



Religions and Cultural Practices: Conflict with Law or Human Rights

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Abstract: South Africa is guided by the Constitution which entrenches equality among citizens, regardless of gender, race, religion or political affiliation. In the same vein, the Constitution also recognizes the right to practise one's religion and culture. Religious and cultural practices must respect the diversity of the society. Such respect must also be observed within the community and religious spectrum. It is in this perspective that this paper investigates whether religious and cultural practices are carried out equally within the Black community. The authors, through a review of literature and observations carried out within the Black community, found systemic violations and discriminatory practices between men and women. The authors found that women are being subjected to abuse in the name of culture and that some practices, such as cleansing ceremonies, violate their dignity. The authors recommend a degree of fairness in cultural practices and that both genders should be subjected to the same practices or treated equally.

Keywords: Cultural Practices, Cultural Rights, Human Rights, Religion

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1. Introduction

This paper aims to examine cultural practices against constitutional prescripts. Although African cultural practices are subject of academic discourse, their examination in light of the Constitution of the Republic of South Africa, 1996 is limited. The angle that this paper takes is distinct from previous studies, which examine mainly whether culture or customary law is given equal treatment to Western law.¹ This paper is not concerned with the equality of customary law and Western law. The focus of this paper is the constitutionality of cultural practices. As demonstrated in the *case of Christian Education South Africa v. Minister of Education*,² religious practices that violate the rights outlined in the Bill of Rights enshrined in the Constitution of the Republic of South Africa, 1996 cannot be used to condone religious or cultural practices which are inconsistent with the Bill of Rights.

¹ Jewel Amoah and Bennett. Tom, "The freedoms of religion and culture under the South African Constitution: Do traditional African religions enjoy equal treatment?," *Journal of law and religion* 24, no. 1, (2008): 1-20. <https://doi.org/10.1017/S0748081400001910>.

² (2000) (4) SA 757 (CC).

This suggests that assuming a strict practice seems to encroach upon any constitutional dispensations; it cannot be conceded that it is reconcilable with the provisions of sections 15, 30 and 31(1) of the Constitution of the Republic of South Africa, 1996. The lawful position is that any arbitrary deprivation of freedom is incongruent with section 12(1)(c) of the Constitution of the Republic of South Africa, 1996, which ensures the right to freedom and security of individual enveloping assurance from all types of brutality, whether public or private. However, cultural practices, like all codes of conduct, are recognized only if they conform to the principles of the Constitution, particularly the Bill of Rights. This command is unequivocally expressed in section 39(2) of the Constitution of the Republic of South Africa, 1996, which specifies that any conduct or legislation should be interpreted within the spirits, and purport of the South African Bill of Rights enshrined in Chapter 2 of the Constitution of the Republic of South Africa, 1996.³ Therefore, any cultural or religious rites that are harmful to any human being are unlawful and against the constitutional prescripts.

Constitutional Prescripts that Religious should Observe

There has been an absence of significant exchange between Western Christianity and African religion.⁴ Despite the constitutional requirement that religious practices be conducted impartially (section 15 2(b) of the Constitution of the Republic of South Africa), this discrepancy persists. As a result, Davis argues that the constitutional protection of religious freedom is up for debate (Davis 10-1). Subsequently, Magesa proceeds to make sense of that the association among Christianity and African religion has generally been uneven, with understood presumptions that are averse to the last option.⁵ Christianity has reliably held a more predominant and decisive philosophical position. As a result, authentic African voices rather than Christian perspectives on African religions dominate the discourse at the moment. Hence the significance of mourning rituals in South African societies as rooted in traditional practices from an African perspective.⁶ Over many generations, these rituals have become deeply ingrained in African culture. Jaison battles that useful philosophy requires philosophical instructive drives to focus on genuine difficulties, making an interpretation of information into noteworthy

³ See also *Mayelane v Ngwenyama and another (Ladies' Legitimate Center Trust and others as amici curiae)* 2013 (8) BCLR 918 (CC) para 23.

⁴ Laurenti Magesa, *African Religion: The Moral Traditions of Abundant Life* (New York, Nairobi: Orbis, Paulines Publications Africa, 1998).

⁵ Magesa.

⁶ Elmarie Kotzé et al., "Women... Mourn and Men Carry on': African Women Storying Mourning Practices: A South African Example," *Death Studies* 36, no. 8 (2012): 742–766. <https://doi.org/10.1080/07481187.2011.604463>.

answers for the networks they serve.⁷

This highlights the idea that pragmatic religious philosophy is a space where information is not exclusively hypothetical yet is a space imbued with sympathy and compassion. This is achieved by critically examining theology, cultural practices, sociological and psychological aspects, organizational considerations, and other relevant disciplines, practical theology.⁸ Osmer contends that functional philosophy experiences troubles in keeping up with its significance inside common colleges, where the social setting adjusts less with congregational-cantered houses of worship.⁹

The Constitution of the Republic of South Africa, 1996 recognizes the rich embroidery of South African culture, portrayed by a wide range of people. This affirmation envelops the hug and acknowledgement of our assortment, including the different social and strict convictions¹⁰ This recognition is based on the fact that members of our society come from a variety of religious, cultural, social, and linguistic backgrounds. The Constitution's affirmation of the Republic's bunch dialects under section 6 is established in this comprehension. Furthermore, section 9(3) of the Constitution bars any type of separation in light of elements like religion, conviction, still, small voice, culture, and birth. Additionally, sections 15, 30, and 31 of the Constitution protect religious practices and beliefs.¹¹ These protected expectations underscore the meaning of variety inside our general public and give voice to one side to shape affiliations.¹² Furthermore, these provisions are a manner in which individuals are provided with the freedom to be themselves without being compelled to conform to the beliefs of the majority.

This is important from the context that the majority may impose their own beliefs to the exclusion of minority views through the enactment of legislation in that regard. Subsequently, the sacred shielding offers the minority the inspiration to openly take part in and maintain different convictions, regardless of whether they may be seen as new by the larger part.¹³ This highlights the meaning of thinking about the protected qualities, especially the affirmation and defending of variety as illustrated in the Constitution, when deciphering regulation .¹⁴ It is apparent that the overarching objective of the Constitution is to promote a society which is united in its

⁷ Jessy Jacob, "Practical Theology: A Transformative Praxis in Theological Education Towards Holistic Formation," *Journal of Theological Education and Mission* 1, no. 1 (2010):1-13. <https://theologicaleducation.net/articles/view.htm?id=138>.

⁸ Jacob, 6.

⁹ Richard Robert Osmer, "Practical Theology: A Current International Perspective," *HTS Theologiese Studies/Theological Studies* 67, no. 2 (2011): 1-7. <https://doi.org/10.4102/hts.v67i2.1058>.

¹⁰ *Daniels v Campbell NO and Others* 2004 (5) SA 331 (CC): para 54.

¹¹ *Prince v President, Cape Law Society, and Others* 2002 (2) SA 794 (CC) para 49.

¹² *Van Rooyen and Others v The State and Others (General Chamber of The Bar of South Africa Mediating)* 2002 (5) SA 246 (CC) para 34.

¹³ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) paras 24-25.

¹⁴ *Daniels v Campbell NO* para 54.

diversity for the purposes of fostering social cohesion, and which protects and celebrates the nation's differences. In this unique circumstance, the Constitution stretches out assurance to social, strict, and semantic practices, given that these practices do not go against the fundamentals of the Bill of Freedoms.¹⁵ Under such conditions, the meaning of variety, alongside the forbiddance of discrimination and the accentuation on embracing different points of view and convictions, is solidly settled in inside the Bill of Rights.¹⁶ In that sense, religious diversity is fostered within the supremacy of the Constitution and is in itself provided with paramountcy.¹⁷ Therefore, the recognition and protection of a diverse society are apparent to be the cornerstone of an open and free society.

The charming part of South Africa's variety lies at the core of its standing as a "rainbow country." This rich variety tracks down articulation in the different groundworks of regulation across Africa, like standard regulation, strict regulation (in districts with a huge Muslim populace), customary regulation, or Dutch Roman regulation, contingent upon verifiable pioneer impacts. As a result, the Constitution appropriately recognizes this diversity by recognizing both common law and customary law.¹⁸ The locale is home to different ethnic gatherings, inside South Africa as well as all through Africa overall. Strangely, there frequently exists an association between African societies, customs, and customs, which supports a feeling of solidarity.

To embody, the act of grieving withdraws a cherished one holds massive importance across numerous South African practices. Setsiba brings up that in customary African social orders, certain legends are woven into the texture of nuclear families and society overall.¹⁹ These fantasies incorporate practices, for example, segregating a relative who has encountered the departure of a friend or family member. These lamenting families or people are seen as conveying a feeling of debasement or pollution because of the relationship with death, and, thus, they are encouraged to cease cooperating with the more extensive local area.

According to Deuteronomy 10:17-18, "*For the Lord, your God is the God of gods and Lord of lords, the great, mighty, and formidable God, which is not partial and takes and bribe. He executes justice for the fatherless and the widow, and loves the sojourner, giving him food and clothing*" This entry states that widows hold critical significance to God, as proven in the Hebrew Scripture. Erwin argues that God's intentions include treating widows with respect and care, to the point where injustices against widows

¹⁵ *Gumede v Leader of the Republic of South Africa and Others* 2009 (3) BCLR 243 (CC) para 22.

¹⁶ *Oudekraal Homes (Pty) Ltd v City of Cape Town and Others* 2010 (1) SA 333 (SCA) para 75.

¹⁷ *Daniels v Campbell NO* para 108.

¹⁸ See sections, 39, 173 and 211 of the Constitution of the Republic of South Africa, 1996.

¹⁹ Tinny Happy Sarah Setsiba, "Mourning rituals and practices in contemporary South African townships: A phenomenological study" (Department of Psychology, University of Zululand, 2012), 28, <https://hdl.handle.net/10530/1055>.

are even addressed in the context of covenant curses. He argues, “*Cursed be to anyone who perverts the justice due to the sojourner, the fatherless, and the widow. And all the people shall say Amen.*”²⁰

2. Research Method

The paper uses a desktop approach coupled with observation of cultural and religious practices within the Black community. The desktop approach involved a review of the literature on religious, and cultural practice and the right attached to these practices. The observation entailed witnessing and observing how the Zulu and Tsonga communities practise their religion and culture. The authors lived sometimes in Kwazulu Natal and currently work in the Limpopo province among the Tsonga. The findings of this study result from the authors’ interaction with the various communities.

3. Result and Discussion

African Widows

The Constitution defends the right to speak freely of discourse. Every person has the right to freedom of expression under section 16(1)(b) of the Constitution of the Republic of South Africa, 1996, which includes the freedom to receive and share information or ideas. In an open and democratic society, this protection of rights is of the utmost importance because it encourages the free flow of vital information and ensures that public officials are held accountable.²¹

In this context, a free and democratic society must have the right to express one's thoughts freely. This idea is additionally built up by the right to form one belief as illustrated in section 15, rights of gathering as expressed in section 17, freedom of association under section 18, and the option to take part in political cooperation as per section 19.²² In any case, the right to freedom of expression is dependent upon inner limits, as illustrated in section 16(2) of the Constitution of the Republic of South Africa, 1996. This subsection excludes from the ambit of subsection 1 of section 16 conducts such as war publicity, incitement of imminent violence or articulations of hatred based on race, identity, gender, or religion that comprise incitement to cause hurt. Here, section 16(2) of the Republic of South Africa, 1996 recognizes attitudes that are inconsistent with the Constitution's core values. This differentiation emerges in light of the fact that the discourses enveloped in section 16(2) of the Republic of

²⁰ Cheryl Jean Erwin, “Designing a Training Curriculum for Soul care Ministries of Widows” (Southern Baptist Theological Seminary, 2015), 4. <http://hdl.handle.net/10392/5045>.

²¹ *Qwelane v. South African Human Rights Commission and Another* 2021 (6) SA 579 (CC) paras 67 – 68.

²² *S v Mamabolo (E television and Others Mediating)* 2001 (1) SACR 686 (CC) para 28.

South Africa, 1996 are perceived as having the capacity to subvert the nobility of others and to cause hurt to them.

As a result, everyone retains the right to express their opinions as long as their speech does not violate the rights of others or fall into any of the categories prohibited by section 16(2) of the Constitution of the Republic of South Africa, 1996. This right is furthermore reduced through an overall regulation, as examined in section 36(1) of the Constitution of the Republic of South Africa, 1996.²³

Further limitation to the right to the freedom of speech is provided for in section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 10 of 2000. This section precludes the distribution or correspondence of words coordinated against any person that could sensibly be deciphered as showing a goal to be pernicious, destructive, or to induce hurt, while advancing or proliferating scorn. This restriction intends to prevent or prohibit speech that infringes on the freedoms of people based on their group identity. Basically, this implies that even offensive discourse is admissible in an open and democratic society, provided that it does not encroach upon the freedoms of others.

Matsane Grieving envelops a scope of ceremonies, among them the limitation put on ladies (especially widows) with respect to their public appearances and conduct until the grieving period finishes. At the point when a demise happens, certain assumptions are put on widows, including ceasing from visiting and talking uproariously (yelling). This suggests that the church ought to view its support of widows as both a privilege and a duty from God. The Congregation's obligation to helping widows ought to be steadfast, independent of the related expenses. The time of grieving can be a disconnecting venture for any lady, considering that widows are viewed as sullied during this stage. When a member of the deceased person's family passes away, they are regarded as filthy or tainted in traditional African societies. Some members of the community believe that reintegration into society is made easier by participating in rituals that purify mourners and remove impurities. As per Ngubane, the act of grieving the dead is a worldwide peculiarity seen across various civilizations through strict and social means.²⁴ Grieving ordinarily includes fundamental convictions and customs, profound practices, and an expectation of explicit ways of behaving representing distress.

Christianity and African Spirituality

Nche, Okwuosa, and Nwaoga declare that for specific Africans who have

²³ *Islamic Solidarity Show v Free Communicating Authority and Others* 2002 (4) SA 294 (CC) paras 31-32.

²⁴ Weekend Sehlulamanye Ngubane, "An investigation into the Implementation of Participative Management in a Rural School in the Pietermaritzburg District" (Rhodes University, 2006), 5, <http://hdl.handle.net/10962/d1003489>.

embraced Christianity, keeping a particular, enthusiastic lifestyle becomes testing.²⁵ They find themselves struggling with a sense of double standards or leading "*double lives*," as they are more commonly known. Their inability to completely separate themselves from the fundamental or early religious beliefs of their ancestors and the values that go along with them is what has led to this predicament. As a result, when things are going well, they take on a Christian identity, but when things get tough, they go back to following the old ways. In any case, the authors' perspective differs from that of Nche, Okwuosa, and Nwaoga.²⁶ The researchers argue on the contrary that after studying African cultures and traditions, Africans do not only resort to traditional practices in tough times; they likewise do as such during seasons of thriving. Various Christians take part in African customs before marriage, after finishing their schooling, after the introduction of a youngster, or following the procurement of another house or vehicle, among different events. According to Okwuosa & Nwaoga,²⁷ these rituals frequently mark celebrations of new beginnings or seek ancestral protection for an individual.

The Church in Africa

In practical theology, Dreyer emphasizes the significance of considering the viewpoints of outsiders.²⁸ She further fights that the idea of heteronormativity ought to be destroyed, supplanted by a method of felt that does not classify terms like satisfactory, hallowed, mainstream, standard, and heterodox, as fundamentally unrelated inside or outside the congregation.²⁹ Dreyer says that practical theologians need pastoral models and approaches to effectively include people outside the church.³⁰ Supporting this position, Kelcourse declares that the essential obligation of the congregation is to give care to those out of luck, stretching out sympathy to all people and consistently.³¹ This prompts an investigation into the setting of grieving for widows inside the Tsonga culture, close by the job of confidence networks and their forerunners in giving physical, mental, and profound comfort to those needing help. This additionally brings into question the commitment to peaceful guiding

²⁵ George C. Nche, Lawrence N. Okwuosa, and Theresa C. Nwaoga, "Revisiting the Concept of Inculturation in a Modern Africa: A Reflection on Salient Issues", *HTS theologies studies/Theological studies* 72, no. 1 (2016): 1-6. <http://dx.doi.org/10.4102/hts.v72i1.3015>.

²⁶ Nche et al., 2.

²⁷ George C. Nche, Lawrence N. Okwuosa, and Theresa C. Nwaoga, 2.

²⁸ Yolanda Dreyer, "Women's spirituality and feminist theology: A hermeneutic of suspicion applied to 'patriarchal marriage,'" *HTS Theologies Studies / Theological Studies* 67, no. 3 (9 Maret 2011): 1-5, <https://doi.org/10.4102/hts.v67i3.1104>.

²⁹ Dreyer, 1.

³⁰ Dreyer, 5.

³¹ Felicity Brock Kelcourse, "Pastoral Counselling in the Life of the Church", *Encounter* 63, no. 1/2 (2002): 137. <https://www.proquest.com/openview/db1563c1882150f45383055604f12edb/1?pq-origsite=gscholar&cbl=41872>.

inside the congregation's peaceful consideration mission. The investigation of the church's involvement in liturgical celebrations is crucial to the success of this investigation. Kelcourse stresses that a fruitful strict pioneer ought to envelop characteristics like successful relational abilities, proficiency in tuning in and correspondence, dynamic initiative, proficient local area association, volunteer coordination, and skill-being developed drives.³² The widows have frequently endured the most of experiencing in various African social orders because of social standards.³³ This suffering is caused by the diversity of cultures and their gender-biased practices, which prevent meaningful reform and forward-thinking advocacy³⁴. An inquiry arises when discussing sacraments performed to honour and show affection for a deceased husband: What moves are made by men to exhibit their adoration and veneration for their late spouses? "*Traditional cultural practices reflect values and beliefs held by members of that particular community for a period often spanning generations,*" according to Oluch and Nyongesa.³⁵

Law and Cultural Practices

There are various provisions in the Constitution which entitle an individual to practice their own culture. These include the right to freedom of belief as outlined in section 15, the freedom to engage in their preferred cultural practices as outlined in section 30, and the guarantee that their cultural expression and language will not be denied as outlined in section 31 of the Constitution of the Republic of South Africa, 1996. Prominently, section 211 of the Constitution of the Republic of South Africa, 1996 awards official acknowledgement to standard regulation and commands that courts ought to apply it at whatever point it is pertinent. This unambiguous arrangement inside the Constitution highlights the use of standard regulation inside the legitimate system.³⁶

The customary practices and traditions that the Indigenous African population of South Africa has traditionally upheld are referred to as belonging to the realm of customary law.³⁷ In this specific circumstance, standard regulation fills in as a course through which the local people of the country express and participate in their social legacy. Accordingly, this legal framework is unique to particular communities and is a

³² Felicity, 139.

³³ Uchechukwu Ewelukwa, "Post-Colonialism, Gender, Customary Injustice: Widows in African Societies," *Human Rights Quarterly* 24, no. 2 (2002): 424-486. <https://doi.org/10.1353/hrq.2002.0021>.

³⁴ Ewelukwa, 484.

³⁵ Oluoch, Elizabeth Asewe and Wesonga Justus Nyongesa, "Perception of the Rural Luo Community on Widow Inheritance and HIV/AIDS in Kenya: Towards Developing Risk Communication Messages," *International Journal of Business and Social Science*, 4, no. 1 (2013): 213-219. <http://ir-library.mmarau.ac.ke:8080/handle/123456789/9688>.

³⁶ *Pilane and another v Pilane and another* 2013 (4) BCLR 431 (CC) para 32.

³⁷ *Gumede v. President of the Republic of South Africa and Others* para 23.

system that is observed and passed down through generations.³⁸ These cultural practices are protected by various provisions, including section 211 of the Constitution.

Thus, the legal framework is constrained to dismiss acknowledgement of any training that conflicts with the Bill of Rights. This signifies that if a tradition is found to discriminate against a particular group, it would violate the equality provision in section 9 of the Constitution of the Republic of South Africa, 1996, rendering it effectively null and void.³⁹

The demonstration of wearing dark clothing as an indication of grieving may not innately cause actual damage upon a widow. In any case, the treatment going with this training brings about the underestimation of widows inside society. Certain practices, for example, talking delicately, hair shaving, and revealing gravestones, hold restricted hurt. On the other hand, activities like jumping over consuming flames, avoiding water utilization, genital mutilation, breaking eggs with one's legs, and participating in sexual purging are corrupting and opening ladies to dangers like consumption, contamination, and transmission of HIV/Helps. To this effect, Madiba and Ngwenya argue that cultural beliefs and practices such as lobola or bride price contribute towards HIV transmission.⁴⁰ This is so because men view their wives as property because they had paid lobola and refuse to use condoms thereby infecting their spouses. In these settings, such behaviour is predominant in a patriarchal society. To this end, strong patriarchal values negatively affect resistance to any sort of cultural practices resulting in women being infected with sexually transmitted diseases because, through lobola, they have been acquired.⁴¹ By virtue of such acquisition, women are unwilfully exposed to life-threatening diseases.

Widows in South Africa are relegated to the back seats of public transportation to prevent perceived contamination because they are expected to yield to pedestrians and even avoided when crossing paths.⁴² This stems from the conviction that widows wearing dark could convey a "*terrible sign or misfortune*" that could be sent to other people. According to Parratt, the black consciousness movement sparked the

³⁸ *Alexkor Ltd. and Another v. The Richtersveld Community and Others* (2004) (5) SA 460 (CC) para 53.

³⁹ *Bhe and Others v. Magistrate, Khayelitsha, and Others (Commission for Gender Equality As Amicus Curiae), Shibi v. Sithole, and South African Human Rights Commission and Another v. President of the Republic of South Africa and Another* 2005 (1) SA 580 (CC) para 91-93.

⁴⁰ Sphiwe Madiba dan Nomsa Ngwenya, "Cultural practices, gender inequality and inconsistent condom use increase vulnerability to HIV infection: narratives from married and cohabiting women in rural communities in Mpumalanga province, South Africa," *Global Health Action* 10, no. sup2 (5 Januari 2017): 1341597, <https://doi.org/10.1080/16549716.2017.1341597>.

⁴¹ Jennifer Glover et al., "Persistence and Resistance of Harmful Traditional Practices (HTPs) Perpetuated against Girls in Africa and Asia," *Journal of International Women's Studies* 19, no. 2 (2018) 44-64. <https://vc.bridgew.edu/jiws/vol19/iss2/4>.

⁴² Paul C. Rosenblatt dan Busisiwe Catherine Nkosi, "South African Zulu Widows in a Time of Poverty and Social Change," *Death Studies* 31, no. 1 (Januari 2007): 68, <https://doi.org/10.1080/07481180600995214>.

development of black theology in South Africa, which sought to affirm African personhood against the backdrop of white exploitation and oppression.⁴³ Dissatisfaction with Westernized theology that was accepted by the African church led to the creation of the term "*African theology*," which served as a label. For illustrative purposes, widows are denied from participating in sexual exercises for a year following their significant other's death, and the more extensive family is comparatively compelled until the memorial service or entombment closes, commonly happening in something like fourteen days of the singular's passing. Kirwen emphasizes the African perspective, which is distinct from Western perspectives, on philosophical aspects of physical death.⁴⁴ This special comprehension entangles the thought of proceeding with conjugal connections in the African setting.

Albeit wearing dark clothing as a grieving custom does not intrinsically hurt widows, it is the related treatment connected to this training those outcomes in the rejection of widows from cultural support. While some practices, like speaking softly, shaving one's hair, and unveiling tombstones, have relatively benign effects, others, like leaping over flaming fires, avoiding water, genital cutting, breaking eggs with one's legs, and sexual cleansing, are profoundly dehumanizing and put women at risk for serious injuries like burns, infections, HIV/AIDS transmission, and unintended pregnancies. As brought up by Rosenblatt and Nkosi, in South Africa, widows are supposed to respect walkers actively, and there is a propensity to try not to encounter widows wearing dark dresses.⁴⁵ In an effort to prevent the spread of what is perceived as "bad luck" or a "bad omen," this avoidance frequently results in widows being relegated to the back seats of public transportation. Parratt highlights the meaning of the dark cognizance development in South Africa, which planned to maintain the pride of African personality inside a setting of double-dealing and mistreatment by white powers.⁴⁶ The expression "African religious philosophy" arose not as an unbending definition yet rather as a mark that emerged from profound disappointment and opposition against the Westernized religious philosophy embraced by the African church.

To give a model, consider the situation where a widow is denied from participating in sexual exercises for a time of a year following her better half's passing. Essentially, other relatives are additionally limited from taking part in

⁴³ John Parratt, *Reinventing Christianity: African Theology Today* (Eerdmans, Grand Rapids, 1995), 13.

⁴⁴ Michael C. Kirwen, *African Widows: an Empirical Study of the Problems of Adapting Western Christian Teachings on Marriage to the Leviratic Custom for the Care of Widows in Four Rural African Societies* (Maryknoll, New York: Orbis Books, 1979), 216.

⁴⁵ Paul C. Rosenblatt dan Busisiwe Catherine Nkosi, "South African Zulu Widows in a Time of Poverty and Social Change," 80.

⁴⁶ John Parratt, *Reinventing Christianity: African Theology Today*, 13.

sexual exercises until the finish of the memorial service or entombment function, which commonly happens inside roughly fourteen days of the singular's demise. Kirwen features the unmistakable viewpoint held by African individuals as opposed to Western people in regard to the more extensive way of thinking concerning the importance and embodiment of actual demise.⁴⁷ Because of this unique perspective, it is effectively impossible for Africans to imagine that marital relationships would continue after such events.

Till Death Do Us Apart 'vs. Marriage in the African context

In the South African civil law context, marriages may come into existence in terms of the Marriage Act 25 of 1961 or in terms of the Civil Union Act 17 of 2006. These legislations provide for formalities for the valid conclusion of marriages. A common marriage is described as a committed and persevering through organization between a solitary man and a solitary lady, went into wilfully with the goal of barring all others. This form of marriage is concluded in terms of an agreement between the parties to the union.⁴⁸ In addition to the parties reaching an agreement, the Marriage Act prescribes certain formalities which must be complied with for a valid marriage to come into existence. These prerequisites envelop the need for the union to be administered by an approved marriage official to lay out its legitimacy.⁴⁹ Essentially, in the same vein, the Civil Union Act defines a civil union as a monogamous, voluntary union between two individuals who are above the age of 18 years. The Act also prescribes certain formalities for the validity of the civil union, including that this union must be solemnised and registered in terms of the prescribed procedures contemplated in terms of the Act.⁵⁰

Once the previously mentioned unions come into existence, they may be dissolved through divorce, annulment, or death.⁵¹ In the case of the death of one of the spouses, the dissolution of the marriage occurs by operation of the law and there is no requirement that a court order must be issued in that regard.⁵²

In circumstances where one or both parties seek to terminate the union through a divorce, in terms of section 4 of the Divorce Act 70 of 1979 the parties have to demonstrate that the marriage has irretrievably broken down. This suggests that the court should determine whether the marriage has weakened so much that there are no practical opportunities for the recovery of a commonplace conjugal connection

⁴⁷ Kirwen Michael C, *African Widows: an Empirical Study of the Problems of Adapting Western Christian Teachings on Marriage to the Leviratic Custom for the Care of Widows in Four Rural African Societies* (Maryknoll, New York: Orbis Books, 1979), 216.

⁴⁸ Jacqueline Heaton and Kruger Hanneretha, *Casebook on South African Family Law*, 4th ed. (South Africa: LexisNexis, 2015), 13.

⁴⁹ Heaton et al., 20.

⁵⁰ Heaton et al., 205.

⁵¹ Heaton et al., 113.

⁵² *Danielz NO v De Wet and Another* 2009 (6) SA 42 para 42.

between the spouses. They may further in terms of section 5 demonstrate that one of the parties suffers from mental illness or continuous unconsciousness.⁵³ This means that a party would be entitled to a divorce order in circumstances where the other party suffers from a mental illness without any prospect of a cure. Furthermore, a decree of divorce may be issued in circumstances where the other party suffers from unconsciousness without any possibility of recovery.⁵⁴

With regards to customary marriage, ladies are expected to show veneration to their parents-in-law, which envelops dynamic cooperation in all ceremonies related to the practices of their mate's loved ones. Marriage is thought to last until the husband dies in many African societies. After the spouse's passing, it is normal for the widow to keep on living inside the premises of her late husband's family and stick to customs like '*Ukungena*' or '*Ku things*'. Grieving practices are not set in stone by the actual widows. *"You do not set your own rules as a widow, these rituals and rites have been done for years and no one died from them, what makes them so special, it is such a shame that women want to control themselves instead of doing things the right way."* This study argues that this practice is not only discriminatory towards women but also harmful as it reflects some traditional values and belief system which has spanned generations.⁵⁵

The way of life and upsides of a particular local area function as middle people for individual encounters. They play this role by establishing fundamental categories and a constructive framework for the systematic organization of ideas and values within that cultural context.

According to Grimes, *"ritual criticism is value-laden but not merely personal, because it is not always a personal decision, in a much at it is contextualised in its approach and because it sometimes appeals to traditions, principles, or theories for its validation."*⁵⁶ All members went through the experience of widowhood and took part in grieving customs recommended by their parents-in-law. Each widow related her involvement in a remarkable way. Makatu et al affirm that passing unfavourably influences the existence of those abandoned.⁵⁷ These rituals have cultural significance because of their therapeutic value, with the goal of assisting the grieving process and allowing the individual to move on without harm.⁵⁸ The purpose of mourning rituals

⁵³ Heaton et al., *Casebook on South African Family Law*, 119.

⁵⁴ Heaton et al., 122.

⁵⁵ Eberechukwu E. Omezue-Nnali, Wisdom C. Egwu, Chinyere Ifeanyi-Aruogu, "A Review of Human Rights Violation in African Cultural Practices," *Awka Journal of Linguistics And Languages* 2, (2023): 169. <https://www.journals.ezenwaohaetorc.org/index.php/AJILL/article/view/2384>.

⁵⁶ Ronald L. Grimes, *Ritual Criticism: Case Studies in its Practice, Essays on its Theory* (Waterloo: Ritual Studies International, 1990), 12.

⁵⁷ Makondelele S. Makatu et al., "Discourse Analysis of the Perceptions of Bereavement and Bereavement rituals of Tshivenda Speaking Women," *Journal of Psychology in Africa* 18, no. 4 (January 2008): 575, <https://doi.org/10.1080/14330237.2008.10820236>.

⁵⁸ Makatu et al., 577.

is to heal, maintain continuity, and bring life back into balance after the death of a loved one.

4. Conclusion

South Africa is a multicultural society in which several beliefs coexist. With the advent of the democratic era, all actions and conduct are underpinned by the constitutional values of equality and advancement of freedoms and human rights. The entrenched equality clause in the Constitution presupposes that all citizens, regardless of gender and or race, are all on the same footing. On this basis, the Constitution recognises the right to belief and cultural practice. More importantly, the practice of one's belief or culture should not infringe on another person's rights and these practices should be consonant with the spirit, purport, and objects of the Bill of Rights.

Transposing these well-crafted rights to cultural practices within the Black community which is the subject of this paper, this study reveals that widows are on the other side of the spectrum. There is a differential treatment between a widow and a widower, or, to put it boldly, between men and women. In fact, this study found some practices, like leaping over flaming fires, avoiding water, genital cutting, breaking eggs with one's legs, and sexual cleansing, dehumanising. These practices, the study further found expose women to risks such as serious injuries like burns, infections, HIV/AIDS transmission, and unintended pregnancies. This reveals the discriminatory practices between men and women if either were to lose the other half. The glaring dehumanisation of women in times of mourning, where they are at their weakest point, is in conflict with the Bill of Rights. Instead of being provided with the necessary psychological assistance, women are subjected in the name of upholding cultural values to more trauma. Why would, for instance, encountering a widow when she is mourning bring bad luck but the same is not extended to the widower? Clearly, if mourning brings bad luck, it should not discriminate between a widow and a widower who, after all, has lost the other spouse.

As a way forward, the study recognises the need to uphold cultural values in society. Considering that cultural values evolve and are dynamic, the authors recommend that there should be a degree of fairness when practising and or applying culture between men and women. This entails a broader consideration to practise culture in a dignified manner. Women's dignity should take centre stage. By so doing, one should foster practices that eliminate discriminatory treatment between men and women.

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