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CONCEPT OF JIHAD IN MODERN MUSLIM LAW: AN ANALYSIS OF MISREPRESENTATION, GENDER IMPACT, AND JUDICIAL INTERPRETATION IN INDIA

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I. ABSTRACT

The concept of Jihad in Islam has long been a subject of scholarly debate, political discourse, and media portrayal. While the term Jihad is often translated as “struggle” or “striving,” its meaning and interpretation have evolved over time, influenced by religious, historical, and socio-political factors. Classical Islamic thought presents Jihad as a comprehensive struggle encompassing personal spiritual discipline, intellectual and social activism, and defensive military efforts. However, in contemporary global narratives, Jihad is frequently equated with violence, terrorism, and extremism, leading to widespread misconceptions that impact both Muslim and non-Muslim communities. This research aims to provide a nuanced understanding of Jihad by examining its historical origins, theological foundations, and modern interpretations. It explores the distinction between Greater Jihad, which emphasizes self-improvement and moral struggle, and Lesser Jihad, which involves armed struggle under strict ethical guidelines. The paper further investigates how modern Islamic scholars and organizations define Jihad in the context of peacebuilding, social justice, and international law, countering the rhetoric of extremist groups that manipulate the term for ideological and political purposes. Additionally, this study critically analyses how the media, political discourse, and global counterterrorism policies have contributed to the misrepresentation of Jihad. It assesses the role of Western and Islamic media in shaping public perceptions and highlights how misinformation fuels Islamophobia and hinders interfaith dialogue. By examining case studies of reformist Islamic scholars and peace initiatives, this paper identifies efforts within the Muslim world to reclaim the authentic meaning of Jihad and promote a non-violent, ethical, and socially responsible interpretation of the concept.

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II. KEYWORDS

Jihad, Islamic Jurisprudence, Islamophobia, Women's Rights, Counterterrorism.

III. INTRODUCTION

The concept of Jihad² is one of the most debated and frequently misunderstood aspects of Islam. The term “Jihad” originates from the Arabic root “J-H-D” (ج-ه-د), meaning “to strive” or “to exert effort.” In Islamic teachings, Jihad encompasses a broad spectrum of meanings, ranging from personal self-discipline and moral struggle to social activism and, under specific conditions, armed resistance. However, in contemporary global discourse, Jihad is often misrepresented and narrowly associated with violence and terrorism, leading to significant misconceptions about its true nature.

In classical Islamic scholarship, Jihad has been categorized into two major forms:

1. **Greater Jihad (Jihad al-Nafs):** The internal struggle for self-improvement, spiritual growth, and moral discipline. This includes resisting sinful temptations, striving for personal excellence, and upholding ethical conduct.³
2. **Lesser Jihad (Jihad bil-Sayf):** The external struggle, which may include armed conflict, but only under strict ethical and legal conditions such as self-defense or protecting religious freedom. This form is regulated by Islamic jurisprudence (Shariah) and is never meant to justify aggression or terrorism.

Historically, Jihad played a crucial role in the defence and expansion of early Islamic communities, often under political and military threats. Islamic empires,⁴ including the Umayyad, Abbasid, and Ottoman dynasties, incorporated Jihad into their political strategies, though interpretations varied based on historical contexts. However, in the modern era, especially after colonialism, geopolitical conflicts, and the rise of extremism, Jihad has been reinterpreted and, in some cases, misused by political entities and militant groups.

² Rudolph F. Peters, *Jihad in Classical and Modern Islam* 1-5 (Markus Wiener Publishers 1995).

³ *Id.* at 2; see also Encyclopaedia Britannica, *Jihad*, <https://www.britannica.com/topic/jihad>

⁴ Majid Khadduri, *War and Peace in the Law of Islam* 55-73 (Johns Hopkins Press 1955); see also Peters, *supra* note 1, at 10-15

A. Statement of the Problem

The concept of Jihad in Islam has been widely debated and often misunderstood, both within and outside the Muslim community.

While classical Islamic scholarship defines Jihad as a multifaceted concept encompassing spiritual, intellectual, and, in certain cases, defensive military struggle, modern interpretations vary significantly. In contemporary discourse, Jihad is frequently associated with violent extremism, particularly in media and political rhetoric, leading to misconceptions and stereotypes about Islam and its followers.

This research seeks to address:

1. The Evolution of Jihad
2. Diverse Interpretations
3. Impact of Misinterpretations
4. Jihad in Modern Islamic Thought

By exploring these issues, the research aims to clarify the authentic Islamic perspective on Jihad, distinguish it from extremist narratives, and contribute to a more nuanced understanding of its role in modern Islam.

B. Research Objectives

1. To critically analyse the concept of jihad in modern Islamic law
2. To examine the different interpretations of jihad and their implications
3. To investigate how modern Islamic legal frameworks address terrorism in the name of jihad.

C. Research Questions

1. How has the concept of jihad evolved in modern Islamic law?
2. How do modern Islamic legal frameworks address terrorism in the name of jihad?

The findings of this research underscore the need for a more balanced discourse on Jihad, free from political biases and media sensationalism. The paper concludes by offering recommendations for scholars, policymakers, and media professionals on

how to foster a more accurate and constructive understanding of Jihad in modern Islam. Through a thorough theological, historical, and socio-political analysis, this study contributes to the broader conversation on religious identity, extremism, and global peace efforts in the 21st century.

D. Research Hypothesis

The central hypothesis of this research is that the concept of Jihad in modern Muslim law has been systematically distorted from its classical theological and jurisprudential meaning, and that this distortion perpetuated by extremist groups, political actors, and media narratives is not supported by the foundational sources of Islamic law, namely the Quran, Hadith, and classical *fiqh*. It is further hypothesised that the misrepresentation of Jihad has produced measurable adverse consequences in three distinct domains: first, the erosion of women's rights under extremist governance structures; second, the radicalisation of vulnerable Muslim populations; and third, the entrenchment of Islamophobia in global legal and policy frameworks, including counterterrorism legislation.

The paper proceeds on the assumption that a jurisprudential re-examination of Jihad, grounded in classical Islamic scholarship and interpreted in light of modern international law and human rights standards, can offer a corrective framework that distinguishes authentic religious obligation from politically motivated violence. This hypothesis is tested through a doctrinal analysis of primary Islamic legal sources, a critical review of contemporary scholarly interpretations, and an examination of judicial decisions from Indian courts concerning the invocation of Jihad in legal proceedings.

E. Research Methodology

This research adopts a doctrinal and analytical methodology, which is the standard approach in legal scholarship examining religious law, jurisprudence, and its intersection with modern legal systems.

- 1. Nature of Research:** This is a qualitative, non-empirical study. It does not rely on surveys, interviews, or field data. Instead, it draws upon primary

and secondary legal and theological sources to construct a coherent analytical framework for understanding Jihad in the context of modern Muslim law.

2. Sources of Data:

- **Primary Sources:** The research draws upon the Quran and Hadith as the foundational primary sources of Islamic law, along with classical jurisprudential texts from the four major Sunni schools of thought Hanafi, Maliki, Shafi'i, and Hanbali. Indian judicial decisions, including *Shayara Bano v. Union of India* (2017) 9 SCC 1 and *Shafin Jahan v. Asokan K.M.* (2018) 16 SCC 368, are also treated as primary legal sources. International instruments including United Nations reports on ISIS atrocities and conflict-related sexual violence are additionally referenced as primary documentary evidence.
- **Secondary Sources:** The research relies on peer-reviewed academic journal articles, books by leading scholars of Islamic law and international law, legal commentaries, and credible media and policy documents. Key secondary sources include works by Rudolph F. Peters, Khaled Abou El Fadl, Shaheen Sardar Ali, and Javaid Rehman, among others.

3. Method of Analysis:

The research employs the following analytical methods:

- **Doctrinal Analysis:** The paper examines the textual and jurisprudential development of Jihad across classical Islamic legal traditions and traces how these have evolved in modern Islamic legal thought. This involves close reading and interpretation of legal texts, fatwas, and scholarly opinions.
- **Historical Analysis:** The paper traces the historical evolution of the concept of Jihad from the early Islamic period through the colonial era and into the post-9/11 global environment, identifying how geopolitical forces have shaped and reshaped its interpretation.

- **Comparative Analysis:** The paper draws comparisons between classical Islamic conceptions of Jihad and modern international humanitarian law, particularly the laws of armed conflict and the Geneva Conventions, to assess points of convergence and divergence.
 - **Case Study Analysis:** The paper examines specific instances of judicial interpretation of Jihad-related issues in Indian courts, as well as documented case studies of extremist misuse such as the Yazidi genocide and Taliban governance in Afghanistan, to ground the theoretical arguments in concrete legal and factual examples.
- 4. Scope and Limitations:** The research is limited to the concept of Jihad within Sunni Islamic jurisprudence, with primary reference to the Indian legal context. It does not undertake a comprehensive comparative study of Shia jurisprudence on Jihad, nor does it examine domestic legislation on counterterrorism across all Muslim-majority jurisdictions. These remain areas for future research.

F. Review of Literature

1. Classical and Foundational Works

Rudolph F. Peters' *Jihad in Classical and Modern Islam* (1995) remains the most comprehensive foundational text on the subject. Peters traces the doctrine of Jihad across classical Islamic jurisprudence and into the colonial and post-colonial periods, translating key primary texts and demonstrating how political circumstances have continuously shaped the legal interpretation of the concept. His work establishes the critical distinction between defensive and expansionist Jihad and forms the theoretical backbone of much subsequent scholarship in this area.

Majid Khadduri's *War and Peace in the Law of Islam* (1955) offers an earlier but equally influential examination of Jihad as a doctrine of Islamic international law. Khadduri situates Jihad within the classical Islamic division of the world into *Dar al-Islam* (the abode of Islam) and *Dar al-Harb* (the abode of war), arguing that Jihad historically functioned as the legal instrument through which the Islamic state conducted its

foreign relations. While foundational, Khadduri's framework has since been critiqued for being overly statist and for understating the spiritual dimensions of the concept.

2. Jurisprudential and Legal Scholarship

Shaheen Sardar Ali and Javaid Rehman's article *The Concept of Jihad in Islamic International Law* (2005), published in the *Journal of Conflict and Security Law*, provides a rigorous legal analysis of how Jihad intersects with modern international law, including the United Nations Charter's prohibition on the use of force. The authors argue that classical Islamic Jihad doctrine, properly understood, is compatible with contemporary international humanitarian law and does not sanction aggression against civilians or non-combatants. This article directly informs the paper's analysis in Section 6.

Mouloud Ghazi's *Examining the Concept of Jihad* (2018), published in the *King's College London Strife Journal*, offers a close textual analysis of the Quranic verses pertaining to military Jihad and concludes that the conditions for its lawful declaration are narrow, specific, and analogous to just war theory in Western legal philosophy. Ghazi's methodology of Quranic exegesis is particularly relevant to the paper's argument that extremist invocations of Jihad are legally and theologically unsupportable.

3. Scholarship on Extremism and Misrepresentation

Khaled Abou El Fadl's *The Great Theft: Wrestling Islam from the Extremists* (2005) is the most important contemporary work addressing the misappropriation of Jihad by radical groups. Abou El Fadl, a leading scholar of Islamic law at UCLA, argues that organisations like Al-Qaeda and ISIS represent a fringe, puritanical distortion of Islam that has no basis in the classical jurisprudential tradition. His work directly supports the paper's central hypothesis and provides an authoritative Islamic legal voice against the extremist narrative.

John L. Esposito's *Unholy War: Terror in the Name of Islam* (2002) takes a political science and religious studies approach to the same problem, tracing how colonial humiliation, geopolitical grievances, and authoritarian governance in Muslim-majority countries

created the conditions for the radicalisation of Jihad. Esposito's work is important for understanding the socio-political context that the paper addresses in Sections 5 and 6.

4. Scholarship on Women's Rights and Jihad

The existing literature contains a significant gap in its treatment of the gendered dimensions of the misuse of Jihad. Most major works focus on Jihad as a doctrine of war or international law, with limited attention to how extremist interpretations have specifically targeted and harmed women. The United Nations Human Rights Council's report *They Came to Destroy: ISIS Crimes Against the Yazidis* (2016) and Amnesty International's *Escape from Hell* (2014) provide the most detailed documentation of this dimension, but they are policy and advocacy documents rather than legal scholarship. This paper contributes to filling this gap by specifically analysing the legal implications of Jihad-motivated violence against women in Section 8.

5. Indian Legal Scholarship

Indian legal scholarship on Jihad is limited primarily to case law analysis rather than doctrinal Islamic legal scholarship. The decisions in *Shayara Bano v. Union of India* (2017) and *Shafin Jahan v. Asokan K.M.* (2018) have been extensively analysed from constitutional law and personal law perspectives, but rarely from the standpoint of Islamic jurisprudence. This paper seeks to bridge that gap by reading Indian judicial engagement with Jihad-related issues through the lens of classical Islamic legal doctrine, thereby contributing a dimension that is largely absent from existing Indian legal scholarship on the subject.

G. The Problem of Misrepresentation

One of the key challenges in understanding Jihad today is its misrepresentation in media and political rhetoric. After the 9/11 attacks, global discussions around terrorism increasingly linked Jihad to violent extremism, overshadowing its broader and more peaceful dimensions.

This has led to:

1. Islamophobia and negative stereotypes about Muslims.

2. Government policies and counterterrorism measures that disproportionately affect Muslim communities.
3. Extremist narratives that exploit the idea of Jihad to radicalize individuals.⁵
4. Misinterpretation by extremist groups who distort its meaning to justify violence, terrorism, and militancy.⁶

Radical organizations like ISIS, Al-Qaeda, and Boko Haram have used Jihad as a propaganda tool, misleading followers into believing that aggression against civilians and non-Muslims is justified.

This misinterpretation harms Muslim communities themselves, as it promotes sectarian violence and instability within Islamic societies.

IV. MISUSE OF JIHAD BY MUSLIMS

While Jihad in its true Islamic sense means a noble struggle for righteousness, self-discipline, and justice, it has been misused by certain Muslim individuals, groups, and political entities for their own ideological, political, or violent agendas. This misuse has led to extremism, terrorism, and sectarian conflicts, creating a distorted image of Islam and harming both Muslims and non-Muslims worldwide.

A. Extremist Groups and Terrorism

1. **Justifying Violence in the Name of Jihad:** Groups like ISIS, Al-Qaeda, Boko Haram, and the Taliban have manipulated the concept of Jihad to justify acts of terrorism, including suicide bombings, mass killings, and attacks on civilians.⁷ These groups ignore the ethical and legal conditions of Jihad in Islam, which strictly prohibit harming innocent people. Instead of using Jihad for self-defence or justice, they exploit it to spread fear and assert power.
2. **Attacks on Civilians and Non-Muslims:** Islamic teachings strictly prohibit targeting non-combatants, including women, children, and the elderly.

⁵ Shaheen Sardar Ali & Javaid Rehman, *The Concept of Jihad in Islamic International Law*, 10 J. Conflict & Security L. 321, 321–22 (2005), <https://academic.oup.com/jcsl/article/10/3/321/877603>

⁶ Ghazi, *supra* note 3, at 92–93

⁷ Peters, *supra* note 1, at 103–15; *see also* Ali & Rehman, *supra* note 5, at 325

However, extremist groups attack civilians, churches, mosques, and markets, falsely claiming that they are engaging in Jihad. Example: The 9/11 attacks (2001), Mumbai attacks (2008), and countless bombings in the Middle East and Africa were all wrongly justified as Jihad by extremist groups.⁸

B. Political Exploitation of Jihad

- 1. Governments Using Jihad for Political Gains:** Some Muslim-majority governments misuse Jihad to suppress opposition and maintain power. Political leaders use religious rhetoric to incite violence against minorities or rival groups. Example: The Iranian Revolution (1979) and Saudi-backed extremist movements have used the term Jihad to justify political control.⁹
- 2. Jihad as a Tool for Proxy Wars:** Countries like Iran, Saudi Arabia, and Pakistan have supported militant groups under the banner of Jihad for strategic and geopolitical reasons. Example: The Afghan Jihad (1980s) against the Soviet Union was heavily funded by Western and Muslim countries, later giving rise to extremist groups like the Taliban and AlQaeda.¹⁰

C. Sectarian Violence (Sunni vs. Shia Conflicts)

Certain Muslim factions misuse Jihad to justify sectarian conflicts, leading to Sunni-Shia violence.

Extremist clerics and political leaders spread hate speech, declaring rival Muslim groups as “infidels” and calling for “Jihad” against them.

Example: ISIS declared Shia Muslims as enemies, justifying attacks on them.¹¹

⁸ See Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq* (Dec. 2014), <https://www.amnesty.org/en/documents/mde14/021/2014/en/>

⁹ Vali Nasr, *The Shia Revival: How Conflicts within Islam Will Shape the Future* 211–30 (W.W. Norton & Co. 2006)

¹⁰ Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and bin Laden* 87–120 (Penguin Press 2004)

¹¹ Ghazi, *supra* note 3, at 95; see also Peters, *supra* note 1, at 118

D. Jihad and Oppression of Women

In some extremist interpretations, Jihad is wrongly used to suppress women's rights, claiming that women should have no role in public life.

Groups like the Taliban have imposed harsh restrictions on women under the false name of "Islamic Jihad," banning education and employment for women.

However, Islam does not prohibit women's education or progress, and such practices contradict Islamic teachings.¹²

E. Radicalization of Young Muslims

Many extremist groups target young, impressionable Muslims by distorting the concept of Jihad. They spread propaganda online and in mosques, portraying Jihad as a duty to engage in violence. Thousands of young Muslims from countries like Syria, Iraq, Afghanistan, and even Western nations have been radicalized through false promises of martyrdom and paradise.¹³

F. The Global Muslim Community

- 1. Islamophobia and Discrimination:** The misuse of Jihad by extremists has caused widespread Islamophobia, making life difficult for ordinary Muslims. Many Muslims face discrimination, hate crimes, and travel bans due to the actions of a small minority.¹⁴
- 2. Internal Struggles in Muslim Societies:**
 - The false Jihad narrative has created divisions within Muslim communities, with moderates vs. extremists clashing over religious interpretation.
 - Instead of promoting unity, the misuse of Jihad has weakened Muslim societies through violence and fear.

¹² United Nations Assistance Mission for Iraq (UNAMI) & Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report on the Protection of Civilians in Armed Conflict in Iraq* (Aug. 2016), <https://www.ohchr.org/en/press-releases/2024/08/ten-years-after-yazidi-genocide-un-syria-commission-inquiry-calls-justice>

¹³ Ali & Rehman, *supra* note 5, at 330

¹⁴ See generally Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists* 3–20 (HarperSanFrancisco 2005)

V. UNDERSTANDING JIHAD FROM A HINDU PERSPECTIVE

As a Hindu, understanding Jihad requires viewing it within the broader framework of Dharma (righteous duty), self-discipline, and struggle for justice – concepts that are deeply rooted in both Islamic and Hindu traditions. While Jihad is an Islamic concept, its essence can be understood in ways that resonate with Hindu philosophy, particularly through ideas found in the Bhagavad Gita, Upanishads, and other Hindu texts.

A. The Meaning of Jihad in Islam

The Arabic term Jihad comes from the root word “J-H-D” (جهد), which means “to strive” or “to exert effort.” In Islamic teachings, Jihad is often categorized into:

1. Greater Jihad (Jihad al-Nafs)
2. Lesser Jihad (Jihad bil-Sayf)

B. Parallels Between Jihad and Hindu Concepts

1. **Jihad and the Concept of Dharma in Hinduism:** In Hinduism, the idea of Dharma (righteous duty) is central. Bhagavad Gita (Chapter 2, Verse 47) emphasizes performing one’s duty without attachment to the results¹⁵ – a concept similar to the struggle for righteousness in Jihad. Lord Krishna advises Arjuna to fight in the Kurukshetra war not out of hatred or aggression, but as his Dharma (duty) to restore justice. Similarly, Jihad in Islam does not promote aggression but emphasizes standing for justice and righteousness. Just as Krishna instructs Arjuna to fight for Dharma, Islam allows Jihad as a means to uphold justice and resist oppression.
2. **Jihad al-Nafs and Yoga (Self-Discipline and Inner Struggle):** The Greater Jihad (Jihad al-Nafs) the struggle against one’s ego, desires, and negative tendencies finds a parallel in Hindu practices¹⁶ like:
 - **Yoga:** The disciplined effort to master the mind and body.

¹⁵ Bhagavad Gita ch. 2, v. 47 (Swami Sivananda trans., Divine Life Society 1995), <https://www.holy-bhagavad-gita.org/chapter/2/verse/47>

¹⁶ Ghazi, *supra* note 3, at 88–89

- **Tapasya (austerity):** The struggle to overcome weaknesses and attain spiritual enlightenment.
- **Bhakti (devotion):** Surrendering oneself to a higher purpose, similar to striving for righteousness in Jihad.

In Hindu and Islamic traditions, self-purification and inner discipline are essential for spiritual progress.

3. Lesser Jihad and Kshatriya Dharma (Warrior Ethos in Hinduism):

The Lesser Jihad (armed struggle under ethical conditions) can be compared to the Kshatriya Dharma in Hinduism.¹⁷ Hindu epics, like the Mahabharata, emphasize that warfare should be:

- **For righteousness (Dharma Yuddha):** Only for justice and self-defence.
- **Under ethical constraints:** Not harming innocents, respecting adversaries, and fighting with honour.

Similarly, Jihad in Islam is allowed only under strict ethical conditions—not for personal gain or aggression, but for protecting the weak and ensuring justice.

C. The Misuse of Jihad and Hindu Parallels

Just as Jihad has been misinterpreted by extremists for violence, concepts in Hinduism, like “Dharma Yuddha” (righteous war), have also been misused by certain groups for political or ideological agendas. Both Hinduism and Islam emphasize that violence should only be a last resort, undertaken under strict moral and ethical guidelines.

D. Common Ground Between Hinduism and Islam

Both religions emphasize:

1. Inner self-discipline and struggle against desires.
2. Upholding justice and resisting oppression.
3. Compassion, peace, and ethical conduct in all struggles.

¹⁷ Peters, *supra* note 1, at 3

Thus, from a Hindu perspective, Jihad can be understood not just as warfare, but as a broader concept of striving for righteousness, self-discipline, and justice – much like Dharma and Yoga in Hinduism

VI. ADVERSE EFFECTS OF THE MISUSE OF JIHAD ON WOMEN

Misinterpretation by extremist groups has had severe consequences for women, both Muslim and non-Muslim. Women have been subjected to violence, oppression, forced marriages, sexual slavery, and restricted rights, often under the false pretext of religious duty.

- 1. Sexual Violence and Exploitation:** Extremist groups have justified rape, sexual slavery, and forced marriages as part of their distorted version of Jihad. Example: ISIS enslaved thousands of Yazidi women in Iraq (2014), forcing them into sexual servitude, claiming it was a religiously sanctioned act.¹⁸
- 2. Forced Marriages and Conversions:** Women, particularly from minority communities, have been kidnapped and forced into marriages and religious conversions in some regions. Example: In Pakistan, Hindu and Christian girls have been abducted and forcibly converted to Islam under claims of religious duty. Several Indian states (Uttar Pradesh, Madhya Pradesh, Karnataka, Uttarakhand, Gujarat) have passed laws criminalizing fraudulent religious conversions through marriage.¹⁹
- 3. Denial of Education and Employment:** In extremist-controlled regions, women's education and employment have been severely restricted, as radical interpretations of Jihad dictate that women should remain confined to their homes has led to oppressive practices against Muslim women in India, particularly in matters of marriage, divorce, and dress codes. Example:
 - **Triple Talaq Case (2017):** Muslim women in India fought against the practice of instant triple talaq (which allowed men to divorce their wives

¹⁸ U.N. Human Rights Council, *They Came to Destroy: ISIS Crimes Against the Yazidis*, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016), <https://news.un.org/en/story/2016/06/532312>

¹⁹ See Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 35, Acts of U.P. Legislature, 2021 (India); see also Madhya Pradesh Freedom of Religion Act, 2021, No. 5, Acts of M.P. Legislature, 2021 (India)

unilaterally). The Supreme Court ruled the practice unconstitutional, marking a victory for women's rights.²⁰

- **Hijab Controversy (Karnataka, 2022):** A legal dispute arose following the Government of Karnataka's order restricting the wearing of hijabs in pre-university college classrooms, raising significant constitutional questions concerning women's rights, equality, religious freedom, and access to education. The Karnataka High Court, in *Resham v. State of Karnataka, 2022 SCC Online Kar 315* (Karnataka High Court, Full Bench, decided on 15 March 2022), upheld the validity of the Government Order. The judgment was subsequently challenged before the Supreme Court in *Aishat Shifa v. State of Karnataka, 2022 SCC OnLine SC 1394* (Supreme Court of India, decided on 13 October 2022), where a two-Judge Bench delivered a split verdict, resulting in the matter being left unresolved pending consideration by a larger Bench.²¹

Under Taliban rule in Afghanistan (1996-2001, and 2021-present), women were barred from schools and universities, and female employment was drastically reduced.

Similar restrictions were imposed by ISIS in Syria and Iraq, where women were forced to follow a strict dress code and were banned from working.²²

4. **Increased Domestic Violence and Gender Oppression:** The radical interpretation of Jihad has often been used to justify gender-based violence and suppress women's rights. In some extremist ideologies, women are considered subordinate to men, leading to a rise in domestic violence, honour killings, and legal discrimination.

²⁰ *Shayara Bano v. Union of India, (2017) 9 SCC 1* (India) (Supreme Court of India holding, by a 3:2 majority, that the practice of instant triple talaq (*talaq-e-biddat*) was unconstitutional and violated Articles 14, 15, and 21 of the Constitution of India).

²¹ *Resham v. State of Karnataka, 2022 SCC Online Kar 315* (Karnataka High Court, Full Bench, decided Mar. 15, 2022), challenged in *Aishat Shifa v. State of Karnataka, 2022 SCC OnLine SC 1394* (Supreme Court of India, decided Oct. 13, 2022) (split verdict).

²² UNAMI & OHCHR, *supra* note 12

5. **Psychological Trauma and Social Isolation:** Women who have been victims of Jihad-driven violence often face lifelong trauma, social stigma, and exclusion from society. Many survivors of sexual violence and forced marriages find it difficult to reintegrate into their communities due to societal shame.

VII. JUDICIAL INTERPRETATION OF JIHAD-RELATED CONCEPTS IN INDIAN COURTS

Indian courts have rarely interpreted the theological concept of *Jihad* directly. Instead, judicial engagement has arisen in disputes concerning Muslim personal law, religious conversion, religious expression, and criminal prosecutions involving allegations popularly described as "love jihad" or organised religious conversion. Consequently, the jurisprudence does not define Jihad as a legal doctrine; rather, it examines constitutional rights, statutory provisions, and criminal liability within the framework of the Constitution of India. These decisions illustrate how Indian courts have balanced religious freedom, gender justice, individual autonomy, and public order while avoiding theological adjudication except where necessary for resolving legal disputes.

1. **Shayara Bano v. Union of India (2017):** The decision in *Shayara Bano v. Union of India*, (2017) 9 SCC 1, represents a landmark constitutional intervention in Muslim personal law. By invalidating the practice of instant triple talaq (*talaq-e-biddat*), the Supreme Court affirmed that constitutional guarantees of equality and dignity prevail over practices found to be arbitrary or unconstitutional. Although the case did not concern Jihad directly, it demonstrates the Court's willingness to distinguish between essential Islamic principles and practices lacking constitutional legitimacy, thereby reinforcing the protection of Muslim women's rights within the constitutional framework.
2. **Shafin Jahan v. Asokan K.M. (Hadiya Case):** In *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368, the Supreme Court restored the autonomy of an adult woman who had voluntarily converted to Islam and married a Muslim man. Rejecting allegations unsupported by evidence that the marriage formed part of a larger conspiracy, the Court reaffirmed that the freedom to choose one's

faith and spouse constitutes an integral component of personal liberty under Article 21 of the Constitution. The decision illustrates judicial reluctance to endorse generalized narratives surrounding religious conversion in the absence of legally admissible proof.

3. **Karnataka Hijab Litigation:** The Karnataka hijab litigation arose from restrictions imposed on the wearing of hijabs in pre-university college classrooms. In *Resham v. State of Karnataka*, 2022 SCC OnLine Kar 315, the Full Bench of the Karnataka High Court upheld the Government Order regulating institutional dress codes. Appeals before the Supreme Court in *Aishat Shifa v. State of Karnataka*, 2022 SCC OnLine SC 1394, resulted in a split verdict, leaving the constitutional questions open for consideration by a larger Bench. The litigation reflects the continuing judicial effort to reconcile religious freedom with institutional discipline and educational regulation rather than determining theological questions concerning Islamic doctrine.
4. **Criminal Law and Allegations of Organised Religious Conversion:** Recent prosecutions before courts in Uttar Pradesh, including *State of Uttar Pradesh v. Mohammed Alim* and the 2024 Special NIA/ATS Court, Lucknow mass conversion case, demonstrate the increasing reliance upon criminal law to address allegations of fraudulent or coercive religious conversions. These proceedings primarily concern the application of penal statutes and the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, rather than judicial interpretation of Jihad as an Islamic legal concept. Accordingly, they should be understood as criminal adjudications addressing allegations of deception, coercion, or unlawful conversion, rather than authoritative pronouncements on Islamic jurisprudence.
5. **Critical Analysis:** A review of Indian judicial decisions indicates that courts have consistently refrained from treating Jihad as an independent legal doctrine. Instead, judicial reasoning has centred upon constitutional guarantees of equality, dignity, religious freedom, personal autonomy, and the rule of law. Where Islamic principles have been discussed, they have generally served as contextual background rather than determinative legal norms. This judicial

approach substantially differs from classical Islamic jurisprudence, in which Jihad constitutes a distinct theological and legal concept governed by detailed jurisprudential principles. Indian constitutional adjudication therefore evaluates disputes involving Muslims primarily through the lens of constitutional rights and statutory interpretation rather than theological doctrine, demonstrating a clear distinction between religious scholarship and secular constitutional adjudication.

In the Indian legal context, the term 'jihad' has been referenced in various judicial decisions, particularly concerning issues of religious conversions and national security. Notable cases include:

1. Bareilly Court on 'Love Jihad' (2024)

- **Case Details:** In *State of Uttar Pradesh v. Mohammed Alim*, the trial court convicted the accused for offences committed under the Indian Penal Code, 1860, arising from allegations that he concealed his religious identity, induced the complainant into marriage, compelled her to convert to Islam, and subjected her to sexual and physical abuse. The judgment was delivered on 30 September 2024.²³
- **Judicial Observations:** The trial court characterised the prosecution case as involving what was described during the proceedings as "love jihad" and made observations regarding organised religious conversion through deception. These observations should be understood in the factual context of the trial court's findings and not as a statement of settled constitutional or statutory law.

2. Uttar Pradesh Court on Mass Conversions (2024)

- **Case Details:** On 10–11 September 2024, the Special NIA/ATS Court, Lucknow, presided over by Special Judge Viveka Nand Sharan Tripathi, convicted Maulana Umar Gautam, Mohammad Kaleem Siddiqui, and other accused for offences relating to an organised unlawful religious conversion

²³ *State of Uttar Pradesh v. Mohammed Alim* (Court of the Additional District & Sessions Judge, Bareilly, Judgment dated 30 September 2024).

racket under the Indian Penal Code, 1860 and the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021. Several of the principal accused were sentenced to life imprisonment.²⁴

- **Judicial Observations:** The findings formed part of the trial court's adjudication on the evidence before it concerning unlawful religious conversions. These findings should be distinguished from separate observations made by the Allahabad High Court in unrelated bail proceedings, certain remarks from which were subsequently directed by the Supreme Court not to be treated as binding precedent or cited as authoritative observations on the merits of the issue.
3. **Hadiya Case (Kerala, 2017):** A Hindu woman, Akhila Ashokan, converted to Islam and married a Muslim man, triggering legal battles as her parents alleged she was brainwashed by extremist groups. The Supreme Court later upheld her right to choose her faith and partner.²⁵

VIII. SUGGESTIONS

To counter the misuse of Jihad and restore its true essence as a struggle for justice, morality, and self-improvement, the following measures are recommended at the educational, religious, legal, and social levels.

1. **Educational Reforms:** Islamic studies curricula in madrasas, schools, and universities should be revised to teach Jihad in its complete theological context, distinguishing clearly between Greater Jihad and Lesser Jihad, and emphasising the strict ethical conditions that govern the latter. Comparative religious education, introducing students to parallel concepts such as Dharma Yuddha in Hinduism, can foster cross-cultural understanding and reduce the appeal of extremist narratives among young Muslims.

²⁴ *Special NIA/ATS Court, Lucknow (Court of Special Judge Viveka Nand Sharan Tripathi), Judgment dated 10–11 September 2024, convicting Maulana Umar Gautam, Mohammad Kaleem Siddiqui, and others under the Indian Penal Code, 1860 and the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.*

²⁵ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368 (India)

2. **Role of Religious Institutions and Scholars:** Mainstream Islamic scholars and institutions, such as Al-Azhar University and similar centres of religious authority, must take a more proactive and visible role in publicly denouncing extremist interpretations of Jihad through fatwas, sermons, and accessible media content. Training imams to address misconceptions about Jihad directly within community settings can help counter radicalisation at the grassroots level before it escalates.
3. **Legal and Policy Measures:** Counterterrorism laws should be carefully drafted to target violent conduct rather than religious belief, to avoid disproportionately criminalising Muslim communities or reinforcing Islamophobic stereotypes. Specific to the Indian context, legislation addressing forced conversions, such as the existing state-level Freedom of Religion Acts, should be applied with due process safeguards to prevent misuse against legitimate interfaith marriages and voluntary conversions, while genuinely coercive practices are prosecuted firmly.
4. **Media Responsibility:** Media organisations, both Western and Islamic, should adopt editorial standards that avoid conflating ordinary religious terminology with terrorism, and should actively seek out and platform voices of mainstream Islamic scholarship rather than amplifying extremist rhetoric for sensational value.

IX. CONCLUSION

This research has demonstrated that the concept of Jihad, as it exists within classical Islamic jurisprudence, bears little resemblance to the violent and indiscriminate phenomenon it is frequently equated with in contemporary global discourse. The doctrine, properly understood, encompasses a primary emphasis on internal moral struggle (Jihad al-Nafs) and permits armed struggle (Jihad bil-Sayf) only within narrow, ethically constrained circumstances such as self-defence, which themselves are bound by strict prohibitions against harming non-combatants.

The research has shown that the systematic distortion of this doctrine by extremist organisations, authoritarian political regimes, and, at times, sensationalist media

coverage has produced significant and disproportionate harm, particularly to women, who have borne the brunt of Jihad-justified sexual violence, forced marriage, and denial of fundamental rights in regions under extremist control. At the same time, the research has revealed that Indian judicial engagement with the term "jihad," particularly in cases concerning religious conversion, occupies an uncertain legal space that risks importing a politically charged and jurisprudentially unfounded concept into formal legal reasoning.

The comparative analysis undertaken in this paper, drawing parallels between Jihad and the Hindu concept of Dharma, further supports the hypothesis that struggles for righteousness across religious traditions share common ethical foundations centred on justice, restraint, and the protection of the vulnerable, rather than aggression or domination.

In light of these findings, this paper concludes that a multi-dimensional response encompassing educational reform, the empowerment of mainstream religious authority, carefully calibrated legal frameworks, responsible media conduct, and sustained interfaith dialogue is necessary to reclaim the authentic meaning of Jihad. Doing so is not merely a matter of theological accuracy but a practical necessity for reducing radicalisation, protecting the rights of women and minority communities, and fostering a more informed and less polarised public discourse on Islam in the twenty-first century.

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