



HUMAN RIGHTS AND WOMEN: A STUDY OF IMPACT OF ENFORCED DISAPPEARANCES ON WOMEN IN KASHMIR

THESIS

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CHAPTER 5

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

Conclusion

“Human rights” as the term specifies represent the rights of all human beings i.e. men and women. Individuals of both sexes are born with these rights. Both men and women have equal access to these rights. No discrimination is allowed or imposed in the exercise of these rights. It is a fact of history that women have been denied equal rights for centuries. But various international bodies including the UN and the state governments have come up with several covenants, agreements and treaties regarding human rights to provide women social, economic, political rights. Yet despite the progress made at the national and international level, to ensure gender equality and women empowerment, a huge gender disparity still exists. Women continue to face prejudiced policies, social and cultural hurdles, and threats to their security that violate their rights and limit their potential.

Throughout history, armed conflicts and wars were accompanied by violence and huge brutality which from the contemporary legal perspective ought to be seen as mass violations of human rights. Although every armed conflict imprints a cruel toll on all members of the society, regardless of their gender, age, skin color, nationality or ethnic origin, women were and still are predominantly susceptible to all forms of such violations.¹ According to UN Women, “the most common risks of violence forms for women in conflicts, in addition to internal displacement and general violence, are rape as a tool of war; sexual assault/exploitation by combatants and community members; forced prostitution; increased domestic violence; human trafficking; female infanticide; early and/or forced marriage; murder; sexual slavery; forced pregnancy; and forced sterilization and so on.² Women are mostly at risk of marginalization, poverty and the suffering engendered by armed conflict, especially when they are already victims of discrimination in peacetime. Also, women are

¹ Natalia Buchowska, “Violated or Protected. Women’s Rights in Armed Conflicts after the Second World War,” *International Comparative Jurisprudence* 2, no. 2 (2016) p-1.

² Jeanne Ward, “Violence against Women in Conflict, Post-Conflict and Emergency Settings,” (UN Women, 2013) p-19.

particularly vulnerable to rape as a weapon of war if they are upheld as “symbolic” bearers of cultural and ethnic identity and the producers of the future generation of the community.³ Violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs their enjoyment of those rights and freedoms. Violence against women affects women everywhere. It affects women’s health, hinders their capacity to take part fully in society, impacts their enjoyment of rights including reproductive rights and is a cause of tremendous physical and psychological suffering for both women as well as their families.

Kashmir has been caught up in the grip of conflict for more than a decade now. The conflict had its beginning as a militant movement fighting for self-determination which has turned into a battle involving not less than a hundred militant groups fighting against the Indian army. All the sides of this battle use violence and it is the common Kashmiri whose lives are deeply affected due to this conflict.⁴ Since the inception of the insurgency in 1989, more than 50,000 Kashmiris have been killed, 100,000 Pandits have migrated to Jammu and other parts of India for fear of persecution, a large number of women (over 5,000 according to a conservative estimate) have been violated, and innumerable people have been imprisoned and held in solitary confinement.⁵

The detailed account of various reports and research works suggest the prevalence of various forms of human rights violations in Kashmir. It has been established that among other human rights violation, there is a large mass of the population which has been subjected to enforced disappearance. Reports on the exact number and the actual perpetrators may vary, however it does establish a link that Indian Armed Forces have always been found involved in this practice.

Enforced disappearance is a human rights violation, which occurs in different contexts. Enforced disappearances are not limited to a particular region but they have occurred throughout the globe. Since the crime is global’, there is the need for a more efficient, victim-oriented perspective especially at the national level of implementation, complementing existing mechanisms to guarantee justice for past

³ Charlotte Lindsey Curtet, “Women Facing War,” (Geneva, International Committe of the Red Cross,2001)p-28.

⁴ Urvashi Butalia, *Speaking Peace: Women’s Vioces from Kashmir*, (New Delhi, Zubaan Books, 2002) p-x.

⁵ Amnesty International, “India Must Prevent Torture,” 2005.

incidents, prevent future incidents, and protect victims and human rights defenders of enforced disappearance. Since it violates a wide range of rights already established under international law. The recent International Convention on Enforced Disappearances not only prohibits enforced disappearance but also regulate States' obligation to criminalize enforced disappearance.

Kashmir has seen a lot of violence due to the armed conflict since the 90s. While the conflict continues to affect all the people of Kashmir, women bear the scars of violence deeper than men. Though most of the time, women are not the direct victims of conflicts, they are still affected a lot. The armed conflict in Kashmir has resulted in killings, destruction of many homes, and for many women, the loss of primary bread earners of their families. Women have been subjugated to violence in Kashmir for the past two decades from Indian Security forces as well as by militants. The conflict has given birth to thousands of orphans, widows, half widows.

Disappearance is a violation that mostly targets men and is overwhelmingly committed by men. It is women, however, notably the wives and mothers of the disappeared, who are most impacted by the disappearance and are themselves victims.⁶ The present study was to examine the impact of enforced disappearances on women in Kashmir. The long-term impact of conflict-related violence is seen in the lives of the women relatives of the disappeared men. The study concluded that these women keep struggling simultaneously to cope with the practical effects of the loss of their disappeared family member – especially the economic impact – while continuing the emotional strain of not knowing whether the loved one is alive or dead. The women face several difficulties which are often interlinked and affect their day to day lives. Women suffer from devastating social, economic, and psychological repercussions because of the loss of male family members who tend to earn more, be more literate, and have greater access to justice. The study also concludes that the disappeared men come from poor backgrounds. These men, with an average age ranging between 18-30 made crucial economic contributions to their families, so the disappearance led to a reduction in livelihood. Since parents are too old to work, it is

⁶ Simon Robins, "Towards a Victim-Centred Transitional Justice: Understanding the Needs of Wives of the Disappeared in Post-Conflict Nepal," *The International Journal of Transitional Justice* 5 no 1 (2011) p-2.

either the half widow who enters into labor services or the children who have to leave their education and support the family.

Thus, wives, mothers of the disappeared also face further challenges: ongoing victimization in the private sphere as a result of poverty, family conflict, and psychological trauma. Economically, the loss of the primary breadwinner or head-of-household forces women into low-paying, insecure jobs, increasing their risk of exploitation. Therefore, because of engagement in low paying jobs, women are hardly able to afford necessities such as basic housing infrastructure, medical treatment, children's education.

Along with the gender-specific injustices such as girls dropping out of school, early marriage, gender norms around what constitutes suitable work for women, and the traditional opposition to women's participation in the public and economic spheres and other conflict-induced injustices, it means that enforced disappearance becomes a major factor in condemning families to poverty.

The wives of disappeared men, half widows, are the worst sufferers. They are caught in a bad situation as they can neither remarry nor declare their husbands dead. They have to wait endlessly for the disappeared to come back and in this process suffer much more than the widows, as for the half widows there is no closure. The half widows see their status and identity reduced to uncertainty as they are neither widows nor wives. For half-widows accessing bank accounts, claiming inheritance, transferring property are also extremely difficult. The prolonged absence of a husband makes half widows vulnerable to several threats against their physical and mental well-being. Most half widows are illiterate and unskilled as a result of which, her family becomes dependent on others, most often the husband's family. Thus she and her children are seen as a burden because of which they are forced to live alone, on their own. Compounding this, families often face isolation, threats, and extortion by those responsible for the disappearance.

The most basic problem faced by the women relatives of disappeared men is the lack of legal and administrative justice and inability to find answers regarding the fate of their loved one. More than getting relief or compensation from govt. they want to know the truth regarding what happened to their disappeared family member. The legal procedure is complicated, lengthy, and daunting, for women who often live far

from cities, and most have had no formal education. Thus pursuing remedies is an exhausting process and the problems faced by the women are compounded rather than addressed by the legal and administrative remedies. In the process of pursuing justice, there are delays, high costs, and harassment which are tiresome enough for most and lead to further misery.

Suggestions And Recommendations

According to the study, there is an utmost need for the state authorities to resolve the issue of enforced disappearances. The families' right to know the truth regarding the fate of their disappeared family member must be confirmed.

- The government should ensure that detained persons are kept in publicly recognized places. The information regarding these detainees should be maintained at every place of detention. This information should be made available to relatives, lawyers, and official bodies searching for detained persons. No one should be held secretly in detention.
- Mass graves must be identified through proper forensic investigations and measures should be taken to protect buried bodies until they can be properly exhumed and identified. For those mass graves that have already been identified, they should be protected until proper exhumations are performed and the remains must be handed over to the families. The remains of unidentified bodies should be protected and buried in a dignified manner.
- The state must provide the families with answers about the circumstances of the disappearance and, if relevant, the circumstances of the death of the disappeared family member. These must include the place, time and reason of death, and location of the body remains. The State body should collect, centralize and process all important information from all the sources possible.
- The families of disappeared persons should be often informed about the work carried out by the State body and the outcomes accomplished. Families, including those living in far-flung areas, must be provided with the means to gain access to the State body.
- India must ratify The International Convention for the Protection of all Persons from Enforced Disappearances and must have a strong basis in law, including:

- I. Use appropriate methods to assist in clarifying what has happened to disappeared persons;
 - II. Laws should be made that define the status of disappeared persons, without distinguishing between cases on political or any other grounds, and recognizing the rights of their relatives and dependents to receive social and economic benefits;
 - III. Regulations on the management of human remains and the protection of personal data.
- The state should pass the legislation which criminalizes any incident of enforced disappearance and categorize “widespread and systematic” enforced disappearances as a crime against humanity, as per international law, including disappearances committed by non-state actors.
 - The families of disappeared persons must be given due relief or compensation without any delays. The State body must help the families gain access to judicial mechanisms to end the impunity enjoyed by the perpetrators of disappearances.
 - Since most of the disappearances have taken place in remote areas of the valley in the poorest families, the state must, therefore, ensure that any relief given reaches all the families.
 - Whereas mostly all compensations are given to the head of the household, the state must look into who deserves it. Payments can be given to the half-widows, and to ensure that money is not taken from them by family members; it can be paid as a regular pension that would help to raise their status in the household and reduce stigmatization.
 - Special care should be provided to the mothers and half widows suffering from chronic physical and psychological symptoms resulting from trauma and loss. If the state gets engaged in the investigation and exhumation process regarding the disappeared, it should also provide long-term psychosocial support to these women during that particular time.
 - The state should provide a mechanism that protects mothers and wives of disappeared persons from any form of abuse, violence, and harassment in

detention centers, prisons, army camps, or any other place they need to visit or access.

- Since most of the half widows are unskilled and illiterate they have to choose petty and low paying jobs. Civil society should organize vocational training for half-widows that can increase the number of jobs they can pursue, as much as access to higher education for those with sufficient previous formal education. Proper support, training and aid provision can increase their self-reliance and confidence.
- Civil society organizations and NGOs should empower these women with much-needed knowledge on their rights, especially when navigating administrative processes around SHRC, child custody, property ownership, etc. and knowledge to better understand the operating legal procedures.
- Civil society organizations should encourage aid programs that meet the specific needs of the mothers and wives of disappeared persons. Access to psychosocial support is a critical step for many female relatives so that they can deal with and overcome their traumatic experiences as well as to better cope with their situation, as this also increases their ability to support their children and dependents.
- There are currently different opinions on the number of years a half widow has to wait to remarry as per different schools of Islamic thought. A waiting period of 4 years, as advised by Maliki school, must be publicized by Islamic scholars along with the civil society.
- Reparation programs should develop policies that overcome the gendered impact of enforced disappearance and disadvantages faced by the children victims, and mothers and half widows at the forefront of the search for truth. Scholarship programs should be created for the children of disappeared.
- Pass legislation specifically criminalizing any incident of enforced disappearance and categorizing “widespread and systematic” enforced disappearances as a crime against humanity, in accordance with international law, including disappearances perpetrated by non-state armed groups, in

fulfilment of obligations under article 4 of the Convention for the Protection of All Persons from Enforced Disappearance.

- The national government's investigation and punishment should include systematic tracking and reporting of disappearances in a centralized fashion
- Another scheme could be providing for a 'Certificate of Absence' to the family members of the disappeared. As conceived, this would be an official document issued to family members of the disappeared persons affirming their status as "missing" as opposed to "deceased". This certificate could be issued to family members in cases of enforced disappearance where there is sufficient supporting evidence but leads to uncertainty (right to truth), which is a widely recognised right in international law.
- Stop with immediate effect, all threats, restrictions and harassment of families of disappeared persons, and those who support them in their search for truth and justice.
- To put in place an equitable scheme of reparations for all family members of the disappeared, irrespective of their background, occupation, status, time period of incident, location of residence and incident, ethnicity, religion etc.
- Provide female relatives with mapping and referral procedures on legal counsel and aid that are affordable and accessible
- Ensure the availability of equitable and quality mental health and medical aid for women and their dependents
- As a State party to international humanitarian law and human rights law instruments, India should incorporate in its domestic legislation and practice a wide range of measures to prevent people from disappearing during armed conflict and other situations of violence, to protect the rights of the missing and of their families, and to ensure prosecution of those responsible for disappearances.