



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

## **ARE MUSLIM WOMEN UNDER A STEREOTYPIC BAR?**

AUTHORED BY - AAKRITI SHARMA

It is a well known opinion of any non-Muslim that muslim women are not having freedom and liberty in their own houses. The idea of them wearing 'hijab' or 'burka' also ignites the whole debate regarding their freedom. Further, Muslim laws which allow the marriage of women under the age of even 18 years or at the age of puberty, poses the question that whether the woman really wants it? Or are they forced to listen to the 'men of their house'. Many people think that the problem lies in the religion, but no, the actual problem lies in the interpretation or rather the 'wrong interpretation' of the religion. In Islam, both women and men are treated equally, they have been given the equal rights and their individuality is also protected when being a Muslim woman. But in practice, men like in all the religions, consider that women are their slaves and thus, try to be dominating in a way which come at the cost of curtailing the liberties and rights of women, and that's why there is no religion which is bad, it is just the people and their manipulations which brings the wrong name and reputation to the religion. <sup>1</sup>

The Quran always emphasizes the phrase as 'believing men and women' so that both are considered equal as part of their relationship to Allah. So, let's try to understand why people think that Muslim women are suffering in their households and what's the truth behind it. According to the report published by NSS 43rd Round (1977-78), the illiterate women was 59.5 % when compared to the 42.2% of Hindus and 22.7 % of Christians. Thus, this data clearly shows the marginalization of Muslim women. What could be the reasons behind this? Is it the general economic development question or does it have something to do with the connection with coming from Muslim household. Not just in education but also when it comes to the Labor Force Participation, the report by NSS 43rd report says that the Muslims are less in number. These things make the Muslims actually the community of 'Minority' in the country, not just in the population or numbers but also in the list of getting the 'privileges', which is sad for a democratic country like India, where we promise to provide social welfare and economic development to every citizen of the country.

Thus, this is a well-versed fact that the religion also accelerates the rate of discrimination in

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<sup>1</sup> <https://mei.edu/publications/mass-rape-rohingya-muslim-women-all-out-war-against-all-women>

the Muslim community. The other example is in Hindu Community, which is that the people from Rajasthan and Haryana, are highly involved in discriminating against women and that's why the more social evils are higher in those places as compared to the other states or regions of the country. Hence, the mentality of people from certain communities may amplify the atrocities happening on the women.

Muslim women face the threats, violence and hatredness more outwardly than the Muslim men. They generally don't have any say or voice in the decisions making. This kind of attitude also distances them from politics and nation building, as when we have given the 1/3rd reservation of seats to women in the Parliament and the State Legislative Assembly then have we ever thought of what the number of muslim women taking part in it? First of all, even after all these reservation policies, the participation of women in politics is not extraordinarily high and then on top of it, when it comes to the number of Muslim women then according to the reports, Lok Sabha had never seen more than 4 Muslim women till the date. This number is too shocking in itself. The History of India has seen many Muslim women as the freedom fighters, but the 'rights' for what they fought for were never achieved even after Independence. <sup>2</sup>

### —> **Why Muslim women are suffering?**

The main answer to this question which can be understood by the layman too is the social and religious upbringing of the girl child. Girls are unfortunately treated as the 'burden' in the society and the overlapping of ill thoughts and ideas can exaggerate these biases against the Muslim girls. Society generally doesn't let women go through the choices they want in life, and on top of it, if the societal ideas are accompanied by the regressive ideas of any community, then the conditions of women won't get better anytime soon. Now, in the 21st century, the thoughts regarding women are changing and society is getting adapted to the new ideas of 'women empowerment'. Similarly, the changes have also entered in the Muslim laws, in the form of the landmark cases like Triple Talaq, Hijab case, Shah Bano case and many more as such which has struck the ideas of changes and progress in the minds of the Muslim women, in order to make them realize that they too deserve the 'basic rights' by being the part of this society.

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<sup>2</sup> <https://www.brandeis.edu/projects/fse/muslim/honor.html>

## —> Case laws pertaining to the Muslim women?

### 1. Triple Talaq Case:

- a. The case revolved around the idea of whether the talaq or divorce can be given orally through words.
- b. This was found too harsh on women as men used to give talaq to women under this practice, and women were not allowed to follow the same. Thus this strikes the idea of 'discrimination'.
- c. The Muslim Women (Protection Of Rights on Marriage) Act, 2019 made the opinion that the triple talaq infringes the fundamental rights of the women and thus, is not constitutionally valid.
- d. The Hon'ble Supreme Court in its judgment has decided that triple talaq was constitutional.

### 2. Ahmedabad Women Action Group(AWAG) Vs Union Of India (1997):

- a. The case was filed under the petition that the polygamy which is allowed under the Muslim law, must be struck down as being unconstitutional.
- b. There were many provisions under the Muslim law, which were questioned like the laws of inheritance under Shia and Sunni, which were found discriminatory as against the women due to the unequal share distribution.
- c. All these pointers in the petition were found non-maintainable as the Court found that the interference of the Courts in the matters of personal laws is not valid and thus, the petition was dismissed.

This also shows the gradual shift which has come in the attitude of people, society and the Courts to not take the stand for the women under the fact that personal laws must be respected and thus, was completely immune from the judicial scrutiny. But this thing changed in the 21st century, where many landmark cases have arrived just to protect the rights of the Muslim women, even though these judgments have not been welcomed in a way it should be but this has really helped in uplifting the status of women and reinforcing it in the way Quran has advised to. <sup>3</sup>

This problem has not been just restricted to our country but also has been in many

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<sup>3</sup> <https://theleaflet.in/criminal-justice/criminal-law/is-it-time-for-a-law-addressing-sexual-violence-against-muslim-women>

different countries like Sweden, Belgium, etc. In Sweden, the country has protested against the crimes happening to the women who are wearing Hijab, in the light and response of it, all the citizens, NGOs, activists and others have tried to wear the Hijab and protest against the crimes and supporting the Right to Safety to women who are wearing Hijab.

A country like India, needs to understand that while giving the citizens the right to enjoy the personal laws, at the same time, it means to protect the citizens of that religion, or community from any kind of social evils. Thus, we need more and more uniformity when it comes to approaching the cases where human values are involved as humanity has no colour, caste and creed. Muslim personal law either by Shia or Sunni Law, is fabulous when it comes to respecting the individuality of the women.

3. Danial Latifi and Another Vs Union Of India (2001 SCC 740)

The case revolves around the question of providing the maintenance within the period of 'iddat'. Thus, the Muslim Women (Protection of Rights on Divorce) Act 1986, was challenged as being 'unconstitutional' as against the provisions of Article 14 and 21.

But the Act was found to be constitutional as this Act was for the betterment and upliftment of the Muslim women. Hence, the idea of providing the maintenance to the Muslim women was the beneficiary provision.

4. Shamim Ara Vs State Of UP:

This case is very iconic when it comes to the stereotypical idea of Muslim women.

In this case, the woman was married to a man under Muslim personal law, later she filed for a divorce on the grounds of cruelty and desertion but the Court denied the maintenance saying that the couple has already been divorced as the man has pronounced the word 'Talaq' three times in the presence of neighbours.

Thus, this was the case which struck the minds of many people regarding the exercise of the Triple talaq practice which is derogatory in nature and does injustices to many Muslim women in the country.

—> **Landmark case of Hijab:**

There are many who think that wearing hijab for women, is not something which women have chosen for themselves but is the practice which has been forced on them. To understand the

insights on Hijab, it is important to understand the philosophy behind wearing Hijab.<sup>4</sup>

First of all, many get confused between Hijab and Burqa, when both are entirely different. Hijab is something whose main purpose is to cover hair, while Burqa covers the woman entirely right from the face, to hair, to body and everything in short.

The idea of wearing hijab is to reinforce the Islamic values of both men and women while interacting with each other in the society. The thing to notice here, is that this practice of wearing hijab is only for women and not for men. This shows that the crux of wearing Hijab to showcase the modesty of women in the most decent way is entirely dependent on the woman herself. So, it is a woman's duty to protect herself from the bad elements of the society, and also to prevent men from doing anything bad in the society, which seems like a very weird or awkward arrangement. In Islam, these practices of covering themselves have been put on the women to not let them cross their limits with anyone. But can this practice or arrangement make sure that the limits which Islamic practices want to create in the society, can be achieved through this. Is it fair to put all the burden of responsibilities on only one gender?

This seems wrong and biased as why it should be just the responsibility of women to protect the reputation of the society or family? If something is right then nobody cares about them but if something is wrong then the first blame is going to be on the 'women' for sure.<sup>5</sup>

However, this choice is just for the 'women' in West, where it is her choice to either wear the hijab or not but in other parts of the country, like India, it is not anyone's choice to wear hijab or not but in fact, it is mandatory for the Muslim women to wear hijab. This seems very wrong as we are living in the 21st century, where it should be our right and call to do certain things or not. The Constitution of India, guarantees the freedom to people to follow the religion of their choice.

Thus, the idea of having the women to wear Hijab may sound fine when we talk about the western countries as there, women do have the right to say NO if they don't want to wear Hijab, at least nobody is going to force them to do so. But in countries like India, the women are generally not listened to a lot, their voices, their opinions hardly matter and when it comes to

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<sup>4</sup> <https://www.washingtonpost.com/news/worldviews/wp/2015/05/22/islamic-state-burned-a-woman-alive-for-not-engaging-in-an-extreme-sex-act-u-n-official-says/>

<sup>5</sup> <https://www.newsclick.in/time-law-address-sexual-violence-against-muslim-women>

the practices of religion, or community then the people generally get more intensified and forget that the individual's satisfaction is more important than the community's or religious beliefs.

So, in short, the practice of wearing hijab is not wrong, the only way of getting through this practice is that it should be the woman's own choice and not due to anyone's force. Also, the idea behind wearing hijab should be very solid and not based on some orthodox mentality of the people. Wearing a hijab or not does not limit the crimes against the women or especially the muslim women if we are talking about this context. That's why this biggest responsibility of stopping the crime in the society and respecting the modesty of women should not fall entirely on the women of the society. It should be their choice whether they want to wear hijab or not, this decision should not be forced on the Muslim women or the girls just for the reason of them being born in the Muslim family.

### --->**Discrimination Against Muslim Women?**

The women who are always getting discriminated against on the basis of their gender roles, also do not get anything better when it comes to the 'religious sentiments'. It is not uncommon that whenever we walk on the road and we see any woman wearing hijab then we start assuming things regarding her background, just by looking at her dress, we can 'comment' on so many things. Now, this habit of judging people, commenting on their life choices and having prejudices regarding them, is something which we as 'humans' have inherently inside us. So, when these young talented Muslim girls go to schools, colleges, offices and places like that, people or authorities before admitting them or recruiting them get to know about them before they even explain about themselves. This is the problem faced by the authorities, and that's why the current Hijab case came into existence in the first place. The most important question in front of the Court was whether the wearing of the Hijab case was the 'essential practice or not?'<sup>6</sup>

### —>**Why Muslim Women are not having freedom?**

Is it true to say that all the women in the Muslim family are suppressed? Whether they get the voice or not, it is our true nature to directly comment on anyone as simply as that without

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<sup>6</sup> [https://migrant-integration.ec.europa.eu/library-document/forgotten-women-impact-islamophobia-muslim-women\\_en](https://migrant-integration.ec.europa.eu/library-document/forgotten-women-impact-islamophobia-muslim-women_en)

looking for the actual truth behind everything. So, this is in fact not true that the Muslim women are suppressed and they are being treated as the 'slaves' in all the families, it is just the mentality of people who think that just because the women are not allowed to choose whether or not to wear a 'burqa', they get married at the age of 15 years, and some other facts of Triple talaq, it becomes the general notion that Muslim women are not enjoying the freedom in their own home. But the reality is that not all the households are this orthodox, there are plenty of examples where the family has supported the Muslim girls or women to come upfront and achieve their dreams. Thus, it becomes very important to even see that side of the reality too while discussing this fact. Some of the Muslim women who took part in this mission of improving Women's position in the society are: Rokeya Sakhawat Hossain, Waheeda Begum, Muhammadi Begum, and many more as such.

These women literally show that there is nothing bad in any particular 'religion' or 'caste' or 'family' but it just depends on the way these 'mixtures' turn out to be when they get together, if they turn out to be in favour of women, then it takes the country's growth one step ahead else we move one step back as the whole society or country.

First of all, as a society we have already failed in uniting this country or making the minority groups feel as they equally belong to this country, the way majority does and all these can be evidenced through the ongoing riots like conditions in the Election based places like UP or Kashmir, where the basic facilities like Internet facilities gets struck down that easily hindering their 'freedom of speech and expressions' so that's why when it comes to overall Muslims then we have failed miserably and we are still busy in the 'Hindu-Muslim war' and figuring out who is better between them, so just think about the adversities of the Muslim women, who gets ill treated in all the ways possible, whether the place is Afghanistan, where the Taliban had taken over the government and now the women who are left out gets subjected to the violence of all forms.

### —> **Instances from the World:**

Whenever there is any war breakage or if the political system of the country gets unrested, then the vulnerable group which gets mostly tortured and against whom the maximum violence gets reported is the 'women' as according to all the reports, or the data from like Middle East Institute, the mass rape happened against the Rohingya Muslims in Myanmar due to the

political unrest which occurred between the army and the government. Since, women seem as the 'commodity' right from the historical ages where they were sold and bought for the other's needs and wants, there has not been a major change as even now women are treated as the 'product'. The unrest and coup in Myanmar has led to the fleeing of 700,000 Muslims from Myanmar, due to the conflict.<sup>7</sup>

Myanmar's military has made sure to use the minority ethnic group, Rohingya Muslims and use all sorts of violence against them. They had brutally raped Muslim women and girls which is very unfortunate even in today's time where the provisions like International human rights are there in the existence. Thus, even in wars like Russia-Ukraine, or in Israel-Palestine, it's always the women who are subjected to the maximum violence of all forms.

**Conclusion:**

Hence, it is not just the Muslim community which subjects women to unconventional practices or orthodox thoughts, it is the case almost everywhere, however we should make sure that no religion, community or anything should stop or restrict the women from choosing the choices they want or deserve.



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<sup>7</sup> <https://igg-geo.org/en/2024/02/27/muslim-women-in-india-a-double-burden-1-2-3/>