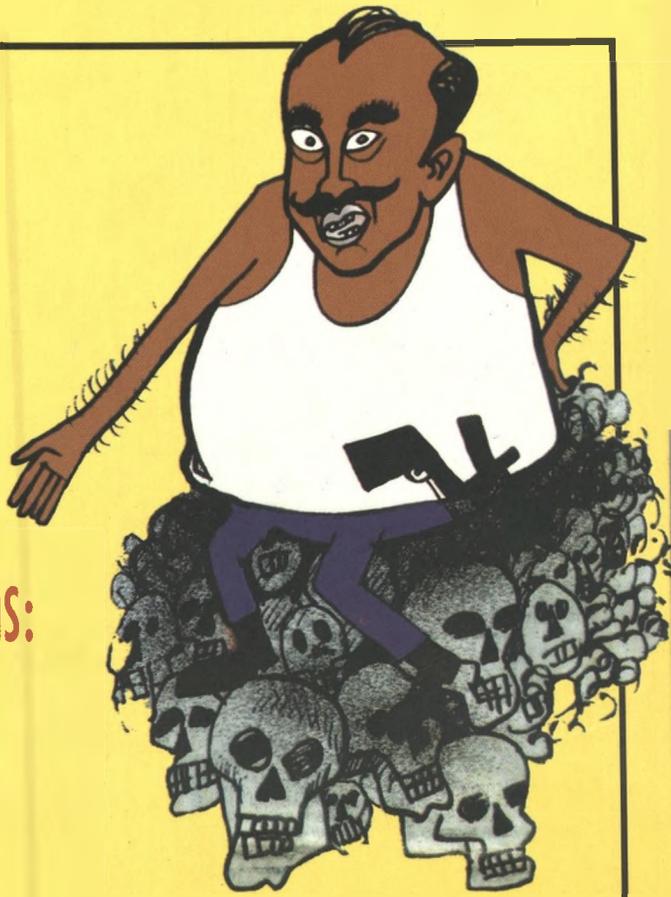


The Debates on
Truth Commissions:
A Retrospective
Healing Process ?



Indika Bulankulame

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LAW AND SOCIETY TRUST

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ISBN: 955 - 9062 - 91 - 3

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Political violence devastates families and communities and destroys the routines of everyday life; the physiology of trauma is as much a result of social trauma as it is an entity unto itself. The experience of suffering is interpersonal, involving lost relationships, the brutal breaking of intimate bonds, collective fear, and an assault on loyalty and respect among family and friends.

Arthur Kleinman (1995)

**Dedicated to all those victims of circumstances
Across Geographical Spaces and Time.
Who do not know the Truth
Where it is or what it is**

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Foreward

The Law & Society Trust, concerned about the legacy of “involuntary disappearance” in the island, has initiated a project to ensure that accountability in the issue of disappearances should be a central part of the peace process. The Trust hopes to be informative to victims affected by disappearances to realise their rights to compensation and also empower lawyers throughout the island in legal as well as organisational strategies to enable them to challenge and prevent disappearances.

The essay produced which primarily focuses on “truth commissions” and its “challenges” is in essence takes a deeper look and a step towards these goals.

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Preface and Acknowledgments

“Truth: the road to reconciliation, by telling our stories of the past, so that we can walk the road to reconciliation”

From the poster hanging in the panel behind the African Commission public hearing: Hayner 2001

Why Truth Commissions?*

Undoubtedly, the peace process currently occupies a great deal of conversation time from the regular mundane conversations Sri Lankans often have with each other here and abroad. So much so, that there is much speculation and debate on the subject among various factions of people, academics, professionals, bureaucrats etc and especially the intellectual community of this country. However, we must remind ourselves that we are still in the “process” of it all. Besides, even in that sense we are very much in the dark about its progress. But one *hopes* not to loose faith. At this point something that I read somewhere comes to my mind: “people who say it cannot be done should not interrupt those who are doing it”.

Yet, even then while we are in the process of building “peace” in that same momentarily capsule “peace” has also come to its intangible *almost expected abrupt* stall. While the politicians debate confront and

* This is an extract of a chapter from the “Political violence in Sri Lanka: Women, Children, Problems of Trauma and Mechanisms of Coping” M. Phil Thesis, University of Sussex, Brighton, England. Forth coming publication 2004. A slightly different version of this essay was presented at the Faculty Seminar, Department of Sociology, University of Peradeniya, 9 August 2002 and was published as a serialised essay in the “The Island” Mid Week Review on 2,9, 16 October 2003

confuse the masses, the media continues to investigate and entertain us with local debates that generate around the question of peace. Conversations still continues in diverse forms and Transitional Justice issues are other aspects to these ever generating discourse. There is also a strong interest on the idea of “Truth and Reconciliation”. It is in this context that the 2002 Neelan Thiruchelvam Memorial Lecture delivered by Alex Boraine, former Vice President of the South African Truth and Reconciliation Commission and a subsequent workshop organised by the International Centre for Ethnic Studies in Colombo were clearly meant to open doors to the debate on the *idea* of reconciliation.

In the light of the above context its been an year since these conversations started generating. It is imperative to note reconciliation comes at the end of a transition, a change or a turn of events. In that sense, I do not feel that we have come to that point as yet to talk about delivering the “truth” as part of the peace process and reconciliation. Furthermore, how much reconciliation and how much healing can we hope to find through the use of a mechanism such as a truth commission in a cultural context such as ours?

This essay attempts to examine two such commissions. One is the South African Truth and Reconciliation Commission, which, I have used for its clarity and professionalism of process. The second is the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons appointed in 1995, the first of its kind to be established in Sri Lanka, which is examined in considerable depth and highlights some important issues and grey areas. The idea is not to compare, but to understand the stand point of Truth Commissions appointed by state agencies. At a time when we are this reflective of knowing the truth we need to be aware from previous experiences the consequences of knowing the truth.

I thank Damaris Wickremesekera , Director of LST for writing the forward and Prabhath Sahabandu, Deputy Editor of The Island for giving me permission to reproduce the cartoon that appeared in an earlier version of this essay in the Mid Week Review of the Island.

I also like to thank Fiona Ross, Senior Lecture of the University of Cape Town , South Africa , whose work, shed much light on the Truth and Reconciliation Commission of South Africa, for her kind permission to quote from her unpublished work.

I like to acknowledge Allan Keenan and Ramani Mutthettuwagama for their commitment towards human rights issues that exists within this country, and I take this opportunity to thank them for their support in all the work we do and to the growing friendship.

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The Politics, Mechanisms and Expectations of Truth Commissions

This essay attempts to locate the extent to which Truth Commissions have been used as mechanisms to bring about national reconciliation, justice and healing to survivors of political violence. While giving a wider perspective with reference to South Africa, Argentina, and Chile, my main focus is on the Sri Lankan Commission appointed in 1995. This was officially called the Commission of Inquiry into the Involuntary Removal or Disappearance of Persons.

Broadly speaking, Truth Commissions can be defined on the basis of the following characteristics:

“ 1.) Truth Commissions focus on the *past*; 2) They investigate patterns of abuses over a period of time, rather than a specific event; 3) A 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; and 4) These commissions are officially sanctioned, authorised, or empowered by the state (and sometimes also by the armed opposition, as in a peace accord)” (Hayer 2001: 14).

To date, five major Truth Commissions and sixteen less prominent commissions¹ have emerged to address the atrocities that have been committed by various bodies, political parties and resistance groups. Truth commissions have also acquired different names, and sometimes the word “truth” is not even in it. There are a number of reasons, why a Truth Commission is established in a country. Truth Commissions

may attempt to reconfirm what is already popularly known knowledge (torture, violence, killings etc) but not acknowledged by any form of authority. To quote Michael Ignatieff:

“the past is an argument and the function of a truth commission, like the functions of honest historians is simply to purify the argument to narrow the range of permissible lies” (Ignatieff: 1996).

Some believed that commissions represent a form of benevolence, for instance in post war Nigeria. “For many people in Hausaland however, far from the battles, the policy of reconciliation was seen as an act of exceptional generosity (Last 2000: 36). Some South Africans argue that the Commission’s most valued contribution was to remove any possibility of continued denial (Hayner 2001).

Similarly, many have argued that ‘justice’ in the narrow sense in which it is usually articulated in popular discourse is not achievable through mechanisms such as Truth Commissions. Perhaps that is why when the Chilean President Patricio Aylwin came to power that he observed “full justice” was “generally an unachievable goal” (Aylwin 1995: 42). Aylwin, on the day the report of the Chilean Commission was released, made a statement on national television:

“When state agents have caused so much suffering and their superiors have failed to prevent or punish such deeds and when society’s reactions have not been strong enough to stop these abuses, then both the state and society as a whole are responsible. That is why, on behalf of the nation, I publicly ask the families of the victims for forgiveness” (1995:38).

Other reasons for the establishment of a Truth Commission may well be national reconciliation. It may also serve the purpose of giving legal status to the persons who disappeared. This may in turn give the survivors access to compensation and to bank accounts or even a will

and death certificate. This was especially true in the case of Sri Lanka and Argentina, and this practicality did much for the survivors. In addition, acknowledging and evaluating institutionalised responsibilities in these acts of violence, changing laws, and to have well-documented literature on the activities of the past, can help in the prevention of such activities in the future (Hayner 2000, Perera 1999, Ross 2000).

However, Truth commissions are appointed at a time of political transition thereby, a commission is mostly politically motivated.

Truth Commission in Sri Lanka

The year 1994 saw a great change in the structure of governance in Sri Lanka, when the Peoples' Alliance Government came to power after seventeen years of rule by the United National Party (UNP). They pledged to institute a "Commission of Inquiry into the Involuntary Removal or Disappearance of Persons" (hereafter referred to as the commission) to investigate disappearances between the period 1988-1990.

The commission was appointed by the President² to inquire into incidents that took place after 1st January 1988. Three separate commissions were set up to investigate relevant matters in three specific geographic locations. The three commissions, although they were appointed on the same day and shared identical mandates, operated rather independently of each other. This was the first body of a formal nature that emerged in post conflict Sri Lanka to investigate the aforesaid period of terror. Each commission is identified here in the following manner throughout this essay:

- Commission A covered Central, North Western, North Central, Uva Provinces.
- Commission B covered Western, Southern, and Sabaragamuva Provinces.
- Commission C covered Northern and Eastern Provinces.

The mandate of the three commissions is summarised as below:

- a.) "Whether any persons have been involuntarily removed or have disappeared from their places of residence in (names of different provinces as given above) at any time after January 1, 1988;

- b.) The evidence available to establish such alleged removals or disappearances;
- c.) The present whereabouts of the persons alleged to have been so removed, or to have so disappeared;
- d.) Whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;
- e.) The legal proceedings that can be taken against the persons held to be so responsible;
- f.) The measures necessary to prevent the occurrence of such alleged activities in the future;
- g.) The relief, if any, that should be afforded to the parents, spouses and dependants of the persons alleged to have been so removed or to have so disappeared” (Commission A 1997: P.4)

The commissions were given an unrealistic goal of four months to submit a report or an interim report on the findings, and it ultimately took the three commissions over two years to submit their final report (Perera 1999). All three commissions appear to have collected information on a similar manner through questionnaires and appeals. Information on the disappeared was also gathered from government sources and NGOs and through public and private sources.

Points (a) and (c) in the mandate of the commissions above attempt to establish the nature of a person’s disappearance. However, commissioners found the distinctions between the disappeared or the abducted, and the ones between disappeared and subsequently killed

and therefore never returned, confusing. The mandate places heavy emphasis on those disappeared³ but not on those who disappeared and were subsequently killed. However, they ruled that this class of person also fell within the mandate, despite some opposition. This decision is important as the clause enables the commissions to investigate not only 'state' sponsored violations but also the killings done by 'subversives'. The total number of petitions inquired from all three commissions is over 27,000 (Hayner 200. P.65).

The image of the commissions

One of the fundamental issues that I came across during fieldwork is the questionable image the commission had acquired. Throughout the reports there is much emphasis on the disappearances caused by state, and para-military groups and by other groups formed by personal enemies in collaboration with the state and para-military groups. The commission inquired seven hundred and seventy nine killings done by subversives. Rupa, whose husband was killed by the JVP had this to say:

“That commission is not for us, my husband was killed by the JVP,. That was for those disappeared and killed by the army.”

Obviously, it was not clear as to who can appeal to the commission. Ashoka an informant from a different social standing who lost his father thus commented:

“We didn’t go for that commission, it was for the state killings, that is the impression we got”.

Even if many people from the rural sector in the South might have misunderstood the mandate of the commissions through ignorance, Ashoka who is well educated and articulate, does not fall into the above category. I asked the same question from victims, who lost their next of kin to the armed forces, as to why this “lady did not go for the commission”. They invariably said, “she wouldn’t go. This commission was only for those killed by the armed forces. It’s not for those who got killed by the JVP.”

This impression perhaps discouraged many members who lost someone to the JVP, from appealing to the commission. I place in context M.C.M. Iqbal:

“These disappearances occurred mainly in the southern part of Sri Lanka and the victims were largely Sinhala youth. The disappearances were not a campaign by a hostile foreign enemy, nor were they part of a bloody civil war or revolution. It was a campaign by a democratically elected government [UNP] to remove an opposition” (Christian Worker September 2001: 67).

The statement above was made by the secretary of one of the three commissions. If this is the impression that the members appointed commission had about the said period of disappearance, then naturally this would impact on the overall impression on the commission as bodies appointed exclusively to investigate state sponsored disappearances.

The exclusions of this segment of disappearances and killings by the Commissions is a failure on the part of its designers and implementers and clearly indicates the very political nature and motive for this omission. That is the regime was merely interested in investigating violations of the UNP regime, the political enemy of the PA government for seventeen long years.

Compensation

There is heavy emphasis on compensation and reparations in these reports. What are the subsequent consequences of compensation and the psychological effect it has both on the victims and the community at large?

Compensation payments began as early as 1988, under the Ministry of Rehabilitation and Reconstruction under a programme called "Payments of Compensation to Most Affected Persons (MAPs)". Under this scheme handled by the Government Agent/Divisional Secretariat, compensation was paid in the following manner:

Death of a married person	Rs. 50,000
Death of an unmarried person	Rs. 25,000
Death of a minor (2 year and above)	Rs. 5,000

Special category – Politicians

Death and injuries	Rs. 6,000,000
Spouses and children in death and injuries	Rs. 5,000,000

(Under circular no 2/88 23rd of July, 1988. Payment of the full salary with all allowances and increments until the age of 55)

2. Ex-gratia payment up to a maximum of 50,000 as follows

Wife	Rs. 75, 000
Children- per child below 8 years	Rs. 8,750
If the wife is dead –children under 8 years	Rs. 37,500
A bachelor - paid to the parents (if parents are dead brothers and sister unemployed and below 8 years, unmarried)	Rs. 75,000

Compensation for loss and damage of property :

On the value of the damaged sustained	Rs. 50,000- 300,000
---------------------------------------	---------------------

Source: REPPIA- Rehabilitation of Persons Properties and Industrial Authority

It is clear that to a certain extent, compensation was paid before the PA government came to power. However, facts emerging from these reports suggests, that compensation was limited to a segment, those victimised at the hands of the subversives and not so much by the reprisal killing done by the state. A cabinet decision taken on November 22nd 1989 also had a grave impact on the beneficiaries.

Firstly, the victim's identity had to be cleared by the survivors. The survivors were victimised by the unpleasant task of lurking at police stations for the necessary clearances. One of the things that was acted upon and implemented by the commissions was the compensation to next of kin of public servants, who were earlier not compensated due to their alleged connections with subversive activities.

My fieldwork indicates that compensation brought ethical dilemmas to those affected by subversive and by state sponsored violence. One problem among these people was that all of them lived in the same village in close proximity to each other. There seems to be a tolerance of each other even though they knew who supported subversives, who supported the government and who wanted to be left alone. However, I feel that there is a burning issue underlying this toleration, as they feel that no justice has been done.

Ameratunga and his aunt were threatened at gun point by known subversives. He is still very traumatised by the incident. Today, the wife of the chief subversive in that area, who was a party to the above incident, has been compensated for the killing of her husband by the security forces. He had this to say:

“They all got compensation. We who lived in fear of our own lives, for the lives of my wife and two children have nothing. We only live with that fear I will never be able to forget that; Yet we speak to them.”

Ceremonies conducted to distribute compensation to the victims brought problems of ethics. The ceremony itself is politically driven and is impractical, causing expenses to the victim. In the act of receiving, they not only relive their pain and memories, but also breed revenge, hatred and shame. This lack of sensitivity is psychologically damaging especially, as it comes after ten years since the terror.

There is another point I want to make on compensation. As seen from the above descriptions, compensation was given to widows or mothers of unmarried children. The idea of compensation is supposed to work towards reconciliation. The actual monies are by way of making amends to sustain the survivors. If it is so, mothers also witnessed

their married children being killed as was the case with Rupa's mother-in-law. As Susila says, "for mothers there is everyday pain". I would like to point out that compensation has taken a clinical nature, and the insensitivity factor has re-emerged, without serious considerations and flexibility as would be culturally required.

In Argentina, its reparation programme was brought in ten years after the Truth Commission finished its reports. Although there was no public demand for reparation as the need of the day was to locate bodies, and establish truth and prosecute the guilty. Thus compensation for some had a sour taste. One group that represents the victims denounced state reparation as "blood money," "Life doesn't have a price" (Hayner 2000:177).

On the basis of field interviews I would argue that in the Sri Lankan context people or rather victims testified with two objectives in mind; one was that the perpetrators would be brought under the law, and the other in the hope that there will be some compensation by the state. My informants were more interested in receiving compensation first, than litigation. The first is clearly seeking truth, knowledge and justice, which would pave the way for healing. The other is the formal acknowledgement from a larger political body of the reality that surrounded the death or disappearance of their loved ones and the practical necessity for accessing some funds for the sake of continued survival.

However, there was also a fear in giving testimonies. There was also no protection guaranteed. Perera says that one woman from the town of Buttala had this to say:

"I was returning home after giving evidence. Then someone told me before I got off the bus that the policeman responsible for my husband's disappearance had come back and was waiting for me. I had to hide for three days out of fear" (Perera 1999: 125).

One of the other things that women expected from the Commission was also to have some social support. Hayner describes the case of Negalambe from South Africa who wanted assistance in fixing things that were damaged during the attack: “the roof still leaked from bullet holes and the front door wouldn’t lock well ever since it was forced open, but the commission hadn’t promised anything, not even an investigation” (Hayner 200 :43). Similarly, of my aged informants’ house was burned down, but is now rebuilt. They showed me all over the house the burnt marks left behind by the fire. This tour was no doubt not only to show me the extent of the loss of property, but also to ensure that I recognised death, justice and their present position. This could hardly be visualised through the testimony of a commission.

Women encountered sexual advancement and harassment at the hands of officials in the process of receiving compensation. I place below Perera’s observations:

“The problems of sexual harassment came from village or local level government officials such as *grama sevek*as and Registrars of Death and Marriages and regional bureaucrats such as Assistant Divisional Secretaries and other bureaucrats in regional officers such as Divisional Secretariats. In one instance, a young widow went to the local *Grama Seveka* with her mother to get a recommendation from him to get her husband’s death certificate. He demanded that the mother leaves the daughter at his house and comes back in the evening. After repeated demands from the official to leave the young widow with him on the pretext that it will take a long time to process the essays, the two women went away without the required letter” (Perera 1999:75).

Recommendations on legal procedures were very slow in coming. The President did not publicly comment on the reports.⁴ The President

also did not take any immediate steps to bring to courts persons allegedly charged in the armed forces due to the on going war. However, in the report of the 1999 Amnesty International, it appears that some were charged for their crimes (quoted in Hayner 2000: 66).

Dealing with the past

One of the more crucial questions that one has to ask here, is how well equipped was the commission to deal with victims who had experienced severe trauma. It is questionable how the members defined trauma and at what levels. All of the members themselves had backgrounds in the legal field or history or politics, but none with a psychology background. Moreover, there was only one woman member in the commissions. Some were also not bilingual or were not fluent in the language of the survivors. Rukmani said a 'gentleman' of a different ethnic origin "who couldn't speak much Sinhalese" was asking her questions during commission hearings. Perera describes another woman who testified:

"I felt as if they did not believe what I was saying. Sometimes, they talked in English with each other while I was giving evidence. It seems that what I said really did not matter. They seem to have already made up their minds" (Perera 1999: 124).

In most cases, lawyers, human rights advocates, or other lay persons are hired to take testimonies for the commissions. Although the South African Commission had trained officers sensitive to the psychological trauma that victims will undergo in the process of remembering inflicted violence, so much cannot be said for Sri Lanka. It seems the members themselves were not sensitive enough to the victims. There should be support services to deal with the socio- psychological trauma that one goes through in giving testimonies.

My informants did not have a clear idea of the overall objectives of the commissions. As one observed, "they asked how this person disappeared and how that one got killed and when? Were there others? Were there people who saw his body? How was he taken? Was there anyone you suspected?" These were one to one questioning sessions.

These sessions lasted from about five-to-fifteen minutes and did not do anything to ease their pain (Hayner 2000: 65). It is possible to quote from the commissions own reports on the emotional nature of the testimonies they encountered. One women said, "I am out of my senses since I saw my son's headless corpse in the river" (Commission B Final :166).

I would like to question how the commission dealt with this emotional aspect at the time of testimony. As I have quoted below, they claim that the commission is a platform to express suppressed grief. The fact that the commissions did not contain a single psychiatrist in their panels and did not offer services of psychiatrists or counsellors when recording testimonies point to the fact that in many ways the commissions are ill conceived and ill planned not as mechanisms of healing but as political machinery of a particular regime with its own agenda. I doubt very much whether the members of these commissions were able to deal with the narration of psychological trauma, given the fact that they themselves may not have had exposure to such emotional disturbances. One member from the commission stated in an interview that he is in great distress since the hearings. It aggravates him that the perpetrators are still out there in the open. He also has trouble dealing with what he has heard.

In these reports, three things can be identified: the state of law in this country, the compensation aspects for the victims and the nature and extent of extra – judicial killings. Thus, even though a commission of this nature is a timely act, the influence and politicisation of the commission has not done justice to some of the recommendations of the report. Moreover, the lack of guidance in contextualising the political situation of the country prevalent at that time and the narrowed focus on national reconciliation, has left the survivors feeling more like victims, and the perpetrators moving on.

However, members of the Sri Lankan Commissions seem to believe they have a healing capacity:⁵

“this commission became a forum for thousands of such affected families whose children or spouses had been abducted and disappeared during the “reign of terror” of Southern Sri Lanka in the late 1980’s. They related to use with their own experience the pain and misery they have been undergoing for the last seven or eight years. It appears that the mere passage of time has not significantly helped the healing process” (Commission B, Final: P.162).

I would argue from the facts I have presented so far that in the Sri Lankan context survivors tend to prioritise financial gains from commissions above everything else. The justice they are looking for is secondary. However, neither came to them easily. In fact, the commission opened and reopened wounds that were closed for almost ten years. Talking about one’s pain and sharing grief, especially with someone other than themselves, is a positive element, if it was done in the proper environment. Sadly, this was missing in the formal context of the Sri Lankan commissions. The idea of a commission like this is not to make the survivors feel helplessly vulnerable but to make them strong, and allow them the capacities to rebuild their confidence in the system of justice and governance that would have helped them in the long run. In this sense, the Sri Lankan commissions did not come anywhere near being a mechanism of coping for thousands of survivors who testified at commission hearings.

End Notes

- ¹ For details see: Hayner (2001).
- ² Warrant dated 13.11.1994.
- ³ Some returned as tortured victims.
- ⁴ As some perpetrators were fighting the war in north-east.
- ⁵ It is in this same capacity that public monuments have recently come about. The most controversial of these is the *Shrine of the Innocents*, a monument dedicated to the thirty-eight schoolboys that disappeared in the south during the terror period. See Bulankulame (2000) and Perera (2000) for detailed accounts.

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Her research interest includes political violence, conflict resolution in Sri Lanka, Politics of identity, culture and gender studies. She is the editor of the feminist journal *Nivedini* 2003. She is also a member of the Collective for Socio-Cultural Inquiry and serves in the editorial board of its journals *Patitha* and *Panuwal*.



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ISBN: 955 - 9062 - 91 - 3