Law & Society REVIEW

Sharia Courts and Muslim Personal Law in India: Intersecting Legal Regimes

Katherine Lemons

In July 2005, a Delhi lawyer filed suit with the Supreme Court of India seeking to ban "sharia courts" (*dar ul qazas*) and Islamic legal opinions, arguing that they constitute a "parallel judicial system" that undermines the state's legal institutions. The Supreme Court decided in 2014 that dar ul qazas are not parallel but appropriate alternative forums. In this article, I analyze several divorce cases in Delhi and Patna dar ul qazas to show that, rather than being alternative or parallel, dar ul qazas intersect with state courts. Attending to this intersection, I argue, has implications for how we understand legal pluralism, secularism, and the relation between them. Specifically, I argue that because of how cases travel between dar ul qazas and state courts, dar ul qazas help to consolidate the oppositions between religious and secular law, kin relations, and rights upon which secularism relies.

In July 2005, a Delhi lawyer filed suit with the Supreme Court of India seeking to ban "sharia courts" (*dar ul qazas*) and Islamic legal opinions (*fatwas*) throughout India (*Vishwa Lochan Madan v. Union of India* 2005, Petition: 45–47).[1] The suit alleged that dar ul qazas were unconstitutional on the grounds that their decisions were issued by religious authorities and were not overseen by the state's legal apparatus. According to the lawyer who filed the suit, Vishwa Lochan Madan, this meant that dar ul qazas constituted a "parallel judicial system" in competition with the secular state's legal institutions. His petition focused on Muslim marital disputes, arguing that they should be dealt with in state courts, not in Muslim legal forums.

In 2014, the Supreme Court decided that, as dar ul qazas' decisions were not legally recognized, they did not undermine state law. The Court clarified that fatwas that interfere with or contradict the individual rights granted by the Constitution and laws of India should be ignored. The court thereby recognized state courts as legally superior to religious institutions. Madan and the Supreme Court agreed that state courts and dar ul qazas constitute distinct legal spheres and that the distinction between these

Please direct all correspondence to Katherine Lemons, Department of Anthropology, McGill University, Montreal, Quebec, Canada; e-mail: katherine.lemons@mcgill.ca.

[1] For an analysis of the *Madan* case as indicative of an institutional turn in legal pluralism in India, see Redding (2010).

Law & Society Review, Volume 52, Number 3 (2018)

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

spheres maps onto secular and religious normative orders, respectively. Although *Madan* viewed this aspect of Indian legal pluralism as a threat to justice and the authority of the state, the Supreme Court saw it as a useful alternative for members of the Muslim minority. At stake in this disagreement was the question of whether authority over marriage should rest solely with the secular state courts, as Madan argued, or whether it should reside in religious forums.

In this article, I draw on my research on two Indian dar ul qazas—one in Patna, Bihar and one in Delhi—to investigate the relationship, in practice, between dar ul qazas and state courts. Dar ul qazas, broadly speaking, are Islamic (or sharia) courts. They are adversarial dispute adjudication forums that base their judgments on witness testimony and extended discussions with litigants and their families. The judges in dar ul qazas, who are called qazis, are trained in seminaries rather than in law schools, and their legal procedures and resources come mainly from the Hanafi school of Sunni jurisprudence. Litigants in the dar ul qaza are all Muslim, while their economic status ranges from destitute to upper class. Dar ul qaza judgments are nonbinding from the perspective of the state and they cannot be directly appealed. However, as their authority rests on the qazi's religious legal credentials, and because all parties agree at the outset to abide by the qazi's decision, they can function as binding.

Based on my research in the Patna and the Delhi dar ul qazas, I contest the view articulated in *Madan* that dar ul qazas and state courts occupy completely separate spheres, whether alternative or parallel. I suggest instead that dar ul qazas and state courts intersect, in particular when adjudicating marital disputes.[2] Dar ul qazas are distinct from state courts, as they follow different procedures, refer to different legal philosophy and history, and occupy a position beyond the state. Yet, historically and in current practices, cases travel between dar ul qazas and state courts. A document I was given outlining the dar ul qaza process in Patna specifies the kinds of disputes it hears: marriage, divorce (*talaq, khul, faskh*), wills, inheritance, custody, and maintenance. This aligns with what I found in the 71 cases I studied. Cases heard in the dar ul qazas do not include criminal matters. This means that dar ul qazas instantiate a separate legal forum from the state courts even as they abide by the state's determination of which matters are appropriately adjudicated by religious authorities: even in state courts family matters are adjudicated according to religious law.

[2] While I do not give an in-depth analysis of the history of such intersection here, I agree with Redding (2014) that dar ul qazas share "mutually conditioned historicities" with the state (2014).

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

The intersections illuminate negotiations about which forum has jurisdiction over family life. My research shows that about 25 percent of cases that appear before dar ul qazas have traveled through state courts or other nonstate adjudication forums. Some judges, especially in Bihar, refer Muslim cases to dar ul qazas rather than hearing them in state court; Muslim clerics refer cases to dar ul qazas rather than to state courts. I argue that recognizing this intersection between dar ul qazas and state courts has consequences for how we understand legal pluralism, secularism, and the relationship between them in and beyond India. Namely, one view of legal pluralism holds that it is a mechanism for addressing distinct, sometimes competing, commitments in religiously plural secular states (Griffiths 1986). Another view holds that such contexts are "interlegal," comprised of different forums that inform one another and produce a kind of legal hybridity (cf.de Sousa Santos 1987; Hong Tschalär 2017; Solanki 2011). My research shows that legal pluralism can also consolidate a division of labor within a shared legal landscape wherein different claims, relationships, and predicaments are deemed appropriate to different forums, shaping cases and forums alike while maintaining their distinctiveness. In India, dar ul qazas and state courts together instantiate a distinction between religious and secular spheres wherein kin relations and their economies are proper to dar ul qazas and individual rights are proper to state courts. Legal pluralism does not reflect but rather produces these distinctions, in the process constituting and upholding the oppositions upon which secularism relies.

My argument has several facets, which I elaborate as follows. *Legal Pluralism in India* shows how divorce claims are shaped by this legal system. *Practicing Secularism* discusses key insights from recent anthropological analyses of secularism. *A Comment on Method* is a comment on my methods of research and analysis and an overview of the scope of my research. *Patna* introduces the Patna, Bihar dar ul qaza and analyzes two relevant cases from it. *Delhi* introduces and analyzes the Delhi dar ul qaza and one exceptional case it heard. The article's conclusion draws out the theoretical implications of this material for our understanding of the place of Islamic legal practices in modern religiously plural states.

Legal Pluralism in India

That religious legal institutions play a role in practices of Indian secularism is partly a consequence of the deep plurality of the Indian legal system, which is comprised of numerous nonstate

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

forums exhibiting a variety of legal bases and formal relationships to the state (Galanter 1981; Moore 1993; Randeria 2006; Redding 2013; Sharafi 2014; Solanki 2011). For example, there is a sector of quasi- and extra-legal dispute adjudication institutions available to settle disagreements and infractions ranging from traffic violations to marital disputes. Many of these institutions originated in the colonial or precolonial era and are now present in new forms in the postcolonial state. In recent years, the Indian government has set up secular alternative dispute resolution forums such as *Lok Adalats* (people's courts), in which judges hand down binding agreements following a process of mediation. An array of religious and community organizations, some new and some with long histories in India, also intervene in marital and family disputes, without any state oversight, and issue judgments that the state does not have to consider binding. Among these are *panchayats* (local councils), *mohalla* (residential) committees (Solanki 2011), and women's organizations such as *nari adalats* (Hong Tschalär 2017; Sharma 2008; Vatuk 2013).

One facet of legal pluralism in India is religious personal law: the law that applies to persons with regard to matters of marriage, divorce, adoption, succession, and inheritance (Agnes 1999; Sturman 2012; Williams 2006).[3] Personal law regulates relationships according to an individual's legal status. Sezgin (2013) has called postcolonial Indian personal law a "unified semi-confessional" system because state judges apply the religious personal laws of certain designated minorities—Muslims, Christians, Jews, and Parsis—to those groups and apply Hindu law to everyone else, including Jains, Buddhists, and members of other religious groups without their own personal laws (7). This means that the personal law structure represents a national legal code, but its content and implementation are uneven, dependent on religious affiliation.

Religious personal law in contemporary India is most directly indebted to its colonial predecessor, which was developed as part of an effort—riven with well-documented ironies—to govern Indians according to indigenous norms.[4] The legal framework that would become Personal Law in independent India was first formulated in 1772 by Warren Hastings, then Governor-General of Bengal, who declared that, with regard to "inheritance,

[3] For comparative analyses of religious personal laws in postcolonial states, see, for example, Sezgin (2013) and An-Naim (2010).

[4] The rulers of Moghul India also governed a religiously plural subject population with a legal system that adjudicated disputes based on the law of the parties (Eaton 1993; Yusuf 1965: 4, 8). As Eaton (1993: 179–183) shows, under Mughal law, Muslim judges even enforced sanctions against Muslim coreligionists who had offended local Hindu norms. Islamic scholars ('ulama) held prominent positions during this period (Guenther 2003).

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

marriage, cast [*sic*] and other religious usages, or institutions, the laws of the Koran with respect to the Mussalmans, and those of the Shasters with respect to the Hindoos, shall be invariably adhered to" (quoted in Kugle [2001] and Williams [2006]). This brief sentence defines inheritance, marriage, and social status (caste) as fundamentally religious institutions, and names the texts relevant to addressing and regulating religious matters for Hindus and Muslims. Historian Mitra Sharafi (2014) posits that two distinct but simultaneous conversations between British administrators and Hindu and Muslim leaders led Hastings to include Hindu and Muslim personal laws. Meanwhile, a presupposition that India's other religious traditions did not have legal facets meant that they were elided.

Following Hastings' pronouncement, personal law cases were adjudicated within state courts. Gradually, British judges replaced religious authorities. As British judges adjudicated such cases, they generated a distinction between "religion" and "law" by deciding which aspects of religious life were subject to legal oversight and which were matters of private religious practice. It is for this reason that Rachel Sturman argues that for Hindus the personal law system created not *religious* but *secular* Hindu law. Along with eliminating the need for religious legal experts during the nineteenth century, new personal law practices emphasized property rights and were oriented around the question of equality, leaving aside matters of ritual and religious status (2012). While I question the secular premise that religion is primarily a matter of ritual whereas property relations are inherently secular, I do think that one peculiarity of personal law jurisprudence is that it must implicitly differentiate between legally relevant religious practices and those toward which state law is indifferent. The postcolonial legal system follows this model, and matters of personal law are adjudicated by judges trained in Indian law rather than by religious legal authorities.

Muslim Personal Law makes the secularizing effect of religious personal laws apparent in a different way. As religious authorities were removed from state courts in the nineteenth century, Muslim clerics began to set up their own courts—dar ul qazas—to settle disputes between Muslims (see Hong Tschalär 2017). The effect was to insinuate that religious personal law in state courts did not have religious authority. Only qazis, operating outside the state legal system, could adjudicate family matters with religious authority. A number of these dar ul qazas eventually came together under the auspices of the Imarat-e-Sharia, where I conducted some of the research on which this article is based. In the postcolonial period, dar ul qazas adjudicate cases that fall within the definition of Muslim Personal Law.

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

This sketch of Indian legal pluralism indicates one way in which sharia in India differs from sharia in other modern state contexts, in particular those where secularism has been most thoroughly studied. For example, in Egypt (Agrama 2013; Asad 2003), sharia-based adjudication takes place within state institutions. In India, dar ul qazas practice an Islamic law that is decentralized and largely uncodified. Justin Jones (2010: 188) has argued that the All India Muslim Personal Law Board's (2001; AIMPLB) publication of a Compendium of Islamic Laws in both English and Urdu is best understood as part of an effort to codify sharia for India, a codification project that began in the 1980s and whose aim is to "facilitate its implementation within a legal and structural framework set by the state." However, the contents of this compendium are not accepted by the state as binding Muslim law. As others have shown, it is the lack of full codification that has enabled Muslim Personal Law to change in significant respects over the last decades (Subramanian 2008).[5] Also unlike in Egypt (Mahmood 2013), dar ul qazas seem to operate beside a civil legal system that is nonetheless open to hearing Muslim family law cases.[6]

Religious personal law in and beyond the state has another effect: it links religion to the family and co-locates the two types of commitments in an ostensibly private sphere. As Mahmood (2013) has noted in her discussion of Egyptian personal status law, the arbitrary alignment of the family with religion renders both legible as elements of the *Volksgeist* or the spirit of a group. This makes reform of family laws and perceived intervention in kin relations by non-Muslims politically sensitive, as regulating the family is equated with regulating community and meddling in the protected sphere of religion. In terms of legal practice, it makes the family a site of ongoing jurisdictional dispute. Because this dispute is about the regulation of the family and of religion, its dynamics are central to secularism, not conceptually but in practice.

The situation facing Muslim men and women in India today who wish to pursue family-related legal claim is an effect of this

[5] It is important to note that India is not a unique case. There are numerous examples of countries where sharia is largely decentralized and uncodified, among them Indonesia (Bowen 2003) and Malaysia (Peletz 2002). Dar ul qazas and sharia councils are also available to Muslims in Britain (Bowen 2016), Canada (Razack 2007), and the United States (based on my unpublished research), among others. My point here is thus not that India is unique but that it is exemplary of one among other types of Islamic legal organization in modern multiconfessional states.

[6] I mention Egypt in particular here because it is in this context that scholars have explicitly begun to consider the question of secularism. However, the dar ul qazas' location beyond the state also distinguishes them from "sharia courts" in Iran (Osanloo 2009), Kenya (Hirsch 1998), and Zanzibar (Stiles 2009), among other national contexts.

complex landscape of different jurisprudential systems. For example, there are several avenues for Muslim men and women seeking divorce (see Table 1). Men can say "I divorce you" three times to their wives, which requires neither secular nor religious judicial oversight. Until 2017, men could carry out this kind of divorce in one of two ways. Men could either pronounce divorce three times in one conversation (colloquially referred to as "triple talaq") or they could say "I divorce you" to their wife once per month over the course of a number of months. In 2017, the Supreme Court of India banned the first method, however carried out over the course of several months, pronouncing "I divorce you" three times remains a husband's primary route to divorce.[7] Muslim men cannot sue for divorce in state courts as there is no statute in Muslim Personal Law under which they can seek divorce.

Women can file for divorce in state courts under the Dissolution of Muslim Marriages Act (1939) (DMMA)[8] or can initiate divorce in dar ul qazas. Within dar ul qazas, women can initiate khula or faskh. Khula is a mutual consent divorce that is granted by the husband in exchange for some payment (Fyzee 1974: 163).[9] The property exchanged for khula may include mahr or dower—an amount of property or money given or promised to the bride by the groom's family at the time of the marriage. Often in India, a woman does not actually receive the mahr unless she divorces. The property exchanged for khul may include maintenance support during the iddat period—the three-month waiting period before a woman can remarry following divorce—but it may not include maintenance to support dependent children. Faskh is a divorce for cause—usually on grounds of cruelty (zulm), neglect of financial, sexual, or other responsibilities, or abandonment, though there are other possible grounds. It entitles women to keep or receive property, including *mahr* and dowry and wedding gifts, and to receive maintenance at least during the iddat period. Faskh is granted by the qazi, not the husband, so it can be given ex-parte. Other matters relating to divorce, in particular guardianship, property division, and

[7] There is extensive jurisprudence in the Indian courts about talaq-ul ba'in (for a discussion of this form of divorce see Lemons [2017]).

[8] The 1939 DMMA is an excellent historical example of how nonstate religious law and state personal law have shaped one another. The DMMA significantly expanded the grounds on which a Muslim woman could claim divorce to include cruelty, neglect, a husband who had disappeared or was in prison for a long period of time, among others. The act was the result of the Hanafi jurist Ali Thanawi's efforts to keep Muslim women from divorcing by committing apostasy (De 2009; Khan 2008; Zaman 2008). As I discuss elsewhere, its provisions are enforced in dar ul qazas, not with reference to the DMMA, but with reference to Thanawi's treatus and to publications like the AIMPLB's Compendium of Muslim Law, which reproduce the treatus' position.

[9] Literally, khula implies "extraction," in this case extraction from marriage (Zantout 2008).

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

Table 1. Types of Muslim Divorce

Type of Claim	Definition	Initiated by	Relevant Institution	Entailments
Faskh	Dissolution of marriage	Wife	Dar ul qaza: by judicial decree	Wife not required to return mahr; entitled to keep any wedding gifts or other gifts acquired during marriage.
Khula	Divorce	Wife	Dar ul qaza: Husband grants the divorce; qazi issues a document called a khula nama	Wife expected to compensate husband for divorce by returning/ forgiving mahr, returning wedding gifts and gifts acquired during marriage, and by not requesting maintenance Reconciliation is possible within the iddat period
Talaq	Divorce	Husband	Extrajudicial: husband declares that he divorces the wife, either thrice in one conversation, or one time per month over three months Can be validated by qazi or mufti	Wife entitled to iddat maintenance, mahr, wedding gifts or other gifts acquired during marriage. If talaq given thrice at once, reconciliation is only possible following halala (marriage to and divorce from another husband); if given once a month, reconciliation possible until third declaration of divorce (provided couple have not reconciled during those three months).
	Return of wife/RCR	Husband or wife	Dar ul qaza	Wife expected to return to marital home. Sometimes results in khula if qazi deems reconciliation impossible.

maintenance, can also be addressed in state courts. In spite of these multiple legal options, most marital disputes are dealt with informally, with the help of family, neighbors, and religious leaders. My research suggests that people approach dar ul qazas or state courts once informal options have been exhausted, or where significant property is at issue.

Practicing Secularism

My claim that Indian dar ul qazas participate in practices of secularism is counterintuitive because I argue that religious nonstate legal forums practice secularism alongside the state. This argument relies both on scholarship on secularism in India and on more recent interventions in the anthropology of secularism. Scholars have long noticed that secularism in India does not follow a "wall of separation" model. The Indian Constitution guarantees both disestablishment (the separation of religion from the state) and equal treatment of all religions, two principles that have often been in tension with one another (Bhargava 1998). The principle of equal treatment of all religions (*sarva dharma sambhava*), which has a Gandhian lineage, has predominated (see Engineer 1995). As feminist legal scholars Crossman and Kapur (1996) have shown, this approach to secularism entails both a formal and substantive concept of equality. Thus, religious personal law, especially Muslim Personal Law, is considered to provide substantive equality to the largest religious minority in this secular state by leaving open a space of religious legal difference. Galanter (1998) describes Indian secularism's animating tension as follows:

> There is a widespread commitment to a larger secular order of public life within which religions enjoy freedom, respect, and perhaps support but do not command obedience or provide goals for policy. At the same time, Hinduism is undergoing a vast reformulation and transformation. Indeed, these processes are closely interlinked. The nature of the emerging secular order is dependent upon prevalent conceptions of religion, and the reformulation of religion is powerfully affected by secular institutions and ideas. (268)

Secularism in this context has long been recognized as a matter of struggle over how to establish and maintain an appropriate relationship between religion and politics rather than an aspiration to strict separation.

Perhaps because of this animating tension, scholars of Indian secularism have anticipated recent anthropological arguments that secularism entails "the regulation of religious life [coupled with]

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

the construction of religion as a space free from state intervention" (Mahmood 2016: 4). Yet, anthropological interventions demonstrate that what many have considered a peculiarity of Indian secularism is in fact one of its broadly relevant characteristics.[10] In anthropologist of Egypt, Agrama's (2013) terms, secularism is a "questioning power": it demands that the state ask where to draw a line between religion and politics (27). Secular states are, thus, always caught in an ironic predicament: the more the state works to separate religion from politics, the more intensely it intervenes in and regulates religion, thereby undermining the separation it sets out to secure. The study of secularism must therefore investigate where this question of boundaries is most persistently, most publicly, asked. In postcolonial India, it is asked in the course of adjudicating specific divorces and, more broadly, in popular debates over the status of particular forms of divorce and of religious authority to adjudicate divorce, as in *Madan*.

There is another twist to Indian secularism, which this article investigates: secularism is not only practiced by the state but is carried out by and in nonstate religious forums. As I have discussed above, in matters of divorce, state courts hearing personal law cases and nonstate religious adjudication forums like dar ul qazas intersect. This intersection marks divorce as the legal issue that calls for a negotiation of the boundary between secular and religious legal jurisdiction. Put otherwise, in contemporary India, the adjudication of kinship—and sometimes also "the family" more specifically[11]—is a significant site of secularism. Furthermore, practical instantiations of the boundary between secular and religious jurisdictions imply a bountary between public and private. In its quality as religious, the family is treated as private, ostensibly beyond the purview of state intervention, and in its quality as secular, it is recognized as a state-regulated institution. The private family is, this suggests, not a *fait accompli*, but is rather a site of constant questioning.

Divorce provides an excellent site for observing this dynamic because it is where legally relevant religion is split between religious and secular authorities (qazis and state court judges, respectively). Divorce is not one, but numerous, legal actions, each with their own entailments: it usually includes claims to maintenance

[10] For recent anthropological interventions, see Agrama (2013), Asad (2003), Fernando (2014), and Mahmood (2015).

[11] As many (Agrama 2013; Asad 2003; Halley 2011; Halley and Rittich 2010) have argued, the "family" as a unit both of law and of society is not a trans-historical entity but came into being with the rise of the modern state. It is noteworthy that while the family has become a lay legal category in India, especially since the 1984 Family Courts Act established courts to adjudicate "family" matters, the technical legal category remains not "family" law but "personal" law.

(alimony), custody, and property division, among other matters. It entails negotiations and decisions about which claims are relevant to clerical and which to state legal authority. As the cases I examine below show, when parties to a case approach both state courts and the dar ul qaza, they bring maintenance, property, and domestic violence claims to state courts but divorce claims to the dar ul qaza. In this way, religious law as practiced in dar ul qazas does not muddle or confuse secular categories but helps to uphold them.

A Comment on Method

Like the work of other anthropologists of Islamic law, my research methods include observing cases and discussing relevant matters with parties and legal practitioners (in this case qazis), as well as gathering and analyzing case records and other written documents such as training manuals, guidelines for qazis, and reports written by and about the dar ul qazas. My archival and ethnographic research do not simply complement one another additively. Rather, each type of material informs my analysis of the other: observations and discussions provide local explanations and often reveal complexities that are not captured in written documents, while case files provide insight into form and procedure. These written materials, in particular case files, can also yield a richness of detail about a case's trajectory that is difficult to grasp through observation and discussions.

I conducted the research on which this article is based on one dar ul qaza in a predominantly Muslim neighborhood of Delhi and on another dar ul qaza in a prominent Islamic legal institution in Patna, Bihar. I carried out the Delhi research between 2006 and 2007; I began the ongoing Patna research with the help of a research assistant in 2015. In Patna, I attended hearings, where I took notes on and recorded, and was sometimes allowed to photograph parts of the case file once the qazi had finished writing his judgment. I also spent time between hearings and during the two-hour lunch break talking to litigants and their families in the ladies' waiting room or in the hallway. I discussed cases and general questions about procedure with qazis before and after hearings and when they called me into their offices to talk. In Delhi, I read files from the dar ul qaza archive. The archive consisted of case files, each contained in a manila folder, kept locked inside a glass cupboard at the bottom of a bookshelf. The piles of cases were somewhat haphazardly organized, so my reading jumped across decades and case types. I sat on the floor of the dar ul qaza, with the muftis, and took notes by hand on these

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

cases, simultaneously translating from Urdu but retaining significant phrases in the original. At the end of my 18-month stay, I was allowed by the head Mufti to photocopy a handful of cases for my own archive. The case I discuss here was among those I copied.

The Patna and Delhi dar ul qazas are but two of many dar ul qazas in India, [12] and I do not take them to be representative of all such forums. It would be impossible to substantiate representativeness, as there is scant, though informative, research on dar ul qazas in India.[13] While many of my findings corroborate other studies of dar ul qazas, my aim here is not to make claims about the representativeness of these findings, but to provide a careful qualitative analysis of the texture of cases in the dar ul qazas that have also traveled through state courts. In spite of the differences between the two dar ul qazas I analyze, differences I note in what follows, the similarities in procedures, types of cases, and broad patterns of relating to state courts lend insight into certain dynamics of Indian legal pluralism, dynamics that are central to the practice of Indian secularism.

Overall, I have studied the records of 33 cases from Delhi's dar ul qaza, and have analyzed 38 cases from Patna (see Table 2). There are several notable distinctions between the patterns of cases in two dar ul qazas. First, the proportion of cases that were withdrawn before the qazi gave a judgment was much higher in Delhi than in Patna (17 out of 33 against 10 out of 38). This may be because although the Delhi dar ul qaza is well established, the Patna dar ul qaza has been active for longer and is better known locally. There are also fewer accessible forums for Muslims in Patna than in Delhi, especially given that the economic status of disputants in Patna was, on the whole, lower than those in Delhi. Another difference is in the types of divorce granted in each institution. In Delhi, there were 7 cases of khula and 8 of faskh while there were 10 khulas and 6 faskhs in Patna. Most significantly, of

[12] For the larger project of which this research is a part, I also conducted research in two other Delhi dar ul qazas. The first was an All India Muslim Personal Law Board-run dar ul qaza in South Delhi and the second was in a madrasa in the trans-Yumuna area of Delhi. These are but a few among a much more extensive group of dar ul qazas in India run by different organizations. For more on Delhi's dar ul qazas, see Redding 2014. On Hyderabad, see Vatuk 2008. The AIMPLB runs one court in Tamil Nadu, four in Andhra Pradesh, five in Uttar Pradesh, five in Karnataka, and 11 in Maharashtra (Hussain 2007). There is also a *dar ul qaza* in Bhopal, Madhya Pradesh that has been hearing cases since the nineteenth century; this is the only such court to receive funding from the Indian government (Hussain 2007: 7).

[13] Jeff Redding has written about a different Delhi dar ul qaza (2014); Sabiha Hussain (2007) and Papiya Ghosh (1997) have written about the Imarat-e-Sharia; Solanki has looked at the dar ul qaza at the Deoband seminary and in Mumbai (2011), and Sylvia Vatuk has done research in dar ul qazas in Hyderabad (2008 and 2017); Hong Tschalär discusses women's discourse in a dar ul qaza in Lucknow (2017).

the 13 rukhsati cases (requests for a spouse's return) in Patna, 4 began as claims for rukhsati but ended with khula because the qazi decided that the wife had demonstrated her clear antipathy to living with her husband; in all cases where this happened, the qazi insisted that no one should be forced to live with someone they detest.[14] This demonstrates the importance of judicial discretion to dar ul qaza proceedings in Patna, and the view that the qazi's job is not only to sever marriage contracts, but also to assess the claim being filed based on his knowledge of the relationship in question. Both in Delhi and in Patna, case files regularly mention other forums in which some of the claims have been heard: in nine of the Delhi cases and 11 of the Patna cases, the proceedings included documents from or references to other adjudication forums. One could look at this from the other direction and notice that in 75 percent of the cases the file mentions no other forums. I think this is because in many instances, the dar ul qaza, as an accessible forum and religious institution is a first, not last, stop for formal, extra-familial adjudication. When cases had been dealt with informally prior to coming to dar ul qazas these negotiations may not be mentioned. In two cases in Patna, the alternative forum mentioned was a village panchayat, which may or may not be a statutory (government) forum. Dar ul qazas regularly hear cases aspects of which had already been heard in the state's legal system, even though this happens in a minority of cases.

The procedures in the Delhi and Patna dar ul qazas also differed in important ways from those in state courts. Although the dar ul qazas conducted adversarial processes that involved calling witnesses to testify, assessing the veracity of litigants' claims, and ultimately arriving at a judgment, the dar ul qazas did not follow Indian laws of procedure or evidence. Nor did they refer to Indian legislation and case law on the matters under consideration. Instead, the dar ul qazas were guided by procedures, norms and philosophies of adjudication from the Hanafi (Sunni) legal tradition in which the qazis had been trained.[15] The qazis in Delhi and Patna had earned the right to adjudicate cases based on over a decade of training in prestigious seminaries in India. They were

[14] Both the qazis and my research assistant thought that the number of cases for faskh as opposed to khula as increased in the last five years, because women have greater economic rights in faskh. While I have not been able to substantiate this in Patna, the clerics Solanki (2011) interviewed in Mumbai also said that they push women to file for faskh if possible. Tschalär (2017) and Vatuk (2008) have not found the same trend in Lucknow and Hyderabad, respectively.

[15] As I discuss later, these are distinct but not isolated legal processes. For example, the divorces granted in the dar ul qazas are based in Maliki, not Hanafi, law. This is the case because of a fatwa (Islamic legal opinion) solicited by an Indian jurist that both affected Indian law *and* the dominant approach to divorce in (Hanafi) Muslim seminaries in India. See also note8, above and note 16, below.

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

Table 2. Summary of Cases in Dar ul Qaza

	Delhi				Patna			
Type of Case	Granted	Denied	Undecided/ Withdrawn	Total	Granted	Denied	Undecided/ Withdrawn	Total
Faskh	3	1	4	8	5	0	2	6
Khula	4	0	3	7	10	0	0	10
Talaq-ul-ba'in	6	n/a	3	9	1		1	2
Request that wife return to marital home (Rukhsati)	1	0	3	4	12[a]	0	7	19
Advice/unclear Compaint	n/a	n/a	4	4	0	0	0	0
Inheritance	1	0	0	1	0	0	0	0

[a]In four of these cases, the initial complaint was rukhsati but the decision was a khula. This is not reflected in the 10 khula cases mentioned in the table.

subsequently selected by other members of the clerical establishment to serve as qazis. Qazis in both contexts are therefore best understood as participants in traditions of fiqh—the body of Islamic legal principles based on interpretations of shari'a.[16]

Patna

To substantiate the dynamic relationship between legal pluralism and secularism, I turn now to several disputes that traveled through state courts to dar ul qazas. I begin with the Patna dar ul qaza, which is part of a large institution called the Imarat-e-Sharia. Founded in 1921, the Imarat-e-Sharia is the headquarters of a network of 27 dar ul qazas in the states of Bihar, Jharkhand, and Orissa (Ghosh 1997; Hussain 2007). According to Hussain (2007), between its founding in 1921 and 2007, the dar ul qazas in the network had collectively decided 31,775 cases. The Imarat-e-sharia also runs a system of 83 courts in northwestern India and is currently working to establish one dar ul qaza in Jaipur, Rajasthan. The Imarat-e-Sharia, founded with the explicit aim of providing resources and support for Muslims in an anticipated future state

[16] Among the legal sources on which qazis in Patna relied are the All India Muslim Personal Law Board's *Majmu'a e Qawaneed Islami*, translated as the Compendium of Islamic Laws (Qasmi: 2001) and *Islami Adalat: Islam ke adalati qawaneen ka maju'a* (Qasmi 2016), and *Adab Qaza* (Imarate Sharia Publishers: 2005). These are all texts in the Hanafi tradition that have been written and circulated in the Indian market and that are on the curriculum at the Imarat-e-Sharia. They are the texts to which I was directed by the qazis with whom I studied when I asked for the sources they draw on and those they learned in their training.

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

where they would be in a minority, has numerous departments (*Imarate sharia* and Ali 2017). In addition to the dar ul qaza, it has a dar ul ifta (fatwa department), education departments, an outreach (daawa) department, and a hospital.

In May 2017, I spent several weeks in the Patna dar ul qaza observing cases, reading case files, and interviewing litigants and qazis. The dar ul qaza had a well-ordered bureaucracy: there were two clerks, a designated archivist who managed files in the record room, and a secretary who handled registration of cases and produced certified copies of judgments for litigants who requested them. The dar ul qaza was both a legal institution and part of the institution's educational wing. A significant numbers of clerics travel to the Imarat-e-Sharia to earn a qazi certificate. Most of the traveling qazis-in-training (*maulanas*) came from parts of South Asia but some came from parts of Africa, North America, and Europe. The qazis I observed were all trained at Muslim seminaries (*madrasas*) in north India and had earned their qazi certificates at the Imarat-e-Sharia. Hearings in the dar ul qaza were well attended: maulanas were required to sit in hearings to learn techniques for questioning witnesses, taking testimonies, and writing complaints, case proceedings, and judgments. They often served as scribes for the qazis, taking down verbatim the testimonies of litigants as well as the qazis' dictated judgments. As there was no court reporter or designated scribe in the dar ul qaza, the transcript composed by the qazis or the maulanas served as the official case transcript. I was therefore in good company when I observed hearings. I joined the qazi, the parties to the case and usually their families and friends, my research assistant, and between one and three maulanas.

The dar ul qaza had five rooms for conducting hearings, which were also the qazis' offices. There was a five-tier hierarchy of qazis, ranging from qazi to chief qazi (*qazi shariat*). Qazis handled types of cases concomitant with their level of expertise, and the chief qazi was technically responsible for ensuring that all judgments conformed to the standards of the institution. Most days several judges heard cases, though usually each judge did not hear more than one case per day. The two cases I present here capture the dynamics of adjudication at the dar ul qaza and provide a view of court proceedings from the dar ul qaza. These are both cases I observed and for which I was not able to obtain the written file. My analysis is based on observations and discussions with the qazi and some of the litigants.

Aliya's Talaq

Three years after the *Madan* decision, in the summer of 2017, I sat in the Patna dar ul qaza observing a divorce case. The Qazi

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

Shariat, or chief judge, heard the case, which involved a couple who had married in 2011 and who had 1 three-and-a-half-year-old child. When they came to the dar ul qaza, the couple had been living separately for several years. I learned from the wife, whom I will call Aliya, that she lived with her parents and her son in a village near the Nepali border, where she taught English at the local school. According to the qazi, who had already read the written complaint and begun discussing the case with the litigants before I arrived, the husband had filed for rukhsati (the return of a spouse to the marital home) two years earlier in state courts.[17] As they waited for a judgment from that court, the couple decided to divorce. At that point, the couple turned away from the state courts and to the dar ul qaza.

The elderly qazi led a discussion of the terms of the divorce from behind a large desk. He faced seven men (including Aliya's father and brother), two women (Aliya and her mother), and one child (Aliya's son) clustered on benches arranged in rows. The discussion of the details of the impending divorce was animated. The qazi took down a list of things that the couple had been given at the time of marriage; he led a discussion about how much maintenance the wife would receive; he asked how much money (*mahr*) she had been promised when she married; her husband asked where the child would live.

The atmosphere in the judge's room was by turns tense and raucous, as every family member had a view about how things should be divided up. Aliya expressed continued criticisms about the proceedings but was regularly cut off by her brother, her parents, or the qazi. By the end of the hour, the negotiations were finished. The husband repeated after the qazi, "I divorce you irrevocably," to Aliya. His family then handed a thick stack of cash to her. She repeated after the qazi: "I have received my *iddat* maintenance and my mahr, and my brother will receive my wedding gifts and furniture on my behalf at his house on Tuesday." She received 11,000 rupees (170 USD) mahr, 11,001 rupees (170 USD) in maintenance, and would receive 3 lakh 25,000 rupees (5,050 USD), the value of her wedding gifts, the following week.

As the qazi pointed out to me once the case had concluded, he had executed the divorce in one short afternoon, following a prolonged two-year tussle over Restitution of Conjugal Rights (RCR) in state courts. The qazi practically ventriloquized the Supreme Court's position in *Madan* when he explained that dar ul qazas complemented state courts and offered a service to them by handling cases that sit for long periods, clogging their cause-lists.

[17] *Rukhsati* is the term the qazi used. In state court, this is a claim for the RCR, a provision for which there is precedent in case law.

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

From the perspective of the dar ul qaza, state courts appeared inept and ill suited to handle divorces. By directly complementing the state courts' work, the qazi enacted a specific division of labor in which he regulated divorce.

Zeenat's Khula

During the two-hour lunch break on another day, my research assistant and I entered the women's waiting room down the hall from the qazis' offices. We met two women, who turned out to be a mother and daughter who were waiting for the qazi to hear the daughter's case for faskh. They told us that the daughter, whom I will call Zeenat, had married in 2006 but had rarely lived with her husband during the intervening 11 years. Initially, Zeenat's husband worked in Jaipur, Rajasthan, selling shoes, stones, and costume jewelry, while Zeenat lived with her new in-laws in a village in Bihar. Zeenat had a particularly tense relationship with her *bhabhi* (her husband's older brother's wife), whom she accused of having a long-standing affair with her husband. According to Zeenat, a year following her marriage and fed up with the feeling that her husband was avoiding her, she went unannounced to Jaipur. To her husband's apparent annoyance, she stayed with him for several months. During this time, she became pregnant by her husband, with twins. The children did not help her relationship with her in-laws and seemed to displease her husband. After another year with her in-laws, Zeenat returned to her parents' home where she lived until 2017, when she approached the dar ul qaza for a khula.

Between 2008, when she moved out of her in-laws', and 2017, when she approached the dar ul qaza, Zeenat and her husband had periodically brought cases against one another in state courts. In 2009, Zeenat told us she sued in civil court for her husband to return from Jaipur.[18] She won this case, but her husband never obeyed the court's order. Zeenat had also brought a case under the Criminal Procedure Code 125—for maintenance[19]—and one under 498A—for protection against domestic violence.[20] The former had yielded an order with which the defendant never

[18] This claim is somewhat difficult to understand because RCR case law grants Muslim men but not Muslim women the right to petition for it. I have also never seen a case of rukhsati (a petition for the spouse to return) initiated by a wife in the dar ul qazas. As I did not have access to the full case file in this case, and do not know if it included the civil court petition, I do not know what legal statute this refers to.

[19] CrPC 125 allows "destitute and abandoned or deserted wives or children to claim maintenance from their husbands or children, respectively."

[20] CrPC 498A stipulates that: "Whoever, being husband or the relative of the husband of a woman, subject women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

complied, and the latter was ongoing. Zeenat's husband, meanwhile, had filed a case for guardianship of the children that had been through several stages of appeal. The Jaipur High Court had granted the defendant custody but, according to Zeenat, her appeal to the Supreme Court had stayed that order. At the time of the dar ul qaza case, it seemed that her chief worry was that she would lose custody of her children.

In our conversations with Zeenat, it was never clear to my research assistant and me why in 2017 she had decided to bring the case to the qazi. Our best guess was that she wished to end the drawn-out and fruitless series of court cases that kept her tied to her husband. The other possibility, which several other women discussed with regard to their cases, was that she no longer wanted to be in limbo—neither married to her husband nor divorced from him. Whatever the specific reason, when she turned to the qazi it was no longer with property or domestic violence complaints but to obtain a divorce.

The hearing at the dar ul qaza lasted two days. The second day, when my RA and I were present, both parties and their family members appeared before the qazi. They had already decided on a khula divorce, and the qazi helped them negotiate the terms. Once the terms had been decided, the qazi wrote out the divorce agreement, or khula naama. The agreement was provisional, divorce contingent on the parties withdrawing all other cases against each other in state courts. In exchange for the khula, Zeenat relinquished her iddat maintenance, but not the part of the mahr she was promised at marriage (25,000 rupees or 370 USD). She promised to petition to close the 498A case. The one thing that was left hanging, to Zeenat's great chagrin, was the matter of custody, which the qazi opaquely said they would deal with at a later date, "according to the sharia."

The two Patna cases lend insight into the relationship between dar ul qaza and civil and district court adjudication. Tempo is part of what differentiates these forums: court processes appear to be plodding and inefficacious, while the dar ul qaza was expedient. Yet, in other ways, dar ul qazas were slow where courts were fast: while judges spend between one and three minutes on a case at each hearing in family courts, qazis ask the disputants many questions about the dispute, about their marriage, their families, and their jobs and incomes, trying to help them figure out the source of their conflicts and whether reconciliation is possible.

The dynamic between state courts and dar ul qazas is also significantly about divorce itself, and the divisions of labor within the legally plural system. Aliya and Zeenat both turned to the dar ul qaza with claims for divorce and negotiations about property were undertaken as part of the divorce settlement. In courts, parties

sued for changes in marriage: for RCR, for maintenance, or to end domestic violence. This pattern certainly reflects the relative expediency of getting a divorce in dar ul qazas. It also shows that dar ul qazas deal with divorce—the undoing of marriage—while state courts address matters of individual rights within kin relations. The qazi's work consolidates religious authority over divorce and in so-doing the process secures divorce as religious and private. The qazi also shapes the boundaries of the religious family, as he brings the economy of divorce, made up of maintenance payments, moveable property, and mahr, within the sphere of the private and the religious.

As I suggested at the beginning of this article, dar ul qazas hear cases in a particular legal context—one delineated by religious personal law. They also hear cases in a particular political context—one deeply suspicious, as *Madan* was, of "sharia." In this context, shoring up religious authority over the family as complementary to state authority affirms dar ul qazas as cooperative rather than belligerent. In 2017, when I observed these cases, concern about the political ascendency of the Hindu right was palpable at the dar ul qaza. The right wing Hindu nationalist party, the Bharatiya Janata Party, had won federal elections with an unprecedented margin in 2014, and many commented that the atmosphere throughout India had become tense. Stories about lynchings of Muslims and dalits were ever-present in the news, and the Supreme Court was hearing cases about the constitutionality of "triple talaq." The qazis suspected that they had fewer clients because the case made even Muslims suspicious of sharia, and my research assistant expressed anxiety about whether she should remove her hijab as soon as we had left the Imarat-e-Sharia premises. In this context, it made sense that the Qazi Shariat, who heard Zeenat's case, insisted on the service that the dar ul qazas provided to the state and to Muslims, and it made sense to insist that the dar ul qaza operated well within the domain allowed by the Muslim Personal Law system. Even though secularism holds out the promise of equality for religious minorities (Ahmad 2009), religious minority institutions make themselves eligible for such equality by operating within the parameters set up by the secular state.

Delhi

The case to which I now turn, from the archives of Delhi's dar ul qaza, provides a particularly stark illustration of how the qazi can be at once subservient to state courts and also an active participant in the regulation of religion and kinship. This case was, like the previous two, heard at a moment of notable tension between

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

Hindus and Muslims. The qazi issued his decision in 1994, two years after Hindu mobs destroyed the Babri Masjid (mosque) in Ayodhya, an act that set off bloody riots throughout north India (see Hansen 1999). The political moment certainly did not determine the outcome of this case, but it is a key element of the context within which the case was adjudicated, as the perception that Muslim leaders disregard state law has been read as evidence that Muslims are not a trusted part of the Indian nation.

The Delhi dar ul qaza was located in a predominantly Muslim neighborhood in Old Delhi and housed in a small Muslim school (madrasa). It shared space with a busy dar ul ifta, in which five muftis spent their days writing fatwas. By the time I conducted my research in the dar ul qaza, the qazi had stopped hearing cases altogether, leaving me to work solely with written documentation. The case I look at below was filed in 1994.

The muftis' descriptions of the dar ul qaza suggest that it was, like the other Delhi dar ul qazas in which I did research, bureaucratically simple. The muftis said it was run by a single qazi who mediated disputes, kept records by hand, compiled case files, and issued notices when people had to appear. The qazi had an assistant whom he tasked with retrieving books, ushering disputants in and out of the hearing room, and serving anyone assembled in the room at teatime.[21] Thus, all aspects of the adjudication were administered by the qazi himself.[22] Until the dar ul qaza's qazi became ill in the early 2000s, the dar ul qaza was also popular.

In January 1994, a woman filed for a divorce (*khula*) at the Kashmiri Gate dar ul qaza. She had married in 1987, and her complaint described the violence and cruelty (*zulm*) characteristic of her marriage. Her in-laws spat on her, hit her, and told her that she was not worthy of her husband. The defendant (her husband), she alleged, had threatened that he would "neither keep her nor leave her," implying that he would neither treat her as his wife and a member of his natal household nor grant her the divorce that

[21] In this way, Delhi's dar ul qazas are distinct not only from state courts but also from dar ul qazas elsewhere, while the Patna dar ul qazas look more typical. The allocation of labor differs from that described by Messick (1993) in the context of Yemen and by Rosen (2000) in the context of Morocco. Both Messick and Rosen found that the qazi's assistant was responsible for keeping records in addition to performing menial tasks. In the context of the kadhi courts in Kenya that Hirsch (1998) studied, the kadhi is assisted by a clerk who talks to disputants before they approach the kadhi and decides whether their cases are worth the kadhi's time. The clerk in that context closely resembles the local court clerks that Barbara Yngvesson (1988) has studied in the United States.

[22] The quiet of this dar ul qaza contrasted sharply with my encounters with district and even the more manageable family courts, where one contends with touts and lawyers, and judges rarely converse directly with litigants (see Mody 2008). Although there were mediators in the Delhi case, this was unusual; even in this case, the litigants spoke directly and at length with the judge, which would be unheard of in state courts.

would enable her to remarry. The plaintiff recalled the defendant saying to her: "I will make you sick of your life, I will torture you… I will take you for one night and I will ruin your face." On December 23, 1994, after a dramatic process involving mediators for the two parties, the qazi granted a khula divorce.

The case file reveals that a civil court judge had sent the couple to the qazi following a series of state court civil and criminal cases reflecting various aspects of the marital dispute: violence, arguments over property, and separation and demands that the errant spouse return. The case file shows that, in 1988, the plaintiff left her marital home. On September 16, 1988, the defendant filed a case for RCR demanding that the complainant return to the marital home. One day later, on September 17, plaintiff filed suit under CrPC 125. This suit had yielded a small award of maintenance—200 rupees (about 3 USD) a month—which both plaintiff and defendant mention in their petitions to the dar ul qaza. Given the amount, the award appears to be purely symbolic (see also Basu 1999, Mukhopadhyay 1998, Vatuk 2001). On September 23, 1988, the plaintiff filed a criminal complaint against the defendant under CrPC 498A/406 of the Indian Penal Code, alleging that her husband had stolen the jewelry and other property that she had received at the time of her marriage. The defendant objected that this property was for their daughter's *jahez* (dowry) and therefore no longer rightfully hers. Each of these state court cases was framed as a matter of rights in marriage: the requests were, respectively, for a marriage free of violence and theft, for a shared marital home, and for the husband to financially support his wife. None of them yielded a satisfactory result from the wife's perspective, yet as far as the records show, she did not sue for divorce in civil courts under the Dissolution of Muslim Marriages Act. Instead, she turned to the dar ul qaza.

The move to the dar ul qaza was a major turning point in the legal life of this marital dispute. The transfer itself was complex, because it happened in two stages. First, the plaintiff filed a complaint with the qazi, which I outlined above. Later, the civil court judge, already involved in earlier complaints, used this new case as grounds to formally transfer the dispute to the qazi and to close all ongoing cases in state court. The transfer was marked by a rhetorical shift on the part of the parties, and a claim to superior authority on the part of the state court judge.

One notable aspect of the case transfer was rhetorical: the dar ul qaza case was articulated in a rhetoric of perseverance widely understood to lay the foundation for divorce. Other matters, such a mahr and maintenance, appeared as part of the divorce negotiation rather than as independent ends. A close analysis of the dar ul qaza case's rhetoric makes this apparent. In her petition to the

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

dar ul qaza, the plaintiff presented herself as a persevering wife who tried to make her marriage work in spite of abuse; the defendant followed suit, presenting himself as a long-suffering husband. The plaintiff did this by describing in detail how she lived with her husband and her in-laws through a full year of physical and verbal abuse, as I have quoted above.[23] She also immediately offered to give up her mahr (5,000 rupees or 75 USD), her maintenance (200 rupees or 3 USD) per month, and the gifts she received from her husband at the time of their marriage (1,500 rupees or 22.50 USD). She did not offer to return her dowry (*jahez*), which included her jewelry and an array of large and small household items.[24] The defendant attempted to discredit his wife by leveling his own accusations of moral failing. His letter alleged that his wife was "…ill-mannered and immoral (*bad chalan*)," and that "she has lied to the *sharia adalat* (dar ul qaza)," demonstrating "the shamelessness (*beniqab*)" of the wife and her family. Lying in this way is "a habit of these people [the plaintiff and her family] (*in logon ka adat hai*)," he wrote. Plaintiff and defendant appeared to agree that the pertinent issue was who had been a more moral spouse.

Qazis, like Indian family court judges, assess whether a couple could be reconciled before granting divorces. Qazis with whom I have worked think that there are circumstances in which preserving a bad marriage is more harmful than giving a divorce, making them more likely to grant speedy divorces that family court judges. As I mentioned above, it is precisely in such instances that the qazis in Patna transform cases for reconciliation into khula cases. More than either party's actual moral standing, the mutual acrimony demonstrated in the dar ul qaza complaint's rhetoric indicates that the parties to this case had no desire to reconcile. The details of what the plaintiff agreed to give up follow from this major problem as a matter of just that—detail. That the rhetoric here is moral rather than rights-based issues from the aim of

[23] This dynamic is familiar to scholars of marital disputing in Islamic courts. In her research in coastal Kenya, for example, Hirsch (1998) argues that women tend to win cases in qazi courts when they bring claims based on customary and Islamic gender norms, including perseverance in marriage. Stiles (2009) has found that qazis in the Zanzibari courts emphasize spousal obligations in marriage, failures of which are cited as grounds for divorce. Numerous historians (Agmon 2006; Tucker 1998) have made related arguments, suggesting that women were successful in such institutions because of their ability to appeal to local interpretations of Muslim women's and men's obligations in marriage. In his study of qadi courts in Malaysia, Peletz (2002) likewise found that women's arguments were usually about men's obligations in marriage, rather than their own rights.

[24] The list contained the following items: a gold necklace and earrings that weigh 2.5 tolas (29.25 grams); 1 pillow and bed sheet; 2 tables; a chair; a fan; a cooker; an electric kettle; a sewing machine; a tea set; a bucket; several bowls; 12 plates; a 32 piece steel dinner set; numerous bowls, plates, and glasses; 17 sets of clothes for the bride; and 9 sets of clothes for men and 9 for women.

securing divorce rather than property rights or maintenance, but it has the effect of rendering dar ul qazas regulators of morality and state courts as protectors of rights.

If the disputants' rhetoric in the dar ul qaza case reflected the case's new aim, the qazi's and the judge's interventions underlined the relations of power between the two institutions. The dar ul qaza case file included the judge's order, which stated that all cases in the district courts should be quashed so that the qazi could handle the divorce. The judge's order did not just transfer the matter, though; in an unusual move, she ordered the qazi to grant a divorce, ex-parte if necessary. She specified that all "articles" the plaintiff received at marriage should be returned to the defendant. In Islamic legal terms, the judge's order therefore required the qazi to grant a faskh divorce—he, not the husband, would carry out this divorce. With the property provisions of a khula, the plaintiff was instructed to give up her wedding gifts in exchange.

This is the starkest example I have seen of the hierarchical power relation between judge and qazi. Technically, these individuals operate in two distinct legal systems, which means both that dar ul qaza decisions cannot be directly appealed in the state courts and that the state courts do not mandate what happens in dar ul qazas. This, in effect, was the point of the decision in *Madan*. Yet here the judge ordered the qazi to grant the divorce. The order simultaneously delegated divorce—the undoing of marriage and the kin relations it instantiates—to the jurisdiction of a religious authority and declared such authority to be working in the service of the state by specifying its terms. The judge declared that kinship and its economy were religious matters. The qazi, by accepting the judge's order and pursuing the divorce case, accepted the division of legal labor and authority that the judge prescribed. In an elegant rendition of secularism's project, which I have suggested at this article' outset entails undoing boundaries between religion and law in the service of separating the two domains, the judge simultaneously sent the divorce to the qazi and authorized the divorce terms. Furthermore, as she did this, she undid the boundaries between personal and criminal matters by closing the criminal cases as a condition of divorce.

Conclusion: Muslim Divorce and the Secular State

This article began with a discussion of *Madan*, the public interest litigation whose primary question was where dar ul qazas and Muslim legal instruments more generally belong in postcolonial secular India. The Supreme Court argued that they belong in an alternative legal realm available to Muslims. I argue that looking at dar ul qaza cases that have traveled through state courts gives a

https://doi.org/10.1111/lasr.12351 Published online by Cambridge University Press

perspective not on what this relationship should theoretically be but rather of its practical dynamics. The cases I discuss suggest that dar ul qazas do work with and within the state's broad legal framework, but that they do so as part of a legally plural landscape, as forums that intersect with rather than running parallel to state courts. Furthermore, I have argued that attending to how dar ul qazas and state courts intersect in these disputes sheds light on legal pluralism as a ground for secular practice. If secularism is an ongoing project of asking where religion and law should be differentiated, divorce cases are a key site for examining its workings. The divorce cases I look at here bring dar ul qazas and state courts into contact. The slow pace of state courts, litigants' knowledge of dar ul qazas, and a decision to divorce led all three cases to dar ul qazas, bearing traces of state courts. The consistent division of claims between state courts and dar ul qazas indicate where religious authority practically begins and ends. In the cases I have looked at here, the state courts oversee questions of individual rights, especially pertaining to non-religious matters such as equality and domestic violence, while dar ul qazas address divorce claims, which are claims about family relations and economics. In other words, families and their inequalities become the domain of the qazi while individual rights and claims to equality become that of the judge.

In this division of labor, secular distinctions—between religious and secular, private and public, family and individual—are made and maintained. They are not made and maintained as applications of a rule. Instead, the work of maintenance is ongoing, as is secularism more generally. This is where the question is posed and practiced, not only by the state but in a dynamic relationship between state and nonstate and religious and secular institutions. To understand the workings of secularism requires attending to the ways in which regulating religion entails regulating kinship and the jurisdictions deemed appropriate to it.

References

Agmon, Iris (2006) *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine*. Syracuse, NY: Syracuse Univ. Press.

——— (1999) *Law and Gender Inequality*. Delhi: Oxford Univ. Press.

——— (2012) "From Shah Bano to Kausar Bano: Contextualizing the 'Muslim Woman' with a Communalized Polity," in, Loomba, Anya, & Lukose, Ritty, eds., *South Asian Feminisms*. Durham, UK: Duke Univ. Press. 33–53.

Agrama, Hussein Ali (2013) *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt*. Chicago, IL: Univ. of Chicago Press.

All India Muslim Personal Law Board (2001) *Compendium of Islamic Laws [Majmu'a e Qawaneen Islami]*. New Delhi: All India Muslim Personal Law Board.

An-Naim, Abdullahi Ahmed (2010) *Islam and the Secular State*. Cambridge, MA: Harvard Univ. Press.
Asad, Talal (2003) *Formations of the Secular*. Stanford, CA: Stanford Univ. Press.
Basu, Srimati (1999) *She Comes to Take Her Rights: Indian Women, Property, and Propriety*. Albany, NY: State Univ. of New York Press.
——— (2015) *The Trouble with Marriage*. Berkeley, CA: Univ. of California Press.
Bhargava, Rajeev (1998) "Introduction," in, Bhargava, Rajeev, ed., *Secularism and its Critics*. Delhi: Oxford Univ. Press.
Bowen, John (2003) *Islam, Law and Equality in Indonesia*. Cambridge, UK: Cambridge Univ. Press.
——— (2016) *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils*. Princeton, NJ: Princeton Univ. Press.
Crossman, Brenda, & Ratna Kapur (1996) "Secularism: Bench-Marked by the Hindu Right," 31 *Economic and Political Weekly* 2613, 2619, 2629–17, 627, 630.
De, Rohit (2009) "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act," 46(1) *The Indian Economic and Social History Rev.* 105–30.
de Sousa Santos, Bonavantura (1987) "A Map of Misreading. Toward a Postmodern Conception of Law," 14(3) *J. of Law and Society* 279–302.
Eaton, Richard M. (1993) *The Rise of Islam and the Bengal frontier*. Vol. 17. Berkeley, CA: Univ. of California Press. 1204–760.
Engineer, A. A. (1995) "Secularism in India: Theory and Practice," in, Heredia, Rudolph, & Mathias, Edward, eds., *Secularism and Liberation Perspectives and Strategies for India Today*. New Delhi: Oxford Univ. Press. 1–13.
Fernando, Mayanthi L. (2014) *The Republic Unsettled: Muslim French and the Contradictions of Secularism*. Durham: Duke Univ. Press.
Fyzee, A. A. A. (1974) *Outlines of Muhammadan Law*. Delhi: Oxford Univ. Press.
Galanter, Marc (1981) "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," 13(19) *The J. of Legal Pluralism and Unofficial Law* 1–47.
——— (1998) "Hinduism, Secularism and the Indian Judiciary," in, Bhargava, Rajeev, ed., *Secularism and its Critics*. Delhi: Oxford Univ. Press.
Ghosh, Papiya (1997) "Muttahida Quamiyat in Aqalliat Bihar: The Imarat i Sharia 1921–1947," 34(1) *Indian Economic and Social History Rev.* 1–20.
Griffiths, John (1986) "What is Legal Pluralism?" 24 *J. of Legal Pluralism and Unofficial Law* 1–55.
Guenther, Alan M. (2003) "Hanafi Fiqh in Mughal India: The Fatāwá-i Ālamgīrī," in, Eaton, Richard, ed., *India's Islamic Traditions: 711–1750*. New Delhi: Oxford Univ. Press. 209–33.
Halley, Janet (2011) "What is Family Law? Part I," 23(1) *Yale J. of Law and the Humanities* 1–109.
Halley, Janet, & Kerry Rittich (2010) "Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism," 58 *American J. of Comparative Law* 753–951.
Hirsch, Susan (1998) *Pronouncing and Preserving: Gender and the Discourse of Disputing in an African Islamic Court*. Chicago, IL: Univ. of Chicago Press.
Hong Tschalär, Mengia (2017) *Muslim Women's Quest for Justice*. Cambridge, UK: Cambridge Univ. Press.
Hussain, Sabiha 2007 Shariat Courts and Women's Rights in India. *Occasional Papers Series*. Delhi: Center for Women's Development Studies.
Jones, Justin (2010) "Signs of Churning': Muslim Personal Law and Public Contestation in Twenty-First Century India," 44 *Modern Asian Studies* 175–200.
Khan, Fareeha. 2008 Traditionalist Approaches to Shari'a Reform: Maulana Ashraf 'Ali Thanawi's *Fatwa* on Women's Right to Divorce. *Ph.D. Dissertation*. Department of History, University of Michigan.
Kugle, Scott Alan (2001) "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," 35(2) *Modern Asian Studies* 257–313.

Lemons, Katherine (2017) "Paying for Kinship: Muslim Divorce and the Privatization of Insecurity," 7(2) *History of the Present: A J. of Critical History.* 197–218.

Mahmood, Saba (2013) "Sexuality and Secularism," in, Cady, Linell, & Fessenden, Tracy, eds., *Religion, the Secular, and the Politics of Sexual Difference*. New York, NY: Columbia Univ. Press. 47–58.

——— (2015) *Religious Difference in a Secular Age: A Minority Report*. Princeton, NJ: Princeton Univ. Press.

Messick, Brinkley (1993) *The Calligraphic State: Textual Domination and History in a Muslim Society.* Berkeley: Univ. of California Press.

Mody, Parveez (2008) *The Intimate State*. New York: Routledge.

Moore, Erin (1993) "Gender, Power, and Legal Pluralism: Rajasthan, India," 20(3) *American Ethnologist* 522–42.

Mukhopadhyay, Maithrayee (1998) *Legally Dispossessed: Gender Identity and the Process of Law.* Calcutta: Stree.

Osanloo, Arzoo (2009) *The Politics of Women's Rights in Iran*. Princeton, NJ: Princeton Univ. Press.

Peletz, Michael G. (2002) *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*. Princeton, NJ: Princeton Univ. Press.

——— (2016) *Islami Aalat*. New Delhi: Qazi Publishers.

Randeria, Shalini (2006) "Entangled Histories: Civil Society, Caste Solidarities, and Legal Pluralism in Post-Colonial India," in, Keane, John, ed., *Civil Society: Berlin Perspectives*. New York: Berghen Books. 213–42.

Razack, Sherene (2007) "The 'Sharia Law Debate' in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture," 15 *Feminist Legal Studies* 3–32.

Redding, Jeff (2010) "Institutional v. Liberal Contexts for Contemporary Non-State, Muslim Civil Dispute Resolution Systems," 6(1) *J. of Islamic State Practices in International Law.* 2–26.

——— (2013) "Secularism, the Rule of Law and 'Shari'a Courts': An Ethnographic Exploration of a Constitutional Controversy," 57/2 *In St. Louis Univ. Law J.* 339–76.

——— (2014) "The Case of Ayesha, Muslim Courts, and the Rule of Law: Some Ethnographic Lessons for Legal Theory," 48(4) *Modern Asian Studies* 940–85.

Rosen, Lawrence (2000) *The Justice of Islam*. Oxford: Oxford University Press.

Sezgin, Yüksel (2013) *Human Rights Under State-Enforced Religious Family Laws in Israel, Egypt, and India*. Cambridge, UK: Cambridge Univ. Press.

Sharafi, Mitra (2014) *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947*. New York: Cambridge Univ. Press.

Sharma, Aradhana (2008) *Logics of Empowerment: Development, Gender, and Governance in Neoliberal India*. Minneapolis, MN: Univ. of Minnesota Press.

Solanki, Gopika (2011) *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*. New York: Cambridge Univ. Press.

Stiles, Erin (2009) *An Islamic Court in Context: An Ethnographic Study of Judicial Reasoning*. New York: Palgrave Macmillan.

Sturman, Rachel (2012) *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*. Cambridge, UK: Cambridge Univ. Press.

Subramanian, Narendra (2008) "Legal Changes and Gender Inequality: Changes in Muslim Family Law in India," 33(631) *Law and Social Inquiry* 631–72.

Tucker, Judith (1998) *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley, CA: Univ. of California Press.

Vatuk, Sylvia (2001) ""Where will she go? What will she do?" Paternalism toward Women in the Administration of Muslim Personal Law in Contemporary India," in, Larson, Gerald James, ed., *Religion and Personal Law in Secular India*. Bloomington: Indiana Univ. Press. 226–50.

——— (2008) "Divorce at the Wife's Initiative in Muslim Personal Law: What are the Options and What are their Implications for Women's Welfare?" in Archana

Parashar & Amita Dhanda, eds., *Redefining Family Law in India*. London, UK: Routledge. 200–35.

——— (2013) "The 'Women's Court' in India: An Alternative Dispute Resolution Body for Women in Distress," 45(1) *J. of Legal Pluralism and Unofficial Law* 76–103.

——— (2017) *Marriage and Its Discontents: Women, Islam, and the Law in India*. New Delhi: Women Unlimited and Kali for Women Press.

Williams, Rina Verma (2006) *Postcolonial Politics and Personal Laws*. Delhi: Oxford Univ. Press.

Yngvesson, Barbara (1988) "Making Law at the Doorway: The Clerk, the Court, and the Construction of Community in a New England Town," 22(3) *Law & Society Rev.* 409–48.

Yusuf, K. M. (1965) "The Judiciary in India under the Sultans of Delhi and the Mughal Emperors," 18(4) *Indo-Iranica* 1–12.

Zaman, Muhammad Qasim (2008) *Ashraf Ali Thanawi: Islam in Modern South Asia*. Oxford, UK: Oneworld Publications.

Zantout, Mida R. 2008 Khula: Between Past and Present. *Islamic Law and Law of the Muslim World Paper No. 08–14*. Social Science Research Network.

Cases Cited

Vishwa Lochan Madan v. Union of India (2005) Writ Petition (Civil) No. 386.

Legislation

Dissolution of Muslim Marriages Act, 1939.

Acknowledgments

The research on which this article is based was generously supported by the Fonds de Recherces, Société et Culture, Québec (FRQSC), and the Social Science Research Council of Canada (SSHRC). Special thanks go to my interlocutors and to my research assistant, Nadia Hussain.