

Challenging State-centric Discourses of Secularism in Pakistan and India

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Secularism has been the subject of selected scholarship within the fields of law, political science, anthropology and sociology. Much of the discourse on secularism has rested on a legal-centric or state-centric premise, based on the understanding that power relations within society are largely hierarchical. In light of Michel Foucault's work on power relations, there is a need to revisit how secularism has been understood. This article looks at seminal work on secularism from the fields of political science and anthropology to see how secularism has been understood. It will use a devolved conception of power, one which looks beyond legislative texts and legal and political systems to challenge how secularism has been understood in India, which from a traditional lens is predominantly considered secular, and in Pakistan, a religious state.

Introduction

The secularism debate has become stale. Although a great deal of recent scholarship has focused on the idea of secularism, studies have generally taken a state-centric approach in understanding the subject. New understandings of power relations, as expounded upon by contemporary philosophers such as Michel Foucault, have opened the door for a radically different approach to understanding secularism. Although secularism has typically been understood as a relationship between the state or legal framework and religion, this article defines secularism as the presence of 'secular' values such as religious tolerance and equality, that is, independence of faith as opposed to the relationship between the law or the state with religion.

In light of Foucault's work on power relations, this article argues that a state-centric understanding of secularism is not fully reflective of whether or not secularism actually exists within a society. Foucault has been highly influential in shaping post-modern discourse on power.¹ His understanding of power has been revolutionary as it has led the discussion of power relations away from traditional models that see power as something that is used by its actors to coerce subjects. Instead, he talks about how power is distributed amongst people within society, and

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¹ Michel Foucault and Colin Gordon, *Power/Knowledge* (Pantheon Books 1980).

how studies of power are incomplete without a focus on its ‘real and institutional effects’.²

In his Second Lecture on Power and Knowledge, Foucault talks about how ‘in Western societies since the Medieval Times, it has been royal power that has provided the essential focus around which legal thought has been elaborated.’³ Foucault argues that understanding power has also been carried forward to more modern government structures whereby ‘the king remains the central personage in the whole legal edifice of the West.’⁴ In other words, Foucault believes people have largely viewed power relations as purely hierarchical – exercised by rulers onto the people.

Although Foucault admits that power distribution has resulted in a hierarchy, his understanding of power as distributed in a kind of network suggests that a purely hierarchical study will never reflect a comprehensive understanding of power relations within society. Therefore, in any analysis of power relations, including any study on secularism, we must recognise both the macro- and micro-level relations that exist within any given society.

If a traditional understanding of power relations is to be adopted, merely looking at the state and its attempts to control religion through law and executive actions would be sufficient to understand the presence or absence of secularism. This is what much of the contemporary scholarship has done with regards to secularism. However, if a Foucauldian understanding of power relations is to be adopted, micro-level exercises of power would need to be taken into account in determining whether a particular society is secular or not. Such a ground-level analysis would significantly complicate the discourse on secularism, and it would problematize state-centric understandings of the subject.

If power is viewed as something that is diffused, enacted and embodied rather than concentrated and possessed, then such a methodological shift in the discourse of secularism will necessarily result in a more wholesome understanding of how and whether secularism operates in any given society. It is through a Foucauldian lens that this article will challenge contemporary state-centric scholarship on secularism.

² Ibid, 97.

³ Ibid, 94.

⁴ Ibid.

Part I of the article will look at how a majority of contemporary scholars have understood the idea of secularism. First, it will consider the work of Hussein Ali Agrama. Although he is a student of Talal Asad, who, as discussed later in the article, adopts a more Foucauldian understanding of power relations, Agrama uses a largely state-centric approach.⁵ In his book, he conducts an ethnography of secularism in Egypt, focused on state judicial and quasi-judicial institutions. He looks at how the Egyptian legal system has shaped the ways in which secularism has played out within society, thereby arguing that Egyptian secularism is driven by the law.⁶

Moving onto an example of how secularism has been understood in the field of political sciences, this part will review the work of Rajeev Bhargava, a leading Indian political theorist, who points out differences in the ways secularism has played out in different jurisdictions, including France, India and the United States. These definitions may differ in form, but structurally, they are all completely state-centric. Although much of the existing literature on secularism has developed in various disciplines including political science and anthropology, it can be seen that there are certain consistent underpinnings which obscure ground-level power relations between individuals, who, at a micro-level, exercise power over one another.

Part II of the article will look at two examples of recent studies of secularism that place secularism beyond the state. These studies implicitly recognise the capillary nature of power, and view secularism at a micro-level. Instead of focusing on the state, and how it has implemented or regulated secularism, these studies actually show aspects of secularism that are not entirely dependent on states, formal legal institutions, and texts.

The first study is Talal Asad's anthropology of secularism,⁷ which was one of the early attempts to rethink the concept of secularism as something that goes beyond the law and the state. Talal Asad distinguished between the terms 'secularism' and 'secular' and recognised that secular modernity is governed by the political authority of the nation state, freedom of market exchange and the moral authority of the family.⁸ This study opened up a previously unexplored conceptual dimension of secularism by looking at the micro-level dynamics alongside the traditional approach of looking at the legal systems and state's involvement in religious affairs.

⁵ Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (University of Chicago Press 2012).

⁶ Ibid.

⁷ Talal Asad, *Formations of the Secular* (Stanford University Press 2003).

⁸ Ibid, 236.

The second study discussed is Saba Mahmood's book *Politics of Piety*.⁹ Mahmood, who is admittedly heavily inspired by Asad's work, conducts an ethnographic study of the women's mosque movement in Egypt and looks at how people are pushing non-secular agendas without appealing to the state in any way or form. Her work suggests that secularism and religiosity exist beyond and independently from the state and the law. In her study, Mahmood uses a Foucauldian understanding of ethics, which reflects in her micro-level study. Throughout her book, her emphasis is on non-state actors, who they are, and how they shape secularism, or non-secularism, in society.

Part III will look at specific examples of ground-level secularism in Pakistan, and ground level non-secularism in India. In doing so, it will not make broad claims about whether or not Pakistan is a secular country, or India a non-secular one. This part aims to problematize statements like, 'Pakistan is a non-secular country' or 'India is a secular country' that are generally based on state actions and legal foundations.

In the case of India, this part will look at non-state religious institutions and their ability to enforce decisions that are contrary to the existing laws of the land promulgated by the state. Its focus will be on the non-secular nature of non-state *fatwas*,¹⁰ as well as other parallel justice systems that ground their legitimacy in religion. Although Indian secularism facilitates religious pluralism, non-state institutions appear to undermine the principles of secularism. It will use examples to illustrate the level of influence these parallel justice systems enjoy within society. Although recent court decisions have recognised their impact on secularism in India, traditional scholarship, as will be discussed, has largely overlooked it.

This part will then look at Pakistan, with a focus on the seemingly non-religious application of the non-secular and controversial blasphemy law amendments that resulted from the Islamisation of criminal laws in Pakistan. It will look at several instances of how the law has been frequently used to resolve property disputes that emerged out of personal enmity, rather than to protect Islam or actually prosecute blasphemers. These examples will challenge commonly held understandings of whether Pakistan and India are secular.

⁹ Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005).

¹⁰ A fatwa is a non-advisory Islamic opinion given to an individual who poses questions by a *mufī* (Islamic jurist); and does not need to be connected with pending litigation. See Eugenia Kermeli and others, 'Islamic Legal Interpretation: Muftis And Their Fatwas' (2000) 15 *Journal of Law and Religion* 421.

Rather than comparing the existence or nature of secularism across jurisdictions, this article concludes that a Foucauldian understanding of secularism does significantly complicate the comparative project on secularism. Yet, it will show that a comparative project devoid of the micro-level power relations exercised by individuals and non-state groups in a legally secular or non-secular society will not be fully reflective of secularism as it exists on the ground.

Part I - Secularism and the State

A number of prominent philosophers, including John Locke, Max Weber, Emile Durkheim, Karl Marx and Friedrich Engels,¹¹ predicted that the role of religion in the public domain would diminish as societies proceeded to become more modern. The re-emergence of religion in the public sphere in the 1970s and 1980s across jurisdictions, however, prompted theorists to rethink their modernist assumptions about secularism. A vast range of literature from various disciplines, including political sciences, anthropology and sociology, emerged in an attempt to explain secularism from a post-modernist perspective.

This section of the article will look at two prominent studies on secularism that are largely state-centric, and contend that these studies ignore micro-level power relations that impact secularism on a ground level in every society. It will first look at Hussein Ali Agrama, who through an ethnography, suggests that secularism is made possible by the exercise of state power in social life and through the legal framework that governs a particular society. It will then look at the work of Indian political theorist Rajeev Bhargava, who has done comparative work on secularism with the state as a constant underpinning in his definition of secularism across jurisdictions.

Hussein Ali Agrama, a disciple of Talal Asad, has conducted extensive research on the topic of secularism with regards to modern-day Egypt. In a recently published book *Questioning Secularism: Islam, Sovereignty and The Rule of Law in Modern Egypt*, Agrama is concerned with the ways in which secular power becomes the primary problem when studying the operation of Islamic law.

¹¹ William Connolly, 'Europe: A Minor Tradition', *Powers of the Secular Modern* (1st edn, Stanford University Press 2015) 91.

Agrama writes that secular power ‘enables state sovereign capacity’.¹² He goes on to say that, ‘It points to the possibility that secular power brings together two things typically thought to be opposed: a growing space of normative critique and contestation, and the increasing assertion of state sovereignty within social life.’¹³

From this, one can gauge that Agrama’s study is concerned with state authority, and how state authority is used to create space for a secular society. Further evidence of Agrama’s study being largely state-centric is contained in the remaining parts of his book, where he conducts an ethnographic study of family courts and the Fatwa Council in Egypt—both state institutions. His interest in state institutions and constant reiteration that they determine the secularity of people appear to be seriously limited if one is to adopt a Foucauldian understanding of power relations. Agrama pays no regard to the exercise of capillary power by and on individual members of society.

One interesting conclusion Agrama reaches is with regards to the level of legitimacy of Fatwa Council decisions and secular personal courts. Although the former are meant to be non-binding in nature and the latter intended to be binding, Fatwa Council decisions are generally followed much more than personal court decisions. Agrama acknowledges that the specific historical context of both state institutions have meant that they have varying levels of authoritativeness.¹⁴ However, he says that this particular history is the result of legal processes. Agrama writes:

In this sense, ‘vigilance and suspicion’ mutually enable the function and legitimacy of a liberal legal system. These are not ‘natural, default conditions, but are instead historically cultivated sensibilities whose cultivation depends integrally on modern legal processes.’¹⁵

The general stance of Agrama’s book suggests that secularism within Egyptian society is necessarily dependent on the law, and on the involvement of the sovereign power of the state in the spiritual lives of citizens. Ultimately, Agrama’s primary concern with the state, its institutions and the law obscures the micro-level power relations within society that also facilitate or take away from secularism in a society.

¹² (n 5) 31.

¹³ Ibid.

¹⁴ Ibid, 119.

¹⁵ Ibid, 127 (emphasis added).

He does take into account the way decisions of state institutions are perceived by members of society, but, as discussed, he adopts a very legal-centric viewpoint in suggesting that people react in particular ways to secular laws because of the legal processes themselves. From a Foucauldian perspective, while there is some truth in the idea that the state and the law can shape secularism, the micro-level power relations cannot be ignored in a broader study of secularism.

Agrama is just one of the countless scholars who have based their work on secularism on power models that have been challenged by Foucault. Rajeev Bhargava is another such academic.¹⁶ His essay ‘*Political Secularism: What Can Be Learned from India?*’ talks about secularism as it has been conceived in different jurisdictions. This comparative study is interesting because despite Bhargava’s attempts to distinguish between the *different* secularisms that exist in different jurisdictions, the state is a consistent underpinning in his definition of secularism across jurisdictions. In his essay, Bhargava talks about how a state may be disconnected from religion at three levels, at the level of ends, at the level of institutions, and the level of law and public policy. His scholarship focuses on the third level of disconnect.¹⁷

Bhargava identifies two broad ways in which the state has disconnected itself from religion in Western legal systems. The first model he discusses is that of *one-sided exclusion*. One-sided exclusion, as described by Bhargava, entails the state ‘excluding ‘religion from its own affairs but to have no limits on its own interventionist powers in the affairs of religion.’¹⁸ He talks about how this form of secularism is normally justified either by the desire for national homogeneity (as in the case of France)¹⁹ or arguing that religion is false consciousness (as it was understood in many communist states). One-sided exclusion, according to Bhargava, allows the state the authority, under the pretext of maintaining secularism, to interfere in or hinder, suppress or even help religion.

The second model of Western secularism that Bhargava describes is that of *mutual exclusion*. He says that under such a model, the state enjoys an absolute

¹⁶ Rajeev Bhargava, 'Political Secularism: What Can Be Learned From India', in GB Levey and T Modood (eds) *Secularism, Religion and Multicultural Citizenship* (1st edn, Cambridge University Press 2015) 92-93.

¹⁷ Ibid.

¹⁸ Ibid, 92.

¹⁹ The French Constitution does not lay out one-sided exclusion as the model of secularism to be adopted in France but Bhargava says that French legislation and case law suggests this is the model the state has chosen to adopt.

disconnect from religion, as does religion from the state. Political institutions and religious institutions under mutual exclusion are to live as strangers. It is foundationally based upon a divide between the public and private sphere, where religion can be exercised freely in the private sphere (to ensure freedom of exercise of religion) but not in the public sphere (to ensure mutual exclusion or secularism).²⁰ Bhargava notes that the United States has implemented this model of secularism.²¹

Where Bhargava's scholarship becomes particularly interesting is when he talks about the emergence of a third kind of secularism i.e. the Indian model of secularism. This model of secularism according to him is the best form of secularism for a modern multicultural society. This is something that has resonated in much of his scholarship on secularism.²² Bhargava points out seven ways in which secularism in India differs from the Western countries. Briefly, these are that Indian secularism has a multi-value character; it concerns itself with inter-religious denomination as well as intra-religious domination; it is based upon the concept of *principled distance*: it distinguishes between depoliticisation and depublication; it is hostile towards some aspects of religion and accepting of other parts; it uses a highly contextual model of moral reasoning; and finally it is modern but different from traditional understandings of secularism.²³

Whereas France depends on one-sided exclusion, and the United States on mutual exclusion, India uses *principled distance* to separate the state and religion. This method provides the state with a great degree of flexibility with regards to the inclusion or exclusion of religion.²⁴ Unlike the other forms of secularism that view public expression of religion as something that is negative, principled distance is not averse to the public exercise of religion, so long as it does not come into conflict with the values of Indian secularism themselves.

Bhargava's argument highlighting the distinction between Indian and Western secularism is not fully reflective of secularism, if viewed from a Foucauldian

²⁰ Bhargava (n 16) 93.

²¹ The First Amendment of the United States Constitution lays a platform for mutual exclusion of state and religion. It reads: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'

²² Bruce J Berman, Rajeev Bhargava and André Laliberté, *Secular States And Religious Diversity* (UBC Press 2013).

²³ Bhargava (n 16), 101-103.

²⁴ Ibid, 104.

perspective. Although he points out differences in form between these types of secularism, Western and Indian secularism as conceived by Bhargava are in fact structurally quite similar. They both use the state as the implementer of secularism, and view some kind of distinction between the state and religion as a determinative quality of secularism in a society. Bhargava's primary focus on the state suggests that he views power as solely exercised by the state onto people.

Both Bhargava and Agrama, in very different ways and from within different disciplines, make the same methodological error. They view secularism as a strictly triadic relationship between the state, religion and people's exercise of religion (or lack thereof). Their work is a general reflection of the majority of work on secularism both in the field of political science and anthropology. It is one that is considerably incomplete if one is to accept Foucault's understanding of power structures and power relations within society. The next part will show how some authors have attempted to break away from this state-centric scholarship on secularism in recognition of the fact that power is much more dispersed than traditional power models would suggest.

Part II: Secularism and the Non-State

In recent times, there has been some effort to look beyond the state within the scholarship on secularism. This effort has been the result of work done by anthropologists who studied societies from a ground-up perspective rather than solely looking at the law and the state in order to place secularism in a particular society. This section will look at two anthropologists who have broken out of the traditional discourse. First, this part will look at Talal Asad and his landmark work on the anthropology of secularism.²⁵ It will then look at Saba Mahmood and her ethnography of Egyptian society.²⁶

Talal Asad's *Formations of the Secular: Christianity, Islam, Modernity* was one of the first anthropological studies of secularism.²⁷ The anthropological method, as understood by Asad, entails 'the comparison of embedded concepts (representations) between societies differently located in time or space.'²⁸ In this comparative analysis, Asad recognises that the origin of these concepts is not of primary concern, but what is relevant is 'the forms of life that articulate them, the

²⁵ Asad (n 7).

²⁶ Mahmood (n 9).

²⁷ David Scott and Charles Hirschkind, *Powers of the Secular Modern: Talal Asad and His Interlocutors* (Stanford University Press 2006) ix.

²⁸ Asad (n 7) 17.

powers they release or disable.’²⁹ What is interesting about Talal Asad’s methodology is that in comparing secularism across cultures, it takes into account ‘the macrosociology and epistemology he believes undergirds modern society and modern systems of knowledge.’³⁰

Adopting a macro sociological approach, Asad is able to point out the limitations of a legal-centric approach to understanding secularism. He argues ‘formal constitutions never give the whole story. On the one hand objects, sites, practices, words, representations—even the minds and bodies of worshippers—cannot be confined within the exclusive space of what secularists *name* ‘religion.’ They have their own way of being.’³¹ His recognition of the problems associated with a legal-centric notion of secularism is in line with Foucault’s theory of power relations. Asad further recognises that secularism goes beyond the state when he draws a distinction between ‘secular’ and ‘secularism’. He views secularism as a political doctrine that emerged in Europe. On the other hand, he views ‘the secular’ as something that predates secularism and something that ‘a variety of concept, practices, and sensibilities have come together to form.’³² In other words, Talal Asad suggests that a study of secularism, therefore, may be state-centric but it is not complete without understanding the secular, which necessitates looking beyond the state.

In Chapter 7 of his book, Asad applies this groundwork to understand the secular and secularism in Egypt. Asad talks about how, despite being part of the Ottoman Empire, sharia courts or codified sharia law that was applicable throughout the Empire was never effective there. During the British rule, religious law was only applied in cases of family law and trust law. The limitation of the place of religion in the law continued under Jamal Abdul Nasir. He examines why:

... the social and cultural changes taking place in the late nineteenth and early twentieth centuries... created some of the basic preconditions for secular modernity. These involved the legal constitution of fundamental social spaces in which governance could be secured through (1) the political authority of the nation-state, (2) the freedom of market exchange, and (3) the moral authority of the family. Central to

²⁹ Ibid.

³⁰ Robert W. Hefner, ‘Review of Asad, Talal, “Formations of the Secular: Christianity, Islam, Modernity’ (2004) H-Gender-MidEast <<https://networks.hnet.org/node/6386/reviews/6632/hefner-asad-formations-secular-christianity-islam-modernity>> accessed 11 April 2015.

³¹ Asad (n 7) 201.

³² Ibid, 16.

this schema is the *distinction between law (which the state embodied, produced, and administered) and morality (which is the concern ideally of the responsible person generated and sustained by the family)*, the two being mediated by the freedom of public exchange—a space that was restructured in Egypt by the penetration of European capital and the adoption of the European law of Contract, a space in which debates about Islamic reasoning and national progress, as well as about individual autonomy, could now take place publicly.³³

From this quote, it can be seen that there is an underlying principle permeating from this chapter that the law and the state are essential in shaping social structures. However, by claiming that morality too played a role in the same, Asad is able to escape from a purely state-centric approach that the discourse on secularism has been plagued by. Although Asad's macro sociological approach to the idea of secularism limits the extent to which micro-level power relations are discussed in his work, his revolutionary understanding of secularism, including the notion that it was not just the law that constitutes the secular and mention of the moral authority of the family, has served as the foundation of far more devolved scholarship, including that of Saba Mahmood.

Saba Mahmood has admittedly been heavily influenced by Talal Asad.³⁴ In her book, *Politics of Piety: The Islamic Revival and the Feminist Subject*, she engages in an ethnographic study of the Women's Mosque Movement in Egypt. This is an Islamic revivalist movement led by women. It is a significant part of the more general and larger Da'wa Movement, which aims to increase the role of Islam in the lives of people, both in the public and private spheres.³⁵

Mahmood carries a fairly devolved understanding of Egyptian secularism. Instead of looking at the law and the state, she touches upon morality and ethics - the second factor that Asad believes to make a space conducive to secularism. She states her interest in 'understanding how different modalities of moral-ethical action contribute to the construction of particular kinds of subjects, subjects whose political autonomy cannot be grasped without applying critical scrutiny to the precise form their embodied actions take.'³⁶

³³ Ibid, 236.

³⁴ Saba Mahmood (n 9) xiii.

³⁵ Ibid, 2-3.

³⁶ Ibid, 24.

She further complicates the ethnography of ethics that she wishes to undertake by rejecting the Kantian understanding of ethics, which she believes reflects a ‘general demotion of conduct, social demeanour, and etiquettes in our analyses of moral systems.’³⁷ Mahmood attempts to adopt a Foucauldian lens that, in her words, ‘allows us to think of ethics as always local and particular, pertaining to a specific set of procedures, techniques, and discourses through which highly specific ethical-moral subjects come to be formed.’³⁸ This understanding of ethics serves as the basis of Mahmood’s work, and it results in her devolved understanding of the place of religion and the limited role of the state in ensuring that the society is secular in nature.

It is based on this foundation that she looks at the Islamic revivalist movement in Egypt. Her study looks at how Islamist movements such as Rashid Ride’s reformist movement and the Muslim Brotherhood have helped open the way for the discussion of religion. Interestingly, she notes that these religious non-profit organizations and participants in the Da’wa Movement have been able to shape aesthetical and ethical sensibilities, including the ways people dress, without even using the state for reform.³⁹

Thus, instead of turning to the state to bestow secularism upon people, the women who carried out the Da’wa Movement attempted to create new structures for learning. This entailed mosque lessons that would serve to restore what was once the familial and social ethos in Egyptian society. For instance, ‘participants of these revivalist movements have engaged in a wide range of activities, including establishing Islamic educational institutions, neighbourhood mosques, printing presses, and mostly effectively, social welfare organizations.’⁴⁰ This ethnographic study, therefore, goes to challenge the conventional notion coming out of the field of political science that the nation-state is responsible for bestowing Islamism or secularism upon people.

This lack of appeal to the state to change secular Egyptian legislation suggests that people do not see the state as responsible for secularism within Egypt. Instead, they have resorted to a ground-level movement, perhaps indicating that power is in fact capillary in nature and does not rest solely with the state. Mahmood’s attempt to focus on a study of secularism without any substantial reference to the state may

³⁷ Ibid, 26.

³⁸ Ibid, 27-28.

³⁹ Ibid, 77-79.

⁴⁰ Ibid, 58.

not fit entirely within the Foucauldian model of power relations, since Foucault does not recognise the existence of hierarchy within the power network of society. However, it does reflect a revolutionary way to think about secularism, and one that breaks away from the extremely limited state-centric discourses on the subject.

Talal Asad and Saba Mahmood, through their work, have opened up a new understanding of the concept of secularism. Scholarship, which, until recently, was almost entirely state-centric in nature, has now adopted a Foucauldian understanding of power in realizing that secularism exists beyond and independently from the state. This finding has problematized the idea of secularism considerably, and this has opened the doors for countries that, under traditional discourse, have been viewed as non-secular to come under contention for secularism. Based on this, the final part will examine whether India and Pakistan fall under a more Foucauldian definition of secularism, that is, one that is based on notion of devolved power relations.

PART III: A Secular Pakistan and Non-Secular India? Looking Beyond the State

A state-centric approach to secularism makes it fairly easy to identify which countries are secular and which are not. A look at the constitutions, legislations and general state actions would serve as adequate indication as to whether a state falls under a conventional understanding of secularism. Part I highlighted a number of prominent state-centric understandings of secularism. Rajeev Bhargava, for instance, throughout his work contends that ‘Indian secularism’ is superior to western secularism for it most effectively promotes tolerance in a modern multicultural society.⁴¹

Part III of the article will complicate such a position by showing instances of ground-level non-secularism in India. It will do so by looking at the influence that *fatwas* issued by non-state Muslim organizations command despite not being state-sanctioned. In further problematizing secularism and adopting a Foucauldian model of power relations, this part will look at instances of secularism in Pakistan, a country that is globally considered as oppressive towards the non-Sunni minority.⁴² In doing so, it will look at the highly controversial, non-secular blasphemy laws and show how these laws, at a micro-level, operate based on secular (or non-religious) agendas. The purpose of this section is to problematize a state-centric understanding

⁴¹ Bhargava (n 16) 101.

⁴² Ibid, 95.

of secularism from a Foucauldian perspective, rather than actually determining whether Pakistan is, in fact, non-secular or India secular.

Before problematizing the commonly held belief that India is a secular country, it is necessary to look at the legal basis that has resulted in such a belief. Secularism has been enshrined in the Constitution of India 1950. Between the time that India attained independence from the British up until 1976, India was formally not a secular state, that is, its supreme legal text the Constitution of India, did not contain any provision that described India as a secular state. However, in 1976, Prime Minister Indira Gandhi, during an emergency period, exercised executive powers and introduced an amendment to the Constitution.⁴³

The Forty-Second Amendment to the Constitution of India was a broad-ranging amendment that significantly changed the Indian Constitution.⁴⁴ One such alteration was the change in India's description from a 'sovereign democratic republic' to a 'sovereign, socialist secular democratic republic.'⁴⁵ Despite this seemingly significant change in the description of the country, it is worth noting that a number of provisions in the Constitution of India have, since its initial promulgation, described the relationship between the state and various religious denominations as well as the religious freedom of individuals. For instance, Article 25 gives individuals the right to freely profess their religions.⁴⁶ Article 26 of the Constitution gives rights to religious denominations to manage their own affairs.⁴⁷

⁴³ Forty Second Amendment Act 1976 amending the Constitution of India 1950.

⁴⁴ The text of the Constitution (Forty Second Amendment) Act 1976 can be seen here: <<http://www.constitution.org/cons/india/tamnd42.html>> accessed 11 October 2015.

⁴⁵ Ibid.

⁴⁶ Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

⁴⁷ Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

These provisions suggest that Indian secularism, as propounded by Bhargava, focuses on protecting the religious diversity that exists in India. As described in Part I, Bhargava describes the relationship between the state and religion in India as one of 'principled distance'. In spite of Indian secularism attempting to cater to a pluralistic society, a more micro-level analysis of power relations within the Indian society suggests that these ideals, though present in the constitutional set up, are not effective at the ground level when one looks beyond state structures.

For instance, the influence of non-state legislative bodies in India points to a ground-level opposition to secularism, as it is often understood. Within certain Muslim communities, the role of religion in what are traditionally seen as state matters such as law-making and adjudication of disputes have not been reduced despite state clamp downs on parallel justice systems. One example of this is *fatwas*. The Darul Uloom Deoband organization is the leading issuer of *fatwas* in India. It has been around since 1866, soon after the collapse of the Mughal Empire, during a time when Muslims were facing immense persecution. Since then, it has issued thousands of *fatwas* on a wide range of matters.⁴⁸

In *Vishwa Lochan Madan v Union Of India & Ors*,⁴⁹ the Supreme Court of India deprived *fatwas* of any formal legal status.⁵⁰ In this case, Madan, an Indian lawyer, filed a public interest litigation in which one relief sought was a declaration by the Court that *fatwas* issued by organizations were unconstitutional. He further asked the Court to declare all *fatwas void ab initio* and wholly *non-est*. The Court ultimately decided that while *fatwas* were not illegal, they were not constitutionally sanctioned and could not be the basis for derogating fundamental rights. Furthermore, they could not be legally enforced.⁵¹

The limitations of a state-centric analysis of secularism even come out from the discourse of the Indian Supreme Court itself in this case. Religion, as a part of culture, has a pervasive effect. It cannot wholly be controlled by coercion through the law, or be legislated upon by the state. Even though there is no legal obligation to obey a *fatwa*, even the judge noted that within Muslim communities, there is the

⁴⁸ More information on this organization can be found on their website: <<http://www.darululoom-deoband.com/english/>> Accessed 11 October 2015.

⁴⁹ *Vishwa Lochan Madan v Union Of India & Ors* Writ Petition (Civil) No. 386 OF 2005 <<http://indian.kanoon.org/doc/22464727/>>.

⁵⁰ Jeff A. Redding, 'Secularism, The Rule Of Law, And 'Shari'a Courts': An Ethnographic Examination Of A Constitutional Controversy' (2013) 57 Louisiana University Law Journal <<http://ssrn.com/abstract=2221619>>.

⁵¹ *Ibid.*

general perception that ‘persons who are God fearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the Fatwaâ.’⁵²

The religious obligation that Muslims may feel towards obeying *fatwas* is an additional power acting on them besides that of the state. People who live in Muslim communities are members of structured religious denominations. The fear of community retaliation, often in the form of vigilante justice or other forms of expression of power, such as banishment from community privileges, often gives *fatwas* considerable authority. This is because, as per Foucault’s analysis, power rests not just with the state but also with the jurist who issues a *fatwa* and the Muslims who agree with that *fatwa*. As a result, even though *fatwas* have no legal force and a person feels no religious obligation towards them, power dynamics within a society often gives them more force than even state law. This is something a state-centric approach to secularism would obscure.

One of the most contentious incidents of *fatwa* came in front of the Indian Supreme Court in the Madan Petition. In a petition challenging *Shariah* courts and *fatwas* in India, the petitioner, Vishwa Lochan Madhane, used the case of Imrana, a woman who was raped by her father-in-law. A local *panchayat* (village council) declared her marriage void. The Darul Uloom Deoband soon issued a *fatwa* declaring that she could no longer live with her husband, and further ordered her to start living with her father-in-law.⁵³ Although the *fatwa* was not state-sanctioned, even before the Madan decision, she was forced to live with her rapist for several days due to the pressure of the community, before her siblings were finally able to get her out and report the case to the state institutions.⁵⁴

Fatwas issued by organizations such as the Darul Uloom Deoband do not require state-sanction or any legal basis. They have been an integral part of the non-state adjudication system for hundreds of years, well before India even attained independence from the British. Even though the state may have deprived *fatwas* of legal validity, power structures within society offer a certain level of legitimacy to these forums. Even if the subjects of *fatwas* do not agree with the terms, their legal nullity is not sufficient coercion to overcome the societal power relations that they

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Sheela Reddy, 'Imrana: Her Story' (*Outlook India*, 2015) <<http://www.outlookindia.com/article/Imrana-Her-Story/227975>> accessed 16 December 2014.

are backed by. India, like any other society, has a well-established parallel justice system that exercises coercion through hegemonic social hierarchies.

Another example of this devolved power dynamic in the Indian society is the *jirga* system, an informal parallel justice system where community elders adjudicate and sentence persons who violate community norms. A local *jirga*, headed by a Hindu village elder, sentenced a Hindu woman to be gang raped for marrying a Muslim man. This *sentencing* was followed by the woman being gang raped for six hours.⁵⁵ This happened despite the fact that the Supreme Court of India had previously ruled that such parallel justice systems had no legal backing,⁵⁶ illustrating that a legal-centric approach does not fully represent the secularity of a society.

The prevalence of *fatwas* or informal *jirgas* in Indian society should not be seen as a problem of law enforcement. Rather, it should be understood as a consequence of a system of power relations in society, whereby laws and adjudications made by organizations such as the Darul Uloom Deoband, have played an important role in non-state legislation among Muslim communities for hundreds of years. This problematizes a state-centric understanding of secularism. Merely framing this problem with regard to the state will obscure non-secular acts that organizations such as the Darul Uloom Deoband and other *panchayats* perform with power that is in fact capillary in nature and rests not just with them but also their followers.

India's secular status has been challenged frequently, albeit, mostly on state-level.⁵⁷ However, Pakistan's non-secular status is seen as something that is incontestable. This may be because non-secularism finds itself ingrained in many of the laws of the country.

Religious overtones are no doubt part of the Pakistani legal framework. The Constitution of Pakistan not only declares Islam as the state religion,⁵⁸ but laws

⁵⁵ Kartikay Mehrotra, Andrew Macaskill and Pradipta Mukherjee, 'Gang Rape Reveals Vigilante India In Rural Villages' (*Bloomberg*, 2014) <<http://www.bloomberg.com/news/2014-01-30/gang-rape-reveals-vigilante-india-where-village-leaders-are-law.html>> accessed 18 December 2014.

⁵⁶ *Arumugam Servai v State of T .Nadu* Criminal Appeal No. 958 of 2011 <<http://indiankanoon.org/doc/1337458/>> accessed 18 October 2015.

⁵⁷ India's secular status has been challenged most vociferously by the right wing Hindu nationalist parties in India. They describe India as a pseudo-secular country because its form of secularism is primarily concerned with minority appeasement. Thomas Pantham, 'Indian Secularism and Its Critics: Some Reflections' (2009) 59 *The Review of Politics* 523.

⁵⁸ Article 2 of the Constitution of Pakistan reads: 'Islam shall be the State religion of Pakistan.'

repugnant to the teachings of Islam cannot be promulgated,⁵⁹ and if passed, they may be struck down.⁶⁰ However, this should not serve as any conclusive evidence that Pakistan is a non-secular country. If a more devolved understanding of power is adopted in light of Foucault's work on the subject, this state-centric and legal-centric understanding of non-secularism in Pakistan may be significantly complicated. Before attempting to apply a Foucauldian understanding of power to see whether Pakistan is in fact a non-secular country, this article will go through the current Constitution of Pakistan to see just how non-secularism has been embedded into the supreme law of the land.

From a constitutional perspective, Pakistan is a non-secular country. Islam enjoys an elevated position within the constitutional framework. Constitutionally, then, Islam plays an important role in limiting state authority. A Foucauldian understanding of power, however, would see a conclusion based on these provisions to be superficial and not wholly reflective of the various levels of power relations that exist in every society. It is based on such an understanding that the label of non-secularism frequently placed on Pakistan can be complicated. For instance, although the blasphemy laws in Pakistan appear to be non-secular, more often than not, they play out with regard to secular disputes, and on a ground level, have little to do with religion.

Amendments to Pakistan's blasphemy laws, under Zia-ul-Haq's Islamisation of the country's legal framework, have made it an offence to defile the Qur'an and use derogatory remarks in respect of the Prophet Muhammad (SAW).⁶¹ These amendments are contained in Sections 295-B and 295-C of the Pakistan Penal Code respectively. The text of these provisions clearly has Islamic character, especially considering that all but one sub-section of the blasphemy laws⁶² protects only Islam from being the subject of blasphemy.

⁵⁹ Article 227(1) of the Constitution reads: 'All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.'

⁶⁰ Article 203-D(3)(b) of the Constitution reads: 'If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam, such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.'

⁶¹ Section 295 of the Pakistan Penal Code 1860.

⁶² Section 295-A of the Pakistan Penal Code protects against the deliberate hurting of feelings of 'any class of citizens' and is not just limited to Muslims.

Although the state has introduced blasphemy laws that are non-secular in nature and create distinctions that favour the state religion as opposed to other denominations, these laws may play out in a manner that has little to do with religion. There have been several instances where the law has been used for non-religious purposes. For instance, in the famous case of Asia Bibi, a Christian woman was accused of committing blasphemy.⁶³ She denied these charges, claiming that she was falsely accused after an argument ensued when she drank water from the same well as Muslims.⁶⁴ A woman whose family had been in a long-running property damage dispute with Asia Bibi's family brought a complaint to a local cleric that Asia Bibi committed blasphemy.⁶⁵

This has not been the only instance where blasphemy laws have allegedly been used to settle personal disputes between two persons or families. Amnesty International published a report titled Pakistan: Use and Abuse of Blasphemy Laws in 1994 expressing its concern about how the blasphemy laws were being used to target individuals. It identified a number of motives for bringing forward blasphemy cases, the most frequent of which were economic or professional rivalries.⁶⁶ The report talks about the case of Anwar Masih, a Christian accused of committing blasphemy by a local Muslim shopkeeper.⁶⁷ It was common knowledge in Samundri, where this incident occurred, that Masih and the shopkeeper who had accused him had been arguing about a small debt.⁶⁸ Another shocking instance of the secular application of the Pakistani blasphemy laws is the case of Tahir Iqbal.⁶⁹ He was accused of defiling a copy of the holy Qur'an by a local Muslim cleric, who had a personal enmity against him. This was based on the fact that Iqbal was providing free education to local children, and that these children were increasingly opting to go to him, instead of going to the local *madrassa*⁷⁰ run by the cleric.⁷¹ There are countless other examples of such non-religious uses of the blasphemy laws.

⁶³ 'Christian Woman Sentenced To Death In Blasphemy Case' Dawn (12 November 2010) <<http://www.dawn.com/news/580993/christian-woman-sentenced-to-death-in-blasphemy-case-2>> accessed 11 December 2014.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Amnesty International, 'Pakistan: Use And Abuse Of The Blasphemy Laws' (Amnesty International 1994) <<http://berkeleycenter.georgetown.edu/publications/pakistan-use-and-abuse-of-blasphemy-laws>> accessed 17 December 2015.

⁶⁷ Ibid, 10.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ A *madrassa* is a local religious educational institute.

⁷¹ Ibid.

This article does not claim that these isolated instances mean that Pakistan is a secular state. Such a claim, by any stretch of the imagination, would be difficult to sustain considering the extent to which religion is embedded in both the private and public lives of people, and the extent to which it has influenced their daily lives, including the food they eat, the way they dress and speak. The aim is to merely demonstrate that analysing secularism from a more devolved perspective, can provide a fuller picture of the nature of a society as opposed to a superficial analysis of constitutional and other legal texts. A constitutional or state-centric view of secularism would obscure how these blasphemy laws, seemingly entirely non-secular in nature, are in fact not being used for non-secular ends.

This part of the article has shown instances where looking at secularism from a solely legal or state-centric perspective is not fully reflective of the micro-level exertions of power in society. A superficial legal-centric approach would result in the seemingly obvious conclusion that Pakistan's blasphemy laws are non-secular, while if looked at in terms of the way they play out, they may not be entirely religion-based. Likewise, although India's constitutional set up appears to promote secularism and religious freedom and pluralism, on a ground level, its non-state legislative and judicial systems do not always play out in a secular manner.

Conclusion

The way secularism has been largely understood in academia is an apt reflection of how power relations have been seen by a majority of scholars. Foucault's ground breaking work on complicating a purely hierarchical understanding of power relations into a more capillary network has opened up the door for rethinking secularism, from a state-centric approach to a more ground-level understanding. Talal Asad and Saba Mahmood have worked on bringing out the idea of non-state secularism. This work has helped problematize how we have generally conceived secularism.

This article used a Foucauldian understanding of power and built upon the approaches used by Talal Asad and Saba Mahmood to show an instance where India, a country that would under traditional discourse be considered secular, would from a non-state non-legal perspective appear to be non-secular in nature. Even more radically, this article looked at Pakistan, a notoriously non-secular country, and looked at one example of how it operated in a secular manner at a micro-level.

In distinguishing between micro and state-level secularism, this article hopes to complicate comparative work in the field of secularism. In looking beyond the law and adopting a Foucauldian understanding of secularism, theorists will need to look beyond the law and state structures to engage in comparative projects. Ultimately, a study on secularism that merely looked at the laws would be based on an incomplete understanding of power relations, and so it would not be fully reflective of what is happening in society at a more micro-level.