ENFORCED DISAPPEARANCE AND ITS NARRATIVES OF SUFFERING: VIOLENCE, SUFFERING AND RECONCILIATION

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DECLARATION

This is to certify that the dissertation titled "Enforced Disappearance and its Narratives of Suffering: Violence, Suffering and Reconciliation" submitted by Shivani Rajput under the supervision of Professor Susan Visvanathan in partial fulfillment for the award of the **Degree of Master of Philosophy** is my original work and has not been previously submitted for any other degree of this University or any other University.

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CONTENTS

INTRODUCTION

This dissertation has looked at the relationship between state and violence in general, and particularly the form of violence called as Enforced Disappearance. The phenomena of enforced disappearance isn't new and has occurred in places like Argentina, Chile, Algeria, Syria, Srebrenica, Bangladesh, Sri Lanka, Kashmir, etc.[1] More than 8,000 people have disappeared in Kashmir since 1989 (IPTK and APDP 2012).[2] More than 10,000 people are believed to have disappeared from 1976 to 1982, during the Dirty War of Argentina (Robben 2004: 136). In Colombia, more than 1,500 people are believed to have disappeared from the year 1978 to 1992 (International 1994: 34). In Sri Lanka the government official data estimates disappearance of approximate 16, 742 people between the periods 1983 to 1990. Though a figure of more than 60,000 cases of disappearances have been estimated by the human rights groups (Punyasena 2003: 16).

What is Enforced Disappearance? Human Rights report such as Amnesty (1994) and government report Never Again (1985) argues that illegal detention, secrecy around abduction (when it is carried out by state and its agent) and extra-judicial killing forms the features of disappearance. Veil (1986) and Amnesty International Report (1994) has pointed out that Enforced Disappearance occurs mostly in the states of emergency and armed conflict (Veil 1986). Disappearance violates some of the fundamental rights which are enshrined in the Universal Declaration of Human Rights such as, "Right to life, dignity and liberty". International Convention for the Protection of All Persons from Enforced Disappearance (CED) which came into force on 23rd December, 2010 finally settled the debates around the disappearance by defining it as, "the deprivation of liberty by agents of the State or by persons, with the

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[1] **For further, read https://www.amnesty.org/en/what-we-do/disappearances/**
[2] The state government of Jammu and Kashmir has admitted in the state assembly that upto June 2003 the number of persons who have disappeared is 3,931 (Chakravarti 2005)

authorization, support, acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person."[3]

How is disappearance different from the missing cases? What is the difference between the suffix and prefix of this term? Amnesty International (1994) argues that,

"Disappearance, torture and extrajudicial execution often go hand in hand…Disappearance becomes a cover for extrajudicial execution and extrajudicial execution perpetuates the state of disappearance" (International 1994:85). Effectively the primary difference between a person who has gone missing and a person who has been disappeared lies in the intention of the crime. Enforced Disappearance is almost always part of a systematic policy of making people disappear (Veil 1986: 37).

Historical Aspect of Disappearance

The genealogy of disappearance points to the fact that though disappearance as the technique of state terror was carried out during Hitler's totalitarian regime but the term gained its attention with the Latin American dirty war of the 1970s and 1980s (Florath 2011) especially with Argentina and Chile. Jose Zalaquett, Chilean lawyer argues that the term enforced disappearance was coined in Chile in 1970s when the human rights lawyers noticed that some of the prisoners they were representing went missing.

The question that arises is why did state actor prefer disappearance over direct execution? Simone Veil in the report *Disappeared* (1986) "calls disappearance as the perfect crime since the terror is caused with no explanation. It is quick and leaves no traces" (Veil 1986:39). The state entrusts military or paramilitary forces with the task of making their political opponents real or imaginary, disappear (ibid: 14). Robben (2004) provocative question, "why the junta had not executed the guerrillas publicly, instead of making them disappear?" To this a brigadier general answered:

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[3]http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx

> "If one would have done what you have asked then there would have been immediate revenge, not only on the executioner or those who presided over the trial but also on their families" (Robben 2004: 137).

Disappearance is always directed to affect the core of the society. It is terrifying because it is intensely private and affects the main social unit of the society which is family (Mathur 2016; Robben 2004).

What is the relationship between violence and power, violence and law? What is the relation between violence and everyday life? How is the experience of everyday life structured around violence? What is the impact of this terror on the society? Most definitely the phenomena created a loss to the family and caused suffering. How do we understand the relationship of suffering with violence? What makes this suffering social? What are the affective ways in which family remembers the disappeared one? What is the relationship of suffering with memory? What is its representation? Certainly disappearance causes trauma to the family. How does the traumatized society reconcile with the Radical Evil? What reconciliatory measure does the state and society establish at an institutional level to address massive suffering? Is Transitional Justice a solution to the traumatic events of the past?

I have tried to understand these questions in my chapters. I will briefly address them in three subdivisions: Political aspect of disappearance, social aspect of disappearance and reconciliatory measures of traumatic events.

Political Aspect: Understanding disappearance at the intersection of state, power and violence

There seems a consensus among the scholars that violence is a complex reality (It is structural, symbolic, collective, individual, legal, illegal, sporadic and every day (Kilbey 2013; Walby 2012; Subramanium 2007). Kilbey argue that, "all sociologists know this that violence as a complex reality is a multidimensional, yet contingent and unstable phenomenon. Therefore the understanding of violence requires an interdisciplinary approach" (Kilbey 2013: 3). For this

purpose I have tried to look at violence through the work of Max Weber, Walter Benjamin and Hannah Arendt in my first Chapter.

In defining the modern state sociologically, Weber had argued that one can define state only in terms of specific mean peculiar to it which is physical force (as cited in Gerth and Mills 1985: 77). The state in Weber's writing is considered as the sole source of the 'right' to use violence. For Weber power only rests with the state, it is forceful and can overcome any resistance. However in Weber's work the distinction between violence and physical force is not clear. Domination on the other hand works with voluntary compliance and obedience (Hechter et al. 1967:211). What constitutes it is legitimacy. According to Weber the structure of domination is based on legality and rationality. These two components can be best seen in the modern bureaucracy and the expansion of this modern bureaucracy is seen in the state institution like the Army (ibid: 212). Weber vests power and violence only to the State. He too sees physical force/violence in the realm of means and ends relations. Violence is then seen as instrumental. As a means to attain certain end.

Walter Benjamin points to the danger of the instrumental function of violence. Benjamin's question, "if violence is a means to an end then how do we decide if it's a means for a just or an unjust end", points to the moral dimension of violence. He critiques the vicious cycle of positive law which sees, "just ends can be attained by justified means and justified means used for just end" (Benjamin 1979:133). In doing so, he explicates the relation between state and violence in the realm of law and justice. Here violence is seen as an instrument, a means towards certain ends. Violence sanctioned by the state is the legal violence which can be both law-making and law-preserving. In what context does state implements these laws? The answer can be found once these acts and laws are contextualised to their regions.

The human rights activists, lawyers and UN reports locate the cause of Enforced Disappearance in the legal-justificatory schema of state-sanctioned and law-preserving violence (IPTK and APDP: 2012; Veil 1986; International 1994). It is important to look at the justification of such violence by the state and its apparatuses before looking at its critique. For this purpose i have attempted to show the dynamics between state and violence through its interplay with Laws and

Acts such as AFSPA which rests with the Indian Army and to certain extent paramilitary forces and has been passed in the disturbed regions for the security of the state and country.

According to Umang Sethi (2013) AFSPA is necessary for the armed forces in tackling external and internal insurgents group. Since it is Army that is fighting a 'proxy-war' and protecting the nation it should be invested with certain powers to safeguard it against any juridical proceedings (IDSA 2013: 45). AFSPA legitimizes armed forces abuse of Human Rights as their 'legitimate actions' undertake place in good faith. If AFPSA is used as a means for a just end and here just end is related to the security of the sovereign nation, how does it address the abuse of fundamental right such as right to life under Section 4(c) of AFSPA which guarantees it the right to kill on the bases of suspicion?

Justified means and just ends seems irreconcilable here. The power enshrined under section 4(d) of AFSPA where Army can enter and search without a warrant to make an arrest and is allowed to use force necessary for the search is one of the major cause of Enforced Disappearance in 'disturbed areas' of India. Laws like AFSPA points to the question, 'is there a way out to this legal-justificatory schema of means-ends relationship? Benjamin's answer lies in Divine Violence. It is violence with pure means, by which the guilt of the past is expiated without positing a new law. Taking from Benjamin's view on divine violence, I want to explore whether the Mothers' movement in Argentina, an intervention of divine violence? The Madres condemnation of forensic and DNA test of the corpses to their condemnation of mourning shows us that their actions are disrupting the established notion and values in society around death, justice, funeral and mourning. Madres' movement points to the zone where the dialogue with the death itself is re-formulated (Franco 1987; Robben 2005). What sort of culture or society this divine violence holds to form which disrupts our established normative understanding of the meaning of life and death?

The understanding of violence is incomplete without addressing Arendt's work. Arendt's writing becomes important for the analytical distinction between violence and power. Power for Arendt is not a vertical concept; she disagrees with Weber's notion of power, which is control or domination over another individual or group. Power for Arendt, argues Bernstein, "is a

horizontal concept, it springs up and grows when individuals act together, seek to persuade each other, and treat each other as political equals" (Bernstein 2011:11). Arendt's work on *Human Condition* (1958) reminds us that the idea of power is rooted in Plurality, which is individuality, distinctiveness and equality. Violence on the other hand is instrumental in nature. What it always seeks is implements. Arendt's famous quote, "Out of the barrel of a gun grows the most effective command, resulting in the most instant and perfect obedience. What can never grow out of it is power" (Arendt 1969: 53) points to the ethical and moral dimension of violence.

Arendt notes that the distinction between power and violence lies in legitimacy. Power gains legitimacy from the initial togetherness of people. She argues that, "legitimacy when challenged bases itself on an appeal to the past, while justification relates to an end that lies in the future. Violence can be justified but it will never be legitimate" (Arendt 1969:52). I have tried to associate Arendt's conception of power with the Mothers' movement in Argentina and Kashmir. Arendt's famous quote, "the extreme form of power is All against One, the extreme form of violence is One against All", captures the maternal struggle of Madres and APDP. I have further explored the context of these struggles in my subsequent chapters.

Social Aspect of Disappearance

How is the phenomenon of enforced disappearance understood socially in places like Argentina and Kashmir? What is the impact of violence on the social unit of the society, family? How is this suffering experienced across the gender? How does suffering attain its social meaning? What is the relationship of this suffering and pain with language? How is this suffering represented? How are disappeared victims remembered? These are the questions that I shall be addressing in my second chapter.

The study of society is the study of its pain and suffering remarks Kleinman (Wilkinson and Kleinman 2016). Kleinman and Das (1998), Bourdieu (1999), Wilkinson (2005), argues that suffering is a human experience and it is a social condition; Social suffering as a concept is developed to understand how people's suffering is caused and conditioned by the society

(Kleinman, Das and Lock 1998). Wilkinson argues that, "the difficulty arising to understand suffering is that, it concern problems that are all at once physical, interpersonal, political, legal and cultural" (Wilkinson 2012: 186). Elaine Scarry (1985) writes "Suffering is always more than physical pain, more than violence, more than material deprivation, more than destruction, more than loss, Suffering is a state of being which 'unmakes our world'". Arthur Kleinman argues that to understand suffering one must look at the experience and modes to expose the situations that caused suffering resonating what Bourdieu (1999) said that it is 'difficult to describe and think about.'

Morris (1998) argues suffering encompasses an irreducible 'non-verbal dimension', a realm beyond language (Morris 1998: 25). Sociologist Arthur Frank wrote, "The void of meaning at the heart of suffering leaves the sufferer without the "map" and "destination" which are formerly used to guide actions in the world." Suffering makes the sufferer's body strange to him/her.

Arthur points to, "the desperate need for sufferers to make their bodies "familiar" once again (to "reclaim" their bodies), which is a prerequisite for regaining a sense of direction and meaning in the world." Reclaiming the body is an exercise in reclaiming the "self" and its experience, including its relationship to others (Frank 1995). Recovery of one's self and experience can take place through one's voice (Barrett 2005). Das sensitise us that, "Voice orients us to the act of listening- to the moments when master-narratives break down and we hear fragments of speech, snatches of conversation or utterances that relate particular experiences and incidents that are often glossed over in the more generalised description of these events" (Das 1998). Chatterji and Mehta points, "Voice helps us to think of experience as affect and to explore different forms of embodiment outside the form of representational language" (Chatteerji and Mehta 2007). The act of listening then becomes a moral responsibility.

Sasanka Perera's (2016) work points to the importance of space where the articulation of suffering takes place. For example, Perera, in talking about the relation between violence and memory brings to our attention the materialized form of memory through monuments. He argues, "Monuments are capable of overcoming the difficulties experienced by language in narrating experience of pain as they do not necessarily depend on the written or the spoken word

to narrate their stories" (2016: 64). He further argues that how notions and experience of pain, war and trauma are represented in the visual arts? (Perera 2016). In my second chapter I have tried to use visual art for the representation of suffering. Rollie Mukherjee's recent paintings on Kashmir try to fill the gap between the incomprehensibility and unknowability of the pain. For the same purpose I have also used Uzma Falak's poem to capture pain's resistance to language.

Suffering is incommensurable and therefore demands meaningful inquiry and comprehensibility (Das 1998). It is both physical and emotional at times. It is a raw experience, a sense of unknowability, because it transgresses the normative understanding and experience of social life. It is individual and collective. It is certainly caused by social, economic, political and cultural forces and causes an impingement on the idea of self and personhood. Since the self is always understood in relational terms; in the realm of subjectivity and intersubjectivity, in the sphere of social condition; suffering demands an inquiry of this 'social' which constitutes it.

Work of Veena Das (2001), Roma Chatterji and Deepak Mehta (2007) points to the relation of violence with everyday life. Their work critiques the assumption that life goes back to being normal after violence has runs its course individuals and communities. Veena Das (2001) shows the deviance of this movement. Das argue that "the recovery of the everyday is a coming to terms with the fragility of the normal". Chatterji and Mehta points that, Das's work makes it clear that there is a 'gap between the end of the riots and the resumption of everyday life.' The study of Chatterji and Mehta is located precisely in this gap (Chatterji and Mehta 2007: 3). And this gap will be incomplete without addressing the meaning of social suffering in the everyday life of the people. For this purpose I have looked at the Mother's movement in Argentina, Kashmir and Ireland to understand the relation of social suffering with everyday life and its transformative nature.

Robben (2005) works point to the fact that Post military junta when the Argentine society saw the transition to democracy, a national history was being created by the armed forces on the Argentine people which claimed that counter-insurgencies war was fought within the margins of legality. Torture and disappearances were not officially sanctioned but were inevitable excess of war (Robben 2005). Robben argues, "That this master narrative failed to convince Argentine

people not only because it was blatantly untrue but because the fate of the disappeared was of an overarching public concern" (ibid: 131).

This public concern was articulated through the mother's movement in Argentina. Formed in 1977, the Madres of the Plaza de Mayo holds silent protest every Thursday at the centre of the city Buenos Aires. They placed white scarves on their heads and walked arm in arm, and talked to the sympathizers who continued to join in their thirty-minute protest (Agosin and Cola 1987). Association of Parents of Disappeared People was formed in Kashmir in early 1990s. The organisation was built collectively and majorly by the mothers of the disappeared men. Grief, love and ambiguous loss became the thread that joined these mothers. Individual suffering was articulated collectively by the mothers who asked repeatedly only one question, 'where are our disappeared ones? Are they alive or have they become ether?'

Suffering is also gendered, as Aretxaga (1997) show us through women's participation of Trouble times in Ireland. For example, in 1970, the families of the Irish rebel formed the Relatives of Action Committees (RAC). Its dominant members were mothers. Private suffering took the shape of a collective project of resistance. The mothers of RAC deployed suffering as a weapon. Aretxaga writes,

> "This suffering was the concrete suffering of their incarcerated sons that lay hidden from public opinion, a suffering that they sought to publicize and in doing so terminate. The members of RAC used the suffering of others that they launched as a discourse of injustice". Therefore the suffering of the mothers of RAC constituted a political discourse that ran against the grain of dominant British and republican narratives and open a space to unmapped forms of personal and social transformation" (Aretxaga 1997: 116).

Violence and Reconciliation

How is the suffering of the traumatized society addressed by the state? I have tried to find the answer in the reconciliatory measures of the Transitional Justice. The purpose is not to romanticize the measure of transitional justice but to learn lessons from its critique. Transitional Justice has focussed on the gross violation of civil and political rights such as disappearance, genocide, torture and sexual violence through its mechanisms of truth commissions, reparation programmes, etc. In this chapter I want to focus on two such works of Transitional Justice. One is the National Commission on the Disappeared Persons also called as CONADEP Project in Argentina and the other is South Africa's Truth and Reconciliation Committee. The purpose to bring these two commissions is to see the importance of truth commission for acknowledging people's suffering and its healing effect and also to see the relationship of truth with justice by bringing the debates around the politics of reconciliation.

Roht- Arriaze defines Transitional Justice as, 'that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression and that are aimed directly at confronting and dealing with the past violations human rights and humanitarian law (as cited in Nagy 2008: 3). Paige Arthur argues, "the term transitional justice was coined as a device to signal a new sort of human rights activity and as a response to concrete political dilemmas that human rights activists faced in what they understood to be transitional context" (Arthur 2009:7). This transitional context is the political dynamics of transition from a repressive regime to a democratic order which provided more accountability for human rights violation. Lutz and Sikkink called this as 'justice cascade and associate this justice cascade with the Argentine's Truth Commission and Trials' (Sikkink 2008: 2).

Truth Commission are always part of political negotiation and confrontation in each society (Jelin 2016). The role of Truth Commission is to unveil denial from the 'widely known but unspoken truth' (Hayner 2001). Though truth commission are not judicial bodies but there exists a close relationship between non judicial truth inquires and judicial investigations and prosecution. Truth Commission focuses on the cause and effect of political violence to bring out the role of the state and other institution during the conflict (Dukalskis 2011). Hayner calls such breadth and flexibility of the commission as its strength (Hayner 2001:16). Most of the Truth

Commissions are based on the survivor's testimonies, representing public acknowledgment of the survivor's private suffering. Chatterji and Mehta argue that the importance of testimony is to show that the speaking subject is both witness and survivor. They write, "Testimony strives to speak the unsayable, with all its attendant ellipses and necessary forgetting. In the archive the subject is an empty position, able to be generalized and framed within the already written. In Testimony, the position of the subject is unique and non-reproducible" (Chatterji; Mehta 2007: 30-48).

Though Truth Commission became popular after the post-apartheid period in South Africa but Latin American scholars Elizabeth Jelin (2016), Sikkink (2008) and Crenzel (2011) argue that the foundation of it was laid by the Argentine's Truth Commission. In 1983 President Raul Alfonsin formed a presidential commission the National Commission on the Disappearance Persons (CONADEP) to investigate mammoth cases of disappearance in Argentine and to bring the perpetrators of political violence to trials through the narratives of the relatives of the disappeared victims (Crenzel 2011: 1064). CONADEP became the first truth commission to report on the political violence and human rights violation in Latin America and became a model for the construction of historical truth in several countries across the continent (ibid: 1070). Crenzel points that, "the commission worked with the families of the disappeared people to locate if they can be found out alive, but it found none. Over 7,000 statements were taken by the commission in the period of nine months out of which 8,960 cases of disappeared persons were documented" (ibid: 1069). The commission came out with its report in 1984 called Nunca Mas (Never Again). The title since then has become a slogan and symbol of the transitional justice movement (Sikkink2009: 8). Argentine *Nunca Mas* (Never Again) in this sense became the first truth commission that set the global trend of transitional justice as noted by Hayner (Hayner 2001). The report mentioned the name of the disappeared persons who were innocent to restore back their identity which might have been lost in several detention centres as arbitrary numbers (Crenzel 2011: 1073)

Though the report Never Again didn't mention the names of the perpetrators but the documentation of the disappeared cases served a purpose for prosecution and trial of the Military Junta which started in 1985 (Kaiser 2015). Robben mentions that the impact of CONADEP

report and truth trials unlike South Africa's TRC was not about truth and forgiveness but truth and adversity. Concerned about the impact of trial on the new democratic regime with resentful armed forces, President Alfonsin passed the Final Stop Law on December 23rd 1986, which placed a sixty-day statute of limitations on criminal charges against individual officer. The series of Presidential pardon to the accused military officer didn't break the struggle of the human rights activists and lawyers. Rather it pushed them towards building new tactics for their struggle to justice.

In 1995 families associated with Centre for Legal and Social Studies (CELS) presented a petition called as the 'Right to Truth' which is a juridical right against the amnesty granted to the former military junta leaders. Soon the federal court started with the juridical proceeding which came to be known as Truth Trials. Robben (2005) argues that these truth trials became famous in 1998 after the series of confession of child abduction and stealing by the ex-military junta officer. The families associated with CLES used legal battle such as 'Right to Identity' and 'Right to Truth' to get the amnesty of the military junta unconstitutional. In 2005 the Supreme Court of Argentina decided that the crime of disappearance was the crime against humanity. Argentine truth trial shows the relation of truth and justice was based on the idea of criminal justice. The indigenous movement struggled to get their justice by putting off the amnesty of the military junta and sending them behind the bars. The process of reconciliation took time because every time new trial would open the wounds of the Argentine society, causing no relief from the trauma.

The process of National Reconciliation in South Africa was different from the Argentine's case. The objective of the commission was to offer amnesty to the perpetrators in exchange of the truth. Moral idea of forgiveness was framed around the commission. According to Archbishop Desmund Tutu, TRC represented a 'working relationship' between truth and justice (Krog 1999). The idea of justice described by Tutu is a restorative one where an emphasis is placed on the restoration of lives of "the of victims and survivors through reparation policy, state-led acknowledgment of suffering and a condemnation, together with the transformation of the system that implemented widespread forms of abuse" (Stanley 2001: 3) The objective of TRC

was to put the past behind and enter into the process of democratization which could only happen once people's suffering is channelized through the process of reconciliation (Leebaw 2003: 3). Bharucha argues, "The goal of Truth and Reconciliation was to enable survivors and perpetrators of violence to live together in reconstituted societies with new imaginaries of coexistence" (Bharucha 2014: 112).

TRC major critique comes from its position of equating forgiveness as reconciliatory measure. It then becomes important to ask, should forgiveness be institutionalised? Should it be the only means for the process of reconciliation? Antjie Krog (1999) 'Country of my Skull' has testimonies of the perpetrators and survivors which always leave this question in mind, is it possible to forgive the Evil? Hirsch (2012) argues, "when transition is equated with the process to 'move on', to reunite a divided society, it falls prey to the collective amnesia, embodied in the notorious slogan 'forgive and forget', the danger of which lies in forcing reconciliation as an assimilative resolution" (Hirsch 2012: 79). Brudholm and Rosoux (2012) argue, "That 'not to forgive' can be seen as a sign of a regrettable lack of rationality or moral virtue". They argue that those refuses to forgive, their motivations and reflections are not seriously investigated (Brudholm and Rosoux 2012:116).

The mechanism of transitional justice and reconciliatory measures in Argentina and South Africa can become a lesson to address the phenomena of Enforced Disappearance in Kashmir. The talk around Truth and Reconciliation Commission was already started in 2007 by state leaders like Omar Abdullah and Mehbooba Mufti. Sajid Iqbal tried to provide a framework for the transition from an armed conflict to an uneasy peace, which is further elaborated in chapter three of this thesis.

Methodology

Most of the research questions in this thesis are arising from ethnographic readings on violence from places like Argentina, Ireland, South Africa and Kashmir. I have used comparative

framework to understand concepts like violence, suffering and reconciliation because the task for explanation has to be inter-disciplinary here. These questions are also shaped by Max Weber and C.Wright Mills philosophy and methodology which is Interpretative sociology. Most of the questions in the chapter around the social action of the actors such as the state, military and family are arising from Weber's concerns around the understanding of social action, its causes and consequences. By pointing towards the social action, Weber is asking to understand the subjective component of that action. Susan Visvanathan argues that Weberian method reflects on two variables, explanation and understanding. She argues that, "Sociologists must believe that, even if they do not understand, the phenomena must be described or recorded so that its existence as a phenomenon is noted" (Visvanathan 2011: 40). It is with this spirit the phenomena of enforced disappearance and its impact on society has been understood in this thesis.

I have also tried to look at C.Wright Mills (1959) *Sociological Imagination* which points to the study of history and biography for analysing struggle of mothers' movement in militarized society. Subh Mathur's (2016) recent work on Kashmir has been useful in this way. Her biographic sketch of APDP's chairperson Parveena Ahangher has been important to understand the relation between empathy and responsibility.

Mills distinction between 'the personal troubles of the milieu' and 'the public issue of the social structure' (Mills 1959) helped me to understand the condition and status of half-widows in Kashmir. As noted by Athar Zia that most of these half-widows faces post-traumatic disorder because of the trauma of disappearance. Post-traumatic disorder then isn't just a personal trouble but a public issue who cause and suffering is rooted in the social condition of the militarized society. Thus Enforced Disappearance itself is the public issue that is responsible for the breaking of the foundational institution such as marriage and family.

Since this thesis is based on secondary data I have looked at the human rights report on disappearance. Sajid Iqbal's essay on Truth and Reconciliation Commission in Kashmir seems like a dialogue with public sociology. In editing this essay after Sajid's death, Mathur writes, the solution to the conflict in Kashmir has to come out from the lived experience of the people (Iqbal

et al. 2014). I have used the conception of public in public sociology as described by Michael Burawoy (2005) who writes,

"It was only the civil rights movement, and the women's movement in particular, and that gave to sociologythe idea of articulate publics that could rationally fight for their interests outside the realm of conventional politics. Social movement theory, critical race theory, and feminism brought about a revolution in sociology, making possible sociology of publics and thus a public sociology" (Burawoy 2005:14).

Chapter 1

State, Violence and Enforced Disappearance

<u>Introduction</u>

Amnesty International Report (1994) points that social activists, journalists, non-governmental organisation and lawyers who have been documenting the cases of disappearances in various countries of the world (which are still stifling with political crises) shares the common view that Enforced Disappearance has always been part of the state's systematic policy. It is a violence that is enacted by state and its apparatuses and sometimes by the non-state actor (International 1994).

I wish to understand 'enforced disappearance' in the intersection of state, power and violence. More importantly the chapter aims to look at the documentation of the phenomena of disappearance to get a clear understanding or explanations to the questions posed above. The importance of documentation is pointed by Susan Visvanathan (2011) who argues,

> "What twenty-first century Sociology attempts to do is to record, to bear witness, to be objective in delineating the crises of our time. In this respect, the Weberian method is crucial since it reflects on explanation and understanding as the two key variables and argues that sociologists must believe that, even if they do not understand, the phenomenon must be described or recorded so that its existence as phenomenon is noted" (Visvanathan 2011: 40).

Enforced Disappearance

I present a poem which explains how the sociology of emotion must document the everyday anxieties that Kashmiris face. The poem has been extracted from Iffat Fatima's documentary movie '*Where have you hidden my new moon crescent*' (2009).[4] The protagonist of the movie Mughal Mase sung this poem for her disappeared son Nazir Ahmed Teli.

Precious son, you are lost

All is sorrow.

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[4] Link of the movie: https://www.youtube.com/watch?v=RZK_J96O6gQ&t=42s

Noble son, you are lost.

The sky is blood rimmed,

The earth is torn asunder.

My Yusuf, I call you, hear me

Come.

My hearts beloved,

I await you,

Come.

Have pity on me,

I am in anguish

Come.

Why are you hiding, you crescent of the new moon.

I wait all day but you ignore me

My day is wasted

O, you crescent of the new moon.

(Mughal Mase)

On September 1st, 1990, Mughal Mase's only son, Nazir Ahmed Teli, a teacher, was picked up by the Indian Security Forces after which he vanished. Ever since then Mughal Mase had been part of the movement against Enforced Disappearance in Kashmir under the banner of Associations of Parents of Disappeared Persons (APDP). She passed away on 26th October 2009 without knowing the whereabouts of her son.

More than 8,000 people have disappeared in Kashmir since 1989 (IPTK and APDP 2012).[5] More than 10,000 people are believed to have disappeared from 1976 to 1982, during the Dirty War of Argentina (Robben 2004: 136). In Colombia, more than 1,500 people are believed to have disappeared from the year 1978 to 1992 (International 1994: 34). In Sri Lanka the government official data estimates disappearance of approximate 16, 742 people between the periods 1983 to 1990. Though a figure of more than 60,000 cases of disappearances have been estimated by the human rights groups (Punyasena 2003: 16). Committee on Enforced Disappearance (CED) have documented many more cases of Disappearance in different parts of the world such as Srebrenica, Tibet, Guatemala, Chile, Iraq, Zimbabwe, Turkey, Balochistan, Bangladesh, etc.[6]

The huge numbers of disappearance mentioned above are not just numbers and figures of a crime. These numbers have names, names of those people who like many of us had aspirations and dreams, family and love. How did they disappear? What possible threat they could have posed to the society which they once inhabited? With these questions I want to discuss the term enforced disappearance, its genealogy, its effect, the international rights that it violates and its documentation in the reports of Amnesty International and United Nations Committee on Enforced Disappearance.

Many scholars have opined that the genealogy of disappearance as a crime against humanitarian law in the modern world can be traced from 1930s (Florath 2011: 13). [7] Florath argues that such practices took place especially against Jews and Communists during Hitler's totalitarian regime (ibid: 13). [8] Much later, from the year 1970s, the term started emerging up in Latin America. Chilean human rights lawyer, Jose Zalaquett, has argued that,

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[5]The state government of Jammu and Kashmir has admitted in the state assembly that upto June 2003 the number of persons who have disappeared is 3,931 (Chakravarti 2005)
[6]Full document of the Committee on Enforced Disappearance can be accessed here: :
http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx
[7]Tanja Florath's dissertation, '*The Protection Against Enforced Disappearance in Armed Conflict',* can be accessed here: https://www.academia.edu/3804193/The_Protection_Against_Enforced_Disappearance_in_Armed_Conflict
[8]The movie *Night and Fog*(1956)is a classic example of disappearance in Germany during Hitler's time.

"Disappearance as a term was first coined in Chile when human rights lawyers in Chile noted that some of the prisoners they were representing had gone missing even though they continued to be held in custody by Chilean security forces."[9]

Human Rights Advocacy and the History of International Human Rights Standards associated 'Disappearance' with dirty war of Argentina and Chile but they also point that 'the phenomenon is not limited to that geographic region or that unique period of time.'[10] What is the difference between enforced disappearance and kidnapping? Simone Veil points to such distinction. According to her the distinction is qualitative in nature where the former always involve state and its agents. She argues that the struggle of human rights have been to frame and assert a 'universally accepted definition' of disappearance so that the boundary between different practices of violations of human rights doesn't get blurred (Veil 1986: 35).

There is a consensus among the human rights lawyers and activists that enforced disappearance mostly occurs in the states of emergency and armed conflict (Veil 1985; International 1994).[11] Disappearance violates both national and international laws and standards of human rights. Some of the fundamental rights which are enshrined in the Universal declaration of Human Rights (UNHRC) such as right to life, dignity and liberty are abused through the practice of disappearance.[12] Human rights activists, non-governmental organisation, lawyers and United Nations working groups on Enforced Disappearance struggled a lot on the framing of the definition of the term. In the report *Disappeared* (1986), Simone Veil argues, that the definition of disappearances should contain its essential features of practice, which is, state and its agent's involvement in the crime; their secrecy around the whereabouts of the disappeared person and lastly their denial of the crime (Veil 1986: 37).

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[9]Jose (Pepe) Zalaquett, '*The Emergence of Disappearance as a Normative Issue'* **in Human Rights: from Practice to Policy, edt. By Carrie Booth Walling and Susan Waltz, published in 2011. See: http://humanrightshistory.umich.edu/files/2012/07/Zalquette.pdf**
[10]**http://humanrightshistory.umich.edu/problems/disappearances/**
[11]Though Florath's work (2011) has pointed that enforced disappearance occurs even in the time of 'peace.' She argues since 9/11 enforced disappearance took in a new context that is of counter-terrorism. 'What became known as extra-ordinary rendition contains in most cases also an enforced disappearance' (Florath 2011: 15).
[12]**http://www.un.org/en/universal-declaration-human-rights/index.html**

International Convention for the Protection of All Persons from Enforced Disappearance (CED) which came into force on 23ʳᵈ December, 2010 finally settled the debates around the disappearance by defining it as,

> "the deprivation of liberty by agents of the State or by persons, with the authorization,   support, acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person."[13]

Thus certain features of disappearance such as, deprivation of liberty, state involvement, denial and secrecy of the crime and finally abuse of right to truth of the family to know whereabouts of their disappeared ones, becomes common to all those regions where the phenomena has occurred. Veil argues that, 'these elements of disappearance make the disappeared as someone with no legal status' (Veil 1986: 34). I present to you a small excerpt of story by Athar Zia (2013) who has puts these elements of disappearance through a story of life struggle of Fateh Jaan, a half-widow[14] whose husband Naseeb, a cattle herder was disappeared in custody of the Indian armed forces in 2002 in Kashmir (Zia 2013)

> *"When Naseeb was taken, Fateh thought it was the routine 'pooch taach'- a euphemism for detainment, primarily for 'questioning.' During pooch taach, the family harbours hopes of imminent if not immediate release, for broken bones if not death (though there are no guarantees)...After Naseeb's arrest, Fateh began the excruciating routine which countless Kashmiri wives, mothers or families undertake to find their kin. Accompanied by a few elderly neighbours and her brothers, Fateh would search in army camps, where the officers would deny arresting Naseeb. The local police station would not accept her FIR and would suggest she keep enquiring from the army. The army officers would refuse to*

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[13]https://www.ecoi.net/file_upload/2018_1447937633_g1505109.pdf.
The list of countries who rectified and signed the declaration can be accessed here:
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=_en
[14]Half-widow is a term used for women in Kashmir whose husband's fate is unknown due to his subjection to Enforced Disappearance.
https://www.theguardian.com/global-development/2010/oct/11/1

divulge any information and send her back to the police. Utterly defeated, Fateh would return home before it would turn dark- the time when an undeclared curfew would begin in the whole of Kashmir" (Zia 2013: 169).

Rationale behind Disappearance

After examining the definition of the term and its elemental feature, the question that arises is why the state practices disappearance, why not direct execution? One of the main reasons of disappearance as identified by Veil (1986), Robben (2004), Mathur (2016), Amnesty International (1994) is to perpetuate terror in the society. Veil argued that as a strategy disappearance draws it particular strength from anguish over the fate of the disappeared person which it perpetuates. She calls it a 'perfect crime' since the terror needs no explanation here, as it is quick and leaves no traces (Veil 1986: 39). The right to use violence and spread terror is permitted by the sovereign state, especially to its police and armed forced. As it has been pointed in the report *Disappeared*! (1986), that because the state fears international critique and the intervention of powerful nation, it 'masks itself with an appearance of democracy' (ibid: 40). Though in reality, its everyday interaction with its own citizen, in practice, is antithetical to the democratic spirit. Therefore to perform well in the eyes of international critique, the state permits its military or police forces to carry out disappearance (ibid: 40).[15] Further the ideology of national security which forms an alliance between the State and the armed forces legitimises such practices. Veil critiques such ideology which according to her, 'dehumanizes social relations and reduce individuals to the level of objects. It breeds insecurity among citizens. It has been rightly remarked that, in this form, national security is inversely proportionate to individual security' (ibid: 41).

What is the logic of disappearance? Robben points to 'strategic concern' of the Argentine armed forces about their political future, which they knew would be safe if there was no body to mourn

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[15] Amnesty International Report (1994) and IPTK and APDP Report (2015) identifies the similar point.

(Robben 2004: 137). But still the question that lingers is, why disappearance? What is the reason for the preference of disappearance over direct execution? In 1989, Robben provoked the Supreme Court of the Armed Forces in Argentina with this question, to which a Brigadier General answered,

> "If one would have done what you have asked then there would have been immediate revenge, not only on the executioner or those who presided over the trial but also on their families. That is to say, the terror had also infused terror among the armed forces and they responded with terror. This is the tremendous problem, the tremendous tragedy of this war" (Robben 2004: 136).

Human Rights Organisations in their several reports have mentioned that disappearance is always followed by torture and in most cases extrajudicial killings (International 1994: 85). [16] Disappearance is terrifying because it is always intensely private and not public and it affects the main social unit of the society which is family. Shubh Mathur (2013) in expressing the grief and anguish of the relatives of disappeared persons in Kashmir writes,

> "The sole purpose and logic behind the disappearance is to create terror among the civilian population, to enact the random and absolute power of the armed forces…in this continuing chronicle of military terror, the families of the disappeared oppose a profoundly moral voice. Grief and love give the families the courage to confront and challenge this regime" (Mathur 2013: 131).

It is this grief, love and anguish of the families of the disappeared person that later got translated into the formation of Association of Parents of Disappeared Persons (APDP) in Kashmir, Madres de Plaza de Mayo in Argentina, Association of Families Searching Disappeared Relatives in Sri Lanka. It is precisely on these grounds and features of disappearances that the international organisation and national collectives worked together against enforced disappearance. IHRLC

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[16]Jalil Andrabi, a human rights lawyer was picked up by the Indian Army, Major Avatar Singh in 1996. On March 26, 1996 his found was found floating in Jhelum river. Full story can be accessed here: http://kashmirwatch.com/jalil-andrabi-the-martyr/

points, that in 2010 the International Convention for the Protection of All Person from Enforced Disappearance came into force (CED) which provided a skeleton framework, typifying disappearance as a human rights violation. CED pointed to the state its responsibility to respect, protect and ensure the rights of the individual to be free from it. IHRLC works shows that CED also provided a comprehensive remedy scheme that includes the rights to truth, justice, reparations, and   guarantees of non-recurrence (IHRLC 2014: 7).[17] As of December 2016, 96 states have signed the convention and 54 have ratified it.[18] India has signed but not ratified the Convention. Domestic Indian law does not even criminalize 'Enforced Disappearance' or 'Torture' till today (IPTK and APDP 2012: 7).

<u>State and Violence</u>

To engage with the concept like violence is to unfold its complex reality. Violence as noted, by Kilby is a 'multidimensional concept' and lies in the sphere of ambiguity. It is structural, symbolic, legal and non-legal (Kilby 2013). Does violence as a category has any meaning? Or is it just meaningless? To understand the complex reality of violence is to look at various discourses which shape it up. The task has to be inter-disciplinary. And it is for this purpose I have tried to engage with the relationship between violence, power and state through the work of scholars like Max Weber, Walter Benjamin, Hannah Arendt, and Antonius C.G.M. Robben.

The kind of violence that I am looking at is the state-sanctioned violence in the region which went through (or are still undergoing through) the state of emergency, where a technique like Enforced Disappearance was (is) used as an instrument of terror.

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[17] **Access IHRLC working paper series No.1 Berkley Law, '***A legal Analysis of International and domestic law relating to victims of Enforced Disappearance* **(2014)**
Link to the file:
https://www.law.berkeley.edu/wp-content/uploads/2015/04/Working-Paper-1-India-Right-to-a-Remedy-151027.pdf
[18]**https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&clang=_en**

The non-governmental organisation reports such as Amnesty International, human rights activists' campaign and the recent development of Committee on Enforced Disappearance (CED) puts enforced disappearance as the state perpetrated violence, bringing one of the social actors, in this case the armed or paramilitary forces into the light of crime (Veil et al. 1986). The Sovereign's right, that is, 'to take life' or 'let live' or even 'the right to make life' or 'let go' becomes indistinguishable. The ambiguity lies in the sphere of uncertainty (whether he/she is alive or dead) and anguish for the families of the disappeared. Only the state and its apparatuses know the fate of the disappeared. But the failing of the materiality of the evidence and the state's continuous denial of its involvement keeps the struggle of the families and friends of the disappeared person alive. To resist mourning then becomes a way to demand the whereabouts of their loved ones. It then becomes important to look at the crime, Enforced Disappearance as violence inflicted on the body of disappeared and his family. The violence is perpetrated not just on one individual but to the most basic unit of the society which is family. It is intensely private.

The human rights activists, lawyers and UN reports locate the cause of Enforced Disappearance in the legal-justificatory schema of state-sanctioned and law-preserving violence (IPTK and APDP 2012: 7-8). It is important to look at the justification of such violence by the state and its apparatuses before looking at its critique. The dynamics between state and violence are interplayed through acts like Armed Forces Special Powers Act, Special Power/Forces Act, and Special Security Act etc. But before looking at the relationship between violence and law, we need to understand their relation to the state and further to ask, what is a state?

Weber argues that one can't define state in terms of its end. It can only be defined in terms of means specific to it, which is the use of physical force (as cited in Gerth and Mills 1985: 77). Weber argues:

> "State is a human community that successfully claims the monopoly of the
> legitimate use of the physical force within a given territory. Note that 'territory' is
> one of the characteristic of the state. Specifically at the present time the right to
> use physical forces is ascribed other institutions or individuals only to the extent

to which the state permits it. The state is considered as the sole source of the 'right' to use violence" (ibid: 78). [19]

There are three important categories that come from this definition: Power, Domination and Legitimacy and Weber's work help us to understand state and its modern bureaucratic organisation through these categories. Weber argues that there are fundamental difference between Power (Macht) and Domination (Herrschaft). "Power is one of the probability that one actor within the social relationship will be in a position to carry out his own will despite resistance" (Hechter et al. 1967:211). Domination for Weber is functioned by two factors voluntary compliance and obedience. Very categorically, Weber clears the point that domination 'does not include every mode of exercising 'power' or 'influence' over other' (ibid: 212). What constitutes domination is legitimacy which Weber explains through three pure ideal types: Legal-Rational Authority, Traditional Authority and Charismatic Authority. These conceptions of legitimacy become important to understand the significance of the structure of domination. Weber argues that the power structure of the modern state, "dominate by the virtue of legality, by virtue of the belief in legal statue and functional competence based on rationally created rules" (ibid: 212).

In legal rational authority according to Weber, the person doesn't obey an individual but the law which is an impersonal order to him (Hechter et al. 1967:185). He argues that the "purest type of exercise of legal authority is that which employs a bureaucratic administrative staff" (ibid: 187). The administrative staffs are hierarchized where its members are appointed on the bases of meritocracy. 'The technical knowledge holds supremacy here' remarks Weber (ibid: 188). [20] Weber points to the expansion of this combination of legal authority and bureaucratic organisation in different spheres of society. One such sphere according to Weber is Army. Weber argues

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[19] **Weber doesn't make any distinction here between physical violence and force, hence making the relation between power and violence ambiguous.**
[20] Note this is the ideal pure type mentioned by Weber.

"The modern army is essentially a bureaucratic organization administered by that peculiar type of military functionary, the 'officer.' Bureaucracy then becomes an exercise of control by means of a particular kind of administrative staff... The choice is between bureaucracy or dilettantism" (ibid: 188).

In Weber's writing, power and violence seems to be vested only with the State. Politics then for Weber 'is the struggle for power or striving to influence the distribution of power, either among states or among the groups within a state' (as cited in Gerth and Mills 1985: 77). Also the distinction between violence and power seems ambiguous in Weber's writing. One important thing that is clear in Weber's writing is that he sees physical force/violence in the realm of means and ends relations.

If Violence can only be found in the realms of means then how do we understand whether it's a means for just or an unjust end? How do we decide such distinction? It is here that Benjamin comes to our rescue. He tries to look at it through natural and positive theory of law which shares a commonality in their view that, 'just ends can be attained by justified means, justified means used for just ends' (Benjamin 1979: 132). Benjamin points that even with the distinction in the positive theory of law between sanctioned and unsanctioned violence, the legitimacy of the violence becomes quite debatable. Are we to understand through such distinction that state sanctioned violence is legitimate and hence a legal violence? If it is so then how can a critique of the violence such as 'enforced disappearance' perpetrated by the state be understood?

In explaining Benjamin's critique of violence, Finley argues,

"For Benjamin, means and ends are related in problematic ways, either in the form of 'law-making violence' or 'law-preserving' violence. In the former, violence posits ends that will be embodied in law; in the latter, it secures the laws through coercion and the punishment of guilt that violence itself created in the first place" (Finley 2009: 34).

Benjamin also points that it is the law-making nature of the violence which threatens the state more because of its mere presence outside the law and its potential threat to rupture the

established norms and to create new structures (Benjamin 1979: 136). Weber's notion of physical force as the mean specific to the state becomes important here, as the monopoly of it rest with the Sovereign power (Gerth and Mills 1985: 77). Benjamin calls Law-preserving violence as threatening violence, 'it is a violence crowned by fate which holds legal uncertainty over the life and death of an individual' (Benjamin 1979: 140). However, he argues, that in the modern institutions like the Police and Army such distinctions between law making violence and law preserving violence have been suspended (Benjamin 1979: 144).

I quote Benjamin here to explain the relation of law with modern institutions such as Military and Police force. On Militarism Benjamin argues,

> "Militarism is the compulsory, universal use of violence as a means to the ends of the state…In it violence shows itself in a function quite different from its simple application for natural ends. It consists in the use of violence as a means of legal ends. For the subordination of citizen to laws-in the present case, to the law of general conscription- is a legal end. If that first function of violence is called the law-making function, this second will be called the law-preserving function" (ibid: 139).

In the case of Police violence Benjamin writes,

> "It is law-making, for its characteristic function is not the promulgation of laws but the assertion of legal claims for any decree and law-preserving because it is at the disposal of these ends…The law of the police marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain. Therefore the police intervene 'for security reasons' in countless cases where no clear legal situation exists" (ibid: 142).

What Military and Police violence shows, is that the right 'to kill' or 'let live', now rests with the Police or Army (state apparatuses) along with the State. Under what conditions does the state

transfer this power to its apparatuses? When does the special act and law seize to become from the state of exception to the state of rule? What are the reasons given for these legal justifications? It then becomes important to look at certain laws and institutions from the perspective of the Sovereign and its subject. It then also becomes important to look at enforced disappearance through such prism. For example, the Armed Forces Special Powers Act in India that rests with the armed forces and to certain extent to paramilitary forces has been implemented in the disturbed state of Jammu and Kashmir (1990) and North East (1980).

Vivek Chadha (2013) gives reasons for AFSPA implementation in the above mentioned regions of the country. His first reason is that the army is protecting the county from an external and internal attack and that AFSPA enables the security forces in such conditions. Secondly, there are places where AFSPA is not operative, the military convoys which passes through these regions can then come under attack. Chadha justifies, 'therefore, the security of both men and material require the legal safeguards and operational powers of AFSPA' (Analyses 2013: 5). Chadha argues,

> "The army, in its security assessment, sees a rise in terrorist violence in the coming years, given the availability of trained and willing terrorist cadres in Pakistan, who are more over likely to increasingly turn their attention towards India after the de-induction of US-led forces in Afghanistan. Under these circumstances, the army feels that once AFSPA is revoked, political compulsions will not allow its re-introduction even if the situation in the state worsens. The example of Imphal, which has seen a spurt in militant activities since the lifting of the disturbed area status, is cited as proof" (ibid: 5).

According to Umang Sethi AFSPA ensures freedom of action for the army which is necessary to tackle insurgent organisations. Therefore it becomes important for the army personals, acting in such conditions to be protected against any juridical proceedings (ibid: 44). Sethi argues,

> "Freedom of action involves allowing certain police powers such as search, seizure, arrest and the conduct of follow up operations...These powers available to

the army under the AFSPA are still limited when compared to wider powers of the local police under CrPC or the Ranbir Penal Code (RPC applicable in J & K) that include preventive detention, summoning of witnesses, search, seizure and arrest" (ibid: 45).

Wajahat Habibullah argues that the powers available to the Army under Section 4 of the AFSPA override the CrPc laws. For example under Section 4(c)

"The army can arrest anyone without a warrant, who has committed, is suspected of having committed or of being about to commit, a cognisable offense and use any amount of force necessary to effect the arrest. Under section 4 (d), the army can enter and search without a warrant to make an arrest or to recover any property, arms, ammunition or explosives which are believed to be unlawfully kept on the premises. This section also allows the use of force necessary for the search" (ibid: 25).

Section 4(c) of AFSPA in the disturbed areas violates Article 21 of the Constitution, the Right to Life (IPTK and JKCC 2012). Bimol Akoijam (2005) argues, "the Act, in every instance, gives rise to a plethora of 'acts' such as right to kill on suspicion, right to arrest, etc" (Akoijam 2005: 482). Note, the power enshrined under Section 4(d) of AFSPA where Army can enter and search without warrant to make an arrest and is allowed to use force necessary for the search becomes one of the major cause of Enforced Disappearance in 'disturbed areas' of India. Uma Chakravarti argues "section 6 of AFSPA prohibits against prosecution of persons acting in exercise of power conferred by the AFSPA 1990 without the prior sanction of the Central government" (Chakravati 2005). Haley Duschinski argues that this very feature of AFSPA provides its impunity, " which are a part and parcel of the logic of the state of law, even as they run counter to the nature and even to the possibility of law itself" (Duschinski 2009: 702).

If AFSPA is passed in the disturbed zones temporarily for security reasons then what effect it has on the everyday functioning of life? Akoijam answers,

"AFSPA seeks to supplant rather than supplement civil authority with military authority in the administration of everyday life...to convert such an ordinance into a regular law that stays in place for almost half a century is to entrench a military structure and ethos in the polity and structure of the state. Ultimately, it leads to a complete subversion of the basic foundation of society and polity. It blurs the necessary distinctions between the alien spaces. This is what has happened in Manipur" (Akoijam 2005: 489).

Akoijam (2005) and Duschinski (2009) through their work have shown us how militarization affects the everyday life of the people. The lives in the disturbed areas are at precarious state precisely because the right to life is under the threat of AFSPA. Such conditions points to the asymmetry in the democratic values and legal equalities. Many human rights activists and non-governmental organisations such as Amnesty International has called for a total 'repeal of AFSPA' due to its potential threat to the most fundamental right which is Right to Live.

Laws like AFSPA brings the question back again to the discussion, which is, Is there a way out to this legal-justificatory schema of means-ends relationship? Benjamin's idea of divine violence can be seen as an answer to this question. According to Benjamin divine violence is "law destroying", which in its destruction only expiates. In its annihilation of old structures it only expiates (Benjamin 1979: 150). This divine violence has grabbed attention of many scholars. What is this divine about this violence? Does it refer to any religious God in the background or is it a call for the restructuring of normative view of categories like violence? Does divine violence also involve blood-shed? Or is it a call for peace through non-violent means?

The understanding of violence is incomplete without addressing Arendt's work. Arendt's writing becomes important for the analytical distinction between violence and power and for addressing a critique of political issue, that she finds common, in the work of scholars like C.Wright Mills, Voltaire, Sartre, Sorel which is , power is nothing but 'rule of man over man'(Arendt 1969, 38).

A little background sketch of the period needs to be brought out, the political turmoil when Arendt was writing her essay *On Violence* (1969). Bernstein writes, "She had lived through the turbulent 1960's with mixed emotions. She was an enthusiastic supporter of the early civil rights movement, the anti-Vietnam War movement, and the nonviolent student sit-ins in universities" (Bernstein 2011: 3).

The notion of Power as *power over* is what Arendt has been challenging in her essay *On Violence*. Arendt's idea of power stems from the idea of Republic. She takes us back to the history of government of Athenian city-state and the Romans who did not see the essence of power and law in the command-obedience relationship. In such cities the obedience of the citizens is to the law with consent and not to the men. It is in the plurality and consent of the people that power lies in. Arendt asserts that,

> "It is the people's support that lends power to the institution of a county and this
> support is but the continuation of the consent that brought the laws into existence
> to begin with…All Political institution are manifestations and materializations of
> power; they petrify and decay as soon as the living power of the people ceases to
> uphold them" (Arendt 1969: 41).

Arendt thus makes a distinction between power, physical force, violence and strength. She argues that such distinction does not appear in the real world. For Arendt the difference between power and violence lies in numbers and implements. She writes, "Power always stands in need of numbers, whereas violence upto a point can manage without them because it relies on implements" (ibid: 7). Note that Arendt's idea of power is rooted in the Plurality. She has reminded us in her work *Human Condition* (1958) that plurality is individuality, distinction and equality. She writes, "Every individual person brings a distinctive perspective to a common world...Politics involves plurality and citizens encountering each other as political equals. That is political life" (Arendt 1958: 7)

Violence on the other hand is instrumental in nature. What it always seeks is implements. Arendt argues, "Out of the barrel of a gun grows the most effective command, resulting in the most

instant and perfect obedience. What can never grow out of it is power" (Arendt 1969: 53). She argues that power and violence are opposite to each other, "where one rules absolutely, the other is absent" (ibid: 56). Therefore, Arendt's conception of power goes further from Weber's notion of domination that rests on the relationship between compliance and obedience to the relationship between consent and support.

Arendt reminds us that what power needs is legitimacy. According to her, Power rests on the togetherness of an act of people,

> "It derives its legitimacy from the initial getting together rather than from any action that then may follow. Legitimacy when challenged bases itself on an appeal to the past, while justification relates to an end that lies in the future. Violence can be justified but it never will be legitimate" (ibid: 52).

Bernstein argues, "Violence loses its plausibility the farther its intended end recedes into the future" (Bernstein 2011: 11). Arendt's important quote: 'The extreme form of power is All against One, the extreme form of violence is One against All'(Arendt 1969,42) takes us back to the struggle of Madres de Plaza de Mayo whose founding member Azucena Villaflor de Vincenti[21] was abducted by the Military Junta on December 8, 1977. The military saw the mother's movement as a threat to their violence and terror. But the shared grief and love of their disappeared children held these mothers together in collectivity and in solidarity. Their power forced the Argentine government to establish a truth and reconciliatory committee on Disappearance which was later called as CONADEP.

Arendt extends Weber's idea of bureaucracy a little further and defines it "as a system of bureaus in which no men neither one nor the best, neither the few nor the many, can be held responsible and which could be properly called rule by Nobody" (Arendt 1969: 38). She argues in the rule of Nobody locating responsibility becomes impossible and this according to her are the "most

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[21]See her story here: http://articles.latimes.com/2006/mar/24/world/fg-dirtywar24/2

potent causes of the current world-wide rebellious unrest, its chaotic nature and its dangerous tendency to get out of control and to run amuck" (Arendt 1969: 39).

There is some truth here in Arendt's writing. For a moment lets go back to Fateh Jan's story where Army refuses to hold any information on the whereabouts of her disappeared husband Naseeb. Note that secrecy is one of the key features of disappearance as reminded to us by Simone Veil in the report *Disappeared*. Veil unfolds the relationship between secrecy and bureaucracy for us, which leads us back to what Arendt, is arguing about, the domination of modern bureaucracy as the 'rule of nobody.' A passage from the report *Disappeared* will help us to clear this argument:

> "In some cases, a military organization composed of several separate cells is established, where each unit is authorized to abduct individuals, to detain them in secret, and, in some cases, to execute them. In one model, individual units are co-ordinated by a central-decision-making body. In other cases, the central unit itself is responsible for planning and carrying out abductions. Sometimes, the process of decision-making, planning and execution is entrusted to an irregular or paramilitary group acting on the authority of the regime. Not only is the disappearances itself shrouded in secrecy-the same applies to the identity of its perpetrators" (Veil et al. 1986: 40).

Bernstein argues that, "the crises that Arendt tries to address of the twentieth century arise from the reversal of vita active" (Bernstein 2011: 19). Bernstein identifies this reversal in two shifts. The first with the rise of Homo Faber in all spheres of life and the second with the glorification of labor. Arendt's argues that it is the 'laboring mentality' which dominates and directs the action of the people in society. She agrees that fabrication is necessary for human condition and if viewed through this lense, violence may be seem to play a functional role in creating human world yet it doesn't give independence to human thought and action. Homo Faber thus seem to occupy a figure of Janus in such context (ibid: 20).

In the *Human Condition*, Arendt quotes Henri Bergson's to explain fabrication and labouring mentality. I quote her

> "And, indeed, among the outstanding characteristics of the modern age from its beginning to our own time we find the typical attitudes of *homo faber*: his instrumentalization of the world, his confidence in tools and in the productivity of the maker of artificial objects; his trust in the all-comprehensive range of means-end category, his conviction that every issue can be solved and every human motivation reduced to the principle of utility; his sovereignty, which regards everything given as material and thinks of the whole of nature as of 'an immense fabric from which we can cut out whatever we want to resew it however we like:' his equation of intelligence with ingenuity, that is, the contempt for all thought which cannot be considered to be 'the first step … for the fabrication of artificial objects, particularly of tools to make tools, and to vary their fabrication indefinitely;' finally, his matter-of-course identification of fabrication with action" (Arendt 1958: 305-306).

The labouring mentality wants to conqueror the limits of uncertainty. The constant structuring and remaking of rules to calculate predictability is what Homo Faber seems to aim for. So strong is its influence that it can even transform the nature of things. This is what happens in concentration and torture camp. Arendt provides a graphic description of it, "They were the laboratories of totalitarian regimes where a systematic attempt was made to destroy the 'juridical person' and the 'moral person' and finally killing the man 'individuality (Arendt 1958: 441).

Arendt points that the aim of totalitarianism has been to make human beings superfluous, to transform human beings into something that is not human. The existence of Concentration camps like Auschwitz under totalitarian regime, then become the testing laboratories of human nature. Arendt writes, "Under such conditions, not rage and violence but their conspicuous absence is the clearest sign of dehumanization" (Arendt 1969: 63).

I argue that Enforced Disappearance, which is the state terror, lies in the description of the laboratories of the totalitarian regimes that holds exactly the same potential as describe by Arendt above, where human being are transformed into something that is not human. The opening lines of Iffat Fatima's movie (2015),'Where the blood leaves its trail' suffice this ambiguity around disappearance. 'Where have they gone? Did the earth swallow them, has the sky taken them, have they become ether?'[22]

For Arendt violence and rage is not irrational. She writes, "violence is neither beastly nor irrational. Violence springs from rage takes place only where there is a reason to suspect that the conditions could be changed and doesn't change. Only when our sense of justice is offended do we react with rage" (Arendt 1969: 63).

According to Arendt, "rage and violence turns irrational only when they are directed against substitutes" (ibid: 63). What is important from Arendt's writing is that violence no matter can sometimes is the only way to express grievances but its results may not bring structural changes. "The practice of violence, like all action, changes the world, but the most probable change is to a more violent world" (ibid 1969: 64).

Conclusion:

There is some commonality in Arendt's and Benjamin's thought. Both are critical about the instrumental nature of violence. Both try to envisage a mean which marks its beginning not in a violent relationship. Politics for Arendt is one such means which is rooted in the idea of natality, plurality, individuality and equality. For Benjamin divine violence becomes such means which annihilates the old structures and in its annihilation expiates itself.

Finley argues,

> "Both Benjamin and Arendt seek to envisage forms of violence, force, and power
> that can, so to speak, violently break the fateful cycle of law-making and

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[22]**Opening lines of the movie: '***Khoon de bharav'(Where the blood leaves its trail)* **directed by Iffat Fatima, 2015.**

law-preserving violence without carrying violence over into the new beginning they seek to initiate...they envisage a violence which *ends* past injustices while leaving the beginning of something new open to properly creative forces" (Finley 2009: 39).

It is here, in the space opened by Benjamin's idea of divine violence and Arendt's idea conception of power and politics that I want to locate the Mothers' movement in Argentina and Kashmir.

Robben (2004) points that in 1984; the de Bonafini group of Madres condemned the exhumation passed by the government of Argentina. "The chairperson of Madres, de Bonafini and her group decided to keep the wounds inflicted by the disappearances open to resist a National process of Forgetting" (Robben 2004: 143). Though Robben favours that exhumation would bring closure to their anguish and would start the process of mourning. But for Madres mourning the dead would signalise breaking of solidarity (ibid: 142). I quote Robben here, who argues,

> "In the eyes of the Madres de Plaza de Mayo, reburials become synonymous with spiritual and physical death. Reburial destroys the living memory of the disappeared and enters them in an enclosed remembrance" (Robben 2004: 142-43).

According to Robben the position of Madres' is remarkable. "It radically changed the political significance of reburials and the meanings of human remains. Body, spirit and funeral were dissociated. The ossified remains lost their meaning and so did their reburial. The spirit as metaphor for political ideas was exalted as the only thing worthy of survival in the embodiment of kindred political spirit" (Robben 2004: 144)

According to Jean Franco "Mother's movement bring ethics of survival and life to counter the political use of death" (Franco 1984: 74). She argues that Mothers' movement brings ethics, moral and responsibility back into the forefront. More importantly their engagement has been broadly around the question, 'what kind of community can re-establish dialogue with its dead" (Franco 1984).

The Madres condemnation of forensic and DNA test of the corpses to their condemnation of mourning shows us that their actions are disrupting the established notion and values in society around death, funeral and mourning. Madres' movement points to the zone where the dialogue with the death itself is re-formulated. What sort of culture or society this divine violence holds to form which disrupts our established normative understanding of the meaning of life and death. The mother's movement in Argentina, Chile, Kashmir, Turkey, and Sri Lanka gains their legitimacy by coming together in a public space and acting politically. Such collectives show the meaning of Power in its truest sense.

Chapter 2

Violence, Suffering and Transformation

Introduction

In the first chapter I looked at the work of Hannah Arendt (1969) and Walter Benjamin (1979) to understand the relationship between power and violence. Arendt examines this relationship in the realm of politics and argues that there is a difference between power and violence. She argues that violence is instrumental; it is a means to achieve certain ends. The difference between power and violence lies in numbers and implements. Power always stands in need of numbers. Arendt's idea of power is rooted in 'Plurality' which means a concern with individuality, distinction and equality. "Every individual person brings a distinctive perspective to a common world" (Arendt 1958:7). Violence is never a solution to political problems. It breeds more violence and the vicious cycle keeps running. Benjamin examines the relationship of power with violence in the realms of law and justice. Benjamin's query is whether violence even used for just ends should be called legitimate? For Benjamin, the escape from law preserving and law making violence has a cyclical and historical aspect. It occurs with the rupture made by a 'divine' violence that expiates the 'mythical' violence of the secular world. Both Arendt and Benjamin, through their work, points to envisage a new 'means' that can break the violent structures and law and pushes to a new horizon of thinking, without carrying violence into new beginnings they imagine. In this chapter I want to extend this imagination of new horizon by looking at the relationship of suffering with violence. Narratives of suffering exfoliate the meaning of life, ethics and responsibility.

  Sociologists have been grappling to understand something that lies outside the domain of certainty and familiarity. How do they look at the uncertainty? Death is certain and known. But how do we understand something that just doesn't clearly fit into the binary of life and death? How can we hope to understand that zone of ambiguity, of uncertainty which each disappeared

body bore? It is the 'unknowability' which haunts and threatens the social-psyche of an individual. Therefore to understand the relationship of suffering with such violence is to understand the ambiguity of morality, ethics and responsibility. How is the phenomenon of enforced disappearance understood socially in places like Argentina and Kashmir, etc is the primary focus of this chapter. What is the impact of violence on the social unit of the society, family? How is this suffering experienced across gender? How does suffering attain its social meaning? What is the relationship of this suffering and pain with language? How is this suffering represented? How are 'disappeared' victims remembered? These are the questions that I shall be addressing in this chapter by looking at the Mother's movement in Argentina, Kashmir and Ireland.

Tragedy and Courage

The study of society is the study of its pain and suffering (Kleinman and Wilkinson 2016). Mills (1959) has argued that to understand the meaning of the social and of society is to weave the history of it with the biography of its people. Such practice helps to understand what personal trouble is and what a social issue is (Mills 1959). Subh Mathur (2016) shares a biographic sketch of the struggle of a Kashmiri mother whose seventeen year old son Javed Ahanger was picked up from their residential home in Srinagar on midnight of 18th August 1990 by the National Security Guard of armed forces. Before Javed was enforcedly disappeared his younger brother Yasir who was then fourteen was tortured in the jail for two months. When Yasir returned back home with maimed and tortured body he was told about the disappearance of his brother Javed. Their sister Saima who was then five years old would run to her neighbours' house to seek help for her wailing mother. This is the family of Parveena Ahanger, who has taken an oath to find the whereabouts of her disappeared son, a fight she is still carrying on, and a personal and desperate struggle for the last twenty two years (Mathur 2016: 41).

Subh Mathur (2016) argues that such tragedy that had fallen on Parveena has also given her courage to fight against the injustice. She writes, "She searched for her son in hospitals, jails, morgues, courts, army camps and torture centres, where she met others like herself and slowly began to organize her grief and loss into support for their struggle" (ibdi: 42). Parveena in her broken Urdu conveys to Mathur a feeling of collective grief and bonds of solidarity and sisterhood. That Parveena travelled to so many places just to find people who share a sorrow like hers, address the relationship of pain, grief and collectivity with violence. Such continued struggle and demand for the truth argues Robben (2005) "demonstrates that the personal and social traumas revolve around a search for the meaning of past suffering" (Robben 2005: 132).

Parveena Ahanger runs a campaign with the several other affected families under the banner of Association of Parents of Disappeared Persons (APDP) which was formed in the year 1994. [23] The families demand the whereabouts of their children. The struggle of twenty two years of Parveena's life represents the relationship of the state and military with the people in the conflict zone.[24] Parveena Ahanger's legal battle shows the impunity that Army personals carry under the ambit of AFSPA.[25] Mathur sketches the legal battle of Parveena:

> "The family filed a FIR at the local police station; then a habeas corpus petition at the High Court. Later a judicial inquiry was instituted and three officers of the National Security Guard (NSG) of the Indian Army were identified as the perpetrators. They have never shown up in court to answer the charges against them... In 1995 the High court directed the Home Department of the state government to apply to the Indian government to sanction the prosecution of the three officers. In 1996 the Indian Home Ministry refused permission to prosecute the three army officers. Even the rank, parentage, age and the initials of the three officers have not been mentioned in the investigation report submitted by the Police" (Mathur 2016: 46-47).

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[23]http://kashmirglobal.com/tag/apdp

[24] http://www.hindustantimes.com/india/in-kashmir-mothers-of-missing-sons-find-strength-in-numbers/story-2C9KPOi07rckuoElGv7kTL.html

[25] https://kafila.online/2011/10/28/end-the-culture-of-impunity-not-just-afspa-apdp/

Mathur points that in, In 2007 Parveena and the families of the APDP approached United Nations High Commissioner for Human Rights for international justice after losing all the hopes of accountability and justice from the Indian judicial system. In 2005 Parveena was nominated for the Nobel Peace Prize. In 2014, Parveena shared her grief in a meeting with British MP Simon Danczuk who then took Parveena's story and Human rights abuses in Kashmir to the debates in the British Parliament.[26] Mr. Danczuk said,

> 'We talk about India, Pakistan, the Line of Control, and escalating tension, but what sometimes get lost in the discussion are the voices of the individual Kashmiris who live their lives on both sides of the Line of Control. Today I want to tell the story of one of those people, ParveenAhangar.'[27]

In November 1976, the Argentine couple Nestor De Vicenti and Raquel Mangin were abducted by the Military Junta. They both were twenty four years old and enforcedly disappeared.[28] After six months of fruitless inquiry Nestor's mother Azucena Villaflor started series of demonstration to make her case public. On 30th April 1997 Villaflor with thirteen other mothers of the disappeared children gathered at the Plaza de Mayo which is at the centre of the Buenos Aires and formed Madres de Plaza de Mayo which looked for the *desaparecidos* (victims of enforced disappearance during Argentina's Dirty War).[29] It's the collective grief of the mothers that got them together to demand a truth from the military junta, an answer to their only question, 'where are our disappeared ones?'

On 10th December 1977 to mark the International Day of Human Rights, the Mothers published the names of the disappeared sons in Buenos Aires Herald, the only newspaper which was reporting on the disappearance then.[30] That night Azucena Villaflor was picked up by the armed

[26]http://timesofindia.indiatimes.com/india/Debate-on-Kashmir-in-UK-parliament-causes-stir/articleshow/42188476.cms
[27]http://thekashmirwalla.com/2014/09/indian-anger-uk-parliament-discusses-kashmirs-human-rights/

[28]http://articles.latimes.com/2006/mar/24/world/fg-dirtywar24
[29]https://www.revolvy.com/topic/Azucena%20Villaflor&item_type=topic
[30]https://www.theguardian.com/world/2013/dec/11/pope-francis-argentina-esther-careaga

forces and detained in the concentration camp of the Navy Mechanic School (ESMA) which was run by Alfredo Astiz who was a former Navy Captain and was famous by the name of 'Blond Angel of Death.' He is linked to numerous disappearances and still awaits prosecution on human rights charges. [31]

Azucena Villaflor never got an answer about her disappeared son and daughter-in-law. She too joined their rank. From 1976 to 1988 the figures of disappearances stands thirty thousand in Argentina.[32] In 2003, the exhumation by the Argentine Forensic Anthropology Team identified bodies of five women who had disappeared in 1977 and one of the bodies was of Villaflor. The multiple fractures in her body confirmed the stories of Death Flight.[33] A common practice by the Military Junta whose horrendous details were recounted by Adolfo Scilingo, 'In these flights prisoners were drugged, stripped naked, and flung out of the aircraft flying over the ocean' (Robben 2005: 146). Azucena's remains were cremated and buried at the foot of the May Pyramid on the Plaza de Mayo. [34]

The purpose to bring the stories of these mothers from Argentina and Kashmir is to present how suffering of mothers became a trope, a fight for social justice in the regions where disappearance took place of the tragedy that has caused grief and courage. The struggle against violence has been challenging and has caused severe threat to the life of its participants. Mothers' suffering has becomes instrumental in the formation of a collective, an organisation of resistance. Suffering is resistance here; it's a quest for social justice and truth. Suffering is social.

Violence, Human crises and their struggle

[31]http://articles.latimes.com/2006/mar/24/world/fg-dirtywar24/2
[32]http://articles.latimes.com/2006/mar/24/world/fg-dirtywar24
[33]http://weiwentg.blogspot.in/2007/12/azucena-villaflor-disappeared-on-or.html

[34]https://www.revolvy.com/topic/Azucena%20Villaflor&item_type=topic

Parveena Ahangar was nominated in 2005 for the Nobel Peace Prize.[35] It was awarded to UN nuclear watch dog International Atomic Energy Agency and its head Mohammed El Baradei.[36] The Nobel Prize in Literature winner Svetlana Alexievich's (2005) *'Voices of Chernobyl'* translated by Keith Gessen needs to be mention here to bring the story of two parallel events together. The book is about the suffering of the nuclear disaster victims of Chernobyl. Testimonies of nuclear disaster points to a moral voice of the families of the dead to which state and international agency don't have any answer. The media reporting and the official statement at the times of disaster were represented more as a war like situation where the military was evacuating the people. Soviet Russia was doing well and the stories around Chernobyl and nuclear disaster was more of propaganda of the USA. This was the ideology people were adhering to in the early stage of the disaster. Nobody could understand initially that it was not a military war but a nuclear war. After few years of the fall of Soviet Russia, refugees from Armenia, Afghanistan, and Ukraine started settling in Chernobyl. The reason for their settlement was that they had seen worse in their homeland, 'man killing another man.' Nobody could grasper the idea of radiation killing the humanity and the world.

By bringing these two forms of human crises together I want to bring to the attention that the modern state through its technical skills and bureaucratic machinery, war like weaponry for the military purpose and rationalized thought hasn't been able to address conflict in a humanistic and visionary way. There are events which still hasn't made meaning for the members of this society. Events like Enforced Disappearance and Chernobyl Disaster demands a very moral, ethical and responsible engagement of the state, its agencies and civil society. Such events raises questions, what kind of human beings have we become? Who is considered as human?

It becomes important to think through such questions and see its engagement in the work of scholar like Judith Butler (2004) who tries to understand the differential 'grievablity of lives'

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[35]

https://www.outlookindia.com/newswire/story/three-kashmiri-women-among-1-000-nobel-peace-prize-nominees/308038?utm_source=bottom_floater
[36] http://www.nobelprize.org/nobel_prizes/peace/laureates/2005/

across the globe to come closer to the meaning of vulnerability and precariousness of life. Writing in the context of post 9/11 situation and global politics around it, Butler argues,

> "That there is a difference between monumental grieving, the kind that demand spectacle and repetition. For example war memorial, commemoration of martyred soldier. These are those deaths that are mourned, for example victims of the twin tower blast who were transformed into the 'grievable beings', model US citizens and then there are those, whose lives couldn't be transformed into ideal models and were certainly subject to less public grieving" (Butler 2004: 35).

Drawing parallel between the death and grievability of Wall Street Journal's journalist Daniel Pearl and the ungrievable lives of Palestinians civilians, Butler argues to think "whose lives are permissible for public mourning, how they operate in tandem with a prohibition on the public grieving of others" (ibid: 37). She argues in her book *Precarious Life* (2004),

> 'Lives are supported and maintained differently and there are radically different ways in which human physical vulnerability is distributed across the globe. Certain lives will be highly protected, and the abrogation of their claim to sanctity will be sufficient to mobilize the force of war. Other lives will not find such fast and furious support and will not even qualify as grievable' (Butler 2004: 32).

The context becomes a moral, social and political quandary; whose lives are 'losable' and whose lives are grievable, whose suffering will be acknowledged should be the point of reference to be considered when we analysed even the disappeared bodies and grief of their relatives in Argentina and Kashmir.

What Butler suggests, is to look at the category of grievable lives which is useful to elaborate ideas of equal values of lives and to consider unequal distribution of grievability as a reference to the differential product of the human, who counts as human? Vulnerability and precarity of life is exposed when there is an impingement on the embodied self (a self, imagined in relation to the other), even so is the loss of someone. It's an attack on the idea of personhood. 'It's a confrontation with a deprivation or violence that is precisely against one's will or indifferent to

one's will' (Butler 2008: 6). Butler argues, "Violence is always an exploitation of that primary tie of interdependence, that primary way in which we are, as bodies, outside ourselves and for one another" (Butler 2004: 24).

How is one's subjectivity shaped when there is a loss of somebody, when that interdependency is shattered? What meaning suffering takes up in the context of grief and loss of mothers of Argentina, Kashmir, etc? What relation grief, suffering, loss and pain holds to violence?

Social Suffering: A Concept

Kleinman and Das (1998), Bourdieu (1999), Wilkinson (2005), argues that suffering is a human experience and it is a social condition; it points to the blurry relation of personal troubles and societal issues. Social suffering as a concept is developed to understand how people's suffering is caused and conditioned by the society. In the study of social suffering, people's pain and misery are taken as the ground on which to make our social state of being a matter for critical and moral inquiry (Wilkinson and Kleinman 2016: 14). Therefore the experience of suffering is what demands our attention.

Suffering is about moral experience and in the study of social suffering people's pain and misery is taken as ground on which to make a social meaning of existence as a matter for critical and moral inquiry. Inquiry in social suffering is located in the understanding that the embodiment of suffering and its expression are not only the product of individual behaviour (Butler 2004) but also as instance where 'social world worlds are seen, touched and felt' (Wilkinson and Kleinman 2016: 14). It is a map making process to navigate and recover, as Wilkinson argues (Wilkinson 2012: 186), new terms on which to relate to oneself and to the others. "Therefore response to suffering is conditioned by the social structure of feeling and behaviours that are always open to change" (Wilkinson and Kleinman 2016: 27).

Suffering is incommensurable and therefore demands meaningful inquiry and comprehensibility. It is both physical and emotional at times. It is a raw experience, a sense of unknowability, because it transgresses the normative understanding and experience of social life. It is individual and collective. It is certainly caused by social, economic, political and cultural forces and causes an impingement on the idea of self and personhood. Since the self is always understood in relational terms; in the realm of subjectivity and intersubjectivity, in the sphere of social condition; suffering demands an inquiry of this 'social' which constitutes it.

In tracing the meaning of suffering from theodicy to sociodicy, Wilkinson (2012) argues that when theodicy, (which explains meaningless suffering as having some purpose within God's plan for the greater good of mankind), couldn't become acceptable (as we saw in the case of Holocaust) the rise of sociodicy took place. Wilkinson quotes Levinas who had remarked the end of theodicy as revolutionary, and with its decline an invitation to sociodicy to interpret the social life in secular realms. Wilkinson argues, "if the religious theodicy now appears to be implausible or untenable the most important reason for their failure seems to be the evidence of suffering itself" (Wilkinson 2012: 185). More than any atrocity of this century, the Holocaust finalizes the failure of theodicy by exposing with horrendous clarity the futility of trying to reconcile a providential view of history with the fact of organized brutality (ibid: 186).

The conditions and experience of social suffering became impressionable as a pressing human concern only when its origin and reasoning is found outside of God's will. By the second half of the nineteenth century most held that it was no longer possible to see the hand of God at work in suffering (Wilkinson and Kleinman 2016: 38). Sontag argues, "For those who seek to rationalize suffering the problem is not a lack of reason, but rather that there is too much suffering to be explained. The global scale of suffering defies the reason" (Sontag 1987). In the guise of injustice, pain, affliction, suffering confronts the limit of rationality. Wilkinson argues, "Hence the unresolved problem of theodicy is that suffering exhausts the limit of practical reasons: the logic of purposive explanation" (Wilkinson 2012: 187).

Wilkinson addresses the difficulty that arises when suffering is brought to notice since, "it concern problems that are all at once physical, interpersonal, political, legal and cultural" (ibid:

186). In trying to attempt to understand the gap between the progress of modernity and its rationalized thinking and the dehumanisation of lives, the frame of social suffering by scholars like Kleinman, Das, Wilkinson and Nancy Scheper-Hughes, have been very fruitful.

The 'Social' meaning of Suffering

Social suffering is described as a reference to the fact that the origin of atrocities, famines, violence, poverty and pain are deeply embedded in powerful social, political and economic processes; moreover these same social forces influence our perceptions of and responses to human affliction (Kleinman et al. 1998: ix). The study of social suffering emphasizes the "extent to which particular social conditions and distinct forms of culture both constitute and moderate the ways in which suffering is experienced and expressed" (Wilkinson 2005). The ethnographic work on state terror in Argentina, Ireland and Kashmir brings to our notice the suffering caused by violence, traumatic experience and its meaning and expressions in the lives of women of these regions.

Robben's work point to us the figures of disappearance in Argentina between 10,000 to 30,000 people disappeared during the seven year of military rule in Argentina. The dirty wars, started from 1976, made the Argentine society a terror-stricken, where its purpose was to make people politically and emotionally weak (Robben 2004). Robben brings Foucault (1979) here who has argued that "such spectacle of torture and terror around disappearance differs from the century old practice of public spectacle where the King asserts his might in the public confession and punishment". The public is witness to such spectacle. The sovereign right of the King to kill also marked the limit of his power. Robben argues, "the sovereign did not reach beyond the dust of assassins, making it finite and therefore according to Foucault vulnerable" (Robben 2004: 137). With disappearance such finite limit of power of the state and its agent was invisible. The unknowability of the fate and body of the disappeared created terror, which as Robben argues was intensely private (ibid: 137). Apart from the reasons of disappearance such as operational (to

create confusion among the guerrilla organization), social (to create fear in the Argentine society), judicial (destroying incriminating evidence) and political reasons (misleading world opinion) of disappearance (Robben 2005: 142), Robben investigates the cultural aspect of it. His persistent question, why did the military continue to conceal the disappeared after the dirty wars is found in the cultural reasoning of the Argentine society around the meaning of body, spirit and burial. Here Robben quotes Robert Hertz (1960) who said, "It is the action of the society on the body that gives full reality to the imagined drama of the soul" (Hertz 1960: 83). Robben is emphasizing exactly on this point, the importance of human remains and their burials in Argentine political culture.

Robben argues that the Argentina society was shaped by the nineteenth century convictions grounded in the Catholic belief that the soul survives after death and that it carries with it a supernatural energy that could pass between organic substances. He writes,

> "Human remains were believed to carry a spiritual power that could affect the world of the living, just like the relics of the saints of the medieval century. Therefore any harm done on the enemy corpse was regarded as, 'a way to disperse, although not to destroy, the spiritual force of the deceased" (ibid: 139).

However in the twentieth century the spirit and the human remains of the deceased acquired a newer meaning. They became metaphor for the 'reinvigoration' of the political ideas of the deceased. The similarity between the two centuries around the reburial of the bodies is important. As Robben argues,

> 'Victors in both centuries believe that reburial would turn the enemy dead into martyrs and invigorate their spirit, so they resorted to mutilation and disappearance as repressive practices. The reburials of the bodies at Argentina's historic and famous cemetery Recoleta explains why surviving relatives searched for the remains of the victims of Argentine state terror in the 1970s' (Robben 2004: 142).

A movement against the forced disappearance took its birth in the love, grief and anguish of mothers of the missing children of the Dirty War of Argentine. Its founder Azucena Villaflor (who was later abducted and succumbed to enforced disappearance in the same year) along with the dozen other mothers on 30th April 1977 gathered around Plaza de Mayo, a city centre of Buenos Aires. The mother's suffering was to pose one question, 'Where are our disappeared children?' Soon, these mothers started demonstrating every week of Thursday afternoon at 3:30 at the city centre. With white head bands and placard and photograph of the disappeared in their hands, the collective was called as Madres de Plaza de Mayo (Fisher 1989)

Suffering is experienced across gender differently (Das 1998; Scheper-Hughes 1992; Aretxaga 1997; Fazili 2011). In her work on nationalist women and the troubles around civil rights movement of 1969 in Ireland, Begona Arextaga (1997) writes, "People identify with mother's suffering, rather than with that of the son" In the republican culture women's suffering is inscribed on the bodies of others like father, husband, sons or brother. It is around the construct of Motherhood that a women's suffering is recognized and made culturally meaningful (Aretxaga 1997: 51).

Aretxaga bring to our notice the history of the experience of Ireland's Trouble time. She points that on August 9, 1971 at 4:30am the government of Northern Ireland passed internment without trials. The purpose of it was to dismantle Irish Republican Army (nationalist militant groups) and its supporters. Most of the men who were incarcerated were local mean with no ideologue or membership with the Irish Republican Army. And most of them were the main breadwinners of the family. Women- mother and wives, and children bore the impact of this internment but their constant worry was their incarcerated men. It was then decided by the female relatives of the detainee to start a broad campaign called as Relatives of Action Committees in late 1976. Aretxaga points, "They were mostly women, mainly mothers and a few men, mainly fathers. The campaign was described as a way to keep local morale alive because people were very repressed and frightened" (ibid: 106).

Aretxaga argues that women became more aware of the violent attitude of the state through its encounter in their everyday lives in the forms of identity card checks, curfews, internment of

men, etc. Curfew and crackdown which became norm of everyday surveillance hampered the most intimate and domestic space for women. She argues, "the continuous blockade affected their social roles as mothers". One of Aretxaga's interviewee recalls, "that it was women and not men who organized themselves into a march; women were accompanied by their children and women carried the food". In trying to locate the position of these women, Aretxaga writes, "in confronting the state, their position in the world as Catholic, working-class women in a Protestant-dominated British colony acquired new political meanings" (ibid: 79).

The mothers of RAC wanted to represent to the masses the suffering of their incarcerated sons. They wanted to bring what was hidden in the prison to the visibility-the prisoner's suffering. Wrapped in blankets these women took to the streets of Catholic district with banners and posters. The women chained themselves to emphasize the harsh conditions of captivity of the prisoners and kept fast vigils at different times (ibid: 107). Aretxaga writes,

> 'The public images of these women clad in blankets constituted a powerful symbol of maternal suffering that brought to the surface the depth of pain defining the Catholic experience in Northern Ireland. Maternal suffering refracted a broader collective pain, stirring a mixture of personal and social guilt' (Aretxaga 1997: 107).

We see here that the grief and rage of the mothers in Ireland, Argentina and Kashmir became instrumental in elaborating their project of political resistance and their struggle for the social justice. Most of these mothers turned their personal grief, loss and sorrow into a collective project of resistance. How does emotion like anger, empathy, disgust and pain enter the arena of cultural representation? Aretxaga has shown us through the women's participation in blanket protest, their embodiment of emotions in social action. Very succinctly she has elaborated the social transformation in the lives of the Irish Nationalist women, their meaning of suffering and agency which is shaped by their subjectivity and experience of violence. I quote Aretxaga here,

> 'The mothers deployed suffering as a weapon…a suffering that they sought to publicize and in doing so terminate. It was not mother's own suffering that they

used as a weapon of resistance but the suffering of the others that they had launched as a discourse of injustice. A power of defiance and a sense of not being afraid anymore, this empowering sense of political engagement generated a profound personal transformation for some of these women. In their own words they became more political, more aware of the social reality in which they were immersed and more cognizant of their human potential beyond the roles of wife and mother' (Aretxaga 1997: 117).

Suffering and Social Transformation

Aretxaga points that sexuality marks the difference between mothers' suffering and wives' suffering. In placing the struggle of wives who broke the societal barriers and norms by participating in the protest and becoming the bread-winner of the family, Aretxaga argues, "The ideology of unconditional love of wives towards their husband dominated and their political activism was shaped according to the cultural societal gender norms" (Aretxaga 1997: 119).

The disappearance of men in Kashmir has created a physical and social vacuum in the family. The brute force of it is faced by the wives, as many of them are forced to step out of their private domain in the public to make their everyday living possible. These women are addressed as half-widows in Kashmir. Athar Zia (2013) shows us a kind of struggle that half-widows go through in Kashmir; she calls it spectacle of '*asal zanan*' (good half-widow). She describes this term *asal zanan* through a story of half-widow Sadaf, whose husband Manzoor disappeared in 2001.

> *At first people were sympathetic towards Sadaf but later some started to doubt*
> *her movement and meeting with stranger men. She was sexually harassed by the*
> *men in armed uniform, while pursuing the whereabouts of her husband in camps*
> *and military base. Societal pressure demanded Sadaf to behave, appear and dress*
> *as someone whose husband is missing which meant dressing in plain clothes and*

no indulgence in make-up and fashion. But Sadaf believed her husband was alive (Zia 2013)[37]

Soudiya Qutab's (2012) work on half-widows brings to our notice the sever complexity associated with the lives of these women. Along with the social taboos women face legal and economic challenges. Qutab points, "for the half-widows the government compensation is wrought with obscurities, complexity and red-tapism" (Qutab 2012) most of them can't claim pension and widow relief fund till a period of seven years. Most of them couldn't claim compensation as the police in most cases don't file an FIR. The property rights of the half-widows are disputed too and recourse to it can be found in Muslim Personal Laws (Shariah) and the Indian legal system. Qutab argues,

> 'Half-widows can re-marry by nullifying their previous marriage. According to Shariah law half-widows can remarry after four years from the day of disappearance and according to Indian Legal system they can remarry after seven years' (Qutab 2012: 263).

I quote Zia here to show the relation between violence and suffering. She writes,

> 'While it is no excuse, it is easy to see how a social fabric, like that of Kashmir which is already worn-out from more than 60 years of militarization and 24 years of armed violence, comes apart. Gender inequities are exacerbated and biases are heightened and this works to the advantage of the state because it recedes as the "direct" aggressor while the social hierarchy intimately cracks down on the women. Enforced disappearances, thus, not only enable elimination of the politically deviant but also unravels the social fabric in unique ways, creating lacunae's which can neither be filled nor kept empty; disappearing the community as it knew itself' (Zia 2013: 6).

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[37] **http://escholarship.org/uc/item/3xx4n1zf**

Therefore to carry 'spectacle of *asal zanan*' despite all these challenges demands closer attention to the relation between subjectivity and suffering in Sadaf's story. Sadaf donned veil after passing through the scrutiny of society on her character. Sadaf started making choices and adopted practices of 'being- a good half-widow' in everyday life. Zia writes that Sadaf de-womanized herself by using creams that would make her look aged and wore plain clothes so that she doesn't become noticeable. She wanted to appear as not seen. Sadaf started to avoid getting into confrontation or even raising her voice, which is not a mark of good half-widow according to her. On the other hand she was also the spokesperson of APDP. Sadaf's notion of agency encompasses not just resistance or subversion of norms but conscious goal-driven activities and the courage to make choices between pathways of action. Sadaf's transformation brings us back to what Aretxaga has argued with the unfolding of events and women's participation in public protest in Ireland as, "the emergence of a new form of political consciousness that led to widespread gender trouble" (Aretxaga 1997: 78).

Suffering, Memory and Trauma

Similar kind of an emergence of a new political consciousness among the Madres changed the cultural meaning of body, spirit and burial in terror-stricken Argentine society since the Dirty War of 1976. This transformation of the meanings of the cultural set of belief and practices should be read parallel to the military's reconstruction of national history of the Dirty War. In 1983, Argentine society saw a transition from military government to a democratic one. Robben calls this phase as the conflictive, contested phase of the making of Argentine national history of the Dirty War, since there lays unresolved traumas about past atrocities in the bosom of Argentine society. Robben writes,

> 'Memory, violence and trauma co-exist here in contradictory way… the forgetting
> of violence is inextricably linked to the remembrance of violence because
> traumatic experiences are characterised by the inability to be either completely
> recalled or completely forgotten… Dynamic of selective forgetting and selective

remembering is sufficient to explain the compulsive nature of trauma' (Robben 2005: 122-126).

Interdisciplinary work on violence and death shows that one copes with the losses and responds to the traumatic experience through silence, mourning or melancholia (Das 1998). Robben argues, "mourning might be seen as a form of working through and melancholia as a form of acting out" (ibid: 126). However, Argentina's response to the traumatic dirty war as Robben points has not been of mourning, melancholia or silence. Rather a compulsive remembering and continued contestation about the meaning of terror and suffering exists. "Argentine society faced chronic mourning, as people cannot mourn their losses when the others deny that those losses took place" (ibid: 127). Pain, loss and suffering are unacknowledged here.

Robben sees that after the defeat in Falklands/Malvinas War in 1982, military junta started their project of the master narrative of the dirty war. He points to the fact that the military dismissed all the human rights violations charges against it and justified and legitimized their crime on the grounds of national security and patriotism. Such master narratives were unacceptable and called by human rights group as untrue because the fate of the disappeared was an overarching public concern (ibid: 131). The struggle between history and memory is what Robben wants to bring in debate.

In 1983, President Alfonsin formed a committee CONADEP to investigate on the mass disappearance in Argentina. The meaning of disappeared someone alive yet missing changed into someone dead yet unaccounted for in CONADEP's report (ibid: 131). On 20th September 1984, CONADEP presented its 50,000 pages report to the government. It was accompanied by an estimated 70,000 persons under the motto, 'punishment for the guilty' (ibid: 135). CONADEP demanded for the forensic mass exhumation. Forensic examination established the identity of the exhumed and the cause and circumstances of the death (ibid: 143). What it didn't identity were the perpetrators. Jean Franco (1987) argues,

> 'Once the person is dehumanized and made superfluous and mutilated beyond recognition there is a devaluation of death and hence of human identity which affects the whole of society. Both the anonymity of the deaths in the camp and

the parody of death in mass execution desacralize death. Desacralization was more terrible because it involved deliberate wiping out of identities' (Franco 1987:72).

In December 1984, a group of Madres headed by Hebe de Bonafini condemned the forensic exhumation, calling it a government scheme of 'national forgetting.' Their suffering has another aspect of the construction of social memory. I quote here de Bonafini's statement against the exhumation, from Robben's essay:

> 'Many want the wound to dry so that we will forget. We want it to continue bleeding, because this is the only way that one continues to have strength to fight…But above all, it is necessary that this wound bleeds so that the assassins will be condemned, as they deserve, and that what happened will not happen again' (Robben 2005: 144)

Robben points to the division of Madres in 1986 into two factions; the determining line was exhumation. The division was on the political lines, though the Catholic formation of the people creates almost a need to have a dead body, a burial and a Mass. The Madres of de bonafini radically challenged the political significance of the reburials and the spiritual meaning of the human remains. Robben writes, "Body, spirit and funeral were disassociated. The spirit as metaphor for political ideas was exalted as the only thing worthy of survival in the embodiment of the kindred political spirits" (ibid: 144).

Robbens argue that Madres' attitude is an example of melancholia transformed into defiance. To speak of death would allow the past to be forgotten. Mourning will break the solidarity of the Madres and produced a reconciliatory attitude, while Madres wanted Argentine society to incorporate the ideal image of the disappeared into its collective self. Madres defiance explains the relationship of suffering with memory (Robben 2005: 144). Though The Madres of de Bonafini group never opposed individual exhumation but they remained firmly against the opening of mass graves and the performance of unsolicited identification. Robben argues,

'Continued political protest weighed more heavily than individual relief because anxiety was the hinge of memory and oblivion' (Robben 2004: 143).

In March 2007, five bodies were exhumed in Kashmir. Abdul Rahman Paddar who disappeared on December 8, 2006 was killed and passed off as Pakistani, the very next day. His body was found in one of the unidentified graves in 'Shahid Mazar' (graveyard) in Sumbal (Adve 2007). In Kashmir there exist unmarked graves with the unidentified bodies. The mass exhumation that took place from the year 2009 made the relatives of the disappeared people more anxious as most of these dead bodies bears the mark of torture which confirms that most of the disappeared people were tortured before killed as it was with Abdul Rahman Paddar.[38] The International People's Tribunal on Human Rights and Justice in Indian Administered Kashmir (IPTK) published a report called '*Buried Evidence*' (2010) that established and conclusively documented the presence of 2,700 unmarked graves of unidentified people in three northern districts of the Kashmir Valley, close to the Line of Control. The further investigation by the members of Jammu and Kashmir coalition of civil society brought to the notice that in the Northern Western part of Kashmir's Baramulla, Kupwara, Handwara district 'in the 2,700 graves, the body count was more than 2934' Most of the bodies had been delivered to local police by the military. The police would register their deaths as foreign terrorists, take pictures of the bodies and then, late at night, go to the villagers demanding that they be buried, quickly and quietly. Most bodies were bullet-riddled; many bore the marks of torture.[39] When the IPTK came out with the report in December 2008, it maintained that the graves may belong to the people who have been missing in custody for years. SHRC report almost endorsed that view, seeking a full investigation with DNA profiling of all the persons buried in the graves as well as of the families of the missing men. However, the APDP begs to differ.[40]

Parveena Ahangar, chairperson of the Association of Parents of Disappeared Persons (APDP), however, questions the relation between the SHRC revelation of mass graves and the disappeared. She said,

[38] http://indiatoday.intoday.in/story/kashmir-fake-enconters-has-perturbed-the-valley2007/1/155645.html
[39] http://foreignpolicy.com/2011/09/22/what-lies-beneath-2/
[40] http://kindlemag.in/disappear-appear/

'There are thousands of youth who tried to cross the border either from this side or the other. These are Kashmiris, Pakistanis, Afghans, others. Countless people were killed while crossing the border by the security forces. Some were left to be eaten by animals and some buried in their dozens. The truth is that the number of mass graves now being talked about and the people buried in them is far too less.' [41]

Franco points that, "What disappearance meant to create in families and neighbours a sense of dependence on the state as the source of truth" (Franco 1987: 63). Commenting on the latest mysteries around disappearance created by then Chief Minister Omar Abdhullah, Anuradha Jamwal writes,

'The latest mysteries around these missing men go beyond the usual paradigm of 'tragedy and trauma. They portend a dangerous trend. The chief minister wants people to believe that some disappeared men may be alive across the border, waiting to seek benefit of amnesty and rehabilitation policy.' [42]

Parveena asserts that the families of the disappeared victims are the witnesses to this terror; they know the involvement of police, security forces and renegades behind disappearances. 'People in these graves may also be Kashmiris, our own children, but the police and the security keep a record of each and every person they arrest. Where are those records? We demand those be publicised.'[43] APDP's stand on mass exhumation comes closer to Madres's, as Parveena insists that such processes don't bring the perpetrator to the light of crime and punishment. In the past years oldest members of APDP have seen their final fate. Mughal Mase died without knowing the whereabouts of her son. [44] How forensic mass exhumation and death of disappeared son would bring any justice to those mothers of APDP who passed away?

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[41] http://kindlemag.in/reconciling-with-truth/
[42] http://kindlemag.in/disappear-appear/
[43] http://kashmirglobal.com/2011/09/04/after-mass-graves-kashmiris-seek-the-truth.html
[44] https://www.kmsnews.org/archives/10-parents-die-without-seeing-their-missing-wards-apdp/

Suffering, Language and Representation

Elaine Scarry (1985) writes "Suffering is always more than physical pain, more than violence, more than material deprivation, more than destruction, more than loss, Suffering is a state of being which 'unmakes our world" (Scarry 1985: 4). Arthur Kleinman argues that to understand suffering one must look at the experience and modes to expose the situations that caused suffering reifying what Bourdieu (1999) said that it is 'difficult to describe and think about.' Morris (1998) argues suffering encompasses an irreducible 'non-verbal dimension' that we cannot know not at least in any normal mode of knowing because it happens in a realm beyond language (Morris 1998: 26-28).

In her several poems on Kashmir the theme of pain, mourning and suffering is what poet Uzma Falak holds on to. She writes, pain is radical, it resist language and silence. Pain lives in exile and evokes metaphor. Pain is irretrievable and finds its trace in memory. Pain renders the body strange and unfamiliar.[45] Sharing here one of her poems which capture the meaning of loss because of enforced disappearance in one's life:

Your face is etched on my being-

that quivering moment

before your existence

slipped between presence and absence.

I grapple with your presence, my absence, your absence, my presence-

all boundaries blurry.

Tiniest speck in my eyes carry you

like multiple reflections in broken mirrors

I wear your last kiss on my forehead as a badge

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[45]**http://immersive.himalmag.com/kashmir-a-metaphor-of-pain**

and hold your only photograph as a placard

(I know how much you hated getting photographed)

Testifying your presence, absence

I wait and witness with other mothers, wives, fathers, children

their stories tied to them

like explosives tied to a suicide-bomber

embracing photographs of their 'disappeared' beloved

as they last existed uncontested.

I have conquered time

fought with the sun, the moon, the stars, the earth, the sky

My womb is a mausoleum

My feet- rivers

Your absence has seeped into my skin

The crimson of my blood is your presence

I grapple with your presence, my absence, your absence, my presence-

All boundary blurry.

And when people ask me what do I remember of you my son

I only laugh hysterically!

(Uzma Falak)[46]

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[46]http://immersive.himalmag.com/kashmir-a-metaphor-of-pain7vtyc

If suffering renders the body strange and unfamiliar then what paths are adopted to bring the sufferer's body back to home? How is this rendering represented? How does healing takes place in such cases? What vacuum does the body in pain points to?

Veena Das (1996) argue that there takes place a transaction between body and language when suffering, pain and grief is articulated. She gives example of lamentation and mourning in many societies where grief is articulated through body and represents an inner state of the sufferer who finally finds a home in language. Das argues,

> 'Such transaction lead to an articulation of the world in which the strangeness of the world revealed by loss of someone, can be transformed into a world in which one can dwell again, in full awareness of life that has to be lived in loss' (Das 1996: 85).

She calls such path, as the path of healing. The meaning of Wittgenstein's words, 'I am in pain' seems to express two things. First the statement 'I am in Pain', Das argues is not an indicative statement, it is not just a reference to an inner state, although it might have a 'formal appearance of one' (ibid: 70).

Secondly, the statement points to 'beginning of the language game.' Das writes,

> 'Pain in this rendering is not that inexpressible something that destroys communication or marks an exit from one's existence in language. Instead, it makes a claim for an acknowledgment, which may be given or denied' (ibid: 70)

The question is as, Uzma Falak asks,

'Do we enter the sovereign territory of pain or is it the pain that enters us? Surely, the body in pain is an articulation of pain itself and what it demand is an acknowledgment of that pain. Sociologist Arthur Frank wrote "the void of meaning at the heart of suffering leaves the sufferer without the "map" and "destination" which are formerly used to guide actions in the world" (Frank 1995: 28). Barrett argues, "Recovery of one's self and experience can take place through one's voice". She argues the concept of voice has multiple significations; "it is both body and

mind, both personal and social". It is only through speech that the sufferer can begin to regain a sense of agency and identification with oneself and others. She argues, "A sufferer share her/his experience of suffering through a story. Stories are not only composed of words, but also contain connections of meaning that are self-reflective on the part of the sufferer. This begins the restoration of meaning for the sufferer" (Barrett 2005: 331-332).

Experience of suffering doesn't escape mediatisation. Das's work on partition (2007) reminds us that how image of Mother India became the cultural trope on which the war of nationalism was fought. Women's bodies were appropriated by social institutions for political and moral purpose. Representation is an empty word without its relational meaning to responsibility. Kleinman opines on the troubling signs of the globalisation of suffering which commodifies the experience and makes it 'palatable for consumption'. He argues, "Such processes thin out or distort the real experience of it. Suffering is being 'remade' through the cultural transformation of the current era" (Kleinman et al. 1998). W.J.T argues, 'What we represent and how we represent prefigure, what we will, or will not, do to intervene?'(Cited in Kleinman et al. 1998: xiii). Such troubling signs of globalisation, writes Falak, "needs to be addressed and challenged through localised, intimate and indigenous narratives". That we are living in the times of drastic and fast paced movement of globalisation where mediatisation of loss and suffering is oversaturated then how to look cautiously at the precariousness of lives and suffering of the other? Or as Falak asks, 'how does one overcome the consequences of the 'crisis of representation' of modern media technologies, drowned in hyper-reality?' She finds a reassuring possibility in Rollie Mukhrjee's painting. Working with different mediums, Mukherjee's art inverts the concept of normalcy and represents wounded bodies and pain. Her painting is the story of the transaction between body and language. What is hidden outside of normalcy needs to be represented is what Falak and Mukherjee seems to agree to. Since normalcy as Das and Kleinman argues, hides the gap between is and ought (ibid: xviii)
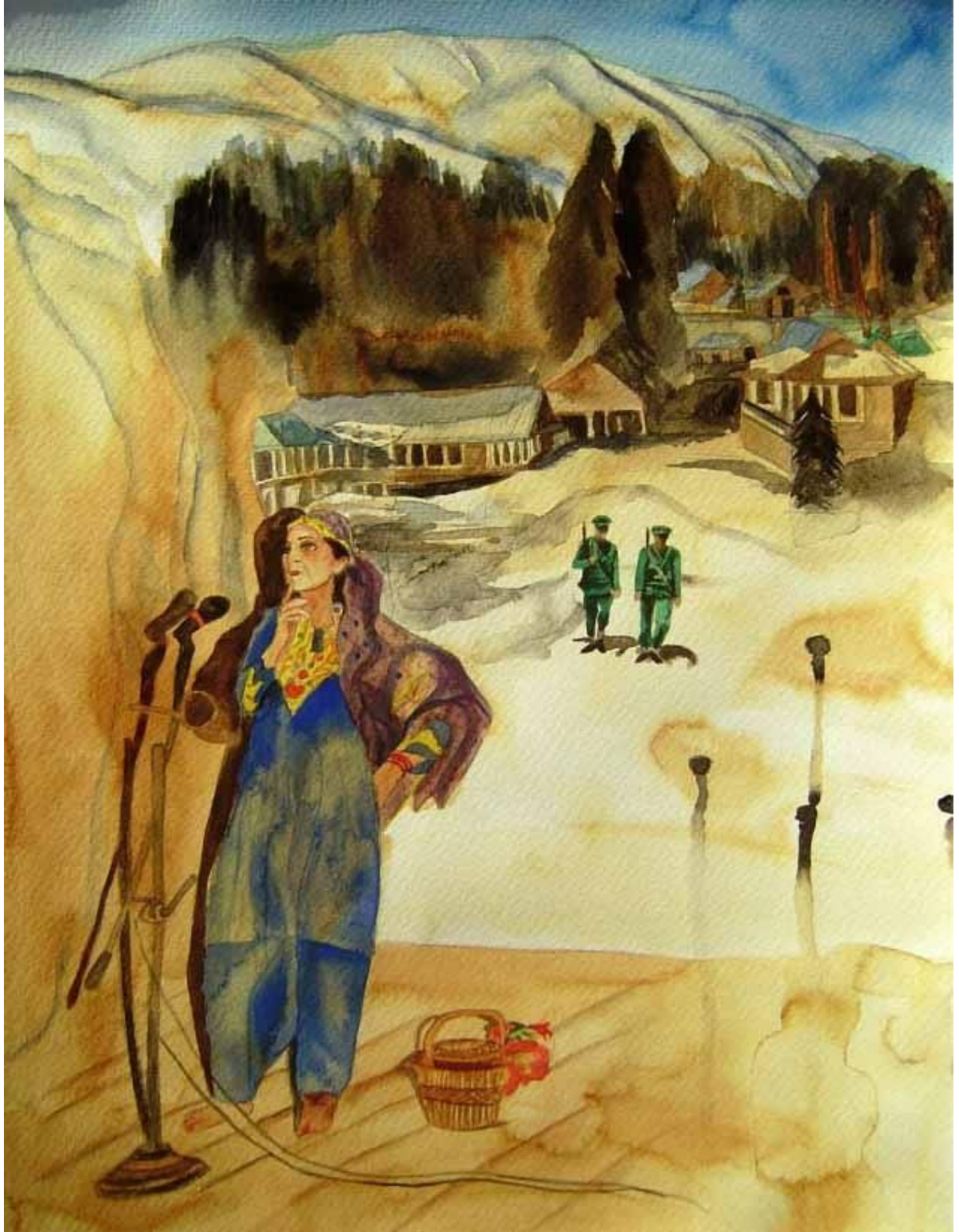
Image: 2.1 OUR Tears Will Break The Barbed Wires

Image: 2.2 'Ruins of an Utopia

Image: 2.3 Exiled Home

Mukherjee's work brings the binary division and difference between 'is' and 'ought' to the foreground of the paintings. Rollie Mukherjee's work, paints the social, moral and political meaning of suffering. She has taken up the task of the sociologist in her practices and investigated minute details of everyday life of a Kashmiri, their experience of violence, suffering and trauma in an artistic way through her paintings. Uzma compares the body of Frida Kahlo in pain (who represented her suffering in several of her self-portrait) with Rollie Mukherjee's painting of Kashmir. Falak writes that

> "Mukherjee paints Kashmir, which is the body in pain; fractured and wounded, but covered in the gold dust of Rollie's imagination.' Rollie's work opines Falak is an attempt towards healing, reclaiming and rendering the unfamiliar as familiar. Her paintings give voice to suffering."[47]

Morris argues voice ranks, among the most precious human endowments that suffering normally deprive us of, removing far more than a hope that others will understand or assist us (Kleinman et al. 1998: 29). Morris too, like Das seems in complete agreement on the healing powers of language. "Words can demonstrably trigger a painkilling placebo effect" (ibid: 32). But what are the processes for initiating that voice, to reclaim that 'self'? Morris argues for the formation of moral community which can sympathise and empathise with the sufferer's pain and acknowledge it. In doing so, Morris brings a new definition of suffering which is different from a natural phenomenon that can be identified and measured. Rather suffering for Morris is a social status that we extend or withhold (ibid: 40).

In describing about the suffering of the half-widows in Kashmir, Athar Zia weaves their loss, pain, silence and suffering with the thread of their everyday life experiences. Zia evokes the same meaning of everyday life as Das has defined, the site of an ordinary buried in memories and experiences (Das et al. 2001: 4). Zia presents to us the sufferer's agency through their experiential narratives. She describes how violence such as enforced disappearance marginalises these women. Often the in-laws refuses to accept these women back into their husband's house

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[47] http://immersive.himalmag.com/kashmir-a-metaphor-of-pain

since their role as wife is in jeopardy. In some cases these women are not accepted back into their natal house. There is an actual loss of home in the lives of these movies. Zia through her writing tries to give voice to the suffering of half-widows and through this inter-subjectivity builds a 'home' outside of home for these women (Zia 2013: 171-76).

Conclusion:

'Grievability' and 'Suffering' are the categories that translate loss, pain and social transformation. Butler's idea of grievability points to the moral gap in society; whose lives do we mourn and whose live we consider as grievable, this also points to the fact, that there are others whose lives doesn't even count as humans. Grievability as a concept in Butler's work is indicative of something-loss, grief, and pain and transformation. Butler writes on mourning, that, perhaps, 'one mourns when one accept that by the loss one undergoes one will be changed, possibly forever. Perhaps mourning has to do with agreeing to undergo a transformation, the full result of which one cannot know in advance. This transformative effect of loss cannot be charted or planned' (Butler 2004: 21)

The concept of suffering described by Wilkinson and Kleinman (2016) is developed to understand how people's suffering is caused and conditioned by the society. It is designed to document forms of social experience and lived conditions that determine how suffering takes place and what this does to people. Suffering is a human condition and it is a social experience. The task of suffering is to bring the debates around social back to the centre. Social shouldn't be seen as a morally neutral term. Suffering points to the social forces which inflict pain and loss. We see in the case of Argentina, Kashmir and Ireland suffering originating from the structural forces and militarization of the society. The impact of violence in these societies has been severing. Testimonies of violence from Argentina in the form of CONADEP report and South Africa's Truth and Reconciliation Committee confirm the intensity of trauma and suffering.

Violence ruptured their everyday life meaning and set cultural practices around death and mourning. Robben's work showed us how Madres suffering testified the culture of impunity of the armed forces. Franco writes, "For the mothers ask not simply that justice be done and the dead be remembered, but more broadly what kind of community can re-establish dialogue with its dead?" (Franco 1987: 77). Aretxaga showed us how the suffering in Ireland during and post the trouble times created more social awakening in the lives of women who saw themselves outside their defined gendered role. Suffering became the trope of resistance; it became both political and social.

By acknowledging the grief of someone, we acknowledge their suffering too. Such acknowledgment reinvents suffering and expands the border of a moral community. Suffering in this term (borrowing from Morris) is a social action and also a social status the one that we can extend or withhold. Suvir Kaul writes,

> "If we grant that the idioms of suffering should have conceptual centrality in our historical and political analyses, it will mean incorporating such accounts as well as examining the more mediated commentaries of poets, painters, musicians, and filmmakers who function within, or who engage with, these circumstances"(Kaul 2012: 72).

On the 30th August 2014, the International day of Enforced Disappearance APDP's protest witnessed solidarity from Kashmiri artists, journalists, filmmakers, academicians.[48] The solidarity with the suffering is the acknowledgment of the loss and violence. Kashmiri artist Sayed Mustabha Rizvi sat with Parveena Ahanger and displayed his sketch. [49]It was Rizvi's self-portrait in juxtaposition to Parveena's disappeared son Javed, signifying that in her loss and suffering Parveena found a son and through this conveying that she may have lost one son but she has also found many children who acknowledges her pain. Suffering through Rizvi's work is

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[48] The link of the photos of 30th Aug, 2014 protest can be accessed here:
http://www.gettyimages.in/event/kashmir-artists-perform-on-international-disappearances-day-509952159#kashmiri-muslim-relatives-of-missing-persons-attend-a-protest-by-picture-id454367026
[49]Iffat Fatima's film: *Where the blood leaves its trail* (2015). (I had an opportunity to see the screening of this movie in the year 2015 at IIC, New-Delhi. The movie is not available on youtube).

a social action. His painting is a social status of suffering of Parveena. A suffering that is social, relational and transformative.

Chapter 3

Truth and Justice: Family, State and Reconciliation

<u>Introduction</u>

In the second chapter I looked at the relation of violence with suffering. Suffering is understood as social and a human experience. As a concept it is developed to understand how people's suffering is caused and conditioned by the society (Kleinman 1998; Bourdieu 1999; Wilkinson 2005). Mothers' movement in Argentina (Robben 2004), Ireland (Aretxaga 1997) and Kashmir (Mathur 2016) showed that suffering is individual and also collective. Personal loss, grief and sorrows were turned into a collective project of resistance. Their shared suffering built their solidarity and showed the precariousness of lives under state terror. Suffering and grievability then becomes an important concept to understand the relation of suffering with reconciliation and justice. Butler argues 'grievable lives' elaborate the idea of equal value of lives and to consider unequal distribution of grievability as a reference to the differential product of the human, who count as human? (Butler 2004)

Enforced Disappearance becomes an example of precarious lives, where the precariousness is shared between the disappeared person and his/her family. Violence like disappearance demands a very moral, ethical and responsible engagement of the state, its apparatuses and civil society to address trauma and suffering. Such kind of traumatic events raise questions, what kind of human have we become. Who is considered as human?

The indegenuious grass root movements such as Madres in Argentina also showed the core of any struggle which is hope. Madres used various modes of resistance to communicate about their suffering with the world. Their condemnation of exhumation, mourning and burial broke the established norm around funeral and death. Suffering was transformative in Madres's case when

the Argentine government after the fall of military junta formed the National Commission on Disappearance. The aim of the committee was to address violence and trauma of the people. In a way it became a state acknowledgment of massive suffering of people. This brings us to see the relationship between suffering and social transformation through the process of reconciliation. How does state address the traumatic events of the past is the concern of my third chapter. What is the relation between suffering and reconciliation? What is the relation between truth and justice? What reconciliatory measures are adopted to address the traumatic events of the past? One of the mediums for transformation is transitional justice, whose mechanisms such as Truth Commission and Trials became popular in Argentina and South Africa. The chapter will look around the cases of Transitional justice from these regions and will try to analyse if such measure could be adopted to address enforced disappearance in Kashmir.

Transitional Justice:

How traumatised societies reconcile with its violent past is one of the concerns of Transitional Justice (Nagy 2008; Arthur 2009; Mani 2002; Tietel 2000; Roht- Arriaza 2006). Teitel defines Transitional Justice as the justice associated with the period of political change where it addresses the wrong doings of the predecessors' repressive regime (Tietel 2000). Roht- Arriaze defines Transitional Justice as, "that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression and that are aimed directly at confronting and dealing with the past violations human rights and humanitarian law" (Roht-Arriaza 2006: 2). Paige Arthur argues, "the term transitional justice was coined as a device to signal a new sort of human rights activity and as a response to concrete political dilemmas that human rights activists faced in what they understood to be transitional context" (Arthur 2009: 326).

This transitional context is the political dynamics of transition from a repressive regime to a democratic order .Though there is no agreed definition of TJ but the scholarship on this field suggests that the mechanisms and processes of Transitional Justice became active after the

political turn in mid 1980s in Latin America, South Africa, Eastern Europe, etc (Francesca 2009). Sikkink points towards a shift that occurred in 1980s among the democratizing states throughout the world in the norms and practices that provides more accountability for human rights violation. Lutz and Sikkink called this as 'justice cascade' (Sikkink 2008: 2). ICTJ mentions the main features of transitional justice such as 'the recognition of the dignity of individuals; the redress and acknowledgment of violations; and the aim to prevent them from happening again' always remain constant even when it is applied in a different context.[50]

Arthur's essay tries to historicize the specific time period where the ideas and discussions around the field of transitional justice started getting attention. The 1988 ASPEN Conference on state crimes, according to Arthur, is a historical event where the conceptualisation and intellectual framework moral, legal and political that could grasp the common issue faced in Argentina, Uruguay, Brazil, Philippines and elsewhere was being developed (Arthur 2009: 30). The arguments and discussions in the conference among the policy makers, activists, academician and lawyers were around the role of military authority and the abuse of human rights under them(Francesca 2009). Later the 1992 Charter 77 Foundation Conference and 1994 IDASA conference laid down some basic measures to deal with the human rights abuses such as, "Prosecution, truth-telling, transformation of an abusive state security apparatuses and rehabilitation or compensation for harms" (Arthur 2009: 36). According to Arthur all these measures formed two normative aims of Transitional Justice which was 'justice for victims' and attainment of 'democratic order' (Arthur 2009: 36).

Transitional justice has become a well-established fixture on the global terrain of human rights. The institution of international criminal tribunal, the international criminal court, truth commission and trials are such examples of the growth of the field of Transitional justice. Rosemary Nagy argues that transitional justice has become a global project now. She refrains from calling it an international project since transitional justice captures its three dimension

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[50]https://www.ictj.org/about/transitional-justice

landscape local, national, global its location within the broader process of globalisation (Nagy 2008: 276).

Transitional Justice has focussed on the gross violation of civil and political rights such as disappearance, genocide, torture and sexual violence through its mechanisms of truth commissions, reparation programmes, etc. In this chapter I want to focus on two such works of Transitional Justice. One is the National Commission on the Disappeared Persons also called as CONADEP Project in Argentina and the other is South Africa's Truth and Reconciliation Committee. The purpose to bring these two commissions is to look at the dynamics of relation of truth and justice, politics of reconciliations and politics of transitional justice.

Truth Commissions

The Aftermath of violence always lead to the question, how does state and individuals reckon with the atrocities of the past? Certainly the transition from a conflict society to a non-conflict one is incomplete without addressing the atrocities of that conflict. The political transition in Latin American countries, Eastern Europe and South Africa in mid 1980s through its truth commissions placed a moral, social, political and legal order to its transitional context. This was done for a better understanding of the past human rights violations. To make this transition, national government and international organisation emphasised the role of truth commission. Such measures were part of the Transitional justice project that established a newer relationship and meaning to truth and justice. It then becomes important to ask what and why of the truth commissions?

Truth Commission are always part of political negotiation and confrontation in each society (Jelin 2016). The role of Truth Commission is to unveil denial from the "widely known but unspoken truth" (Hayner 2001). Hayner uses the term truth commission to refer to those bodies that have following characteristics: "(i) Truth commissions focus on the past and thus creates an official historical record or memory. (ii) It investigates a pattern of abuses over a period of time,

rather than a specific event. (iii) Truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report. (iv) These commissions are officially sanctioned, authorized or empowered by the state" (Hayner 2001: 12).

Though truth commission are not judicial bodies but there exists a close relationship between non-judicial truth inquires and judicial investigations and prosecution. Truth Commission focuses on the cause and effect of political violence to bring out the role of the state and other institution during the conflict (Dukalskis 2011). Hayner calls such breadth and flexibility of the commission as its strength (Hayner 2001: 16). According to her, "truth commissions can and probably increasingly will, positively contribute to justice and prosecutions, sometimes in the least expected ways" (Hayner2001: 88). Most of the Truth Commissions are based on victim centric approach, which collects and publishes survivor's testimonies. These testimonies then represent public acknowledgement of their suffering by the state and its people (Dukalskis 2011: 435). Truth Commission in this way plays an important role towards accountability especially when it publically names the accuser (Hayner 2001: 17). The importance of 'truth' in the commission as articulated by Jose Zalaquett emphasize that "official truth telling is important in order to prevent, the military or other groups and institutions responsible for past abuse to escape the judgement of history" (Arthur 2009: 37). He argues that truth should always preside over justice, since the "truth does not bring back the dead, but releases them from silence" (Krog 1999: 35).

CONADEP Report and Truth Trials

(i)   CONADEP Report

The Argentine society underwent a transitional change from a military government to a democratic one after its defeat in the Falklands/Malvinas war of 1982 (Robben 2004: 142). In

1983, President Raul Alfonsin formed a presidential commission the National Commission on the Disappearance Persons (CONADEP) to investigate mammoth cases of disappearance in Argentine and to bring the perpetrators of political violence to trials through the narratives of the relatives of the disappeared victims (Crenzel 2011). Though non-governmental organisation and human rights activists favoured parliamentary commission over the presidentially appointed body for the reason that the later lacked power to compel perpetrators (former military junta) for the information (Hayner 2001). Hayner notes, "the commission received almost no cooperation from the armed forces, despite repeated requests for information from the commission's investigators" (Hayner 2001: 34).

CONADEP became the first truth commission to report on the political violence and human rights violation in Latin America and became a model for the construction of historical truth in several countries across the continent (Crenzel 2011: 1066). The commission worked with the families of the disappeared people to locate if they can be found out alive, but it found none. Over 7,000 statements were taken by the commission in the period of nine months out of which 8,960 cases of disappeared persons were documented. Hayner notes, "The main of aim of the commission was to focus on identifying detention centres and torture camps and the final report listed 365 torture centres across the country" (Hayner 2001: 34). The commission came out with its report in 1984 called *Nunca Mas (Never Again)*. The title since then has become a slogan and symbol of the transitional justice movement. (Sikkink 2009: 8). Hayner notes that the "Argentine *Nunca Mas* in this sense became the first truth commission that set the global trend of transitional justice" (Hayner 2001: 34)

Crenzel (2011) in his study and analyses of the report argues that *Nunca Mas* in its documentation reported the disappeared people as innocent civilians who didn't have any linkages with the guerrilla forces and were classified according to their occupations as lawyers, journalists and members of the clergy. The report mentioned the name of the disappeared persons who were innocent to restore back their identity which might have been lost in several detention centres as arbitrary numbers (Crenzel 2011: 1066). In doing this, writes Crenzel,

"The report gives a new political significance to the identity of the disappeared with respect to the dictatorial government's perspective, which identified them as guerrilla members" (ibdi: 1067).

The report reconstructed the facts of the sequence of disappearance in a single narrative. The sequence was abduction, torture, detention and execution. It also established the involvement of the military and police officers in the 'task forces' that perpetrated disappearance and the material existence of the Clandestine Detention centre. Nunca Mas also confirmed the existence of children and babies who were born in captivity and later disappeared or given to the families of the military and the police (Crenzel 2011: 1066-67). Sikkink argues that there have been other regimes that had practiced disappearance but the Argentine military developed a well 'organised system to disappear a very large number of people.' Disappearance in this case was massive and systematic in nature (Sikkink 2009: 5).

The report Nunca Mas was based on the testimonies of the survivors and relatives of the disappeared persons. Elizabeth Jelin (2016) argues that since there is no official registers, the testimonies of the survivors becomes the main source of the past event. She writes, "this is the truth components of such commissions and the basis for the recognition of the 'right to truth' that is incorporated into international humanitarian law" (Jelin 2016:43).
Susana Kasier (2015) also argues around the same line, " the impact of testimonies in a climate where there is an absence of the confession of perpetrators and the assassins and the survivor's memory, memory which also is imprecise, is the only way to know about the state terror" (Kaiser 2015: 2). Jelin asserts that there is no such way as to know 'the complete truth' since there is memories, experiences and events that cannot be accessed, she writes, "no one has returned from a gas chamber, just as no one has returned from the 'death flights' in Argentina, to tell their experience or even to silence their own trauma" (Jelin 2016: 43).

The testimonies thus objectified the details of the violence of the military junta and the legal, social and political battle of the families, materialising the evidence against disappearance (ibid:

43). Crenzel calls this as 'symbolic realm of memory'. He uses this term to describe the emotional significance of the struggle of the survivors and victims' in a situation where the materiality of evidence is eliminated, making the struggle symbolic and politically legitimate in Argentina (Crenzel 2011: 1068).

The report also accounted 2% of testimonies of the perpetrators whose words confirmed the truthfulness of the testimonies of relatives and survivors (Crenzel 2011: 1069). The CONADEP commission also hired scientific experts like Dr.Clyde, the human rights forensic organisation EAAF[51] and the American Association for the advancement of Science for the identification of the remains of disappeared in the mass exhumation that took place in 1982 (Sikkink and Walling 2007: 12). It also adopted physiognomy software to identify the abducted children through genetic tests to determine their kinship (Crenzel 2011: 1069). Robben argues the aim of the CONADEP and truth commission were truth and adversity (Robben 2005: 132)

Although the commission held no public hearings, it maintained a public profile (Hayner 2001). On July 4 1984 at 10:00PM the CONADEP broadcasted their ninety-minute documentary, 'Never Again' which captured the national attention.[52] On September 20, 1984, the CONADEP truth commission submitted a report of 50,000 pages to the government called as *Nunca Mas* or Never Again, the summary of which became available in the newsstand throughout the country (Robben 2005: 135). The key question of the report was "how something as violent as this can be prevented from ever happening again?" (Crenzel 2011: 5). The report proposed an institutional timeline for the violence and presented disappearance as the product of the 'dictatorial state.' It later got included into the school curriculum to educate the new generation about the violent history of Argentina Dirty War (Crenzel 2011: 2). Robben writes, "This was the systematic description of the Dirty War for the Argentine people." The other comprehensive attempt to reconstruct the national memory about the dirty war was the Argentine truth trial of 1985 (Robben 2005: 135).

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[51] http://www.irinnews.org/analysis/2014/02/05/argentinas-forensic-anthropology-finding-disappeared-ones
[52] The movie can be accessed here: https://www.youtube.com/watch?v=HuuQ4WLQs2I

(ii)   <u>Truth Trials</u>

Jelin (2016) notes that the report *Nunca Mas* did not list the names of the perpetrators. This was criticized immediately as a 'concession to the military'. But the documentation of cases in CONADEP served a purpose later for prosecution and trial of the Military Junta which started in 1985, making the link between truth and justice (Jelin 2016: 39). Robben notes that the hearing of the trial was open to public but not televised or radio broadcasted to people. By early 1995, more than two thousands complaint had been filed against 650 officers and NCO (Robben 2005: 138). Jorge Rafael Videla and the Admirals Emilio Eduardo Masera were among the nine former members of the military juntas that were successfully prosecuted in this trial.[53] Sikkink (2008) argues that the Argentina Trial of 1985 marks the 'movement of Transitional Justice' in Argentine. She points to the fact that so far no authoritarian regime in Latin America was put under trial for human rights violations, "this made Argentine trial of the juntas the 'modern cascade of transitional justice trials' just as their truth commission initiated the cascade of truth commission" (Sikkink 2008: 8).

In the trial, the military tried to portray itself as the victim of just war by emphasizing their role in the guerrilla war and saving the sovereign state, denying disappearances and portraying the convicted military commanders' as martyrs (Robben 2005: 139). Robben argues that the denial of the disappearance by the Army and the disclosure of it in CONADEP report produced 'rebellion' and 'defense' among the military junta (ibid: 137). Concerned about the impact of trial on the new democratic regime with resentful armed forces, President Alfonsin passed the Final Stop Law on December 23rd 1986, which placed a sixty-day statute of limitations on criminal charges against individual officer. On April 15th 1987, the commanders of the military junta started their campaign under the title 'Operation Dignity.'

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[53]https://www.ictj.org/our-work/regions-and-countries/argentina

Under this campaign the former junta leaders explained to the President that they did what they were told to do as they carried out the orders from the above higher authorities and that instead of being welcomed after their defeat in the Falklands war, the armed forces were treated as criminals and put to trials (ibid: 138-39). On June 4th 1987, the Alfonsin government proposed the 'New Obedience law' which distinguished the levels of responsibility. The law set many accused free since there was no evidence as they were directed to follow the commands from the higher-ranked officers (ibid: 139). Robben looks at the military rebellion which got channelled into Operation Dignity against the trial from a socio-psychological perspective and argues, "the military defeat and the dishonourable arrival in Argentina cut deep wounds into the armed forces whose political, institutional and emotional consequences can be best described as social trauma" (ibid: 141).

On October 1989 President Carlos Menem pardoned 277 accused military officers and guerrillas (ibid: 141) and in December 1990 he decreed a pardon for the incarcerated military commanders including Videla and Massera (Sikkink 2008: 11). The series of Presidential pardon to the accused military officer didn't break the struggle of the human rights activists and lawyers. Rather it pushed them towards building new tactics for their struggle to justice. Sikkink (2008) points that in 1995 families associated with Centre for Legal and Social Studies (CELS) presented a petition called as the 'Right to Truth' which is a juridical right against the amnesty granted to the former military junta leaders. CLES argued that despite the amnesty and laws given to the former military junta, the families of the disappeared victims have the 'right to know about the truth' of the whereabouts of their kith and kin. Soon the judicial process was established by the federal court of appeal after it allowed the petition. These judicial processes were called as Truth trials, which are combination of truth commission and criminal justice (Sikkink 2008:14). Robben (2005) argues that these truth trials became famous in 1998 after the series of confession of child abduction and stealing by the ex-military junta officer. Former military officer General Balza confessed that the military junta of 1976 was involved in stealing the children born in captivity from their parents who were innocent civilians and members of

guerrilla organisation. The process of separation was made very systematic and successful (Robben 2005: 149).

In 1998, the federal judge in Argentina ordered preventive detention for both ex-president Videla and Admiral Massera, "the two most powerful leaders in Argentina during the time of repression for the crimes of kidnapping babies and falsifying public documents" (Sikkink 2008: 13). Since 1998, truth trials made it way in Buenos Aires and other Argentine cities (Sikkink and Walling 2007).

CLES and the families of the disappeared persons campaigned for the 'right to truth' and 'right to identity' as a legal battle to get the amnesty of the military junta unconstitutional. They used the kidnapping by the military junta of the children born to the disappeared person as the trope to fight their legal battle. Sikkink points that, on Aug 2003, amnesty laws such as Final Stop and Due Obedience were declared null and void. In 2005 the Supreme Court of Argentina decided that the crime of disappearance was the crime against humanity. "The effect of the court's decision was to permit the reopening of hundreds of human rights cases that had been closed for the past 15 years" (Sikkink 2008: 15). All these fights and struggle make the Argentine trials exceptional. Susana Kaiser argues that, "these trials are exception because they are the trials history, of the State and not of a common criminal" (Kaiser 2015: 195). According to Kaiser 'Testimonies' and 'Trials' plays an important role in exposing 'a state of normality' that can exist under the 'state of fear.' She writes,

> "Testimonies attest to the two side of state terrorism: terror and 'life goes on…a
> terrified and paralyzed society chose not to see; everyone knew that something
> atrocious was happening. The trials may force many to remove their blinders"
> (Kaiser 2015: 202).

South Africa: Truth and Reconciliation Commission

Mamdani (2014) argues that the human rights movement of the 1970s anchored itself into the lessons learnt from the Nazi Holocaust (Mamdani 2014). The Nuremberg Trials became an important model for them as it offered problems and solutions to the movement. He writes,

> "The problem was of extreme violence, Radical evil and the question it posed involved the responsibility of that violence. The solution it offered was to think of violence as criminal and of the responsibility of it as individual. Moreover this responsibility is said to be ethical and not political" (ibid: 62).

The question that arises from the aftermath of violence in Argentina and South Africa is around the problem posed by Mamdani who asks, "Should the extreme violence or mass violence be called as criminal or political? Should the responsibility around it be defined as criminal or political?" (Mamdani 2014: 63). He calls atrocities of the Apartheid regime as 'political violence.' Marking qualitative distinction between political and criminal violence, he argues that "political violence requires more than just criminal agency, moreover political violence requires constituency. More than perpetrators it requires supporters and it is always an issue driven" (ibid: 63). According to Mamdani TRC represented all violence as criminal and the responsibility of it as individual (ibid: 63).

The silence around the oppressive apartheid regime in South Africa was unveiled with the establishment of Truth and Reconciliation commission (Krog 1999; Mamdani 2015; Stanley 2001), which began to take shape in 1993 with an agreement between Africa's Liberation movement and state representatives to end apartheid and hold democratic elections (Leebaw 2003: 35). The idea of TRC was to offer amnesty to the perpetrator in exchange of their public confession and full truth about their involvement in human rights violations (Leebaw 2003: 25). Forgive but not forget became the central ideology of the TRC (Mamdani 2014: 66). The structure and design of TRC came into force on 19th July, 1995 in accordance with the South Africa's parliamentary act of the Promotion of National Unity and Reconciliation Act (Stanley 2001: 526). It set the time frame of the violations of human rights from 1st May 1960 to 10th May 1994 (Krog 1999). TRC was not subjected to any state control and was free to define its

agenda within the framework of the legislation. This freedom argues Mamdani, gave TRC the power to craft a 'semi-official' narrative of apartheid. This narrative then was guaranteed an access by the prime time media for its communication to a wider audience (Mamdani 2014: 72). According to Krog overall,

> 'the aim of the commission were to return to victims their civil and human rights; to restore the moral order of the society; to seek the truth, record it, and make it known to the public; to create a culture of human rights and respect for the rule of law and to prevent the shameful events of the past from happening again' (Krog 1999: ix).

According to Archbishop Desmund Tutu, TRC represented a 'working relationship' between truth and justice (Krog 1999). Stanley argues,

> "the idea of justice described by Tutu is a 'restorative' one where an emphasis is placed on the restoration of lives of 'the of victims and survivors through reparation policy, state-led acknowledgment of suffering and a condemnation, together with the transformation of the system that implemented widespread forms of abuse" (Stanley 2001: 526).

The objective of TRC was to put the past behind and enter into the process of democratization which could only happen once people's suffering is channelized through the process of reconciliation (Leebaw 2003: 24). Alexander Hirsch (2012) argues, "reconciliation was seen as a project of harmony and democracy became a precondition for reconciliation itself" (Hirsch 2012:83). The goal of Truth and Reconciliation was to enable survivors and perpetrators of violence to live together in reconstituted societies with new imaginaries of coexistence (Bharucha 2014: 112).

Against Reconciliation:

According to Mamdani (2014):

> "TRC   described apartheid not as a system of in which racialized power was disenfranchised and dispossessed a racialized majority, but as a set of human rights violations of minority of individual victims carried out by an even smaller minority of individual perpetrators" (Mamdani 2014: 72).

Such definition of the TRC individualized the political crime and focussed on the criminal justice rather than social justice. Mamdani criticizes the TRC for "defining the human rights violation in the apartheid context as the violation of bodily integrity." He argues that such narrowly defined human rights violation ignores the fact that the majority of the population suffered violence as extra-economic (Mamdani 2014: 72).

Rustom Bharucha (2014) calls the South Africa TRC as a public theatre of private grief. He critiques the performative dimensions of the TRC, "whose overall emotional affect tends to supersede, if not overwhelm, the actual effects of social transformation" (Bharucha 2014: 111). He points towards a critical reflection on the idea of 'breaking silence' in the context of Transitional justice. Silence in such context writes Bharucha, "is seen unacceptable in dealing with any tragedy or atrocity, even as the absence of justice is tolerated. The survivor or victim is obliged to speak out" (ibid: 145). Bharucha argues that the survivors shouldn't be dictated to 'break silence' just for the sake of it. As Veena Das (1998) work reminds us that Silence can be a cultural or political choice, it is a conscious agency, and a resistance to linguistic competency. Of course when silence is translated into language through testimonies to tell one's story it represents the truth of the event and also demands acknowledgment of that truth.

But Bharucha's question, as to what happens after the story telling is pertinent. Is the process of healing guaranteed after narrating the horrendous event of the past? He argues that the

reconciliatory mechanism such as breaking of silence, or giving voice to the victims was built on a 'utopian hope' which was difficult to be sustained at all the levels (Bharucha 2014: 140).

Also the choice of victim to remain silent need not be emphasizing their victimhood but rather the crimes inflicted on their bodies (Bharucha ibid: 145). Here silence and anger both demands attention. Drawing the component of grief and anger from Das's work on anti-Sikh riots of 1984, Bharucha argues that, "The spectacle of women's suffering after the death of their family and neighbourhood (striking differently the way media portrayed it as the sensational victimization) is the affirmation of anger" (ibid: 148). His question, 'What would it be like if, instead of Truth and Reconciliation, one could offer the redemptive possibilities of Anger and Reconciliation?' (ibid: 148) becomes important especially in the context of South Africa TRC where Truth and forgiveness became the agenda of the transitional process where forgiveness as a moral virtue is institutionalised.

It then becomes important to ask, should forgiveness be institutionalised? Should it be the only means for the process of reconciliation? Antjie Krog 'Country of my Skull' has testimonies of the perpetrators and survivors which always leave this question in mind, is it possible to forgive the Evil? Here is one of the summaries from Krog's (1999) book which Leebaw (2003) captured in his writings:

> "*In 1980s Jeffrey Benzien who was the member of Cape Town's Terrorist Detection Unit was awarded medal for his effort to put the members of the Liberation party in check. Benzin was notoriously famous for his torture method called 'Wet Bag' which he used against the people of anti-apartheid movement. In 1996, he confessed his crime at a public hearing before the TRC. Attending this hearing was one of Benzin's former victims Tony Yengeni who was now a member of South Africa's first post-apartheid parliament. Yengeni confronted his former torturer and insisted him to demonstrate the wet bag method before the audience at TRC... Benzin's psychologist shared about his trauma, suffering and memory loss as a result of 'inhumane working conditions.' In 1997, Benzin was granted*

amnesty by the TRC who reasoned out the decision as, 'The offences for which the applicant seeks amnesty were committed during and arose out of the conflicts of the past between the State and Liberation Movement" (Leebaw 2003: 24).[54]

Blaming everything on history and moving on from this past cannot be called as reconciliation but impunity argues Trimikliniotis (2012). He points, "to institutionalise 'right to forgive' at a societal level is a contradictory affair" (Trimikliniotis 2012: 247). Reconciliation then seems to be in opposition to forgiveness. Therefore the very concept of reconciliation demands a redefinition. Mamdani's (2014) work suggests one such redefinition of the term reconciliation where he argues that, " the idea of reconciliation should be based on the imagining of common future together by perpetrators and victims, and this can happen once both are looked as survivors" (Mamdani 2015: 77).

The reconciliation agenda of TRC is critique through its dimension of time. Is a year and a half an enough time periods to reconcile with the atrocities of the past? Trimikliniotis (2012) argues, "The notion of reconciliation as something 'painless forgetting' is misused." He quotes Derrida, who wrote,

> "It should not be normal, normative, normalising. It should remain exceptional and extraordinary, in the face of the impossible: as if interrupted the ordinary course of historical temporality" (Derrida 2001: 32)

For Trimkliniotis, Derrida's agonistic view that; 'the only thing to forgive is the unforgivable' is the context of Truth Commission. 'The new commissions are called for in unthinkable contexts' (Trimikliniotis 2012: 246). For example South Africa's TRC in which conditional forgiveness as a form of amnesty was set up in exchange of admission and disclosure of the past atrocities. The right to forgive and when to forgive should only be the survivor's or its relative's rights. The campaign by Priests, advocates, commissions for forgiveness as the best or the only path to

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[54] **This story is in Chapter 6 (pg 105-118), titled: 'The Wet Bag and Other Phantoms' of Antjie Krog book,** *Country of My Skull* **(1999)**

personal as well as social healing and reconciliation needs to be critically examined (Brudholm and Rosoux 2012). Brudholm and Rosoux argue that in such instances 'not to forgive' can be seen as a lack of rationality or moral virtue. They critique this idea where forgiveness in an uncritical way is misused and is normalised, by brining to our notice more nuance 'conception of unforgiving victims and the resistance or refusal to give.' They argue that those refuses to forgive, their motivations and reflections are not seriously investigated (Brudholm and Rosoux 2012:116).

Reen Kashyap (2009) criticizes the forgiveness project that the TRC championed. She argues that the TRC fumbled in practice because it couldn't place the victim's need on the plane. Amnesty became a violation of the right of the survivors' and their families to seek judicial redress for the murder. Amnesty became the political agenda of the TRC. She contend that the "TRC in its overzealous promotion of forgiveness to achieve its ambitious goal of reconciliation departed from the principles of restorative justice, which has a context sensitive nuanced approach to forgiveness" (Kashyap 2009: 454). Pointing the commonality between feminist epistemology and the philosophy of restorative justice in South Africa's TRC she draws attention to narratives and victim's need. She argues that a gender lense is useful to analyse how apartheid was experienced by men and women and feminist lense brings to surface not just the oppressive structure of patriarchy but also stratified layers of ethnicity, class, race, age, etc.

The commission received 20,000 statements from victims, 2000 of these in public hearings; and it received nearly 8000 applications for amnesty from perpetrators (Krog 1999: ix). Kashyap points that only 10% of the testimonies were selected for public hearing at TRC. The small percentage points to the selection criteria of the TRC which created a hierarchy of victimhood experience. Kashyap argues that

> 'Those who were denied a public hearing stood deprived of a public
> acknowledgement of their stories of suffering (and survival). In a way this is also

a denial of listening, an often ignored component of narration' (Kashyap 2009: 456).

Most of the silence around the sexual abuse in the TRC hearing went unnoticed. TRC guaranteed amnesty to the perpetrators in exchange of full detailed disclosure of their act and proving that their act was politically motivated and did not have any personal interest to it. To ensure accountability, TRC determined that rape is not a political act. Kashyap points to the consequences of it, the fact that "sexual violence was only associated with women denied men and children who were sexually abused during the apartheid regime from testifying". Feminist literature has pointed to the fact that rape in the context of violence and conflict is used as a political tool to demasculinize the enemy (Ross 2003). Kashyap points that "though, men did testify about their sexual violence but it was seldom made public" (Kashyap 2009: 460). Also some women chose not to disclose about sexual abuse by their colleagues in Liberation party as it would break the party integrity and their political legitimacy within the community (Krog 1999: 269-90).

Kashyap explains the politics of this silence through Driver's work who remarks, 'That at TRC women's apparent 'shame' continued to function to maintain a socially crucial silence about the specificities of male abuse'(Kashyap 2009: 459). Therefore they chose silence over the disclosure of sexual violence. Silence in the testimonies has much to tell us and remind as, Visvanathan (1993) argue that, "silence, contradictions and hesitations in the narrative material are important because they express the complexities of human experience and consciousness" (Visvanathan 1993: 33).

Also the relation of truth with the commission needs to be critically analysed. Krog (1999) writes,

> 'If the commission interest in truth is linked only to amnesty and compensation, then it will have chosen not truth, but justice. If it seems truth as the widest possible compilation of people's perceptions, stories, myths and experiences, it

will have chosen to restore memory and foster a new humanity, and perhaps that
is justice in its deepest sense' (Krog 1999: 23).

Mamdani's critique of TRC seems to be coming "from its failure to acknowledge or a conscious denial of the fact that apartheid was a systematic, economic, political and socially planned structural violence of the white minority over the black majority population of South Africa.". This is because, as argued by Mamdani, the TRC viewed violence as criminal and not political. "It focussed on violence as excess and not as the norm" (Mamdani 2014: 78). Mamdani points to the difference between Nuremberg and TRC, the former focused on crime and punishment and the later with crime and confession. By linking confession to amnesty and the violence of apartheid as criminal violence and not political, Mamdani argues, the TRC subordinated the "logic of criminal justice to that of the political justice" (ibid: 78).

Is Truth Commission possible in Kashmir?

Mathur (2014) argues that the Kashmir's conflict commonly is portrayed as a territorial dispute between India and Pakistan, "the conflict is experienced by Kashmiris as the heavily militarised control of everyday life" (Mathur 2014: 8). Therefore the solution to the conflict, argue Mathur, can be best provided by the experience of the people who live inside this conflict. She acknowledges the mammoth abuse of the human rights in Kashmir through the technique of state terror such as enforced disappearance, extra-judicial killing, arbitrary detention and torture. She points to the documentation of these human rights violation by the families of the enforced disappearance in collaboration with the UN High Commission on Human Rights (Mathur 2014: 8). Sajid Iqbal (2014) had argued that the Kashmir's mode of struggle for secession from India has shifted from an armed movement of 1989 to a peaceful struggle now (Iqbal et al. 2014: 53). The conflict caused mass human rights violation which involved the Indian Security Forces and the Militants. The distinction between them is quantitative, the former outnumbering the latter and in between the innocent civilian Kashmiris have faced the brunt. Human rights violations

such as disappearance, killing, rapes and torture affected the lives of people socially, economically and psychologically. Sajid Iqbal proposed to look at the conflict and its impact in Kashmir through the lens of Transitional Justice (Iqbal et al. 2014).

Pointing towards the precariousness of life in a militarised zone, Iqbal argues the human tragedy that has been unfolding in Kashmir since last twenty years is about the devastation of the common Kashmiri at the hands of the militants and military (ibid: 53). He also critiques the abuses of human rights under Armed Forces Special Powers Act which according to him is, "antithetical to the India's principles of democracy and human rights" (ibid: 53). The conflict also eroded the social fabric of the society which saw the exodus of the Kashmiri Pandits from the valley. It is then; Iqbal stresses, the moral and political responsibility of the state and civil society to address the conflict in Kashmir.

Examining the change in the mode of resistance of struggle in Kashmir, from an armed movement to a peaceful protest, Iqbal identifies the Kashmiri society undergoing a transition from an armed conflict to an uneasy peace.[55] In 2009 Iqbal, Hussain and Mathur conducted interviews with the prominent mainstream party leaders, separatists and the families of the disappeared people. Based on those interviews, the essay then proposed a framework of the mechanism of transitional justice to address the transitional shifts in Kashmir, from an armed movement to political protest. Interviewees were asked questions such as whether there is a need for a truth commission in the circumstance prevailing in Kashmir, and what violation of human rights such commission should address? The second question was whether a commission should address violence by security forces, or, also by militants? Third, what should be the time period of such an inquiry? What kind of person would the commission like to see serving? Whether the interviewees favour amnesty along with an unconditional apology to the perpetrator in exchange of the full disclosure of their act? Whether they believed that individualizing the crime would help them personally? Would Kashmiris gain full sense of closure if such commission is

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[55] **Sajid Iqbal passed away in 2011, the time when the valley seemed peaceful after the massive protest of 2008 and 2010. His ideas on Truth Commission and Transitional Justice in Kashmir were later updated by Zoheb Hussain and Shubh Mathur.**

established? Should the commission be authorised to pay reparation to the survivors of human rights violation? Lastly, would community reparation for example building of memorial park, road, etc, help individuals and society with closure, reconciliation and forgiveness? (Iqbal et al. 2014: 56).

The first talk of Truth Commission was addressed by the chief minister Omar Abdullah in 2007. [56] Mehbooba Mufti the present the Chief Minister of Jammu and Kashmir had back then replied to these series of question. She favoured the establishment of Truth Commission and argued that certainly the conflict has caused massive human rights violations but the disappearance must be investigated on a priority basis, 'as these are a constant source of trauma to the victims' families in a way that other violations aren't'(ibid: 56).[57] She also stressed on the phenomenon of half-widows in Kashmir. Mufti emphasised that the truth commission needs to be unbiased and should made perpetrators on both sides of the political divide accountable for their crimes. On commenting the time frame of such a commission, Mufti suggested that it should be set from the year 1987 when the first state elections were rigged as it 'provided the immediate violent spark to decades of political and democratic repression' (ibid: 57). According to her such a commission would help the Kashmiri society to bury 'the ghost of the past' and 'in healing our shattered society.' She was categorical that such a commission should be instituted only after demilitarisation, and that it should be authorised to pay monetary reparations to survivors and victims' families. She also added that the community reparation would help the society with closure and forgiveness (ibid: 57).

Mirwaiz Umar Farooq also stressed on the need for the institution of such a commission but he also shared his doubt whether such commission can be established considering the trust deficit that exists between India, Kashmir and Pakistan. According to Farooq, the time period of such a commission should be set from 1947 and that it should inquire into the root cause of the conflict, its outbreak post 1989, and thereby develop an interpretation of the events that is acceptable to

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[56]http://www.thehindu.com/news/national/other-states/Omar-makes-fresh-demand-for-truth-and-reconciliation-commission-in-JampK/article10636627.ece#!
[57] http://kashmirwatch.com/pdp-demands-truth-and-reconciliation-commission/

everyone. He too believed that such a commission should investigate into the role of all the leaders, including the separatist such as himself. On the question of amnesty in exchange of truth, Farooq stated, 'that if the whole truth of the violence is to have any chance of coming out then some kind of amnesty would be required for the truth telling' (ibid: 57). Pointing to the role of religious clergies such as Archbishop Desmund Tutu in the South African TRC case, Farooq suggested that the future Truth Commission in Kashmir should have Hindu and Muslim religious clergies. Doubting whether forgiveness would be possible at the individual level Farooq argued that as a society, we need 'to bury our ghosts.' What Kashmiri society needed through the institution of such commission according to him was the 'governmental recognition of their suffering.' Since such public acknowledgment can help the society in healing. Farooq added that, just as the South African TRC was said to promote a very Christian concept of forgiveness, he felt, 'we too need to forgive. Islam teaches forgiveness and we are predominantly Muslim society' (ibid: 57-59).

One of the long pressing demands of the Association of Parents of Disappeared Persons has been the institution of Truth Commission in Kashmir. APDP demands that, 'India should implement the recommendations of Universal Periodic Review-2 and ratify the international convention for the protection of all persons from enforced disappearance, besides repealing Armed Forces Special Powers Act' (ibid: 60).[58]

Despite proposing the ideas for the Truth Commission, Iqbal, Hussain and Mathur acknowledge that the political obstacles to such a commission are strong and its supporters are quite a few in numbers (ibid: 60). Also Kashmir has been witnessing political turmoil and protest since 2008. The year from 2011 to 2014 saw uneasy peace in Kashmir but the violence has flared up in the state with the rise of the popular indigenous militant group Hizbul Mujahidin. Since 2016 with the death of Burhan Wani Kashmir has again been caged into curfew, stone-pelting, killings, etc. [59] The mechanisms of Transitional Justice will face lot of challenges in Kashmir since it's still a

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[58] http://thekashmirwalla.com/2011/12/apdp-a-credible-inquiry-commission-should-probe-8000-disappearances-of-j k/
[59] http://www.hindustantimes.com/static/the-young-militants-of-kashmir/

conflict state and hasn't transitioned to a post-conflict one as Iqbal had predicted before his death. In the editor's note Shubh Mathur shares the disappointment with the Indian military response to mass protest of 2008 and 2010 which saw the deaths of over 125 unarmed protestors, the Shopian rape[60] and murder case of 2009, the Pathribal fake[61] encounter case, the lies around the disappearance of Showkat Ahmed Paul, and pellet firings and killings of the young Kashmiri boys since Burhan Wani's death[62] and the heavy militarization of the state all builds up the disappointment to the hope that Indian government would ever agree for the process of transitional justice to take its place. Mathur writes, 'these obstacles make it clear that the international community will have to play its part in the establishment of mechanism for justice, accountability and reconciliation' (ibid: 62). The international community should build political pressure on the Indian state to rectify and sign International Covenant against Enforced Disappearance (IPTK and JKCC 2012).

Politics of Memory

The institutionalisation of reconciliatory measures such as forgiveness points to a question such as is true justice equivalent to forgiveness? Do such measures in praxis reconcile and heal the torn fabric of the society? The eruption of communal violence and violent events in India such as Partition, Anti-Sikh riots, Bombay Riots, the recent Muzaffarnagar riots etc, point to the question of whether the religious communities in the country see each other as enemy or adversary? Have the governmental measure's fumbled in their practices and policy to look at alternative ways of reconciliatory measures? Such questions have been raised in the work of Argentine scholar

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[60]http://www.countercurrents.org/cc280510.htm

[61]http://indianexpress.com/about/pathribal-fake-encounter-case/

[62]http://indianexpress.com/article/india/india-news-india/kashmir-terrorist-burhan-wani-death-hizbul-mujahideen-commander-2933736/

Antonius C.G.M. Robben who asks how the traumatized societies remember. He argues that the response of Argentine society to the traumatic dirty war, 'has not been one of silence, disavowal, melancholia, or impeded mourning, but instead a compulsive remembering and continued contestation about the meaning of terror and suffering' (Robben 2005: 126). What Argentine society went through is chronic mourning, where people couldn't mourn their losses because the others denied it (ibid: 127). Such process of dealing with traumatic past and painful memories, writes Robben, in Argentine's case "critiques the psychoanalytic interpretation of the Holocaust studies which point out that one copes with the losses either through mourning or melancholia" (ibid: 128). Robben argues that silence and denial at times doesn't form the intrinsic part of trauma or repression because they are very much dependent on specific political, national and historical circumstances. He writes, "While the response to social trauma could be silence, forgetting, denial as in the case of Holocaust but it can also be 'compulsive reliving, acting-out, re-experiencing, and repetition' as in the case of Argentina's dirty war" (ibid: 127).

Robben points to the fact that the Truth commissions and truth trials in Argentina started the reconstruction of the Argentine's historical memory (ibid: 132). Such reconstruction has to be understood through the dynamics of denial and disclosure, rebellion and defence and the effect of social trauma on the memory construction project of Argentina. Who should be reconciled? Who will gain from reconciliation? What will they gain? These are the questions that are important to understand the politics of memory in Argentina. Robben argues that the Truth Commissions and truth trials are also the project on how the dirty war of Argentina is to be written? Such a project unfolds the politics of memory.[63]

In her analysis of the relation between past and present, oral accounts and official accounts, Susan Visvanathan tries to locate memory as a site of refraction of events and personal experience. She writes,

> 'The advantage of people's history lies in the fact that we are provided with a
> different kind of knowledge which affords us a much more immediate sense of
> the past. We escape some of the deficiencies of documentary record; we receive

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[63] Robben defines social trauma here as the wound on the social body and its cultural frame.

evidence which is open-ended, which is available nowhere else but in the memory of our informants' (Visvanathan 1993: 33).

Memory then becomes a contestation between truth and fiction. According to Trimikliniotis, "politics of memory is the contestation of multiple interpretation of conflictive past such as political violence and war" (Trimikliniotis 2012: 55). Robben notes this politics of memory in Argentina where the contestation of the past revolves around different social memory of dirty war. The agreement and disagreement over this memory points to the question, according to Robben of, "how to remember a past that all recognized as traumatic?" (Robben 2005: 122). This conflictive interpretation of the past points to the agenda of the different participating groups. For example, according to Robben, the Military desired a closure of the past to guarantee their survival as corporate institution. The Human Rights group wanted criminal justice and accountability so that the military could be prevented from assuming power ever again. The Judiciary was interested in the importance of instituting a legal accountability and equality before the law. The Government's agenda was to persuade the reconciliation of democratization of Argentine society (Robben 2005: 142). Politics of memory in this case points to the dynamics of reconciliation which then revolves around this memory politics and politics of forgetting (Trimikliniotis 2012: 255).

Arguing about how some Argentines involved in the memory construction do not want the horrors of the past to be forgotten. The master narrative of dirty war is accompanied by the resistance to forgetting. The tragedy of the dirty war, argues Robben, is that,

> "the perpetrators will always be a victor even after its confession because the unknowable in the context of disappearance is the foundational element of any trauma. Trauma and unknowable emerge together" (Robben 2005: 35).

On 30th August 2001, a Memory Park was inaugurated in Buenos Aires as the reminiscent of the state terror atrocity of the Dirty Wars. Robben writes, 'The monument symbolizes the open wound in Argentine society left by the disappearance' (ibid: 153). Reconciliatory measures were

adopted at the governmental level too. Robben points that 'The City Council of Buenos Aires in 2001 marked 24th of March as the 'Memory Day' where flags would fly at official buildings at half-mast and the city would organize some public activities. Also students in schools will be taught about dictatorship to commemorate 1976 military coup' (ibid: 151). Robben argues that all these attempts were made to forge a national memory where the irreconcilable and incommensurable event of the past stands together (ibid: 151).

Politics of Reconciliation

Reconciliatory approaches are shaped by the dynamics of memory, politics, and forgetting. According to Nicos Trimikliniotis, "Reconciliation is about the present and future which somehow requires managing past differences, divisions and polarisations around which violence was historically organised" (Trimikliniotis 2012: 245). Verdeja (2012) states the maximalist position of reconciliation which is, "perpetrators should acknowledge responsibility, repent and ultimately be forgiven by their victims" (Verdeja 2012: 169). This is the same position that Archbishop Desmond Tutu, former chairman of South African Truth and Reconciliation took. Trimikliniotis argues that there is no universally accepted mode of reconciliation, though the comparative literature of Transitional justice in Argentina and South Africa points to the prevailing model of reconciliation where the relationship of truth and justice is established. So Official form of reconciliation will only occur once truth is told, so that a sense of justice could be provided to the victims (Trimikliniotis 2012: 245). Trimikliniotis points out the danger to this relation of truth to justice. Calling the two terms as antagonistic in nature, he argues that, "the notion of truth is contested and relative. As for 'moving on', this is part of ideological, symbolic and performative acts seeking to legitimize a 'post-conflict' order" (Trimikliniotis 2012: 246). Hirsch argues,

> 'When transition is equated with the process to 'move on', to reunite a divided
> society, it falls prey to the collective amnesia, embodied in the notorious slogan

'forgive and forget', the danger of which lies in forcing reconciliation as an assimilative resolution' (Hirsch 2012:79).

For this purpose Trimikliniotis suggests to look at the praxis of reconciliation as proposed by theologian Villa-Vicencio. According to Villa-Vicencio "reconciliation is both a process and goal with uncertainty, unevenness and incompleteness lingering around it" (Villa-Vicencio 2009:170). He argues that forgiveness isn't the necessary part of reconciliation and that reconciliation involves 'exploring new relationship which involves disrupting the already constituted patterns of events.' Such interruption can result as Villa-Vicencio argues "in an agreement to stop killing each other; at a more advanced level it establishes way to prevent killings in the future by establishing structures for sustainable peace" (as cited in Trimikliniotis 2012: 246). There also seems a consensus in the thought of scholars that reconciliation is often the only pragmatic alternative way to stitch the torn fabric of the societies affected by the violence. Therefore the 'praxis of reconciliation' becomes necessary and important (Trimikliniotis 2012: 247).

Agnostic Scholars suggests alternate ways for the reconciliation. Their critique is against this championing of forgiveness as a moral virtue over other emotions like resentment. Their disagreement with the politics of reconciliation revolves around the critique of the advocacy of forgiveness carried out by the NGOs, politicians who all have something at stake in such process. They argue that in such scenario, forgiveness becomes one of the charitable events where the crimes and atrocities of the past are made mundane, trivialised, normalised and taken as casual. Some perpetrators ask for forgiveness without even showing any form of remorse. So what they refuses to is this official 'politics of recognition', which normalises traumatic past in a bureaucratic way, where the structure of the script remains the same and forgiveness is taken as a mechanism that can be quickened for fast-paced healing of the nation per se (Hirsch 2012; Brudholm and Rosoux 2012; Verdeja 2012).

Hirsch's criticism of such transitional measures is coming from his Agnostic views that reject constitutional order as a medium to address the trauma of past atrocities. Lawrie Balfour writes, 'Agonism emerges from an appreciation of differences that cannot simply be managed, forgotten, or transcended and a commitment to equality' (as cited by Hirsch2012: 83). Hirsch argues that what agnostic democrats propose is an,

> 'Agnostic model as a transformative power based on aesthetics, affective and cultural modalities. Agnostic democrats suggest that. Instead of encouraging citizens to bracket their moral and cultural disagreements, we cultivate oppositional yet respectful civic and political relations and practices' (Hirsch 2012: 85).

The only problem with Hirsch's suggestion is that it doesn't mention how these ideas would be implemented in praxis. Here Verdeja and Brudholm and Rosoux also points out the alternatives to forgiveness whose practicality seems feasible. Their idea of political reconciliation is based on: (i) to present an accurate understanding of the past which could recognise the truth that what was done was unacceptable and unjustifiable; (ii) accountability while entails that, human is a moral being and when it abuses someone's right they are morally responsible for their actions and should be held accountable. "Accountability is particularly important to end culture of impunity" (Verdeja 2012: 173); (iii) victim recognition which is the crucial element of reconciliation; (iv) the rule of law for guaranteeing that personal rights will be respected that the state will be bounded by law and that political differences should be resolved peacefully (Verdeja 2012: 179).

Conclusion

There is a relation between violence and suffering. The relation is memory. Memory lies in the centre of the traumatic events. The trauma of violence shows us that it affects both the perpetrators and victims. Robben and Krog's works show how trauma affects different social

actors. What comes out as social memory is the summation of the traumatic memories of these social actors. The conflict arises when selective remembering and forgetting takes place. How to forget a past which caused massive disappearance and killings? How should society move on from the trauma? Transitional justice mechanism becomes important to address this tussle, so that the individual as collective can work on this trauma to reconcile and heal.

Traumatic events cannot be surpassed, especially when the state is involved as the cause of it. It becomes a moral and ethical responsibility of the state to address violence of the past and present. Civil society shares this responsibility and aid the state in social transformation. The problem arises when forgiveness is made out to be the moral virtue of reconciliatory measures. Forgetting of the past is then equated with forgiveness which becomes problematic as shown by Mamdani and Krog in South Africa's Truth Commission. The question of anger and resentment and not of forgiveness becomes legitimate when the process of forgiveness is crowned with the specific time period.

Since the mechanism of transitional justice is to bring to the forefront relation between truth and justice, addressing the truth of the violence and acknowledging the horrors and abuse of the human rights restores a sense of dignity back to the survivors. The suffering of the survivor gets a platform to articulate their pain through language. This language is captured in the testimonies of the truth commissions. Suffering undergoes a transformation here, providing a map to the survivor so that it can navigate its subjectivity and self. The Argentine's truth trial established the relation between truth and justice through accountability thereby, making the perpetrator responsible for his/her act. Accountability becomes important to break the culture of impunity of the Military Junta. The relatives of the disappeared persons through their innovative legal battles, such as right to truth and right to identity brought the powerful military junta leaders to the trials. They made them accountable not just for disappearance, but also selling babies born in captivity to disappeared persons and forging their fake identities for adoption. Criminal justice then becomes important here over forgiveness.

CONCLUSION

My attempt in this thesis has been to understand enforced disappearance in the intersection of state, power and violence. The adversaries of political violence points question that even if the state violence is legitimized through its legal justificatory scheme such as AFSPA in India how are the killings and disappearances of the innocent civilian be justified? Therefore, what is required is new vision which can dissolve the link between violence and the law. This is what, Arendt (1969) and Benjamin (1979) were trying to establish through their writings on violence. Their critical interrogation of violence, its instrumentality and the relationship between means

and ends opens up the possibility to imagine a new beginning that escapes violence as its end. Finley (2009) puts the similarity in both the philosopher's writing. He argues, "Benjamin and Arendt both seek to reinforce a strict separation between the violent dispatch of the past and the non-violent achievement of new political possibilities. They envisage a violence which ends past injustices while leaving the beginning of something new open to properly creative forces" (Finlay 2009: 42). It is here in the space opened by Benjamin's idea of divine violence and Arendt's conception of power that I tried to locate the Mothers' movement in Argentina and Kashmir.

Mothers' movement became site of my study to understand the meaning of social suffering and its relation with pain, language, representation, resistance and social transformation. Social suffering is not a neutral term and it points to the ambiguities around moral, ethical and social responsibility. This moral gap was addressed through Butler's idea of grievable lives which is useful to elaborate ideas of equal value of lives and to consider unequal distribution of grievability as a reference to the differential product of the human, who count as human? (Butler 2004)

The thesis also attempted to look at the experience of violence in the everyday life of the people. The experience of violence is shaped by the traumatic events of the past. The comparative literature on reconciliation, mourning, suffering shows the different experiential reality of precarious lives and also what meaning people attach to such reality. The aim of this dissertation has been to understand what meaning people attach to suffering? How it is socially constructed in different society? And the writings from Ireland, Argentina, and Kashmir opened up a space which then shows the relationship of pain with art. Certainly suffering is social in such context. The paintings, stories, poems, laments, etc all are proof of it. Such work then helps us to understand the relationship of suffering and pain with language and representation.

National reconciliation process becomes contested when the survivors critique the state agenda of reconciliation and equates it with the national process of forgetting. South African and Argentine Truth Commission showed that at the heart of reconciliation lies the politics of memory. Memory then becomes indiscernible from the understanding of critical events and the relationship of violence with the every day. The past can't be forgotten until a sense of justice is provided to people. In the case of Argentina, the military trial provided criminal justice after a series of resistance from the Military Junta.

The South Africa Truth and Commission provided a reconciliatory mechanism which is amnesty in exchange of the truth. The critique of TRC is regarding its reconciliatory measure which is forgiveness. The politics of reconciliation is coming from that ground that how a time period can be applied to the survivors to forgive the perpetrators of mass violence. Also how forgiveness is shaped as a moral virtue over other emotions like resentment. Overall the purpose of taking Transitional justice mechanism in Argentina and South Africa has been used to understand the conflict and its consequences in Kashmir. The international organisations and grassroots movements like Madres' have worked together against enforced disappearance. In 2010 the International Convention for the Protection of all people from enforced disappearance came into force. CED provided a comprehensive remedy scheme that includes the right to truth, justice, reparation and guarantee of non-recurrence. India has signed the convention but has not rectified it yet. Even domestic Indian laws doesn't even criminalize 'Enforced Disappearance' or 'Torture' till today (IPTK 2012: 7)

Madres' legal battle around disappearance opens up the possibility for relatives of disappeared victims in Kashmir to channelize the right to truth and right to identity for their future struggle. Since the past years, oldest members of APDP saw their natural fate. The possible exhumation in Kashmir would become hindrance for these families since there would be no living member left for the DNA sampling. The truth around Mughal Mase's son's disappearance has fallen into the

shadow of mystery, since she passed away in 2009. So one lesson that Kashmir can learn from the Madres of Argentina, would be to open up Gene Bank or DNA sampling bank so that possible closure could be attained in future, which then can fight for the social, political and legal justice.

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