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Review Article

Victims of Enforced Disappearance in Kashmir: A Socio-cultural Perspective

 $^{f ext{ iny D}}$ Dr. Sharon P. Thomas *

Assistant Professor & Academic Coordinator, Department of Forensic Science, JAIN (Deemed-to-be University), Kakkanad, Kochi, Kerala, India

Corresponding Author: Dr. Sharon P. Thomas

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Abstract

With thousands of civilian casualties, the conflict in Kashmir is one of the longest-running unsolved wars in history. The cross-border infiltration and home-grown insurgency have resulted in the enforced disappearance and extra-judicial killing in the Valley. With the destruction and strategies that accompany these crimes, there is a unique unforeseen ramification — half widows and the children of the disappeared. This poignant and vulnerable group is neglected and often left unnoticed in the ongoing struggle for control of territory. The paper attempts to provide a socio-cultural and economic perspective on victims of enforced disappearance — half widows and children- and further examines the repercussions of conflict in the young generation of Kashmir Valley.

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KEYWORDS: Half widows, enforced disappearance, extra-judicial killing, Kashmir, vulnerable victim.

INTRODUCTION

Kashmir is one of the longest-running unresolved armed conflicts in the world. Though Kashmir has witnessed three inconclusive wars between the two major powers in Asia, India and Pakistan, the region remains the core of dispute between the two countries to date. The infiltration from international borders

and insurgency within the state has made Kashmir a war zone, and decades of cross-border terrorism and home-grown insurgency compelled the government to implement stringent laws and employ more armed forces in the valley. It is estimated that the ratio of civilians to security personnel in Kashmir is about 1:7; there exist approximately 70,000 armed forces, which

is the highest ratio of security forces per capita in the world (Association of Parents of Disappeared Persons, 2011). The exceptionally high rate of armed men appeared to prognosticate the violence-filled future of Kashmir. The augmenting number of military and hostility muddled civilian life and affected the civil-military relationship in the region. Kashmir - the most militarized zone in the world is questioned about being the most dangerous place in the world. To enhance internal security and protection of international borders, the Union of India enforced a range of legislative provisions in Kashmir. The Jammu and Kashmir Public Safety Act (PSA) of 1978, the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) 1990, and the Jammu and Kashmir Disturbed Areas Act of 1992 are some of the acts executed by the Union of India in the State. Police officials implement the Public Safety Act to prevent the detection of persons who are a threat or suspected to be a threat to the state. "Arrest under mere suspicion" is the power given to police officials to arrest and jail a person for two years without trial who has not committed any offense. In the Public Safety Act, 1978, Section 8 (1) of the act allows detention on the grounds, including acting in any manner prejudicial to the state's security and to public order 8 (3). Section 19 (2) allows the police to make a repeat detention order on the same grounds as an earlier order of detention. In the presence of the Act, judicial review of detention is not permitted and authorities are held accountable for using this clause to delay the release of detainees. Section 22

of the Act protects the officials from civil, criminal, or any legal proceedings for anything done or intended to be done in good faith in the discharge of duty (Public Safety Act, 1978). The impunity grants supremacy to the officials and protects them from further prosecution. Armed Forces Special Powers Act (AFSPA) 1990 and The Jammu and Kashmir Disturbed Areas Act, 1992, also grant special powers to police in areas declared "disturbed" by the state government, similar to those conferred on the army and paramilitary forces under the Armed Forces (Special Powers) Act. Under section 4 of AFSPA, - a person can be arrested on the ground of suspicion or even can be shot to death -fire upon or otherwise use force, even to the causing of death. It is not mandatory that death may take place in counter attacks but also ... any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons. AFSPA empowers the armed forces personnel with the omnipotent power to use violence and threats against civilians and Section (7) of the act gives impunity to the armed forces from legal procedures for action made under the act (Armed Forces Special Powers Act, 1990). Being the most militarized zone, the use of power and violence against civilians escalated in the region. The cumulative report of the Ministry of Home Affairs (1990-2022) shows the trail of violence in Jammu & Kashmir.

Table 1: Trail of Terrorism in Jammu and Kashmir

Year	Incidents	Civilian casualties	Special force casualties	Local/Foreign militant casualties
1990-1991	4158	461	155	550/14
1991-1992	3765	382	173	844/12
1992-1993	4817	634	189	819/14
1993-1994	5247	747	198	1310/90
1994-1995	5829	820	200	1596/122
1995-1996	5938	1031	237	1332/85
1996-1997	5014	1341	184	1209/139
1997-1998	3420	971	193	1075/197
1998-1999	2932	889	236	999/319
1999-2000	3071	873	355	1082/305
2000-2001	3074	847	397	1520/436
2001-2002	4522	996	536	2020/625
2002-2003	4038	1008	453	1707/508
2003-2004	3401	795	314	1494/470
2004-2005	2565	707	281	976
2005-2006	1990	557	189	917
2006-2007	1667	389	151	591
2007-2008	1092	158	110	472
2008-2009	708	91	75	339
2009-2010	499	71	78	239
2010-2011	488	47	69	232
2011-2012	340	31	33	100
2012-2013	220	15	15	72
2013-2014	170	15	53	67
2014-2015	222	28	47	110
2015-2016	208	39	17	108
2016-2017	279	40	80	213
2017-2018	417	39	91	257
2018-2019	255	39	80	157
2019-2020	244	37	62	221
2020-2021	299	41	42	180
2021-2022	125	31	32	187
2022-2023	46	14	13	73
Cumulative Number	71,060	14,184	53,38	26,404

Source: Annual reports of the Ministry of Home Affairs (MHA) (1990-2022)

In the State of Jammu & Kashmir, there has been a total of 71,060 attacks reported in which 14,184 civilians and 53,38 security force personnel have lost their lives- evidence of the excessive militant casualties in the Valley. A total number of 26,404 militants have been executed since the emergence of terrorism in Kashmir. In the year 2017-2018, there have been 417 violent incidents reported and the security forces have exterminated 257 militants which is the highest reported causality in the last two decades. As the internal security system is more effective in Kashmir, there has been a gradual decrease in the number of casualties in recent years. Kashmir has witnessed the extrajudicial killing, arbitrary arrest, prolonged detention, torture, physical assault, custodial deaths, rape, forced labour, and enforced disappearance for decades together. Enforced disappearance is the most strategic weapon of a war which can neutralize the armed resistance and instil fear in the opponents. In enforced disappearance, the civilian is taken away from the family and loved ones and never returned; and the perpetrators (state or non-state actor) refuse to give the whereabouts of the disappeared. The primary motive of the perpetrator is to avert the civilians from any kind of anti-national activities and deter potent young adults from engaging in insurgency or terrorist groups (OHCHR, 2019). The fate of the disappeared person is unknown and this creates a state of uncertainty and fears in the mind of people. The fear of the unknown and the realization of being a potential target terrorize the people and society.

The unofficial report states anywhere between 8000 to 10000 people have disappeared in Kashmir, as the prima facie pieces of evidence APDP (Association of Parents of Disappeared Persons) submitted on the 6,217 unmarked mass graves to the State Human Rights Commission to further strengthen the argument (Manila, 2013). According to the United Nations' Declaration on the Protection of All Persons from Enforced Disappearance in the resolution 47/133 dates 18 December 1992 "... persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting in behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law" ..." enforced disappearance is an offense to human dignity... a grave and flagrant violation of the human rights and fundamental freedom". The Article 7 states that ... "No circumstance whatsoever, whether a threat of war, a state of war, internal political instability, or any other public emergency, may be invoked to justify enforced disappearances". An act of enforced disappearance is condemned as a denial of the purposes of the Charter of the United Nations and is a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. The unmarked and mass graves in Kashmir give evidence of the prevalence of enforced disappearance in the valley.

Thousands of 'habeas corpus' petitions have been filed in Kashmir since the emergence of insurgency. After the revoke of

Article 370 & Article 35A in August 2019, 13,000 people were arrested, and hundreds were booked under the Public Safety Act (PSA) in Kashmir. It can be stated that even after the dismissal of "special status", the situation remains be same in the State. In Kashmir, it is a common practice to file habeas corpus to know the whereabouts of the disappeared, and the state agents denying the custody of the disappeared find the habeas corpus void. According to Amnesty International, "Hundreds of unidentified graves - believed to contain victims of unlawful killings, enforced disappearances, torture, and other abuses - have been found in Indian-administered Jammu and Kashmir". APDP found a total of 2700 unmarked and mass graves in 3 districts of Kashmir - Baramulla (1,122 graves), Kupwara (1,453 graves), and Bandipora (125) with men, women, and even children. The distressing number of graves in the valley calls for an urgent investigation, a petition submitted by APDP to the State Human Rights Commission (SHRC) in August 2012 documented 507 cases of disappearances in Kashmir (Chatterji et al., 2009).

In a war zone, enforced disappearance is used as a repression policy that can blindfold war crimes - custodial death, extrajudicial killing, rape, enforced labour, and even using civilians as shields in counter-attacks and to detect mines in the war zone. This illegal criminal activity against humanity is not penalized in India. The International Humanitarian Law is not applicable in Kashmir even though the humanitarian concern in Kashmir has been internationally accepted with the aid of disputes under resolutions adopted by the UN Security Council. And with the existence of a legal vacuum in India regarding enforced disappearance; there is an unforeseen ramification unique to such violence - half widows, and children of the disappeared. The phenomenon of enforced disappearance in Kashmir is not widely accepted by the government. In the case of legal remedies, not much acknowledgment is given by the police, even refusal to lodge First Information Report (FIR) is evident in the valley. Government support for the family of half-widows is difficult to identify in the existing compensatory framework. The Schemes Jammu & Kashmir Victim Compensation Scheme, 2019 and Jammu and Kashmir Rehabilitation Assistance Scheme, 2022 were not implemented for the victims of enforced disappearance - half-widows and children; because of the legal and social status given to them by the government.

The present study adopts a descriptive, fundamental, and qualitative research approach in its treatment of the problem. The study is descriptive in nature as it describes the severe conflicts and casualties that have occurred in the Kashmir valley. It also describes how women came to be widows and half-widows and the children became the victims of enforced disappearance. Further, the study is fundamental as it offers an in-depth understanding of the aforementioned issues through the scope of generalization. The qualitative research approach of the study is because of the understanding of the problem through open-ended and conversational communications with the elements studied. These victims are connected to the disappeared in such a way that they suffer physical, economic, emotional, and psychological damage.

Half-widow – Victim of Enforced disappearance

Though men are directly involved in armed conflict and counterattacks, women are on the receiving end of the violence. Decades of enforced disappearance and extrajudicial killing have created half-widows and widows in Kashmir. The half widow is an appellation given to a woman when her husband disappears but is not declared dead. According to APDP, a conservative estimate of 1,500 half-widows is there in Kashmir valley. Following the departure of the husband half widows and widows encounter social, cultural emotional, and psychological isolation. Though enforced disappearance cases are reported in police stations; the cases are rejected for not having substantial evidence or are pending for years. The injustice is stated that the military is immune under the Public Safety Act and police cannot arrest or take action against armed forces without proper evidence.

Half-widows often face an identity crisis of neither a wife nor a widow and social ostracism. She and her children are not accepted in the family and have no right to the inherited family property of her husband (Waheed & Ahmad, 2012; Singh, 2019). As per Islamic Shariah law, a widow with children can receive one-eight and without children one-fourth of her husband's property. But 'half widows are not widows' and after the death of the husband, the half-widow is moved to her parental house and cannot make a claim on the dead husband's share in the property. Half-widows are not taken back to their parental family due to economic and cultural constrain and often their husband's family is reluctant to take responsibility for the victim and her children. Half widows neither get the privilege of the wife nor get the compensation given to the widows of the deceased in conflict. To attain compensation to the wife, her husband should be declared deceased or she should prove his death, but in the case of a half-widow, neither is possible. The government does not provide financial aid to the family of the disappeared, and even if ex gratia is granted to the victim's family, the half-widow is given only about one-eighth of the relief amount and the rest goes to the family members as per the Muslim Personal Law (Rashid, 2011). Half-widows are not permitted to transfer any official documents to their name- ration cards, insurance, transfer of husband's property, bank accounts, and other official records as they cannot provide a death certificate or eyewitness to their husband's death. It is still a debatable topic whether to consider a half-widow as a widow and grant her the status and compensation given to the widow of a war crime.

Since Kashmir is a Muslim-dominant area, the legal practices are also based on Islamic laws. Islamic law encourages remarriage but major schools of Islamic law provide various guidelines on remarriage. Muslim Marriage Act of 1942 says that if the whereabouts of the husband have not been known for 4 years the woman can seek permission to dissolve the marriage. However Islamic laws say if her first husband arrives after the second marriage, the previous marriage is dissolved and if she bears children from a second marriage, they will be legal (Nazir & Manzoor, 2018; Qutab, 2012). There exist sociocultural taboos and conflicting views about remarriage; the marriage of a half-

widow is rare, and they often restrain themselves from married life in fear of stigma and social ostracism.

Research shows that despite the exposure to violence in a war zone being alike for both genders, women are far more likely than men to be widowed. Once the women pass the initial trauma of bereavement, they must alter to the social and cultural changes. Women express insecurity and hardship in their changed gender roles with emotional disturbance, financial burden, displacement, and humiliation (Osuri, 2018; Niaz, 2014; Omidian & Miller, 2006). Most of the disappearances and extrajudicial killings occur in frontline or rural areas where women are illiterate and depend on agriculture and livestock for their daily bread. With the loss of the sole breadwinner of the family, women become emotionally dependent and incapacitated. A single-mother family is approximately five times more likely to be poor than a two-parent family (Cancian & Reed, 2008). The single mothers in Kashmir, who are uneducated with no financial security and stable income are incapable of providing their children with basic needs. The children of half-widows are taken away from them; either sent to an orphanage or kept in their father's house. The inability to attend to the emotional and financial needs of the family and the status of "single parent" and "single woman" is deteriorating and traumatizing to the victim. The bereavement, isolation, economic instability, low educational status, and poverty have intensified the grief and have had an immense effect on the social, emotional, and psychological psyche of the women victims (Hamid, Jahangir, & Khan, 2021; Shin, Kim, Liw, & Kim, 2009; Crew, 2008). Research shows that there is not a single case of PTSD was registered before 1990 (before the onset of terrorism and armed conflict in Kashmir) but after a decade between 200 and 300 people consult every day at the psychiatric hospital in Srinagar (Hassan & Shafi, 2013). The case of continuous exposure and daily stressors acts as a mediator between the traumatic incident and the symptoms of mental health illness. According to Margoob (1995) (a senior psychiatrist in Kashmir, human rights violations by militants and government forces have developed PTSD in civilians of Kashmir. The symptoms do not resolve quickly and repeated exposure to unpredicted terror and disruption of daily life must have contributed to PTSD symptoms in respondents (Ahmad Dar, Deb, & Bhat, 2023; Housen et al., 2019).

According to the lifestyle exposure theory, people who fit particular demographic profiles are more likely to become victims of crime because of the risky scenarios that their lives expose them to. An individual's lifestyle plays a critical role in determining the risk of exposure to a crime or victimization. In this context, lifestyle is taken to cover all routine daily activities whether vocational or leisure. The deviant Place Theory states that prolonged exposure of an individual to a dangerous place makes him/her likely to become the victim of a crime (Seigel, 2006). In this case, the active or passive involvement of the individual doesn't make him the victim of the crime, rather being in a "bad" place makes the individual a victim. In contrast to the position put forward by the Deviant Place theory, the Victim Precipitation theory attributes the role of the victim in alluring

the offender for committing the crime. In the present study, the war-affected region makes the individuals prone to the victimization of forced disappearance. Here, half-widows and the children of the disappeared are more likely to fall prey due to the unrest prevailing in the war-affected valley. The theory further posits that adopting preventive measures to protect from victimization is ineffective because victimization is caused by neighbourhood and not by lifestyle.

Children – Victim of Enforced disappearance

Though the protection of children in armed conflict is an issue of international concern, notably within the United Nations system, children are equally exposed to violence as adults in a war zone. In the last decade, 2 million children were killed, 6 million were homeless, 12 million got disabled and injured, and around 300,000 children were recruited as child soldiers globally (UNICEF, 1997). Though humanitarian laws stand to safeguard children from being a target of conflict and protect them from participating in armed conflict, the alarming statistics depict a different picture that no child is safe in a war zone.

Studies show that children in conflict areas are also victims of poverty, malnutrition, bombing, extrajudicial killing, torture, rape, forced labour, and enforced disappearance (Santa Barbara, 2006). Children are dependent on their parents, but the disappearance of the father and the emotional unavailability of the mother disrupt their lives. Often the children are sent to substitute care due to economic constrain as the mother is helpless and cannot provide her children with basic needs. The state of fatherlessness, poor economic conditions, and lack of motherly affection have affected the mental stability of the child (Paul & Khan, 2019; Niaz, 2011). The children of the disappeared are under suspicion and monitored by armed groups and society. The military claims the disappeared to be a militant and often states that he had crossed the border to join the militant group and the militants suspect the disappeared to be an agent of the military. The family, especially the children of the disappeared are targeted and to conceal one's identity children run away from their homes.

In cases where the children of disappeared and decided to stay with the family; the burden of the household falls on their shoulders. Many times, the male child is voluntarily or involuntarily engaged in labour to support the family. Though child labour is an economic and social evil, the practice is widely accepted in the carpet and handicraft industry in Kashmir. As per the Indian Census report (2011), 25528 children in the age group of 5-14 years are into child labour in the State of Jammu & Kashmir and children enter the labour industry at the age of 11. Studies describe various reasons for the high prevalence of child labour; loss of family (orphan), to support family, illiteracy, and ignorance of the parents; but the main reason mentioned was the loss of the breadwinner (father) and the eldest son/daughter it's their duty to provide for the family (Bhat & Rather, 2009; Gani & Shah, 1998). Researchers stated that continuous conflict harms the mental health of children and they are emotionally and psychologically victimized suffering from anxiety, depression,

and post-traumatic disorder (Khan, 2022; Naqshbandi, Sehgal, & Hassan, 2012).

It is apprehended that the government incentive schemes for the cottage and small-scale industrial units have increased the demand for labour and thus child labour in Kashmir. The children are entrapped in hazardous occupations with severe health consequences: chronic bronchitis, chest pain, cough, dysphasia, and bacterial endocarditis (Mir, 1991; Pati, 1991). The ongoing conflict in the valley snatched the patronage of the children leaving the family to female headship, and to hold the family together the children are compelled to leave school to do menial labour for survival.

When forced economic necessities have caught many children in child labour, a war zone has other reasons to deprive a child of education. Close to 500 schools have been burned down in Kashmir since the emergence of insurgency. The increased risk of attending school in a conflict area has adversely affected the number of female students in the region. Studies show that female students living in conflict-prone areas are more likely to drop out of school than students from other areas. Parents of girl children discontinue their schooling in fear of sending the child alone to a militarized zone (Parlow, 2012). In Kashmir, most of the schools burned in rural places have been occupied and used as camps by the armed forces (Qayoom, 2014). According to International law: targeting an educational institution is a war crime - OPAC condemns "the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools" (Coomaraswamy, 2010). Geneva Convention IV and AP I protect infrastructure and property, including educational facilities, from direct and deliberate attack where such property is civilian and not used for military purposes (Schindler & Toman, 2004). It is evident that the increased militant activities and the counter-attack strategies have disrupted peace and tranquillity; this has also been reflected in the educational system in Kashmir. Ongoing conflict, prolonged curfew, roundup raids, and strikes have also contributed to breaking down the education system in Kashmir.

During the wave of the conflict when the curfew is imposed in the valley, youngsters come out to the streets to protest the military. Stone pelting or 'Kanni jung' is a common practice in Kashmir, it is a form of stone-throwing by Kashmiri youth on the Indian security forces deployed for crowd control and peace maintenance. This is a way of showing anger and retaliation against the government. Retaliation against the security force is a matter of pride and praise among the young generation. It is a common practice in the market streets to throw stones and protest after the Friday prayer. Despite knowing that if caught under PSA and AFSPA for retaliating against armed force -the minimum punishment is two years of imprisonment without trial and even if the detention can be prolonged on the same ground; youngsters still indulge in the act. With the new wave of militancy, i.e., social media-driven; the militancy in Kashmir is attaining a new phase. The year 2016 witnessed the rise of child militants in Kashmir- Burhan Wani; a minor when recruited to Hizb-ul Mujahideen – a militant organization. Social media was flooded with pictures of Burhan Wani holding guns along with his companions. The message was far-reaching, and a new dimension of conflict emerged with more minors joining terrorist outfits and involved in armed jihad. But Burhan Wani was killed at the hands of State agents in a counterattack. In July 2016, chaos and protest followed the death of Burhan Wani along with two other Hizb-ul Mujahideen. The incidents have caused the death of more than 60 civilian casualties and injury to 5,500 civilians and 130 civilians were reported to have been partially or fully blinded in the pellet attacks (Ismail, 2023; Nabeel, Riaz & Muneer, 2016).

One of the most pernicious forms of violence against children in a war zone is making them participate in violence itself. Countless children are forced to become child soldiers and fight war and insurgency around the world. The adoption of the Statute of the International Criminal Court (2023) conscripting or enlisting children under 15 into armed forces or groups or using them to participate actively in hostilities constitutes a war crime (Art 8(2). With Burhan Wani, Kashmir has seen a new crop of militancy that is ripe to be harvested. The praise and fame received by a militant exhibit the morale and ideological indoctrination of an entire generation. The militant units recruit members by using the non-coercive way of luring and making them believe in group ideology and apocalyptic vision. A sense of pride, prestige, and false hope is instilled in the members to feel respected in society. The role of family, religious beliefs, feelings of discrimination and inequality, torture, and destruction of the family have been believed to be the contributing factors for a younger generation in Kashmir to indulge in violent behaviour (Bloom, 2018).

Years of ongoing conflict and exposure to continuous violence have sealed the fate of an entire generation. Examining judicial and quasi-judicial international institutions the victims of enforced disappearance in Kashmir has deprived them of the level of legal personality, the right of individuals to identify, and the right to life and human treatment (Ahmadi, Maryam, Elahe & Yaser, 2019). Extrajudicial killing, bereavement of loved ones, broken family, disrupted childhood, poverty, and fear of living in a militarized zone has an adverse effect on the women and children in Kashmir. The exposure to threatening incidents and violence to self and family caused much suffering and the emotional and psychological well-being of the victim is also at stake.

RECOMMENDATIONS

- Law and policy changes should address the victims of violence. Actions should be taken to implement state and central legislation to safeguard the half-widows.
- Actions should be taken to grant half-widows the status of widows. Implement a streamlined system of compensation and relief funds for half-widows.
- Implementation and monitoring of international humanitarian law regarding the protection of women and children in Kashmir.

- Establish measures to prevent children from entering forced labour. The measures should include sensitizing civilians on the legal issues of child labour and giving awareness of the occupational hazards causal to health problems among children.
- Provide free and compulsory education to all children regardless of gender and geographical area of living. Necessary actions should be taken to safeguard children and educational institutions from being attacked.

CONCLUSION

The colossal suffering over the years has affected the sociocultural stability and psychological well-being of the victims. Ensuring that all civilians are protected in a war zone is a global challenge and particularly daunting. Civilians remain exposed to violence all the time, and hence casualties in a conflict are inevitable. The government should provide better protection and assistance to victims of conflict. Necessary steps are to be taken to ensure that the parties in conflict should respect international humanitarian laws and humanitarian values to ensure the protection of civilians. However, while the endeavour of reintegrating the harmed is difficult, remember it is never futile.

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About the Corresponding Author



Dr. Sharon P. Thomas, Assistant Professor at JAIN (Deemed-to-be University), Kochi, researches victims of terrorism and armed conflict in Kashmir. Her work focuses on women's issues, workplace victimization, and human rights. She has edited a book and holds a copyright on a model preventing women's victimization at work.