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THE CONCEPT OF RELIGION AND THE DEBATE ON THE RIGHTS OF WOMEN IN THE CONSTITUTIONAL DEBATES OF INDIA

Abstract

I intend to show that religion was seen as an obstacle to the improvement of women’s rights in India in the debates of the Constituent Assembly during the 1940s. In order to understand this negative view of the role of religion in society, we need to understand two very different concepts of religion current in India during the period. I call these the universalist and the particularist concepts of religion. These two concepts were associated with dichotomies like universal religion and particular religious traditions, positive religion and negative; inclusive and exclusive, progressive religion and conservative religion. To most members of the Constituent Assembly, religion was seen as inseparable from the caste-system, from local customs, rituals, law, and general worldview. I argue that this particularist concept of religion shaped the dominant views and attitudes about the public role of religion in the debates about the Constitution of the Republic of India. As a consequence, religion was perceived as a barrier to social reform in a number of different areas. My focus will be on the rights of women.

Keywords: India, religion, gender, Hinduism, Constitutional Assembly of India.

Introduction

There took place important shifts in ideas about the nature of religion in India between the late nineteenth century and the period when India gained independence from Britain in 1947. The changes were closely linked to the changing political realities of the period. During the last decades of the nineteenth century the most important trend in the history of Indian religions was the tendency to look for universalism and common ground either between religions in general or between the different branches of Hinduism. However, when Indian politicians of the 1940s discussed the way toward independence, religion was given a new role in national debates. Most of the Indian leaders of the period before and during the Second World War would reject the universal aspirations of the religion of an earlier generation. In fact, their concept of religion was diametrically opposed to the universal religion of important reformers of the late
nineteenth century. Instead, they saw religion as embedded in the social structures of
the different religious communities of India. To them, religion was inseparable from
the caste-system, from local customs, rituals, law, and general worldview. I call this
concept of religion particularist. I argue that this particularist concept of religion
shaped the dominant views and attitudes about the public role of religion in the debates
about the Constitution of the Republic of India. Religion was perceived as a barrier to
social reform in a number of different areas. Here my focus will be on the rights of
women.

In the following I use Indian archival material from the 1940s to corroborate my argu-
ment. Two sources will be particularly important. First, I use the Constituent Assembly
Debates (which I will henceforth refer to as CAD) and, second, I use early Parliamentary
Debates (which I will refer to as PD). To my knowledge, scholars of religion have not
studied these sources before. I believe they represent the kind of source that we should
use more often to understand how discourses about religion contribute to the shaping of
ideology and politics.

I argue that the debates about religion as a potential obstacle to social reform in the
area of women’s rights, which I identify in the archival material from the 1940s, entail
very specific ideas about the nature of religion. Indeed, the debates I look at build upon
concepts of religion inherited from the broad reform of Indian religions that took place
in the late nineteenth century. On one hand, religious leaders talked about a universal, all-
embracing and inclusive religion, and on the other hand, they often warned against reli-
gion as a particularist and narrow force. In order to understand these concepts of religion
I will need to take a detour into the conceptual universe of the religious reformers of the
nineteenth century.

Thus, this article will start out with a section showing the skepticism about religion in
the Constituent Assembly. Then two sections follow, discussing the origins of the universal-
alist and particularist concepts of religion in the nineteenth century. Finally, a longer
section will take us back to the Constituent Assembly and Parliamentary debates of the
1940s in order to show how these new concepts of religion informed the debates, and
shaped the attitude to religion on matters of social reform related to gender issues among
the political elite of India around Independence.

Before we approach our material, we might take a brief look at previous research on
the framing of India’s Constitution. A large body of literature has been produced about
this crucial process in the shaping of the world’s largest democracy. Hugh Tinker noted
that the framing of the constitution had been discussed by historians ad nauseam, in a
review of Granville Austin’s first major work on the constitution, published in 1966
(Tinker 1967). Austin’s book, entitled India’s Constitution: Cornerstone of a Nation
(1966), showed how the members of the Constituent Assembly struggled to achieve
several different goals through their three years of constitutional debates and drafting.
They wanted to create a constitution that would be the basis for democracy, unity and sta-
bility; and at the same time they needed to make room for social reforms of institutions
like caste. Indeed, key players – like Nehru and Ambedkar – saw the constitution as a tool
for creating equality and lifting the Indian masses out of poverty. After the Constitution
of India was brought into force on 26 January 1950, there have been a number of consti-
tutional reforms, and these reforms are the subject of Austin’s other major monograph: *Working a Democratic Constitution: a History of the Indian Experience* (2003/1967). Apart from the groundbreaking work of Austin, there is no reason here to go into the large body of literature on the framing of the Indian Constitution; that would be outside the scope of this article. However, we should mention the important point of reference, *The Framing of India’s Constitution*, published by The Indian Institute of Public Administration in five volumes in the late 1960s.

I would also like to point to the important contributions to the understanding of themes in the Indian Constitution made by scholars working within the field of comparative law. This subject is first of all associated with the original and wide-ranging work of J. Duncan M. Derrett, formerly Professor of Oriental Laws at the University of London. Derrett’s work has been continued by Werner Menski of the School of Oriental and African Studies. The strength of the approach represented by comparative law is the ability to discuss modern Indian law within a much broader context of judicial and religious history than that used by most historians and scholars of constitutional law. The broader perspective is necessary if we wish to understand how modern concepts of religion have contributed to shaping politics, which is the focus of this article. In my opinion, we need to keep in mind that the spheres of religion and law were separated by processes of modernization. The field of comparative law allows us to explore these processes without getting lost in the details of a particular historical context. Understandably, scholars of Indian religion have taken far less interest in the Constituent Assembly debates than scholars of constitutional law and comparative law. The fact remains that the concepts of religion found in the Constitution have been vital in the shaping of India’s policies on matters of secularism, religious freedom, communalism, minority rights and related issues. Thus, I believe these documents represent types of sources that scholars within the humanities, too, should use in order to understand how discourses about religion contribute to the shaping of politics.

**Religion and women’s rights**

Both Gandhi and Nehru saw the participation of women in the national movement as crucial. Nehru was convinced that women’s participation in the movement would result in a process whereby women would find a new and proper place in the Indian nation and enjoy equal rights with men; at his behest, Congress enshrined formal equality between the sexes at the Karachi Congress of 1931. This process met little or no resistance, partly because the realization of women’s formal rights remained in the distant future. When the principles of equal rights became one of the reform issues in the Hindu law, strong objections were raised from several groups (Som 1994). In many of the debates over the issue of women’s rights, religion played a prominent but highly ambivalent role. For instance, Nehru’s cautious optimism about Hinduism’s capacity to adapt and change contrasted sharply with Ambedkar’s view of the same tradition as the recipe for oppression and social rigidity.
The question of women’s rights was one of the most important socio-political issues that motivated Nehru and Ambedkar and others to work for the reform of Hindu law. However, several speakers of the Parliament pointed out that injustice to women was perpetrated also within other communities and that the reform only of Hindu law would merely complicate matters without solving the problems of women in India generally. Commenting on the proposed reform of Hindu law, while leaving Muslim law alone, MP Shri Indra Vidyavachaspati said:

By this Bill the Government wants to achieve a big thing, that is they want to remove all injustice done to the women. [...] Is this injustice done to Hindu women alone and not to Muslim women also? I ask my sisters whether they will tolerate that justice should be done only to Hindu women and not to Muslim women? This injustice done to them must also be removed. (PD: 2389).

I the following, I intend to analyze the idea of religion in the debates in the Constituent Assembly and its committees. The Constituent Assembly was inaugurated in December 1946 to draw up a constitution for India, and worked until the end of 1949. The Constituent Assembly did not start from scratch but took as its starting point the Government of India Act of 1935, which became the Independence of India Act in 1947. The constitution was introduced on 26 January 1950. The Constituent Assembly set up several advisory committees to work on different areas of the constitution. (The Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas was of particular importance on questions of religion and freedom of religion. It was divided into two subcommittees, one discussing fundamental rights, the other minorities.)

Discussing freedom of religion and the restrictions on freedom of religion, many speakers in the assembly expressed apprehension that the authority of the state for providing social reform might encroach on freedom of religion. For instance, is it possible to reform the traditional Hindu law without interfering with religion in some way (Derrett 1968)? The conception of religion in this country is generally thought to be so wide, said one speaker of the assembly, as to cover every aspect of life from birth to death; and if the state were to accept this conception of religion, the country would come to a standstill in regard to social reforms. Members of the assembly saw religion as something inextricably linked to the rest of the social fabric of India. Thus, they saw it as a conservative force that would hamper social reforms. «Nationalism, not religion, is the basis of modern life,» President Radhakrishnan said in a speech to the Constituent Assembly (The Framing of India’s Constitution: 16).

To get an idea of how this negative view of religion was expressed in the debates, we may start by looking briefly at the opposition to freedom of religion. A draft of the article on religious freedom from the subcommittee on fundamental rights given to the Advisory Committee reads:

All persons are equally entitled to freedom of conscience and the right freely to profess and practice religion subject to public order, morality or health and the other provisions of this chapter. (The Framing of India’s Constitution: 140)
At a later stage of the debate in the committee, «propagate» was added to «profess» and «practice» and the constituent debates about the rights to propagate and proselytize is an interesting aspect of the discussion of religious freedom. In the work of the committees set up by the Constituent Assembly, we find a note by Rajkumari Amrit Kaur regarding the freedom of religion clause, dated April 20 1947. In a note, Kaur objects to a revision of the clause on «free practice of religion»:

To make the ‘free practice of religion’ a justiciable right is, I submit, an error and will defeat not only social progress but will keep alive communal strife. (The Framing of India’s Constitution: 213)

According to Kaur, the words «free practice of religion» would not only be a bar to future social legislation but would even invalidate past legislation such as the Widow Remarriage Act, or even the law abolishing sati, i.e. the burning of widows on the funeral pyres of the husbands (The Framing of India’s Constitution: 213). The fear that complete freedom on the practice of religion would tie the hands of the state on all matters of social reform was widespread among the members of the Constituent Assembly. Women’s rights were one important focus for the discussion of the negative consequences of religion.

For instance, certain forms of slavery or prostitution could be defended on religious grounds, as observed by the members of the Constituent Assembly, which showed how dangerous freedom of religion could turn out to be. In discussing Article 17 of the Constitution, prohibiting traffic in human beings, Prof K.T. Shah of Bihar had comments on the article concerning the definition of human traffic. He started out by saying that the common understanding of the concept was the classic European and American idea of slavery. In India, however, traffic in human beings was not confined to this ancient conception, according to Shah. In particular, the Constitution must include another form of traffic in human beings, which is connected to religious tradition. For this purpose, he suggested an amendment to Article 17.

I have, no doubt, worded my amendment with reference to a particular form of slavery which prevails in this country to a large extent, namely, dedication, in the name of religion, of young women to be Devadasis, and as such devoted to immoral traffic almost from an immature age. This also I think ought to be stopped. The name or cloak of religion should not help all those who indulge in such traffic. (CAD: 805)

Certain other speakers of the Assembly were not in agreement with Prof Shah. For instance, Shrimati G. Durgabai of Madras thanked Shah for mentioning the problem of devadasis, but argued that the proposed amendment was not necessary. «Sir, if any province has suffered from this bad practice of dedication of Devadasis in the name of religion, it is the province of Madras,» Durgabai said (CAD: 808). However, the practice would certainly disappear in the course of time and it should not be mentioned specifically in the Constitution. Durgabai also pointed out that Madras has already passed a law prohibiting devadasi practice and she mentioned the work of reformers like Mrs. Muthulakshmi Reddi, who had already done a lot to counter the evil of religious pros-
titution (CAD: 808). Giani Gurmukh Singh Musafir, a Sikh of East Punjab, interjected that the amendment of Prof Shah was unnecessary, and asserted that prostitution was not in accord with Indian civilization; that it was imported from the West, and with the departure of Western rulers it would come to an end (CAD: 807–8).

The discussion continued in the Constituent Assembly around the suggested amendment of Prof Shah on the matter of de vadasis, which received support from some members and opposition by others. Shrimati Renuka Ray of West Bengal supported the amendment. The custom still lingered in some areas, and a categorical provision in the Constitution against the practice would help to change the state of affairs. The traffic in women is one of the most urgent of all the problems on which women’s organizations in India are working, Ray said, and pointed out that legislation could really become effective only when men’s minds changed towards the problem. The very dignity of womanhood was lowered by prostitution, Ray said (CAD: 810).

In the end, the chairman of the assembly, Dr. B.R. Ambedkar, did not accept the amendment and it did not make it into the constitution. Dr. Ambedkar referred to the counter-argument of the preceding debate without giving precise reasons for his rejection of the amendment. However, it seems that Shri T.T. Krishnamurty of Madras summed up the real argument against inclusion of a reference to the devadasis in the Constitution, in a long speech. He asked the assembly not to import into the fundamental rights of the Constitution «age-old peculiarities of ours that still persist», but which could be made to disappear by suitable legislation in a few years, as had happened in Madras (CAD: 811).

Historical background: Hindu reform and women’s rights

At this point, it is time to trace the debates back a few decades. In fact, this issue was a primary focus for the increasing tension between orthodox Hindus and reformists from the early 1800s. Several of the most important social questions in Bengal were about gender relations. In 1870–72 the Brahmo Marriage Bill controversy was the centre of attention in Bengal. The Brahmo Samaj was a movement of religious reform, centered on deistic, Unitarian theological ideas, but it was also extremely concerned with social questions, and especially the position of women. Two later figures of the Brahmo Samaj, Keshab Chandra Sen and Debendranath Tagore, were at the centre of the Brahmo Marriage Bill controversy, which was about establishing separate marriage rituals for the Brahmans. Another slightly later conflict about marriage customs, the Age of Consent controversy, where the age of consent was raised from ten to twelve years, marked the peak and the dramatic defeat of the orthodox ambitions of conservative Hindus in Bengal (Sen 1993: 363). A court case studied by Sudhir Chandra brings into focus the problems that arose when British and Hindu ideologies of gender relations clashed. This is the Dadaji Bhikaji vs. Rukhmabai case. This case started in 1884, when Dadaji moved the Bombay High Court to direct his wife, Rukhmabai, to start living with him (Chandra 1995). They had married when Rukhmabai was a child, and she had continued living with her stepfather for eleven years, until Dadaji filed a case for restitution of conjugal rights. At first, the British judge rejected the case, but when
Dadaji appealed in 1887, a new British judge decided that Rukhmabai had to go and live with her husband. Rukhmabai decided that she would rather go to prison than consummate her marriage. The prospect of a woman being jailed on these grounds upset even those sections of Hindu society that had supported Dadaji, and the British Government started to get seriously worried over the embarrassing implications of the case. The case produced a crisis; even the Viceroy got personally involved, and a special committee was established to deal with it. A few decades later, the differences between British and Indian traditions and cultures would become a main theme in the heated debates about woman suffrage. In Bengal, as in India as a whole, opponents of women suffrage claimed that demands for political participation were an artificial issue imported from Britain, whereas many nationalist leaders realized the necessity of universal suffrage for the nationalist movement (Southard 1993).

Two of the most important figures in both the general reformation of Hindu religion and on the matter of women’s rights in India were Rammohan Roy (1772–1833) and Swami Vivekananda (1863–1902). Rammohan Roy was the founder of the Brahmo Samaj, he was a religious reformer and the greatest figure in Indian intellectual life in the first decades of the nineteenth century (Killingley 1993; Kopf 1979; Kotnala 1975). Roy was highly critical of the way women were treated in the Brahminical tradition and he worked zealously to change the situation. He was committed to ending the practice of sati, the ritual in which widows let themselves be burned on the funeral pyres of their husbands after the model of the perfect wife in Puranic mythology. Apart from the many references to the Vedas and Upanishads, a modern advocate of reason and humanity could have written Roy’s treatises on the subject of sati. He had seen sati practiced in his own family. In A Second Conference between An Advocate and Opponent of the Practice of Burning Widows Alive, Roy opposes a Brahmin defender of the traditional position of women in Hindu society.

By ascribing to them all sorts of improper conduct, you have indeed successfully persuaded the Hindoo community to look down upon them as contemptible and mischievous creatures, whence they have been subjected to constant miseries. (Roy 1832: 251)

It is because men are physically stronger that they have been able to deny women the excellent merits that they are entitled to by nature, he says. He discusses the natural properties of women and points out that women are equal or even better than men in understanding, in resolution, in trustworthiness, in the subjection of passions and in virtuous knowledge. On trustworthiness he says:

If we enumerate such women in each village or town as have been deceived by men, and such men as have been betrayed by women, I presume that the number of the deceived women would be found ten times greater than that of betrayed men. (Roy 1832: 252)

Roy’s treatment of the issue of women is conducted in a very rational way, in accordance with the requirements of debate that were current in Bengal at the time. The opponent’s arguments are considered, discussed, and refuted; and authoritative texts
are cited on both sides. However, Roy often lets his private feelings of repugnance shine through.

At marriage the wife is considered half of her husband, but in after-conduct they are treated worse than inferior animals... What I lament is, that, seeing the women thus dependent and exposed to every misery, you feel for them no compassion, that might exempt them from being tied down and burned to death (Roy 1832: 254–255).

Of course, Roy’s opponents, orthodox Hindus, had a very different idea of what sati was really about. In conservative Bengali newspapers and periodicals during Roy’s times, sati was certainly not conceived of as the result of the cruelty of Indian husbands, but rather as the privilege of any truly religious and morally upright wife. According to a number of popular accounts, Hindu wives who were stopped from burning themselves to death on their husbands’ funeral pyres would die within a short time anyway because death was the inevitable result of true devotion and virtue (Pennington 2001: 589–592).

Swami Vivekananda was part of the later milieu of Brahmos in Calcutta. He was intent on changing the position of women in Hindu society, and his reasons were both religious and political. In America and England, Vivekananda encountered societies where the uplift of women had come a very long way in comparison to India. Indeed, one of the things that made him admire America was the position of its women. The average American woman is far more cultivated than the average American man, he said (Vivekananda 1994, vol. 5: 22). And he observed that «... nowhere in the world is women so free, so educated, so cultured. They are everything in society.» (Vivekananda 1994, vol. 5: 22). But Vivekananda saw the West’s lament over women’s fate in India as an aspect of a general attack on Indian culture, and he refused to condemn the treatment of women in his own society in the way Rammohan Roy did. Instead, he talked in romantic terms of the Indian woman as the ideal Mother, as opposed to the American woman as the Wife (Vivekananda 1994, vol. 8: 53). For Vivekananda, the Indian woman was the epitome of purity. This did not mean that he was happy about the contemporary position of women in India. Women in India had «many and grave problems,» according to the Swami (Vivekananda 1994, vol. 5: 231). But at the same time, the solution to the problems was to be found at home, in the Hindu tradition. Vivekananda took religion as the point of departure when thinking and talking about the position of women. He distinguished two ideals of womanhood: the Semitic and the Aryan. The two ideals were diametrically opposed, he said, because in the Semitic world-view women were seen as dangerous, and they were not allowed important religious functions. In the ancient Aryan world-view, women were a necessary part of any religious ritual and they consequently enjoyed a higher status. Moreover, according to Vivekananda, the ancient Aryans had a completely different view of women than that of contemporary Hindus, which was overly influenced by Buddhism and Puranic traditions (Vivekananda 1994, vol. 5: 229). He looked to ancient India to find the ideal relation between men and women, quoting classical literature in Sanskrit, which he knew well, in order to demonstrate that there was a strong tradition in Indian history for gender equality. «Again, could anything be more complete than the equality of boys and girls in our old forest universities?» (Vivekananda 1994, vol. 5: 231).
Gender, religious identity and nationalism

In order to understand the attitude to gender issues and the position of women in Indian society found in the work of nineteenth century reformers like Roy and Vivekananda, we need to place their ideas in the context of religious reform and religious authority and identity. Both Roy and Vivekananda denounced traditional ideas of religious authority (adhikara) as the product of Brahmin selfishness. Vivekananda worked incessantly to change the relationship between Brahmins and the rest of society, and he saw such a change as a basic precondition for a healthy Indian nation. He wished to break open the treasure-box of Brahminical Sanskrit culture, he said, and make this culture the foundation of a common Indian identity. This meant, in a sense, to make everybody into a Brahmin, to give everybody access to the sacred tradition, to invest everybody down to the lowest untouchable woman with religious authority.

Everybody, men and women, should take responsibility for the interpretation and transmission of the ancient teachings, according to Vivekananda. Every man and woman should become a priest, he demanded. To borrow a term from Max Weber, he called for a universalization of priesthood. Closely related to the processes of universalization of priesthood and the assaults on traditional authority was the increasing awareness of religion as a factor of individual life. Within all the major religions of South Asia in the period, strong leaders came forward and demanded that each individual should take a greater responsibility for his or her own moral and religious life. This insistence of individualism was part of the ideology of nationalism and the widespread feeling that everybody needed to take responsibility for the future of the community. Religion became individualized. It became the birthright of every individual born into the community, including, of course, women. Thus, gender issues, religious reform and nationalist projects became intimately linked in this period.

Religion was individualized, and this was an important precondition for the uplift of women in India in the nineteenth century. To understand the individualization of religion we might take a brief look at the work of Vivekananda’s contemporary Bankimchandra Chatterji. He wished to make dharma into a universal principle which was not limited to India. He lifted it out of its Indian context; he made it transcend caste by giving it an individual interpretation. Dharma was no longer about social position and social duties, but about the individual’s potential for physical and psychological development, and the duties entailed in this potential. Bankimchandra brought about an important relocation of religion: the focus shifted from social structure to the individual human being (Brekke 1999). This shift was a precondition for nationalism and it had great consequences for the potential status of women. Bankimchandra’s writings were the point of departure for much of Indian nationalism and social philosophy. For instance, the militant Aurobindu Ghose’s (1872–1950) ideas of dharma – where the individual’s nature and duty, svabhava and svadharma, are separated from the social world of caste – were to a large extent borrowed from Bankimchandra (Hacker 1978).

Women were a necessary part of the Indian nation in the reformist and nationalist ideology of the nineteenth and early twentieth centuries. The national leaders who steered India into the modern world needed to break down internal social barriers to prepare the
ground for a feeling of shared culture and shared fate among people from different parts of the subcontinent. One point where Vivekananda stood apart from most other Hindu reformers of the nineteenth century was in his emphasis on the underprivileged masses, and part of this emphasis was his concern with the status of women in society (Raychadhuri 1995: 9–10). Thus, to Vivekananda, the uplift of women was a necessary part of his nationalist project as well as of religious reform inspired by his teacher Ramakrishna.

To understand the need for a new religious identity as defined by leaders of the nineteenth century, we must take a closer look at the distinction between ascribed and achieved religious identities. Membership of a religious community may be exclusive to certain parts of society or inclusive in the sense that no restrictions on social affiliation are made on the members. The two variables, ascribed versus achieved and exclusive versus inclusive, make for four types of religious communities with regard to membership. What the leaders of the nineteenth century wished to create was a religious identity that was ascribed by birth and inclusive of all members of society. Let me give brief examples of each of the four types of religious community in order to illustrate the differences, and to characterize the modern type of Indian religion. Firstly, Brahmin religious identity is ascribed by birth and exclusive to certain parts of society. This may sound self-evident, since the ascription and the exclusiveness seem to be more or less the same thing. They are not, as the modern situation illustrates. Second, membership of the dominant Sinhalese Buddhist Samgha, the Siyam Nikaya, has traditionally been achieved through an initiation ceremony, but membership has been exclusive to the land-owning Goyigama caste. Third, membership in the bhakti sects has typically been achieved through initiation and completely inclusive in the sense that membership is open irrespective of caste and gender. Fourth, the important type for my concern is the new type of Indian religion, according to which membership of the religious community is ascribed by birth and is inclusive of all members of society. This is a truly modern type of religious identity that can form the basis of a national identity.

Two concepts of religion: particularism and universalism

I believe the historical and political vicissitudes of the concept of religion in South Asia have not received the deserved attention from scholars. However, Arvind Sharma has done a survey of the concept of universal religion in modern Hinduism (Sharma 1998). He starts by discussing the meaning of universal religion, and identifies six different approaches to this question: the philosophical approach, the history of religions approach, the definitional approach, the denominational approach, the missiological approach and the dialogical approach (Sharma 1998: 1–9). For my purpose, the philosophical approach to the meaning of universal religion is the most interesting. It is here that we find the questions relevant to my analysis of the concept of universal religion in modern India, i.e., the questions about the relationship between particular religious traditions and a possible common element in, or possibly outside, the actual historical religions of mankind. The sense in which I use the term universal religion in this article corresponds quite closely to the philosophical approach to question described by
Sharma. Sharma starts with Rammohan Roy and ends up with S. Radhakrishnan, and in between he looks at pivotal characters like Vivekananda and Mahatma Gandhi.

In our discussion, however, the crucial difference between the universalist and particularist concepts of religion is not about diverging world-views regarding the unity of religion across cultural borders. The crucial difference between our two concepts of religion has to do with views concerning the social location of religion. The social location of religion is about the structural relationship between religion and other parts of society, like the economy or law, for instance. Any discussion about the role of religion in social change, like the reform of women’s rights, must begin by posing the most fundamental question about the social location of religion: To what degree is religion differentiated from other elements of society? The most basic assumption must be that in a highly undifferentiated society, i.e., a society where religion is not differentiated from other institutional spheres, any social change or social reform must necessarily entail religious change, too. As institutional differentiation is generally seen to be an aspect of modernization, we might simply say that social change entails religious change. The most important element in the particularist concept of religion which informed the Constituent Assembly debates was the notion of religion as highly undifferentiated from other spheres of society.

To return to the discussions in the Constituent Assembly, we may conclude so far that the concept of religion was fundamental in the discussion about social issues like prostitution in the form of devadasis. These discussions illustrate the central paradox of religion in modern India, because we can detect conflicting conceptualizations of religion in the debates. The concept of universal religion, inherited from nineteenth century nationalists like Vivekananda, was clearly represented by a minority in the Assembly. To take one example, the member Shri H.V. Kamath suggested amending Article 19 of the Constitution by adding a sub-clause saying that «nothing shall prevent the State from imparting spiritual training or instruction to the citizens of the Union.». In other words, Kamath wished to make India a state that professed religion. To clarify the suggestion, Kamath needed to define what he meant by ‘religion’.

Now, Sir, coming to the real meaning of this word ‘religion’, I assert that ‘Dharma’ in the most comprehensive sense should be interpreted to mean the true values of religion or of the spirit. ‘Dharma’, which we have adopted in the crest or the seal of our Constituent Assembly and which you will find on the printed proceedings of our debates: (Dharma cakra pravartanaya) – that spirit. Sir, to my mind, should be inculcated in the citizens of the Indian Union. (CAD: 825)

It is obvious that the idea of religion expressed here owes a great deal to the universalizing tendencies mentioned above. In particular, Kamath’s indebtedness to thinkers like Vivekananda is revealed in the way he used the words religion and dharma. Kamath gave a long speech praising the achievements of India in the spiritual realm, and he asserted the need of the world to learn religious values from India. In this, he reveals even more of his ties to the religious ideology of an earlier generation of Hindu leaders.
When I say, Sir, that the State shall not establish or endow or patronise any particular religion, I mean the formal religions of the world; I do not mean religion in the widest and in the deepest sense, and that meaning of religion as the highest value of the spirit, I have sought to incorporate in the second part of the amendment. That is, the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union. (CAD: 826)

Again, in this speech we see expressed the basic dichotomy of universal versus particular religion. There is, in Kamath’s view, a fundamental difference between the particular religions in the sense of formal, «actual» religions of the world, and universal religion. The Assembly did not support the amendment.

The importance of paying attention to different concepts of religion in research on religion and social reform is amply demonstrated by the discussion of the place of religion in modern Indian law by D. Derrett. He relates a case in the Supreme Court of India (Ratilal Panachand Gandhi versus State of Bombay) in which the petitioners claimed that the Bombay Public Trust Act of 1950 infringed on rights to religious freedom guaranteed under Articles 25 and 26 of the Indian Constitution because it provided for the registration, superintendence and administration of public trusts, including religious trusts, by the State of Bombay (Derrett 1968: 462). The Supreme Court said:

The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not? Our Constitution-makers have made no attempt to define what ‘religion’ is and it is certainly not possible to frame an exhaustive definition of the word ‘religion’ which would be applicable to all classes of persons.... It may well be noted that ‘religion’ is not necessarily theistic and in fact there are well-known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Causes. (quoted in Derrett 1968: 465–6)

Thus, in this case in 1950, the Supreme Court accused the Constituent Assembly of making no attempt to define what religion is, and therefore making life difficult for judges in matters of freedom of religion. However, the Supreme Court decided that what is to be counted as religious must in the final instance be judged on the basis of material provided by the community or sect itself, not on rigid and narrow definitions of religion. Along the same lines, India may have provided us with any number of cases where different ideas of religion clash, and where it is left to the courts to decide what religion is and what it is not and what constitutes the essential and non-essential elements of any religious tradition.

When the Constituent Assembly discussed the clause in the constitution relating to the instruction of religion in school, the same ambivalence in the very concept of religion can be found in most of the speeches given by members of the assembly. On one hand, most of the speakers talked about an ideal state where India would have realized a religion that was not tied to any of the religious communities in the country – a universal religion or a religion of humanity. On the other hand, all members talked about a more «narrow» or particularist kind of religion, i.e., religion as it was practiced by Hindus, Muslims, Christians, Sikhs and Jains. Sometimes referring to the carnage of Partition,
they would also talk about the communalism and violence that these kinds of narrow religions had led to and would lead to again.

The background for the discussion was the proposition that the constitution should contain a clause saying that no religious instruction can be given in schools maintained wholly or partly out of state funds. That did not mean a ban on religious instruction in general, as Dr. Ambedkar stressed several times during the debates. Religious instruction would be left to the religious communities themselves and the state would keep its hands off. However, although most of the assembly members who took part in the discussion of this clause had a double view of religion in the sense explained above, they did not necessarily agree about what this should mean for religious instruction in schools. Typically, the speakers who perceived the universal religion of humanity as an unrealized, and perhaps unrealizable, dream would defend a ban on religious instruction schools. The assembly members who had higher hopes for a religion that would unite Indians were more positive regarding religion in schools, and conversely, more critical of a ban on religious instruction.

The speaker Mr. Mohamed Ismail Sahib was clearly in the minority in representing the positive view of universal religion as a common denominator uniting man and man. He argued that it was necessary that all children should be taught religion in school and that it should be the responsibility of the state to impart religious instruction. Thus, he opposed the ban. It is crucial for the very existence of the state that children be taught religion, Mohamed Ismail argued, because the only way to give moral grounding to new generations is through religion. He asserted that many European writers now conceded that the Second World War started because Europe had turned away from religion. There is now a tendency throughout the world, he said, to turn back to religion and many politicians understand that true religion must be imparted through state schools.

People talk of trouble arising on account of religion. As I have been saying more than once, it is not really religion that is the source of trouble. The point is that pupils must be made to understand what religion really is and for that purpose you must not leave them to learn their religion here and there in the nooks and corners of a village or a city. (CAD: 875)

Real religion, according to this member of the assembly, is not what people learn from their parents and community in the villages of India. Religion is something that must be imparted by teachers in schools.

Shrimati Renuka Ray of West Bengal also talked about the positive sides of religion. She stressed that instruction on matters of religion must be imparted so that children learn what unites people rather than what divides them. She deplored the exploitation of what we call religion and the evils perpetrated in the name of denominational religion. When Indians are now building for the future, they must build in such a manner that they are able to do so untrammeled by the legacy of the past. The next generation must be made to understand that «the religion of humanity is much greater to them than religious dissections on a denominational religious basis (CAD: 878).» Shrimati Renuka Ray returns several times to the opposition between denominational religion and the religion of humanity. Again, we are presented with the dichotomies universal religion and particular
religious traditions, positive religion and negative, inclusive and exclusive, progressive religion and conservative religion. There is a religion of humanity, Ray said; there exists a common core in all religion, and this universal religion must be imparted to the children of India through religious instruction. Consequently, there should be no ban on religious instruction in schools funded by the state.

A slightly different idea of religion and therefore a different conclusion on the matter of religious instruction is exemplified by a speech made by Shri M. Ananthasayanam Ayyangar. He supported the ban on religious instruction in school, although with a heavy heart. «I am very much pained that religious instruction is not to be taught in any school in a country which is full of religion,» he said (CAD: 881). Ayyangar explained that he agreed that the state must be secular in the sense that the state cannot aid one religion or give preference to one religion against another. He pointed out that that did not mean, and should never be taken to mean, that the people of India lacked religion. We all believe in some religion, we all believe in the existence of God, in prayer, in meditation, he asserted.

But it is regrettable that we have not been able to evolve a universal religion, a religion where the religious practices need not cloud the issues. (CAD: 882)

Thus, like the rest of the members of the assembly, Ayyangar contrasted religion in the sense of sectarianism and particularism with a universal religion of service to humanity. He claimed that the Bhagavad Gita laid down many of the principles of a universal religion. A universal religion uniting mankind was clearly possible, in the eyes of Ayyangar, but it had yet to be realized. The fact is, he said, that India is divided into a number of creeds and these again are divided into various sects. He concluded that the only thing the Constituent Assembly can do under the actual circumstances is to avoid religious instructions in schools funded by the state.

Conclusion

I have showed that in the discussions about women’s rights in the Constitutional Assembly of India, religion was seen as a main obstacle to social reform. In order to understand this negative view of the possible role of religion in society, we need to be aware of the opposition between two very different concepts of religion current in India in the period in question. I have called these the universal and the particularist concepts of religion. The two concepts were associated with the dichotomies universal religion and particular religious traditions, positive religion and negative, inclusive and exclusive, progressive religion and conservative religion. These concepts of religion were inherited from nineteenth century religious reformers, like Swami Vivekananda, and have continued to play a crucial role in the conceptualization of the possible social locations and consequences of religion in India in modern times.
References


