

# Trapped Between Life and Loss: The Human Rights Struggle of Half Widows

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**Abstract**—The phenomenon of “half widows”—women whose spouses have disappeared in conflict situations without confirmation of death—represents a deeply under-examined dimension of contemporary human rights discourse. Situated at the intersection of gender, conflict, and legal invisibility, these women endure prolonged uncertainty that deprives them of both social recognition and legal protection. This article critically examines the human rights implications of enforced disappearances through the lived realities of half widows, with particular reference to conflict-affected regions such as Kashmir. Drawing upon feminist legal theory and the framework of transitional justice, the paper argues that existing international and domestic legal regimes inadequately address the structural and gendered vulnerabilities of half widows. It concludes by proposing a rights-based approach that emphasizes legal recognition, accountability, and reparative justice.

## I. INTRODUCTION

Armed conflict frequently produces not only immediate humanitarian crises but also long-term, less visible forms of suffering. Among these is the condition of women whose spouses have disappeared under uncertain circumstances, leaving them in a prolonged state of legal and emotional ambiguity. Commonly referred to as “half widows,” these women occupy a liminal space between marriage and widowhood, where neither closure nor recognition is attainable.

This article argues that the condition of half widows reveals structural deficiencies in international human rights law, particularly in addressing enforced disappearances and their gendered consequences.

## II. CONCEPTUAL AND THEORETICAL FRAMEWORK

### 2.1 Feminist Legal Theory:

Feminist legal scholarship highlights the ways in which legal systems often marginalize gender-specific

harms. As Catharine A. MacKinnon argues, law frequently reflects male-centered norms, thereby rendering women’s experiences invisible within formal legal structures.<sup>1</sup>

The plight of half widows exemplifies this structural invisibility, as legal frameworks tend to prioritize the disappeared persons while neglecting the relational harms suffered by those left behind.

### 2.2 Ambiguous Loss Theory

The concept of ambiguous loss, developed by Pauline Boss, describes a form of unresolved grief arising from the absence of certainty regarding a loved one’s fate.<sup>2</sup> This framework is essential to understanding the prolonged psychological distress experienced by half widows.

### 2.3 Transitional Justice Framework

Transitional justice mechanisms are intended to address past human rights violations through accountability and reconciliation. However, as Ruti Teitel observes, such frameworks often prioritize political stability over individual experiences of harm.<sup>3</sup> Half widows frequently remain excluded from these processes, as their claims are neither fully recognized nor adequately addressed.

## III. ENFORCED DISAPPEARANCES AND INTERNATIONAL LAW

Enforced disappearance constitutes a grave violation of international human rights law. The United Nations defines it as the deprivation of liberty followed by a refusal to acknowledge the fate or whereabouts of the person concerned.<sup>4</sup>

Key legal instruments include the International Convention for the Protection of All Persons from Enforced Disappearance,<sup>5</sup> the International Covenant

on Civil and Political Rights,<sup>6</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>7</sup>

Despite these frameworks, enforcement remains inconsistent, particularly in conflict-affected regions.

#### IV. JURISPRUDENCE AND CASE LAW

Judicial bodies have addressed enforced disappearances and established important legal principles.

In *Velásquez Rodríguez v. Honduras*, the Inter-American Court of Human Rights held that states bear responsibility not only for direct violations but also for failing to prevent and investigate disappearances.<sup>8</sup>

Similarly, in *Kurt v. Turkey*, the European Court of Human Rights recognized that the suffering of relatives of disappeared persons may constitute inhuman treatment under Article 3.<sup>9</sup>

In *Varnava and Others v. Turkey*, the Court reaffirmed the continuing nature of disappearance-related violations and the obligation of states to investigate.<sup>10</sup>

While these cases acknowledge the rights of families, they do not sufficiently address the gendered realities faced by half widows.

#### V. THE LIVED REALITIES OF HALF WIDOWS

Half widows face intersecting forms of marginalization:

- Legal invisibility, due to the absence of death certification;
- Economic vulnerability, stemming from loss of primary income;
- Psychological trauma, arising from prolonged uncertainty;
- Social exclusion, shaped by patriarchal norms.

These factors collectively demonstrate how enforced disappearance produces layered and enduring human rights violations.

#### VI. EMPIRICAL CONTEXT: HALF WIDOWS IN KASHMIR

##### 6.1 Scale of Enforced Disappearances

Empirical data from the Office of the United Nations High Commissioner for Human Rights indicates that

over 8,000 cases of enforced disappearance have been reported in Kashmir since 1989.<sup>11</sup>

This figure is supported by independent human rights organizations, which estimate between 8,000 and 10,000 disappearances, reflecting a pattern of systemic abuse.<sup>12</sup>

##### 6.2 NHRC Engagement

The National Human Rights Commission of India has acknowledged disappearance-related complaints and sought reports from state authorities.<sup>13</sup> However, its role has largely remained recommendatory, with limited enforcement capacity and few successful prosecutions.<sup>14</sup>

##### 6.3 Mass Graves and the Right to Truth

Investigations have identified over 2,700 unmarked graves across multiple districts, raising concerns about the fate of disappeared persons.<sup>15</sup>

The Office of the United Nations High Commissioner for Human Rights has expressed concern regarding the lack of effective investigation and accountability in such cases.<sup>16</sup>

##### 6.4 Gendered Impact

Reports indicate that thousands of women are affected as half widows, with estimates ranging from 1,500 to over 2,500 individuals.<sup>17</sup>

These women face legal uncertainty, economic hardship, and social marginalization, highlighting the gendered consequences of enforced disappearance.

##### 6.5 Impunity

UN officials have noted the persistence of “almost total impunity” in cases of enforced disappearance in Kashmir.<sup>18</sup>

The absence of accountability mechanisms perpetuates violations and denies justice to victims and their families.

#### VII. TOWARDS A RIGHTS-BASED APPROACH

A comprehensive response must include:

- Legal recognition of half widows;
- Access to reparations and social protection;
- Strengthened investigative and judicial mechanisms;
- Gender-sensitive policy frameworks;

- Enhanced international oversight.

### VIII. CONCLUSION

Half widows represent a profound yet under-recognized human rights crisis. Their condition exposes the limitations of existing legal frameworks in addressing the gendered and relational consequences of enforced disappearance.

A meaningful response requires not only legal reform but also a commitment to accountability, recognition, and justice.

### FOOTNOTES (BLUEBOOK STYLE):

- [1] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 161–70 (1989).
- [2] Pauline Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief* 3–8 (1999).
- [3] Ruti G. Teitel, *Transitional Justice* 4–9 (2000).
- [4] G.A. Res. 61/177, *International Convention for the Protection of All Persons from Enforced Disappearance* art. 2 (Dec. 20, 2006).
- [5] *Id.*
- [6] *International Covenant on Civil and Political Rights* art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.
- [7] *Convention on the Elimination of All Forms of Discrimination Against Women* art. 15, Dec. 18, 1979, 1249 U.N.T.S. 13.
- [8] *Velásquez Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 166–74 (July 29, 1988).
- [9] *Kurt v. Turkey*, 1998-III Eur. Ct. H.R. 1152, ¶¶ 130–34.
- [10] *Varnava v. Turkey*, 2009-V Eur. Ct. H.R. 1, ¶¶ 148–49.
- [11] U.N. Human Rights Council, Rep. of the Working Group on Enforced or Involuntary Disappearances, ¶ 515, U.N. Doc. A/HRC/19/58/Rev.1 (Mar. 2, 2012).
- [12] Amnesty Int’l, *India: Investigate All Allegations of Enforced Disappearances in Jammu and Kashmir* 5–7 (2008).
- [13] Nat’l Hum. Rts. Comm’n of India, *Proceedings on Disappearances in Kashmir Valley* (2011).
- [14] *Id.*
- [15] Int’l Comm’n of Jurists, “No More Missing Persons”: The Right to Know the Truth About

Enforced Disappearances in Nepal and Kashmir 32–35 (2017).

- [16] Office of the U.N. High Comm’r for Hum. Rts., *Report on the Situation of Human Rights in Kashmir* ¶¶ 49–52 (2018).
- [17] Jammu Kashmir Coalition of Civil Soc’y, *Facts Under Ground* 18–21 (2009).
- [18] Statement by U.N. High Commissioner for Human Rights on Kashmir (2018).