

RELIGIOUS LIBERTIES AND THE CONSTITUTION OF SOUTH AFRICA: A CALL FOR RELIGIOUS ACCOUNTABILITY

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Abstract

This article looks at the relationship between religious liberties and the South African constitution as understood and implemented by religious establishments, particularly the Pentecostal/Charismatic Churches in South Africa. It calls for an immediate redress by the State on the infringement of human rights by religious institutions and for accountability on the part of Pentecostal/Charismatic orientated churches in addressing practices that relates to the issues of human rights and human dignity. It further questions the role of the State in addressing the violations of the principles of human dignity by religious institutions under the guise of religious liberties.

Key Words: Religious Liberties; the Constitution of South Africa; Bill of Rights; Charter of Religious Rights; South African Charter of Religious Rights and Freedoms

Introduction

This article looks at the abuse and violations of human rights in South Africa by religious establishments, particularly the Pentecostal/Charismatic Churches, under the guise of religious liberties which are enshrined in the South African constitution of 1996. The aim of this article is to implore the State to bring about some form of control to the breach of the South African constitution by religious establishments. It further calls for accountability on the part of Christian religious establishments in upholding human rights issues and in particular the right to human dignity.

Religious Liberties and the Violation of Human Rights

Religion, as a spiritual exercise, has an overwhelming influence on the lives of religious people. Due to its great influence on matters of faith and conduct, many of its pitfalls sometimes go unnoticed. Lately, a number of religious establishments have gone overboard to validate their authority, often violating the very principles entrenched in the constitution.

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It has frequently been reported in the media (*eNCA*, 24 September 2014) that religious liberties sometime exceed the bounds of the constitution. This happens when major religious groups, such as Pentecostal/Charismatic Churches overstep their bounds to encroach upon the rights of people. A lot has been said about pastors who abuse and misuse their religious authority in order to enforce their will on the helpless. For instance, in South Africa, a certain pastor was reported to have misused his religious authority by demanding that his congregants drink petrol and eat grass; while another prophet made his congregants eat snakes (*eNCA*, 15 July 2015).

Recently, there was a widespread report of a prophet who used the insecticide "Doom", petrol and fire to heal his congregants (*Dispatch Live*, 21 November 2016). Even though these acts are claimed to be of faith, they demoralize and undermine the rights of congregants. When a similar incident occurred in Brazil, as far as the violation of human rights is concerned, where an evangelical pastor claimed to have been endowed with heavenly milk that came out of his genitals when he received oral sex from his congregants; the State intervened and the pastor was arrested. The evangelical pastor had convinced his followers to drink his semen, which he claimed was 'Holy Milk' in order to be healed of their sicknesses (*News24*, 14 July 2015). These pastors seem to be taking advantage of the health condition and biological needs of their congregants. Since they are aware that people who are desperate for healing often go to any lengths to obtain their recovery, these pastors (or prophets) use that as an advantage to exploit and undermine the constitutional rights of congregants.

To illustrate how these pastors take advantage of the health conditions of their congregants, the pastor who had made his congregants eat grass and drink petrol was reported in the media (*Christian Post*, 26 September 2014) saying the following:

“Do you believe in the Father?” Daniel asked the congregation. ‘Can you imagine not being able to have a baby and you come here, drink petrol and tomorrow the doctor says, ‘no more barrenness, you are pregnant because you drank petrol’” (*Christian Post*, 26 September 2014).

This is an act of exploitation, which demeans the dignity of the congregants. What seems to be worse about this incident is that the same pastor, according to the *Christian Post* (26 September 2014), said that the next time he brings a bottle of petrol, he will ‘command’ congregants to go at the altar for a sip “whether you want to or not.” The terminology that has been employed in this citation endorses an element of force. The pastor says that he will ‘command’ congregants to go to the altar, against their will, for a sip whether they want to or not. This appears to be a blatant abuse of authority. Within the parameters of the law, no one should be forced into consuming or drinking harmful substances like grass or petrol (SA Constitution, Section 15.1). Religious participation should be free and without force. Hence the term ‘religious liberty’ is used to express such a freedom.

When addressing religious practices however, one ought to acknowledge that some of the “beliefs that believers hold sacred and thus central to their religious faith may strike non-believers as bizarre, illogical or irrational” (Constitutional Court of South Africa [CCT36/00, 2002], 25 January 2002 at para.[42]), and these also must enjoy “the protection guaranteed by the right to freedom of religion” (Constitutional Court of South Africa [CCT36/00, 2002], 25 January 2002 at para.[42]). This however, does not imply that religious institutions are to violate flagrantly the rights of congregants due to such “bizarre, illogical or irrational” beliefs, but religious liberties should be accompanied and guided by corresponding responsibility. James, as cited by Sarat (2012:12), for instance, states that “while freedom of religion or belief rightly means that people have the right to live in

accordance with their belief, it does not mean that others should necessarily bear the burden of that right.” In this case, it appears as if some Pentecostal/Charismatic congregants bear the burden of that right since their constitutional rights are being violated.

People should not reach a stage where they bewail religiosity due to the burdens that are imposed upon them by others. Religious liberties must be exercised with and guided by corresponding responsibility so that people do not overstep their boundaries to impose upon the rights of others. Furthermore, there should not be a ‘next time’ to the grievous incident highlighted above, because it is apparent from the statement that the same pastor intends to repeat this behaviour. He said that the ‘next time’ he brings a bottle of petrol, he will ‘command’ everyone to drink it, whether they want to or not. This is perhaps an indication that there are no strategical measures that are put in place by Pentecostal/Charismatic Movements or the government to regulate this issue. So far, nothing has been reported in relation to intermediary initiatives that seek to address this issue. The media has also not enunciated anything regarding the introduction of a special committees or ethical boards that would approach pastors or churches that tarnish the dignity of congregants under the practice or administration of healing.

Deplorable acts such as these infringe upon the rights of people. The cost of religious freedom must be paid and those responsible for perpetuating the violation of human rights issues and human dignity must be held accountable. Many congregants appear to suffer silently from the abuse of Pentecostal/Charismatic pastors who impose upon their rights because they earnestly long for healing. This must come to an end. However, the biggest problem which the country is facing is not that of individuals abusing and misusing their authority to impose their will on the helpless but the flagrant violation of their constitutional rights. The issue here is: what is the State doing to uphold the constitutional rights of people who are ill-treated by religious establishments? How can the demands of the South African constitution be met in organizations that violate people’s rights - the same organizations that are supposed to be transforming their lives? And how can religious establishments be held accountable for breaching the core precepts of the South African constitution?

Limitations of the South African Constitution

What makes this issue even more difficult is that the South African constitution does not give a proper clarification of the reservations or limitations of religious liberties. It simply defines religious liberties as “the right to freedom of conscience, religion, thought, belief and opinion” (SA Constitution, Section 15.1). This kind of a definition is very vague and limited. It does not set any boundaries or make provisions in the case of practices that infringe on the law by religious establishments. It does not indicate either what should be done or how the State is to be involved when the practices that are conducted by religious institutions impose on or violate the rights of others, as illustrated in the examples mentioned above. For this reason, it is not clear what is to be done and how the State is to be involved in such matters. Thus, the question of mediation still lurks around, while the situation at hand calls for an immediate solution. How can the demands of the constitution be met where the Christian Church, more specifically the Pentecostal/Charismatic Churches seem to abuse and misuse their authority by violating and impeding the rights of congregants? Clearly, an intervention is needed in this matter, particularly on the side of the state because it is the guardian of the constitution.

In the United States, the involvement of the state on religious matters has been clearly defined. Based on the nature and practice of religion, the First Amendment of the

Constitution of the United States of America wisely treated religion and religious beliefs differently from other forms of expressions in order to ensure the protection of religious liberties. The First Amendment of the United States Constitution (15-12-1791) states thus:

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 redress of grievances (The First Amendment of the United States Constitution, 15-12-1791).

This Section draws a line of distinction between religious establishments and the State. Religious establishments are allowed to function independently and to exercise their freedom of speech, press, and peaceful assembly. This form of liberty, however, is also clearly enshrined in the South African Constitution. What sets the US Constitution apart from the South African is that the former states that religious establishments do have a right “to petition the Government for a redress of grievances” (The First Amendment of the United States Constitution, 15-12-1791).

In this case, when religious establishments violate the constitutional rights of people, those who are affected by such religious establishments are given the right to exercise their freedom of speech and express their concerns, if necessary through the press, in order to resolve their grievances. Moreover, they are permitted to involve the government in religious affairs in order to solve their grievances amicably. This is the feature that does not appear or that is lacking in the South African constitution. The sole exception, in which a person can petition the assistance of the government, as indicated in Section 37 and 38 of the Constitution, is when a state of emergency is declared. This allowance, however, does not pertain to matters of human rights and human dignity. It refers purely to issues that may threaten the welfare of the State such as war, invasion, general insurrection, disorder or any other public emergencies (SA Constitution, Section 37.1(a)). In fact, the South African Constitution (Sections 37.5(c)) classifies the Rights from which the State should not deviate even during the existence of a state of emergency in the following manner:

Table of Non-Derogable Rights

Section number	Section title	Extent to which the right is non-derogable
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language.
10	Human dignity	Entirely
11	Life	Entirely
12	Freedom and security of the person	With respect to subsection (1) (d) and (e) and (2) (c)
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: - subsection (1) (d) and (e) - the rights in subparagraphs (I) and (ii) of subsection (1) (g); and - subsection (1) (I) in respect of children of 15 years and younger.
35	Arrested, detained and accused persons	With respect to: - subsections (1) (a), (b) and (c) and (2) (d) ;

		<ul style="list-style-type: none">- the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) ;- subsection (4) ; and- subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.
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The above mentioned Rights, as depicted in the Table of Non-Derogable Rights, do not constitute issues that can be addressed when a state of emergency is extant. Therefore, apart from these two Sections (37 and 38), there is no provision for the people to petition the involvement of the Government to address their grievances regarding the issues of human dignity and religious liberties. The stand of the State and its involvement in matters that seek to uphold the dignity of humans and the infringement of constitutional rights such as religious liberties is therefore not clear. The State needs to state how it enforces and protects the violation of the Bill of Rights, and how it should be approached in order to address some grievances that pertain to issues of human rights and human dignity.

Challenge to the State

The violation of human rights is a serious issue because the Pentecostal/Charismatic oriented churches tends to hide what they do behind the constitution. This is because they have been provisioned by a Democratic National Constitution to exercise their religious liberties. This, on its own, is an irony. Why should religious establishments that mistreat and undermine the rights of people be given a leeway to misrepresent the constitutional rights and values that seek to protect and preserve the dignity of people who are helpless and maltreated? Such religious establishments cannot be allowed to continue to ill-treat people under the guise of religious liberties. The State has to bring some form of control or monitor the exercise of such religious liberties. The adage that in a secular society the throne and the altar should be separate has no relevance here. Perhaps it is time for religious institutions to start allowing state officials to evaluate their human rights related practices and to give public reports concerning such assessments.

This, however, does not imply that religious institutions should be controlled by the State, or that state officials should detect what happens in churches - but that religious institutions should be held accountable when they infringe the constitutional rights of people. It is therefore important to establish the extent to which the State is positioned with regard to the prevention of the infringement of the most fundamental laws of the land by religious establishments. Section 7.2 of the Constitution is key to the enforcement of the Bill of Rights. It states that: "The state must respect, protect, promote and fulfill the rights in the Bill of Rights". This means that the State has the duty of upholding the Bill of Rights. Firstly, it must respect the Bill of Rights. That is, the State must not violate or limit the exercise of rights listed in the Bill of Rights. Secondly, the State must protect the Bill of Rights. This means that the State needs to take positive steps to prevent any violation of the Bill of Rights, including religious liberties. This Section of the Constitution (7.2) therefore implies that the State cannot just stand idly by and ignore the infringement of religious liberties by religious establishments.

The State reserves the right to prevent, protect and redress the violation of human rights by religious institutions, through judicial and non-judicial institutions, mechanisms and procedures, including interfaith dialogue. Lastly, the State needs to promote and fulfill the rights in the Bill of Rights. This clearly requires the State to take some measures that would

heighten people's awareness of their rights and how to defend them. The State bears the responsibility to inform people and its institutions, particularly religious institutions, about their rights and corresponding civic duties in upholding and respecting the Bill of Rights. The State should emphasize the importance of embracing norms, values and ethical principles that seek to promote and prevent the violation of human rights. Beyond this, it is the duty of the State to protect the rights of people whether they are part of a religious system or not. Religious liberties should be monitored and constitutional rights enforced wherever needed. If not, religious establishments will keep on infringing the constitution and the rights of helpless people.

This article is therefore a cry to the State to uphold its role of undertaking the necessary steps to protect the dignity of citizens who are helplessly mistreated by religious institutions under the guise of religious liberties. It is also a plea to all Christian religious establishments to protect the constitutional rights and human dignity of people under their jurisdiction by refraining from unethical practices that violate the very essence of their humanity. All human beings have the right to be protected by law. They have the right to be respected, whether blinded by their faith or desperation stemming from their need for healing. And if their rights are being violated, it is the duty of the State to protect them against such violation.

Religious Liberty under the Charter of Religious Rights

One of the official documents that spells out the rights and liberties of religious establishments in South Africa is the Charter of Religious Rights which was first put forward as a proposal at a workshop of churches and religions held in Stellenbosch on 14th April 2007 (Coertzen, 2008:19). Subsequently it was circulated among the churches and religious communities to solicit their input and comments. Some amendments were made on 6th August and 1st October 2009 (SACRRF, 2009:1). The Charter identified and endorsed the following Religious Rights and obligations:

- The right to believe or not to believe (Article 1-2.4);
- The right of religion to the freedom of expression (Article 1-2.2);
- The right of religion to freedom of association (Article 1-2.2)
- The obligation of the state with regards to the protection of Religious Rights (Article 3-3.2 and 9.3);
- The right to observe and to exercise one's religion (Article 4-4.5);
- The right to maintain particular matrimonial, family and personal legal traditions (Article 5);
- The right of religion to freedom of expression (Article 6-6.3);
- The right of religion to freedom of propagation (Article 6.2);
- The right to religious dignity (Article 6.3);
- The right to education consistent with one's religious convictions (Article 7 and 8);
- The right to institutional freedom (Article 9);
- The rights and obligations of religion with regards to the laws of the land (Article 9.4 and 10);
- The right of religion to solicit, receive, manage and spend voluntary financial and other forms of support and contributions (Article 11);

- The rights of religion to conduct upliftment and charity work in the community and to establish, maintain and contribute to charity and welfare associations, and solicit, manage, distribute and spend funds for this purpose (Article 12).

The Charter of Religious Rights is a useful supplement to the constitution in that it adds more value to the element of human dignity. Article 6.3 of the Charter speaks directly to the kind of treatment religious establishments should receive. At the same time, it speaks of how religious establishments are to conduct themselves, to uphold the spiritual, moral and constitutional rights of people under their jurisdiction. Had Christian establishments such as the Pentecostal/Charismatic churches justly upheld and properly followed the rights and obligations laid down in the Charter of Religious Rights, there would be no need for the State to intervene or monitor the exercise of religious liberties – as far as human rights issues are concerned.

This indicates that some religious institutions are failing to uphold the rights and obligations of the Charter of Religious Rights. As such, they do not fulfill their constitutional obligations of acknowledging the responsibilities that accompany the exercise of religious liberties. In such a quandary, why would their religious liberty therefore go unchecked? Their inability to uphold the rights and obligations of the Charter with regard to the Law of the land, as stipulated in Articles 9.4 and 10, indicates that a serious intervention from the State is urgently needed. It is clear that there are no quality control groups or forums instituted by the Pentecostal/Charismatic body to address this issue. Otherwise, some measures would have been taken after the first incident and those responsible for causing such violations would have been warned sternly and brought to justice.

However, some efforts have been made by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) to address issues such as the one mentioned in this article, although these efforts have not yielded any results. The reason for this, according to the writer of *DailyMaverick* (05 November 2015) is that the CRL has been using inappropriate measures to rally up pastors who would testify against those who are infringing the Rights of their congregants. For instance, the head of the CRL is said to have issued summons, without prior consultation, through a local Sheriff, to force certain pastors to testify against those who fed people snakes and made them drink petrol. .

It turned out that Mkhwanazi-Xaluva had issued summons through a sheriff to certain pastors to give testimony, without bothering to speak to them first, or to invite interested parties to speak. When questioned about this, she claimed that the CRL Act gave it the power to issue a summons, and that if people did not give testimony, they could go to jail (*DailyMaverick*, 5 November 2015).

The lack of a proper approach reveals the inability of the CRL to address matters like this. The act of summoning people to testify - with a threat of imprisonment hanging over their heads - without any prior consultation, on the part of CRL, is equivalent to a violation of human rights. People should be given the right to choose whether they want to testify or not, rather than being summoned without their consent to testify. This type of intervention by the CRL, even though made in good faith, does not solve but increases the magnitude of the problem. That is why the State needs to be involved. For the sake of bringing this situation under control and for preventing any further inconveniences, the State must find a way to intervene in matters that involve the violation of human rights and human dignity by religious institutions.

The Charter of Religious Rights evidently seeks to promote the free exercise of faith. It states that people have a right to believe or not to believe (Article, 1-2.4). It further states

that people have a right to freedom of association (Article, 1-2.2). This means that people should be given the freedom to believe what they want to believe and should not be forced into believing what they do not want to believe. If, for example, they do not want to drink petrol, because they believe that it will harm them when ingested, they have a right to object. They should not be ‘commanded’ or forced into drinking it. Again, by making a conscious choice of associating with a particular religious group, the people are not surrendering themselves and their wills to all kinds of abuse by those religious groups. Association does not mean giving up one’s self to the organization to which one is associated. Rather it means that one is uniting oneself with people who share the same belief systems. Therefore, one should be given the freedom to exercise their beliefs with people who will not abuse them but will treat them with a measure of respect and dignity.

This is what the Charter of Religious Rights endeavours to promote and seeks to achieve. Similar efforts have further been shown by the Council for the Protection and Promotion of Religious Rights and Freedoms (CRRF). In Article 4 of the South African Charter of Religious Rights and Freedoms (SACRRF), the Council stated that “[a] religious institution may also not act in a way that is blatantly illegal, for example to force its members to perform acts or rituals that are physically harmful...” (SACoRRF, 2016:42). The eating of grass and drinking of petrol by congregants under the authority of pastors appears to qualify as the performance of acts or rituals that physically harm the congregants, and thus impose upon their human rights and demoralize their human dignity. The above citation (Article 4) is therefore a serious plea from the CRRF to religious organizations to adhere to the rights and freedoms of people as expressed in the South African Constitution and the Bill of Rights.

Owing to the violations of the principles of the Charter of Religious Rights, and that of the South African Charter of Religious Rights and Freedoms (SACRRF), it is not clear how far the influence of these Charters has gone. The manner in which some Pentecostal/Charismatic Churches conduct themselves seems to suggest that a lot is still to be done. More importantly, people need to be acquainted with the contents of the Charter of Religious Rights, the South African Charter of Religious Rights and Freedoms, and the Bill of Rights. This however, is not going to be an easy task since some Pentecostal/Charismatic pastors have not received proper theological training (Anderson, 2004:3; Warrington, 2010:4). As a result of this deficiency some have not acquainted themselves with the laws and regulations of the Constitution and the Charter of Religious Rights or the South African Charter of Religious Rights and Freedoms which are mandatory for all religious institutions (Section 32.1(a) and (b)).

The lack of proper theological training, according to Anderson (2010:3) has led some scholars like Klaus and Triplett (1991) to refer to Pentecostal/Charismatic Movements as “dead intellectualism” that “stifles the Spirit-filled life.” However, the reference to Pentecostal/Charismatic Movements as “dead intellectualism” is untoward given their historical background (Hollenweger, 1972:121). The Classical Pentecostalism from which Charismatic Movements sprang (Maxwell, 2006:110) started as a vehicle of evangelism (Maachia, 1999:9), and therefore the issue of theological training was the least among their priorities. Hence, the subject of theological training has been minimal within these movements (Warrington, 2010:3). But this should not be seen as an excuse by Pentecostal/Charismatic Churches for neglecting the civil duty of acquainting themselves with the principles and obligations of the South African Constitution and the Bill of Rights. They need to put an end to this ignorance. Ultimately, this issue falls back in the arms of the State - it remains

the duty and responsibility of the State to ensure that people are well informed about their constitutional rights, and those of others.

Conclusion

The role played by religious establishments in the lives of people and their respective communities is obviously undeniable. Religious institutions are agents of change. Their influence extends to both the young and old, and they possess the capacity to enhance the moral and spiritual wellbeing of their followers as well as the structural functioning of society. However, when their practices start to encroach on the values and principles enshrined in the constitution, especially the right to human dignity, their value is questionable, because they are meant to uphold and maintain good ethical standards, practiced in line with the Law of God and that of the country. The failure to adhere to such ethical and moral standards and the obligations demanded by the constitution means a serious offense has been committed; first to the economy of God's Law, and secondly, to that of the Country (Romans 13:1-6). Religious institutions ought to be a good example in terms of obedience, be it to law enforcement agencies or the civil authorities. The perpetual violation of human rights and human dignity as enshrined in the South African Constitution by Pentecostal/Charismatic Churches does not reflect such an exemplary attitude. This should come to an end. Christian religious establishments must abide by the guidelines provided in the constitution, and are therefore implored to refrain from abusing or misusing their authority by violating the constitutional Rights of members who are under their jurisdiction.

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