

**KEEP IT  
CONSTITUTIONAL**



Episode 15

# **RELIGION, BELIEF AND OPINION**

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REPUBLIC OF SOUTH AFRICA



The Keep It Constitutional campaign is a 20-part series brought to you by the Foundation for Human Rights. The campaign aims to provide South Africans – particularly learners – with an introduction to the Constitution and its contents. The campaign consists of animated episodes, audio episodes, and lesson plans.

For more information visit [www.keepitconstitutional.co.za](http://www.keepitconstitutional.co.za).

The lesson plan is designed to assist educators and group leaders lead an introductory session on the Constitution. Educators can follow the lesson plan word-for-word, but may improvise as desired.



# Episode 15: Freedom of religion, belief and opinion

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Time required	45 minutes
Learning objectives	<ul style="list-style-type: none"><li>• Religion, belief and opinion are a vital part of individual and community identity, and are protected by the Constitution;</li><li>• People whose beliefs are not held by the majority still need to have their views protected, and may need to have special treatment in order to be properly protected;</li><li>• Religious practices, including religious speech, can be limited by the rights of others, including their right to dignity and their right to be free from threats of violence.</li></ul>
Resources	<ul style="list-style-type: none"><li>• Keep It Constitutional animation series: Episode 15 OR Keep It Constitutional radio series: Episode 15;</li><li>• Handouts 1 and 2, attached at the end of this lesson plan.</li></ul>

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# Introduction

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Time required 4 minutes

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## **Educator:**

Why are religious beliefs important? If you feel comfortable sharing, would anyone like to tell us why their religious beliefs are important to them?

### **ADVICE TO EDUCATORS**

Allow learners to respond.

Students can give their own opinions, and, if anyone feels comfortable, should feel be allowed to briefly share why their religion is important to them.

If necessary, prompt the students with ideas about belief giving meaning to life, about the idea that there is more to the world than we can see around us. Other students might contribute ideas that religion offers people assistance in times of need, creates community, or creates a sense of uniqueness.

## **Educator:**

All religious beliefs are protected in South Africa. But, sometimes religious beliefs clash – religions can clash, religious beliefs can even clash with other rights contained in the can clash, and opinions can clash. Why do you think religious beliefs are protected in democratic nations, like South Africa?

### **ADVICE TO EDUCATORS**

Allow learners to respond.

Answers could include that the right to have religious beliefs and the right to hold opinions are fundamentally important to the right to dignity. And the right to dignity, in turn, is fundamentally linked to the right to form an identity. For many people, their beliefs lie at the heart of their identity.

If possible, link this answer to the first-person experiences shared by the students in the previous question.

It is important to note that ALL religions are protected in South Africa. The country does not have a state religion. Even though the majority of people in South Africa



identify themselves as Christian, we have many religions, and many people who do not believe in a god at all. Everyone's belief is protected. But this doesn't mean that all religious practices are protected.



# Play video/radio episode 15

Time required 5 minutes



# Case law

Time required 10 minutes

## **Educator:**

The right to freedom of religion allows people to freedom to believe the things that they want. A former Chief Justice of South Africa, Arthur Chaskalson, once defined freedom of religion as:

‘...the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.’

However, it doesn't mean that everyone can do anything that they want and claim that it is protected because of their religion.

The Constitutional Court has given us some idea of what freedom of religion, belief and opinion means in South Africa. Some of the cases tell us what it means for all religions to be treated equally, and some of the cases tell us about what the limits of freedom of religion are.

## **Christian Education South Africa v Minister of Education (2000)**

The South African Schools Act, which regulates certain aspects of how schools function in South Africa, prohibits corporal punishment in schools.

A group representing 196 Christian schools claimed that the prohibition on corporal punishment violated the rights of parents and pupils, violating their freedom of religion. The group claimed that corporal punishment is part of their Christian belief system, and they cited a number of passages from the Bible to support this. Specifically, the group claimed that the Bible instructs parents to use corporal punishment to discipline their children, and that parents could give this power to use corporal punishment to teachers. The group therefore claimed that the prohibition on corporal punishment was unconstitutional.

The Minister of Education disagreed with this group, and instead claimed when corporal punishment is administered to children, constitutional rights are violated. Although everyone has the right to freedom of religion, everyone also has the right



to equality, human dignity, freedom and security of the person, and children also have the right to be protected from abuse.

The Court thought about why religion is important, noting that

“The right to believe or not to believe, and to act or not to act according to his or her beliefs or non-beliefs, is one of the key ingredients of any person’s dignity. Yet freedom of religion goes beyond protecting the inviolability of the individual conscience. For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe.”

So, clearly, the Court thought that the right to religion was vital. However, the Court also thought that the government was under an obligation to reduce violence, and this, together with the obligation to protect children, meant that any exemption to allow corporal punishment, even for religious reasons, would have to be carefully considered.

The Court noted that preventing parents from allowing schools to impose physical punishment did not prevent schools from maintaining their Christian ethos. Although this did intrude upon the right to practice their religion, this limitation of the right was reasonable – protecting children and preventing violence were important constitutional obligations.

*Reflections on the case:*

If we think about this case, we can see that the Constitutional Court was drawing a line between having a belief and being able to manifest that belief. In moving from thought to action, other peoples’ rights have to be taken into consideration. It is also important to note that parents are not the only authority in relation to who children are treated – the Constitution requires the government to protect all children. This means that parents and teachers cannot treat children however they want. The government can limit what they can do.

### **MEC for Education: KwaZulu-Natal and Others v Pillay**

In 2004, a learner went to their school with a small nose stud. The school had a rule which only allowed small earrings, and no other jewellery. After a period of correspondence between the school and the learner’s mother, the school decided



that the learner should not be allowed to wear the stud. The learner's mother took the school and the KwaZulu-Natal MEC for Education to the court, alleging that they had unfairly discriminated against the learner and had violated her religious and cultural rights.

The Constitutional Court said that the rule prohibiting the wearing of jewellery had the potential for indirect discrimination because it allowed certain groups of learners to express their religious and cultural identity freely, while denying that right to others. The evidence before the Court showed that the wearing of a nose stud formed part of the learner's South Indian Tamil Hindu culture, which itself was inseparably intertwined with Hindu religion. The school had therefore interfered with the learner's religion and culture. As that burden was not imposed on others who didn't have the same religion, the school's interference amounted to discrimination against the learner.

The Constitutional Court noted that, although uniforms served an important purpose in schools, this case wasn't about uniforms, but about a specific exception on a uniform. This exception would allow learners to express their religion or culture, and this was something that should be encouraged.

All of this meant that the school had unfairly discriminated against the learner. Schools have to take reasonable measures to allow people to practise their religions.

*Reflections on the case:*

This case shows how important it is that all religions are treated equally, and that everyone has equal opportunity to practise their religion. It is important to note that everyone having an equal opportunity to practise their religion doesn't mean that everyone should be treated exactly the same. In this case, if everyone had been treated the same, no exception would have been allowed. In this case, the rule limiting the wearing of jewellery affected people of different religions differently. For some people, the law wouldn't have had any impact on their religion – they would have been able to proceed as normal. However, for other people, the rule would prevent them practising their religion.

**Religion and homosexuality**



The South African Human Rights Commission has had to deal with a number of cases in which people have made homophobic comments, and claimed that preventing this sort of speech may restrict their freedom of religion and their freedom of expression.

One pastor has been a repeat offender. In 2013, the SAHRC laid a complaint against Pastor Oscar Bougaardt, claiming that comments that the Bougaardt had made, about homosexuals, were “likely to encourage hatred and cause emotional, psychological and physical harm.” Bougaardt agreed not to make any more statements that would blame gays and lesbians for social problems and disease, advocate hatred, or advocate harmful behaviour.

In 2015 and 2016, Bougaardt made more statements, including indicating support for homosexuals being put to death, and calling for people to kill South Africa. He claimed that he could say these things, as his religious views were protected by the Constitution. The Equality Court said that his statements overstepped his rights to religious belief and freedom of speech.

*Reflection on the case:*

We know that our rights don't exist in a vacuum. While we have rights, everybody else in the country has rights too, and we have to act in a way that doesn't put other people at risk or harm, doesn't direct hatred towards anyone, and, an even higher standard, should respect the dignity of others.

This can impact our religious freedoms. It means that we don't have the right to do anything we want, to say anything we want. Our religious rights need to pay due respect to the rights of others.



# Class discussions

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Time required 24  
minutes

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We are going to think about the different ways that the right to religion, belief and opinion should function in constitutional South Africa.

## ADVICE TO EDUCATORS

Divide the learners into groups. Give each group a copy of Section 15 (included at Handout 1, at the end of this lesson), and the 2 topics for discussion (Handout 2).

The group discussion will cover two topics. For each topic, allow the groups 5–6 minutes to discuss their thoughts, and then convene a discussion for 6–7 minutes, ensuring that as many class members participate as possible.

When briefing the students prior to their discussions in their groups, push the learners to think that about the manner in which the rights of the Constitution should be protected, and how the different rights should be protected.

Try to ensure that the learners' answers are based on a consideration of constitutional rights and values, rather than purely their personal views – for example, when a learner makes a statement about what they think, ask them how this reflects constitutional values.

### *Discussion 1:*

In 2019, an Australian rugby player called Israel Folau posted a picture on Instagram. The post said that homosexuals would go to hell. Folau had his contracts cancelled.

What do you think would happen in South Africa if a similar situation happened in our laws? What do you think should happen? Where is the line between religious freedom, freedom of speech and the rights that everyone has to have their dignity respected, and to not be discriminated against on the grounds of sexual orientation.



*Discussion 2:*

At the end of 2018, the Constitutional Court heard a case about whether parents are allowed to physically chastise their children.

A man was convicted of assaulting his 13 year old child. He claimed that he was administering moderate and reasonable chastisement under the common law. An organisation thought that this conviction was unfair, claiming that reasonable chastisement would not infringe the dignity of a child – in fact, they claimed that “loving parental chastisement applied for the benefit of the child...gives dignity to the child.” The organisation claimed that physically disciplining the child was something that scriptures encouraged.

What do you think? Do you think that it is right that children can be hit by their parents? Do you think that prohibiting this would violate religious rights? If someone’s scriptures say that children should be physically disciplined, do you think that this would violate children’s rights? Would it discriminate against children? Would it violate their dignity? Alternatively, do you think that prohibiting physical chastisement would undermine religious freedom?



# CONCLUSION

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Time required 2 minutes

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**Educator:**

A fundamental part of the identity of many South Africans is the religious beliefs that they hold. Protecting these rights, and other opinions and beliefs, is a vital part of our constitutional order. It doesn't matter about whether the majority agrees with the views of another – they are protected, regardless. But beliefs and opinions, however honestly held, do not give us the right to override the rights of others. We exist in a country that seeks to protect minorities and vulnerable people, and we need to make sure that we recognize the dignity of others, in all we do.



# HANDOUT 1

## **Constitution of the Republic of South Africa Section 15. Freedom of religion, belief and opinion**

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that -
  - a. those observances follow rules made by the appropriate public authorities;
  - b. they are conducted on an equitable basis; and
  - c. attendance at them is free and voluntary.
3.
  - a. This section does not prevent legislation recognising -
    - i. marriages concluded under any tradition, or a system of religious, personal or family law; or
    - ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
  - b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.



# HANDOUT 2

## Class discussion

### *Discussion 1:*

In 2019, an Australian rugby player called Israel Folau posted a picture on Instagram. The post said that homosexuals would go to hell. Folau had his contracts cancelled.

What do you think would happen in South Africa if a similar situation happened in our laws? What do you think should happen? Where is the line between religious freedom, freedom of speech and the rights that everyone has to have their dignity respected, and to not be discriminated against on the grounds of sexual orientation.

### *Discussion 2:*

At the end of 2018, the Constitutional Court heard a case about whether parents are allowed to physically chastise their children.

A man was convicted of assaulting his 13 year old child. He claimed that he was administering moderate and reasonable chastisement under the common law. An organisation thought that this conviction was unfair, claiming that reasonable chastisement would not infringe the dignity of a child – in fact, they claimed that “loving parental chastisement applied for the benefit of the child...gives dignity to the child.” The organisation claimed that physically disciplining the child was something that scriptures encouraged.

What do you think? Do you think that it is right that children can be hit by their parents? Do you think that prohibiting this would violate religious rights? If someone’s scriptures say that children should be physically disciplined, do you think that this would violate children’s rights? Would it discriminate against children? Would it violate their dignity? Alternatively, do you think that prohibiting physical chastisement would undermine religious freedom?

