

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2026 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

A Wife who is not a Widow: Half-Widows and the Legal Vacuum of Disappearance in India

Aamina Kazi^a

^aRizvi Law College, Mumbai, India

Received 09 June 2026; Accepted 09 July 2026; Published 13 July 2026

Half-widow was a term coined in Kashmir to describe a woman whose husband has disappeared. Since the 1980s, a vast majority of men in Jammu and Kashmir have disappeared during the region's decades of insurgency, never to be found, with no signs of their whereabouts and no certain declaration of death, leaving behind their wives who occupy a category that does not exist in the Indian legal system nor is it recognised by any Indian law: The half-widows. Neither married in any legal sense nor widowed. People who suffer due to this are not just the women of Kashmir, but their children as well; using a Kashmiri origin point, we can argue that the underlying legal problem is not just confined to Kashmir or to wives alone. Throughout India, families of missing soldiers in wars, intelligence officers or covert agents who vanish into the records their own country cannot acknowledge, personnel or soldiers lost in high altitude terrain during peacetime duty where soldiers disappear due to nature instead of the enemy, merchant sailors lost in international waters all face the consequences of the same civil-law vacuum, a legal system built around sections 107 and 108 of the Indian evidence act.

Assumes ordinary absence and does not provide any provisions or intermediate status between "alive" and "legally dead." Families, or more specifically wives, lose access to property and inheritance; custody and children lose guardianship, financial support, and succession, while laws related to this subject matter were not written with an unresolved disappearance in mind, which also include statutes governing custody and pension eligibility. While states like Argentina and Sri Lanka both of which have legislated and made provisions for an intermediate legal status for the missing or disappeared that is short of death declaration, drawing from

field-reports and interview-based evidence and research from Kashmir and documented cases from the armed forces and merchant navy, we can argue that this problem or India's omission of it, can be framed as a rectifiable drafting issue which is common to several different categories of Indian families, it is not isolated to one specific problem or a single conflict. It can be solved with reforms that apply to all of them: a statutory certificate of interim status of disappearance, a shortened and more realistic standard for evidence for documented absences rather than an ad hoc case-by-case legal approach or case-by-case litigation, which is required of every family, regardless of how or where their relative disappeared.

Keywords: *wife, widow, absence, statutory certificate.*

INTRODUCTION

The words half-widow are not written in any Indian statute or ordinance. The term half-widow was coined by human rights researchers, activists and journalist working in Kashmir trying to define a term that was never recognised by any law nor defined by it, a woman whose husband had gone missing and disappeared who cannot be declared alive or dead with certainty, which produced wives who cannot be certified a widow leaving them in a legal limbo, because India has no procedure to convert a documented disappearance into an official legal status on its own.

It is in Kashmir that this term originated, and it is the civilians of Kashmir who have gone missing; thousands of men have disappeared during the ongoing conflicts in the 1980s, and they remain the most extensively documented population that lives inside this vacuum. The number of people who have disappeared; their estimation can vary from source to source. The Association of Parents of Disappeared Persons (APDP) has estimated over eight thousand men to have gone missing since the early 1980s, while the Jammu and Kashmir coalition of civil society's survey, which was done in 2011, roughly estimated the number of half-widows to be around 1500 in that district specifically. The disagreement between various sources points to the fact that even the state cannot produce an agreed count of men who have gone missing without an official register of the disappeared, nor can it produce a number for the half-widows.

Kashmir's half-widows put a human face to something that the law has left abstract. Women like Atiqa Begum, Haseena Begum and Naseema Begum each describe a similar story with the same structure just slight changes in sufferance, all had initial assurance given to them by their in-laws that they would be provided for and taken care of, followed by after years a sympathetic

elder would pass away, like a father in law in the case of Atiqah Begum, and the next in kin like a brother in law would take over the inheritance and distribute it among everyone eligible except Atiqah, as she shared that her children did not receive a share of their father's inheritance as the right fully deserved so, often the case for all these women as they would be cheated out of their husbands.¹

Inheritance was twisted and turned by twisting religious inheritance laws and reframing them not in their favour of them, and often this was done by their own family members and the ones closest to them.² The advocates and lawyers who often work on these cases said it was more of a pattern, where these women who should be supported in these difficult circumstances were treated as an inconvenience, often by their own extended families. Cheated by their families and neglected by the system, these women were abandoned to shoulder the heavy burdens of survival alone and the survival of their children. When reforms were made about remarriage by religious dignitaries, the women argued that it was too late after all these years of trying to survive on their own, decades of raising their kids on their own, reaching their seventies and sixties; the solution was not remarriage or a new husband; what would matter now was financial stability and legal clarity. Ultimately, what these women require is not some romantic remedy, but recognition and provisions as advocated by the Association of Parents of Disappeared Persons (APDP) for decades. To broaden this beyond the confinements of Kashmir, this status touches the wives of soldiers, sailors and other missing men, whose grief or sufferings carry no organised movement, no particular platform given to bring attention to them.

So, the legal structure that built this vacuum or created the half-widow condition is not just confined to Kashmir, or to insurgency-linked disappearance or even to wives alone. The same gap that is the civil law system with no status between “alive” or “legally dead” can be seen in different clothing across different categories of Indian families. The “missing 54”, Indian soldiers and airmen who went missing in the 1965 and 1971 wars between India and Pakistan and were never repatriated, and their families have spent more than fifty years navigating a status the government itself has been unable to settle, at some point the government issued affidavits confirming the death of 15 out of the 54 missing soldiers, while also continuing to list all 54 as

¹ Safina Nabi, ‘How Kashmir’s Half-Widows Are Denied Their Basic Property Rights’ (*Pulitzer Centre*, 26 January 2022) <<https://pulitzercenter.org/stories/how-kashmirs-half-widows-are-denied-their-basic-property-rights>> accessed 05 June 2026

² Deyaa Bhattacharya, *The Plight of Kashmiri Half-Widow* (Report No 16, The Hindu Centre, 2016)

missing. The family of a deep cover intelligence spy or intelligence operatives face an added layer of difficulty that an ordinary missing persons case does not, as their identities and secret operations cannot be revealed for the security of the nation; an agency that cannot officially acknowledge an intelligence operative's identity or their work without compromising itself, leaving their family to seek recognition on their own. Soldiers who vanish during peacetime, swept away by an avalanche on the Siachen glacier, lost to a flash flood during counter-insurgency patrol in dense terrain, leaving families to secure a declaration of "civil death" through ordinary civil litigation as instructed by the Army, before any pension or retiral benefits can be released, as observed by a Madhya Pradesh high court bench in 2024. Taking into no consideration the years of documented service, the years of their life they dedicated to the country were completely washed away. Merchant sailors are lost at sea in international waters where the flag ship, the port state and India as the labour provider all three have partial responsibility in the subject matter and none holds complete responsibility, leaves the families such as of the young Odisha deck cadet went missing from a vessel travelling from Mauritius to Singapore in February of 2026 depending on the coordination between the director general of shipping, a foreign maritime rescue centre and a private shipping company for even basic information.

What connects the Kashmiri half-widows, the old parents of a 1971 war prisoner, the family of an intelligence operative, the family of a son lost at sea is not their circumstances of disappearance but the legal vacuum they are left in. Indian civil law was built around an ordinary model of disappearance or absence, the law basically states that if the question is whether a man is alive or dead is proved by if he has not been heard off by people who would have naturally heard of him if he had been alive for 7 years, the burden of proving that he is alive is on the person who affirms it, a rebuttable presumption of death under the Indian Evidence Act of 1872³. The given act was not built around disappearances of cases where evidence was scarcely available or hard to find. Because a war record was never repatriated, because a state cannot disclose the identity of an intelligence operative and acknowledge their existence, because a body was never recoverable from a glacier or ocean, or because no one witnessed what happened at a checkpoint. Most laws or statutes, such as succession law, will not let someone gain access to properties if there is no certain death declaration; guardian law follows the same framework and presumes a

³ Indian Evidence Act 1872

living father until the same thresholds are met. Both military and civilian pensions and benefit schemes require matching evidentiary requirements that a family experiencing such disappearance simply cannot provide on their own. And it is not only wives who suffer the following hardships of the given consequences, as children lose guardianship and inheritance they cannot claim.

The following analysis explains and traces the vacuum through Indian statutes, using Kashmir's half-widows as a focal point and its central most thoroughly documented illustration, the population from which the term emerged, and situating their experience alongside various other families that suffer the same fate, who confront the same underlying legal gap, further more it tries to place India's approach against the one international framework built for exactly these evidentiary issues and compares it with two countries legislated solutions, and proposes reforms which are narrow enough to be workable and broad enough to reach every family this article describes, not only the one that gave this problem its name.

THE STATUTORY VACUUM

Indian law's default answer to any unexplained, prolonged absence of a civilian, a soldier, an intelligence operative or a sailor is found in sections 107 and 108⁴. Both sections are present in Chapter VII of the Evidence Act 1872 and work together as a linked pair; one presumes life while the other presumes death, depending on how recently that specific person was known to be alive or dead.

Section 107 – Presumption of Life: This provision addresses the burden of proving the death of a person known to have been alive within thirty years. In simple terms, if someone was alive within the last 30 years, the law presumes they are still alive, and the burden falls on whoever claims otherwise to prove the death of that person. If a family member disputes that a person is dead, say in an instance of inheritance disputes, and if that person was known to be alive in the past 30 years, the person (family member) asserting the death of that person has the burden of proof to prove it, as the law defaults to the presumption of life.

Section 108 – Presumption of Death: This provision states that when the question is whether a man is alive or dead, and it is proved that he has not been heard of by people who

⁴ India Evidence Act 1872, ss 107 and 108

would naturally have heard of him if he was alive, for seven years, the burden of proving that he is alive shifts to the person who affirms it. In simple terms, if a person has not yet been heard of for 7 years by the people who would normally be in contact with them, like family and close friends, the burden flips on anyone who is claiming the person is still alive to prove it.

There are two features of this provision that matter enormously to all the types of families who are affected by the said issue. Firstly, nothing happens automatically; the seven-year mark is not a status that is automatically granted by the said calendar date; it is a fact that must be pleaded and proved and defended in a specific civil court proceeding that is to be initiated by someone with standing to plead it. A woman whose husband had disappeared in 1998 does not receive the status of a widow by law in 2005. She just becomes eligible from that period onwards to petition a court to presume that her husband is dead, which is a lengthy process that requires legal counselling, documentation, evidence, and years and years of further litigation that she must face. Secondly, even after all the lengthy legal process, if a court presumes the person to be dead, it only presumes the death of a person, not when or on a specific date. Courts have repeatedly held that section 108 raises no presumption as to the specific day of death within the seven years, which is a crucial question for succession and pension schemes and their calculation alike must be separately established on the facts of the case alone.

The Madhya Pradesh High Court's 2024 ruling⁵ on the case of a missing soldier's pension explains the problems of these families outside the Kashmir context.⁶ This case involves the family of an Army signalman who went missing while travelling to a training centre, a peacetime administrative disappearance, not a combat casualty. While a missing persons report was filed and the family received pension starting from the date of disappearance, after a decade the Army informed the family that the special family pension and the additional retirement benefits could only be provided by an actual death certificate. The court found that rather than assisting the family, the Army effectively required them to secure a declaration of a civil death through normal civil proceedings, which did not withstand the government of India's own pension rules, which already recognise a presumption of death after seven years of disappearance. The court was

⁵ *Chhaya v Public at Large* (2024) SCC Online MP 3733

⁶ Ritu, 'MP High Court criticises Indian Army's behavior towards missing soldier's family; calls for reforms of worn out pension rules' (SCC Online, 03 June 2024) <<https://www.scconline.com/blog/post/2024/06/03/mp-high-court-criticises-indian-armys-behavior-towards-missing-soldiers-family-calls-for-reforms-of-worn-out-pension-rules-scc-times/>> accessed 05 June 2026

critical of this system, as it described it as an added layer of difficulties imposed on families who had already waited years for basic administrative relief, and the court directed that the family's pension and special benefits be duly released once the date of presumed death was judicially fixed. It also raised an important question: should the date of civil death be the date of disappearance or the date the court declared, because the lapse in years causes financial consequences that the families must face. Justice Anil Verma held that while section 108 raises a presumption of death after seven years unheard of, the exact date of death is a matter of evidence, not presumption. What the case entails is not unique the armed forces, an internal administrative rule may nominally track the same seven-year presumption found in the evidence act, but the burden of actually establishing that presumption in a specific case with the help of litigation falls on the family as they must themselves initiate and fund, something that remains with the family regardless of which institution, civil or military, is on the other side of the claim.

Succession laws add to this rather than resolving the gap for civilian families more broadly. Both the Hindu Succession Act 1956⁷ and the personal law provisions that govern Muslim inheritance require confirmed death rather than vague disappearances, or the Evidence Act presumption, before any shares are vested in heirs. The reports from the Kashmir Baramulla district have helped illustrate how this plays out in actual practice. Atiqah Begum whose husband disappeared from their home in Zogiyar village in 1990, was assured by her in-laws that she and her children would be well taken care of and looked after and that she would receive her husband's share of inheritance, an assurance that was only held until her sympathetic father-in-law died in 2015, after which her brother-in-law distributed the inheritance of the family among the surviving siblings, excluding Atiqah and her children from their share, citing what she described as "twisting interpretation of Islamic laws of inheritance". Her case illustrates a specific mechanical problem within Islamic succession law that the advocates and lawyers who work on these case such as advocate Habeel Iqbal, who has worked extensively on Islamic inheritance matters, has described in detail that under one law or rule, a person is treated as legally dead after seven years if he has not been heard of, but under a separate rule of inheritance, if a man is deemed to have died while his own father is still alive, that man's children are excluded from any share of his grandfather's estate, because inheritance in that structure passes through the generation alive at the time of death, not around it.

⁷ Hindu Succession Act 1956

In Kashmir, most land ownership is ancestral holdings; the children of the disappeared men are shut out of their family property precisely because their father is treated as having passed away during his own father's lifetime.⁸ This might not always be families exploiting a loophole in the succession laws or taking advantage of an ambiguity; it is just the ordinary operation of succession rules that were never designed to anticipate and it not only fails the wife but also her children, who lose inheritance they may not even know they were entitled to until decades later.⁹

Guardianship also presents parallel structural gaps that affect the children of the disappeared men directly as it does their mothers. Legal scholar Samreen Hussain, who has researched women's property rights under Islamic laws, has explained that guardianship of a minor child ordinarily passes first to the grandfather, then to an uncle, and only to a mother if all other male relatives are absent or not willing to take the role of a guardian for the child, which means she can ask for maintenance on her children's behalf once she has formally taken the place of guardian for her children, which male relatives do not always relinquish. Male relatives often use these guardianship structures to avoid taking the financial responsibilities of these children. Hussain's own assessment of the resulting gap is direct: there is presently no mechanism to transfer a disappeared man's property or assets to his wife to make them financially independent, which ultimately allows the underlying pattern of dependency to continue indefinitely.

Even when a family decides to pursue the death declaration of the disappeared rather than not pursuing it, they are met with administrative hurdles that some families cannot bear.¹⁰ Conciliation Resources' 2018 account of civil society efforts in Kashmir notes that a death certificate for a disappeared man can only be obtained if the family gives evidence that the man was not involved in militant activities, which is an evidentiary burden that exists nowhere in the general Evidence Act framework. This is highly difficult for a family that has no information about what happened to the missing man in the first place. Without the certificate, pension,

⁸ 'Securing the property rights of Kashmir's 'Half-widow'' (*Conciliation Resources*, February 2018) <<https://www.c-r.org/news-and-insight/securing-property-rights-kashmirs-half-widows>> accessed 06 June 2026

⁹ Dissolution of Muslim Marriage Act 1939

¹⁰ 'Half Widow, Half Wife? Responding to Gendered Violence in Kashmir (*Kashmir Law and Justice Project*, 23 November 2023) <<https://www.kljp.org/articles/half-widow-half-wife-responding-to-gendered-violence-in-kashmir>> accessed 06 June 2026

ration cards and bank accounts tied to the husband's identity all remain out of reach, adding to the hardship for the affected families to be financially independent.

Divorce offers the narrowest and most conditional path out of this vacuum, and only for Muslim women. The Dissolution of the Muslim Marriage Act 1939¹¹ allows a wife to petition for dissolution under section 2(I) if her husband's whereabouts have been unknown for four years, which is shorter than the seven-year waiting period of the Evidence Act 1872.¹² But there remain conflicts with the disagreements of the correct waiting period for remarriage; as a legal scholar, Sheikh Showkat has noted that the Hanafi school of Sunni jurisprudence historically held that the wife of a missing man should wait ninety years before remarrying, while other schools of thought set the period at four to seven years. A 2015 Jammu and Kashmir government circular set the waiting period at seven years, directly conflicting with the 1993 Kupwara court ruling that had permitted a woman to remarry after four years.¹³ It took a formal 2017 consultation among Islamic scholars from multiple schools of thought, organised with the support of a civil society initiative, to produce a joint statement settling on four years as the applicable standard, which was nearly three decades after the disappearances.

BEYOND KASHMIR - OTHER CATEGORIES OF DISAPPEARANCE ACROSS INDIA

Kashmir's half widows are the most thoroughly documented population living inside India's legal vacuum around disappearance, but they are not the only one. The same legal vacuum that appears when someone is missing without confirmed death appears in the military, intelligence units of the nation, and maritime sectors as well. Although it is not highly documented, it is necessary to discuss such families and disappeared persons, and a provision not just confined to Kashmir, if limited to a single conflict-affected region, would leave several other groups of Indian families unprotected and with no meaningful assistance.

Missing soldiers and personnel missing in action - One of the most well-documented and extensively researched cases of military soldiers that went missing is that of the "Missing 54".

¹¹ The Dissolution of the Muslim Marriage Act, 1939

¹² 'Odisha Merchant Navy Cadet Missing At Sea: Family Alleges Lapses By Ship Management Company' *ETV Bharat* (18 February 2026) <<https://www.etvbharat.com/en/bharat/odisha-merchant-navy-cadet-missing-at-sea-family-alleges-lapses-by-singapore-ship-management-company-enn26021804617>> accessed 07 June 2026

¹³ *Grant of Family Pension and gratuity to the eligible member of the family of an employee/pensioner/family pensioner reported missing-consolidated instructions regarding dated:23.12.2014* (Department of Ex-Servicemen Welfare, 2014)

This case entails the story of the 54 soldiers that went missing during multiple wars between India and Pakistan in the period of 1965 and 1971. These soldiers were never officially declared dead or repatriated. Later reports have cited figures to be more than 54, 83 to be specific. The uncertainty is added by the government's own inconsistent records. In later years, the government had allegedly reported 15 of those 54 men to be dead, confirming their status from disappeared to dead. It also later listed all 54 men as missing in parliamentary answers. A few years later, the family of Major Ashok Suri received a letter addressed to him, after his son was already said to be dead in the line of duty. His name was later mentioned in radio broadcasts, and there was suspicion of Indian military men being held in Pakistani jails. This shows us another perspective of the disappearance of a person in India, which also falls under the category of absence of a body and lack of evidence to prove the death of a person. This scenario also shows the added layer of diplomatic dimensions, since resolution of such cases depends on the diplomatic relations between countries, which normal Indian domestic law has no power over.

Deep cover Intelligence Operatives: A starker, more impossible version of the same problem affects the families of undercover agents in India, the Research and Analysis Wing agents or the R&AW agents. Their identities and operations cannot be openly spoken about, as they might threaten the security of the nation. As an intelligence agency operates under deliberate deniability and cannot easily issue any kind of official employment or relation to the agency. The unsung heroes of our nation and their families both suffer the consequences of the circumstances.

Military Personnel Missing in Extreme Terrain during Peacetime: The Indian Army soldiers who work in physically extreme postings and high altitudes, or the Siachen Glacier, the dense forests and terrain during peacetime operations, prominently in the northeast of India, can face life-threatening challenges while on their job. An avalanche, a crevasse fall, or a flash flood can make a body permanently unrecoverable even if the circumstances of the disappearance are completely undisputed. These soldiers' families face a different variant of evidentiary problems, as it is difficult to find the body of the missing military official due to the geological difficulties, and the body of the missing person might become permanently unrecoverable. Although the ministry of defence has built some provisions, the family can file a missing person's report and receive family pension after six months of disappearance, as per the instructions of the ministry of defence dated 1988, rules that have been updated periodically

from time to time but as the Madhya Pradesh high court ruling of 2024 shows the reality of an administrative provision explained on paper and its application in reality can still require years of civil court proceedings.

Merchant Navy and Maritime Personnel: The commercial maritime sector also provides similar difficulties and jurisdictional frictions of the same problem;¹⁴ they do not fall under any single national legal system. When a maritime personnel member goes missing at sea the burden of responsibility is formally distributed among different legal entities, with the help of the UN convention of the law of the sea, the flag under which the vessel is registered bares the initial responsibility, the port the vessel is docked at also bares some responsibility and India as a primary source of labour supply also holds partial responsibility towards its own nationals, this shared responsibility often leads to a situation where no one is fully held accountable. A 2026 case from Odisha illustrates this issue: a young deck cadet went missing while the vessel was sailing from Mauritius to Singapore. The family had to deal with several entities: a Mauritian rescue team, Singapore ports authority and India's Director General of Shipping, the Indian high commission in Singapore and the ship's private management company. That is five institutions altogether, none of which had the full responsibility to investigate the given case. Even the seven-year presumption of death in a case might get lost across different legal systems before an Indian legal court agrees to hear the case and address it.

The Common Thread is Clear:¹⁵ What distinguishes these categories is mainly who created the vacuum and why: in maritime cases, it is jurisdictional disputes; in high altitude cases it is extreme operational geographic issues. The state's desire for deniability impacts the intelligence cases; unresolved diplomatic issues cause the prisoner of war situation; in Kashmir, a security environment has led to disappearances that no other region in India has reported.¹⁶ Despite these differences. All families affected share the same legal challenges. They face a presumption of a death framework designed for ordinary absence. All evidentiary burden is left onto the family, and they do not adjust for the unique challenges presented by the type of disappearance

¹⁴ United Nations Conventions on the Law of the Sea 1982, art 94

¹⁵ 'Working Group on Enforced or Involuntary Disappearance' (*UN Human Rights*)

<<https://www.ohchr.org/en/special-procedures/wg-disappearances>> accessed 06 June 2026

¹⁶ International Convention for the Protection of All Persons from Enforced Disappearance 2006

of the missing men, and all pension schemes, inheritance laws, and guardianship rules need an official declaration of death before any action is taken.

ENFORCED DISAPPEARANCE AS A LEGAL CATEGORY INDIA HAS NOT ADOPTED

The disappearance in Kashmir is said to involve state security personnel, either directly or through inaction. International law has established a specific legal category for this pattern, which India has signed on to but has not yet ratified it or incorporated it into domestic law.

The UN Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly in December 2006 and was opened for signature in Paris in February 2007. India signed the convention on 06 February 2007, but had not yet ratified it; since then, the status of the convention has not yet changed, not for more than two decades. As of now, ninety-eight states have signed the convention, and eighty of them have taken a further step of ratification, a crucial step which helps bind the state under international law.

While signed, the agreement imposes only limited obligations on the state not to act in ways that would defeat the signing of the treaty's purpose. It fails to create enforceable domestic legal obligations or rights for citizens. Ratification would require India to take three actions it currently does not. Criminalise enforced disappearance as a distinct offence in domestic law, which would be defined as detention or abduction followed by a refusal to acknowledge and hide the fate of the person, which establishes a right to truth for families, which is made independent of any criminal conviction. This creates a genuine framework for families of disappeared people without relying on general compensation programmes built for other situations.

The results of not ratifying this convention are that there is no proper legal definition for enforced disappearance. Leaving a lot of families to rely on normal missing persons and criminal complaint procedures. It is difficult when these complaints involve security personnel; prosecution often needs prior government approval, which ordinary missing persons cases do not. The primary tool for these families is the writ of habeas corpus petition, which compels an authority to present the person in custody and explain their reason for detention. However, it is weaker when the state denies knowing the whereabouts of a person, which is what defines an enforced disappearance that normal detention or disappearance does not. Armed forces personnel may effectively be protected from civil prosecution, even when a missing person is

eventually found. Although this does not apply to all cases, it still shows us how much weight the general civil framework has to bear when no specific legal process exists to help.

COMPARATIVE FRAMEWORKS: STATES THAT NAMED THE STATUS

India is not the only country that has experienced mass disappearance or an unresolved disappearance period; however, the lack of a legislative framework to fix it is unusual. Two examples can be discussed from two countries to show what a thoughtful legislative solution can look like and how it helps families who have been affected.

Argentina: After transitioning to democracy in 1983, Argentina's congress passed Ley 24.321, the Ley de Ausencia Por Desaparicion forzada, in 1994.¹⁷ The law allows the declaration of "absence by forced disappearance" for a person who has gone missing involuntarily from their home or residence, with no information about their whereabouts or where they could be, till the date of December 10, 1983. Relatives, family members, and descendants up to the fourth generation may petition a civil court for this declaration. Their actual interest is presumed, unlike in India, where a petitioner must prove where they stand in the case and how it affects them; whether civilian, military, intelligence, or maritime, there are no exceptions to this; the provisions are made keeping everyone in mind. Once the declaration is granted, the declaration's civil effects are treated as legally equivalent to Argentina's existing domestic law of "absence with presumption of death".

This means the inheritance and associated civil rights are easily accessible to citizens without the need for a lengthy process of litigation that takes years to reach conclusions. If the missing person resurfaces or is eventually found, they have the full right to claim ownership over any existing properties or income that has been generated by them, but any existing marriages or legal actions taken under the law do not get cancelled.

Sri Lanka: After its own conflicts, Sri Lanka also made provisions for a slightly different but related approach. They focused more on administrative measures rather than judicial ones.¹⁸ A separate body of government was created, known as the Office of Missing Persons Act, 2016. Their two functions were: one to search for the missing person, and two to issue a certificate of absence to the families. The certificate has legal validity, and it helps the missing person's family

¹⁷ Forced Disappearance of Persons 1994

¹⁸ Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act 2026

to perform certain legal rights on their behalf, including access to welfare services and administrative functions. This helps as the person can be declared missing without the need for them to be declared deceased, and it does not put an evidentiary burden of proving anything on the families of the missing person. The Registrar General issues this certificate of absence based on evidence collected by interim reports. The certificate is valid for two years and can be renewed.

In the state of India in these matters, the country's laws demonstrate a careful refusal to force families to pick the choice between “legally dead” or “alive”. This approach recognises the reality that a body may never be found, and a person may never be declared officially dead. The Ehsaas initiative, backed by the international peacebuilding organisation Conciliation of Resources, had gathered civil society activists, legal experts and various thoughts of Islamic religious leaders to discuss the rights of half widows. This led to the 2017 agreement on the Islamic remarriage act, shortening it from 7 years to 4 years. The coordinator for the Ehsaas civil society, Ezabir Ali, stated that they wanted to educate women in their property rights and help them claim their rightful inheritance, rather than feeling like victims of circumstances. This work is not insignificant but a gradual step towards better frameworks of laws for the half-widows. There are no equivalent informal solutions for the families of other categories of missing persons. Although India may not have created a single statutory mechanism that any qualifying family can use, as created by Argentina and Sri Lanka, in contrast India has created at best a collection of category-specific administrative provisions and civil society workarounds, but none of them offers the automatic civil effects of a law.

REFORM ARGUMENTS

The comparative frameworks and examples discussed are not templates to be copied as they are. Both Argentina and Sri Lanka have their own laws which have emerged from their own specific perspective and needs and circumstances. But the basic structure of the underlying principle is transferable and applicable, and broad enough to provide every category of family the rights they deserve.

India should create a statutory certificate of interim status that works across all categories. The certificate should establish a specific set of interim rules and rights to access welfare and other benefits. It should grant authority to manage any joint-held property but not necessarily the right

to sell it. The framework of the provisions should ensure clear guardianship rights over minor children without the need for separate legal proceedings. There should be rules that support the family members of all those people who have gone missing or disappeared, no matter where they are from or who they are, as long as they are citizens of our country, without the need to create a fragmented process through the Ministry of Defence or informal religious agreements for Kashmiri wives. One single statute that is eligible and applies to all families. This statute could include specific evidentiary rules for different situations, such as a court-martial or a police report for military cases, a shipping company incident report and flag ship notice for maritime cases, and an FIR or Habeas corpus filings for Kashmir cases. With the help of the Argentina model, this status should have explicit guidelines which are not final and can be revised if the missing person returns, with clear guidelines for restoring property and benefits.

A conflict-specific evidentiary standard should exist within the current presumption framework. The seven-year presumption in the Evidence Act 1872 was designed for ordinary disappearance, not for disappearance in documented conflicts, security operations, challenging terrain, or jurisdictional conflicts in maritime situations, where evidence is structurally scarce. A more realistic evidentiary standard should allow proof through a filed missing persons complaint, a court of inquiry finding, a shipping incident report, or documentation from recognised human rights organisations. There should be legislative clarity to replace the current ad hoc case-by-case approach and religious responses.

CONCLUSION

The term “Half” is not a legal status; it is the consequences of neglect and what happens when law refuses to describe something at all. The Kashmir issue gave that description a name, being one of the most highly and extensively documented and researched issues that lives within this vacuum, which kept building on, interview by interview and constant reporting and researching. But the same gap or vacuum reaches much further than just that one region that first exposed it and gave it recognition, but just because other categories of the same issue are not as well documented or given a platform to speak about does not mean they do not exist or they should not be given recognition. It just shows a lapse in the Indian legal system that has failed to accommodate such issues. The elderly parents of a 1971 prisoner of war, the family of an intelligence operative whose own government cannot publicly claim them, the family of a soldier lost to an avalanche whose pension waited a court's willingness to fix a date of death, and the

mother of a merchant navy cadet missing between two ports in two different countries, all these people in their own ways and suffering and circumstances live in that same vacuum, not necessarily built with malice but an inadequate civil law system that never built the specific tool any of their situations truly required.

The problems of this gap are not abstract, and they do not stop with the missing man's wife. They determine whether a woman can inherit a home that she has lived in for more than thirty years or is she living in that house only at the discretion of her in-laws? They determine all the important things, such as whether a child's guardianship is clear enough that a relative cannot legally avoid taking their responsibility towards the child. They determine whether a family can move forward after difficult circumstances or stay stagnant in time, trying to pick between two states that do not correctly describe their situation. It is the difference between a family that can build a life and one that is asked, indefinitely, to wait for a law that was never written for them.