

“IF THEY ARE DEAD, TELL US!” A CRIMINOLOGICAL STUDY OF THE “DISAPPEARANCES” IN KASHMIR

By Teresa Crew¹

Abstract

Cradled in the lap of majestic mountains of the Himalayas, Kashmir is one of the most beautiful places on earth. This paradise is now hell for many Kashmiris due to the prolonged war between India and Pakistan since the end of the British Empire and subsequent partition of the Indian Subcontinent. This paper focuses on the enforced disappearances in Kashmir.

The aim of this study is to further develop the study into the victims of State harm. In order to do this, Kauzlarich et al's 'Victimology of State Crime' is utilised, and their general propositions of State crime are tested with reference to the disappeared in Kashmir.

This study holds with Kauzlarich et al's assertion that State crime victimology is a different phenomenon from that of street crime as victims are doubly victimised by the state - once during the actual harm inflicted and then again by the criminal justice process.

Whilst the majority of Kauzlarich's propositions were consistent with the situation in Kashmir, the concept of secondary victimisation was underdeveloped throughout the original Kauzlarich et al paper. This concept, in relation to Kashmir, is developed in this paper.

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'Emergencies' have always been the pretext on which the safeguards of individual liberty have been eroded' (Hayek, 1944 cited in Solomon, 2004).

They can come at any time, day or night; out of uniform, always carrying weapons. They don't say who they are or on whose authority they are acting (Crelinsten, 2002). Often producing no arrest warrant nor giving reasons for their visit, they drag off one or more members of the family - using violence in the process if necessary. This is often the first act in the drama of an enforced or involuntary disappearance (EID), carried out by India's agents of control (OHCHR, undated).

This paper will discuss the 'disappearances' in Kashmir using '*Victimology of State Crime*' as a theoretical base. The aim of the paper is to contribute to the development of criminology's understanding of state crime victimology by testing Kauzlarich et al's (2001) six general propositions, in relation to Kashmir. The objective is to refine the model through qualitative data analysis in order to specify the circumstances in which it does or does not offer potential for explanation (Vaughan, 1992).

This study is important as criminology, in the main, has ignored the study of victimisation by the State. As Thorstein Sellin suggested in 1937 if criminologists are interested in developing a science of criminal behaviour, they must rid themselves of the shackles forged by criminal law (Schwendinger and Schwendinger, 1991). Critical criminologists took up this mantra during the 1960s and 1970s, but as Cohen observes
'...the subject has been raised and then its implications conveniently repressed' (Cohen: 1983: 98)

Harper and Israel offer four explanations for this. First, they argue, state crime has been ideologically masked. This 'masking' has occurred as the majority of criminologist's assume a state definition of crime as their initial starting point. As the State defines 'what is a crime', it follows that the State will not be classed as being criminal. The 'masking' also occurs as the State has multiple roles to play in the study of crime: they can be victims, distributors of punishment and (or) compensators and offenders (Harper and Israel, 1999). As criminologists are often in the employ of the State, criminology as an academic discipline has reinforced rather than critiqued the values of the State (Taylor et al, 1975). When a State commits a crime it is either not recognised as being a crime (tariff fixing); excused (terrorism); ignored (torture) (Barak, 1990) or even put down to forces beyond the government's control (natural disasters) (Green and Ward, 2004).

This study also responds to the observation that the conflict in Kashmir, as a site for academic study and media attention, has often been overlooked in favour of the 'troubles' in Ireland or the stand off between Israel and Palestine. Although Kashmir has been issue of contention between India and Pakistan for over fifty years, this conflict has only appeared intermittently in the media and rarely in academic journals. Furthermore, criminology – the study of crime and deviance – has paid even less attention to a case study which has all the components that criminologists normally investigate.

Methodology

The methodology employed is of a qualitative nature, using a case study approach. The study is literature based, relying on material derived from criminological texts and academic journals. Part of the research is derived from classic victimology, critical criminology and State crime texts.

In order to provide accurate and reliable information concerning the situation in Kashmir, reports from Amnesty International and Human Rights Watch (HRW) is used extensively. There is a particular emphasis on two reports: the Amnesty International report, *'If they are Dead, Tell Us'* (1999) and the HRW report, *'Behind the Kashmir Conflict'* (1999).

Definitions

This section outlines who are the 'victims' and 'victimisers' in the Kashmir conflict – in relation to this criminological case study. This clarification is necessary as with any conflict situation, the victims and victimisers can be interchangeable at different stages or time periods. This particular section also highlights that there are two types of victimisation in Kashmir – primary and secondary.

The concept of victim can be traced back to ancient cultures and the earliest languages: its roots lie in the notion of sacrifice. Over the years, the term victim has developed and now includes additional meaning to the original term. Currently the term includes all those who experience loss, injury or hardship: but generally, does not include those who have been victimised by the State (Mawby and Walklate, 1994, cited Quinney: 1972).

This paper will use the term 'victim' to refer to those persons:

'...arrested, detained or abducted against their will or otherwise deprived of their liberty [or life] by officials of different branches ... of Government, acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government' (UN Declaration on the Protection of All Persons from Enforced Disappearance, 1992) [added by author]

In addition there will be use of the term 'secondary victim' which will be utilised to include the immediate family or dependants of the direct victim.

Secondary victimisation involves the relevant authorities refusing to disclose the fate or whereabouts of the persons concerned or to even acknowledge the deprivation of their relative's liberty

During research for this project it was observed that the main victimisers in the Kashmir conflict were not easily identifiable. A cursory glance at the situation in Kashmir identified three possible candidates; Pakistan, the numerous terrorist organisations operating in Kashmir, or India. Whilst this author does not condone or support the actions of the terrorist organisations in Kashmir, it was judged that due to

the contemporary political climate, it would be profitable to focus on an example of a government which has asked its citizens to give up a portion of their civil rights in order to tackle terrorism.

The emphasis on state criminality meant that either Pakistan or India could be utilised to further understand the complexities of State crime. India was identified by both HRW and Amnesty International as having human right issues with respect to their citizens in Kashmir and Punjab, as well as more recently, the way that criminal suspects are dealt with in general, - not just in conflict zones (HRW, 2005a). Pakistan also has examples of grave human rights abuses - for instance, a rise in sectarian violence and legal discrimination against women and religious minorities (HRW, 2005b). However, the Amnesty International report (1999) concerning EID in Indian controlled Kashmir was so detailed that it was decided that the focus of this paper should on India and its agents of control.

Historical Background

For centuries travellers have delighted in the beauty of Kashmir. On visiting the Valley of Kashmir, Jehangir, one of the Mughal emperors, is said to have exclaimed:

"If there is paradise anywhere on earth, it is here, it is here, it is here." (Jaleel, 2002).

However, this paradise has been hell for many Kashmiris since the transfer of British colonial power in India during 1947 (Rees, 2005). The problems in Kashmir can not be understood without discussing the history of the Partition of the British Empire.

In 1947, Kashmir - along with 561 princely states - was independent as long as it recognised the paramountcy of the British Empire. The rulers of these states were autonomous except in the most vital areas; defence, foreign affairs and communication. During Partition, Lord Mountbatten added two qualifications to his directive concerning the princely states. Firstly the geographics of each state should be adhered to; secondly, all areas that were predominantly Muslim would join the newly formed Pakistan; whilst the non Muslim states should become part of India (Ganguly, 1997). Under the terms of the Indian Independence Act, none of the Princely States would be allowed to declare independence. Kashmir was one of the few Princely States that due to its geographical location could have joined either India or Pakistan (Hewitt, 1997). Despite this it was generally assumed that Kashmir would accede to Pakistan as it had an 80% Muslim population (Rees, 2005).

An invasion of Srinagar by Pakistani tribesmen in August and September 1947 compelled the Maharaja to seek the assistance of Prime Minister Nehru of India, who agreed to send troops only if Kashmir formally acceded to India (Ali, 1985). Lord Mountbatten intervened at this point, agreeing that the troops could be sent out as long as India agreed to ratify the agreement with a plebiscite once normalcy returned to the region (Ganguly, 1997). This is an important part in the history of the conflict as Pakistan maintains that the accession to India was not legal as to this day, the all important plebiscite has never been held (Ali, 1985). From an Indian perspective, the

signing of the Act of Accession, as well as the agreement with the Maharaja, fulfilled the established procedures whereby Kashmir legally joined India (Hewitt, 1997). Furthermore, the plebiscite has never been held as Pakistan has not withdrawn from Kashmiri territory (Adams and Whitehead, 1997).

At this point, it would be prudent to pause and briefly discuss how the dispute over Kashmir is exacerbated by two complex factors. A predominantly Muslim Kashmir holds immense symbolic value for India as the State is the test of its secular ideology. For Pakistan, Kashmir encompasses the nation's Islamic identity, the State of Kashmir being the missing piece. However, India can ill afford to be weak on domestic insurgencies (they also have secessionist movements in Punjab and Assam): allowing Kashmir to become independent would set a precedent for state secession (Kapur and Narang, 2001).

Kashmir's demographics also display the complexity of the conflict (ibid). The territory can be divided into three regions - Jammu, the Kashmir Valley and Ladakh: each of which are dominated by a different ethnic group. Although Kashmir has a Muslim majority, the region Jammu is dominated by Hindus, whilst Ladakh is evenly split between Muslims and Buddhists. However, the Kashmir valley is over 95% Muslim (BBC News, 2003).

To return to the history of the conflict; full scale fighting broke out between the armies of both countries until December 1947 when India lodged a complaint with the UN Security Council (Kolodner, 1998). The UN Commission for India and Pakistan (UNIP) was duly established with the aim of mediating between the two countries. UNIP decided in 1949 that there should be an immediate ceasefire and a withdrawal from the disputed area; after Pakistan troops had vacated then Indian troops would be expected to leave, bar a small force to maintain law and order. The final part of the resolution stated that there should be a plebiscite so that the future of Kashmir be decided in accordance with the will of the people.

A tenuous peace remained until 1965, when war broke out following a breakdown of the ceasefire between the two countries. The Indo-Pak war lasted for just over 12 months, ending with the Tashkent agreement, which outlined both countries commitment to resolving their difficulties through peaceful means. Peace remained until 1971, when the second Indo-Pak war broke out. This war ended in 1972 with the Simla Declaration where both countries agreed a Line of Control (LOC) which divided the territory between India and Pakistan: with a small part going to China (Lieten, 2002).

The 1980s saw a wave of secessionist movements in India: for example, the Jammu and Kashmir Liberation Front (JKLF), a group of Muslim youths who wished to assert Kashmir's right to self govern (Kapur and Narang, 2002). 'Abdullah' suggests that the JKLF 'picked up the gun' because India had repeatedly denied the people in Kashmir a meaningful democratic voice (Rees, 2005). Other dissenting groups turned to violence as a major part of their strategy; the government cracked down on their political leaders, which had the effect of undermining the more moderate voices (ibid, 259). Some level of assistance, whether moral or material, came from across the Line of Control in

Pakistan. The situation deteriorated and in late 1989 a full-scale insurgency broke out (Bowers, 2004).

The political landscape changed radically in 1998 with both India and Pakistan carrying out a series of nuclear weapons tests, dispelling any remaining doubts about each nation's capability of striking a devastating blow against the other (BBC News, 1999). The most serious threat of an all out nuclear war came when fighting broke out between India and Pakistani troops during 1999-2001. A bitter two month conflict ensued along the LOC which only ended after Pakistan withdrew their forces. The events of 9/11 brought about a rapprochement as the US tried to bolster support in countries bordering Afghanistan for its strikes against the Taliban (BBC News, 2001).

However, tensions along the LOC continued; the worst fighting in more than a year broke out in October 2001 as India started shelling Pakistani military positions (South Asian Media Net, 2002). Since then, there has been massive international pressure on both Delhi and Islamabad to resolve the crisis.

Kashmir has been intermittently in the news since the nuclear scare of 2001. In April 2005, a historic bus service, hailed as a peace breakthrough, took its first journey from Pakistani controlled Kashmir – Azad Kashmir –to Indian controlled Kashmir: reuniting many with relatives that they had not seen for over 20 years. Although this was a historic breakthrough, there are still many dangers to living in Kashmir. The British Foreign Office does not recommend travel to Kashmir, and there is still small scale fighting by insurgents that goes largely unreported in the mainstream media. A devastating earthquake, which hugely affected large sections of Pakistan and Pakistan controlled Kashmir, brought the region back into the news during late 2005 (BBC News, 2005).

It is no surprise, since Kashmir is one of the most militarized regions in the world - over 700,000 security personnel are stationed there - that the human cost in Kashmir has been massive. It is extremely difficult to give a reliable estimate of how many deaths there have been since the conflict started in Kashmir due to propaganda from both countries: the majority of statistics concerning the death toll in Kashmir tend to start from the time of the secessionist movement in 1989. Amnesty estimates that 44,000 people, thousands of whom are elderly, women and children, have been killed (Amnesty, 2003). However, sources such as the Kashmir Observer, have suggested that the death total is closer to 80,000 (Khan, 2005).

The following section consists of the main analytical discussion of this paper. This section will discuss the six propositions of Kauzlarich et al's paper using Kashmir as a case study.

Analysis

Proposition 1.

Victims of State crime tend to be among the least socially powerful actors.

The assertion, by Kauzlarich et al, that victims of State criminality are prone to be amongst the most vulnerable members of society does not hold with regards to EID in Kashmir. Research by Amnesty and HRW demonstrates that those who disappear in

Kashmir belong to all age groups and are employed in a variety of different professions – including teachers, labourers, farmers and business men (Amnesty, 1999). Generally, the term ‘least socially powerful actors’, would constitute women, children and the elderly, but this is not consistent with people who disappear in Kashmir. Whilst it is true that there are children who disappear – the case of 14 year old Nazir Ahmad Gojat is given by Amnesty as an example – on the whole, women, children and the elderly tend to be secondary victims (HRW, 1999).

Kauzlarich et al further argues that the State is able to hide illegalities and immoralities committed by their agents by putting the issue of ‘national security’ over the need for normal rights to due processes (Kauzlarich et al, 2001: 183). This is consistent with the situation in Kashmir as a proliferation of legislation has given police and security forces powers to detain people who are regarded as being problematic, a ‘threat’ to ‘national security’ or troublesome in some way (Cohen 1985: 1). More often than not, this is done under conditions that deny access to legal counsel or communication with relatives, remove the right to silence, and are free from any reliable, independent review or oversight. (McCulloch, 2004).

Kauzlarich notes that there is a

‘...great deal of dehumanisation and ideology which allows unjust practices and policies to flourish (2001, 185).

The assumption that victims of state criminality are dehumanized is correct when you consider the example of how the families of the disappeared are treated. These secondary victims are denied the right to know where their family member is being held, as in the case of Riyaz Lone. Officials denied that they had arrested Lone - even though his family were present at their son’s arrest (Amnesty, 1999).

A *Victimology of State Crime* also attends that there is much scapegoating, stereotyping, and profiling of the types of people who fall within the radar of the security forces. In the context of Kashmir, it could be argued that the disappearances are a form of scapegoating ordinary civilians for the actions of the terrorist groups. In June 1998, the Indian Home Minister LK Advani said

“Terrorism will be stamped out from our land by any means necessary. We are on the right track; militancy will be totally eliminated through a multi pronged strategy” (Amnesty, 1999: 8).

Amnesty found that ‘crackdowns’ have often resulted in many people being arbitrarily detained without any discernible reason; furthermore many of those arrested during these operations never return (Ibid: 13)

Stereotyping is an often a negative by product of mental processes carried out by humans: namely, categorisation. Human beings categorise from an early age in order to find their way around an occasionally dangerous and often unpredictable world. While stereotyping is useful as a means of simplifying complex situations and people, it can be problematic (Morris, 2000). With regards to Kashmir, people targeted by security forces are classed as being terrorists or potential terrorists; however many EID are in fact ordinary citizens without any connection to terrorism (HRW, 1996).

With regards to profiling, research from Amnesty showed that there is little evidence of

profiling involved when it comes to the disappearances in Kashmir. As discussed earlier in this paper, victims of disappearances belong to all age groups and professions – although the majority tend to be men. According to an army officer currently serving in Iraq, when army personnel conduct cordon and search operations for suspected terrorists or terror equipment, anyone;

“6-60 are potential suspects. After you have got the person ‘cuffed’ then you can see that they don’t ‘look’ like a terrorist, but in the heat of the moment, you have to protect your back, your partner and your unit” (L O’Reilly, pers comm., 20 January 2005).

Kauzlarich lastly observes that the authority of the State to conduct itself in such a manner is seldom met with organised opposition by the citizens. Using the example of attitudes in the USA to the Vietnam War, he argues that when there is a sizeable protest movement against state policies, citizens may be unaware of its existence or may perceive opposition as the work of radicals disconnected with reality. As a result social harms and human rights abuses might be overlooked, or even worse, supported because of an apparent lack of overt opposition towards the State policy or practice (Kauzlarich et al, 2001).

In the case of Kashmir, there have been protests concerning the ‘disappeared’ in the shape of the Association of Parents of Disappeared Persons (APDP). This organisation, formed in 1994, held a hunger strike from 17-24 April 2003 to protest against the Government’s treatment of relatives of the disappeared and to appeal for perpetrators to be held accountable for their actions. Whilst this hunger strike has not achieved its main aims, Chief Minister Mufti Mohammad Sayeed was prompted to promise to set up an independent Commission to help locate the missing persons and was forced to admit, at the Indian state assembly, that 3744 persons had gone missing since 2000 (Naqshabandi and Powell, 2003).

Proposition 2.

Victimisers generally fail to recognise and understand the nature, extent and harmfulness of institutional policies. If suffering is acknowledged, it is often neutralised within the context of entitlement.

Kauzlarich et al state that the most significant distinction between victimisers and their victims is the power to exert their will. Before this is discussed it is useful to draw upon the explanation provided by Quinney;

‘Power is the ability of persons and groups to determine the conduct of others’ (Quinney, 1972: 11).

The power in question has been given to India’s criminal justice institutions through a series of draconian laws. The following section will briefly outline two examples of those laws in order to demonstrate the wide-ranging powers held by the collective agencies.

One of the most notorious laws in force in the State was *The Terrorism and Disruptive Activities (Prevention) Act (TADA), 1987* which proved to be open to abuse in the hands of law enforcement officials. The Act gave strong search and seizure powers to the police, who could indict any person on the basis of strong suspicion. Once indicted under *TADA*, the accused would be tried by a special court according to special

procedures. The accused often risked conviction on the basis of slender evidence which would have been insufficient for conviction by an ordinary court (Ghosh, 2002). Following intense pressure, TADA was not renewed when it lapsed in 1995. However, cases can still be filed under section 14 of TADA which provides that defendants can be tried for offences alleged to have been committed before 1995 (Amnesty, 1999).

The *Jammu and Kashmir Disturbed Areas Act, 1992* gives powers to police in areas that the State government, considers to be “disturbed”. In disturbed areas, any magistrate or police officer of a certain rank, may “*fire upon or use force even to the causing of death against any person*” who is committing any act which may result in a serious breach of public order. Section 6 gives legal immunity to persons acting under the Act:

‘No suit or prosecution shall be instituted except with the previous sanction of the government against any person in respect of anything done or purporting to be done in exercise of the powers conferred by section 4 and 5’ (Amnesty, 1999: 21)

Kauzlarich et al argue that victimisers often do not recognize the degree to which their policies have caused harm. An example of this is the view espoused by Richard Boucher, State Department spokesman, who declared that POTA was “*within constitutional bounds*” and that it was “*consistent with democratic principles.*” POTA's critics disagree, arguing that existing laws were sufficient to deal with the threat of terrorism (Human Rights Organisation, 2005). POTA provides a vague definition of membership of terrorist organizations, insufficient safeguards for the principles of presumption of innocence and a lack of opportunities for review and redress.

Supporters of POTA tend to focus on the effectiveness of their policies to bring about desired change, maintain hegemony or promote other forms of dominance.

Unjust and harmful policies are often excused by neutralising deviant behaviour. Sykes and Matza theory of neutralisation (1964) suggested that there are five techniques of neutralisation that delinquents employ in order to excuse their actions: these techniques can be applied to examples of state crime. They suggest that deviants neutralise their behaviour by;

1. Denial of responsibility (Sykes and Matza, 1964: 207).

In some instances, the Government of India in its response to concerns highlighted by Amnesty and HRW about security forces “disappearing” people in custody has argued that armed opposition groups have in fact committed the offence. With regards to the disappearance of Jalil Andrabi, the Government of India wrote to Amnesty and suggested that;

‘It is common practice that these terrorist outfits precipitate a major incident or the killing of a prominent person just on the eve of international conferences...in order to gain propaganda mileage’
(Amnesty, 1999: 45)

2. Denial of Injury

Lt. Gen. S. Padmanabhan gives a clear example of denial of injury when he suggests;

“What people often complain about is not a gross violation of human rights. It is just that some of our methods perforce will cause

inconvenience. If a village is cordoned off, there will be some inconvenience. This is mistaken as a gross violation. Besides, some of our people may be rude in their manners..." (Amnesty: 1999, 38)

3. Denial of the victim

Even if the deviant accepts responsibility for the 'crime' and consequently acknowledges any ensuing injury the victim suffered, the delinquent may still argue that the injury is not wrong considering the circumstances in which it was committed (Cottee, 2005).

An example of such is the repressive POTA legislation: an act which India argues is necessary in order to eradicate terrorism (Amnesty, 1999).

4. Condemnation of the condemners

A fourth technique of neutralization is to condemn the very people that are condemning you, or as McCorkle and Korn have phrased it, 'rejection of the rejecters' (Sykes and Matza, 1964, 210). Indian sympathisers shift attention from their deviant behaviour by pointing out that the condition in Pakistan Occupied Kashmir is one of severe oppression. (Pipinashvili, 2004). Sykes and Matza suggest that this form of neutralisation is characterised by attempts to claim that the condemners are themselves hypocrites or deviants in disguise (1964, 211).

5. The last form of neutralisation which Sykes and Matza outline is;

'Dehumanising the powerless for the purposes of exploitation and appealing to higher loyalties i.e. national security' (1964, 211).

India argues that anti-terrorist legislation is necessary in a response to "an upsurge of terrorist activities in different parts of the country". Thus, POTA contained powers to investigate, detain, and prosecute for a wide range of terrorist-related offences. However, after the legislature passed POTA in March of 2002, the Indian media and human rights groups observed and criticized frequent abuses of the law, including hundreds of questionable and prolonged detentions with no formal charges filed (Gagne, 2001). It is this justification which sums up the form of "appealing to higher loyalties" neutralization: the legislation or the collective actions of the Government and its agents are needed to protect the greater good.

Proposition 3.

Victims of State crime are often blamed for their suffering.

Victim blaming is unfortunately a common reaction to those most wounded by state crime (Kauzlarich et al, 2001: 186). Ironically the most developed aspect of victimology calls to account the victim's role in their own victimisation. Since the early days of victimology there has been research into victim offender mutuality, victim-offender interaction, the victim's personality and the processes of becoming a victim. (Elias, 1986)

Fattah (1992) integrated the various models explaining victimisation into one comprehensive system which outlines the major factors involved in victimisations. Fattah's model can be easily applied to the situation in Kashmir and to the problem of state crime as it incorporates much of the issues that its victims face. Fattah suggests that the *opportunity* to commit the crime is a central factor; arguing that this is closely

linked to the characteristics of potential targets. Reverting back to the situation in Kashmir it can be seen that India's agents of social control indeed have the opportunity to commit the crime because they have the authority to be at the place where the crime takes place. Legislation and indeed the authority of their position enable the border police et al to be legitimately placed in the location.

Fattah also argues that the '*associations*' which victims have with other criminals increases the risk of victimisation. Associations are overwhelmingly a justification for the frequent crackdowns carried out by India's forces of control. In the case of the disappearance of Sheikh Gowhar Avour, it was alleged that Gowhar was a militant belonging to the TUM group. However Gowhar's family denied that he had any connection with any political group (Amnesty, 1999).

Fattah suggests that there are '*dangerous times and dangerous places*' for possible victimisations. Fattah's interpretation of 'dangerous times' refers to the assertion that evening or late hours and weekends are dangerous times for possible victims, but in this instance dangerous times will refer to a time period as a whole. By this it is meant that, in particular, the time frame from the late 1990's to early in the next decade was a dangerous time for State crime victimisations in Kashmir. As asserted earlier in this thesis, the late 1990s saw a surge of insurgent activity which culminated in oppressive legislation and over policing. An example of this is the treatment meted out to the families of the disappeared.

Under the *Jammu and Kashmir Public Safety Act, 1978*, relatives of those who have disappeared can be arrested for protesting against the treatment of their relatives (ibid: 27). 'Dangerous places', in the context of Kashmir can refer to the villages where military presence is high. For example Newburg asserts that since 1995 over 400,000 Indian troops have been deployed in Kashmir as well as 120,000 Pakistani troops posted in and around Kashmir and 70,000 paramilitary and associated forces nearby. Newburg conservatively suggests that there is a 'uniform' every fifty feet or so in the city (Newburg, 1995: 25)

Proposition Four.

Victims of State Crime must generally rely on the victimiser, an associated institution, or civil social movements for redress

As Kauzlarich correctly states, victims of state criminality are forced to rely on those who commit harm to provide them with official redress and recognition. If this is not forthcoming, then victims must depend on other institutions for help (Kauzlarich et al, 2001:186). The situation in Kashmir has complicated this process in many ways: the practices of the police in Kashmir being one such example.

The first step for victims to ensure that an EID is investigated, the whereabouts of the prisoner established, and those accountable for the alleged violation brought to justice is to register a complaint against the police. Police officers are obliged under section 154 of the Code of Criminal Procedure to take a complainants statement down in writing in a First Information Report (FIR). This is laid down, in clear terms, in the United Nations Declaration of the Protection of all Persons from Enforced Disappearance (UNDPPD).

'Each State shall ensure that any person...who alleges that a person has been subjected to enforced "disappearance" has the right to complain to a competent and independent State authority and have that complainant promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced "disappearance" has been committed...no measures shall be taken to curtail or impede the investigation' (United Nations, 1993)

Solicitors in Kashmir have repeatedly asserted that there is routine disregard for this right to file a complaint: local police have been directed to refuse to register complaints without first obtaining permission from higher authorities (Amnesty, 1999)

Redress for the disappeared or their families is also made difficult by the practices of the higher judiciary in Kashmir who appear unable or unwilling to provide justice to the "disappeared" and their families. The Jammu and Kashmir High court has two benches, one at Srinagar and one at Jammu. At present at least 200 *Habeas Corpus* petitions are reportedly pending and it is foreseeable that it will take years to clear the backlog of petitions. (ibid: 28, 69).

Filing *Habeas Corpus* petitions, is an expensive process which more often than not does not lead to the recovery of the person. Ordinary Kashmiris do not have the financial resources to sustain the long drawn out legal process – especially if they live in remote areas, which are often a long way away from the High Court. Many petitions have been dismissed by default, simply because family members can not afford the legal fees nor bear the cost of traveling to and from court (ibid).

Chillingly, Amnesty is also aware of dozens of cases where security forces have actively threatened, harassed or intimidated relatives to stop them from seeking redress. The parents of Mohammed Yousuf Lone, an unemployed graduate looking for work who was arrested by RR, were left badly beaten after inquiring about his whereabouts. Families of the disappeared have also alleged that they have been threatened to make statements which would exonerate the security forces. Neighbours of Fayaz Ahmed Sheikh were threatened by RR Officers until they agreed to sign blank papers (Amnesty, 1999)

The National Human Rights Commission of India, set up under the 1993 Human Right Act, should be an avenue for redress but the limited mandate of the commission prohibits it. Dr Farooq Abdullah, Chief Minister suggested that the NHRC would be set up to investigate all cases of human rights abuses, but a year later he had to back track. Abdullah admitted that the Commission would not be empowered to investigate allegations of abuses by armed forces (Naqshabandi and Powell, 2003). This limited mandate has left the Commission incapable of combating impunity facilitated by special legislation. The NHRC itself has expressed concern about the limitations of the Commission (Amnesty, 1999).

Although human rights organisations are unable to provide official redress, the work of organisations such as Amnesty and Human Rights Watch have been critical in highlighting the plight of the people of Kashmir. Both Amnesty and HRW produce

annual written reports documenting the human rights record of countries from around the world. The goal with these reports is to facilitate change within a country, but there is also a belief that there is a duty to convey the 'truth'. However, the problem with human rights reports is that many of them do not leave the closed circuit of human rights organisations and government offices. The attention paid to producing these reports is dispersed if they do not get to a wider audience. Most lay people do not know what the human rights situation, according to Amnesty, is in Peru or the recommendations Amnesty has given to the government of Tunisia. Whilst this is part of a wider problem concerning the type of information which is considered newsworthy by the Western media, the problem also lies with organisations such as HRW and Amnesty. Many human rights organisations put less effort into distributing these important documents, making sure that the general public has access to them, than they do into producing the reports in the first place (Cohen, 1998).

Proposition Five.

Victims of state crime are easy targets for repeat victimisation

As victims of EID rarely return after being arrested or turn up dead, days or months later (Amnesty, 1999), they are not usually subjected to repeat victimisation. However, in the case of the secondary victims of state criminality in Kashmir – the families of the disappeared – there is evidence of repeat victimisation. As outlined in previous sections, the families of those subjected to EID are victimised in the first instance by the disappearance of their relative, and then in the second instance by the criminal justice system and the representatives of the state.

Kauzlarich et al attend that the way in which victims of state deviance are harmed changes over time, arguing that the victimisation does not decrease, but just reoccurs in another form. Kauzlarich et al argue that in many cases victims are continually harmed by the same organisation. Using the example of the families of EID, victimisation is continual, and this victimisation is carried out by the state – the original victimisers. This section will further argue that the society in which these victims live is a further source of continued victimisation.

Widows of EID face three particular problems; economic difficulties, sexual harassment and a sense of social undesirability. Although widows are entitled to government support in the form of ex gratia relief, this is only paid out in 30% of cases and then the amount is normally only received after a number of years following their husbands death. Some widows have also reported corrupt practices by officials asking for a percentage of the payment in return for the money being received at all (Me'raj, 2004). Furthermore these women are often subjected to sexual harassment by control agencies that still patrol the area where their husband was taken and then killed.

Although they are not responsible for their husbands' death, widows are also isolated by a society where remarriage is frowned upon. However, the Kashmir clergy claim to play no role in the taboo on widow remarriage as they argue that Islam clearly encourages widows to remarry. Clerics point to the influence of Hinduism and Buddhism in recent years as a means of explanation why remarriage is not common. Widows of insurgents are the least desirable of all as they are directly associated with violence through their husbands (Burkhari, 2002).

Kashmir's 'half-widows', wives of EID who have never been found or confirmed as dead, face particular victimisation from both state and, in some cases, the family of their husbands. The disappearances of men have an immeasurable impact on Kashmir women who traditionally play a limited role in economic life. The situation is exacerbated for the half-widows as under Muslim Personal Law, a person cannot be declared dead for seven years after disappearance. Until then their property cannot be sold (Bhuagat, 1999). If the Human Rights Commission finds that the person has gone missing in custody they will provide compensation of 100,000 rupees (£1,200), but will offer no information on where their loved ones are or if they are still alive. The majority of half-widows do not receive this money as the Commission will often argue that the disappeared person is part of the insurgency or has just disappeared for other reasons (Huggler, 2005).

Children in Jammu and Kashmir, India, have also shown signs of psychological damage caused by relatives' disappearances. One school's vice principal said that children frequently brought guns to school. In one reported incident, a 10-year-old took a bayonet to school in Srinagar to show off to friends. He was outdone by another 10-year-old boy who had brought a grenade and pistol in his lunch box. These children, who have often witnessed severe human rights abuses, and who have had their education disrupted and their lives distorted by a climate of violence, are ill-equipped for normal life. Numerous studies (Aboud et al., 1991; Wolf et al., 1995; McClosky et al., 1995., and Muldoon, 2004) highlight the negative impact that a child's experience of political violence has on their subsequent development. Muldoon, for example, suggests that children in Northern Ireland not only suffer from mental health problems, but there is also evidence that deep social divisions accompany political violence experienced in childhood. Muldoon attends that many conflict areas are affected by other social issues such as poverty, deprivation and racism. His research also highlights how many young people feel distanced from institutions of governance (Muldoon, 2004).

Returning to Kashmir, a study carried out by Muzamil Jaleel, concluded that
'Kashmir children are socialized to violence and if this socialization towards violence continues unabated, there will be a revival of large-scale militancy after a decade' (Amnesty, 1998)

The fight against terrorism in a post 9/11 society can only be made all the more difficult when young people feel apathy, indifference and, in some cases, outright hostility to their government (Muldoon, 2004).

Proposition 6.

Illegal state policies and practices, while committed by individuals and groups of individuals, are manifestation of the attempt to achieve organisational, bureaucratic or institutional goals

The last section of a victimology of state crime attends that state criminality has previously been blamed on the deviance of one or more members of the respective criminal justice agencies or at the very least, misuse of an officer's authority (Pogrebin

and Atkins, 1976: 10). Kauzlarich et al argues that state harm is in fact due to a wider issue of individuals

'pursuing the larger goals of their respective organisations' (Kauzlarich et al, 2001: 188).

In order to assess this claim, structural explanations for institutional deviance will be evaluated in the context of the Border Security Forces (BSF) in Kashmir. A brief outline of the role the BSF provides in Kashmir will precede this discussion in order to offer an explanation of the likely 'goals' of the organization.

The ethos of the BSF, the armed wing of the state, is "Any task, any time, any where". Furthermore, the official website of this organisation attends that the BSF has given blood and sweat to execute its motto "Duty unto Death".

According to the BSF website, the tasks of the BSF are as follows:

1. Promote a sense of security among the people living in the border areas
2. Prevent unauthorized entry or exit from the territory of India.
3. Prevent smuggling and any other illegal activity (BSF, 2006).

A caveat is added to this which says that in addition to these duties, the BSF are also responsible for counter insurgency and internal security duties.

Looking further into the history of the BSF the organization was originally formed

'...to cope with armed aggression... The Government of India felt the need for a specialized centrally controlled Border Security Force, which would be armed and trained to man the International Border with Pakistan' (ibid)

Whilst the official role of the BSF is to 'protect the public', it is argued here that the actual role of the BSF is to protect the border *from* the public; or at the very least, from a certain section of the public. The claim that the BSF has one role which it presents to the public – the official role, and one role within the organisation – the actual role is consistent with Roebuck and Barker's assertion that;

'...police corruption is best understood not as the exclusive deviance of individual officers, but as group behavior guided by contradictory sets of norms linked to the organization to which the erring individuals belong' (Pogrebin and Atkins, 1976: 10 cited Roebuck and Barker, 1974).

Box further argues that the 'ugly face' of state control is hidden under the rhetoric of 'protecting the public' (1983: 80).

To explain why institutional deviance occurs, Vaughan argued that three interlinked concepts must be considered; competitive environment; organizational characteristics; and the regulatory environment. First, Vaughan attends that the competitive environment – in the case of Kashmir, the standoff between the insurgents and the state - generates pressures upon organizations to violate the law in order to attain institutional goals (Vaughan, 1992 cited Vaughan, 1983). As the BSF are under pressure to control the insurgency, methods of achieving this directive - which in normal circumstances would be frowned upon- will be tolerated, or perhaps even encouraged. Research has

found that BSF have in fact trained and organized guerilla groups to facilitate disappearances of suspected insurgents (Ganguly, 1997) – although Amnesty suggest that it is in the economic interests of these armed, renegade groups to ‘find’ suspected terrorists (Amnesty, 1999).

Vaughan also suggests that characteristics of the organization itself can facilitate opportunities to commit violations. In the case of Kashmir, the BSF has demonstrated characteristics such as: wilful disregard of life (disappearances); neglect of duty (citizens caught in crossfire between BSF and insurgents); stereotyping the public (arrestees classed as insurgents) and lack of respect for procedures (failing to file FIR) have all contributed to the harm to which many citizens of Kashmir have been subjected to

The last factor which Vaughan denotes as explaining state deviance is the regulatory environment to which the violators are subject (Vaughan, 1992 cited Vaughan, 1983.) Criminal justice agencies are protected in three ways. First, they are protected from possible legal redress by not following procedures which are laid down in legislation to protect citizens from possible abuse: for example, if there is no record that a person has been arrested and then disappeared; the officer can not face charges. Additionally, officers are often exempt from being policed as it is rare for another officer to report his peer to a higher authority. The police subculture desires to suppress any attempts to publicise deviant police activities. Further to this, is the fear that if officers report the misconduct of a fellow officer then it may result in a counter allegation concerning the reporting officer’s conduct sometime during his career. The threat of retaliation is a very real, pervasive fear due to the latitude of discretion used on the job (Pogrebin and Atkins, 1976: 12). Lastly, the officer is protected throughout the criminal justice process – from the courts to the limited mandate of the National Human Rights Commission, to the denial by the state that anything has happened: BSF are very unlikely to face charges for their conduct (Amnesty, 1999).

Summary of findings.

This section will summarise the findings which the research has offered and outline limitations observed with a Victimology of State Crime – in relation to Kashmir. Finally, avenues for further research will be outlined.

Proposition 1 held that victims of State harm tend to be amongst society’s vulnerable sections of the population. With regard to Kashmir this was not found to be the case as the majority of disappearances were men aged between the ages of 17-40 and furthermore, those who disappeared were likely to belong to any type of profession: white as well as blue collar. (Amnesty, 1999). However it was noted that victims of secondary victimisation were likely to be among the most vulnerable sections of society: namely women, children and the elderly.

The research supported Kauzlarich et al’s assertion that the State is able to claim precedence for “national security” matters over the right to due process (Kauzlarich et al, 2001: 183). Likewise the research was consistent with Kauzlarich et al’s claim that victims are dehumanized: it was found that both the primary and secondary victims are dehumanized by the state and its agents (Amnesty, 1999: 14).

The research held with Kauzlarich et al's argument that victims are scapegoated and stereotyped. It was found that the actions of the terrorists mean that ordinary citizens of Kashmir are treated as scapegoats and furthermore that the majority of those who disappear are stereotyped as being insurgents (Amnesty, 1999) – however the victims in Kashmir are not profiled. The research shows that as victims are stereotyped, this means that anyone could be deemed guilty of being a terrorist or harbouring an insurgent (L O'Reilly, pers comm., 20 January 2005)

The next proposition attended that victimisers often do not recognise the harm that their practices and policies cause. This is supported by the available evidence as legislators have introduced draconian laws which give almost limitless powers to India's agents of control. The harm is not recognised as politicians argue that these laws 'protect the public'. Furthermore Kauzlarich et al state that if victimisers understand the harm that they cause they often find reasons, excuses and justifications for these laws. Using Sykes and Matza's classic study of the concept of denial, the evidence supported Kauzlarich et al's claim

The third proposition discussed is the worrying assertion that victims are blamed for their suffering. Again, the research agreed with Kauzlarich et al's general propositions and utilised Fattah's victimisation model in order to discuss this in relation to Kashmir.

The fourth notion central to victimisation by the State is that the victims must rely on those who have caused them harm for redress. This is something which is particular to the victims of state crime only. This section then went on to outline how this situation is complicated by the state making it difficult for victims to receive recognition that a crime has been committed, official redress or even compensation for the harm caused (HRW, 1999). Kauzlarich et al also attended that if this redress is not forthcoming then victims must then hope for acknowledgment from an associated institution. In this case, an associated institution was taken to refer to the work of human rights organisations such as Amnesty International and HRW.

Proposition 5 claimed that state crime victims are likely to suffer repeat victimisation and that this victimisation did not decrease, but instead took another form. This particular section was most at odds with the case study analysis as the victims in question either died following their disappearance or were feared dead (Amnesty, 1999: 1). As a result, this section concentrated on the forms of secondary victimisation. This section in particular differed from Kauzlarich et al's original assertions – and in some small way, added to the theory of state victimisation. This will be discussed in further detail in the part of this paper which outlines the limitations of a *Victimology of State crime*.

The last proposition argued that an explanation for the deviance of institutions of the state should not be one which focuses on the motivations of individuals, but should instead look for structural causation.

The research in Kashmir was consistent with this claim as it was found that the overriding role of the control agencies – the BSF used in this example – was to control

or catch suspected insurgents. This role is different from the proclaimed ideology of the BSF as the public are told that the purpose of the BSF is to protect the public (BSF, 2006).

Limitations

There were two limitations observed with utilising Kauzlarich et al's propositions. The first was one which was mentioned by the authors in their original paper: '*Toward a Victimology of State Crime*'. The authors note that the study of State crime victimology is deficient, so as a result there is not a large research base to draw upon (Kauzlarich et al, 2001, 173). They attend that their propositions are general observations about the experiences of the victims of various forms of State deviance; as a result they may not be applicable to all cases. However, on the whole, these propositions were consistent with the experiences of people in Kashmir who are 'disappeared', as well as the families of EID.

There was only one major incident where the research could not support the claims of Kauzlarich et al – discussed in the next section – and a few minor examples where the research differed. As Kauzlarich, Mathews and Miller suggested, the intention of their paper was meant to facilitate the development of the study of victims of state criminality (ibid).

Development of a Victimology of State Crime

As was mentioned in the previous paragraph, there was one major example where the case study of Kashmir could not support the claims of Kauzlarich et al: this was proposition five which suggested that;

'Victims of state crime are easy targets for repeat victimisation' (ibid: 187).

The problem with this assertion, when using Kashmir as a case study, is that the research suggests that those who are disappeared would not be further victimised by the State as they are often likely to die during EID or are suspected dead (Amnesty, 1999).

However it was noted that secondary victims of State victimisation are likely to suffer repeated victimisation. Throughout a '*Victimology of State Crime*' the experience of the secondary victim was not alluded to, thus it is this which has been developed by this paper. In the context of the research, secondary victims are defined as being the;

'Family or dependants of the primary victim who are in turn victimised by the original victimisers and (or) by other actors'.

In the case of Kashmir, secondary victimisation refers to the way in which the family of those who disappear suffer repeat victimisation: firstly, by the State and then secondly by the society in which they live.

The State further victimises the dependants of those who disappear in two ways. First, through the subjection of a harmful criminal justice process. Routine disregard for the right to file a complaint against the police or other agencies of control denies the family their chance to have allegations of human rights abuses investigated (Amnesty, 1999): whilst legislation prohibiting demonstrations means that distraught relatives are criminalised instead of being treated as a victim of a crime. Further to this, research by Amnesty suggests that dependants are harassed and intimidated by security forces in

order to stop them from seeking redress. The few relatives who are able to afford to take their case to court find that justice is further prohibited by a criminal justice process which shields the perpetrators. The higher judiciary in Kashmir has a backlog of cases which will take years to clear, if at all: whilst the NHRC is powerless to prosecute security forces (ibid)

State crime victims in Kashmir suffer additional victimisation by the state: they are denied or delayed from receiving monetary compensation, to which they are clearly entitled to (Huggler, 2005). Me'raj notes that although widows are entitled to ex gratia payments, this is in fact, only paid out in less than 30% of cases. In the majority of cases, government officials refuse payment as they maintain that the person who has disappeared has either joined a terrorist organisation or is missing due to problems in the family. Research has shown that some widows are offered compensation by the government in return for a percentage of the payment by corrupt officials, or as a bribe to drop the search for their husband or son (Me'raj, 2004).

It is also argued that secondary victims suffer further victimisation carried out by the society in which they live. This is done so in three ways. First, the widows are unlikely to be able to move on with their lives as remarriage is unlikely. Although Muslim scholars deny that they prohibit marriage for widows, very few actually do remarry. In the case of the half-widows, it is even less likely that they will have the chance to remarry, as they are often negatively associated with violence through the disappearance of their husbands (Bhuagat, 1999).

Women also suffer at the hands of their husbands' relatives: many are forced to leave their home at a time when they need a stable environment. Widows suffer physical abuse at the hands of their in-laws, whilst some reported that the meagre compensation that the government paid out for the death of their husband was in fact taken from them by a relative by marriage (Burkhari, 2002).

Children suffer as they have often witnessed the grossest of human rights violations. These children have their education disrupted, often have to move home, or live under conditions of extreme poverty or threatened violence. Furthermore, many exhibit signs of predisposition for violence, extreme depression or hopelessness: in short, the way is prepared for the next generation to resort to violence to resolve their problems.

Further Research

This paper has two recommendations for further study;

- A comparison study with, for example, the 30,000 people who disappeared in Argentina during the 'dirty war' (Project Disappeared, undated) might be useful in order to show any differences or similarities between the experiences of those in Kashmir.
- Green and Ward argue that natural disasters are a form of State harm; believing that that, in some cases, the response by the government in the time period *following* the disaster could be classed as a form of State harm (Green and Ward, 2004: 52). This claim is interesting when one refers back to the recent earthquake which affected large rural areas of Kashmir. Some have argued that the ongoing

conflict between India and Pakistan meant many more people died as they did not receive vital aid (BBC News, 2005). In contrast, some alleged terrorist organisations were instrumental in providing essential material aid.

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