regulated and controlled what constituted the category of the 'Indian', in its identity and ways of being; till it was amended in 1985. As identity and lifestyle operate within systems of race, gender and class it is important to note that Indigenous peoples negotiated the same in the context of settler colonialists (Lawrence 2003).

Truth and Reconciliation Commission (TRC) (2012) Canada, in the report 'Aboriginal Peoples, And Residential Schools: They Came For The Children', notes that the Indian Act 1876 paved the way for the Canadian government to assume full control over Indigenous systems of governance, land, economy and resources,

religion and personal lives. Both the government and church authorities operationalized a system that ensured erasure of Indigenous cultures, spirituality, languages and customs in Canada. From 1879, the Canadian government systematically separated Indigenous children from their families, placing them in residential schools in order to assimilate them into colonial culture (Sinha and Kozlowski 2013).

Residential schooling by French catholic missions were a failure in the eighteenth century, as Indigenous parents were unwilling to send their children to such schools. In the nineteenth century British colonisers in the form of the New England Company established a missionary boarding school in New Brunswick. The aim was to convert young Maliseet and Mi'kmaq children to Protestant Christians. Similar steps were taken in Ontario and Northwest Territories. Students were given basic knowledge of the English language, arithmetic, history and geography and were trained in basic sciences. The education of Indigenous children was primarily focused on turning them into trained farm hands, labourers and technicians. Soon after the Canadian state was established in 1867 the federal government began providing student grants to church-run all-day boarding schools. The schools were doomed for initial failure as Indigenous parents were reluctant to send their children to places that were lonely and removed them from their language and culture. These were established away from Indigenous reserves and were the only source of education, as a consequence parents who envisioned a future for their children had no choice but to send them far away from their families with a consolidation of the process of colonisation. This was in turn an unwilling compromise as children lost out on their identities and cultural practices. Until 1894 no legislation was brought in place for regulating education in such schools that often housed both First Nations and Métis or children of shared Indigenous and European lineage (Knopf 2008).

In the 19th century Sections 113-122 of the Indian Act legally eroded the rights of Indigenous peoples in Canada as parents and gave guardian ship duties to the government. Part of a larger scheme of assimilation around 130 residential schools were run by Churches and the federal government in collaboration from 1892-1996. In the 1880s the Canadian government began to put in place a system of industrial and residential schools whose intent was the assimilation of Indigenous children into

the working class of Euro-Canadian culture. These schools were mostly jointly funded by both provincial and state governments along with Church missions comprising of the Roman Catholics, the Anglicans, and the Methodists. Although the two types of schools shared the aim of assimilation, there were several differences. Industrial schools were aimed more at providing training for working class jobs, whereas the residential schools aimed at literacy (Muir and Bohr 2014).

However, through the passage of time the aims and practices of the two types of schools blurred. After the reorganisation of Indigenous education in Canada in the 1920s the two were termed collectively as residential schools. Henceforth the residential school system grew rapidly, with 80 schools in 1931 (Woods 2013). Due to inadequate funding teaching staff was mostly untrained and the levels of education were glaringly low in these institutions. Their condition worsened during the 1930s as the pressures of the Great Depression resulted in greater fund cuts (TRC 2012; Tomasso and Finney 2015).

Instructors and administrators of residential schools aimed at doing-away with the character traits of Indigenous adults in these children. Their habitat was shaped in accordance with perceptions that catered to the colonial administrator's racialized idea of childhood, rendering childhood as a social constructed category that has its roots in specific spaces and history (Leeuw 2009). Such a concept also encouraged inter racial adoption. The first statute concerning Indigenous adoption in Canada was passed in 1871; it effectively terminated legal rights of biological parents and handed over the same to strangers. It was not until the 1920s that the so called interests of the child became the primary consideration for inter-racial adoption. At the time of its inception, the generic concept of interests focused mainly on economic and social advantages and did not yet include an acknowledgement of cultural rights and the importance of cultural connectedness. Such a perception was a product of prevalent colonial ideologies that condemned many Indigenous families to land dispossession and poverty, and considered families and communities incapable of raising children (Tomasso and Finney 2015b).

These residential schools became tools for advancing the cause of assimilation and did not provide adequate education or care to their students. They were founded on an

assumption that European civilization was way superior to Indigenous cultures. The process of forced separation for First Nations children from their families declared Indigenous peoples unworthy and incapable of being parents. This continued in the residences where children were separated from their siblings and were forbidden to speak their language, and participate in traditional dance ceremonies. During the 1940s public figures like John house, principal of the Anglican school in Gelichen, Alberta, J.O. Plourde, official of the Roman Catholic Church and George Dorey a United Church Official; asserted the vitality of erasure of Indigenous cultures from residential schools. Like the missions in system in Australia, growth of Christianity as a faith was seen as a success as children were removed from their unique sense of spirituality (TRC 2015i; Varley 2016).

In its final report the TRC (2015e) documents the Métis experience and explains that initially the federal government of Canada sought to prevented their induction in schools, yet the Churches followed the opposite. Post the Second World War provincial authorities provided educational services to a large number of Métis children. Provincial governments and school boards also objected to the idea of schools for Métis communities on reserves hence parents were forced to send their children in far flung areas (Knopf 2008).

Schools that operated in Arctic Quebec pushed students into manual labour, domestic chores and hardly paid any heed to academic progress. At that point in time it was the only Canadian province with a sizeable population of Inuit peoples. From 1939 to the early 1960s, successive governments in the province paid little heed to the Inuit population or to the province of northern Quebec. Following the federal government's decision to expand schooling in the North in the mid-1950s, four hostels were built in northern Quebec. Like the First Nations and the Métis students, the Inuit were denied their language and faith. Although not all students reported abuse in the Northern areas of Canada, all lived in a atmosphere where hardship and humiliation were common (TRC 2015d).

Basic academic achievement or even basic human needs were seldom met in these schools. Lack of uniformity was evident in residential schools across Canada as the Department for Indian Affairs rarely had any control over the manner in which

finances were being utilised. Maintenance of buildings was often the first casualty resulting in fires. This period also saw a glaring rise in deaths due to malnutrition, meningitis, bacterial infections, and tuberculosis. Tuberculosis caused deaths in 48.7% of the cases of mortality that were reported at these residential schools. A child's vulnerability to tuberculosis and the ability to recuperate from the infection were affected by poor diet, hygiene, lack of ventilation, quality of clothing, and poor physical immunity. The federal government did not put in place a screening mechanism that could keep infected pupils out of the schools which in turn exacerbated the crisis. Mortal remains of students who died at school were rarely sent home unless their parents could pay for the journey; which was mostly impossible in poor communities. Most students who died at residential school were buried in at the school cemetery or in the vicinity (Dorrell 2009; TRC 2015f).

Abuse was rampant throughout the residential school system, many victims were subjected to near-death situations. Students were at risk irrespective of gender and the Church denomination in charge. Cases of physical and emotional violence by fellow students were very common. BC recorded the largest number of cases of abuse. Such cases were largely unaccounted and many times wilfully silenced by the authorities. These experiences were common to all residential schools whether in Yukon (YT) and the Northwest Territories (NT) or in Quebec (QC) or BC (TRC 2015b; TRC 2015d).

By the 1940s officials of the Department of Indian Affairs were committed to the closure of residential schools in Canada. As of 1944-45, 76 schools with 8,865 residential students had been operational. These numbers did not include housing campuses in NT. Even when they were operating residential schools were poorly funded and often caught in jurisdictional conflicts between the churches and state authorities. In cases where funding was adequate, Indigenous children were invariably housed in poor and often inhuman conditions due to administrative corruption and ill-will (TRC 2015c).

In 1951, a new Indian Act was brought into place which continued to further governmental goals of achieving 'civilizing' milestones. It called for greater integration among First Nations, Métis and Inuit into mainstream Canada. During the

1960s the Hawthorn Report blamed provincial negligence for the detriment of First Nations and urged greater investment in infrastructure and services for their betterment. In 1969, a Statement of the Government of Canada on Indian Policy was tabled by Pierre Trudeau's government. The White Paper as it was termed, mentioned the need to alter the socio-economic conditions of First Nations, Métis and Inuit peoples in Canada. It pointed out the inherent colonial thrust of the federal policy towards Indigenous peoples and called for greater policy reform (Shewell and Spagnut 1995).

The White Paper 1969 considered treaties, political exclusion, spatial isolation through reserves were obstacles in achieving a homogenous Canadian nation. It aimed at removing the special status accorded to Indigenous peoples in relation to the Constitution of Canada by eliminating the Indian Status and doing away with the Indian Act. It aimed at converting reserve land into private property, with ownership accorded to individual persons; and phase out existing treaties with Indigenous peoples (Cairns 2005). Indigenous peoples had to face the stigma of exclusion and later the pressure of blending into the Euro-Canadian mainstream.

Indigenous leaders refused to buy the argument that doing away with federal responsibility over Indigenous affairs and favouring provincial mechanism of development; could ameliorate existing disadvantages. Indigenous bands go together to oppose this move throughout Canada. The government withdrew the White Paper due to this public outcry. Later brought about the Constitution Act of 1982 which acknowledged the inherent Aboriginal and treaty rights of the Indigenous peoples in Canada. This essentially meant Indigenous peoples had the right to self-government that had been denied to them in the past. The reading of section 35 of this Act is mostly contested depending on the perception employed, as unlike the government, Indigenous peoples believe that such powers can only be 'restored' and not granted by any governmental authority (Schouls et al. 1999).

Until the 1990s, the Canadian federal government worked in tandem with a number of churches to sustain the residential school system. This was despite parallel efforts to shut these schools as they were deemed financially unviable. The federal government had always been overzealous about killing cultural diversity. With 80,000 former

students alive today, visible trauma of a general lack of emotional mooring are evident in the form of poor health, and low educational success rates in Indigenous communities today (Cairns 2005; TRC 2015a).

The Sixties' Scoop and Non-Indigenous Adoption

Andrew Armitage (1995) succinctly classifies the contours of First Nations Family and Child welfare policies into three time periods. Assimilation through church operated and federally funded residential schools was the main focus from the mid 19th century till the 1960s. First was the assimilation period (1876-1960s), followed by integration period (1960-1980s) and the current period of local control (1980-present). The first has been discussed in the previous section. As has been stated earlier, post the Second World War child care services expanded to the rural provinces and diversified wherein parental counselling was provided for children deemed as neglected.

Despite the introduction of the White Paper or efforts at greater homogenisation of Canada, the 1970s saw greater resistance to functioning of the Department of Indian Affairs even as it continued to expand the reach off its programmes. This resistance primarily focused on collective rights and the responsibility to take care of children. This phase was also characterised by rising separatism in Quebec made the federal government enact policies for great Indigenous self-government. This led to dissolution of the Department of Indian affairs and the creation of a Ministry of State for Indian First Nations Relations to ensure both rights and interests previously denied (Shewell and Spagnut 1995; See 2001).

During this decade First Nations began creating service models unique to the experiences of their histories and cultures. Similar practices were being put into place by the Métis and the Inuit. However, the government continued to further non-Indigenous familial adoption and foster care. Despite efforts at greater Indigenous control over child welfare, the decade from 1969-1979 saw 78% of Indigenous children adopted into non-Indigenous families. Families of Indigenous origins rarely met the requisite socio-economic criteria, required to host and adopt children. This strategy worked in furthering the governmental agenda doing away with Indigeneity

and encouraged the envisioned merger into Euro-Canadian mainstream. The relationship between the federal government and the First Nations people was marked by political, social, and economic pressure under assimilatory policies (Carriere 2007).

With the coming of the 1980s the policy evolved to delegate authority on a three tier basis between federal, provincial and band/tribal systems of governance (Sinha and Kozlowski 2013). This was a direct consequence of the transformation of section 35(1) of the Constitution Act 1982 that acknowledged Indigenous rights of self-government and treaties. Despite the same, these agencies operate under the overarching authority of the province adhering to the provincial guidelines and often operate as sub-branches of the larger provincial child protection system. As of now, local control by the First Nations has not been achieved in its entirety. The situation gets complicated when federal agencies, provincial authorities and First Nations welfare have to negotiate for funds (Scmidt et al. 2012; Zinga 2012). Unlike earlier, in the contemporary era Indigenous children are being institutionalized through long-term foster and institutional care with little or no chance for adoption. Long-term childcare and foster care placements for Indigenous children are glaringly high while trans-racial adoption statistics have plummeted (Tomasso and Finney 2015b).

Justice René Dussault (2007), co-chair Royal Commission on Aboriginal Peoples states that when the Canadian Confederation came into being, it assumed that Indigenous communities would eventually lose their distinct identities. Indigenous communities were therefore brought under the common jurisdiction of the Canadian Parliament. Over the years purposive disruption of families, communities and Indigenous governments by colonialism incapacitated the self-reliance of these peoples. He asserted the need to reconcile the wrongs perpetuated by current child welfare systems in order to nurture and not uproot the well-being of children and their communities.

From 1950s till the 1980s services for supporting First Nations were highly inadequate. This in turn led to removal of Aboriginal children from their homes in large numbers, resulting in the ‘Sixties’ Scoop’. Between 1960 and 1990, 11,000 Indigenous children, and many others without status, were taken away from their

families by child welfare authorities. Child welfare policies during this period focused on integrating services for both Status Indians and non-Indigenous Canadians. Youth protection and welfare systems furthered maltreatment of Indigenous children in Canada. During the 1960s such systems failed to address the needs of First Nations communities, as they continued to place children in state sponsored non-Indigenous foster care on the basis of poverty, poor living conditions and lack of medical care. They constituted 4% of the population, yet accounted for 30-40% of children monitored by systems of welfare. This did little to aid the health and well-being of children and their families. Placements in foster care or adoption more or less ensured First Nations children remain away from their families. These were introduced to achieve the same milestones as the previous system of residential schools. Child Welfare Services were sites of abuse as they pressured Aboriginal children into assimilation; primarily through adoptive families. Only a small percentage of the adopted children returned to their families. Those who after years, found themselves alienated from their family, community and culture. "Raised by middle-class, white parents, they grew up with little understanding or awareness of their roots" (Bennett and Blackstock 2002: 22). The children also reported incidences of physical or sexual abuse in immediate and extended foster and adoptive families (Blackstock and Trocmé 2004; Zinga 2012).

Residential schools continued to function with lesser students, and were drastically restructured in 1968; as territorial governments were made directly responsible for their functioning. Amid the rising visibility of First Nations resistance to assimilation and a rising awareness amongst non-Indigenous Canadians, the federal government began shutting down boarding schools. According to some estimates, over 1,50,000 Indigenous children had spent precious years of their lives at these institutions, by the time the last residential school closed in 1996 (Tomasso and Finney 2015a). Policies of colonization, expropriation and assimilation have had major repercussions particularly on the family unit with the breakdown of family ties, and their poor living conditions. The oppressive and systematic implementation of provincial child welfare services on communities only exacerbate the devastating effects on First Nations people that endure poverty, domestic violence, child maltreatment, criminal activity and substance abuse till the contemporary times (Tourigny et al. 2007; Lavergne et al. 2008; Kreitzer and Lafrance 2010).

Settler Colonialism, Cultural Assimilation And Genocide

Colonialism and its effects vary according to location and context. A settler colony emerged when other forms of colonial enterprise were deemed unsustainable. It worked on the premise of occupying a space deemed as a geographical void (Veracini 2010). The colonisers occupied the land to live therefore the occupation followed a permeating structure and could not be reduced to one event (Wolfe 1999). This concept was based on the elimination of the colonised, as evidenced in the colonial narratives that deemed Indigenous peoples as a race doomed to disappear. In cases where the colonised survived, the colonised were subjected to physical and economic decimation; along with political disenfranchisement and subordination (Loomba 1998; Veracini 2013). Indigenous groups were subdued and coerced or completely eliminated as was the case with the Beothuk peoples in Newfoundland, Canada and with Indigenous peoples in Tasmania in Australia (Varennes 1996 ; Docker 2015).

The larger enterprise of settler colonialism pre-empts assimilation. Assimilation is a process through which Indigenous peoples conform or are coerced into conforming into settler norms regarding race, culture and behaviour. The experience of residential schools in both Australia and Canada is a testimony to the fact. Assimilation is premised upon the vision of a homogenised society, and entails imposition of settler lifestyle, and socio-political organisation. Australia and Canada are settler colonial states whose foundations are based on settler domination and dispossession of Indigenous groups within their own land. The nation-state was achieved in both the cases through central legal domination of a unified territory, a homogenised system of education and early attainment of political autonomy from the imperial metropole of Britain. The nation state in both Australia and Canada was founded on a collective naming of the 'other'- Indigenous peoples as biologically and culturally inferior (Pearson 2001). This explanation stand true with respect to the policies regarding residential schools mentioned in the previous chapter and in the section below in greater detail.

Lorenzo Veracini refers to the above as "perception transfer" (Veracini 2010b: 37). This occurs when Indigenous peoples are invisibilised in discourses like 'terra nullis' as is evident in the case of Australia. It also entailed incarceration, expulsion and even

assimilation for Indigenous peoples. Settler colonialism, therefore followed a disciple wherein the Indigenous other was dehumanised and objectified. Tradition forms of hunting, fishing and land use were destroyed and alien forms of agriculture were introduced in both Australia and Canada. This discipline is also what subjected generations of Indigenous children to separation from their families and communities in Australia and Canada. This imposition of a certain manner of thinking, speaking and making sense of the world reflected a certain superiority that violently dismantled Indigenous knowledge, memories, religions and cultures (Smith 1999). Such a process of assimilation was carried out in order to render the colonized undistinguishable from the coloniser (Varennes 1996).

Assimilation entails a complex combination of motives. In the context Australia it entailed specific fears concerning the future of a homogenous white Australian nation that drew its history from a common British lineage. Post the Second World War national progress and cohesion took centre stage as racism lost its legitimacy. Settler nationalism was founded on dispossessing Indigenous peoples from their land and culture, and post 1945, it took the form of cultural affirmation and imposition, disguised in the form of development or uplift of Indigenous peoples (Moran 2002).

Indigenous peoples have been systematically disempowered through the legitimacy of the settler state. As stated in the previous sections displacement occurred on multiple levels, geographic, physical, social and cultural. Ongoing colonization reaffirms the Indigenous person's identity in opposition to the settler one (Barker 2009). An Indigenous person is limited to one who belongs to a certain land in contrast to the settler that can inhabit spaces spreading out from Europe to any other place in the world. Therefore the Indigenous person is always in a contested space negotiating with limited entitlements within colonial system (Shantz 2010).

Settler colonialism can be explained through the analogy of bacterial action. Just as bacteria adapts to the environment and transforms according to different gene mutations and local conditions; settler colonialism creates certain spaces and is itself transformed by local conditions. In settler societies therefore, the initial demand for racial and cultural homogeneity gives way to a sanitised version of diversity in which multiculturalism is defined by the settlers. Both Australia and Canada as settler

societies, were forerunners in defining multiculturalism. In 1971 Canada became the first country to enact a national based on the same in the form the Canadian Multiculturalism Act. According to this piece of legislation multiculturalism was to be encouraged and embraced, and not merely tolerated. This was further bolstered by enactment of legislation regarding anti-discrimination. However this multiculturalism spanned the lives of immigrants was largely ignorant of the condition of large swathes of reserves housing Indigenous peoples (Sutherland 2008). Similarly Australia adopted a policy regarding multiculturalism in 1973. It went beyond the Canadian example by making the concept a part of their national identity and not as a policy focused only on ethnic minorities. The costs of the policy in the both the countries have been extremely high in the form of furthering inter-community segregation and indifference, along with deepening geographic, social and economic divisions. In both countries such a definition created strict boundaries by clearly stating what one group is and what it is not. Settlers in these cases control the political order and are the bearers of sovereignty and subjugate Indigenous populations through various forms of violence (Veracini 2015).

Concept of Genocide and its Implications for Australia and Canada

Raphael Lemkin (1946) stated that genocide destroyed national, religious and racial groups. It is in most cases committed by powerful groups or the state itself. Therefore as a crime it is seldom prosecuted by the state. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNGC) (United Nations GA Res. 1948), clearly established that genocide entails killing the members of a group, causing serious physical or mental harm to the members of a group, deliberate imposition of conditions that cause serious injury or destroy the group in whole or in part, conditions that prevent future births in the group and forced transfer of children from one group to another. Article III clearly states that genocide, conspiracy to commit the same, public and indirect incitement of the act, attempt to commit the act and complicity in committing genocide, are all punishable by law. It was established that genocide constituted a crime against humanity and a state ratifying the same cannot justify such crimes through gaps in domestic legislation or lack of public outrage or interest.

It is important to note that Australia and Canada ratified the convention in 1949 and 1952 respectively (Scott 2004; CCLA 2016). Australia did not implement a domestic legislation corresponding with this ratification until 2002, and fear of litigation by Indigenous peoples prevented the law from applying retrospectively (Scott 2004). In Canada the UNGC was brought in through domestic law in 2000, by the Crimes Against Humanities and War Crimes Act (CAHWCA). Much like the legislation in Australia, it cannot be applied retrospectively for international crimes committed within Canadian jurisdiction. Moreover the Canadian Parliament has time and again asserted that the UNGC is a part of customary international law, hence it is automatically a part of Canadian Common Law (MacDonald and Hudson 2012).

The NISATSIC had been the first thorough indictment of the genocide that Australia committed, with reference to intention with which Indigenous children were removed from their families. The report documented emotional and mental trauma of parents and termed it as genocide, leading to high rates of substance abuse and suicides amongst children. The report stated that

> When a child was forcibly removed that child's entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide (HREOC 1997: 190).

It also asserted that cultural continuity was wilfully denied to a community as a whole with the removal of its children hence constitutive of genocide with reference to Article II, regarding forced transfer of children from one group to the other (HREOC 1997). The NISATSIC or 'Bringing Them Home' report brought forth the inhuman treatment of Aboriginal Australians throughout the 20th century and termed it as genocidal in accordance with the definition endorsed by the United Nations. He elaborates on the last aspect of Article II of this Convention. The violence of the assimilation against the 'Stolen Generations' pertains to the clause on the transfer of children from one group to another that also led to systematic obliteration of Indigenous culture in favour of a European mode of living at a time when children are most receptive of their cultural lineage (Krieken 2004).

Regarding the intention behind removals of Aboriginal and Islander children the NISATSIC took a different stand from a previous official report of the Royal Commission into Aboriginal Deaths in Custody. Unlike the latter that termed such measures as acts ensuring Indigenous preservation, the former termed these actions as products of a vision that entailed destruction of Indigenous cultures. The report clearly stated that mixed intentions were no excuse for discriminatory legislation that continued unabated till 1960; and are argued that the continued placement of Indigenous children in non-Indigenous adoptive and foster can also be termed as genocide; primarily because there can be multiple motivations for perpetrating the same as established by the debates preceding the UNGC. Adopted and ratified by Australia in 1949 the Convention came into force in 1951; after the same the practice of forcible removal of children continued for more than fifty years. The report explicitly called for aiding Aboriginal and Torres Strait Islander communities in dealing with a history of genocide (HREOC 1997).

Arguments to the contrary indicate that the policies followed by legislators from the inception on the Australian state at the beginning of the twentieth century till the 1940s do not qualify as genocide primarily because of two reasons. According to this stream of thought, genocide is equated with the use of violence in the form of killings however clarifies that it can take place without overt use of the same. Absorption required a scale of machinery and resources that the protectors of Aboriginal and Islander peoples lacked. Both the states of WA and NT with the removal and retirement of overtly ambitious administrators like Dr. Cook and A. O. Neville, hardly received any attention during the Second World War even if discriminatory policies regarding marriage, association and child removal remained in place till much later (Manne 2004).

Similarly, Russell McGregor (2004) argues that social and cultural assimilation in the post-Second World War era was a form of governance and not a project for elimination. He asserts that due to ambiguity in defining the term, cultural genocide had been placed outside UNGC. The scholar argues that the NISATSIC fails to take into account the difference between pre-war policies of absorption and post-war policies of assimilation. The latter in his opinion was not determined by exterminatory intentions and segregation unlike the former and was reformatory in nature. While

both doctrines envisioned a nation with racially specific out-group of Indigenous peoples, absorption was focused on blood and kinship ties as formative of a homogenous nation with a common history and origin. Assimilation on the other hand was based on shared duties and rights through which national cohesion could be maintained. According to this view a nation had to be viewed through the ideal of a responsible and self-sufficient citizen. Therefore focused on remodelling Indigenous peoples to fit into the Anglo-Australian imagery of a law-abiding citizen. Russell McGregor, states that as assimilation was reformatory in nature its intention was not to destroy a people; the NISATSIC is incorrect in terming the same as genocide. He argues that this policy was culturally suppressive and brought in greater state surveillance, but it did not seek to obliterate the existence of Indigenous peoples in whole or in part. It was destructive in nature yet does not fit into the category of genocide.

The study finds the above argument unconvincing as the scale and extent of harm caused is not entirely dependent on the extent of financing and administrative capacities involved. In fact in the case of residential schools lack of the same resulted in unwarranted deaths, diseases, malnutrition and neglect. Similarly the above argument ignores the structural attributes of violence that resulted in diminishing all capacities of Indigenous children to say the least and caused inter-generational trauma as mentioned in the numerous studies above. In cases where abuse and purposive spread of diseases did not lead to death, the poorly equipped system based on removing children from their culture foreseeably ensured removal from their communities; which counts as genocide according to Article II (e) of the UNGC (United Nations GA Res. 1948).

Arguably thus a precedent for the terming of inter-generational trauma as genocide in Canada, can be found in the case of Australia (MacDonald 2007). As has been observed the case of Canada is strikingly similar to that of Australia. However the study notices that acknowledgement of genocide within the final report of the TRC and otherwise in the larger ambit of cultural genocide which remains out of the purview of the UNGC. While Canada approved the UNDRIP in 2010 and recently adopted the same in 2016, article 7 of the same states that Indigenous peoples would not be subject to genocide in any form, including the forcible removal of children

from their communities. Even if intentionality regarding forced separation of children and the spread of diseases in residential schools can be proved; Indigenous peoples cannot sue Canada in the International Court of Justice as they are not entities equivalent to states. Similarly establishing intentionality for the forced removals resulting in the 'Sixties' Scoop' would be nearly impossible (MacDonald and Hudson 2012; Fontaine 2016).

However the above arguments are framed on the basis of intentions as being central to the recognition and classification of certain acts as genocide. This focus on intentions has since been reframed regarding the terming of genocide. In legal terms scholars have argued that in cases where intentions cannot be directly attributed in acts involving harms, forcible transfer of children, destruction of a part of a group or even killings; occurrence of a genocide can be established if the consequences are deemed foreseeable. This approach entails that the acknowledgement of the crimes pertaining to the intention to destroy a part, or the whole of a group; should be read as the knowledge that certain acts have a greater probability of destroying a group. Therefore such an approach would establish that actors were purposively ignorant or reckless to the end results of their deeds and establish their negligence (MacDonald and Hudson 2012). Thus the occurrence of genocide through assimilatory policies, post 1945 in Australia cannot be dismissed, just as the forced separation of Indigenous children in Canada through residential schools and later foster and adoptive care. In both the cases the consequences of depriving Indigenous children of their families, kinship and culture by transferring them to another group were foreseeable.

As has been observed by this study the Cases of Australia and Canada share striking similarities in terms of patterns of Indigenous dispossession and child removal, the observations regarding the treatment of Aboriginal and Torres Strait Islander children in Australia, stand true for First Nations, Inuit and Métis in Canada. The practice of forcibly transferring children from one group to another clearly states the intention of doing away with their Indigenous identities (Tatz 1999). As is the case in Australia the occurrence of genocide in removal of Indigenous children is highly contested in Canada. Legal proceedings in courts have struck down references to the UNGC when the claims of the plaintiffs referred to their abuses in residential schools prior to the coming into being of the Convention in 1948. In the year 2005 the Supreme Court of

Canada made it clear that forcible removal of Indigenous children and their placement in residential schools could not be the sole reason for suing the government. However, the court observed that specific cases of abuse, acts of criminality justified legal action. In Canada evidence of purposive spread of diseases, withholding of preventive treatment, involuntary sterilization has come forth in case of residential schools. However legally, if overarching evidence of intention to destroy Indigenous peoples as a group in part or in whole is not proved; the above contention cannot be brought within the legal ambit of genocide in Canada. Similarly the Kruger v Commonwealth Case of 2005, concerned with the 'Stolen Generations' in the 19th and 20th century in Australia, brought forth that no intentionality in causing harm to the children could be established. The High Court observed that neglect can be a failure of the policy of residential schools, however the policy intention was directed at providing the children with an education (MacDonald and Hudson 2012).

Patrick Johnston, in his report on the child welfare system in Canada, states that Indigenous children have been subjected to triple trauma due to separation from parents, family and culture. Adding to the same regarding 'Sixties' Scoop', in the Manitoba public inquiry report Associate Chief Judge Edwin Kimelman equated the provincial foster care statistics for Indigenous children with cultural genocide. He firmly stated that the federal government was destroying Indigenous culture and heritage. This was being done through state sponsored agencies that had no training or facilities to equip disadvantaged families who were forced to give up their children in order to adhere to governmental notions of the 'best interests' of children. The term cultural genocide is not found in the UNGC; however forcible transfer of children from one group to the other, as mentioned in Article II (e) is directly applicable to the case of Indigenous children. As stated by the final report of the Truth and Reconciliation Commission (TRC) in Canada no court of law has legally recognised the transfer of Indigenous children from their racial group to others as genocide (TRC 2015g). The TRC also notes that until recently the forced assimilation of children into Anglo Canadian mainstream was not seen as a policy of oppression. Therefore, cultural rights of Indigenous children take a back seat when there is no room for appeal pertaining to cultural genocide even within the UNGC (TRC 2015h).

The draft of the UNGC included provisions for ensuring the recognition of cultural genocide. Raphael Lemkin stated clearly that complete annihilation of groups was not a necessary for certain acts to be classified as genocide. Genocide in this sense could occur even when an oppressed set of people were made to function within national patterns imposed by the oppressive parties. This was primarily due to the fact that Raphael Lemkin viewed culture as common beliefs, practices and customs, central to collective existence. Culture in this sense maintained the inherent equilibrium and eventually survival of a community. Therefore cultural destruction in form of forbidding the use of certain languages, religious practices; often preceded biological harm and physical attacks. Cultural genocide deprived a group of its beliefs, resources of spirituality, language and ceremonial practices. Cultural genocide was therefore viewed through the lens of vandalism, wherein disruption of cultural practices was coerced. However, within Raphael Lemkin's definition, legal assimilation through state policy, was not considered as cultural genocide. This was primarily due to prevalent notions of trust and faith in western liberal democracies, in the aftermath of the Holocaust. The concept of cultural genocide was eventually dropped from the draft of the UNGC (Moses 2010). As a concept, cultural genocide is defined as wilful destruction or weakening of cultural values and practices of a feared or derided out group. The concept provides a foundation to look at extreme violations of cultural rights (Kingston 2015). The current regime of human rights has mechanisms to deal with the violations of cultural rights and respect diversity through the Universal Declaration of Human Rights (UDHR), International Covenant on Economic Social and Cultural Rights (ICESCR), European Cultural Convention (ECC) and others. States are supposed to comply to these principles on a voluntary basis and even in extreme cases, states are made to desist from the violation of cultural rights. However no criminal responsibility can be placed on states in what is deemed as cultural genocide (Nersessian 2005).

The concept of genocide has also been treated as an analytical one besides its legal dimensions. The UNGC observes that genocide is intentional in nature, however Ernesto Verdeja (2012) argues that one must look beyond this narrow reading of prior intentionality. He avers that a prior intent is nearly impossible to delineate in the case of genocide and inferring the same is relatively easier in case of political repression and civil war. He proposes instead to focus on an intentionality that is emergent and

can be measured on three scales. First is the level of lethal destruction, second pertains to the extent of coordination and the system under which it operates and third is its scope in the terms of the extent of human lives affected. According to this study, genocide is selective and develops over time through strategies that entail legal, social and political exclusion, forced assimilation or even small-scale massacres or expulsion; of certain groups of people. Out-group devaluation by the mainstream or the elite results in all forms of systemic harassment in the form of incarceration and institutionalisation and ultimately in genocide. In such cases it is seen that the leadership or the elite act within broader ideological narratives that frame the negative out-group perception; in such cases they adapt quickly to the situation and change the degree and form of violence according to perceptions of other actors as either allies, enemies or bystanders. This study suggests that the legality of the term should not make us abandon the analytical attributes of genocide. In conjunction with same Mihran Dabag (2005) notes that studies on genocide must consider the overarching structure of both politics and knowledge that enable the possibility of genocide. Genocide entails multiple forms of violence which include humiliation, exclusion and deprivation of rights; that manifest at various stages. Genocide is often legitimised as protecting or rescuing the stability of society and civilization.

The above analysis draws parallels with Lorenzo Veracini's corpus on settler colonialism discussed above, wherein it is believed to change its form and adapt to the environment in order to sustain the settler colonial enterprise. Here one must recount that removal of Indigenous children in both Australia and Canada in the form of residential schools and foster care were taken up to civilize them, bring them into the urban and educated mainstream and provide them the health and well-being they were denied in their own homes. The effect of the same was the opposite while it failed in doing away with Indigeneity as an attribute in each of the two states.

Conclusion

Indigenous peoples in both Canada and Australia have experienced the loss of population, land, culture and spiritual practices due to colonialism. European rule was enforced through the killing of Aboriginal leaders, destruction of settlements, removal of children, outlawing of ceremonial practices, banishment of medical practitioners

and limited access to land and natural resources. Actions of the states post coming into being of the confederation seem to take the lead from their origins. Settler Colonialism and its accompanying attributes of assimilation, exploitation and inequality cannot be relegated to a historic past, as these experiences manifest inter-generationally in Indigenous in the form of poverty, physical and mental ill-health, lack of social and community development in both the countries (Hunter 2008; Wesley-Esquimaux 2010; Lonne et al. 2013). Residential schools have thus been replaced by state sponsored foster care; while the concerns regarding cultural assimilation remain relevant and largely unaddressed. The International Labour Organization Convention (ILO C169) provides for protection of minority groups against assimilation, however it must be noted that neither Australia nor Canada has ratified the same.

The concept of genocide against Indigenous children and communities in different eras after coming into being of the two states remains a matter of debate. As the discussion above states genocide as a legal category cannot be closed off and relegated to the side, but needs to be explored analytically. As stated by Ernesto Verdeja (2012) intentionality pertaining to the crime, needs to be treated as emergent in nature. As Mihran Dabag (2005) suggests, intentionality itself needs to be looked through the prism of politics and overarching systems of knowledge that enable genocide. The study suggests that this overarching system of settler colonialism enabled several forms of genocide in Australia and Canada. The next chapter looks into the denial of genocide, along with apologies for wrongs committed against Indigenous children and subsequent efforts at reconciliation in the two countries.

CHAPTER THREE

RECONCILIATION AND INDIGENOUS CHILDREN IN AUSTRALIA AND CANADA

In settler states of Australia and Canada, the sense of nationhood is not dependent upon Indigenous peoples' access to the state and greater representation in institutions of power. This is due to the fact that state identity remains focused on that of a settler in each case. Miranda Johnson states that reconciliation in each of these cases has been termed in such a sense that, "the authority of the settler state has been cast away from the former imperial metropole and localized in terms of more Indigenous claims of political belonging" (Johnson 2011: 187). As previously mentioned settler colonial rule is predicated upon and sustained by non-recognition which destroys the culture of the colonised and imposes its own institutions and language. As cultural identities are nourished by institutions and language, groups whose culture has been disregarded or shamed need public recognition of their loss and trauma in order to re-establish their status as equal members of a polity. Deliberate misrecognition of minority cultures therefore is an act of oppression (Taylor 1995). Reconciliation in these societies is therefore bound with this recognition of difference pertaining to Indigenous peoples. Australia and Canada are states that coming to terms with violations of human rights is a huge challenge for stable democracies as distinct from post-conflict transition states; that seek reconciliation with sections of their populations. In these cases state responsibility for the injustices of the past, is linked to its constitutional continuity and enduring institutional responsibility (Murphy 2011).

Reconciliation within settler societies challenges the state to render visible Indigenous lives and experiences, that its colonial enterprise deems as invisible. Indigenous peoples are segregated in physical and mental spaces in settler geographies and imagination in locales that are not of their choosing. In terms of reconciliation it is witnessed that the right of Indigenous peoples to not engage with the state on non-negotiated terms or to not participate in the so called process is never given any credence. In the case of Canada a settler administrative system finds itself in contrast with Indigenous forms of self-governance. Therefore while one seeks to analyse the

relationship between non-Indigenous and Indigenous peoples in settler states one needs to understand concerns regarding the creation of a social context that addresses Indigenous vulnerabilities and reduces the chances of further violence. It has been observed that settler societies do not view vulnerabilities and violence as a consequence of colonialism, and place the burden of reconciliation on Indigenous peoples by perceiving their living conditions as products of cultural failure (Clark et al. 2016).

Reconciliation in these two cases brings forth state responsibility to investigate and settle historical wrongs committed against Indigenous peoples. In this sense reconciliation is usually framed as retrospective, wherein historical wrongs are dealt with, thereafter a postcolonial nation can be created wherein Indigenous and non-Indigenous persons share a relationship of interdependency within a constitutional framework that does not necessitate any shift in political power in favour of Indigenous peoples, and reinforces the authority of the settler state (Johnson 2011). Therefore reconciliation in both Australia and Canada is bound with the process of exclusion and inclusion that necessitates a dialogue between Indigenous peoples and the nation state (Schaap 2005).

Reconciliation in Australia

Government policy of removing Indigenous children of mixed lineage, from their families resulted in the creation of the ‘Stolen Generations’. This policy was followed from 1910 until 1970, displaced an estimated number of 25,000-50,000 Indigenous children from their families. These were a direct consequence of a vision for ‘white Australia’ or cultural homogeneity, an expression of Australian settler nationalism based on paranoia regarding Indigenous peoples and cultures. This lead to dispossession of Indigenous peoples and disappearance of a large section of their population. Indigenous disadvantage in all matters relating to land, autonomy, health, law and justice, education, infrastructure and economic development. Incarceration of Indigenous persons was disproportionate as compared to their population and over half of the youth in prison were Aboriginal and Torres Strait Islander (Moran 2002).

The 1950s saw Indigenous peoples in Australia come together with the settler population to form the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders (FCAATSI); to combat constitutional discrimination. This led to the referendum with 90% of Australians supporting the amendment of section 51 (xxvi) of the constitution whereby the federal government got the power to legislate over matters pertaining to the Aboriginal and Islander population. The referendum also led to the deletion of section 127 whereby Indigenous peoples came to be counted in the census. However prior to these constitutional changes Indigenous adults in Australia had secured the right to vote in federal as well as state and provincial elections. Policies of racial discrimination had also been removed through legislation in all states except QLD, WA and NT (Bond 2012; The Conversation 2017)

In 1987, the Royal Commission into Aboriginal Deaths in Custody looked into 99 cases of Indigenous deaths in prisons and other state institutions over a decade (Read 2010). Report of this Commission (1991) was instrumental in cultivating public support for institutionalisation of the process of reconciliation. Passage of Council for Aboriginal Reconciliation Act (1991) established the Council for Aboriginal Reconciliation (CAR) to enable a process of reconciliation between Indigenous and non-Indigenous peoples in Australia. The CAR aimed at understanding Aboriginal dispossession and disadvantage through a deeper study of Indigenous history and cultures. The Aboriginal and Torres Strait Islander Commission was established in between in order to develop a treaty with Indigenous peoples in Australia. This commission was headed by an Indigenous person along with elected commissioners with an authority over regional councils of Indigenous peoples. The idea of a treaty was soon abandoned due to fears of a voter backlash. The CAR, however did have a positive impact in terms of changing non-Indigenous perceptions of the history and ongoing trauma of Indigenous peoples in Australia. The council operated through study circles in universities, churches and community halls wherein both Indigenous and non-Indigenous persons sat together and discussed the state of affairs. Similar initiatives were taken up for government officials through day long seminars with Indigenous leaders. Such an orientation of officials and the larger public, brought forth the larger concerns of Indigenous peoples (Barta 2008; Bond 2012).

At the end of 1992, PM Paul Keating acknowledged prejudice that robbed Indigenous peoples of their lands, language and tradition. Their families were disrupted through the removal of children and substance abuse was heightened under these circumstances. After this acknowledgement and setting up of the Human Rights and Equal Opportunities Commission (HREOC) inquiry into child removal, appeals for an official apology followed (Brennan 2004; Barta 2008).

In October 1994 'Going Home Conference' in Darwin, representatives from all the states and territories of Australia met to come up with strategies to bring forth the history of children who were removed from their families and communities. At the same conference the Minister for Aboriginal and Torres Strait Islander Affairs, Robert Tickner, announced that he intended to inform the Attorney General and write to the HREOC to conduct an inquiry into the matter. This national inquiry came into being after judicious lobbying by activists and organizations such as Link-Up, which helped members of the 'Stolen Generations' come into contact with separated family members. This national inquiry was not a legal trial and it was not constituted as a truth commission. It exposed historical wrongs committed by settler Australia towards Indigenous families and communities in the garb of assimilation. The terming of forcible removals as markers of genocide and consequent recommendations for reconciliation through reparations led to vigorous and polarising debates. Genocide, as a term had been used to denote colonial and contemporary violence was used with reference to Indigenous children in the context of governmental control and assimilation (Gigliotti 2003; Kennedy 2011).

National Inquiry into the Separation of Indigenous Children

As a consequence the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (NISATSIC), from Their Families was established in May 1995, headed by Sir Ronald Wilson, President of HREOC and former High Court judge along with Mick Dodson, the HREOC Social Justice Commissioner. This inquiry was conducted over a span of two years with a budget of AUS$ 1.5 million as compared to AUS$ 30 million allocated to the Royal Commission into Aboriginal Deaths in Custody. For two years the HREOC conducted hearings in each capital city and numerous regional centres, and received 777 submissions in total which included

535 submissions by both Indigenous groups and individuals. In 1997 the publication of the HREOC's report, 'Bringing Them Home: National Inquiry Into The Separation Of Aboriginal And Torres Strait Islander Children From Their Families' brought to the fore harrowing details of the lives of Indigenous children, who were taken away from their families and communities. The report stated that many Indigenous children were removed at an early age, while most were taken away at a school-going age; primarily due to paucity of resources. Institutions of placement were managed and run by non-Indigenous staff, similarly non-Indigenous families became homes for foster and adoptive care (Vijeyarasa 2007; Short 2008).

The report stated that Indigenous children were brought up on a narrative of lies wherein they were either told that they were abandoned by their biological families or their kin had died. Families were far removed from their children and had little or no knowledge of their whereabouts. Children were mostly abused and exploited for their labour both at institutions and in foster care. Children grew up sans their families into adults with low self esteem, depression, substance abuse and various mental illnesses due to childhood trauma. They were conditioned into rejecting or being ashamed about their Indigenous lineage. The report also pointed out that since 1874 individuals within the operative system of child removal had warned of its detrimental consequences on Indigenous children, families and communities; that was completely disregarded by subsequent authorities in power. The continuance of such policies by the Australian state was found to be a serious violation of human rights, racially discriminatory as Indigenous children were subject to such removal based on their ancestry. The report further stated that forced removal of children constituted as an act of genocide. As the Convention on Genocide delineates that the forcible transfer of children from one group to another with the intention to destroy the targeted group constitutes as an act of genocide. The report made 54 recommendations including tracing of families, services for reunion and disclosure of all relevant records. These included acknowledgment of truth by all the concerned parties, an apology by the federal and the state governments, guarantee against non-violation in the future, rehabilitation of victims and compensation (HREOC 1997).

From 1991-2001 the rates for ownerships of homes by Indigenous peoples grew marginally whereas other indicators of socio-economic progress like health, income,

fulltime jobs, life accessibility showed hardly any improvement. Marginal gains in educational qualifications were diminished by huge differences in retention rates and performance as compared to non-Indigenous persons. During this period PM John Howard had explicitly stated that the government aimed at reducing Indigenous disadvantage as a policy of realistic or 'practical' reconciliation. This approach of ameliorating socio-economic disadvantage through simplistic policies of greater funding largely ignored historical factors that shape Indigenous disadvantage. Rights discourse based on historical ownership of land and resources closely connected to cultural and spiritual life of Indigenous peoples was sidelined to feature greater attention to so called realistic policy concerns. Factors such as social alienation, absence of parenting in case of 'Stolen Generations' that lead to substance abuse, domestic violence and greater crime rates were largely ignored in this policy discourse. The so called 'symbolic' reconciliation had a huge impact of emotional and psychological well-being of Indigenous peoples in Australia especially in the context of historical wrongs committed through administrative policies (Altman and Hunter 2003).

At this point in time, between 1998 and 2000 the death rate for Indigenous infants was four times the rate of their non-Indigenous counterparts; significantly lowering life expectancy of the communities. In the same period death rates for both Indigenous men and women in the ages 30 and 64 years were seven times higher as compared to the rest of the population (Merlan 2005; Short 2008).

Responses to the National Inquiry and Efforts at Reconciliation

The responses to the 'Bringing them Home' report or NISATSIC were myriad. On 27th May 2000 CAR sponsored a meeting of public leaders wherein government failings pertaining to the 'Stolen Generations' and land rights were brought to the fore. The second day of this 'Corroboree' or meeting of minds saw a people's walk for justice and reconciliation across the Sydney Harbour Bridge. The government allocated $52.9 million in June 2002 for a span of four years for health services and family reunion (Vijeyarasa 2007; Short 2008).

The report recommended that reparations should be made in terms of acknowledgement and apology. Official guarantees against repetition of acts and measures of rehabilitation and restitution were also stated. The report highly recommended monetary compensation for individuals who were taken away as children, descendants of such individuals, family members and communities. It called for the parliament, churches, police forces to apologise; and Aboriginal and Torres Strait Islander Commission (ATSIC) along with the CAR to organise a national 'Sorry Day' to acknowledge and commemorate forcible removals. Implementation of the convention on Genocide domestically, adequate funding for family reunion and policy building for ensuring social justice and negotiations at regional and community levels for self-determination; were also amongst its suggestions (HREOC 1997).

Non-Indigenous peoples in Australia have continually expressed support for reconciling with Indigenous peoples. However there is considerable disagreement regarding the form of reconciliation, Especially regarding governmental management of relations between non-Indigenous and Indigenous peoples in Australia. The prospect of an official apology to the 'stolen generations' was deeply contested as the policies that resulted in separation of Indigenous children were undertaken with the good-intention of bringing them into the so called mainstream. Similar suspicions were also evident in public opposition to the granting of specific rights to Indigenous peoples and negotiation of a treaty between them and the government (Moran 2002).

Despite the above, from the end of the twentieth century till the first decade of the twenty-first, Indigenous peoples in Australia continued to encounter discrimination and disadvantage on a daily basis due to both attitudinal and structural mechanisms (McConnochie and Nolan 2006). The Indigenous population accounted for close to 3% of the population, while their life expectancy was seventeen years lower than the rest of the population. They were three times more likely than the rest to be unemployed, twice as likely to be threatened by violence or be victims of violent acts (Johnston 2009).

Post the NISATSIC, another report titled, Forgotten Australians: A Report on Australians who Experienced Institutional or out-of-home care as Children (FAR), looked into matters pertaining to unlawful treatment of children in both governmental

and non-governmental institutions, foster homes and all licensed institutions that catered to the care of children. It investigated 440 public and 174 confidential submissions. This report did not exclusively focus on Indigenous children yet it concluded with identifying cases of sexual abuse, illegal confinement, malnutrition and other forms of physical and emotional violence against Indigenous children. The report identified long-term socio-economic consequences of child abuse as lack of trust in proximate people, lack of social skills, involvement in high risk behaviours and an inability to maintain healthy personal relationships. Indigenous children came were also reported to have acquired mental illnesses after going through traumatic experiences. The report explicitly acknowledged role of the administration and care delivery mechanisms in failing children (Commonwealth of Australia 2004).

Reconciliation in the Australian context must be seen through the lens of nation building especially when both leadership and policy are used to mould public consciousness and in some cases build legitimacy for policy rhetoric. Post 2001 CAR was replaced with Reconciliation Australia, an independent non-profit organisation responsible for building trust between Indigenous peoples and the larger community in Australia. It primarily entailed spreading awareness regarding Indigenous cultures, histories and identities. This must be seen as a response to Indigenous identity wherein self-determination, rights of first nations and issues regarding treaty were increasingly brought forth through greater activism. The organisation basically vouched for acceptance of historical injustices in order to ensure greater equality and equity in the present times. These aspects of reconciliation are termed as ‘hard’ and must be seen in contrast to ‘symbolic’ reconciliation in the form of apology, citizen’s initiatives and marches. This so called ‘practical’ reconciliation aimed at ameliorating Indigenous disadvantage in health, housing and education that continues to have assimilatory underpinnings as it sidelines the discourse based on unique rights of Indigenous peoples in Australia. ‘Practical’ reconciliation therefore assumed that Indigenous populations need to reconcile themselves with dispossession of culture, land and resources in order to sustain the mainstream non-Indigenous sense of Australian nationhood (Burridge 2007).

Sarah Maddison (2012) avers that recognition of historic injustice entails “moral disgust” that stands in deep contrast with the official national narrative supported by a

celebratory and invisibilising reading of Australia's history (Maddison 2012: 701). 'Practical' reconciliation in Australia emphasised nation building as a foundation of reconciliation while settler colonial history was sidelined. It entailed continuous denial of a sense of guilt amongst non-Indigenous peoples in Australia regarding their colonial past. Redressal of wrongs of the past, persistent dimensions of inequality due to historical injustice and skewed intergroup relations; took a back seat within this approach. In this manner 'practical reconciliation' stood in contrast to affirmative action, as it refused to acknowledge the causes of disparity between Indigenous and non-Indigenous lived experiences and conditions; or in short their unique social identities. Scholars document a direct correlation between rising inequality perceived as negatively impacting non-Indigenous identity and non-Indigenous support for ameliorating living conditions of Indigenous persons. When inequality is viewed as illegitimate and reflecting poorly on non-Indigenous identity there is great participation of non-Indigenous persons in facilitating social change. They advocate a policy that brings together both 'symbolic', in terms of apology and acknowledgement of past wrongs and 'practical' in terms addressing Indigenous disadvantage; aspects of reconciliation in a manner that is attuned to the intertwined experiences of the past and the present of both Indigenous and non-Indigenous social identities. Understanding this difference and thereby promoting inter-group dialogue subverts the assimilatory undertones of one unique national identity as advocated by PM Howard (Subasic and Reynolds 2009; Paradies 2016).

Between 1998 and 2003 Australia witnessed acknowledgement and apologies for the wrongs of the past, through the governments of states and territories. Governments of TAS, QLD, WA, SA and NSW established redress funds for the 'Stolen Generations' (Hollinsworth 2012; Haughton 2017). PM Howard led a 'motion of reconciliation' in the parliament in 1999, in which he expressed deep regret for the pain caused to Indigenous communities; by the policies of the past. This statement clearly fell short of an apology as the PM firmly believed that the present generation of policy makers cannot be held guilty for the actions the past leadership (Corntassel and Holder 2008).

Federal Apology and further Efforts for Reconciliation

Subsequently after 11 years of denial under PM John Howard, the federal government followed suit. On 13th February 2008 PM Kevin Rudd apologised to the 'Stolen Generations' of Australia in the parliament, in a televised event. The PM honoured the Indigenous peoples of the land and emphasised that the 'Stolen Generations' were a shameful chapter of their history. By stating the same the PM also relegated separation of Indigenous children from their families to the past and not an aspect of the present. The apology significantly emphasised the word 'sorry' with regard to children, families and communities that were separated from loved ones due to government policies. He stated the following,

> That today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history. We reflect on their past mistreatment. We reflect in particular on the mistreatment of those who were Stolen Generations—this blemished chapter in our nation's history. The time has now come for the nation to turn a new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future. We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians. We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country. For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry. To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry. And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry. We the Parliament of Australia respectfully request that this apology be received in the spirit in which it is offered as part of the healing of the nation. For the future we take heart; resolving that this new page in the history of our great continent can now be written. We today take this first step by acknowledging the past and laying claim to a future that embraces all Australians. A future where this Parliament resolves that the injustices of the past must never, never happen again. A future where we harness the determination of all Australians, Indigenous and non-Indigenous, to close the gap that lies between us in life expectancy, educational achievement and economic opportunity. A future where we embrace the possibility of new solutions to enduring problems where old approaches have failed. A future based on mutual respect, mutual resolve and mutual responsibility. A future where all Australians, whatever their origins, are truly equal partners, with equal opportunities and with an equal stake in shaping the next chapter in the history of this great country, Australia (Parliament of Australia 2008: 167).

The apology specifically addressed a future wherein the aggrieved peoples had received the statement of regret as a resolve against repetition of past atrocities. It emphasised on reducing disparity between the non-Indigenous population and Indigenous peoples based on mutual understanding and accountability for a "future that embraces all Australians" (Parliament Of Australia 2008: 167). This ceremony was marked by the presence of former Prime Ministers like Malcolm Fraser, Paul

Keating, Bon Hawke and Gough Whitlam, and the absence of John Howard. Brendan Nelson, leader of the opposition tendered an apology after that of the Prime Minister. He detailed the painful experiences of Indigenous children from their families; however reiterated the belief that current generation of policy makers should not be held guilty for the actions of the past (Wright 2008). Ali Cobby Eckermann (2010), an Indigenous writer and activist, states that the reiteration of the current conditions of Indigenous peoples in Brendan Nelson's speech reeked of an arrogance that made the listening crowd turn their backs to him. As crowd booed the speaker and many began to leave, the iteration of the word 'sorry' by the leader of the opposition was the only saving grace. Despite the same many Indigenous peoples accepted the apology by the PM, and were grateful for the same; as their presence in large numbers marked the ceremony. However most emphasised the need to redress current socio-economic conditions that are a direct consequence of historic trauma (ABC News 2008). The ceremony ended with Indigenous elders presenting a 'coolamon', a traditional vessel to both the PM and the leader of the opposition; who then went on to present the same to the speaker of the house, Harry Jenkins (Wright 2008).

This apology clearly fell short of acknowledging the rights of Aboriginal and Islander peoples as culturally distinct entities. It served the national narrative of defining Indigenous peoples as interwoven to the 'white' Australian mainstream. The term genocide failed to find a mention in the national apology primarily because Australian society views the Indigenous condition today as clearly distinct from the past. Circumstances of Aboriginal and Islander lives, high rates of deaths in prison in the present cannot be ameliorated through settler attitudes to the same. Therefore acknowledging the unacknowledged genocide in Australia would entail seeing the same from the beginning of European settlement (Barta 2008).

The next year PM Kevin Rudd announced six specific goals in order to 'close the gap' between Indigenous and non-Indigenous population in Australia. These goals spanned significant dimensions regarding health, housing, education and employment and the government pledged $4.6 billion to be utilised over a decade in order to achieve the same (Seidman 2014). It is important to note that rights of Indigenous children formed a crucial part of these goals. As they aimed at increasing life expectancy, reducing infant mortality below the age of five, ensuring access to

education in early childhood especially for children living in remote communities. These goals also aimed at reducing the gap in educational achievements of Indigenous and non-Indigenous children by half. Three reports track developments regarding the above. First is the Prime Minister's annual report, followed by Productivity Commission's biennial report and finally the Coalition of Australian Governments' (COAG) report. While progress has been recorded in terms of reduction in child mortality, education in early childhood and attainment of academic skills till the age of twelve; much needs to be achieved in terms of life expectancy, educational achievements and outcomes in employment (Gardiner-Garden and Simon-Davies 2012).

The NISATSIC had recommended a national fund for compensation funded by all state and territorial governments, however such a federal fund is yet to take shape. Many victims find the lack of a national fund for compensation a humiliating evidence of the lack of political will to substantively redress the wrongs of the past (Hollinsworth 2012, Brennan and Peacock 2017). Much of its recommendations are yet to be implemented. In the meantime a national scheme for redress regarding victims of sexual abuse has been established. 15,000 members of the 'Stolen Generations' are alive today and require a needs based approach to address their pain. Reconciliation in this context requires special governmental focus on health and socio-economic wellbeing of Indigenous peoples (Bickers 2017).

Ongoing Challenges to the Process of Reconciliation

Despite these efforts at reconciliation, wrongs regarding separation of Indigenous children from their families cannot be relegated to the past in Australia. Indigenous children are 10 times as likely to end up in alternate care as compared to their non-Indigenous counterparts. They make up 5.5% of the population and yet constitute 35% of the children placed in out-of-home care; which higher than the corresponding numbers at the time of the PM's apology. 45.3% of Indigenous children in out-of-home care were placed within their extended families in 2007, this number was considerably reduced to 35.9% as of 2016 (Behrendt 2016). Chris Sarra (2017) warns that if the situation is not adequately addressed soon Australia as a nation may have to

apologise to another ‘Stolen Generation’ twenty years from now. Reconciliation as a process entails that wrongs of the past should not be repeated (Verdeja 2009).

Life expectancy amongst Indigenous men remains 10.6 years shorter than those of non-Indigenous men. For women gap rests at 9.5 years. The goal of halving the gap in infant mortality continues to remain off track despite a decline of 33% since 1998, in mortality amongst Indigenous children. The PM Malcolm Turnbull acknowledged these failures and stated that the government would include an Indigenous commissioner in the Productivity Commission in order to evaluate current policies in Aboriginal and Islander affairs. However much needs to be achieved in reversing fund cuts of $500 million for Indigenous peoples during the Tony Abbott era (Hunter and Gordon 2017). The study observes that ongoing separation of Indigenous children from their families needs to be urgently addressed by the state of Australia in order to reconcile with Indigenous peoples.

Acknowledgment and accountability are central to reversing the dehumanizing effects of acts of violence. As accountability entails understanding the extent of harm caused by the offending party’s actions. Apology follows accountability wherein the act of apologising gives the offender a chance to relate to victims on a moral level and distinguish herself from violatory actions of the past. It gives the victims an opportunity to relate to the offender on a personal level and even explore the possibility of forgiveness. The third aspect of restorative justice is voice. It pertains to voices of victims and their communities that are heard, and acknowledged and the voices of the offenders who are given the opportunity to apologise. However it is important that forgiveness is not coerced or even expected of the victims, it has to be voluntary in nature. Scholars mention that it is crucial that social policies reflect a multiplicity of voices in order to be an effective tool of restorative justice (Moran 2006; Short 2008). The study argues that voices of Indigenous communities symbolise their agency; which is indeed crucial in rebuilding their capacity to ensure a wholesome life for their children. Therefore, it is crucial to understand the rights of Indigenous peoples as a community, in order to further the cause of reconciliation.

In Australia, immigrant minorities chose to become citizens of settler nations. In the process many Indigenous peoples lacked that choice and had to cede both their lands

and political autonomy. Therefore recognition of Indigenous rights through rights of citizenship guaranteed by the settler state of Australia is a consequence of internal colonialism that does not acknowledge Indigenous political sovereignty. James Anaya argues that self-determination entails both consent and participation in a manner that mirrors the will of people being governed. Indigenous peoples' call for self-determination based on the fact that they are self-governing entities despite the history of colonisation. Citizenship rights within the settler state have enabled assimilation, as they seldom acknowledge unique status of Indigenous peoples, their laws, forms of government and autonomy. In Australia negotiation of a treaty over sovereignty of Indigenous peoples is much sought after. The continent had been colonised by force and no negotiations or treaties had taken place between the colonisers and the Aboriginal and Torres Strait Islander peoples (Anaya 2000; Short 2008).

Australia's constitution lacks any formal reference to its Indigenous peoples. A referendum regarding such a recognition has been debated over the years, as it is the only mechanism to change the Australian constitution. Several factors could possibly shape such a recognition. Recognition of Indigenous peoples as the first occupiers of the land, removal of Section 25 of the constitution that calls for banning people from voting on the basis of race and a ban on all forms of racial discrimination. Constitutional change gained through the referendum of 1967 enabled the federal government to make laws for Indigenous peoples in Australia, through section 51(xxvi). However it did not specify the nature of these laws as necessarily advantageous to the cause of Indigenous peoples, resulting in greater suspicion of the provision. The referendum could also call for the establishment of an Indigenous advisory body to the parliament to communicate community concerns. The exact nature of the referendum and what it would entail is not yet clear. As of now the referendum is stated to take place in 2018, after skipping the stipulated deadline of May 2017 (Henderson 2015; The Guardian 2016).

Reconciliation in Canada

Since reconciliation takes place in various political settings, location and context are crucial to understand and develop the process. In the case of Canada the legacy of colonisation impacts the economic, political and social lives of Indigenous peoples.

Both historical and contemporary attitudes reaffirm and rationalise current policies of the Canadian state towards Indigenous peoples, and Indigenous identities continue to bear the emotional, mental and physical burden of policies regarding residential school system (Rice and Snyder 2012). Residential schools in Canada were co-managed by churches and the federal government. The Canadian government withdrew from this partnership in 1969 and took over the school system, only to transfer the authority to Indigenous bands later. Criminal investigations into the abuse within residential schools began in 1980s followed by testimonies by a few survivors that encouraged others to come forward and narrate their trauma (Stanton 2011). The Institute on Governance (TIOG) (1997) delineates crucial aspects of the final report of the Royal Commission on Aboriginal Peoples (RCAP); which was an enormous exercise undertaken to understand the living conditions of First Nations, Métis and Inuit peoples in Canada and possible means of reconciliation. This Commission was founded in 1991 and functioned for over five years to come up with a strategy to move ahead while recognising the colonial relationship between Indigenous and non-Indigenous peoples in Canada.

Reconciliation in the Canadian context is therefore underway between the survivors and churches, governments and the society at large. Reconciliation in its first stage promises a new relationship between Indigenous and non-Indigenous people through networks of families and communities. Families and communities are considered as parties to reconciliation primarily because wrongs committed in the past targeted the cultural and socio-economic continuity of Indigenous peoples as a whole. These wrongs went beyond targeting individuals and incapacitated Indigenous communities at large (Castellano 2012).

Beginning of the Process and Policy Follow-Up

The RCAP was established in 1991 and through its public hearings in as many as 96 communities, it brought to the fore formerly silenced voices. The Commission recommended a public inquiry into the residential school system. The RCAP called for mutual recognition based on co-existence and equality among non-Indigenous and Indigenous peoples and most importantly Indigenous self-determination. Mutual-respect based on recognition of the unique cultures of Indigenous peoples was a

natural follow-up to the above recommendations. The Commission strongly recommended sharing of land and resources based on new forms of government that enable decolonisation of the relationship between Indigenous peoples and the government based on mutual responsibility. It stated the need for restructuring the government in a manner that embodies Indigenous jurisdiction over land and resources along with financial assistance to Indigenous governments especially control over child development and care. Much needs to be done in terms of securing the former, however certain developments have taken place regarding Indigenous control over the latter in Canada (AFN 2006; Lightfoot 2015).

In 1993, Archbishop Michael Peers apologised to Indigenous peoples on behalf of the Anglican Church of Canada in Ontario. His statement emphasised on healing through constant effort on part of the church (Hiltz 2012). Phil Fontaine, a vociferous advocate for the rights of Indigenous peoples, was elected as the National Chief of the Assembly of First Nations in 1997. He immediately commenced negotiations with federal government and the churches for settlement for IRS survivors. Civil litigation resulted it compensation for a few survivors, though it was financially and temporally exhausting. Criminal prosecution brought justice to the survivors, though it accomplished little in terms addressing systemic problems of the IRS (Stanton 2011). In March 1998, the Minister of Indian Affairs, Jane Stewart issued a statement of reconciliation for those physically and sexually abused in the Indian Residential Schools (IRS) system. Following the same the government established a Aboriginal Healing Foundation (AHF) with $350 million in funds for community based healing programmes (Castellano 2012; Newhouse 2016).

In 2003 Alternative Dispute Resolution process (ADR) was established in order to look into the increasing number of lawsuits and media campaign against the government and the IRS. The ADR focused on both financial and psychological aspects of compensation but came under severe criticism for demanding a high standard of proof in all cases of abuse, leading to denial of several claims. ADR aimed at remedying the fallacies of civil litigation but failed to streamline its functioning in order to holistically address the survivors needs (Stanton 2011). In 2005 all the parties involved began resolution of these claims under Indian Residential Schools Settlement Agreement (IRSSA) and the court began supervising monetary

compensation in each province and territory. The entire process was finalised in 2007 post which an independent assessment of cases of abuse also took place; along with establishment of a health programme for survivors, memorial projects commemorating the victims and foundation of the TRC. The Commission in this case envisioned a focus on the truth and narrative as bringing forth what had been largely invisibilised earlier. IRSSA composed of a Common Experience Payment (CEP) that compensated Indigenous survivors with $10,000 for the first year of IRS attendance and $3000 for each subsequent year of school attendance that marked a separation from their culture and language. An Independent Assessment Process (IEP) adjudicated claims in quasi-legal hearings and healing programmes with a budget of $125 million, that were managed by AHF over a span of five years. $20 million were spent to fund community-initiated commemorative projects. However compensation has been limited to students of residential or boarding schools concerning primarily First Nations peoples, Métis peoples are yet to be compensated for attending day schools in which they went through similar experiences of trauma (Park 2015; Galloway 2016).

Federal Apology

Prime Minister Stephen Harper apologised for the IRS in the Parliament on 11th June 2008 and stated the following (Menkel-Meadow 2014).

> The treatment of children in Indian Residential Schools is a sad chapter in our history. For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools. Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country. One hundred and thirty-two federally-supported schools were located in every province and territory, except Newfoundland, New Brunswick and Prince Edward Island. Most schools were operated as 'joint ventures' with Anglican, Catholic, Presbyterian or United Churches. The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential

> schools and others never returned home. The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language. While some former students have spoken positively about their experiences at residential schools, these stories are far overshadowed by tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children, and their separation from powerless families and communities. The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today. It has taken extraordinary courage for the thousands of survivors that have come forward to speak publicly about the abuse they suffered. It is a testament to their resilience as individuals and to the strength of their cultures. Regrettably, many former students are not with us today and died never having received a full apology from the Government of Canada. The government recognizes that the absence of an apology has been an impediment to healing and reconciliation. Therefore, on behalf of the Government of Canada and all Canadians, I stand before you, in this Chamber so central to our life as a country, to apologize to Aboriginal peoples for Canada's role in the Indian Residential Schools system. To the approximately 80,000 living former students, and all family members and communities, the Government of Canada now recognizes that it was wrong to forcibly remove children from their homes and we apologize for having done this. We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry. The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly. Nous le regrettons, We are sorry, Nimitataynan Niminchinowesamin Mamiattugut. In moving towards healing, reconciliation and resolution of the sad legacy of Indian Residential Schools, implementation of the Indian Residential Schools Settlement Agreement began on September 19, 2007. Years of work by survivors, communities, and Aboriginal organizations culminated in an agreement that gives us a new beginning and an opportunity to move forward together in partnership. A cornerstone of the Settlement Agreement is the Indian Residential Schools Truth and Reconciliation Commission. This Commission presents a unique opportunity to educate all Canadians on the Indian Residential Schools system. It will be a positive step in forging a new relationship between Aboriginal peoples and other Canadians, a relationship based on the knowledge of our shared history, a respect for each other and a desire to move forward together with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us (INAC 2010).

A group of eleven former students of residential schools along with Indigenous elders surrounded the PM Stephen Harper as he delivered the apology, many of them were overwhelmed by the ceremony and five of them addressed the Parliament. They called for an end to the trauma that continued in the form of racism, agreed that the apology paved the way for healing. Several other Indigenous persons found the

apology insincere. Patrick Brazeau, an Indigenous leader congratulated the PM on being the first in office in apologising for sexual abuse in residential schools. While Beverly Jacobs, president of the Native Women's Association of Canada stated that the apology was accepted, and the gesture should be directed towards greater respect and value of Indigenous women; especially in the sight of disappearances and physical violence (CBC News 2008).

Indigenous leaders pointed out that in his apology the Prime Minister had clearly stated that systems of thought and perceptions that were responsible for the removal of Indigenous children from their families had no place in Canada. However, with the above statement his misrecognition of those attitudes is evident. The official apology had skipped the term 'colonialism' and had termed it as a consequence of corruption in the education system. As a result the apology refused to accept that a multifaceted and overarching historical system was responsible for the ongoing oppression of Indigenous peoples (Henderson and Wakeham 2009). Continuing poverty amongst First Nations is a living testimony of colonisation that robbed them off their lands and resources, they lost out on cultural reciprocity and togetherness that emotionally enfeebled them as a community. Cultural differences amongst the Indigenous and the mainstream in Canada continue to be sidelined in the larger discourse on Canada's national identity (Koptie 2010).

Post the apology for the residential school system Canadian PM Stephen Harper, at a press conference at the G20 Summit in Pittsburg, Pennsylvania on 25th September 2009, effectively denied that Canada has had a history of colonialism (Dearing 2009; Ljunggren 2009). Relevant portion of the statement reads as follows:

> We are a very large country, with a well-established, you know, we have one of the longest-standing democratic regimes, unbroken democratic regimes, in history. We are one of the most stabile regimes in history. There are very few countries that can say for nearly 150 years they've had the same political system without any social breakdown, political upheaval or invasion. We are unique in that regard. We also have no history of colonialism. So we have all of the things that many people admire about the great powers, but none of the things that threaten or bother them about the great powers. (Wherry 2009: 1)

This denial of colonialism implicitly in the apology and explicitly in the above statement, explains that the establishment of the settler state is seen as axiomatic by

the Crown; something it compels Indigenous peoples to accept. The terms treaty, land and the material resources the residential school system meant to rob were not mentioned in the apology. Children primarily removed from their communities in order to take them far away from their lands and traditional ways of being. The overt description of Indigenous families as damaged, despite governmental responsibility for the same; has been viewed as serving the purpose of continued state intrusion in Indigenous lives. Such an intent is drastically different from one that aims at reducing Indigenous disadvantage by acknowledging wrongs committed by settlers. Indigenous communities are recognised as different but within the paradigm of the multicultural state. The limits of such settler notions of multiculturalism prevent negotiation of treaties with Indigenous communities as independent sovereign nations. It is important to note that the PM did not initially permit Indigenous persons to respond to the apology in the Parliament. Without any exchange of dialogue the PM assumed that the state apology would be accepted by Indigenous peoples. Such an assumption indicates a certain obliteration of Indigenous agency and a lack of political to positively engage with those towards whom the apology is directed (Mackey 2013). The study observes that the apology lacked any reference to the act of genocide, regarding the removal of children.

Formation of the Truth and Reconciliation Commission

Post the apology, the Truth and Reconciliation Commission (TRC) of Canada was founded as a direct consequence of IRSSA, wherein twelve thousand individual cases of abuse were made along against the Canadian government and the Churches responsible for running the schools. A truth and reconciliation commission aims to investigate and acknowledge abuses of the past and respond to the needs of the victims. It entails institutional responsibility and recommends reforms that contribute to both accountability and justice. Its larger vision focuses on reconciliation between adversaries based on a common understanding of their history. Such an understanding comes from a commitment to bring multiple voices together to narrate incidents of pain and grief in order to knit together a narrative that uphold the dignity of the victims. Competing narratives often provide justification for further violence and injustice. The main purpose of a TRC is to reveal the truth, in order to prevent it from recurring. A TRC is founded on the belief that knowledge of truth is lies at the centre

of the process of societal reconciliation. Such a commission also acknowledges and recognises the trauma of victims of mass violence. As a culmination of the above aspects of its functioning; a TRC clearly acknowledges the perpetrators of violence along with beneficiaries of such actions; and holds them accountable for their deeds. Finally since a TRC in its essence calls for prevention of acts of violence, it aims to strengthen administrative, political and judicial structures in order to prevent further injustice or respond adequately in the sight of the same (Rice and Snyder 2012).

The TRC was founded to bring forth truth of the lives of Indigenous peoples in Canada, enable a process of healing and eventually reconciliation. However reconciliation was not envisioned as something that can be institutionalised in this case as the survivors may choose never to reconcile with their past. The Canadian TRC came into being as a result of judicially supervised agreement rather than a legislative or executive order with a focus on the lived experiences of children who had been wronged historically. The IRS system is the focus of the Canadian Truth and Reconciliation Commission (TRC). While such commissions are usually formed in societies seeking regime change, in the present case it is a consequence of legal action by survivors against the churches and the government that ran the system (Regan 2010).

Much like Australia Indigenous peoples are disadvantaged in all matters ranging between health, employment and suicide rates as compared to their non-Indigenous counterparts in Canada. Indigenous peoples account for 4.3% of the population, with their median age being 21 years which 20 years younger than the rest of the population in Canada. the number of Aboriginal adults in their twenties, is set to rise by 40% by 2017. Therefore poverty accompanied by an unemployment rate of 9.3% and compared to 3.8% for the rest of Canada; is set to result in greater despair amongst Indigenous youth (MacKinnon 2013). Suicide rates are five to seven times higher for youth belonging to First Nations as compared to the rates for non-Indigenous persons in the same age group. Similarly the rate of tuberculosis remains 26 times higher amongst Indigenous peoples as compared to the rest in Canada. When it comes to economic dimensions many amongst Inuit peoples are fighting for land claims for more than two decades. Indigenous persons by and large come at odds with the extractive industry in Canada. Extraction of oil being a major hurdle in order to

access their right to trap and hunt in their traditional lands. Indigenous persons are worse off in every dimension when it comes to access to equality of opportunity. Treaty rights are yet to be renewed, as Indigenous resurgence seems to be limited to the grassroots level and is yet to find its place in federal politics (Roache 2015).

As discussed earlier reconciliation needs to be understood in relation to location and context. Scholars suggest that TRC in Canada should therefore be used to identify socio-economic changes, institutional reforms in order to address large scale injustice in the form of denied land claims, meagre social services, poverty and lack of political and legal access that mark the differences in the lived experiences of Indigenous and non-Indigenous population in Canada. A Commission of this kind should dispel myths and stereotypes regarding Indigenous lifestyles through public statements acknowledging wrongs by both political and religious leaders. In the context of a settler society TRC should be seen in the context of ongoing exploitation of Indigenous resources and lands and settler destruction of Indigenous languages and cultures (Rice and Snyder 2012).

The Commission in Canada through its mandate went on to document statements, facts and archived narratives in order to widely disseminate the truth as expected of its functioning through the above mentioned criteria (Llewellyn 2012). Scholars consider the establishment of a TRC itself an acknowledgement of historical injustice especially in a non-transitional context of a stable nation-state like Canada. In such a context the transformative potential of a TRC is considerably contained especially when it comes to negotiating the relationship between Indigenous and non-Indigenous peoples in Canada. Researching, documenting and recording the facts and consequences of residential schooling have been the primary tasks taken up by the Commission. These acts inform non-Indigenous persons of the lives of both victims and survivors and bring forth conditions wherein Indigenous histories are understood and valued as testimonies of resilient peoples. It must be noted that such testimonies are strictly voluntary in nature due to which the commission's acts of investigation, witnessing and understanding, bolster public legitimacy for the process of reconciliation (Hughes 2012; Wilson 2015). The Commission divided its report into primarily two sections. The first was concerned with the legacy of the residential school system and what it meant for First Nations, Métis and Inuit individuals and

communities. The second part was concerned with recommendations for reconciliation (TRC 2015g; TRC 2015h).

Unlike the federal apology, the TRC categorically acknowledged that coerced assimilation of Indigenous children into another race counts as genocide according to Article 2(e) of the UNGC. The act of separation of Indigenous children however, is not acknowledged as a civil wrong. This has resulted in a deep-seated sense of distrust towards political and legal system in Canada; especially when such a system categorically aids the removal of Indigenous children through systems of child welfare. With the Constitution Act 1982, Indigenous treaties came to be acknowledged in domestic law, however without the implementation of the same through political will and judicial vigour Indigenous individual and collective rights cannot be realised. The TRC time and again emphasised the crucial role of non-Indigenous people in reconciliation Canada, through witnessing, acknowledging and reflecting over Indigenous testimony, past trauma and inter-community healing (TRC 2015h).

Current Challenges to the Process of Reconciliation and the Recommendations of the TRC

Indigenous adults account for one in four adults in correctional facilities at the provincial level in Canada (Reitano 2016). Half of the children belonging to First Nations bands live in poverty (Hildebrandt 2013). Indigenous children under 14 account for 7 % of all children in Canada and 48% of all children in foster care (Yukselir and Annett 2016). Even after public apologies and programmes for compensation, Indigenous children continue to be apprehended in both state sponsored and Indigenous systems of alternate care. The placement of children outside their homes continues at rates that go past those at the peak of the residential school system. Poverty, over-crowded homes, lack of resources continue to form reasons for neglect; which is stated as the primary cause of such apprehensions. Indigenous persons remark that such a trend risks repeating the mistakes of the past especially when children living on reserves have a higher chance to be apprehended. The placement of Indigenous children in non-Indigenous homes continues unabated despite the growth of a large number of Indigenous child welfare services. This is primarily due to the fact that many Indigenous families despite stating the will to

house children; do not meet the standards of foster agencies due to lack of resources and poverty (Humphreys 2015).

In its 94 recommendations or 'Calls to Action' the TRC reflected on the work of RCAP calling for reconstitution of Indigenous nations, return of lands and resources, bridging the distance between indicators of Indigenous and non-Indigenous socio-economic well-being. The RCAP had called for special initiatives for educating and supporting Indigenous peoples in achieving the goal of self-governance. The TRC also emphasised the need to enable Indigenous communities in a manner that reduces the levels of poverty and welfare dependency. The study observes that the TRC confronts the continuing separating of Indigenous children from their families in a manner that aptly acknowledges the current conditions. It states, "residential schools were an early manifestation of a child welfare policy of child removal that continues to this day" (TRC 2015g: 11).

Reconciliation therefore entails reduction of the number of children in alternate care. The commission recommended assessment of the cases of apprehension regarding neglect in a manner that checks for factors such as racial discrimination, poverty, and lack of resources that can be addressed through laws, and governmental support to ensure maximum Indigenous children grow up within their families. It called for training and education for child welfare workers in order to orient them towards the continuing effects of the residential schools system on Indigenous caregivers. It urged the federal government to keep a detailed account for the data on apprehension of both Indigenous and non-Indigenous children in cooperation with federal and territorial governments. In a crucial step for preventing a repeat of the past the commission emphasised on right of Indigenous governments to operate their own agencies of child welfare, called upon all child care services and courts to be sensitive to the trauma of residential schools system while making decisions. The report pressed for ensuring culturally appropriate care for Indigenous children in circumstances wherein their removal from families is unavoidable and places the child in a situation of considerable harm. Similar cultural sensitivity has been sought in matters of education by provision of funds for ensuring gaps in attainment of education between non-Indigenous and Indigenous youth are reduced. The report called for preservation of Indigenous languages and culture by introducing them in

school curricula. Reinforcing treaties has been noted to ensure rights to language (TRC 2015g).

The TRC has emphasised the need to address the dismal state of life expectancy, infant mortality, chronic illnesses and mental health issues within First Nations, Métis and Inuit peoples in Canada. The commission recommended that an increase in training and recruitment of Indigenous health workers and healing practices especially when dealing with cases on reserve, to ensure better care. In terms of institutions catering to justice the commission in its final report called for amending the legal framework on order to prevent tools of limitation defence from stalling cases of abuse brought forth by Indigenous peoples against both federal and state governments. It also sought governmental will and action in reducing the overrepresentation of Indigenous peoples in custody at both provincial and federal levels. The commission has directed government bodies at all levels to immediately look into the disappearance and murder of Indigenous women. This recommendation has been teamed up with action to support Indigenous victims of violence (TRC 2015g).

In addition to the above the TRC has called upon lawyers and law students alike to train themselves in Indigenous systems of law and orient themselves with the their specific histories. It urged the government to inform the legislature regarding measures to aid and compensate victims not covered in the IRSSA. The TRC also asked the judicial system to follow suit regarding the same (TRC 2015g).

On the whole the commission has sought greater inclusion of Indigenous peoples at all levels of governance and policy implementation in all dimensions of citizenship. It has brought forth the need to continuously engage with the past in order to ensure a more equitable present and future for Indigenous peoples in Canada. The commission in its final report called for the recognition of the UNDRIP as a foundational document in reconciling Indigenous peoples by implementing the constitutional rights of First Nations, Métis and Inuit peoples of self-determination to the fullest extent possible. To this end the commission reiterated the demand to re-establish treaty relations based on mutual-recognition and responsibility. It acknowledged the need to go beyond European notions of sovereignty. To meet this end the report also called upon the Government of Canada to issue a Royal Proclamation of Reconciliation in

order to make Indigenous peoples partners with full rights within the Confederation. This would in turn entail recognition of Indigenous laws in negotiating and implementing land claims and treaties along with other constructive agreements. Recognition of Indigenous systems of justice in a manner of mutual-cooperation and dialogue (TRC 2015h).

In order to achieve the above the TRC has also sought help and cooperation from churches party to the Settlement Agreement and otherwise to acknowledge Indigenous faith, belief and practices during the process of community healing. It urged churches act in accordance with the principles of the UNDRIP stating the right of Indigenous peoples to practice and teach their spiritual and cultural traditions and rituals. Most importantly the commission called for acknowledging First Nations, Métis and Inuit understandings of reconciliation and law that bring their perspectives on responsibility and citizenship. This was envisioned in order ameliorate inter-generational trauma due to invisibilisation of Indigenous knowledge and wisdom regarding self-governance. The commission also sought publication of governmental efforts towards incorporating Indigenous legal traditions in order to implement their rights (TRC 2015h).

For monitoring governmental progress post-apology and reporting the same to the Parliament and the people, the final report of the TRC called for the establishment of a National Council for Reconciliation. In order to better achieve greater public-private dialogue, education regarding related issues and participation in the process of reconciliation; a legislation called National Action Plan for Reconciliation was also sought. The Commission urged the government to make sure Indigenous history in taught at levels of curricula, in order to foster greater sensitivity in Canadian society. The TRC stated that the memories of Indigenous history should be commemorated through museums and events especially in the sight of the 150th anniversary of Confederation in 2017. The report also stated the need to remember the grief and trauma inflicted on children through special commemorative events at former residential schools. The TRC also sought documentation through records and commemoration for those Indigenous children who went missing in residential schools or passed away at these institutions (TRC 2015h).

The TRC urged the federal government to institute a holiday or National Day for Truth and Reconciliation, and establish commemorative monuments in each capital city of Canada to honour the survivors, and victims of the residential schools system; after due consultation with Indigenous peoples. The report sought action from the federal government to utilise the national broadcaster to further the cause of reconciliation by educating the public at large through programmes about Indigenous rights to land, resources and culture. Indigenous and crown relations, history of residential schools and current efforts to seek reconciliation with different bands also needed to reach the public (TRC 2015h).

The final report of the TRC called upon the federal government to utilise sports as a tool for reconciliation by introducing the same as a foundational aspect of health and wellbeing in the Physical Activity and Sport Act. History of Indigenous participation at both national and international levels in sports, should be broadcast. Local communities must be involved in organising both national and international sports events, in order to encourage greater Indigenous participation in the same. The commission made sure it appealed to all aspects of life and therefore called upon the corporate sector to commit to meaningful and substantive consultations with First Nations, Métis and Inuit peoples before undertaking any economic projects affecting their lives, lands and resources (TRC 2015h).

The commission has called upon the government to act in all dimensions of public life. The recommendations entailed all aspects of 'symbolic' reconciliation in the form of commemoration and archiving of testimonies. In terms of 'practical' aspects of reconciliation the TRC listed out suggestions for bridging the gap between Indigenous and non-Indigenous lives. However, much needs to be seen regarding the implementation of the report. Dialogue and communication between the state and Indigenous peoples, being the key to institutionalise Indigenous self-determination. This would then bolster the restitutive aspects of reconciliation.

Responses to the Ongoing Efforts at Reconciliation

Brenda Green (2017), professor of community health, First Nations University of Canada, Saskatchewan, in a conversation about community health, reconciliation and Indigenous children, remarks that,

> elders are crucial to addressing inter-generational trauma within First Nations communities. Keeping children safe from diseases is one of the top priorities community health networking, and actions as small as building a gymnasium go a long way in ensuring both physical and mental health. Government initiatives regarding the same have been largely disappointing. There has been more talk than action in this regard. As far as the process of reconciliation is concerned, this is our second round, we had RCAP promising us a lot before the TRC. Indigenous peoples have every right to angry and sceptical regarding the policy follow-up on the recommendations of the TRC. Very little has been achieved regarding community health, because the communities themselves have seldom been consulted in determining the choices available to them in ensuring the same. With respect to children policies regarding community self-help are yet to take elders on board. Indigenous children are still removed from their families, because of largely structural failings and lack of financial support to communities. Children are removed from the comfort and care of community relationships, taking a toll on their physical and mental health. Largely Indigenous perception of this continuing problem is one of constant and continuing denial of Indigenous perceptions of care that are constituted in relation to the whole. In such a framework not one person can thrive without fulfilling duties of care and guardianship towards the other. While interacting and working with Indigenous communities I am conscious of my non-Indigenous identity and that I can understand their situation from a distance. More non-Indigenous persons need to be educated regarding inter-generational trauma being experienced in Indigenous communities today (Green 2017).

Settler acknowledgement of the freedom and dignity of Indigenous peoples is therefore crucial to the idea of restoration amongst Indigenous peoples. It entails an acknowledgement of the fact that land and resources need to be shared by both the parties. Restitution does not harp on settler guilt, rather focuses on confession and disclosure in a manner that conveys regret. Restitution in this sense would reverse the theft of Indigenous lands, resources and ensure that the wrongs committed in the past are not repeated (Alfred 2012).

Restitution is founded on constant engagement between Indigenous peoples and their non-Indigenous counterparts in Canada. Scholars objecting to the TRC and its framework supported by the UNDRIP, which grants Indigenous self-determination strictly within the paradigm of the nation state. Scholars focus on restorative attributes of reconciliation that are substantive in the form of renegotiation of treaties and return of lands and resources. These measures would count when they are legally applicable, which is not the case with this declaration that defines the larger framework of the TRC (Denis and Bailey 2016).

One needs to note that Indigenous peoples engaged within the process of the TRC have diverse opinions on a reconciled future with the Canadian state, similarly settler Canadians have different sets of opinions on forging a relationship with Indigenous peoples. The final report of the TRC calls for a stronger Canadian state that addresses the needs of Indigenous communities in a comprehensive manner. Besides the above mentioned criteria, this entails calls by AFN to move ahead in partnership in order to reduce the disparity between Indigenous and non-Indigenous populations in Canada. Similarly advocates of child rights called for ending disadvantage of Indigenous children primarily by continuous under-funding of First Nations welfare services. Some Indigenous scholars emphasised on inter-personal healing and building of relationships; adding to the larger consensus on reducing Indigenous disadvantage in terms of socio-economic status, education, health and aiming at equitable distribution of resources. However many scholars state that such an orientation ignores restorative attributes of reconciliation, which would reverse the colonial relationship between Indigenous peoples and the state; by restoring lands and negotiating treaties with each Indigenous nation (Denis and Bailey 2016).

Dr. Alexander Blair Stonechild, professor Indigenous studies, has a personal history attached with the IRS. Educated in a residential school between the age of six and fifteen, he remembers being made to feel ashamed of his spiritual beliefs. He remembers pictorial descriptions in the school condemning Indigenous spiritual beliefs (CBC Radio 2016). In a conversation regarding the current process of reconciliation Dr. Stonechild states that,

> There are a number of challenges including professional education in a culturally-appropriate manner, obtaining recognition of sovereignty and jurisdiction and receiving equitable tuning. Problems include isolation, often geographical remoteness, challenges of urbanization, inadequate human resources and effective liaisons with provincial authorities. Efforts are being made however there are often structural problems connected with not genuinely recognizing Indigenous sovereignty and jurisdiction. However, there is limited support in that funding is not equitably shared, and there are differences in operational philosophy on how to heal broken relationships and how to create new relationships (Stonechild 2017).

Truth is a foundational aspect of the larger and ongoing process of reconciliation, however truth alone cannot ensure the same. Reconciliation largely consists of restoring relationships. It entails recognition of historical wrongs and the cost borne out by the societal relationships. Principles of restorative justice, therefore consist of

an orientation towards the future, and therefore give all stakeholders opportunities to address the suffering and wrong-doing of the past. In order to rebuild relationships such a process of reconciliation entails accountability for wrong-doing. The parties to such a process of reconciliation include dialogue wider communities and not just individuals. Restorative justice, therefore acknowledges the role of larger communities in sustaining and resolving social conflicts. Mode of participation remains voluntary, dialogical and is especially inclusive of those marginalised within society. Such a process ensures that the legal rights of all parties as both participants and witnesses are protected. Such a dialogue is usually public in nature except in cases in which parties involved demand confidentiality (Llewellyn 2012).

In this manner as mentioned in the case of Australia restorative justice in settler societies calls for giving a voice or agency to Indigenous peoples and their conceptualisation of justice. In case of the residential schools in Canada, as pointed out earlier, both the individuals and communities at large have to perpetually deal with trauma caused by dispossession of land and resources and the larger impact of the IRS. Restorative justice in this case would entail a future based on a relationship of equality, dignity and respect between Indigenous peoples and their non-Indigenous counterparts in Canada (Alfred 2012; Llewellyn 2012). The TRC's recommendation of ensuring maximum self-determination of Indigenous peoples is a step ahead in ensuring restorative justice. However such a recommendation would be effective only if it sees a legal imprint in the form of restoration of treaties, lands and resources.

As a follow up to the recommendations of the TRC, PM Justin Trudeau announced June 21 as National Indigenous Peoples' Day and stated that Hector Louis Langevin's name would be removed from a federal building as he was a vocal advocate for residential schools. The PM announced that a centre for First Nations, Métis and Inuit people would be housed in a building that previously hosted the U.S. embassy (Harris 2017). On the recommendation of the TRC the PM has also asked the Pope to apologise for the role of the church in the residential school system (The Guardian 2017). However much remains to be seen in terms of policy and action as a response to the recommendations of the TRC.

Apology and Reconciliation: A Comparison of Australia and Canada

Different approaches that mark the concept of reconciliation. The first approach is religious in the sense that reconciliation is known to be central to the Christian belief that those who inflict violence tend to alienate themselves from larger humanity therefore forgiveness would restore them to their place in society. He states that "the reconciliation of a divided society is often premised on the need to redeem a painful past for the sake of a common future" (Schaap 2005: 17). The second, focuses on healing the individual and the society as a whole. This stream of thought argues that trauma of the past can overwhelm and disadvantage an individual's present and future. Healing from such experiences entails recalling invisibilised memories and the shame of victimhood and bringing it forth through narratives. Widespread and public acknowledgement of narratives of collective trauma tend to restore the dignity of surviving victims and honour the sacrifice of the dead. Thus acknowledging victimhood and the apparatus that inflicted trauma is a crucial aspect of reconciliation.

The third perspective emphasises on settling certain accounts of the past. This discourse focuses on granting reparations to the victims, citizens who remain silent witnesses are called to account for their complicity and onus is placed on public acknowledgement of crimes committed by the perpetrators (Schaap 2005). Painful pasts have been dealt with through testimonies that have been archived in Australia in the form of the NISATSIC and in Canada through the TRC. As mentioned in the previous sections; federal compensation for victims has been denied in Australia, the same finds it way through certain legal hurdles in the case of Canada. The IRSSA did not include many schools attended by Métis, many other institutions were not made a part of the agreement. These included provincially run schools, sanatoriums for patients of tuberculosis (Galloway 2016).

The above approaches however, tend to ignore the political aspects of reconciliation. Therefore the process of reconciliation must to beyond the above. Religious aspects, discourse on healing and economic accounts tend to depoliticise the discourse of reconciliation in order to serve higher purposes of redeeming a nation, or healing a society or bring a closure to a traumatic event. In each of these cases the conditions and underlying factors of reconciliation remain largely uncontested. Skewed social

relations, and consequent political differences are often invisibilised and silenced (Schaap 2005). Reconciliation when reductively defined in terms of accounts that need to be closed, implies that personal and communal loss can be calculated. Thus reparations defined in this manner render all conflicts and relational victimhood as reconcilable; which in political terms may indeed be the opposite. As opposed to these approaches reconciliation in political terms acknowledges "the risk of politics" (Schaap 2005; 19). This entails the understanding that all differences and conflicts may not be reconcilable. This concept of reconciliation acknowledges that politicisation essentially involves calling into question the process of exclusion and inclusion that results in a dialogue between adversaries. Reconciliation is deemed as incomplete in itself as it only optimises the possibility and potential of reconciliatory politics in the present (Schaap 2005).

Politics of recognition is based on the idea that identity is formed through social relations and a misrecognition of the same is a form of oppression. Colonial rule is predicated on and sustained by non-recognition which destroys the culture of the colonised and imposes its own institutions and language. As cultural identities are nourished by institutions and language, groups whose culture has been disregarded or shamed need public recognition of their loss and trauma in order to re-establish their status as equal members of a polity. Deliberate misrecognition of minority cultures therefore is an act of oppression. Recognition therefore provides the basis for a dialogue that is open-ended in order to come to an understanding of the other (Taylor 1995).

Recognition as mentioned above is crucial to the process of reconciliation. State recognition of Indigenous identities, whenever it occurs runs the risk of essentialising the same as it ignores the ability of cultures to adapt in order to prioritise sanitised notions of coherence. Recognition through self-definition carries a certain emancipatory potential but it does not promise a change in the material reality or lived experiences. As observed in the case of Indigenous peoples their recognition through self-definition in international politics has not altered their disadvantaged socio-economic conditions. In Australia the campaign for constitutional recognition of Aboriginal and Torres Strait Islander peoples revolves around the recogniser or the

state and the government, and the recognised or the Aboriginal and Torres Strait Islander peoples (Costa 2016).

In 2010 PM Julia Gillard appointed an Expert Panel to consult Indigenous peoples for constitutional reform in Australia. The panel recommended that racially discriminatory policies be removed from the constitution, guaranteeing Indigenous peoples equality before law and in addition, recognition of their position in Australia as the original inhabitants of the land. The panel also highlighted the need for constitutional recognition of Indigenous peoples in order to better protect their cultures and languages that would in turn accurately reflect Australian history and national identity. By stating that the unique position and culture of Indigenous peoples needs to be acknowledged the panel did acknowledge Indigenous difference. By acknowledging the need to do way with discriminatory clauses the settler state admitted a need for change (Costa 2016).

The panel ended up conflating the previous two notions by stating the need to acknowledge Indigenous difference strictly within the context of the nation state. As a follow up to the above the Parliamentary committee in its report of July 2014 supported the recognition of Indigenous peoples as the first peoples of the land. Unlike the panel, this report called for Commonwealth's right to make laws pertaining to Indigenous peoples and utilise this power to obliterate discrimination within the Australian society. The committee's final report in 2015 stated that constitutional recognition of Indigenous peoples would indeed complete the document and reaffirm the historical fact that their existence predates the nation by thousands of years. This verdict is self-explanatory in the sense that it does recognise historical specificities regarding the existence of Indigenous peoples. However the state refuses to give up its power over Indigenous peoples however restrains the same by re-inventing itself through the legal obligation to end discrimination. This form of state recognition acknowledges Indigenous difference however it sidelines the accumulative structural disadvantages that are directly caused by the actions of a settler society (Costa 2016; Little 2016).

Constitutional recognition of Indigenous peoples through a referendum has been on the political agenda for a decade in Australia. There is greater pressure on Indigenous

peoples as compared to their non-Indigenous counterparts, to accept governmental terms as this opportunity is extremely rare. A loss of this chance could result in another decade or more without constitutional recognition in the absence of a legally determined relationship. For Indigenous peoples the discourse on reconciliation needs to move beyond building new relationships between Indigenous and non-Indigenous peoples. The relationship remains crucial to reconciliation; however the larger process should not remain limited to the same. Negotiation of a treaty leading to self-government is stressed as pivotal for reconciliation. However a treaty may or may not follow a referendum. Scholars have also suggested that non-Indigenous peoples in Australia may lose interest in the matter which needs to be addressed beyond a referendum. The nature of the referendum and the constitutional amendments it may entail regarding Indigenous recognition are not yet clear. This factor has also brought up serious suspicion regarding the nuances of constitutional recognition amongst Indigenous peoples in Australia. The debate regarding constitutional recognition is largely taking place without an agreed process regarding the same, above all a comprehensive process of dialogue with Indigenous communities is missing (Little 2016).

The Constitution of Canada in section 35(1) of the Canadian Constitution Act 1982, recognises the treaty and inherent rights of Indigenous peoples in Canada. According to the RCAP's reading of this Act, Indigenous peoples have an inherent right to self-government primarily due to their existence prior to the state. Such a reading was regarded as essential to reconciling with Indigenous peoples and for building a political and legal relationship between the state and Indigenous nations. Such a recognition of Indigenous peoples is based on the principle of the inherent right to self-determination, and the fact that Indigenous communities and bands constitute nations. The RCAP in its reading of the Constitution Act reconciled Canadian state sovereignty with Indigenous laws and customs (Turner 2013).

In the case of Canada, the process of reconciliation has acknowledged Indigenous difference through its recommendations, 'Calls to Action'. Through the same the TRC urges the government to acknowledge different Indigenous nations by renewing treaties based on mutual recognition. The TRC in its final report acknowledged the need for current systems of law to incorporate Indigenous legal systems and sought

the assistance of law schools regarding the same. The Commission clearly stated the legal system in Canada failed victims of abuse in residential schools, it in turn re-victimised them by denying them justice. The residential school system is the primary cause of Indigenous alienation within Canada and high rates of incarceration within these communities. Policy follow up by law schools and the legal system regarding the above remains to be seen, however the call of changing basic legal premises is promising in terms of defining the intention to alter the system that brought about injustice to Indigenous peoples in the first place (Costa 2016).

Dimensions of Reconciliation in a Comparative Perspective

Reconciliation is a complex phenomena that can be broadly assessed and not measured in an exact manner. It begins with acknowledging the past and its future course is determined by the nature of approach involved. A minimalist course of action focuses on simple co-existence between antagonists, wherein basic norms for negotiation and contestation are accepted as a part of procedural justice while the larger issues of redistribution and transformative policies are regarded as unattainable and destabilizing the current order. In this sense reconciliation creates a space for former antagonists to become political opponents operating within a code defined by the rule of law. The minimalist approach therefore puts aside normative issues like making peace with the past, in the form of truth telling, apologising and forgiving. It focuses on procedural demands of the current times. This approach usually avoids publicising and acknowledging narratives of victims and their families, looking into apologist accounts of history; and institutional causes of violence responsible for victimhood. Redistributive justice is sidelined when there is a lack of political and institutional transformation bolstered by reification of ongoing power arrangements. The opposite spectrum of this maximalist approach also has its own limitations. A maximalist approach relies on forgiveness between individuals as central to the process of reconciliation. The act of forgiveness involves a victim's agency, however this approach fails to specify how such an act can be institutionalised (Verdeja 2009).

Forgiveness may not necessarily remove mistrust during the process of reconciliation. Its importance cannot be done away with, yet it cannot be placed at the core of an approach to reconciliation, especially when the mechanisms for its operationalization

remain ambiguous. Both maximalist and minimalist approaches remain embedded in a discourse that operates at only one level of the society. Calls for truth telling, forgiveness and justice operate at multiple interpersonal, political, institutional levels and often involve civil society. At the interpersonal level, individuals relate with personal narratives of the past to broader public narratives of recognition, forgiveness and victimhood. Political level pertains to responses of the political elite, parties and actors who control the state. Institutional level includes mechanisms like truth commissions, tribunals that legally address responsibility, recognise victims and implement policies for compensation and relief (Verdeja 2009).

Australia and Canada largely adhere to the maximalist approach to reconciliation. Here truth telling, victim and witness testimony is brought to the fore through the 'Bringing them Home' report and the TRC respectively. Both the countries acknowledge the need to reconcile at multiple levels, however much needs to be achieved each case regarding restorative attributes to justice. This study observes that neither country has institutionalised the process of forgiveness and largely adhere to achieving this goal through policies and programmes that intend to shape a more reconciled future.

Political relationships lie at the core of the process of reconciliation. These relationships need to account for the institutional and attitudinal problems, in order to be rebuilt. Instead of generic analyses, unique characteristics that mark political relationships in specific contexts need to be addressed in public policy. Therefore political reconciliation needs to be informed by context specific dynamics of repression, instead of applying an idealised notion of just relationships. It seeks to address societal response in the sight of systemic failure to realise political relationships. Rule of law defines how institutions build political interaction, while political trust represents the perspective adopted by both citizens and officials. These two aspects along with capabilities, comprising of both opportunities and resources shape the success or failure of political relationships; which in turn are the agents of political reconciliation. The need to rebuild political relationships in the context of rule of law, political trust and capabilities is central to political reconciliation. Frequent violations of law or in case of repressive rule, law itself becomes a tool of oppression; lead to distrust between the governing body and the affected people.

Reduction of capabilities due to exclusion from social, political or economic domains, diminishes opportunities and the freedom to shape one's life according to one's will. It also reduces the capability to exercise one's agency in political interactions. Membership of a political community is the most basic capability. Absence of this recognition or being regarded as an outsider, disrespect and humiliation can make one's position more vulnerable (Murphy 2010).

As mentioned previously, such incapacitation of Indigenous communities has been witnessed in both Australia and Canada. Besides the structural disadvantages, high rates of incarceration and other forms of state institutionalisation; Indigenous peoples are poorly represented in both Australia and Canada. In Australia only three Indigenous persons have ever been elected to the parliament (Vasilev 2013). Government bodies at the state and territory levels depict relatively better representation of Indigenous peoples (Llyod 2009). In the case of Canada 2015 saw ten Indigenous leaders elected to the parliament, the number stood at seven in the 2011 election. Nonetheless Indigenous peoples continue to be underrepresented in the Canadian parliament (Grenier 2013; Fontaine 2015).

Besides structural and political factors, Indigenous peoples in both Australia and Canada face constant threat of violence. In Australia Indigenous women are 80 times more likely to face physical and sexual violence as compared to non-Indigenous women. The rate of violence within Indigenous communities remains high as more than a quarter of total Indigenous adults claim to be victims of physical violence. Scholars in Australia assert that instead of tackling domestic and intra-community violence, Indigenous communities are further stereotyped as culturally permissive of such acts. The federal and provincial governments have fallen short of providing substantive community support in behavioural change and anti-violence campaigns and have failed to ensure basic human rights of Indigenous persons through law and order (Taft-Dick 2013; Fitzpatrick 2016; Kerin 2016).

In the case of Canada over 1200 Indigenous women have been reported missing or murdered over the last thirty years. This was primarily a product of deep seated sense of impunity amongst perpetrators of such violence in the site of unsolved and un-pursued cases. An inquiry into the matter was launched as late as 2015. Scholars

analysed the phenomenon as a product of a colonial and racist society wherein Indigenous women were considered dispensable. Vulnerabilities amongst Indigenous communities are high not only due to structural factors. Racist attitudes of individuals involved in all kinds of welfare, health care and education; result in the opposite of what is intended by such agencies (Dillon and Allooloo 2015; Kassam 2016).

Such use of violence or the threat of violence in social, economic or political spheres significantly reduces an individual's capabilities. Stereotyping of an certain identity also amounts to violence as stereotypes are used to reinforce and rationalise repressive social practices, further restricting participation in a political community. Political trust is that which is defined by a sense of optimism regarding the agency and competence of both citizens and officials; regarding duties and responsibilities. An important aspect of political trust is the acknowledgement of distrust especially in case of repressive rule wherein political relationships lack reciprocity. Conditions for creating meaningful political interaction based on trust entail the will to facilitate trust-responsiveness. Transparency and acknowledgement of the marginalization of affected parties is pivotal in this regard. Here the interconnected factors of political, social and economic capabilities and a just rule of law come into play. Political reconciliation is closely linked to fostering conditions that can make change possible. Rule of law, political trust and capabilities are the conditions that facilitate exercise of agency which is fundamental to the process of rebuilding political relationships. Reconciliation is therefore a complex process that evolves through context specific strategies and actions of agencies at multiple levels (Schaap 2005; Murphy 2010).

In this context of reduced capabilities, failures of systems of justice and the consequent loss of agency amongst Indigenous peoples, official apologies play the role of soliciting political trust. Apologies by states are usually offered for wrongs committed through an overarching political culture that legitimises the same. They are usually invoked in cases of identity based wrongs committed as witnessed towards Indigenous peoples in Australia and Canada under the overarching politico-legal framework of settler colonialism. Aboriginal identity was considered an essential 'other' for the civilised sovereign to assert its legitimacy. Settler colonialism further entailed a hierarchical structure in which non-Indigenous in Australia enjoyed a

legitimacy and sovereignty that was denied to Indigenous peoples (Celermajer 2006; Sanderson 2012).

In both, Australia and Canada, apologies take the form of truth-telling, wherein history of the country is acknowledged in order to mitigate current social biases and denial embedded in the society due to policies of the past. Ensuring that representatives of the aggrieved parties are present and accorded a leading role in the conduct of the apology, as witnessed in the Canadian apology for residential schools; adds to the legitimacy accorded to the act. Victim communities are ensured of their recognition as moral equals of the former perpetrators. The apologies by Australian and Canadian heads of state aimed at acknowledging the fact that Indigenous peoples are morally equal to European settlers who historically dehumanised them; though an apology cannot stop suffering, it can only bring some measure of comfort to the victims through public acknowledgement of injury and injustice meted out to them. Though apology is only one amongst several factors that further reconciliation. Although an apology cannot substitute policies of reparation and redress; it is crucial for addressing human rights abuses and reassuring the survivors of the humanity of the political community which includes former perpetrators. It also helps in building trust and mutual respect amongst political antagonists (Murphy 2011).

An apology signifies government acknowledgement of its role in committing wrongs. The determination of the office of the state official offering the apology is therefore crucial for its acceptance for historic injustice. As the choice of the office sends a clear message to the victims regarding the degree of government acknowledgment of the gravity of the situation and recognition accorded to them. The content of the apology must clearly state that injustice has been meted out and squarely assume responsibility for the harm caused. A constructive dimension to the same is an assertion that such injustice and violation would not be repeated. Very often the content of an apology is negotiated over time with the aggrieved parties can yield the desired outcome of acceptance of the same. This has been observed in both the Australian and Canadian apologies. Location of an apology's delivery is as important as its content, as its viability in terms of reach and visibility is crucial to the act of apologising. In both the cases official apologies were offered on the floor of the Parliament in televised and publicised events. The timing of the apology on the

national stage coinciding with crucial events gives the apology larger acceptance and legitimacy. The manner of their delivery in an oral form duly followed by a recorded written text as a permanent account for generations to come is crucial to cases wherein historical injustices have inter-generational impacts like destruction of language, traditions and culture (Barrie 2013; Borrows 2014).

The apologies in Australia and Canada certainly did meet the aforementioned criteria however both were silent on the very foundations of wrongs in the form of settler colonialism. Primarily because the two countries did not intend to question the foundations of their nation state. Both the official apologies were incidentally silent regarding the terming of forced separation of Indigenous children as genocide. In the case of Australia the NISATSIC chose to term it as genocide, in case of Canada the TRC termed the same as cultural genocide.

Political apologies carry a reiteration of wrongs as a crucial indicator of remorse. People seek public acknowledgment of history and narratives. Such apologies also carry an initiative for further dialogue, address grievances and create political space for wronged groups to advocate their political agendas. Official apologies to Indigenous people in Australia and Canada were made within a short span of time from each other. Canada's highly publicised apology was accompanied by a Truth and Reconciliation Commission and a mechanism of financial settlement. Australia's apology had meagre financial liabilities and the apology was a part of a long term reconciliation process. A series of failed apologies had preceded official apologies to Indigenous people in Australia and Canada in 2008. Political pressure galvanized by Indigenous groups strengthened the reception of official apologies. However, official responses do not determine the course of reconciliation, such gestures need to be followed by a concrete policy framework. He succinctly concludes that, "the desire for recognition and reconciliation but not necessarily inclusion makes apologies to Indigenous peoples especially hard to get right" (Tager 2014: 10).

The apology offered by Australian PM Kevin Rudd in Australia did not promise any financial compensation and therefore sidelined restorative justice for the 'stolen generations'. This stands in contrast to the apology tendered by PM Stephen Harper that was followed up by the promise of the creation of a Truth and Reconciliation

Commission to look into the residential school system (Johnson 2011). Apologies in both the countries sought a shift in political culture wherein heads of state acknowledged the need to delegitimize discrimination against Indigenous peoples. In this sense official apologies have implications for the future for changing the dynamics of national membership in both the countries. National membership of Indigenous peoples in the two states is influenced by political, legal and affective dimensions of the apology. In the case of Canada the official apology was a direct consequence of the RCAP report it did not have any impact on the legal status of Indigenous peoples in Canada. Nonetheless it affirmed Canada's commitment to Indigenous self-government in the form of consultations with Indigenous communities. In Canada negotiations between the federal government and Indigenous peoples are organised in three stages. The first being 'framework agreement', second is an 'agreement-in-principle' and the third is termed as the 'final agreement'. Between the years 1998 and 2005 the Canadian federal government entered into three 'framework agreements', fifteen 'agreements-in-principle' and eleven 'final agreements' with First Nations Peoples. In the case of Australia however official apologies have done little to alter the dynamics of national membership. Indigenous peoples in Australia view treaties through the realm of self-governance and autonomy and greater control over matters that affect them (Nobles 2008).

Commemoration, Memory and Inter-Personal Contact

The study observes that over the years reconciliation as a process in Canada and Australia has witnessed commemoration, walks, art installations that engage both Indigenous and non-Indigenous people through personal exchange and dialogue. Such events are often a result of state initiatives and are organised for concerned citizens and groups. In contrast to the same Indigenous groups organise gatherings that are more reflective of their lived experiences. In Australia, public performances of hand-shakes between Indigenous and non-Indigenous people, long marches across the Sydney Harbour bridge, bring forth emotional responses regarding mutual trust based on cross-cultural human contact. Such performances of reconciliation are marked by participants' feelings of amity and a larger sense of cross-cultural goodwill. Reconciliation in this sense has various "performative affects", in forging new alliances or relationships for an imagined future (Edmonds 2016: 2).

Such performances are crucial to symbolic aspects of reconciliation. Reconciliation in settler societies serves various political and social functions in sight of continuing structures constitutive of the violence of a colonial state. It can serve as a mechanism of redemption especially in the sight of public acknowledgement of historical wrongs. In case of Australia this was brought forth through the 'Bringing Them Home' report. Following which, the Sydney Harbour bridge walk organised by the CAR, functioned as a platform to address non-Indigenous guilt in being a part of a larger narrative of oppression. The walk brought a lot of people together from various cultural backgrounds yet it was criticised for being a government sponsored distraction from state refusal to apologise to Indigenous peoples under the leadership of PM John Howard and larger denial of the claims of the NISATSIC defining large scale removal of Indigenous children as genocide (Edmonds 2016).

In contrast to the above the year, 2000 also saw a commemoration for the Myall Creek massacre; organised by an Indigenous elder Sue Blacklock. This massacre was perpetrated in 1838 by two convicts at the Myall Creek station in the absence of the manager, wherein Aboriginal men, women and children were violently massacred. The perpetrators of the violence were punished with death sentences post public outcry at their initial acquittal. The ceremony organised by communities guided non-Indigenous participants through Indigenous rituals of remembrance, followed by a recital of a prayer commemorating efforts of both Indigenous and non-Indigenous lives in bringing the perpetrators to justice. This was then followed by a dialogue between descendants of both perpetrators and victims. This ceremony followed both Indigenous rituals and Christian traditions of truth-telling. Such a ceremony lacks an inherently emancipatory agenda however such a cross-cultural exchange brought forth a certain spontaneous dynamic of understanding missing from top-down state sponsored, and meticulously programmed events. An absence of the imprint of the state in public commemorations, marches and other events marks greater potential for building cross-cultural relationships in settler contexts. Such performances by the state and their contrasts in counter-performances by Indigenous groups or cross-cultural initiatives play out within various contexts. Counter-performances within the discourse of reconciliation attempt to create a narrative that goes beyond the assimilating agenda of the settler state by locating Indigenous memories and narratives at the centre of such events (Edmonds 2016).

Indigenous Self-determination in International Politics and its Reflection in Australia and Canada

As observed in the previous sections, Indigenous agency and voice are crucial to reversing overarching colonial structures that shape the relationship between Indigenous peoples and the state, and those between Indigenous peoples and their non-Indigenous counterparts in Australia and Canada. Such an agency forms a crucial component of restorative justice, which is in turn foundational to reducing Indigenous disadvantage; a factor which is central to the process of reconciliation in both Australia and Canada. Self-determination in settler contexts is therefore crucial to challenging the foundations of colonial oppression (Wilmer 1993).

Right to Self-Determination

Self-determination as a principle appears in the UN Charter in Articles 1(2), 55 and is also implied in Chapters XI and XII. In its mandate the Charter provides for the maintenance of international peace and security through the principles of equality of rights and self determination (Cirkovic 2007). The right to self-determination is also contained in the International Covenant on Civil and Political Rights (ICCPR) and in International Covenant on Economic, Social and Cultural Rights (ICESCR). Self-determination is defined as the collective right of Indigenous peoples to manage their own affairs and determine the policies that impact their lives. It entails the principle of non-discrimination, respect for culture, control over lands and natural resources, development and welfare services and self-government. Governments in this sense must provide only financial support for implementing programmes and policies; adopted by Indigenous peoples through their own choice. State parties to these Covenants are under the obligation to promote this principle in accordance with provisions of the Charter of the United Nations. Both Australia and Canada are parties to the above mentioned human rights treaties (Anaya 2000; Thornberry 2002; ; Government of Canada 2016; Commonwealth of Australia 2017).

The United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 13, 2007. The UNDRIP as a document, is aspirational and non-binding in nature as it entails a set of rights that

states are to enforce and implement under moral obligation and not legal compulsion. In Article 1, it postulates the right of all peoples to be unique and preserve their culture both as individuals and as a collective. Following which it invokes principles of non-discrimination and equal rights. In Article 3, it declares the right of self-determination as foundational to achieving the above. These three articles sum up the wider vision of the declaration. It is important to note, that the UNDRIP establishes that the right of self-determination must be envisioned through a framework of partnership between states and Indigenous peoples (Fromherz 2008).

According to the UNDRIP self-determination is the right of all peoples to determine their political status and pursue social, economic and cultural development. According to Article 4 of the document Indigenous peoples have the right to self-determination, thereby a right to self government over their own affairs and to financial mechanisms for managing the same. Taking the principle of self-governance further, Article 34 states that Indigenous peoples have the right to establish, develop and manage institutions that preserve and develop their legal systems, customs and cultures in a tandem with the international standards on human rights. The declaration, goes on to state that no part of the document warrants any right to "dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States" (UNDRIP 2007: 14). Therefore the right to self-determination, in the context of the UNDRIP is to be read as "a right to internal self determination" (Fromherz 2008: 1371). The declaration is not legally enforceable, however it has been adopted by both Australia and Canada (ABC News 2009; Fontaine 2016).

Policy Reflections in Australia and Canada

Self-determination goes beyond mere consultation or participation of Indigenous peoples in policy formulation and delivery of services. It includes authority regarding decision-making that is followed throughout the process of policy implementation. The 'Bringing Them Home Report' in Australia pointed out that current laws and practices pertaining to Indigenous children must take into account principles of self-determination. Through self-determination, high rates of child removal can be tackled better if Indigenous peoples receive funds to administer and manage all aspects of child welfare services. The report also emphasised the role of Indigenous self-

determination in managing services pertaining to familial reunion, mental health support, adoption of Indigenous children and to tackle high rates of Indigenous presence in juvenile and other justice systems. Such an approach is holistic in the sense that it incorporates Indigenous world-views to tackle Indigenous vulnerabilities through ways and means that can advantage their position (HREOC 1997). The report instructively states the purpose of Indigenous self-determination as follows,

> developing community justice solutions within a context of self-determination is essentially a practical task. Governments are not required to relinquish their responsibilities but they are required to relinquish control over decision-making for Indigenous communities. Successful Indigenous community justice responses require efficient, practical and continuing support from governments to facilitate communities in the difficult process of finding acceptable solutions. At the same time structural issues must be addressed by governments. These are the underlying social and economic issues which cause crime and demand a co-ordinated Commonwealth, State and Territory response (HREOC 1997: 462).

Along with the HREOC, the CAR also highlighted the importance of self-determination in the process of reconciliation and the related goal of ensuring their human rights. The Australian Human Rights Commission (AHRC) (2003), emphasised that self-determination by Indigenous peoples does not amount to a right to secede.

The COAG had established certain governmental trials at the community level titled 'whole-of-government' between 2006-07. These governmental initiatives established mutual support and obligation between state governments and Indigenous peoples; along with Indigenous self-support systems. These materialised in the form of Shared Responsibility Agreements (SRAs), Indigenous Coordination Centres (ICCs) and Regional Partnership Agreements (RPAs). The ICCs, located in 30 different places across the continent, recorded the maximum success. They became focal points for interaction between Indigenous peoples and all other levels of governance regarding specific community programmes and governmental level negotiations. Regaining lost dignity through campaigns for better education and employment opportunities brought to the fore an Indigenous leadership that focused more on societal dysfunction than land rights. This form of Indigenous leadership could negotiate better with the government in order to secure certain autonomy to rebuild communities. Despite a few successes, failures of such joint ventures remained common. The SRAs were prioritised by the government, over policies regarding self-

determination to organise direct interactions with communities. These however saw Indigenous agencies being bypassed by governments to negotiate directly with families and communities. The RPAs remained largely unsuccessful due to their professional negligence and indifference to Indigenous issues (Hunt 2008).

The year 2007 saw the Australian federal government intervene in NT amidst reports of rampant sexual abuse of children. In the short term Indigenous communities welcomed the action as medical facilities and better law and order were the requirement of the day. However, prolonged presence of the army, along with widespread withdrawal of land permits and rights, along with the application of stringent rules regarding usage of household income in over 70 communities soon came to be regarded as invasive and arbitrary. Critics did not question the reason for this intervention, however they became highly sceptical regarding the nature of this specific governmental action (Hunter 2008). Efforts for implementing Indigenous right to self-determination, saw a huge setback after this governmental response, in favour of greater Indigenous mainstreaming through urbanisation and shutting down of remote reserves guided by the government (Kowal 2008). Nonetheless, Australia adopted the UNDRIP in 2009. As of today, much is to be seen in terms of the implementation of the principle of Indigenous self-determination (ABC News 2009; Bellear 2013). However recently efforts have begun in order to negotiate treaties between three Indigenous groups and the government of South Australia (Hobbs 2016).

In the case of Canada despite the recognition of Indigenous peoples through section 35(1) of the Constitution, as mentioned previously, Indigenous objectives and aspirations regarding self-determination are yet to be realised. The Supreme Court of Canada has not explicitly recognised or elucidated regarding the contents of self-determination as entailed in the above section, that guarantees the right to Indigenous and treaty rights. In case of a conflict between the State and Indigenous peoples, with respect to a violation pertaining to section 35(1), it must first be proved that a particular federal legislation violates Indigenous rights; and that such an infringement is justified and can be deemed as acceptable. However justifications in such cases cannot be termed according to generic public interest, but must fall strictly within the confines of the responsibility of the government towards Indigenous peoples. The

Canadian common law acknowledges only one sovereign, the Crown; ending in possible conflicts over jurisdiction pertaining to Indigenous self-determination. However in Canada treaties have been negotiated between Indigenous peoples, the provincial government and the federal government in order to secure legislative rights to Indigenous peoples (Dalton 2006).

The Nisga'a treaty negotiated between the Nisga'a people, the government of British Columbia and the federal government in 1999; is a testimony to the fact. This treaty entailed Indigenous self-government over 1,930 square kilometres of land with municipal powers and $190 million in cash. In case of this treaty an objection was raised regarding its constitutional validity, as it conferred legislative powers to Indigenous people which in the constitution were exhaustively placed with the provincial and the federal governments. The British Columbia Court of Appeal in this case rejected this objection by rejecting the argument in favour of exhaustive powers to legislatures, by observing that the right to self-government of Indigenous peoples had been negotiated several times under the sovereignty of the crown. This was primarily due to the fact that the preamble acknowledges that there are many constitutional powers that are not set in writing, as in principle it follows the constitution of the United Kingdom and its unwritten laws. These unwritten laws can therefore be utilised to negotiate such treaties and fill in gaps regarding distribution of legislative powers. Moreover the treaty specifically stated the limitations of the legislative powers regarding this land at several levels; and the court concluded that Indigenous self-government is a constitutionally protected right. However unlike this provincial court ruling, the Supreme Court of Canada has been largely reluctant to deal with cases regarding Indigenous self-government (CBC News 1998; Dalton 2006; CBC News 2011).

Through this particular judgement the law of the state of Canada acknowledged the Indigenous right to self-governance as constitutionally valid. Such a legal recognition is a step ahead in the process of reconciliation. The TRC bolstered this validation of the principle of self-determination by emphasising the need for Indigenous self governance in all matters pertaining to the community within the larger ambit of the UNDRIP. Till date Canada has negotiated and formalised 22 agreements regarding self-governance across 36 Indigenous communities (INAC 2015).

Conclusion

Official apologies, establishment of Truth Commissions are means to address abuses of human rights. Both intend to transform the relationship shared by adversaries and provide political, social and economic mechanisms to move beyond the wrongs of the past. Such state-dominated modes of reconciliation remain problematic for Indigenous communities as they continue to face the consequences of past wrongs in the sight of state failure in addressing their present disadvantages (Corntassel and Holder 2008). Indigenous disadvantage in Australia, mirrors that of Canada. In both the countries Indigenous children are disproportionately represented in the child welfare system. In the case of Canada Indigenous constitute 50% of those in care while in Australia this number stands at 51%. Therefore separation of Indigenous children from their families continues unabated in the two countries, despite the efforts at reconciliation (Wahlquist 2016).

Apology and reconciliation are yet to transform the existing colonial relationship between the state and Indigenous peoples. The two states are yet to establish meaningful forms of restitution and dialogue with Indigenous peoples. When these factors are analysed through the lens of Indigenous self-determination one observes that much is to be achieved in both the states. Policy follow-up on the process of reconciliation must make itself evident. The entire exercise of reconciliation in the two countries, otherwise risks being criticised as a distraction from the essentially colonial functioning of the state and dire conditions Indigenous peoples live with (Corntassel and Holder 2008).

Reconciliation as a process does not only seek facts in terms of recording details of incidents or narratives; it also seeks to appropriately acknowledge them. This acknowledgement operates at a public and political level along with a sense of responsibility on the part of for restoring the dignity of aggrieved parties. A truth commission focuses on the victims and their narratives and therefore becomes a forum for garnering support. Unlike a court of law a truth commission does not call upon perpetrators to hear their accounts; this is primarily done in order to bring forth the fact that under repressive rule the very foundations of law and order were inverted. Australia, unlike Canada is yet to form a truth commission. It is not

recovering from armed conflict neither is it passing through a phase of political transition. The aggrieved group forms a small proportion of the population. Indigenous peoples resist their classification into 'minorities' both nationally and internationally. They have asserted that their unique historical ties to the land and existence prior to the advent of the colonial and the nation state, should warrant political autonomy or negotiations for the same. In extension of the above argument stating acknowledgment of and accountability for violation of the rights of Indigenous children and their families, reconciliation in this context should therefore entail restorative justice (Short 2008).

This study observes that, as compared to the relationship between the state and Indigenous peoples, the relationship between Indigenous and non-Indigenous peoples holds greater promise of change; with individuals and communities taking the initiative to understand and acknowledge the history of the other. Initiatives wherein non-Indigenous peoples remember the loss and trauma faced by Indigenous communities in joint non-governmental commemorative events, hold greater potential for emotional connect and rebuilding of political relationships.

Both Australia and Canada face contradictions in the form of ongoing separation of Indigenous children from their families, which runs parallel to the process of reconciliation. These conditions of ongoing violations of the rights of Indigenous children and their communities, threaten a repeat of history. Indigenous agency and voice carry the potential to address this problem and challenge the colonial relationship between the settler state and Indigenous peoples; through the mechanism of self determination. Self-determination pertains to self-governance over systems of welfare, and economic and social development. As witnessed in Canada Indigenous communities view the same as asserting their ability to control systems that affect the lives of their communities (Harding 2008). Australia has a relatively longer way to go, with regard to Indigenous self-determination in child welfare as compared to Canada. Negotiations regarding the same have taken place in Canada several provinces would be discussed in greater detail in the next chapter.

CHAPTER FOUR

RIGHTS OF INDIGENOUS CHILDREN IN A COMPARATIVE FRAMEWORK

As has been observed the rights of Indigenous children and their communities have been violated through coerced separation from their families since the establishment of the state in both Australia and Canada. This began under the initial garb of state protection, followed by assimilation through education. This continues till date through state sponsored systems of child welfare; thereby violating a basic ethic of reconciliation that entails non-repetition of the wrongs of the past. A rights based approach to look at reconciliation entails an understanding of the integration of rights into all dimensions of decision making regarding social, economic and cultural lives of Indigenous children. This chapter uses the framework of child rights in order to look into the ongoing violations of the same in the form of continuing separation of Indigenous children from their families and communities in both the countries that seek to reconcile with Indigenous peoples.

Concept of Child Rights

Rights are valuable because they attribute a certain dignity to the bearer and acknowledge its agency. Such an agent and bearer of rights participates in the betterment of its life. Rights come along with remedies that require implementation in case of violations. They offer legitimacy to marginalised groups, lobbies, non-governmental organisations to advocate for rights (Freeman 2011). A rights based approach is founded on the acknowledgement of individual entitlements along with duties of states to ensure the same. Rights based approaches are being increasingly used to analyse state controlled delivery of services and decision making by the judiciary. The process of mainstreaming or integration of rights is proactive in nature therefore it pertains to decisions that are preventive of violations and are not limited to the remedial realm. Such an approach manifests itself in the process of official investigations and litigation, that are essential to the protection of human rights. Therefore an instrumental approach to human rights is foundational to the process of

shaping policies pertaining to the protection of these rights. Rights based approaches are founded on the principles of accountability, non-discrimination and participation (Tobin 2011).

With respect to children, such rights based approaches also entail notions of universal human dignity as enshrined in Article 1 of the Universal Declaration on Human Rights (UDHR) and the indivisibility and interdependence of human rights. The latter emphasises that there is no universal hierarchy of human rights and each right is connected with the other. Such approach also addresses children's vulnerability through principles of 'best interests' and the right to survival and development. International law also acknowledges their right to assess and determine their interests even in contexts where they lack the capacity to exercise these rights. The determination of their interests is based on a theory of social interest in contrast to a reductive understanding of basic or immediate interests (Tobin 2011; Tobin 2013).

Accountability

The accountability of the state in securing and implementing children's rights is tied to the right of the child to avail the same. The Convention on the Rights of the Child (CRC) acknowledges every human being below 18 years of age as a child. It gives room for discretion according domestic law in which majority may be reached earlier. In case of the CRC Article 4 makes the state responsible for utilizing their resources to the maximum in order to ensure social, economic and cultural rights of children. The Convention also recognises that the capacities of children evolve on the basis of support provided by parents, guardian and extended family according local customs and practices. The state is therefore mandated within the CRC to respect the accountability of parents and guardians (United Nations GA Res. 1989; Article 5). The preamble to the CRC also asserts that the family is pivotal in nurturing the child and ensuring its accountability within a community (UN GA Res. 1989).

Article 3 and 5 of the CRC also ask states to ensure the rights and guardianship duties of parents or individuals accountable for children. Article 5 especially calls for states to take into account rights of the community and legal guardians wherever applicable to ensure care and nurture, in accordance with specific customs unique to the identity

of the child. However Article 9(1) makes a significant departure from this principle when it states that a child can be removed from the care of its parents post judicial review and the procedure of law followed by the concerned authorities deems it necessary to ensure the 'best interests' of the child. Similarly Article 9(3) acknowledges the right of the child to stay in contact with her parents with the conditionality that it should not contradict her 'best interests' (UN GA Res. 1989).
States under Article 18 of the CRC are to acknowledge that parents and legal guardians are primarily responsible for bringing up children. They are bound to assist parents through development of services and institutions of care in supporting working parents (UN GA Res. 1989). However, this provision can be trumped as parents can be denied the right to guardianship of their children in cases where the principle of 'best interests' is perceived to stand contradicted. The above Articles are crucial in understanding the context of the rights of Indigenous children in Australia and Canada; especially pertaining to state responsibilities regarding their familial and cultural rights and their 'best interests'.

Non-Discrimination

Non Discrimination is the second principle of a rights based approach, based on equal protection by law and equality before law. The Convention calls for States to ensure that children are not discriminated against on the basis of their ethnicity, race, language, religious affiliation or any physical disability. States are also called to guarantee against any prejudice on the basis of status, actions or orientation of their families or legal guardians (UN GA Res. 1989, Article 2). Article 2 concerning the principle of non-discrimination, precedes Article 3 that enshrines the principle of 'best interests'.

Rights of Participation, Survival and Development

The CRC focuses on children as beings that need to be nurtured and protected. Going further within the document the study understands that the CRC also identifies the child as a possessor of rights and establishes that states ensure to a child, the right to express her/his opinion in legal and administrative matters directly affecting her/his life (United Nations GA Res. 1989, Article 12). On similar lines, Article 8 delineates

the child's right to an identity and its preservation without the state's undue intervention. This article also marks the state's duty to protect and reinstate the child's sense of identity in cases where it is illegally deprived of the same. Fundamental freedoms of children are acknowledged through Article 13 and 14. These establish that states are responsible for respecting a child's right to religion and conscience to the extent that it does not violate the fundamental rights and freedoms of others according to law. These Articles re-emphasise the importance of the child's knowledge of her/his agency regarding the pursuit of rights. Such an agency would come in use especially when matters pertaining to the ongoing violations of the rights of Indigenous children in both Australia and Canada. Subjective interpretations as discussed earlier with respect to 'best interests' can be a point of contention. The CRC maintains in Article 14(3) that the freedom to pursue religion and other beliefs to the conditionality of rule of law, health, morals, public order and safety along with fundamental freedoms and rights of others. Similarly Article 19 ordains that state parties shall take all due measures to protect the child from mental or physical violence, maltreatment or neglect. This cause if furthered through Articles 12 and 42, wherein the CRC identifies the child as an entity has to be made aware of its rights (United Nations GA Res. 1989).

The CRC, therefore defines the child as an active agent who exercises her/his rights and furthers the possibility that s/he would claim the same by making states responsible for spreading awareness regarding the provisions and tenets of the Convention. Such an emphasis acknowledges that children's right regarding their own agency also need protection. Children are therefore guaranteed a say in administrative and legal matters that directly affect their lives. The CRC emphasises this as essential to the development of their personality. The principle of participation acknowledges a child's moral integrity as an individual and decision making capacities need to be acknowledged in order to ensure just treatment. Implementation of children's rights require recognition of autonomy, in the present and potential autonomy of the future along with protection. Autonomy in this sense refers to the treatment of the child as an equal, and protection implies intervention only in case of potential harms to be caused by her/his actions; along with protection from immediate hazards or harms. The debate that draws a dichotomy between the two, creates a false division; as protecting children necessarily entails protection of their rights. Assertion of agency in matters

that affect their lives directly is an important aspect of the exercise of agency (Freeman 2011; Grover 2015).

Principle of 'Best Interests'

Article 3 of the CRC states that all actions pertaining to children whether undertaken by public or private authorities regarding welfare, legislation, administration or the judiciary are to give primary consideration to their 'best interests' (United Nations GA Res. 1989). This principle emerged in international law as it forms a central feature in family law of several countries. These countries are primarily United Kingdom, France and the United States of America. The use of this term predates the convention, and has found its way into many legal instruments focusing on the rights of the child. It found its way into Charter on the Rights and Welfare of the African Child, European Convention on Human Rights. Scholars highlight that the interpretation of 'best interests' in domestic law may come of use in understanding its significance in international law, but it is by no means definitive in nature. The interpretation of term has to have both objective and subjective elements. Objective elements should therefore derived from a consensus over a set of values. Most importantly, the subjective individual experiences of a child determine the 'best interests' in the case (Alston and Walsh 1996).

The UN Working Group deliberated in length before deciding on the 'best interests' being a 'primary consideration'. However the CRC specifically state that 'best interests' were to be considered 'paramount' while considering cases of adoption, as mentioned in Article 21. This decision was taken in order to ensure that the child's 'best interests' take precedence over all other matters including the interests of adoptive and birth parents, adoption agency and the state concerned. Similar provisions are in place in the CRC when it comes to cases for adoption and in the UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (United Nations GA Res. 1986; UN GA Res. 1989).

In all the CRC mentions 'best interests' eight times. However, by its very nature this principle remains indeterminate, as different cultures and viewpoints would have a

different take on the matter. This principle is also challenged temporally as many a times future oriented interests clash with the interests of the present. Michael Freeman observes that this principle also remains ambiguous as, "is about best interests, and not best rights" (Freeman 2007: 4). There are competing theories regarding the relationship between rights and interests. One favours choice or will and the other values benefit or interest. Scholars who favour the view of the will consider self-expression as paramount, while those who favour benefit state that rights do not favour individual assertion and cater to certain interests. The CRC in Article 3 considers 'best interests' as primary and not the sole determining factor in decisions regarding children. This principle is seen as constrained and informed by other principles mentioned within the convention. Therefore, any act said to be taken in a child's 'best interests' cannot violate any provision of the CRC. 'Best interests' cannot violate the child's right to protection from violence, exploitation and has to a be ascertained through protection of right to education, leisure and a decent standard of living (Freeman 2007).

In recent times the process of 'best interests determination' (BID) involves a procedure that takes into account a large array of factors in order to determine an outcome for the child (Cantwell 2011). The formal process of the BID entails decisions by individuals from relevant areas of expertise to assess all relevant factors regarding the decision. Such a process must entail consideration for the right to life, survival and development. It must consider the principle of non-discrimination and the process should guarantee participation of children to express their views in matters directly affecting their lives. Balancing of various objectives during such a process is quite crucial especially while dealing with matters regarding child protection (UNHCR 2008).

Beyond the content of the term, issues of agency regarding who decides what is in the child's 'best interests' also need to be evaluated. Such a concern becomes more valid in case of state sponsored surveillance of families regarding child protection. According to the CRC it is the state that decides the 'best interests' of the child. In case of Australia and Canada, where the state has been a historical violator of the rights of Indigenous children; the state's accountability for their welfare becomes highly suspect. There is a persistent lack of consensus when it comes to determining

the ‘best interests’ even in cases where a balance between objectivity and subjectivity is sought; as witnessed in the ongoing removal of Indigenous children from their families in both Australia and Canada due to lack of housing, health care and an education euphemistically termed as neglect or maltreatment; through protection agencies (Mower 1997).

Scholarship suggests that such a principle is based on the concept of a western notion of childhood, wherein the views of adults regarding children in the western world are privileged and declared as a basis for ensuring child rights. Underlying such a principle of ‘best interests’ are dynamics of power that shape social relations. Such relations of power are exposed through ways in which the ‘other’ is defined. Productive power shapes and influences the subjects of power, it also influences our quality of interests or autonomy and generates the capacity or agency to avail these interests. Productive power is never a consequence of conscious decision making and is exercised unintentionally, by acting upon certain intentions that largely permeate the society and social relations; primarily through one’s day to day actions. These permeating intentions are shaped by what is generally believed to be true or worthwhile in a society. Certain beliefs result in the creation of specific systems of knowledge that are involved in the creation of subjects. All knowledge is therefore a product of power, which is diffuse or capillary in nature (Vella 2016).

Structural relations of power and dominance therefore shape the use of terminology or language. Productive power decides what constitutes a problem and how to fix it. Such authority bestows power to categorise, classify and conceptualise; these three in turn shape the discourse that produces knowledge and power. Such knowledge is professionalised through both research and on-field experience. As indicated in BID significant authority is given to individuals with expertise. Such a humanitarian enterprise involving assessing the ‘best interests’ of vulnerable children has potential for both dominance and emancipation. As the recipients of such decisions may acquiesce due to their socio-economic disadvantage (Vella 2016). Protection of children through ‘competent’ institutional authority and trained personnel within the state is mandated by the CRC, that declares children require the state’s concern and protection in familial, legal and societal terms in order to ensure their ‘best interests’ (UN GA Res. 1989). However, there is no description of the term ‘competent’ for

supervising institutions that deal with children, whether public or private. This can be viewed as an example where productive power decides who is 'competent'. Thus all facilities pertaining to child fostering, adoption, day care; have to meet 'standards' ensured by the states themselves. There is no definition of such 'standards' in the CRC and they have to be determined by states themselves. In Australia and Canada where Indigenous disadvantage continues to shape stereotypes regarding communities, 'standards' of care are essentially determined by expertise of state sponsored child welfare personnel. Such an analogy therefore becomes particularly relevant when analysing cases of Indigenous child apprehension by workers of state agencies who may choose to act upon commonly believed notions of child neglect, in what are actually, economically and socially deprived households.

Rights of Indigenous Children

With respect to the rights of Indigenous children, the CRC entails three specific Articles, namely 17, 29 and 30. Article 17 enumerates that state parties shall take all the appropriate measures to ensure that children have full access to all the information needed for their cultural and spiritual development and physical and mental well being. Such materials should be made available from all national and international sources. Article 17(d) specifically stipulates that states must facilitate dissemination of such materials in the mass media to cater to the linguistic needs of Indigenous and minority children. Similarly Article 29 asserts that education provided to a child shall correspond towards the fullest development of her/his personality with specific reference to Indigenous children under 29(c) and 29(d). These sections state that education must nurture respect for child's own culture and of family and place of origin. Just as such regard is placed for his/her country of residence or citizenship. These sections place special emphasis on respect of diverse ethnicities, religions, cultures and Indigenous peoples as the foundation of a responsible adulthood. Article 30 states that no child of Indigenous origin shall be denied a right to her/his language, religion or culture (Thornberry 2002; United Nations GA Res. 1989).

The essence of the CRC calls for broad protection for children's development, Article 6 protects the right to life, survival and development while Articles 18, 23, 27, 29 and 32 protect physical and mental health along with talent and subjective interests. This

becomes most crucial in the case of Indigenous children, as they are positioned in a chronic condition of suppression due to political, social and cultural attitudes towards them (Peleg 2013). Therefore there is an added need to view children them agents with capabilities in order to facilitate their maximum development. In the context of the CRC the parents, or guardians, along with the state and the international community ensure the same. Indigenous children as mentioned above are continuously deprived of their rights in these given respects in both Australia and Canada.

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) makes states accountable for the civil, economic, social and cultural rights of Indigenous peoples (United Nations GA Res. 1965). The International Covenant on Civil and Political Rights (1966) delineates their right to self determination and the right to economic, cultural and social development. It enshrines the right to practice and assert their unique culture. Indigenous people are protected by this convention even if they do not belong to a minority population of a state (United Nations GA Res. 1966a). The International Covenant on Economic, Social and Cultural Rights (1966) asserts the rights of children to protection against discrimination, right to education that encourages inter racial, inter religious and inter-ethnic understanding and tolerance under the aegis of the state (United Nations GA Res. 1966b). Australia and Canada are parties to all the above treaties (Government of Canada 2016; Commonwealth of Australia 2017). It is important to note that the ILO Convention on Indigenous and Tribal Peoples in Independent countries (ILO C169) is the sole legally binding instrument of international law that deals exclusively with the rights of Indigenous people. It acknowledges the right of Indigenous people to decision making in policies that impact their societies, identities and cultures. This convention provides for the education and protection of languages pertaining especially to Indigenous children. Incidentally neither Australia nor Canada has ratified the same.

Secretariat of National Aboriginal and Islander Child Care Australia (SNAICC) (2012), in its analysis points out that the Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), does not delineate any new rights, rather it builds upon the existing framework of human rights as they apply to Indigenous peoples. The key

tenet being the right to self-determination, which pertains to effective and full-scale participation in all matters that impact their interests directly, in order to have greater control over their lives. A closely connected right as illustrated in Article 18 is that of participation in decision-making that is fundamental to empowering vulnerable communities and establishing a relationship of trust with governments and their agencies. Articles 11- 13 provide for recognition of unique histories, languages, societal institutions, cultures and lands of Indigenous peoples. Australia adopted the Declaration almost a decade ago while Canada removed its objections from the same in 2016, and vowed to adopt the same.

As stated previously historical violations of human rights a massive scale led to disruption of families, communities and cultures. It led to economic, social and cultural decline of Indigenous communities in both Australia and Canada. As a consequence Indigenous children are predisposed to be born into poverty, suffer health related issues, maltreatment, and substance abuse. These coupled with a poor education and cumulative psychological trauma, emotional injury result in their placement in out-of home care. High rates of suicide amongst the youth and disproportionate rates of Indigenous people in penal institutions, and other forms of institutionalisation in rehabilitation centres, institutions for mental health by the state are a testimony of inter-generational trauma (Shantz 2010; Hutchings 2016; ABC News 2017).

Average incomes of Indigenous and non-Indigenous are distanced by huge gaps, usually sustained by differences in levels of education in Australia. This results in lower levels of household income, poorer health, and lack of proper housing. These communities are therefore characterised by greater uptake of welfare services and income support. Such disadvantages affect children directly, with many lagging behind on several development outcomes. Such gaps as compared to other children, compound for Indigenous children in their adult hood due to cumulative disadvantage (AIHW 2015a). Similar accounts of income disparity, education and well-being are experienced between Indigenous and non-Indigenous people in Canada. Disadvantages like poverty, likelihood of living in poverty, greater chances of facing violent crimes, persist overtime and often culminate in chronic health problems. Like

the case of Australia, chronic disadvantage hamper capacities and overall wellbeing of Indigenous children in Canada (INAC 2013; CBC News 2013).

Placement of Indigenous children in out-of-home care, in the form of group homes, kinship and eventually non-Indigenous foster care has witnessed in a disproportionate rise in both Australia and Canada. Australian Institute of Health and Welfare (AIHW) (2016) states that Indigenous children made 5.5% of all children between the years 0 and 17 years as of June 2015; yet accounted for 35.6% of all children put in out-of-home care. Their rates of placement were 52.5 per 1000 children, in contrast to 5.5 per 1000 for non-Indigenous children. The National Household Survey (2011) stated that 48% of 30,000 children and youth in alternate, out-of-home care across Canada are Indigenous. With 14,200 Indigenous children in foster care less than half lived with one parent who identified as Indigenous (Yukukselir and Annett 2016).

Indigenous Child Welfare in Australia

In 1940, New South Wales (NSW) removed its legal control over Aboriginal Protection Board and transferred it to state child welfare authorities. It became the first jurisdiction to do so. In case an Aboriginal child had to be removed the Board had to convey it satisfactorily to the court that the child was vulnerable or abused in accordance with Child Welfare Act 1939. Systematic policies for forced child removal in Australia continued well into 1960s. Most of these children were placed with non-Indigenous families. Indigenous families perceive any interaction with welfare authorities as threatening. Indigenous organisations working with communities point out that welfare workers continue to be prejudiced against Aboriginal culture and child rearing practices. Inter-generational impact of removals, dismal socio-economic conditions, cultural difference between Indigenous and non-Indigenous systems of child care and racism have resulted in significant over-representation of Indigenous children in child care. In the contemporary times intervention in Aboriginal families and communities continues in Australia especially when it is governed by eight different child welfare systems across states and territories. Pitjatjanjtara people live in areas bordering Northern territory (NT), South Australia (SA) and Western Australia (WA) and are therefore covered by three different child welfare systems. High levels of poverty, ill-health, homelessness,

unemployment and inter-generational trauma characterise Indigenous communities which are therefore more susceptible to the intervention of welfare services (Cunneen and Libesman 2000).

Legal guardianship over children was transferred to Indigenous people in the late 1960s in Australia. SA took this step in 1962, NT in 1964, while WA undertook the measure in 1963 and Queensland (QLD) in 1965. The same period also saw the closure of many reserves and movement of Indigenous people towards the cities. In the cities they became all the more dependent on state welfare services and its concomitant, state surveillance. Indigenous families were always subject to the prejudice of exhaustive scrutiny. In Australia the 1950s and 1960s saw large scale removal of Aboriginal children. In 1971, 97% of all children in foster care were Indigenous. Emotional and sexual abuse were rampant in foster care. The reported incidents were more than those documented in state institutions in Australia. In the case of Australia the judiciary cannot be evaluated in factoring Indigenous identity in foster placement due to paucity of publically available responses in case law. There has been a disproportionate number of Indigenous children in foster care since 1980s in Australia (McCallum 2014).

Similar to other wealthy countries with colonised Indigenous populations, Australia's Aboriginal children are over-represented in the child welfare system (Tilbury 2009). Child welfare departments and their personnel have miserably failed to shift perceptions about their role within Indigenous communities (Libesman 2007). Aboriginal and Torres Strait Islander children continue to be over-represented in child welfare, with the greatest level of over representation in out of home care in Australia. At the same time Indigenous children, families and communities face structural poverty and systemic inequality. In Australia there exists a massive administrative lacuna in the form of failure to register Aboriginal and Islander births results in children being deprived of an education, social security benefits, employment and franchise in the future. Lorenzo Veracini (2010) describes the same as an issue that does not garner much attention despite turning Indigenous children into refugees in their own country. This he avers is a consequence of the administrative apathy and lack of governmental will, in a settler colonial state.

The ‘Bringing Them Home Report’ points out that close guidance of very young children and greater autonomy of older children characterise parenting in Indigenous communities in Australia. Children are expected to learn by observing adults in the community. Yolgnu children in NT Australia are expected to look up to their camp group for emotional and physical support and children between 5 and 15 enjoy considerable independence. A study on the functioning of child welfare in Victoria (VIC) in 1990 found that the welfare workers misunderstood the role and responsibilities of the extended family in Indigenous communities as dysfunctional or pathological (HREOC 1997; Harris Short 2012). It was only in the 1990s that substantive debate began about the removal of Aboriginal and Islander children in Australia. Until then there was little action in government responses to transfer any effective and tangible power to Indigenous communities and the federal government simply held State governments responsible for the lack of initiative (Bessant 2013).

Legislative Reforms at the State and Territorial Level

Steps have been taken towards legislative reforms that ensure greater control of Aboriginal and Islander communities over child welfare and protection services. Measures have been introduced to secure greater representation of Indigeneity in placement of children, ensure greater consultation of welfare workers and Indigenous communities, and more sensitivity towards Aboriginal and Islander practices in the bringing up of children. In QLD subsequent legislative will has demonstrated that Indigenous people are better equipped to find solutions to the problems that face their communities. Similar legislative will for reforms led to changes in the practice of Indigenous child welfare in VIC, NSW, WA and NT (AIHW 2001).

In NSW Aboriginal and Islander communities have been authorised to participate in the care and protection of children in accordance with the principle of self-determination. The Children and Young Persons (Care and Protection) Act 1998 that ensures the above, also provides for governmental negotiation with Indigenous persons while implementing programmes and policies that enhance and facilitate self-determination. The Children’s Protection Act SA 1993 calls for respecting a child’s cultural identity while determining the child’s best interests. Similarly Care and Protection of Children Act 2007 NT provides that a child’s ethnic background,

language and religious practices must be taken into account while dealing with cases of child protection.

The Child Protection Act 1999 QLD and Children, Youth and Families Act 2005 VIC, call for considering cultural and spiritual identity in protecting the interests of Indigenous children and ensuring their contact with their respective communities. The most crucial amongst these provisions is the Aboriginal placement principle. All jurisdictions within Australia recognise that whenever Indigenous children are required to be placed in out-of-home care they must be placed within their own communities or culturally the closest unit or band. The precise lettering of this principle differs across states however its larger formulation is evidenced in the Children and Young Persons (Care and Protection) Act 1998 NSW (Harris Short 2012).

Another measure that favours Aboriginal involvement in child welfare is participation of communities in the decision making processes regarding child welfare. In NSW the Department of Justice, the Department of Community Services and the Attorney General's Department have developed a joint agency to secure the involvement of community elders before the final orders regarding child protection are made. Aboriginal and Torres Strait Islander Child Care Agencies (AICCAs) were established in 1970s in Australia to ensure that children remain within their own communities, and their placement within non-Indigenous families must be put to an end. The agencies aimed at ensuring constant support for the preservation of Indigenous families. Over a 100 such AICCAs operate throughout Australia, and provide assistance with care of children, adoption and foster care. Despite these functions their role remains limited to consultation and assistance as actual decision-making authority rests with non-Indigenous child welfare services. The need for such consultation with Aboriginal communities in all crucial decisions regarding children is enshrined in legislative acts in SA, QLD, VIC and the Australian Capital Territory (ACT) (Higgins and Butler 2007).

Moira Rayner (2002) explains that despite ratification of the CRC in 1990, health and welfare of Indigenous children remain dismal. To begin with, infant mortality rates are three times higher than those of Australian infants of non-Indigenous origins.

Welfare interventions in Aboriginal and Islander communities are much higher than in non-Indigenous families. Laws regarding children are divided amongst six states and two territories, the federal government does not have authority to impose laws that are binding on states regarding child protection. However there is a crucial exception in case of implementation international treaties, wherein the federal government can intervene. Child protection remains a state responsibility however the financial resources required for its delivery are federally controlled. While different states and territories compete over resources they find collaborations amongst each other inconvenient. Therefore gaps, inconsistencies, overlaps in programmes and services for children are common.

Australian Institute of Health and Welfare's (AIHW) (2001) report on child welfare stated that except Tasmania (TAS), in all the jurisdictions the rate of substantiations for Indigenous children was much higher than that for other children. The same year Indigenous children were 9.6 times more likely to be the subjects of substantiations than other children in VIC, while this discrepancy stood at 7.9 times for SA. Numerous state and federal government reports describe poor economic, health, education, housing, and employment conditions of Aboriginal and Torres Strait Islander people; of particularly those who live in remote communities. These reports indicate that poverty is worsened due to social problems of substance abuse, domestic violence, and child maltreatment. Statistics are collected by each state government for the number of notifications and substantiations of child maltreatment. The data demonstrates that Aboriginal and Torres Strait Islander children are overrepresented in the child protection system. Indigenous children are up to 6 times more likely than non-Indigenous children, to have an experience of child maltreatment substantiated. They are also more likely to experience neglect than other children (Rayner 2002; Hunter 2008).

In QLD and VIC representations of Aboriginal and Islander agencies are mandated to attend family, group meetings and all such meetings pertaining to child protection. In VIC Indigenous agencies have the power to veto the placement of children in non-Indigenous child care. The Children, Youth and Families Act 2005 (VIC) ensures that the court cannot issue a permanent care order placing an aboriginal child in non-aboriginal care without prior approval of an aboriginal agency received in the form of

a report. Other jurisdictions provide limited scope for consultation with Indigenous communities in matters of child care (Harris-Short 2012).

Throughout Australia, legislation has voiced the need to assist communities to develop their own child welfare services, however policy implementation of this intention is yet to be actualised. Legislative measures have also sought to change the legal definition of family in various jurisdictions in order to accommodate Indigenous conceptions of kinship. The Care and Protection of children Act 2007 NT includes extended family as determined by custom or tradition, in the definition of family. In the context of adoption the risk of complete and thorough alienation of Indigenous children from their families and communities runs very high. States and territories with the exception of TAS have introduced an Aboriginal placement principle similar to the one applied in foster care; to ensure Indigenous children are adopted into a non-Indigenous family only as a last resort. Therefore custody and care of Indigenous children is allocated to the child's extended family or community, in order to support the effort of Indigenous communities to preserve their culture. Despite these efforts Aboriginal and Islander children are more likely to be a subject of child protection proceedings. As of June 2010, 48.3 per 1000 Indigenous children were subject to protection or care orders in comparison with 5.4 per 1000 of their non-Indigenous counterparts. In VIC aboriginal children are 14.3 times likely than their non-Indigenous counterparts to be removed from their families. This figure is the highest for any jurisdiction in Australia followed by WA where the figure stands at 13.5 times, for NSW and SA, Indigenous children are 11.3 and 10.2 times more likely to be placed in out-of-home care than non-Indigenous children (AIHW 2015).

Impact of Legislative Reforms

The Secretariat of Aboriginal and Islander Child Care (SNAICC) has observed that new legislative reforms have failed as Indigenous agencies do not have decision making power, which remains with non-Indigenous child welfare authorities in key administrative, judicial and executive departments. Indigenous involvement usually occurs at the final stage, when a child is being removed from his family, at the level of hearing at the court. The Inquiry voiced the need for a framework that takes care of children in compliance with international law and Indigenous people's right to self-

determination. The inquiry recommended that national legislation must be negotiated between Australian government and Indigenous organisations to formulate an agreement on measures that would address needs of Aboriginal and Islander children and ensure adequate funding and resources to best guard their human rights. The inquiry also suggested that welfare jurisdictions be transferred to Indigenous communities or shared jurisdiction wherever the same is desired by the communities. The Inquiry has spelled out minimum standards for all Indigenous children irrespective of whether they are dealt with by Indigenous organisations or the government. These require consultation with Indigenous bodies at every stage of decision making regarding children of the concerned communities. A significant limitation to the recommendation of minimum standards is the need for adoption by all Australian governments as the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (NISATSIC) was reluctant in considering an over-riding federal legislation (SNAICC 2012).

Since Australia is a signatory to the CRC, it is responsible for their safety and care providing them with a wholesome environment for their growth and development. The National Framework for Protecting Australia's Children entails community support for the development of children along with non-governmental organisations, for the delivery of services. At the administrative level, local governments provide infrastructure and support for Indigenous families followed by state and territory governments that co-ordinate out-of-home care and delivery of child welfare services from the non-governmental sector and supervise intervention and protection services. The state governments are also responsible for conducting research on child welfare (AIHW 2015).

The National Framework is also responsible for ensuring that Indigenous children are not deprived of their culture and beliefs. Concomitantly they have a right to safe and peaceful environment free of abuse and neglect. In decisions relating to their interests children and their families have to be participants in decision making. In order to achieve the same for Indigenous children in Australia, the Aboriginal child placement principle, which entails the placement of Indigenous children according to an order of preferences most suited to their needs. In case of removal from her/his family an Indigenous child should be placed with the extended family. If the first option is not

viable then placements should be made within the child's community, if the same is not possible then the placement should take place with other Indigenous peoples in the child's physical and cultural vicinity. Alternate care arrangement in a non-Indigenous family is seen as a last resort after extensive consultations with aboriginal and islander communities. Due to such an arrangement as of 2013-14, 67% of Aboriginal and Torres Strait Islander children were placed in the care of their relatives and communities. This stands as a testimony to the better implementation of Aboriginal child placement principle (AIHW 2015).

Children who are abused or neglected in their parental home often require placements in out-of-home care. These placements include group homes or other small residential institutions. In recent years they have more often taken the form of home-based care with unrelated foster carers, or alternatively kinship care with relatives (Jones 2010; Maureen and Sephton 2011). The provision of home-based care is under great strain as State authorities face difficulties in recruiting and retaining carers. At the same time, the number of children coming into the ambit of state protection has increased due to reports of child abuse and substance abuse amongst parents (Langton 2011). Much of the increase in demand has been addressed by kinship care rather than traditional foster care, due to difficulties of recruiting foster carers but also because kinship care is seen as providing better opportunities for familial and cultural continuity for children. Kinship care is now more common than traditional fostering in some jurisdictions in Australia and is the main form of care placement for Indigenous children nationally (Kaime 2010).

The majority of kin carers are grandparents, however, awareness regarding their financial requirements and support is limited in Australia. There are agencies that specialise in placement of Aboriginal children with authorised foster carers such as Kari Aboriginal Resources. These arrangements are given preference over other options as they tend to preserve the culture of Indigenous and multicultural children in out-of-home care. An Indigenous child needs to grow up in an environment where its person is considered as a part of the larger community and not an exception. The benefits of constant contact in reducing a sense of alienation, lack of parental care and culture of origin are the positive effects of kinship care patterns (SPRC 2008). Moreover, if the above provisions do not work out or are detrimental to the well-being

of the child, then in consultation with her/his community the child should be placed with a most suited person by the Director-General. Even in cases of non-Indigenous out-of-home care the foster family is obliged to ensure the child's contact with her/his family and community. However, NSW and VIC unlike other jurisdictions do not make it compulsory for the Aboriginal placement principle to be applied in case of children of mixed races. Other states and territories in Australia apply the principle in relation to children of mixed races depending on whether the child is considered Aboriginal; which is usually defined in a broad sense (Harris Short 2012).

Despite the above efforts 14,39,716 Aboriginal and Torres Strait Islander children received protection services, at the rate of 136.6 per 1,000 children. The data suggests that Indigenous children are 7 times more likely than non-Indigenous children to receive the same. A history of forced removal, cultural differences in upbringing of children, poverty and inter-generational trauma prevail and account for the data mentioned above. In June 2014, 14, 991 Indigenous children were in out-of-home care with a rate of 51.4 per 1,000 children. At the national level the rate of Indigenous children in alternate or out-of-home care was 9 times the rate for non-Indigenous children (AIHW 2015). Despite the prevalence of customary care arrangements among Australia's Indigenous people, these practices are not recognised in Australian law. Aboriginal and Torres Strait Islander communities have unsuccessfully lobbied the QLD government for its recognition (Tomasso and Finner 2015b).

Bob Lonne, Maria Harries, and Sarah Lantz (2013) explain that the child protection system in Australia is structurally disadvantaged today primarily due to the high number of notifications, rising number of Indigenous children in care and a decreasing number of foster carers. Social-policy objectives are seldom achieved when workers fail to acknowledge the ideologies that underscore practices of child protection. Work environment remains highly stressed due to lack of staff, especially in the context of increasing demands on the system. In the context of rising Indigenous children in care, the workers are under constant pressure due to potential failures, accompanied by inadequate supervision and lack of training, and inadequate reporting.

Child welfare workers in such conditions fail to follow the law or adhere to it to the last possible measure, maintain poor quality records and are often themselves victims of lack of inter-agency communication and cooperation. Assistance to families suffers due to the same, with a rise in punitive interventions that often break up marginalised Indigenous homes. The scholars observe that children suffer the most in the process. Alternate care fails to provide health and safety to children especially when bureaucratic work takes precedence over the amount of time spent with children and families. They go on to recommend a framework for promoting well-being of children and family. Decision making according to this should acknowledge competing ethics in any matter concerning child welfare. Along with this works must be trained to be sensitive to unequal relationships of power and complex needs of stakeholders and their responsibilities. Workers must understand competing interests regarding duty, respect for diverse and different cultures and securing justice for children. This framework cannot work if workers simply go by the rule-book and lack in pragmatic approaches to child care and safety. Over and above the same lessons need to be learnt from past failures concerning Indigenous children in care (Lonne et al. 2013).

Fiona Ryan (2011) argues for including the knowledge and experiences of Indigenous workers in the process of making decisions around child protection issues for Indigenous families and children. Many Indigenous workers also express disappointment at the lack of receptiveness among non-Indigenous staff to listen to their views about the protection of children. Indigenous workers would want non-Indigenous staff to listen to, and in turn engage with them. Mutual engagement would go a long way in building a relationship of trust between protection services and Indigenous communities.

Indigenous Child Welfare in Canada

Due to historical trauma caused by colonialism and state policies thereafter, traditional upbringing of children has suffered in Indigenous communities. Indigenous fathers along with the extended family play a pivotal role in a child's upbringing; which also prioritises the child's autonomy. In addition, distinct ways of attachment, addressing milestones of growing up, discipline, language and spirituality continue to be misinterpreted by non-Indigenous care professionals. Indigenous children have

inherited traumas that their ancestors were compelled to endure. These traumas continued through government policies that aimed at disrupting Indigenous cultures. It has been observed that maltreatment of children especially neglect is associated with socio-economic conditions in Canada; just as it was for Australia (Muir and Bohr 2014). Parental unemployment, behavioural or cognitive problems in guardians, social isolation of carers, substance abuse, domestic discord and violence; cause cases of neglect. As is evident in the study of such cases in Canada, these are mostly manifestations of socio-economic stresses. When compared with reported incidents of maltreatment of children in non-Indigenous communities; one discovers that Indigenous children are reported for neglect by mother unlike the former where maltreatment has no familial perpetrator. This is the case as Indigenous families are mostly dependent on social welfare, have had a history of dealing with protection services, deal with social isolation and poverty (Tourigny et al. 2007). At this point it is crucial to go through the history of child welfare in Canada.

Reports of forced child removals by non-Indigenous protection services have been rampant since the 1950s. At the other extreme end provincial welfare services have also failed to protect children at the risk of severe abuse and exploitation. Dispute over the jurisdiction of federal and provincial agencies have been more or less ongoing. The British North America Act 1867 gave exclusive legal control to the federal government over Indigenous people and their lands. This was changed in 1951 when provincial jurisdiction was extended to First Nations Reserves. The provincial authorities reluctantly assumed responsibilities as financial compensation from the federal government was absent or meagre. The 1960s saw a number of Indigenous families move to the cities in Canada. This in turn made people aware of their poor living conditions. There were mostly dependent on state welfare with the added issues of substance abuse, violence and sexual abuse in the context of loss of lands and traditional ways of being. The ‘60s Scoop’ as mentioned earlier consisted of a set of policies that removed Indigenous children from reserves and placed them in white/Euro-Canadian foster homes. It was primarily undertaken through the Department of Indian Affairs, through the provincial child welfare system. Indigenous children were apprehended and were permanently placed in foster homes. In 1966 the federal government took up shared financial responsibility along with provincial governments to provide child welfare services. However, conflicts over funding and

legal jurisdiction continued in Canada. During 1970s and 1980s trans-racial adoption of Indigenous children in non-Indigenous families was encouraged in Western Canadian provinces. Many of these adoptive parents regarded Indigenous culture with great disdain hence the children grew up thinking less of their own culture and identity. In BC, the Gove Inquiry concluded that economic marginalisation led to low birth weight, chronic health issues, psychiatric problems and fatal injuries amongst Indigenous children (TRC 2015g).

Legislative Reforms at the Provincial Level

In the 1980s provincial governments softened their stand and began notifying First Nations Representatives for protection services and involvement in planning. However, the rate of removal of Indigenous children in the early 1990s continued to main as high as the peak of the '60s Scoop' in Canada. Therefore until the 1990s provincial child welfare workers would investigate any report filed. In such circumstances assistance to Indigenous families to prevent child removal or return upon removal; were non-existent. Children from reserves were the primary targets of such removals into foster and adoptive care (Harris Short 2012).

During this point in time demands were raised for Indigenous control over child welfare, with parallel demands for self-government (Shewell and Spagnut 1995). Similar patterns of administrative bias remained in place largely legally uncontested. Eventually in 2009 a class action was initiated against the federal government in Ontario, Canada as sixteen thousand Aboriginal children were allegedly subjected to provincial child protection between 1965 and 1984. Such action was taken by the welfare services to do away with Indigenous cultures, languages, customs and tamper with their spiritual beliefs (TRC 2015g).

Canada ratified the Convention on the Rights of the Child (CRC 1989) in December 1991, and is therefore obliged to report once in every five years to the United Nations Committee on the Rights of the Child its progress in implementing the CRC. The Committee identified various areas of concern that included discrimination against Aboriginal children (Collins 2012). In 2006 Indigenous children constituted 6% of the population within this group, 65% of Aboriginal children were First Nations. The

child welfare system is Canada's primarily state-sponsored mechanism for responding to reports of failure of action on part of a caregiver, that threatens a child physically or emotionally. Aboriginal children are highly over-represented in state sponsored child protection systems. This is primarily due to the fact that the system focuses on each case of maltreatment as an isolated incident. An approach that sees it as symptomatic of a larger discourse of settler colonialism is missing. Since factors that result in these cases of neglect and maltreatment are not taken care of the rate of Indigenous children in alternate care continues to rise (Bennett 2007). There is growing public awareness regarding the situation of vulnerable children who encounter greater surveillance, intervention and are placed in greater numbers in foster care in Canada (Sinha 2013).

To counter the above Cindy Blackstock (2011) suggests culturally based services targeted at poverty, poor housing and substance abuse. These would reduce the over-representation of First Nations children in out-of-home care. Protection services with moral courage need to be nurtured in order to bring forth violations against children by both individuals and institutions with authority. From 1995 till 2001 the number of Indigenous children entering foster care rose by 71.5% annually. The scholar also points out that there are more First Nations children in child welfare today than at any time in history with placement rates 6-8 times higher than for non-Indigenous children. Under-funded First Nations child welfare agencies restrict their ability to address this issue (Blackstock 2011). While looking at the data and resources available for care services being provided to Indigenous children in Canada, one observes that there is a dearth of the same for Métis and Inuit children. Despite their over-representation, there have been hardly any studies on child care and their eventual transition from alternate are, to their communities, indicative of a general lack of culturally adaptive services for Inuit children (Fraser et al. 2012).

Laws Regarding Indigenous Self-Governance Over Child Welfare

The RCAP, recommended that Canadian governments recognise the authority of Indigenous governments over child welfare and replace per capita expenditures with block funding that encourages preventive services. The commission was primarily concerned with personal healing through familial care and community involvement. The status of policy follow up on restructuring regarding Indigenous self-

determination, is crucial to the commitment of the federal government in reconciling with Indigenous peoples in Canada especially pertaining to the rights of children to live a healthy and happy life within their communities. It is important to remember the context in which separation of Indigenous children took place over time and the living conditions of the communities that justified the same (AFN 2006; Lind 2008).

Justice René Dussault (2007) former co-chair of the RCAP argued that non-Indigenous agencies have been largely unable to understand cultural differences of parenting. This has been the case largely with non-Indigenous Canadians as they lack the information to come a better understanding of Indigenous cultures. Child welfare is a crucial part of the process of reconciliation, due to historic and on-going separation of Indigenous children from their families.

Legislation regarding Indigenous self-determination, that bolsters culturally based welfare services is in place in Canada. Such legislation derives its authority from Section 35(1), brought in through the Constitution Act 1982. This Act confirmed and adopted the common law doctrine of Aboriginal rights. It confirmed that the British Crown's control of North American territories in 1763 was founded on principles of continuity, according to which rights to property, customary laws and governmental institutions of Indigenous peoples were presumed to survive. Indigenous groups therefore, acquired the status of dependent nations and acknowledged the Crown as the sole sovereign. This section acts as a barrier against undue interference and reaffirms that Indigenous rights are legal (Cairns 2005).

Drawing from the Constitution act 1982, British Columbia, Child, Family and Community Service Act 1996, provides that the cultural identity of Indigenous children must be preserved and every child has the right to receive support regarding the same. This Act also entails a principle akin to the Aboriginal child placement principle of Australia; wherein placement of Indigenous children in non-Indigenous families is considered a last resort. Cultural factors are therefore considered pivotal in determining what is the best for the child. The Child Youth and Family Enhancement Act 2000 in Alberta and the Ontario Child and Family Services Act provide for similar prioritisation of cultural uniqueness in child care. Other Canadian provinces have not enshrined the Aboriginal placement principle, however they do recognise in

that an Indigenous child must be placed as far as possible within the extended family or a community proximate to its cultural lineage. British Columbia provides for the relevant Aboriginal authority to be notified for the hearing in cases where children are deemed to be in state supervised care and is also authorised to a full part status in the proceedings. Similarly in Ontario a representative of the Aboriginal child's community is entitled to be a part of child protection proceedings and reviews (ACICWG 2015).

Similar provisions are also in place in Saskatchewan. However the provisions for legal consultation with Aboriginal communities are limited in Alberta and Prince Edward Island. Aboriginal communities in Alberta do not have specific rights to be a party to proceedings for child protection. A representative of child's community is consulted at all important stages of the process in Prince Edward Island. Statutory provisions regarding consultation with Aboriginal communities over child protection policies are underpinned by a larger constitutional obligation of provincial governments to accommodate interests of Indigenous communities. This requirement of consultation however does not entail that the two parties have to come to an agreement. This obligation on the part of state child welfare is to engage with Indigenous communities in good faith. Generally communities that are involved in negotiations over self-government, which includes child welfare; insist on considering long-term implications of child protection and are involved in policy design and delivery. In Manitoba Indigenous child welfare agencies were mandated to exercise powers over child protection through a tripartite agreement between federal, provincial and Indigenous governments in 1982 and were given statutory status in 1986. Ontario, British Columbia and Saskatchewan followed soon with similar legislative agreements. Despite the above legislations one has to remember that Indigenous welfare agencies in different jurisdictions are not equally empowered, and some still come within the purview of provincial authorities (Harris Short 2012)

Indigenous child welfare agencies offer a range of child protection and family support services across Canada. 25 such agencies operate in Quebec, while there are 22 of the same in British Columbia and Saskatchewan, 20 in Alberta, 18 in Manitoba, 12 in Ontario, 9 in New Brunswick; and one each in Nova Scotia and Newfoundland. Legal proceedings regarding child protection have continued to regard aboriginality as a

crucial factor, have given due importance to the child's extended family, role of the community and traditional connect with land and language. However despite the existence of the above mentioned legislation, Indigenous children are often placed in non-Indigenous care due to paucity of carers within the community (Harris-Short 2012). However as Linda A. White (2014) explains, an imbalance of resources characterises the child welfare system catering to Indigenous children. This is founded in divided jurisdiction over federal and provincial jurisdictions. Rules differ according to the administration of social benefits across provinces and territories, which means that Indigenous children in similar situations are subject to disparities depending on their geographical location. Canada does not have a national adoption legislation, and there is little research on adoption outcomes. Incentives need to be put in place to encourage cooperative intergovernmental programs and institutions to benefit the most vulnerable amongst children.

Despite its vision for a more equitable system of child welfare, Indigenous self-government is not the panacea for all the issues pertaining to vulnerable children within these communities. Federal funding for Indigenous agencies remains focused on the maintenance and care of children who have been marked as vulnerable, support for preventive services remains neglected; unlike in the case of non-Indigenous welfare. A major hindrance that these agencies encounter is that their operations are restrained as provincial, this limits both jurisdictional space and funding. Indigenous self-governance regarding child welfare has also seen failure on several accounts. Death of Lester Desjarlais in the care of Dakota Ojibway child and Family Services (DOCFS) brought to the fore deeply entrenched systems of violence in Indigenous communities. The inquiry into the death revealed that socio-economic problems of the Sandy Bay reserve, and the working of DOCFS. In this case the inquiry found that the undue interference of the Chief, Band Council members and powerful individuals in the working of DOCFS and intimidation of agency workers in order to conceal sexual abuse; prevented timely intervention that could have saved her life. Such incidences of interference of powerful individuals within the community and lack of political will to act independently on the part of aboriginal agencies; fails the most vulnerable children on the reserve (Harris Short 2012; Muir and Bohr 2014).

The above legislative provisions fail to adequately address the rising rates of Indigenous children in out-of-home care primarily due to structural mechanisms that continue to disadvantage their communities. An analysis of the data on First Nations child welfare system in the early part of the 21st century revealed that proportion of First Nations children investigated for neglect is much higher than other Canadian children. Children in such cases are found to be physically neglected, with parents being unable to care for them due to poverty, problems with health and housing or substance abuse. Close to a 100 welfare agencies that cater to families on reserve and struggle to meet the basic needs of families. The Department of Indian and Northern Affairs (DIAND) is responsible for their funding, through a formula that last updated in 1989. Such a formula does not take into account inflation of the previous years and places greater emphasis on child removal than investment in enabling communities. As a consequence welfare workers as well as children have to make do with lesser salaries and per day endowments. There is no categorical funding for family and community counselling. This in turn puts further strain on the system as the number of Indigenous children in care continues to rise. Over and above these hurdles the staff for on reserve welfare often has to deal with jurisdictional disputes between provincial and federal agencies. In contrast when preventive services have been employed in off-reserve services, the case load regarding notifications for children have come down considerably. The case of agencies in Manitoba is a leading example of the same. On the whole long term investment is sought for expanding resource base, employment opportunities in order to make communities self-sufficient and the system more cost effective (Wien et al. 2007).

Problems with child welfare are also not restricted to non-Status Indigenous peoples. Status First Nations are extremely vulnerable to jurisdictional disputes as the federal government finances both territorially and provincially managed social services on reserves, and the territorial and provincial governments are responsible for the same for non-Status or off-reserve peoples. Jurisdictional disputes are a direct consequence of lack of federal funding of services on-reserve and ambiguities regarding demarcation of services between provincial and federal authorities. Jordan's Principle was unanimously passed by the House of Commons in 2007 to address such jurisdictional ambiguities. It basically prioritises children above jurisdictional disputes so that they are not subjected to unwarranted denial or delay in provision of services.

When a case invokes such a principle certain criteria need to be fulfilled. In its earlier form this principle was only applicable to First Nations children living on reserve and deemed as Status Indian. The child had to be one in need of multiple carers to provide services for multiple health issues or disabilities. The case had to evince a dispute between provincial and federal jurisdictions. Such assessment of needs was made on the basis of prevailing requirements of care as needed in case specific situations (Sinha and Blumenthal 2014; JPWG 2015).

Jordan's Principle had been criticised over its narrow purview, and the differences it reaffirmed between Status and non-Status First Nations children. Its availability was also limited to children with disabilities. However with the latest amendments coming through in May 2017 the Principle has been refined to be equally applicable to both Status and non-Status First Nations children. According to Indigenous and Northern Affairs Canada (INAC) (2017) it would still cater to disputes between territorial/provincial and federal agencies; however it is not limited to First Nations children with disabilities.

Linda Kreitzer and Jean Lafrance (2010) note that besides legal and administrative hurdles, the Indigenous child welfare system is rendered less efficient due to a lack of vision needed deal with differing world views, especially when dealing with distinct sets of people. Hence their functioning is not very different from the welfare system they chose to replace, as they still operate under a highly bureaucratic framework that does not prioritise human interaction with the targeted group. Indigenous oral traditions which emphasise the resilience of family and community, are also ignored by Indigenous welfare workers. Rendering it similar to the welfare system that was managed by people with a Euro-centric worldview, that invisibilised implications of a settler colonial legacy. With Indigenous control over welfare services the opportunities to remedy Euro-centrism are more; even if they function within the purview of provincial authorities. However if Indigenous welfare organisations function merely maintain the status quo, there is greater potential for harm. As has been observed Indigenous agencies often operate within Euro-centric modes of care management, quite often to meet norms for funding requirements. Child welfare agencies are also up against strenuous standards of cost effectiveness. The scholars conclude by stating that in order to understand the situation of the child better the

functioning of these Indigenous welfare agencies needs to be overhauled. Focus needs to be brought on building a relationship with the families workers deal with. Governmental and Indigenous agencies need to communicate better in order to focus on providing maximum support to children who need it the most.

Problems are compounded also compounded for Indigenous child welfare agencies when they are under constant pressure to find appropriate placements with increasing policy emphasis of permanence of care wherein priority is given to adoption. The need for security and permanent placement often outweigh considerations of cultural appropriateness. Challenges to providing culturally based services are not limited to paucity of Indigenous carers. Courts in Canada are equally marred by cultural bias in dealing with Indigenous communities. A child's native heritage, identity and culture as experienced through the family and the community form a larger sense of well-being and security. The courts however treated the child's 'best interests' in a de-contextualised manner. Even in cases where the court acknowledged the importance of Indigenous heritage in developing a child's sense of self-esteem; they would insist that the importance of maintaining such links be proved as suitable in each case. In cases wherein Indigenous culture were considered of importance to the child the courts mistakenly assumed that exposure to any culture of such origins, and not of its specific familial group; would be appropriate in developing a child's sense of cultural identity. The Canadian courts would impose culturally biased standards to poor aboriginal women; wherein poverty was used to misjudge the quality of parental care. Over-crowded and unorganised homes were seen as spaces of neglect according to non-Indigenous protection workers; even if actual neglect of the child could not be evidenced. In cases where Indigenous communities intervened in judicial processes to ensure that the child is treated as a member of an Indigenous community; the courts warned them against unsubstantiated and general arguments that were not specific to each case (Harris Short 2012).

The latest data as reported by ACICWG (2015) states that Indigenous children makeup 8% of the population of children in British Columbia they constitute 55% of children living in out of home care. In Alberta their numbers make up 9% of the population of children while constituting 69% of the children in non-parental care. Similarly the data for Saskatchewan stands at 25% and 65%, for Manitoba it is 23%

and 87%. In Ontario Indigenous children form 3% of the population while 21% of children in care; while statistics for Quebec are 2% and 10%. In New Brunswick 3% of the population of children is Indigenous while constituting 23% of children in care, similarly the numbers for Nova Scotia are 6% and 23%. Prince Edward Island does not keep records of ethnic lineage of children in care. The figures for Newfoundland and Labrador are 11% and 34%, while the data for Youkon stands at 33% and 64%. The figure for Northwest Territories is 61% and 95% while in Nunavut Inuit children make up 85% of the child population and close 94% of the children in care.

Aboriginal Children in Care Working Group (ACICWG) (2015) emphasises that the above figures are a consequence of federal discrimination against Indigenous peoples on reserves providing lesser funding to child welfare, as compared to territorial and provincial government funding of services off-reserve. Since Indigenous children in Canada at present, are served by a combination of provincial/ territorial, federal and Indigenous governments; co-ordination and communication between agencies also remains a hurdle in reducing the number of children alternate care. Much like other states with First Nations peoples, child welfare systems of the Northwest Territories, Nunavut, and Yukon suggest that a disproportionate number of Inuit and Métis children land up in out of home care due to failure of early intervention practices. Removal from home to avail basic facilities like education and health care result in cases of suicides and substance abuse amongst Indigenous children in Canada; even when they are placed with Indigenous carers or kinship guardians. Separation of children from their immediate families, physical location and culture remains an ongoing problem despite the laws and administrative powers in place.

Rights of Children in Australia and Canada in a Comparative Perspective

The lived experiences of children provide the context crucial to realising their rights (Harcourt and Hagglund 2013). Rights of Indigenous children, therefore, have to be seen in the context of their communities (UNICEF 2004). State responsibility for the protection and development of racial groups that are vulnerable to discrimination and exploitation is pivotal in realising the rights of Indigenous children. As is evident from the above section both Australia and Canada violate the CRC in multiple ways. Both have failed to ensure that institutions and services for children cater to the ‘best

interests' of children. Similarly structural factors fail Indigenous children in both countries. In Canada it is evident in the form of lower levels of federal funding for on reserve welfare facilities and jurisdictional disputes regarding funding of off-reserve Indigenous agencies. In the case of Australia management Indigenous child welfare services remains as state issue while the funding for the same comes from the federal authority (Australian Government 2012). Therefore there is a difference of authority in the management and funding of welfare services.

Most of the child welfare services are managed through governmental authority at the state level in Australia. As mentioned above many ACCAs, the management of which remains under the national non-governmental authority of the SNAICC. The SNAICC works with local governmental and non-governmental authorities in order to heal communities, and provide culture specific care to Indigenous children. However the condition of Indigenous children even in the sight of legislative changes has shown little improvement. Indigenous families still continue to face paternalistic state interference regarding their children (D'Souza 1993).

Through an assessment of the previous section it can easily be assessed that both Australia and Canada have failed to adhere to the basic principle of non-discrimination with regard to Indigenous children. The two states have also disregarded parental and guardianship responsibilities in Indigenous communities, by failing to provide all legal and administrative facilities for fulfilling the same. This basic principle is flouted in case where Aboriginal child placement principle is not complied due to both logistical and administrative reasons. Both countries are similarly accountable to keep us with respective domestic standards ensuring the availability of welfare services to children and ensuring their compliance with evolving practices of child rights. This assessment being strictly in terms of protection of children from violence both direct and structural.

For an individual to develop it is essential to have a cohesive sense of self. This possible when individuals develop their cultural and ethnic identity in tandem with their individual identity; as they grow and develop from children into adults. It is well documented that growing up outside of your cultural and ethnic community and/or with a family who are culturally and ethnically different may have detrimental effects

upon the social and emotional growth of an individual and is highly likely to result in psychological and emotional problems (Peleg 2013). The failure to protect cultural rights and identity needs to be assessed further, especially with regard to the principle of 'best interests'. A child's familial, racial, ethnic and cultural background need to be taken into account in determining the child's 'best interests' relating to the legislation which informs the court. Persons engaged in counselling of Aboriginal and Torres Strait Islander peoples who were removed from their families as children; observe that such persons report emotional difficulties in developing positive relationships and notions of belonging. They lack a sense of self-worth and often indulge in self-harm. Mr. Stephen Ralph who has worked as the Director of Court Counselling in the Family Court of Australia in Darwin explains that counsellors unfamiliar with aboriginal culture do not address cultural needs of Indigenous children which affect their 'best interests'. The gap in understanding across cultures is addressed in Darwin by the court's awareness programme that appoints Aboriginal Family Consultants and trains counsellors in the area. Indigenous child-care arrangements allow frequent movement of children between the community as a part of their socialisation and are not remotely considered as disruptive. A number of adults care for and nurture children in Aboriginal societies (Anderson 2014).

This practice ensures the preservation of Aboriginal spiritual and ceremonial practices as individual and collective needs are considered interlinked. Therefore a child's 'best interests' would be influenced by cultural considerations of the community as a whole through the Aboriginal perspective. Especially when their history has been one of dispossession, invisibilisation and colonial exploitation. Practitioners need to acknowledge a child's feelings of difference and alienation while growing up amongst people of a different racial background; that hinders positive self identification within Indigenous children. There are agencies that place Indigenous children with foster families within their community. Such placements are recommended as the child's unique culture can only be absorbed through adults familiar with it. Attachment with biological and genealogically connected adults reaffirms a sense of identity and has greater possibilities for engagement with positive cultural figures in Australia. Indigenous children need to feel one with their families and not exceptional or different as may be the case with non-Indigenous carers (Anderson 2014).

Throughout Australia, a child's 'best interests' are considered as 'paramount' while undertaking any decision. In contrast to the CRC wherein the 'best interests' of the child are considered 'primary' and not 'paramount'. However as Mark Anderson points out, the use of expert evidence to help a legal authority determine what is in the child's best interests does not always produce the same answer. Adoption and placement of Indigenous children come under greater legislative restrictions in Australia. The Family Law Act 1975 provides sections 60B(2)(e), 60B(3), 60CC(3)(h), 60CC(6), 61F with reference to Indigenous cultural issues. The Adoption Act 2000 (NSW) provides in sections 8(f) and 8(g) that in case the concerned child is Aboriginal or Torres Strait islander then Indigenous child placement principles are to be applied. Trans-racial placement of Indigenous children in non-Indigenous homes raises the issues of attachment and identity versus racial, ethnic, and cultural identity issues.

In Australia the 'Bringing Them Home', report called for national legislation to govern aboriginal child welfare that would establish minimum standards for the protection of children's human rights. However such protection needs to be achieved in a manner that takes into consideration the right of Indigenous people to self-determination. Cultural differences pertaining to the perception of rights of Indigenous children of emerge between Indigenous and non-Indigenous perception of rights.

Robert Van Krieken (2005) explains that the organization of legal thinking and interventions concerning Aboriginal and Torres Strait Islander children's 'best interests' are deeply entrenched in Western family law. At the same time, neither courts nor psychological or social welfare theories have been able to predict outcomes that surely ensure a child's 'best interests'. Evidence of the legacy of the failure to protect rights is excessive reliance on government benevolence and its disproportionate impact on Aboriginal and Torres Strait Islander people in Australia. In 1997 High Court case of Kruger v. the Commonwealth was the first case to be heard in the High Court, which considered the legality of the government authorised assimilation-based policy of removing Indigenous children from their families (Behrendt 2007). In this case the plaintiffs claimed a series of human rights violations including the rights to due process before the law, equality before law, the right to

freedom of religion and freedom of movement. They were defeated on each count, a result that brought to the fore lack of rights protection that resulted in disproportionately high removal of Indigenous children. A child's placement outside its ethnic or racial group has implications for child rights as asserted in the CRC signed by Australia. The section 60B of the Family Law Act 1975 has been amended to make room for the considerations of CRC both in fostering and adoption. Article 7 of the convention states that children have a right to name and nationality. The convention provides for a child's upbringing by parents and its separation from the family must occur only after due consideration of its best interests. Article 8, 29 and 30 assert that the child's cultural identity must be protected. A child can be placed outside its family on a permanent or long-term basis through fostering or adoption. The process of attachment is critical to the development of the child and therefore children are advised to grow up within their unique communities. Children that are placed outside of their cultural origins have difficulties in choosing whether to fit or to stand out (Anderson 2014; Harris-Short 2012).

In the case of Canada one needs to go through the history of closed, external adoptions through which Indigenous children have been victimised. Statutory adoptions pertaining to colonial legal adoption standards and policies have until very recently meant they were against the wishes of Indigenous parents, external adoptions to non-Indigenous families outside the child's family and community, and/or closed adoptions in which ties to birth families and communities and to cultural heritage were severed and were often secretive. The more nuanced caretaking approaches that Indigenous children need, including customary and cultural approaches, are only being explored now and sanctioned in Canada (Tomasso and Finney 2015a).

The Committee on the Rights of the Child has upheld the child as a subject with rights and not an object that needs protection. It emphasises that rights of the child in turn empower communities and add to the rights of the family and the community. Nonetheless, the Committee strictly adheres to valuing human rights over and above customary beliefs and practices that contradict the same. The Committee also observed that when it comes to spreading awareness regarding rights of children participation and discussion with all the relevant parties is more successful than one party lecturing. All affected groups must be involved in the process. Canada made a

reservation regarding the exercise of duties under Article 21(a) within which bodies only authorised by state deemed as 'competent' could permit adoptions. This according to Canada would have interfered with custom adoption in Indigenous communities, and interfered with the implementation of Article 4 calling for states to undertake all administrative and legislative measures possible to implement cultural, social and economic rights of children; and Article 30 ensuring right to language, religion and culture. This move did expand the horizons for realisation of cultural rights of Indigenous children in Canada. As evidenced in the argument the CRC sees culture as an instrument to ensure rights; there can be problems when certain culture specific collective rights, religion etc do not correspond with the principles of the Convention.

The history, present treatment and living conditions of Indigenous children in Canada contradict both legal and moral readings of human rights. Outcomes at all levels remain dismally poor for Indigenous children in violation of the CRC, its own Charter of Rights and Freedoms and the UNDRIP. Right to housing, nutrition, clean drinking water along and an education form a legal right for children in Canada, yet these are not accessible to Indigenous children. Access to health, housing and an education remains distant due to discrepancy of funding in social services as compared to non-Indigenous persons. First Nations children on reserve and otherwise remain disadvantaged due to the same. In 2007 First Nations Child and Family Caring Society (FNFCS) and the Assembly of First Nations (AFN) together sued the Department of Indigenous and Northern Affairs Canada on the basis of violation of the Canadian Human Rights Act due to inequitable funding for First Nations Children on reserve. According to the law Jordan's Principle ensures that jurisdictional disputes do not come in the way of social services for Indigenous children in the form of disruption or delay. The Canadian Charter of Rights and Freedoms equal treatment and the rights of Indigenous peoples. The federal government was also found guilty of violating both. The Canadian Human Rights Tribunal hearing the case found that this principle had been violated on several occasions and found that even after it's ruling in January 2016, by April 2016, Indigenous children living on reserves did not have equitable access to child welfare services. The orders of the Tribunal haven't yet been honoured, but the human rights framework continues as a form of redress in order to address access to secondary education which remains unavailable on reserves; and

hold the federal government accountable for its lapses. There is need to establish an integrated human rights framework functioning on the basis of the CRC, the UNDRIP and the Canadian Charter in order to implement the recommendations of the TRC calling for ensuring physical, social and economic well-being of Indigenous children. Though the UNDRIP is not legally binding, it does provide a foundation of ensuring the basic rights of Indigenous peoples (Filipetti 2016).

Child welfare in both Australia and Canada has been marred by disproportionate removal of Indigenous children from their families and communities. The 'Bringing Them Home' report clearly states that consequences of past policies continue to mark their presence in Aboriginal and Islander communities in Australia till date. While Indigenous children makeup 2.7% of the population and yet constitute 20% of the number of children in care. Control of Indigenous agencies over policies and measures regarding children and the possible transfer of legal jurisdiction to local communities from states and territories; was considered pivotal in addressing this issue. The report stated that the 'best interests' of the Indigenous child would take into consideration the advice of appropriate Indigenous organisation. The report recommended an accredited system to scrutinise Indigenous organisations, court proceedings should mandate separate representation of the child and called for the recognition of the Indigenous child placement principle. In addition to the above measures the report called for greater sensitivity to specific cultural beliefs and practices in delivering child protection and welfare services to Indigenous communities. The report clearly states aboriginal self-government as pivotal to child welfare, however this suggestion is yet to be implemented (Harris Short 2012).

Canada's colonial past and the consequent treatment of Indigenous children shares great similarities with that of Australia. Voices calling for decolonisation of Australian child welfare have consistently found resource in sounder initiatives of Canadian provisional governments in sensitising authorities regarding Indigenous customs and sensibilities, and authorising aboriginal community control over child welfare. In Canada, the provincial government of Manitoba along with the federal government entered into a tripartite agreement with the First Nations Confederacy and the Manitoba Indian Brotherhood in 1982 to form child protection agencies to cater to Indigenous persons living on the reserve. This measure is not equivalent to

Indigenous self-government, yet it allowed greater degree of aboriginal control over child welfare and protection services. In the past twenty years greater number of people on the reserve have been covered by Indigenous child welfare agencies in Manitoba (Latimer et al. 2014).

Similar changes have taken place in British Columbia, wherein twenty two Indigenous child welfare agencies operate out of which nine have delegated provincial authority to provide guardianship and protection services to children. The operation of such agencies has not been successful in its entirety primarily because of political interference, lack of adequate funding and operation of a legal framework that embodies the mainstream non-native perception on law and government institutions. Indigenous self-government over child welfare is therefore closely connected to the right of the community to self-government over their culture and lands. However child welfare is the only aspect of Indigenous self-government that has garnered widespread political support. The Nisga'a Nation located in Northern British Columbia initiated control over child welfare in 1997, which was due to lengthy negotiations with the provincial and state governments. Despite its many successes aboriginal self-government over child welfare is not foolproof. Death of Lester Desjarlais, failed by an Indigenous child welfare agency is testimony to the fact. The agency was operated by untrained staff and had been functioning under the influence of powerful families living on the reserve. The agency had been in denial regarding violence and abuse perpetrated even by its own staff and was abandoned by the provincial government at the earliest signs of misconduct. Indigenous self-government is also marred by neglect of the most vulnerable within communities in Canada. The Canadian federal government has therefore sought to bring Indigenous child welfare under a set of non-negotiable conditions including adherence to the Canadian Charter of Rights and Freedoms (Gauthier et al. 2011; Harris Short 2012).

The First Nations Child and Family Caring Society of Canada (FNCFCSC) (2006) while looking into the lived experiences of children found out that they face considerable risk pertaining to more than a few Articles of the CRC. Hunger, homelessness, overcrowding and inadequate health care are an overpowering feature of Indigenous childhood. Such risks last over a long period of time and little administrative will is displayed in ameliorating the same.

Current practices of child welfare in Canada infringe on Articles 2 and 30. The primary tool of offence being the Indian Act that defines who is a 'Status Indian'. This creates unnecessary divisions amongst Indigenous peoples, in order to the contain the number of responsibilities and obligations owed to the communities. Absence of recognition due this Act has debilitating consequences on the lives of Indigenous children. Under the Indian Act children born to women who lost their Indigenous status by marrying a non-Indigenous person are not acknowledged as 'Status Indian'. Though Indigenous women who lost their status were restored the same through amendments, however it was conditional upon them not being second generation descendents of non-status Indigenous women. Eventually under this law their might be no 'Status Indian' children to demand the implementation of the CRC. This goes against the very grain of Article 8 of the CRC calling for states to respect the right of a child to name, nationality, identity and to preserve the same. The Canadian Human Rights Act (CHRA) under Section 67 obliterates any complaints under the Indian Act. Section 67 also restricts access of people working within Indigenous communities to human rights. Therefore actions carried out by a First Nations government or a state or even federal government are exempt from scrutiny. It discriminates against children of Inuit origins by not recognising them under the Indian Act. As a consequence children not recognised under this Act cannot avail the funding and services available to Indigenous children living on reserve land and registered under the Act. Discrimination similar lines continues for Métis, non-status children and those living off reserves. Most caregivers supported by child welfare are those that have low-income, live in urban areas (FNCFCSC 2006; Bennett 2007).

Differences in Approach to Child Care

Physical punishment is abhorred in Indigenous communities in Australia and Canada, wherein humour and shame are treated as tools of discipline. Similarly Indigenous children in Canada are discouraged to express emotions in public, which is often misinterpreted by social welfare workers as sign of abuse. Existing disparity of power between non-Indigenous Australians and Canadians on one side and Indigenous communities on the other, are embedded within the legal framework and core functioning of state sponsored systems of welfare. Therefore the current legal and administrative framework of child welfare itself favours non-Indigenous approach to

child rights and welfare. The consequences can be seen in high rates of self-harm, substance abuse, mental illness and perpetration of violence within Indigenous communities. Colonial practices and respective government policies are responsible for socio-economic factors that affect Indigenous communities in both Australia and Canada. However poverty alone is not responsible for the disproportionate number of children in state protection. In the case of Canada, euro-centric perspective of child welfare workers makes them use their cultural values to perceive and judge Indigenous parenthood. Similar is the case for Australia, though cultural practices vary within and between Indigenous communities in the two countries. Aboriginal parents in Canada tend to accord more freedom to children and more importance is given to self-sufficiency in children. Instead of a euro-centric nuclear family the entire community is responsible for the care of children in both Australia and Canada. In fact the community lies at the centre of ties of kinship. This is often viewed by non-Indigenous systems of welfare as indifference towards children (Harris Short 2012).

Indigenous welfare agencies have a different approach to child welfare wherein they focus on supporting the family, building their capacity to care better for the child rather than focus on the child as an exclusive being. Therefore total separation from the family is seen as the last resort, services focus on prevention of such practices and cohesion. Community involvement in child care with Indigenous agencies transforms the perception of welfare as intrusion into that of control and assertion. In Canada steps towards Indigenous self-government including matters of child welfare, are more advanced than that of Australia. Self-government of Indigenous peoples is considered a right in Canada. In the case of child-welfare self-government has received greater support from within the community due to intra community understanding of economic pressures, domestic abuse and alcoholism. Indigenous agencies working for child welfare are an important aspect of the process of decolonisation as they are seen as tools for countering dependence of Indigenous communities. The history of intervention in Indigenous families from colonial times till the present has been strikingly similar in the case of both Australia and Canada. The effects of which are evident till date in the child welfare legislation, policies and practices of non-Indigenous child welfare authorities in the two countries. It is self-government that promises control over child welfare to Indigenous communities and

is also seen as a means of decolonisation in both Australia and Canada (TRC 2015g; ACICWG 2015; Sarra 2017).

This study observes that Article 18, calling for state parties to respect parental obligations towards their children should be read as preceding Article 20(1), 20(2) and 20(3) dealing with foster care arrangements in case of neglect and maltreatment (United Nations GA Res. 1989). This however must be made conditional upon the right of the child to survival and development. Placements in alternate care must take into account their religious, ethnic, cultural and linguistic backgrounds. Wherein foster care or adoption does not alienate them from their roots. As has been witnessed both Australia and Canada have established legislation for kinship and community care. Data for legal assessment of this situation is not publically available for Australia; however in the Case of Canada it can be safely said that jurisprudence has failed to take structural and historical incapacitation of Indigenous communities in order to favour a case by case analysis of placement of Indigenous children. This brings us back to the debate of privileging objectivity over and above Indigenous subjectivities. As has been demonstrated either preference can lead to debilitating circumstances for Indigenous children. As witnessed in Canada self-governing welfare systems can also bring great harm upon Indigenous children. However this study claims that these failures of Indigenous self-government in Canada should be seen as structural failures that can be addressed through compliance with procedural code regarding child welfare and larger state facilitation in enabling Indigenous communities. Issues regarding self-governance cannot be assessed regarding Australia at this point as much of it is in the pipeline.

Article 9, is particularly relevant to the study. It makes a clear mention of the rights of all concerned parties to participate in the proceedings and express their views of the matter while dealing with cases pertaining to separation of children from their parents. Article 12 of the CRC states that a child who has the capacity to form an opinion must be allowed to freely express the same in matters concerning the child. In this case representation cam be both in person or through an appointed body; as per the procedure of law. Maturity and age of the child are also mentioned in this Article as being relevant to the exercise of this right. Participation and agency of child is bolstered further through Article 13 that guarantees freedom of expression along with

the right to seek and receive information, Article 14, which attributes freedom of conscience, faith and religion. Article 14 also calls for respecting the duties of parents in directing the child regarding the same (United Nations GA Res. 1989). These provisions are relevant to guaranteeing the rights of Indigenous children to their culture and lineage. Articles 15 and 16 ensure the right of children to assemble peacefully and protect them from undue interference, invasion of privacy, and defamation. These provisions reflect the human rights of children (Cantwell 2011). The Optional Protocol to the CRC on a communications/complaints procedure is basically an extension of the right of the child to be heard in legal and administrative matter that affect her/him the most. This protocol allows children to register a complaint with UN Committee on the Rights of the Child when states have failed to protect or violate their rights (Grover 2015). Articles 12-16 were drafted in order to bolster children's participation. An assessment of the above situation of child rights in Australia and Canada makes it clear that neither country has case evidence to demonstrate agency of Indigenous children in legal hearings or administrative procedures; in matters directly affecting their interests. This is a clear violation of the ethos of child rights that seek to enable and empower children. Participatory rights of children are clearly mentioned in the CRC.

Indigeneity and International Politics

The discussion above establishes that children in both Australia and Canada were discriminated against primarily because they were Indigenous, and the current discourse on their rights revolves around children's right to stay connected to their lineage and culture. It is therefore important to look at the contours of the term Indigeneity and its meaning in international politics.

The term Indigenous as mentioned previously signifies self-identification. The term Indigenous peoples, signifies a collective, it signifies social beings who constitute communities. However collective rights do not undermine individual rights, as mentioned in Article 40 of the UNDRIP, that assures against all violations of both collective and individual rights. The term Indigeneity signifies Indigenous identity and self-representation.(Anaya 1996; UNDRIP 2007; Guenther 2006). Such self-identification is closely linked to culture and lineage and is the first feature of the term

Indigenous. Being Indigenous accounts for being culturally unique and distinct, however the concept of culture is complex, it cannot be defined through simplistic categorisation; primarily due to the inherent nature of culture to change and adapt according to external and internal phenomena. With respect to Indigenous peoples, culture is defined as a wide array of institutions, practices and customs that form the focus of their collective identity (Kingston 2015).

Culture in international politics is being increasingly defined as an activity, especially as essential to the advancement of the human rights of Indigenous peoples. Cultural rights are therefore being increasingly framed in international politics as a verb pertaining to a certain manner of living. Article 8 of the UNDRIP enshrines the right of Indigenous peoples to not be subjected to any form of coerced assimilation, through deprivation of land, language, cultural values or identities. Articles 11-16 state that Indigenous peoples have the right to maintain their customs, protect cultural sites, and to protect and promote their forms of language, art and culture (UNDRIP 2007). Communities and individuals are the primary subjects of these rights, however both individuals and collectives have a right to engage in these activities on their own terms. Most importantly, this study observes that cultural rights protect the right to relationships (Dwyer 2006; Holder 2008). Such a right to relationships becomes crucial to one's understanding of the violations of the rights of Indigenous children in Australia and Canada.

Conclusion

The principle of 'best interests' within the framework of child rights continues to trump principles of accountability and non-discrimination. Ambiguity within the term enables essentially non-Indigenous governmental bodies to exercise control over the lives of Indigenous children. Both the states have legislative measures in place to place Indigenous children within their communities, in circumstances when alternate care is unavoidable. However, lack of federal funding to Indigenous agencies in both Australia and Canada; continues to prevent much needed self-governance in matters pertaining to child care.

Self-governing Indigenous systems of child welfare are better equipped to deal with challenges within the community regarding the upbringing of children, due to their approach of holistic support to families and communities. This has largely been witnessed in the case of Canada, as legislative agreements between Indigenous bands, provincial authorities and the federal government have materialised over the years. The case of Manitoba is often cited as the most successful tripartite agreement with respect to child welfare.

The rights of Indigenous children are increasingly being framed in context of Indigenous rights to culture. Such a viewpoint can help in achieving a better understanding of relationship and collective rights of Indigenous children in Australia and Canada

CHAPTER FIVE

CONCLUSION

Australia and Canada share a common colonial past, wherein racism, theft of resources and the consequent annihilation of Indigenous people was common. Such actions were supported by a stream of thought that favoured social Darwinism, a theory based on the impending disappearance of alien races or the Indigenous peoples (Short 2005). The settler colonial enterprise followed a capillary structure and could not be reduced one act or event (Wolfe 1999; Veracini 2010). Dispossession and domination of Indigenous peoples occurred through the formation of the nation-state, through the unification of territory and political and economic distance from the imperial metropole of Britain. Settler ideas of religion, culture and language were imposed through a common education system that aimed at creating a working class to support the settler enterprise; in the aftermath of complete invisibilisation Indigenous uniqueness. This Colonial policy of absorption through education manifested in the removal of Indigenous children from their families into industrial schools; in order to feed the demand for cheap labour, menial jobs and extra farm hands (Atkinson 2006).

Policies of removal of Indigenous children found their post-confederation makeover and justification in the form of assimilation, aimed at the creation of culturally homogenous nation states. However the terming of such governmental policies, asserted the eradication of Indigenous socio-economic disadvantage, was the final aim of doing away with the governmental acknowledgement of Indigenous difference (Haebich 2002; Shewell and Spagnut 1995). These policies stayed in placed in both the states throughout the 1950's and 1960's. The foot print of this policy manifested itself in the 'Stolen Generations' in Australia and the 'Sixties' Scoop' in Canada (Cassidy 2009; Engel et al.2012). Loss of Indigenous childhood throughout colonial and the post confederation era created generations deprived of their lineage and emotionally burdened with trauma and fear of governmental authorities (Eickelcamp 2010; Blackstock 2011; Bessant 2013).

Both Australia and Canada saw the advent of multiculturalism and its components of non-discrimination, and acceptance of difference; in the 1970s. As a policy this viewed immigrants as its focus-group and ignored the Indigenous peoples. The policy of multiculturalism has been identified by scholars as a mechanism employed by the settler state to do away with the stigma of a history of racism, while continuing to strictly defining the limits of multiculturalism (Sutherland 2008). Removal of Indigenous children from their families continued unabated while these policies of multiculturalism were being espoused by both Australia and Canada.

An indictment of policies regarding removal of Indigenous children as genocide occurred through the NISATSIC, and in Canada as cultural genocide through the TRC. Scholars have since debated the terming of governmental acts through as genocide. In case of Australia, scholars asserted that the intention to annihilate Indigenous peoples in whole or in part cannot be ascertained from governmental acts. Arguments against this position have stated that in cases where intentions cannot be clearly established, wilful ignorance of conditions wherein destruction of a group, as a whole or in part, is foreseeable; is enough to identify the crime of genocide. Scholars have since called for analysing the concept of intention in genocide as emergent, and one that is shaped by overarching political systems that facilitate such a crime. With respect to the case of Canada, the terming of Indigenous child removal as cultural genocide, has kept the crime outside of the ambit of international law.

As has been observed by the study initial denials or effacements regarding the disruption of the lives of Indigenous children and their communities gave way to governmental apologies and efforts at reconciliation in both Australia and Canada. Reconciliation as a concept involves various stages, initially it focuses on non-repetition of the wrongs of the past through an understanding of the reasons behind their occurrence, and employs investigative methods through national inquiries and truth commissions. Later other aspects emerge in order to rebuild interpersonal relationships between former adversaries, in opposition to the more traditional approaches featuring state level, top-down interactions with the aggrieved parties (Short 2005; Johnson 2011). Political reconciliation therefore requires clear delineation of the terms within which reconciliation would take place; this entails recognition of those political aspects that are mutually agreed to be contestable and

open-ended. It also entails the knowledge that a community comprising of political adversaries cannot be assumed as an end-goal of reconciliation. The formation of such a community should therefore be visualised in tentative terms, not as a closure or final settlement of political interaction. As has been observed in this study, rebuilding interpersonal relationships through political reconciliation is most successful when undertaken through inter-personal means between aggrieved parties in settler societies (Edmonds 2016).

Reconciliation

Recognition of Indigenous peoples and their unique status is crucial to the process of reconciliation between settler states and Indigenous peoples. However over determination of the conditions of recognition or pitching the stakes on certain notions of so called authenticity by the state; can do more harm than good as all members of the concerned community may not adhere to the same (Schaap 2005). Such over determination of identities by the states are conveyed through legal systems that define who and what constitutes as Indigenous. As mentioned in this study such legislative mechanisms are evident in both Australia and Canada. In addition to conditional recognition, lives of Indigenous peoples are marked by socio-economic disadvantages along with poor records on indicators of health and well-being. Despite governmental efforts at reconciliation, the presence of Indigenous children in non-Indigenous systems of care remains glaringly high in the two countries. Residential schools of the earlier era have been replaced by the child welfare systems (Trocme et al. 2004; Hammond 2013). Unlike Canada, Australia does not have a policy on monetary compensation of victims of residential schools and forced removals at the federal level.

As stated previously settler colonial history sets the foundation of social relations that shape the process of reconciliation. Scholars argue that this process has much to do with the desire of non-Indigenous peoples to feel good about their past, as they tend to rationalise colonialism as well-intentioned and good for Indigenous peoples (Maddison 2012). In such a context of continuing disparity between Non-Indigenous and Indigenous lives, principles of restorative justice are crucial to adding the process of reconciliation especially with regard to ongoing violations of the rights of

Indigenous children and therefore by extension their communities. Indigenous agency and voice are realised through the process of self-determination, aid this cause primarily through self-governance regarding child welfare. Reconciliation in the aforementioned conditions must seek mutual-understanding. This has largely not been the case**,** due to lack of information regarding Indigenous history and current conditions in school curricula, and mainstream media.

Child Welfare and Self-Determination

Australia and Canada both share a history of interventions through child protection programs that do little in acknowledging and appreciating Indigenous uniqueness in matters of child care and upbringing (Courtney et al. 2013; Bennet 2014). In terms of Indigenous self-determination especially in terms of management of institutions of child welfare Canada is way ahead of Australia. Agreements regarding Indigenous self-governance regarding child welfare have played a key role in furthering the cause of reconciliation in Canada (Geboe 2015). The study observes that there is a lot to be done with regard to Indigenous self-governance in child welfare in Australia. In the case of child welfare, there is hardly any interaction or integration between Indigenous and non-Indigenous approaches to child care; that could promote a more holistic approach. Indigenous agencies that operate with meagre funding and largely unqualified and untrained staff have been unable to contain the human cost of historic societal disruption in both Australia and Canada. The reasons for ongoing separation of Indigenous children from their families, is indicative of ongoing failures of state agencies to address the administrative and legal biases that continue to be corrosive of the ethos of child rights.

Government officials usually display lax attitudes while implementing the Aboriginal Child Placement Principle in Australia. They often site lack of suitable homes within Indigenous communities as a reason, when Indigenous families that meet the socio-economic credentials can be easily traced on social media networks. Indigenous responses to such callousness are evident in the form of groups like Grandmothers Against Removal (GAR). The GAR is committed to implementing the recommendations of the 'Bringing Them Home' report, that urged the government to end discriminatory practices in child protection and welfare. In order to achieve

greater harmony and balance in the relationship with Indigenous peoples, scholarship suggests that, the federal government should come up with an indicator on the placement of children in alternate care on the 'Closing the Gap' agenda (Behrendt 2016). Indigenous children in Canada, face similar hassles as is observed by the study. Funding for Indigenous agencies remains meagre and lack of jurisdictional clarity between various levels of governments disadvantages Indigenous children in several ways. Self-governance in child welfare is crucial to delivering culturally appropriate care services to families and communities in both the states. It also ensures survival of Indigenous cultures and languages and makes sure that children are not alienated from their lineage (Harding 2008).

Indigeneity and Child Rights

Recognition of Indigenous identity is being increasing advocated through the assertion of the principle of self-recognition. Indigenous accounts and narratives are heard with greater respect today than that was accorded to them historically. However these narratives are seldom given legal importance especially in courtroom settings wherein they are dismissed by the legal parlance vouching for witnesses and cross-examination (Rollo 2014). Within international human rights law, Indigenous rights have emerged as crucial to protecting the vulnerable, with respect to their right to self-determination and to practice their unique culture and religion; and to speak in their own language. Indigenous people also have a right to political representation and autonomy within the framework of the UNDRIP (Cook and Sarkin 2012). International politics, however, is yet to account for the Indigenous need for self-recognition. Especially in the context of violation of the principle as has been witnessed in domestic legislation defining who qualifies as Indigenous in both Australia and Canada. This is primarily due to the fact that the UNDRIP is not legally enforceable.

Such an arrangement when viewed in the comparative framework of Australia and Canada exposes settler colonial biases operating through the mechanism of child welfare. As mentioned earlier legal ambiguities within the CRC, often provide established biases to adversely affect the rights of Indigenous children Current analysis establishes that lack of clarity over what constitutes the 'best interests' of the

child diminishes the chances of Indigenous children to stay within their communities in the light of continuing disadvantage and ongoing policies of state surveillance. Parental rights are often trumped in order to account for state supervised notions of child care. Lack of Indigenous agency in terms of self-governance of its systems of welfare adversely impacts the rights of children in Australia, more so when compared to the case of Canada. It has been observed that no legal data is available in the public domain, for proceedings pertaining to the placement of Indigenous children in alternate care in Australia. The study also observes that the above mentioned phenomena act as an added hurdle in the exercise of the Indigenous child's agency within the framework of the CRC in Australia. So far details regarding children's participation in the legal proceedings regarding their placements in out-of-home care have been missing in recordings of relevant legal proceedings in Canada as well.

The hypothesis stating that state policies of cultural assimilation continue to hinder the rights of Indigenous children in both Australia and Canada in violation of the Convention on the Rights of the Child; has been proven correct. The second hypotheses stating that policies of reconciliation more comprehensively address the concerns of Indigenous children in Canada in comparison with the case of Australia; has also been proven correct.

While human rights entail the universalisation of the dignity of human beings, such principles are essentially defined by Euro-American and European standards. Thus what is defined as legal, sovereign, civilised and acceptable continues to be determined by these standards. Contemporary international law condemns forms of colonisation of the past, establishes the principle of self-determination and delegitimizes racism. However due to the dominant position of settler states in the international system, self-determination and the concomitant process of decolonization are recognized only through relationships between states and not within states. Struggles for the implementation of the right to self-determination take place in such a context (Cirkovic 2007).

Indigeneity is therefore said to operate in a context of ongoing or contemporary colonialism at the international, local and individual levels (Alfred 2012). In this regard scholars have provided a Foucauldian analogy regarding state surveillance and

the principle of ‘best interests’ to pursue their dominance over Indigenous peoples. A Foucauldian analogy regarding the permeating power of settler colonialism must also concern itself with resistance. This study observes that Indigenous resistance in the form of self-governance with respect to child welfare in Canada, and continuing negotiating regarding self-governance in South Australia is indicative of contestation of state power (Foucault 1972). Such acts constitute a post-colonial response in settler societies, when the term ‘post’ is not treated as a temporal indicator, but one signifying resistance to the colonial (Loomba 1998).

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ANNEXURES

List Of Concerns – Australia

- What are the challenges faced by Indigenous persons while exercising their right to self-determination pertaining to self-governance in child welfare?

- What problems are being faced by Indigenous agencies working for keeping children within their communities and out of non-Indigenous systems of foster care?

- Do you expect the current establishment to follow measures that can enable greater financial support in order to accord autonomy and self reliance to aboriginal communities thus aiding reconciliation?

- Do Indigenous agencies of child welfare find support in keeping children within their communities from the government and it's current policy on placement of Indigenous children?

- What is your opinion regarding the process of reconciliation in Australia?

List of Questions – Canada

- What are the challenges faced by Indigenous persons while exercising their right to self-determination pertaining to self-governance in child welfare?

- What problems are being faced by Indigenous agencies working for keeping children within their communities and out of non-Indigenous systems of foster care?

- Do you expect the current establishment to follow measures indicated by the TRC as crucial to reconciling with Indigenous peoples in Canada?

- Do Indigenous agencies of child welfare find support in keeping children within their communities from the government and it's current policy on placement of Indigenous children?

- What are your reflections on the ongoing process of reconciliation in Canada?