Assessing possibilities of paternalism masquerading as church regulation in South Africa

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DECLARATION

Lintle Quintin Litha hereby present assessing possibilities of paternalism masquerading as Church regulation in South Africa as a dissertation of my own work and effort in Political Studies. The dissertation has not been presented by me or any other person at another University before. The use of full citations is a demonstration of honest scholarship and giving credit to other scholars who have influenced analysis toward the completion of this report

…….. September 9, 2022

Litha LQ Date

POSITIONALITY AND MY ROLE IN THE STUDY

I write as a black South African male who is currently living in zone 11 Sebokeng in the Vaal triangle, a place rich with spiritual heritage in the Christian tradition. My interest in social justice shaped my study choice in politics and public administration. It is my conviction that people are human first before they can be members of a cultural organisation. I for one belong to a charismatic Christian faith who grew up active in religious activities as early as I was eleven (11) years old. The church for me became a second home away from the harsh realities of inhumane living conditions that saw many families share a Reconstruction and Development Programme (RDP) house with no form of privacy – the primary home of clustered dwellings. For me, the church was an escape into a world where all things were possible and everything was all right, the only space where things made sense amid the gigantic world where individuals had more questions than answers. It was in 2014 that the researcher enrolled at the NWU Vaal campus as a first-year student studying towards a degree in politics and administration majoring in law subjects. It is here that I wanted to understand the relationship between the church and politics. Following the shocking turn of events in some religions in South Africa, i.e. in form of bizarre and unusual practices, such as the commercialisation of religion and the rise of religious leaders taking advantage of congregants, bringing the constitutional spotlight upon the church and its dealings with ordinary members of society. Listening to religious organisations respond about the proposed religious regulation, I wanted to explore how the state intervention, which is normal governance practice would amount to paternalism.

The religious practices that people complained about are unprecedented in South Africa and gained prominence around the year 2012. As an academic who is a Christian, I wanted to analyse how it is possible to safeguard the right to freedom of religion while acknowledging and encouraging the usage of existing legal instruments to protect ordinary South Africans from harmful religious practices. I am cautious to make claims that are grounded on verifiable facts and not to make statements that affirm my bias or religious interests. As much as I support freedom of religion as a principle, I in no way support the shameful practices. As a student of political science, I have learned to be

critical of my own assumptions to come to a better understanding and explanation of phenomena. My commitment in this remains, facilitating a free and fair society that safeguards the rights and interests of all people.

ABSTRACT

This dissertation contributes to explanations about the status of religious freedom in South Africa after the proposal for religious regulation. A proposal coming from a series of allegations about religious abuses that necessitate the government's intervention. This proposal for religious regulation raised concerns about the possible limitation of freedom of religion enshrined in the constitution. Through document analysis, the dissertation critically reviews whether the proposed regulation in any way implies the violation of the basic right to religion. And whether the proposed regulation is a masquerade of paternalism by the state as critics opine. Theoretical debates about what paternalism, and the extent to which that protection takes away legitimate individual freedom to determine one's life prospects is essential. These debates about the constitutional limitation on freedom include a cross-national comparison that clarifies the genuine exercise of power by the state for the sake of law and order. The constitutional limitation clause also helps interested groups to hold the state in check when exercising its power, thus limiting the abuse of power. The limitation clause, therefore, helps evaluate the constitutionality of religious regulation in South Africa. The dissertation reflects on how the proposal for religious regulation is inconsistent with the constitutional provisions. Religious regulation presents a threat to the freedom of religion if implemented in the shape and form that the Commission for the Promotion and a Promotion of the Rights of Cultural, Religious and Linguistic Communities (CRL) proposed. Therefore, this dissertation supports the view that there is no need for unique religious regulatory instruments other than existing laws that already affect the operations of Non-Governmental Organisations (NGOs) and criminal law. Instead, the CRL should fulfil its mandate for public education and research in religious practices and thereby promote religious freedom effectively. The CRL ought to implement broad engagement with affected communities to generate a code of conduct among the mechanisms to help reduce religious abuses. There has to be a mutually agreed upon route to strengthen religious regulation.

Keywords: masquerade politics, religious freedom, religious regulation the Commission for the Promotion and a Promotion of the Rights of Cultural, Religious and Linguistic Communities (CRL)

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With all of that said, I would like to acknowledge and extend my gratitude to all the servants of God who constantly kept me in their prayers and believed in my ability to accomplish this. I humble myself, servants of God. I also acknowledge and appreciate the servant of God, Ntate Sysman Motloung, my supervisor. Moruti thank you for guiding me through this mammoth of a task, your support and enormous contribution made it all possible. Through this journey you cultivated in me and taught me that good is not enough when the sky is not the limit. You truly stretched me and moulded me. I am grateful, may the good Lord bless you for your offering Mohlanka Jehova. At this point, words do not suffice, and I do not think mere words could translate my gratitude. I can only hope that you sense my gratitude for your discipleship, Thank you!

Truly the Lord has done it!

Psalm 20: 2

"May he send you help from the sanctuary and grant you support from Zion"

ACRONYMS AND ABBREVIATIONS

CIPC	Companies and Intellectual Properties Commission
CoGTA	Department of Cooperative Governance and Traditional Affairs
CONCOURT	Constitutional court of South Africa
COVID 19	Coronavirus Disease
CRL	Commission for the Promotion and Protection of the Right of Cultural
DSD	Department of Social Development
FOR SA	Freedom of Religion South Africa
HIV	Human Immunodeficiency Virus
ICASA	Independent Communications Authority South Africa
NCC	National Council of Churches
NGO	Non-Government Organisation
NPO	Non-Profit Organisation
NRLF	National Religious Leaders Council
NWU	North West University
PEW	PEW Research Center
SACRRF	South African Council for the Protection and Promotion of Religious Rights and Freedoms
SAHRC	South African Human Rights Commission
SAPS	South African Police Services

SARS	South African Revenue Services
TEASA	The Evangelical Association of South Africa

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CHAPTER 1: THE PROBLEM OF PATERNALISM IN THE PROPOSAL FOR RELIGIOUS REGULATION IN SOUTH AFRICA

Keywords: Paternalism, nanny state, political masquerade/masquerade politics, freedom of religion, regulation of religion.

1.1. Orientation and background

Religious regulation is a sustained form of control through the introduction of laws applied by a governing body, or deliberate state influence over religious conduct to prevent undesirable behaviour (McMinimy, 2015). The state or regulatory body deciding what undesirable religious behaviour is could lead to claims of religious suppression by those whose behaviour is said to be improper. This aspect of disagreement about (im)proper behaviour adds the political dimension to religious affairs. Freedom of religion includes the right to maintain the internal institutional affairs of religious community life without state intervention; it (freedom of religion or belief) is a fundamental, universal human right (Dickson, 1995). Freedom of religion has its significance in law recognising that protecting a person's religion or belief helps preserve human dignity.

According to Dworkin (2002), paternalism refers to the interference by another in an individual's life against their will to protect them from harm. The other reference to paternalism is through the concept of a nanny state. A nanny state refers to a form of government or policies of an overprotective nature that unduly interfere with an individual's ability to make personal choices (Harsanyi, 2007; Claeys, 2013); a choice such as deciding whom and how to worship. Masquerade politics refers to the act of presenting what is not as though it is, or concealment of the reality to pass off a picture of non-reality. Masquerading derives from ancient English ball evening events that often-required masks to conceal identity and mostly reveal the eyes and lips (Oloruntoba, 2020). These are fundamental concepts that underpin this study's approach of religious regulation through the lens of paternalism, paternalism not overt but as a masquerade.

Political science is about addressing questions of how much power governments should have over their citizens. This includes disagreements about the extent of political intervention in private and public spheres. These questions arose after the increasing

visibility of laws that regulate and control simple aspects like the use of motorcycle helmets and seatbelts, the sale and consumption of alcohol, also the prosecution of persons who help others perform euthanasia due to terminal illness (Grand & New, 2015). This dissertation aims to examine the extent of paternalism that exists in the calls for the regulation of churches in South Africa. The request for the regulation in question follows the findings by the Commission for the promotion and protection of the rights of Cultural, Religious, and Linguistic Communities (CRL). This was constituted after investigating the allegations of the abuse of church members and the commercialisation of religion by the leaders (Ellerbeck, 2018). The CRL appealed for a need to have religious communities hold accountable, those people who bring religion into disrepute and abuse the public freedom of religion. To this effect, the CRL wanted to establish a self-regulation instrument that would help faith communities restore law and order in the faith sector (CRL Rights Commission, 2017). The CRL recognises that some faith communities failed to respond appropriately to the commercialisation of religion, and saw it fit to intervene upon public comments about the matter. The CRL Act No. 19 of 2002 (CRL Act) states that “the objects of the CRL amongst others, are to promote respect for and further the protection of the rights of cultural, religious, and linguistic communities”. Section 4 (b) of the CRL Act further states that the objects of the CRL are “to promote and develop peace, friendship, humanity, tolerance, and national unity among and within cultural, religious, and linguistic communities based on equality, non-discrimination, and free association.”

Public concerns were increasingly questioning the state’s lack of response to reports about questionable religious practices that seemed to violate human rights, dignity, and the involvement of religious leaders in criminal activities. The concerns involved the need for the regulation of religion or at least, more stringent law enforcement to protect the public. A large proportion of society questioning whether religion has become a commercial institution or a commodity to enrich a few. In response to these religious scandals, the CRL Rights Commission undertook an investigation and found that most of these antisocial acts were unconstitutional and violated human rights (Barnett, 2015). In contrast to the report findings, the South African Council for the Protection and Promotion of Religious Rights and Freedom (SACRRF), and Freedom of Religion in South Africa (FOR SA) questioned and critiqued the sample methods used in the consultations

(COGTA, 2018). Questioning the sampling method insinuates that CRL did not consult sufficiently to capture the views of the religious community. The opposing parties argued that the proposed regulation of religion, if implemented, would violate the constitutional rights of freedom of religion, belief, and opinion (section 15) as well as freedom of association (section 18) (COGTA, 2018).

The CRL, after concluding its investigation, felt obligated to act by proposing a regulatory mechanism, which entailed "self-regulation" by the churches. However, the backbone of this dissertation, is assessing whether this proposal of self-regulation is masking the real intentions of the state which organisations like freedom for religion have argued to be something other than what is presented (COGTA, 2018). About 95% of governments around the world practice religious regulation in one way or the other, thus making it seem more acceptable over time (Majumdar, 2019). The government regulates religion to restrict religion's active participation in politics, especially where religion may use the power of its influence against the state (Chatterjee, 2018). Influence comes from control; hence autocratic regimes restrict any aspect of civil society they cannot control. Besides, some countries have anti-religious national ideologies and are secular (Majumdar, 2019). What remains strange is that even though religious regulation is costly, governments are willing to inject funds into its implementation (Majumdar, 2019). Critics say religious regulation may open the possibility for systemic coercion, agency capture, the culture of harsh legalism, and simple abuse of power for tyrannical ends (Chatterjee, 2018).

Questions of paternalism recently became a public concern where states limited people's movement, some disallowed the selling of tobacco and alcohol as a measure to curb the spread of COVID-19 (Mail & Guardian, 2020). One might say government regulation on alcohol in response to public demands does not imply a nanny state, others would differ, wishing for more choice. Be it as it may, the question of paternalism is now rearing its head in the South African political narrative related to proposals for the regulation of religion. It has become increasingly evident that more countries have resorted to regulation (Hoyeck, 2019). This chapter is a research outline that includes stating the problem, research questions, theoretical framework, and research design.

1.2. Problem statement

The commercialisation of religion has led to a proposal for the self-regulation of religion in South Africa, which some religious organisations oppose for fear of paternalist intentions by the state.

The South African institutional architecture includes the chapter 9 institutions which are tasked with the promotion and protection of democracy by holding the executive and legislative arms of government in check. They promote accountability and good governance as a result. Acting in line with the mandate of protecting the constitutional right to belief, especially the minority groups; the CRL has appraised the scope of religious regulation to defend the rights of those who allegedly fallen victim to unjust religious practices. But there is opposition to the CRL's effort by religious organisations who reject the report proposing religious regulation (Mail & Guardian, 2018). The year 2016 saw the rise of what is now classified as unhealthy practices in the Christian religious space in South Africa, where it was reported that congregants had fallen victim to church leaders (Duncan, 2018).

These abuses led to a series of investigations by the CRL for four months into the commercialisation of religion, that is selling religion – its services and objects (Phiri, 2017; Masenya and Masenya, 2018:634). After its investigation, the CRL recommended that the South African parliament make provisions for the establishment of a peer review committee aimed at being an umbrella-like organisation representing certain religious groups (CRL, 2017). The peer review committee would function as an accountability and mediation body for religious organisations. The proposal for regulation was rejected by members of the Christian community, organisations like Freedom of Religion South Africa including the Anti-Regulation Movement (Andrew, 2017). The opponents argued that religious regulations of this nature would be unconstitutional because they limit the inherent right to freedom of religion and allow state intervention into personal affairs (Phiri, 2017). At face value, the state is justified in terms of its approach of acting as a guardian to ensure the wellbeing of its citizens. But the question remains about the extent to which the religious regulation is justified as paternalism; and the extent to which religious

regulation is an over-reach of governance and misuse of power. This then raises a debatable general question that forms the core of the dissertation.

1.3. The rationale and aim of study

The premise of the study is that failure by the religious community in South Africa to self-regulate has led to the prevalence of suspicious practices within it. In response, public perceptions about the legitimacy of some Christian organisations are at a low ebb and there are calls for the state to bar some leaders from religious practice (Grill & Hanna, 2018). The dissertation presents a critical analysis of what religious regulation is, the context within which it is justified, and the risks that follow from giving the state decision-making power over certain basic freedoms such as religion as an attempt to save people from themselves. Also, the study will clarify the mandate of the state concerning sectors such as religion, which enjoy the protection of the constitution where protecting human lives and dignity is essential (Grill & Hanna, 2018).

1.4. The general research question

What is the validity of the concerns that religious regulation in the context of South Africa masquerades as paternalism?

1.4.1. Specific research questions

The study attempts to answer the following research questions:

- What is the problem of paternalism in the proposal for religious regulation in South Africa?
- What are the theoretical linkages between paternalism, religious freedom, and religious regulation?
- What are the masquerading symptoms in church practices and state responsibilities in South Africa?
- How do the recommendations of the CRL commission indicate elements of paternalism or government overreach into personal affairs?

- How to limit religious abuses and ensure religious freedom through religious regulation?

1.4.2. Research objectives

To provide valid responses to the main research question and clarity to the secondary questions, the study will:

- explain the problem of paternalism in the proposal for religious regulation in South Africa.
- clarify theoretical foundations of paternalism, religious freedom, requests for religious regulation.
- describe masquerading symptoms in church practices and state responsibilities in South Africa.
- identify elements of paternalism in the recommendations of the CRL Commission.
- propose strategies to limit religious abuses and ensure religious freedom through religious regulation.

1.5. The theoretical foundation of study

The study is grounded on the theory of paternalism for the analysis of empirical realities related to religious regulation in South Africa. Paternalism is associated with the concept of the nanny state, which is a bloated and over-regulated form of government (Barnett, 2015). It can further be described as a government that attempts to protect its constituency by controlling their lives in a way that takes away their independence (Harsanyi, 2007). There are two main assumptions related to paternalism, one is that it is necessary and acceptable to use policy to limit people's liberty for their good or improve their situation in a particular way with or without their consent (Grand & New, 2015). The other assumption is that interference or coercion without the others' consent is impermissible or unwarranted (Weber, 2013). Proponents say paternalism is justifiable and acceptable when addressing the failure or inability of an individual to make a sound

judgment (Weber, 2013). Mill (1859:12) opposed unwarranted interference except to prevent harm to others.

Paternalism as defined is the interference with one's freedom without consent for the promotion of a person's good. Other scholars argued that paternalism disregards people's right to self-determination where authorities ban or restrict so-called harmful behaviour (Harsanyi, 2007). Paternalism is considered harmless when there is no use of coercion to achieve the end objective. It has been widely expressed that the idea that paternalism restricts liberty is false (Grand & New, 2015). One of the reasons paternalisms seems to be widely accepted by people is because they perceive words in subtly different ways, especially when it comes to words like consent, freedom, and individuality. Many people accept paternalism when it stems from the backbone of morality and is aimed at the achievement of good for the one whom the paternalistic decision is made (Weber, 2013). A typical example in point is the act of paternalism regarding the life of a patient in a life-threatening situation. This is termed euthanasia in medical terms: a doctor in this instance has the right to decide to take life due to life-threatening medical reasons.

The term masquerade refers to concealment and disguise where those involved make show of what they are not, being both the opposite and them (Sylvester, 2015). The art of the unsaid and hypocrisy form the heart of masquerade as a concept (Akubar, 2016). Masquerading is about hiding the true human nature of political and personal plotting, in other words, concealed agendas of the perpetrators (Sylvester, 2015). Politics is said to be one of the greatest forms of masquerades and indeed the most destructive. It is on the backbone of this reality that affected religious leaders understand the idea of religious regulation in South Africa as a masquerade of paternalism and not what it is meant to come across as on face value. Religious regulation masquerades as a form of leadership but it is, in fact, a survival game for politicians and their cronies (Akubar, 2016).

1.5.1. The theoretical argument

The conceptual argument in this study is that good governance by the State includes religious regulation, which protects and promotes religious freedom and human dignity. Therefore, religious regulation does not in any way amount to paternalism.

1.6. Research design

The study is an outcome of an interpretive research paradigm. Based on the qualitative case research method, the study observes the religious community in South Africa and its interaction with state institutions where contentions about religious regulations and paternalist masquerades find expression. The research consists of five objectives answered throughout the five chapters set out in the proposed research (Kumar, 2019).

1.6.1. Population and sampling

This study is based on the purposive sampling of the CRL Commission's report on religious regulation in South Africa, particularly in the Christian denomination and section 15 and 31 of the South African Constitution. This includes the analysis of already existing video, audio, and text content of religious leaders and organisations in South Africa, which comprise the anti-regulation of religion summit, and the South African Council of Churches (SACC) to provide a meaningful contribution to the study.

1.6.2. Data collection tools

The study is based on desktop research of academic literature (books, journals, thesis), newspaper reports, video and audio files, and social media accounts that cover debates about CRL and religious regulation in South Africa. This way, the researcher accessed reports based on actual accounts of the subject matter without interfering with or influencing perspectives unfairly. The research captures authentic views of affected and interested parties from their point of view and the meaning they make of reality (Mugenda, 2011).

1.6.3. Data analysis techniques

Content and narrative analysis are essential to provide answers and authentic descriptions of disagreements about religious regulation and paternalist masquerades in South Africa. The dissertation identified how people describe themes such as paternalism, legislative overreach, religious regulation, religious freedom, and masquerade politics. These meaningful themes helped develop arguments and

conclusions about paternalism in religious regulation. The dissertation also suggests strategies for religious regulation without undermining religious freedom (Mugenda, 2011). Figure 1 below is the reflection of theoretical concepts and themes that helped build the connection between paternalism and religious regulation through narrative analysis.

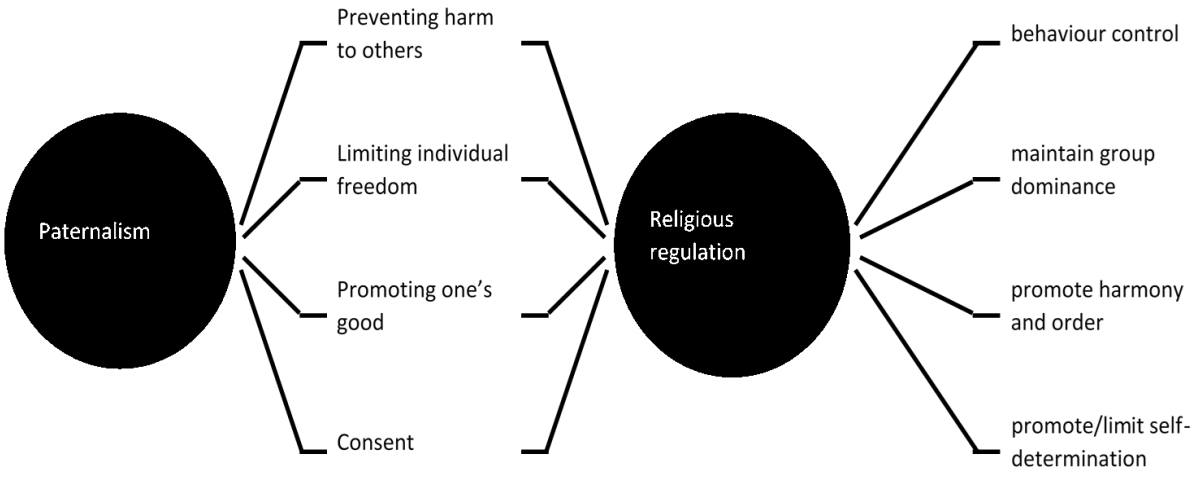

Figure 1 The theoretic concepts of study, own construction

The figure shows that the control of human behaviour through regulation is often justified by the reason of preventing harm to others, promoting harmony, and the common good. Yet, the absence of consent, limiting self-determination, and group dominance over others are reasons for the backlash against paternalist regulations that opponents say limit their rights and freedoms.

1.6.4. Ethical considerations

This study presents no risk at all. That is because the researcher used information that is already available on Facebook, Twitter, YouTube, and radio. The researcher cannot violate privacy where the person who posted has set a post to be available to the public and not private among a close circle of friends. Desktop research in this case respects the integrity of persons. The use of full citations acknowledges contributions and ideas of other authors from books, journal articles, and media sources (Connelly & Lynne, 2014).

The researcher has also completed the North West University (NWU) ethics course as part of the mandatory requirements for all postgraduate students.

1.6.5. Limitations of the Study

This study examined whether paternalism "nanny state" masquerades as church regulation in South Africa. The researcher used document analysis as the technique for data collection (Bowen, 2009). Conducting interviews with ordinary members of society may also help strengthen the study further, to provide views from a broader scope of people, however, interviews proved difficult in terms of cost and the newly introduced regulations following the COVID-19 that restricted movements due to the rise of infections (Bowen, 2009). The researcher has also had no success soliciting permission from identified prospective respondents for the six months of preparing ethics clearance. A task the researcher abandoned when it became clear that it would be hard to meet the ethical clearance requirements in time. As a result, the researcher opted for a desktop study design.

1.7. The significance of the study

The study clarified the facts about paternalist masquerades in religious regulation. It further describes the state of self-regulation by the religious community and its implications for religious freedom. Freedom of religion in South Africa is an inherent constitutional right just as it is in many constitutional democracies around the world. The study will thus explain the extent to which the state interferes in religion for the sake of protecting basic human rights. Political science scholarship gives little focus to issues of religion and public affairs. Moreover, this dissertation is not about opposing religious regulation, but promoting religious regulation and religious freedom alike (Kim, 2015).

1.8. Literature review

The study in question is aimed at accessing the reality of elements of a nanny state or "hard paternalism" in the recommendations by the CRL, which were dated and released in 2017 following media reports of abuse within religious spaces. Therefore, the following review of the literature investigates how the religious regulations, freedom, and

constitution have evolved over the years concerning the right to religion, what limitation is present and how these limitations, if any, may infringe on the right to freedom of religion. Moreover, a review of literature on paternalism, government regulation, and masquerading systems in government systems from a religious point of view would be looked at. For this purpose, databases such as the NWU boloka repository, the NRF Nexus, the national ETD portal, and ProQuest were valuable. These include Google Scholar search engine, plus B-OK, AOPEN, and LibGen online libraries. In addition, the research used paper submissions on the subject matter from academic search engines such as Google Scholar, Science Direct, and research sites such as Academia.

It is also important to add that this dissertation investigates a topic that has had little attention from within political science in South Africa. Theologians do research on the state and religion. Outside theology, the main researchers on religion and the state are Dube and Zondi (2019), who have argued that the idea of religion as a form of human phenomenon, must no longer be left to the few privies to religious agents or churches, but rather that it must fill a central space within the 21st century scholarship. This view justifies the political inquiry into religion as a terrain of politics or public affairs. Prominent publications that discuss a theme similar to this study include from the Faculty of Theology, Banda (2019), who argues that the report by the CRL fails to address the prevalence or reach of the problems which it has identified in the religious community. This argument supports this study in making a claim that the CRL proposal is paternalistic because it seeks to present group dominance on the Christian community and ignores the misbehaviour in other religious groups. In other words, religious regulation is likely to affect Christian communities alone. From the Faculty of Law, Coller and Akinloye (2019); Dube and Zondi (2019) argue that the problem is the non-compliance of religious organisations on matters of financial abuse, and that state institutions charged with the enforcement of existing laws are ineffective or not doing their job. Hence this study uses this argument of non-compliance religious organisations and weak law enforcement by the state to speculate about paternalistic masquerades. This aspect religious regulation as a form of paternalism is what scholars have neglected analysing. This dissertation therefore tries to show that the CRL is over-reaching its mandate by proposing to assume the work of being a supervisor of the Christian religious community, something it does not

intend to do on other religious groupings. The NRF nexus portal shows there is no published MA or PhD study that assesses the perceived Paternalism masquerading as regulation of churches. The dissertation aims to contribute to the already existing body of knowledge about the church and state because academic projects by South African political science researchers are scarce.

After 1994, the idea of freedom of religion became a guaranteed right found in the constitution for the very first time ever. The Constitution of South Africa, Act 108 of 1996 allows diverse legal groups, legal interests from cultural, language, and religious associations to enjoy their culture, language, and religious practice together with other members of society.

Paternalism or a nanny state is such that protects people from themselves (Stewart, 2000). The nanny state prohibits activities that might cause people to harm themselves or put their lives in danger (Coons & Weber, 2013). For instance, government regulations on religion can be seen as nanny-state legislation; legally compelling churches not to engage in religious rituals and activities that might pose danger to themselves. This might involve the drinking of petrol or be sprayed with insecticide spray with the hope of being healed of sicknesses. Nevertheless, the challenge in South Africa is about the lack of consent by churches to religious regulation (EWN, 2016). Bonk (2007) further defines paternalism as follows: The principle and practice of paternal administration; government as by a father; the claim or attempt to supply the needs or to regulate the life of a nation or community in the same way as a father does those of his children. The study in question is aimed at accessing the reality of elements of a nanny state “paternalism” in the recommendations by the CRL Commission, which were dated and released in 2017 following media reports of abuse within religious communities. Therefore, for the dissertation to materialise this intention there is a need to critically assess the concept of regulation as a system to exercise government power and control and further investigate its implementation from a South African as well as an international perspective.

Regulation is often regarded as an exercise of control over a particular region or state using laws and rules that govern, governments often use this method through the introduction of policies and laws that are implemented to effectively regulate society

(Baldwin et al*.,* 2012). In South Africa and some states like China and Israel, there are regulatory measures put in place, such as the one-child policy of China, the entrenchment of solely Jewish religion in Israel, and the COVID-19 regulations that imposed alcohol bans and the restriction of movement. With all the questions of states using regulation as a tool to masquerade as paternalism, this makes it important to effectively define the concept of masquerade (Baldwin et al*.,* 2012).

Masquerading symptoms implicate both the church and the state practices. Some mega-churches claim to operate for public benefit but serve to enrich the leaders, claiming righteousness but practicing criminal deeds. Controversial news reports show pastors leading adherents to ingest petrol, snakes, grass, or donate large sums of money in exchange for a blessing or miracle (FOR SA, 2017; SACRRF, 2018). Public responses opined that religion is not a conduit for personal enrichment and not service for public welfare (Majumdar, 2019; Barnett, 2015). The state could also claim religious regulation to be in the interest of human rights protection by serving to limit church leaders who are critical about state policy or limit the church's influence in politics. However, government masquerading can be viewed positively: this may be seen through the government tax legal framework aimed at making it compulsory for legally established religious groups like churches to pay tax and contribute to the social protection grants distributed to the needy, children, old, and the disabled (Majumdar, 2019). To conclude the literature review it is necessary to also define how these elements combined create the idea that the proposed regulations by the CRL, may amount to what is termed a nanny state: A British term which means a form of government or policies of an overprotective nature that unduly interferes with the ability to make a personal choice. Within a nanny state, a government aims to be protective of people from harming themselves, in the confines of a nanny state. This dissertation therefore emphasises the conceptual aspect of a nanny state in that the CRL proposes undue interference in religious organisational operations, introduces overprotective laws by setting institutions to govern religious organisations while there already are laws that can curb the identified challenges in religious practice, and that religious regulation is without the consent of the affected parties (Van der Vyver, 1986; Harsanyi, 2007).

The dissertation aims to use the knowledge gained from the literature review to effectively tackle the remainder of the chapters to investigate and prove the validity of the study and the questions it seeks to answer.

1.9. Chapter Layout

The dissertation is organised into five chapters as follows:

Chapter 1: introduced the study and explains the problem of paternalist masquerades in religious regulation in South Africa.

Chapter 2: covers the theoretical foundations of religious regulation and clarifies the extent of paternalism in it.

Chapter 3: analyses questionable church practices, leaders, and the responsibility of the state in maintaining order or protecting citizens.

Chapter 4: critiques theoretically and empirically the assumptions of the CRL and determine what paternalism there is.

Chapter 5: concludes and proposes strategies to limit religious abuses and ensure religious freedom through religious regulation.

2 CHAPTER 2: THEORETICAL LINKAGES OF PATERNALISM, RELIGIOUS FREEDOM, AND REGULATION

2.1 Introduction

This chapter is about the theoretical exploration of paternalism, how it finds expression in religious regulation, and how that regulation affects religious freedom. It is by making this connection that the dissertation lays a foundation that allows for critical analysis about the alleged masquerade politics and religious governance in South Africa. The first section presents the social contract explanation as a basis of justification for the state to intervene in religious affairs. This then sets contentions about the state-church relationship in motion. The term paternalism is one that needs to be defined as it has been at the helm of debates around the world, however in order to effectively do this, it is critically important to understand that this cannot be done effectively without highlighting the social contract that exists. The second section unpacks the concept of paternalism in its various forms. This section helps understand the benefits and disadvantages of intervention in other's affairs. The third section about regulation and its types is important to identify how and why religious regulation comes into effect at different levels as the fourth section shows. Gaining an understanding of the theoretical frameworks of paternalism, religious freedom and regulation is crucial to determining that the regulation of religion as proposed may have a negative impact on the right to freedom of religion and thus ultimately impact negatively on the social contract that is in place in South Africa, which will then result in paternalism. The fifth section draws linkages between paternalism and regulation, which is important for the theoretical arguments about masquerade politics in the next chapter.

2.2 The Social Contract as a basis of paternalist policies in modern societies

The social contract concept can be traced to a rather Western thought origin, which defines and has contextualised a basic constitution and make up of society. According to Adams (2018) Hobbes loosely defines it as a logic that in essence captures the relationship between laws or rules, and why they are a necessity within the bounds of society. In his argument Hobbes mentions that societies before civilisation (in the state of

nature) constitute a life that s brutal and not suitable for human survival and happiness. Another theorist, Jean Jacques Rousseau (1923) conceived of societies where individuals have free reign and are not governed by rules and laws. Moreover, Rousseau states that within the confines of a natural state man was naturally an object of pity as they lived in peace and harmony, therefore, the idea of bringing harm to another was one that was rather farfetched and did not feature in the makeup of society (Adams, 2018).

In addition to this, Rousseau adds that greed arose from the evolving nature of society which led to the introduction of property ownership; which then led to society seeking ways to effectively protect what they felt they owned from others (Rousseau, 1923). So in essence the notion of the social contract speaks to how living can be accomplished without receiving any form of cohesion from another. This absence of cohesion is what informs beliefs about individual freedom. Another side of the debate assists the argument in this dissertation about the elements of paternalism in the proposed plan to regulate religion in South Africa. One scholar worth mentioning in this regard is David Gauthier, who makes an improved argument on the argument made by Hobbes. Gauthier argued that society can establish a form of morality without having to enforce mechanisms of sovereignty (Adams, 2018). In other words, Gauthier hints that people have sufficient rationality for an individual to cooperate with members of society for the common good without the state guiding or compelling them.

Therefore, matters of state intervention through regulation ought to consider the extent to which people can self-regulate in a manner that makes peaceable living possible. Which means that the state is only accepted to intervene when members of society misuse their power to subjugate and make like difficult for others. And the premise of making life difficult would include a threat to life, freedom, and property. It follows that the state is a referee of social affairs to resolve disputes when people do not honour their agreements. This aspect when coming to religious regulation in South Africa becomes relevant where organisations do not heed to laws that are intended to facilitate a peaceful coexistence. The reason for the existence of the state is therefore summarised in the duty to ensure safety (in that members of society should not avenge themselves or take the law into their own hands).

2.3 Understanding the idea of paternalism

The debate surrounding the idea of paternalism is not new, mainly because it is a phenomenon that engages deep philosophical issues through normative ethics and political philosophy related to the relationship between the state and the individuals in matters of autonomy and freedom (Begon, 2016). Many laws and policies around the world are paternalistic and carry controversy surrounding them (Begon, 2016). White (2013) relies on Dworkin (2010) to define paternalism as the interference by the state or an individual with another person, against their will, and defending that interference with a claim that the one interfered with will be better off or protected from harm. According to Miller (2013) the nub of paternalism is impinging a person's freedom for the person's freedom. This is considered impermissible under Mill's (1859:32) definition of liberty, in which he adds that the only purpose for which power can be rightfully exercised over a member of a community, against their will is through the attempt to prevent harm to others. In other words, paternalism is justified when it prevents me from harming you, but not for me not to harm myself. Grand and New (2015) seems to agree with Mill by indicating that interference for the reason of promoting an individual's own good is never justified.

In context to government, paternalism can be described as some form of interference, which mostly requires a form of justification in using public policy to limit one's liberty for their benefit (Grand & New, 2015). Using the logic of harm to self-versus harm to others is not simple as that to define paternalism. Steward (2000) posits that paternalism (also called the nanny state) is such that protects people from themselves as well. The nanny state prohibits activities that might cause people to harm others and themselves or put their own lives in danger (Coons & Weber, 2013). Therefore, the main elements of paternalism are – i) interference (with choices and actions of the other), and ii) reason (for the good - to benefit the person interfered with).

For instance, government regulations on religion would express a nanny-state that prevents people from willingly participating in religious rituals and activities that may endanger them – or disallowing religious practitioners to prioritise safety when carrying out rituals (Bonk, 2007). Rituals that endanger people might involve the drinking of petrol

or being sprayed with insecticide spray for healing as it occurred in South Africa. Other incidents that draw the public attention and calls for paternalist laws include incidents where adherents drown in rivers during baptismal rituals. Such laws may include banning baptismal services during seasons of high rainfalls or altogether banning baptisms in rivers. The contention on regulations is not mainly about general safety but regulations that affect individual choice in rituals in religious practice. For example, the laws exist on the building regulations, the floor plans, evacuation points where large crowds gather – and religious organisations adhere to them without concern. While in recent debates that, the adherents giving money for the sustainability of the religious organisation might be acceptable, it is unacceptable to exchange money for healing or a blessing (Masenya and Masenya, 2018:636). In chapter 3, the dissertation will elaborate on the hearings held to investigate these reported violations and criminal cases related to them that are underway. Bonk (2007) said paternalism is the principle and practice of government as by a father; the claim or attempt to supply the needs or to regulate the life of a nation in the same way as a father does those of his children. However, not all relationships between government and religion can be termed paternalistic, such as secular, autocratic, dictatorship and democratic relations (Bonk, 2007).

There exist controversies surrounding a widely accepted definition of paternalism viewed from a broader or narrower perspective and the acceptance of its justification (Coons & Weber, 2013).

2.3.1 Justification for paternalism in social policy

Governments over the years have been called upon by different groups such as Section 27, and the South African Human Rights Commission(SAHRC) within the South African society to introduce policies that alter human behaviour deemed out of control such, as consumption of unhealthy food (sugar), alcohol abuse, gambling, smoking tobacco (Todele & Moland, 2019). In countries such as Australia, preventative regulatory frameworks have been introduced leading to increased policy focus on gambling regulation, preventive health, and behaviourally based forms of paternalism (Baker, 2009). There has been an increase in paternalistic policies among western democracies such as the United States of America and Australia, which brought about what is called

new paternalism (Begon, 2016). This new approach has shifted from merely helping people to making demands in their best interest using control (Kim, 2013). Widely accepted forms of paternalism like the wearing of helmets, seat belts and tobacco restrictions do not face public opposition as much as others because they are deemed acceptable and justifiable. They are deemed justifiable because they protect the person and others, promoting the greater good. The justification of paternalism in public policy lies on the legitimacy of the state the ultimate authority in making laws that govern people's behaviour for prosperous communities. The existence of government itself is because people wanted it to be, thus, the people have invited government to interfere in their affairs. This is the legal legitimacy is the justification for paternalism. Examples of paternalistic policies also encompass pension deductions from workers to lead them to save for retirement purposes and be less of a burden on government and reduce poverty. But the issue then does not centre around the legitimacy of the paternalistic behaviour. But around what type of conditions these paternalistic policies exist in that warrants legitimacy (Kim, 2013).

2.3.2 Paternalism justification for interference in one's freedom

The most cited definition of paternalism is the interference with one's liberty (Carpenter, 2004; Thoma, 2021). The justification for such interference is the promotion of the welfare, good, happiness, meet needs, interests, or values of the person (Carpenter, 2004). The issue of contention, therefore, is about the constraints that interference put on the other and their ability to secure and define their good like when the individual does not have freedom of action (Daniel, 2012). Lack of freedom of action can be painful for a chronically ill person who want to be assisted to die but the laws of the state do not allow it. On the other hand, paternalism does not necessarily have to do with the interference of one's freedom. Like someone being admitted into a hospital and needing a blood transfusion (Daniel, 2012). But in the process, it is then discovered that the person's religious beliefs do not allow the transfusion to happen. While conscious, this person then informs the doctors of his/her decision before they slip into a coma. In this case, should the doctors proceed with their job they may be acting paternalistically, but not interfering with the patient's freedom as at the point of interference the person is unable to make their own

decision (Thoma, 2021). Paternalistic actions include medical practitioners who remove women's wombs without their consent to minimise the occurrence of unplanned pregnancies or the birth of HIV infected infants (Bi & Klusty, 2015; Ebrahim, 2020). The focal point of this definition is that a paternalistic act cannot be undertaken without the enforcement of any immediate coercion, it can be thus better termed non-freedom restricting paternalism. This can be seen as paternalism that occurs in the event an action that involves the violation of moral rule towards the person interfered with (Narbet, 2015).

It can thus be said that paternalism is an interference with one's autonomy and that is the crucial point concerning the concept. For paternalism to be evident what must exist is a violation of the autonomy of an individual. This interference may include omission of information and/or withholding information, coercion, refusal to cooperate and or manipulation. Government as an institution helps explain many of the above definitions through the way it conducts its affairs by enforcing sanctions that interfere with people's independence. Government interferes in people's independence and decision-making capacity for example, by giving out tickets or making an arrest for not using a car seatbelt and prohibiting the illegal sale of narcotics. Government can further add restrictions through the withholding of information from people or it can control what is released (Narbet, 2015).

2.3.3 Paternalism justifications for promoting the good

One of the central concepts surrounding paternalism is the idea that interference in another's affairs to help further their good. It implies that one interfered with has limited ability to exercise sound judgment. For instance, an individual's reasoning capacity could be flawed, thus forcing the state to act protectively towards others shielding them from the consequences of the former person's failings. In Miller (2013), this distinguishing factor helps highlight a particular focus of paternalism as actions that are warranted as self-regarding, in other words, actions that do not harm others. However, there is not always a clear distinction between self-benefiting and self-regarding actions, because activities that have no form of influence on another through offense or causing a form of unhappiness are minimal, if any (Ahlstorm-Vji, 2013). Paternalism can thus be attributed to the government acting in a way that enforces morality in that morality does not involve

or require intentional or explicit harm to the interests of an individual rather than being merely cruel (Grill & Hanna, 2018). However, the fact that there are wide range of ways in which people can in principle act for their own good is not all related to the individual's ultimate happiness. Hence it is assumed in the above that any decision on the interference will or is not discounted as paternalistic action. It is also important to continue to highlight more characteristic elements commonly cited when referring to paternalism, one of which is centred around the question of consent (Grill & Hanna, 2018).

2.3.4 Paternalism justification for the imperative of consent

Paternalism may be said to consist of two elements, namely, the interference with one's freedom and the promotion of a person's good. In most cases however, there is a third element that is included - the absence of consent. Most often, paternalistic actions do not allow people an opportunity to express whether they agree or disagree to interference in their lives (Sartorius, 1983). “For one thing, there is something arrogant about paternalistic interference; a distinct kind of disregard for the wants, preferences, or opinions of those interfered with. With that said, it is not necessary that the agent interfered with must object to being interfered with, or that such interference be otherwise against their will, for an interference to qualify as paternalistic” (Ahlstrom-Vij, 2013).

Paternalism is loosely attributed to the notion of lack of consent from a broad perspective, as many authors have made noticeable strides towards this issue (Sartorius, 1983). However, in the arena of government from some perspectives, this form of notion may be immune in the sense that laws apply to a populace rather than a sole individual. Therefore, an individual cannot ideally consent to the enforcement of a particular law when being enacted. It is not important whether the individual consents, which is why many government laws or policies are highly controversial in that they always are opposed by some people in society (Ahlstrom-Vij, 2013). For government laws to enjoy broad support in society, public consultation is important and serves as consent when the majority in society support them. It cannot be believed that the issue of consent should be excluded as an issue that is not important for justification. The reality is that for as long as the option of consent is closed off, any enforcement and intervention in a person’s affairs constitutes paternalism, whether the recipient agrees or not. The idea of consent

for government can on the other hand be considered redundant (Enoch, 2016). Yet, Ahlstrom-Vij (2013) argues that “asking and subsequently acting against the will of those asked does not qualify as having consulted them”. White (2013) makes a similar argument that “paternalism is inherently opposed to personal autonomy, no matter what form it may take, because it interferes with people’s determination and pursuit of their own interests.” This establishes the debate about religious regulation in South Africa, where religious communities feel their input in the policymaking process will not shape the outcome in the final policy enactment.

Like many other concepts and theories, paternalism has those who advocated for and against it as a system of rule or regulatory measure. Those who cite paternalism as unjustified or unacceptable argue that it “involves a certain disregard for the wants, preferences or opinions of the person interfered with” (Ahlstrom-Vij, 2013; Bullock, 2012). One of the reasons paternalisms seems to be widely accepted by people is mainly because people perceive words in subtly different ways, especially when it comes to words such as consent, freedom, and individuality (Sacha, 2007). For many, when paternalism stems from the backbone of morality it is viewed as justified for as long as it is aimed at the achievement of good for the one who decision is made for. In addition, paternalism is viewed by some as without harm when it does not necessarily use coercion or a force to achieve the end objective for the person in question. On the other hand, the idea that paternalism restricts liberty is regarded as false and hence not as restrictive as it is argued to be (Enoch, 2016).

However other scholars such as Bullock (2012) and Sacha (2007) have put forward arguments opposing the above views, highlighting the harsh realities of paternalistic behaviour like the lack of self-determination, the interference with one's autonomy. The question around what forms these paternalistic behaviours take surrounds whether the route of banning and restricting so-called harmful behaviour is justified (Dworkin, 2004). This then raises a debatable question that forms the core of the research paper, which is, to what extent does the proposal for religious (self) regulation signify paternalism? The dissertation further seeks to explore the risks that follow from giving the government

decision-making power over certain basic freedoms such as religion to save people from themselves (Hall, 2018).

Fahlbusch and Bromiley (1972) pointed out that "paternalism, then, will always involve limitations on the liberty of some individuals in their interest, but it may also extend to interferences with the liberty of parties whose interests are not in question". Paternalism is invariably described as coercive interference with the liberty of an individual for either his good or the good of others (Kim, 2015). Be it as it may, the question of paternalism is now becoming a prominent theme in South African politics.

2.3.5 Types of paternalism

The term paternalism is loosely defined as the state assuming the role of father, the right and obligation of overruling over those deemed incapable of making their own decisions about self. Thus, in a setting of a political or public policy arena, paternalism is seen as a form of intervention in private interests or decision-making (Woodward, 2020). Paternalism has different variants, namely narrow vs broad paternalism, hard vs soft paternalism, strong vs weak paternalism, new vs old paternalism, impure vs pure paternalism, and welfare vs moral paternalism.

2.3.5.1 Narrow and broad paternalism

Narrow paternalism refers to actions from the state to the constituency like government implementing seat belt laws; while broad paternalism involves any paternalistic action that does not involve the state like a friend not permitting another friend to smoke in their car or ride in their car without wearing a seatbelt (Bernard & Culuer, 1976).

2.3.5.2 Hard and soft paternalism

The idea and understanding behind hard paternalism are that the state can interfere or intervene in individual’s decisions even if the decision is made knowledgeably and voluntarily (Hanna, 2018). In contrast, soft paternalism is a form of intervention by the state in the event an individual is argued to be making an ill-formed and involuntary decision (Hanna, 2018). Intervention in any form is only justifiable to the extent where one

is argued to need any form of protection from harm which they did not ascertain or consent to. This is regardless of whether one acted knowledgeably or voluntarily, according to this definition an incident of soft paternalism may not be regarded as paternalism as it comes as a form of corrective measure (Bernard & Culuer, 1976).

2.3.5.3 Strong and weak paternalism

Strong paternalists are those that deem it justifiable to interfere in people's means to an end, through restrictions implemented. An example of this can be a ban placed on literature that provides information on suicide. Weak paternalism is used to describe paternalistic behaviour used to achieve an objective to accomplish desired end. For example, being denied access to medical treatment is deemed to be ineffective (Bernard & Culver, 1976).

2.3.5.4 New vs old paternalism

According to Coons and Weber (2013), there are two differentiating factors between new and old paternalism. Old was a way of restricting people from receiving welfare, but on the other hand, new paternalism is not concerned with using restrictive measures to prevent people from acting in ways that result in harm but is used to an end. Often used by governments and businesses to ensure behaviour is steered in a particular direction for the benefit of the one enforcing the paternalistic rule or law. Old paternalism was often used in private organisations such as churches and philanthropic organisations, many of these are often aimed at educating people morally and creating a sense of improvement in society. By contrast, new paternalism is mostly government-driven and involves the supervision of society (Thoma, 2021).

2.3.5.5 Impure vs Pure paternalism

The idea of impure paternalism has to do with intervention where the class of the interfered is greater than the class being protected (Sacha, 2007). By contrast, pure paternalism has to do with an intervention that is specifically directed, here the class interfered with is directly proportional with the one being protected. An example according to Dworkin (2013) is the prevention of the manufacturing of cigarettes because they are

harmful to consumers, although consumers consent to be harmed or not. An additional example is the restriction of the sale and distribution of marijuana with the intention of protecting one from harm and risk regardless of consent. This route affects the entire value chain, from production to the consumer. On the other hand, pure paternalism deals with restrictions on people's own choice to smoke; this can include specifying areas where smoking is permitted. However, this form of paternalism does not necessarily affect everyone, just the smokers (Bernard & Culver, 1976).

2.3.6 Criticisms against Paternalism

According to Mariner (2014), it is important to acknowledge that people do not always behave in a manner that they are required to. This is seen by all sectors across board such as governments, businesses, religious leaders, non-profit organisations, and friends that have discovered that people do not always act in their best interest. Considering all the above, the question is whether anyone should care. Realistically people must care about the behaviour of others, specifically if this behaviour affects them, but critics of paternalism argue that it makes no sense for governments to care about self-harm (Sacha, 2007). The focus here is on government paternalism because of its coercive nature. It is due to this coercive nature that criticisms develop; the research here will attempt to highlight some of these critiques that have resulted due to governments.

All ideas have always had and continue to have those for and against; this stems from the understanding that society has different world views and moral ideas. Paternalism is no different in that it, too, has had critiques and those who hold opposite views to it (Hall, 2018). According to Rizzo and Whitman (2009), the philosophical debate surrounding paternalism and its legitimacy have been around since the early 20th century, but further research proves that this debate may have pre dated the early 20th century through the writings of philosophers such as John Locke, whose writings together with the writings of Mill on the rejection of paternalism in a book titled On Liberty, have formed an integral foundation for liberty and freedoms as known today. When assessed in depth most of it stems from the aspects surrounding freedom and autonomy. Miller (2013:173) equates paternal government with despotic power that cannot success in moral education of society

Locke (1823:87) presents the critique of paternalism by arguing that political subjection and obedience based on paternal authority or hereditary rule is irrelevant in modern society. It seems that Locke traces the roots of slavery and absolute power from paternalism – and this in democratic societies is undesirable. Of course modern paternalism in government does not claim authority based on some actual father in whose name it demands people to be obedient. Rather, the policies that governments enact have a fatherly feel or function that limits the citizens' independence in life, in short, they are domineering. Hence the need to limit the state's involvement in religious affairs and personal choices of belief. The aspect of overstepping the private jurisdiction of religion by the state would be seen as paternalistic (Hudlin, 1985). The defenders of paternalism would argue that seeing paternalism as only domineering is misleading because the function of the father is also about caring and ensuring security for their own. Therefore, public policy has a dimension of concern and protection the vulnerable in society, which includes state institutions observing what happens in the private sphere. The debate about religious regulation presents paternalist implication in that the religious practitioners begin to be accountable to the state institutions – which is what is not acceptable for the community that believed that God is the head of the Church and the law giver for religious practice, not the state. Therefore, religious regulation should have limitation that show what it is practitioners will do in their own will and on that basis the state will intervene – such boundaries do not exist in the CRL proposal. Which makes it problematic and hard to support. It is unsuitable therefore, to give the state the prerogative to decide religious practices.

Locke (1823:82) submits that paternal power applies where subjects are minors and incapable to manage their affairs. Religious communities in South Africa feel the state should not treat them as minors, and religious regulation should not take away their agency. White (2013) confirms the disagreement by identifying the practical problem of paternalism because it is not possible to fully know what is best for others or help them through laws and policies. The violation is in the moral problem of paternalism that White (2013) identified, that people have a right to pursue their own interests. This implies that to act on people's behalf deprives them the opportunity of being or the meaning of life. The limitation of complete freedom to exercise decision-making between right and wrong

seems to not take into consideration the moral burden borne by those whose choices are interfered with (Arneson, 1980). Another critique of paternalistic behaviour is the means to an end, an immoral action is used to attain a moral end (Hudlin, 1985), a notable example is the prohibition of the selling of drugs, prostitution and animal poaching in addition to this is an example of the ban of same sex relations in countries such as Zimbabwe and many other African countries and the subsequent imprisonment of individuals who engage in same sex relations (Arneson, 1980). The issue here is whether being motivated or feeling duty-bound constitutes or warrants the moral ground to act. An example of this is placing sugar restrictive measures on foods to protect the society from obesity, placing curfews and time restrictions to prevent the movement of individuals, to help curb the spread of COVID 19. The definition of paternalism or state intervention is summarised as the struggle between liberty and authority (Mill, 1859:6). A struggle that delineates the extent to which the state acts morally when interfering in people's affairs. Mill (1859:12, 13) adds that the only moral justification for state interference (legislative or executive) private conduct (one's liberty) is when the person inflicts harm to others. An interesting aspect that Mill (1859:11) hints class interests and that the dislike of superiority is what fuel the opposition to paternalist actions. In addition to this, Mill (1859:10, 13) contends that simply intervening for one's own good is never justifiable. Considering all these arguments and doubts against paternalism, it is evident that many doubt the true moral nature and its existence on paternalism (Arneson, 1980; Hudlin, 1985).

According to Thomas and Buckmaster (2010) this behaviour of controlling people's choices for their good often comes with coercion in certain areas. This restrictive behaviour aimed at their own good can be defined as paternalism. These forms of policy reforms are very often critiqued for their characterisation of infringement on individual autonomy and/or individual liberties (Gert & Culver 1976). It is also argued that paternalism is regressive because it causes a dependence behaviour and erases self-reliance (Gert & Culver 1976). The problem of paternalism does not lie so much in the idea of protecting people from themselves but lies in the effects of the action on the minds of those it is implemented against (Giesinger, 2019). The message implied is that ordinary citizens do not always do what is good for them and therefore need a helping hand from the state to help them make decisions that are in their best interest. This is ironic as these

are the same people given the right and the authority to consent to medical surgery or not when required medically at health institutions to do so.

Considering the paternalistic critiques, it is important to draw from Mill's harm principle as his work in this regard is the backbone of scholarly arguments against paternalistic behaviour within the economic, government, health, and religious sector (Bassford, 1982). Mill manages to capture the contradiction between liberalism and paternalism, the concept of the harm principle according to Mill is one that is against placing limitations on individual liberties, unless such liberties affect the welfare of society negatively (Jaslow & Noll, 1981). In other words, when people are involved in activities that may harm them and not members of society, it is best to "advice, instruct, persuade, or avoid them" (Mill, 2017:159). Therefore, rather than the state preventing some questionable religious practices, it is best to speak against them, educate the public to avoid association with them. The second harm principle by Mill (2017:160) posits that conduct that is harmful to the interest of others is best met with social or legal punishment to protect the affected parties (Mtshilibe, 2019). In this case, the state and CRL could pursue legal sanctions against the offenders. While social punishment could be explained in instances where members of the public went to protest offending pastors as a sign that they are not accepted in society (Owojaiye, 2019). The harm principle does not condone forceful prevention of physical harm, social offense or moral, if the effects of the social offense or physical harm are limited to just the actor (Jaslow and Noll, 1981).

> "[T]hat the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant" (Giesinger, 2019).

The above excerpt explains why the only legitimate reason for states to limit or constrain the individual liberties is if the exercise of that liberty disregards the liberties of others (Jaslow & Noll, 1981; Dworkin, 2004). The rejection seems to apply across the board in all sectors and all forms of power, namely moral reprimands, and legal sanctions, in

simple terms both the government and the public sector are said to have no regard using their authority and power, preventing an individual from exercising self-regarding actions (Henrico, 2019). In his writings, Mill presents two reasons which carry his reasons for rejecting paternalism: he begins by highlighting that to effectively achieve human excellency, individual human autonomy should not be prohibited.

Firstly, Mill (1859) paints a few scenarios. Firstly, he brings to the fore the consequences of supressing human expression through three scenarios. He starts by dealing with the aspect of the silenced opinion as truth and argues that suppressing freedom of expression takes away the opportunity to change falsehood and dispatch the truth (Cami, 2013). In the following scenario, the expressed silence opinion is wrong because it denies affected parties the opportunity of discovering the truth through discussions. Secondly, Mill (1859) argues and cites another reason for rejecting paternalism as the fallibility of paternalistic interference. There is always the possibility that the interference in one's liberty against their will always results in undesirable outcomes the collapse of personal privacy and the rise of a despotic order where people cannot do what they wish in daily life (Houston, 2005). Even if the interference is done with the sole reason of benefiting the one it is imposed on, no one can justifiably exercise authority over self-regarding matters, it is merely the potential recipient of the government intervention that can rightfully decide what is in their best interest (Houston, 2005). Finally, Mill argued that humanity requires the opportunity and liberty to create opinion from exploring both sides of the truth (Henrico, 2019). The harm of government interference is the misjudgement of an individual expressions and beliefs (Van der Vyver & Green, 2008). It is better for people to formulate opinions, express them and be corrected in the public sphere than the evil misfortune of allowing others authority to restrain or dictate opinions concerning what is good for them (Van der Vyver & Green, 2008). Through this Mill (1859) attempts to reveal that man is in a better position of deciding what is good or bad for self. However, what is at the core of Cami's argument is human fallibility and the stern belief that an individual should be sovereign over self; Cami, (2013) argued that Mill is in no way saying man is perfect but asserts that even in their imperfection man stands in a better position to make that judgement call as opposed to others concerning self-regarding actions. Mill's thoughts are best applied in constitutional democracies like South Africa because of the

overriding concern that societal interference in an individual's life creates more problems than it solves (Fall, 2016).

Below are examples according to Mill (1859:17) that reveal the problematic nature of paternalism from the standpoint of majority rule over the minority individual, despite the possibility of being incorrect. In this case Mill cites the puritanical ban on amusement, Islamic religious abstinence, prohibition, regulation laws regarding the Sabbath and the sumptuary laws (Woodward, 2020). According to Mill (1859:8) the majority should not override the preferences of minorities, for example if an Islamic country prohibits eating or consuming pork, it should not prevent those who prefer to consume it, just to suit the majority. Likewise, laws prohibiting alcohol production and consumption also warrant unjust and unreasonable limits on individual freedom, in addition the restricting of amusement and leisure just because the puritan majority do not condone recreation is also unjust (Fall, 2016).

2.3.6.1 Arguments against paternalism

Considering all the above, naturally the question of what is wrong with paternalism is common amongst members of civil society and interest groups, and over the years it has become an increasing practice to raise concerns or views of the wrong side of paternalism, through protests, petitions, and civil litigations such as the legal battle between South African health institutions and the Jehovah's Witnesses church about the issue of blood transfusions for members. One of the biggest critics of paternalism can be quoted as John Mill in his offering titled On Liberty, his writing continues to from the base of arguments against paternalism within the context of society (Snowdon, 2017). Mill (1859), therefore cannot be left out of the discussion when it comes to achieving the objective of this paper—his main argument is that paternalism is unjustified in that it uses coercion and to act in the interest or good of the people. This view does not justify one's interference in the autonomy of another to make decisions for self-benefit (Snowdon, 2017).

Snowdon (2017) argues that at times governments are overwhelmed by the pressure to act against a particular thing, but this is often misinterpreted by governments as anything

can be done. However, acting at all costs is a terrible way to make policy by government. Snowdon asserts that it cannot be denied that some form of regulation is required but the question he poses is whether regulation should be imposed for the protection against self. It is not disputed that the government ought to protect individuals from others, but the question of the protection of self is one that seems to hang, no reason justifies paternalistic behaviour (Bullock, 2012). From the above it is evident that the debate about paternalism is one that will continue for as long as the relationship between institutions and civil society exists. This is because the exercise of power is the ability to control and shape human behaviour. In chapter 3 the writer expands on the CRL, its findings and its recommendations, including findings of other institutions such as the Department of Cooperative Governance and Traditional Affairs (CoGTA), and religious organisations. By doing so the writer aims to validate and answer the main research question and the research objectives.

2.4 The concept of regulation

The survival and development of modern societies are dependent on the government's ability to enforce a set of rules and regulations. According to Porket (2003), regulation can be defined as a process that contains the application, making, and adjudicating of rules that govern social interaction and human behaviour. It is a composition of rules and commands set out and applied to help govern a particular society or a group of people. Regulation, therefore, forces the state to either enforce any one of the forms of regulation to attain an end or a particular result. Regulation does not only exist on a governmental level solely (Lewin et al., 2010). The regulation of human behaviour and interaction has been and continues to be a feature in both modern and postmodern societies. Regulatory laws are often viewed as paternalistic and often opposed by many societies who emphasise the need for individuals to make their own life choices. In addition, most societies are governed by systems of plural regulation, informal regulation, and self-regulation (Cristi, 2005). Both informal and formal forms of regulation take place in various social systems such as neighbourhoods, localities, and households; what is a common thread among these is the restriction and the control of behaviour within a society. This

includes various systems that are functional such as formal organisations, and informal ones such as family units.

With reference to the difference between regulation and self-regulation, a social system can be identified through its ability to apply, make, and adjudicate the rules which govern the interaction and behaviour between its members or the society, including its interaction with its social environment. However, a social system cannot be viewed as self-regulating if these rules are enforced and imposed on it from the outside by another social actor (Lewin et al., 2010). There are naturally degrees of regulation and self-regulation, even in the private firms or free-market economies, the legal frameworks that exist operate, and even though societies are not entirely self-regulating, due to government regulatory constraints imposed by treaties, conventions, and international law (Lewin et al., 2010). There is regulation or control within society. Therefore, government regulation is both permissive and restrictive (Jordan, 2019).

2.4.1 Rules and Commands

For purpose of this research, it is important to highlight that rules are different from commands even though both carry authoritative power and are used to regulate human behaviour and interaction. Rules are a norm, which is applied to a general situation, and in contrast, a command (Yong, 2010) is from both institutions and society to help keep members of society morally grounded on the other hand, it is not a norm in this sense. A command is an authoritative order aimed by those in positions of authority in society at addressing a particular group of people or a social actor. Highlighting what the person addressed should or should not do in a particular circumstance; these are often given by those in positions of authority, government leaders, members of the economic sector and parents over their children (Yong, 2010). Both rules and commands must be enforceable (Lewin et al., 2010). Regulations in application exist on different levels.

However, how restrictive, or permissive the state becomes is a source of conflict in modern-day societies formed on the foundations of democratic autonomy (Baker, 2009). Permissive regulation is a form of regulation that allows members of society to comment about what is right and wrong for their lives. Therefore, permissive regulation is conducive

to autonomy, which is freedom. This then translates to self-regulation as members of society have the freedom to act according to what they perceive as best and befitting for their lives (Jordan, 2019). However, restrictive regulation is a form of regulation that constricts the autonomy or freedom of members of society. This form of regulation tends to have an overreaching bearing and impact on innovation, flexibility, and efficiency, mainly because of the cost implications connected to rule-adjudicating, rulemaking, and rule application (Jordan, 2019). Moreover, when government regulation manifests as either extensive or intensive, rules are often more specific rather than general and often create confusion; in addition, they must be frequently changed to respond to constant change (Baker, 2009).

Below the dissertation will explore in detail the idea of permissive and restrictive regulation as mentioned above, using examples of such.

2.4.1.1 Examples of the forms of restrictive and permissive regulation

To understand the different levels of regulation, it is important to first explain permissive and restrictive regulations that exist and are implemented by different states to attain a particular end or serve a purpose. Examples of permissive regulation, it has become increasingly evident that countries that lean more towards liberalism like the United States are more likely to have permissive laws or regulations (Sumner II, 2005). One such example is the law of gun usage in the United States, unlike other countries like China and Britain, the USA has permissive laws rather than restrictive laws when it comes to the ownership and usage of guns within civil society. Another example is the controversial abortion policy that exists in countries such as Britain, which allows citizens the free will to abort or terminate a pregnancy, where these types of laws are often met with criticism from members of religious communities. In addition, these very laws are restricted in other countries such as Tanzania where abortion is not permitted due to religious beliefs, which view it as a murder of an innocent being (Tadele & Moland, 2019). This is the case in Islamic states in Africa such as Morocco, and other Northern parts of Africa.

Other restrictive forms of regulation examples are the restrictions and regulations employed due to COVID 19 in South Africa, where religious gatherings have been

prohibited and at certain stages allowed only up to a certain number, to help prevent the spread as the government asserts. However, the conversation around marijuana and its legalisation has become widespread across the globe as more people are turning to natural/herbal forms of treatments and medicines, forcing governments to relook at restrictive measures previously imposed (Sumner II, 2005). Lastly, when discussing the aspect of permissive and restrictive regulations, the usage of censorship cannot be left behind, as censorship has become a popular way of regulating people's freedom of speech and access to information by states. In recent times, countries such as Swaziland, North Korea and Nigeria have been subject to criticism from within and around the world for censorship of communication tools such as Google, Twitter, and Facebook by government. This has also led to world governing bodies opposing this measure and stating that these effectively infringe on the rights of the citizens (Baker, 2009).

2.5 Understanding religious regulation

Religious regulation has become increasingly common in many parts of the world like Africa, Asia, and Islamic states such as China with their rather none-secular laws, Qatar and Zimbabwe. However, there is a need to conceptualise the meaning of the term to gain an understanding of what the objective and or backbone of the research project is, the paper aims to do this through the highlighting religious regulation building blocks and its meaning from an academic literature perspective. From a historic perspective, Hackett (2011) displays how religious regulation can be traced from as far back as the colonial practice era, or religious manipulations according to the needs of the colonial ruler. In Zaire, which is now the modern-day Democratic Republic of Congo, government had set out mechanisms both provincially and nationally for the disbanding of "sects" and "association indigenes" during the year 1938, as the government felt they were a threat to public order (Hackett, 2011). Furthermore, in the year 1965 and onwards the then leader aimed to construct an ideologically integrated Zairean state, through launching various laws to restrain public worship, such as the December 1971 law which regulated public worship and conditions that help grant one recognition as a religious institution in Zaire (Hackett, 2011).

Considering the above, it is important to define the concept of religious regulation. According to Ropi (2017), religious regulation can be defined as treatment and practice from the state apparatus toward religious groups, or religious beliefs, symbolism in a particular given nation-state based on the prescribed system of laws. In addition to that, it is said to be about action or policy by government agencies and institutions in managing or administering religious life as part of service delivery of good governance. The regulation of religion as stated above is not new phenomenon as it can be traced back as far as the history of human civilisation. In ancient times rulers, or governments in the modern age, always exercise authority and power over their citizens, including their religious affairs (Ropi, 2017).

Governments regulate religion mainly because they want to restrict religion's active participation in politics; this is mainly because of the fear that religion may use the power of its influence against the state (Van der Vyver, 2012). Another reason is the need to regulate religious practices, including institution and clergy. At least one form of religious regulation is administered by 95% of governments around the world, making it more acceptable over time (Cristi, 2005). According to Akinloye (2020), the decision to regulate institutions, practices and clergy comes in attempt to create harmony, preservation of purity and integrity, specifically within the confines of the church and regulatory practices are implemented to help conduct behavioural expectations from a societal perspective. Regulation is essential to the need of protecting the legitimate interests of protecting the community and businesses alike.

2.5.1 Different levels and types of religious regulation

Many governments such as Islamic states implement religious regulation to promote the dominance of Islam over other religions (BBC News, 2019). The building components of regulation or what behaviour warrants a regulation depends on understanding rules and commands are discussed below in different forms and types of religious regulation (Akinloye, 2020).

2.5.1.1 Government regulation of religion

Government regulation like any other form of regulation is implemented with the intent of steering social behaviour in a particular direction. This brings about the aspect of favouritism and discrimination, which are argued to be some of the reasons why government regulation of religion is imposed in parts of the world like northern Africa, Arabic countries, and Islamic states. According to Hackett (2019), Tanzania has stood out for subjecting the exercise of rights pertaining to religion to limitations that fully render the constitutional right of religion meaningless. Which is why studies weigh in on the idea that the constitutional protection of the right to freedom is cold comfort to religious groups that are not favoured by the parties in power. As stated above, the researcher aims to delve into two aspects, which are the different levels and different types of religious regulation; below the dissertation briefly discusses the regulation of religion in Islamic states, its grounds and reasoning (Hackett, 2019).

Muslim majority states regulate religion at much higher levels on average than non-Muslim states, because there is this traditional connection in Islam, government regulation of religion seen as legitimate and even as a positive good that governs all aspects of life, from religion, education to finances. Bramsen and Vermeer (2019), state that regulation of religion in Islamic states takes four basic forms. Which are firstly the countries approach towards having a state religion (theocracy), this is more likely with Muslim states, and secondly the degree to which Islam is supported. In such states, the support ranges from the implementation of Sharia law and to influence public morality and paying the salaries of imams. On the other hand, the third form has to do with the restriction of religion, this happens in many ways, such as repressing forms of Islam that move away from the government-preferred form of Islam to limiting the manifestation of politics in Islam that might challenge the ruling elite to imposing restrictions on worship practices (Bramsen & Vermeer, 2019).

Lastly, to bring the argument closer to home, for the purpose of this research it is necessary to briefly delve into how blasphemy laws within South Africa, can be pointed out as an example of religious regulations. This is mainly because historically blasphemy was viewed as a criminal law offence under the then common law, which resulted in the

conviction of an editor after covering an event that discussed, the topic “God is dead”. This then led to the editor quoting comments from attendees who were quoted saying “God must be written off entirely” and “God is beginning to stink”. As a result, the editor received a conviction but was cautioned during the year 1968 (McCullough & Willoughby, 2019). Looking retrospectively into the South African church –state history, traces of regulation can be found in the administration of state business and decision-making which emanated from the strong religious hold of the Dutch Reformed church in South Africa. In 1948 the Dutch Reformed church requested the ordinance 7 of 1843 to be revoked, which then gave rise to the swift transition into the policies of Apartheid, which cannot be translated totally as non-tolerance for different church denominations (Lalloo, 1998). Rather as the controlling of the church by the state through its policies, Afrikaner churches did not only subscribe to apartheid policies but also largely enforced and encouraged them. This is evident in the Mixed Marriages Act 55 of 1957, Immorality Act 21 of 1950, Group Areas Act 77 of 1957 all these acts prohibited any form of contact with black natives. Many acts not limited to these including the section 29 (c) law did not allow black natives the privilege of fellowshipping with their white Christian counterparts. What still remained was that the church regulated and controlled freedom of religion within the confinements of South Africa (Lalloo, 1998).

2.5.1.2 Self-regulation by religious bodies

Self-regulation is the process by which a system uses information about its present state to change that state, in addition self-regulation and self-control are said to be crucial standpoints for success in many aspects of life. McCullough and Willoughby (2019) define self-regulation as any form of response or chain of responses by a group or individual that serves to change the probability of the individual’s response to an event and in doing so, functions to change the probability of the later consequence related to that event. It is evident that the above definitions common ground concerning people who self-regulate; they are guiding and adjusting their behaviour in pursuit of some desired end goal or state. Levi-Faur (2010) contends that the notion of self-regulation is tied to self-control, self-regulation is argued to be one of the levels of regulation imposed on a people or society. Self-regulation like other forms of regulation is introduced with the sole purpose

of controlling human behaviour to attain or restore morality. Although aimed at controlling it is not restrictive but permissive as government or the state affords the individual the freedom to make decisions for the protection of self. An example is the introduction of the usage of condoms to help prevent the spread of HIV and other sexually transmitted diseases, although the usage of condoms is advised by government the regulation of the use is not forced by the government but a self-regulatory method of the use of condoms is employed (Levi-Faur, 2010).

Considering the above, from a religious perspective, specifically the Christian community, the view is that religion can cause one to act right is one that is held within the ranks of the community—it is viewed as a source of morality. It is for this reason that organisations of civil society such as Freedom of Religion South Africa are opposed to the idea of religious regulation as a remedy for the complaints and allegations waged against the Christian church (Henrico, 2019). Self-regulation is conceptualised as a dynamic process by which people bring their behaviour into conformity with a standard through the operation of feedback loops consisting of several integrated functions (Van der Vyver, 2012). A self-regulating system continuously self-monitors for discrepancies and attempts to minimise those discrepancies through its outputs. Effective human self-regulation affords individuals the freedom of non-interference from external forces, it further affords individuals the much required decision-making power concerning their lives.

2.5.2 Criticisms against religious regulation

According to Nkamura and Church (2003), regulation is never met with a warm welcome by those that are being regulated, mainly because it often comes with costs in the form of money, aggravation, and time. Many scholars also argue that the case against this form of coercion is often pervasive or systematic; these criticisms can be categorised into three groups, respectively. Firstly, there are theoretical forms of critics that attack regulation based on its substitution of affording collective judgment backed by force for individual decisions based on choice (Thoma, 2021). On the other hand, there is a body of empirical work that seeks to highlight the shortcomings of regulation as it unfolds, as the problem of agency capture. Judging from the abovementioned problem at hand, centred around regulatory unreasonableness, lastly, there is also a view that argues that

regulation brings about an environment of harsh legalism, leaving the decision-making to be drawn out. Once again it is evident that the core problem of regulation is its coercive nature, the usage of government power raises concerns of abuse on the part of the government in at least two ways, namely the use of power for tyrannical ends against individuals for political gain, including the abuse of power for private ends (Nkamura & Church, 2003). It is necessary to explore the linkages between regulation and paternalism, to effectively achieve the desired outcomes of this paper.

2.6 Linkages between paternalism and regulation

For this study, it is necessary to investigate whether there are parallels that exist between the two concepts; upon finding any, the dissertation will briefly shed light on them. By doing so, the researcher hopes to achieve an understanding of the similarities or differences, if any. This will also help achieve the main objective of the paper, which is to assess whether religious regulation in South Africa masquerades as paternalism (Enoch, 2016).

Most regulation seeks to control current activities to moderate future danger. Like paternalism, it emanates from the need to protect from harm and to exercise power and control over a population. This trait can be traced in paternalistic states as the implementation of paternalism in policy measures and is often as a response to an attempt to guard against harm or what may result in harm (Faur, 2010). What can also be identified across and is parallel is the usage of coercion or lack of consent or regard for the individual's ability to make informed decisions. These two tools, regulation and paternalism are often used to an end when faced with a problem or need to address a societal issue. It is also important to note that one common feature is the reality that both tools as policies become viewed as politics and this is mainly because the choice to implement or not to implement such measures often influences who loses and who wins (Faur, 2010). The common feature as mentioned above is that of criticism from members of society within interest groups and members of the Christian community. However, regulating in comparison to paternalism seems like one of the most difficult tools to successfully implement as it often requires government bodies with limited resources to take on huge responsibilities in unfavourable conditions or environments. Like

paternalism, regulation takes an unfavourable position and creates an adversarial relationship between some citizens and the government (Coggon, 2018).

According to Porket (2003), human behaviour and social interaction must be regulated to help create a system of ordered relationships. Which will then create room for the maximisation and attainment of material and nonmaterial objectives, leading to ultimate survival. Regulation is needed for the creation of an orderly conducive environment, which in turn also births survival and prosperity within human interaction. However, like any other measure of government operation put in place, some constraints exist in government regulation.

2.6.1 Major constraints to government regulation

Like any other human invention or yardstick rule, regulation has its constraints, which in turn function as obstacles towards effectiveness and efficiency. At the helm of these constraints, it is important to note that there is the element of the availability of resources and the costs that come with rulemaking and rule enforcement (Porket, 2003). The other constraint is rules which are universally valid and other binding existing laws that cannot be overridden by any governmental regulation laws. Instead, there is a mandate on government to preserve existing structures of political, civic, and economic nature and to preserve them, while any form of government regulation should not seek to override them. Lastly, is the issue of the society's value system, government regulatory systems, or rule enforcement need not be at odds with. If this were to happen there is a possibility of illegitimate regulation (Porket, 2003).

Failure is not something far-fetched in goal-driven government regulation. This often comes due to an inability to solve problems as intended which often creates new problems or exacerbates existing ones. Below the dissertation will touch on cases in point that form part of empirical evidence of government regulation and their pitfalls that present themselves in the process of implementation (Maghadam & Gutmann 2013). Between the years 1920 to 1933 the US, the liberal democratic state prohibited the sale, production, and transportation of alcohol; however, despite the prohibition, to prevent

people from alcohol trade and consumption, the result was the opposite and led people into secret drinking and alcohol smuggling and other violent acts (White, 2013).

Another point of reference is the communist systems that existed in the Soviet Bloc countries, which were highly bureaucratic, having an authoritarian form of control over politics and the economy. As formal as this system was, it had unintended non formal consequences which were not meant to play out, and as a result, a second economy which had a different set of rules developed, and this became an increasing norm in liberal countries too, but close to non-existent in developing countries (Thomas & Buckmaster, 2010).

In addition to the above, it is important to also add that there is a distinction between insignificant and effective government regulation. However, the distinction lies in the fact that the latter lead to compliance with the enacted rules and regulations designed and the former do not (Bullock, 2012). Furthermore, the reality is that even though enforcing rules is an issue, the creation or the rule-making process also faces significant constraints (Baker, 2009). These constraints vary from political constraints to judicial constraints and in a constitutional democracy, the democratic element becomes a constraint in rule making and their enforcement. Political constraints are far less in an autocratic system of government than in a setting of the political coalition and/ or multiparty democracy systems of government. However, in a democratic political system, there is the existence of another constraint which is the constitution as it defines the set parameters where rulemaking ought to take place. As the constitution is meant to control how political power is used and rulemaking as a whole, because of this, it is costlier to amend and/ or modify rules in this setting than other operating rules (White, 2013).

Judicial review as mentioned above forms part of constraints that exist, which in turn gives courts the power to validate or invalidate laws using the constitution in a setting of constitutional democracy. In addition, courts are also empowered to invalidate or validate administrative decisions. As part of their mandate as one of the highest decision-making bodies is to assess the legality of administrative decisions and the constitutionality of laws. Importantly, on the other hand, decision-making in democratic systems is also fuelled by pressure groups, movements of a social nature, and public opinion at any point

in time. This can in turn encourage enforcement of regulations or block them (White, 2013). The idea of regulation is not as simple as it is made out to be as there are several factors to be considered or assessed before the rule to regulate a certain aspect of society is enforced, such as the social contract that exists, what role the government will play in this regard and what is to be done in the event that the set regulations are not adhered to.

2.6.2 Assessing the issue of compliance and non-compliance

It has become evident that despite the regulatory limitations that exist, some governments have now developed a regulatory form of mentality, which can be identified by the belief in the idea that they are best fit to judge good and bad within the societal context. As a result, through regulation as a mechanism, problems can be solved and attain objective from a political, social, cultural, and economic perspective, all this results in inevitable extensive or intensive regulation (Conly, 2014). For example, within an economic perspective regulation displays how it has bearing effects on all spheres of social interaction and human behaviour. By the impact it has on profitability, productivity, competitiveness, unemployment, competition, hiring and firing, there are also relevant implications outside of economics in the same breath such as political activity and processes, information, communication, healthcare and education, social interaction, opportunities, and privileges. However, from a societal point, the impact can be both harmful and beneficial depending on the level of intensity (Conly, 2014).

Despite government, regulation is a source of tension, and it is either characterised by being goal-driven or process orientated, it is also often a choice between non-compliance and compliance which is in turn affected by the costs incurred which are economic. Goal-driven regulation is characterised by an ongoing culture of rule-breaking rather than compliance (Conly, 2014). Regulation that is either goal-driven or process-driven may present unintended consequences, to substantiate this submission, a brief analysis of the justification for the proposed regulation helps identify possible paternalism as is the argument presented, the back bone of the reasoning behind the CRL's call for the proposed regulation of the religious sector, has its foundation in the harm principle. Researchers argue that the term harm and its usage is a rather complex and broad

phenomenon. According to Vorster (2021) the rather fluid contents and scope of considerations of harm make its application in terms of the harm principle a rather difficult and impossible task in terms of general rule applications. In addition to this harm in this regard is elusive due to the risk of contextual considerations. A reference point here is the CRL's mentioning and the pointing out of the payment of offerings and tithes in its 2017 report, as a form of harmful type of exploitation. This despite it being a long standing practice in the Christian faith community, due to its scriptural reference the CRL, viewed it rather as a form of exploitation (Vorster, 2021). Resulting in the CRL using this view as bases and contributing reason for the call for religious regulation. It is important to note that the separate use of the harm principle in the religious rights setting in order to warrant enough reason for state intervention is unjustified. Mainly because as stated above, the reasoning behind the proposal of the principle is to always be justifiable within a legally significant framework that will determine why it ought to be the only method used in order to determine a limitation of a right (Vorster, 2021).

2.7 Concluding remarks

Due to the debate that has been present since before the beginning of the 20th century to date, the policy-making aspect of paternalism needs to be dealt with in a manner that imposes strict scrutiny and assessments as paternalism deals with a highly integral part of human existence in a modern-day society such as autonomy and self-determination. The issue of consent will always unintentionally raise constitutional concerns like deciding how promoting one's good outweighs other factors like freedom of choice and self-determination (Begon, 2016). When government regulation is characterised as intensive and extensive the idea of government regulation becomes a sign of the state being permissive or restrictive, which then further creates a picture of the state being both goal-orientated and result- or outcome-focused. In addition, when the extensiveness and intensiveness become more apparent, calls for deregulation become widespread to help obtain the freedom that is felt to be lacking (Coons & Weber, 2013).

This dissertation brings perspective to what can be viewed as discontent within the religious community. Which has led to protest against the call to regulate religion in South Africa. Furthermore, the study will put into perspective the justification of the call for the

regulation of religion through the theoretical analysis of paternalism. While also clarifying the responsibility of the state in maintaining order or protecting citizens, as a Social contract helps identify the relationship between a government and those it governs. And thus in order to effectively analyse whether the proposed recommendations amount to any interference theoretical tools such as paternalism are used to assess possible signs of overreach. Even though no academic work exists on the topic from this perspective, the research will thus be a valuable contribution and addition to the theoretical understanding of the call for regulating religion in democratic South Africa. In addition to this it is necessary in order to help guide policy formulation. The research will further contribute and become part of a small body of academic literature that is available on this rather important subject matter.

The above chapter argues that the idea of regulation though viewed as an option does not always bring the desired results or outcome, due to the different interest groups that exist in larger society. The reality is that religious regulation may have a bearing on freedom of religion since there exists no clear boundary on just how much the state can be involved in society's religious space. According to Maghadam and Gutmann (2013), there are no guiding principles when it comes to the governance of religion even in international law, this gap has been there for a while due to the lack of existing frameworks.

Taking into consideration the discussion above that details aspects of paternalism, regulation and the social contract, it can thus be said considering the application of the above theories to assess the regulation of religion, it is possible to conclude that aspects of paternalism are evident in the proposed recommendations. It is for this reason that chapter 3 aims to delve into assessing masquerading symptoms in religious practices and the states responsibility in maintaining order or protecting citizens, in this chapter the research seeks to help unmask the symptoms of paternalism in the regulations proposed by the CRL’s recommendation.

Below the dissertation will further explore the idea of paternalism and whether it is justifiable in this context. To do this, the research addresses issues of definition, variants, the problem of paternalism, and putting theory into practice. Considering the different

variants that present themselves, the question remains of what problems are posed by paternalism. The dissertation aims to find out how the element of masquerade as the title suggests then comes into play, by briefly explaining the concept of masquerade, how and why masquerade happens, and lastly how paternalism masquerades as religious regulation (Nkamura & Church, 2003). To attain the dissertation objectives, the dissertation below explores the masquerading symptoms in religious practices and state responsibilities in South Africa. By doing this, the dissertation aims to achieve clarity on the subject matter and research question, including the need for alternative solutions from those proposed by the CRL commission.

3 CHAPTER 3: MASQUERADING SYMPTOMS IN RELIGIOUS PRACTICES AND STATE RESPONSIBILITIES IN SOUTH AFRICA

3.1 Introduction

This chapter is a discussion of practices that hint at what might seem like religious organisations, but their activities are not in keeping with the dictates of faith or religious leaders whose conduct violates the people's freedom of religion. This is one symptom of masquerade when people use the pulpit for personal gain and criminal activity. In addition to this, the chapter shows the context within which the state found it necessary to propose for religious regulation. Including the determination of how such regulation is a façade of paternalist intentions. According to Froster (2019), South Africa like other countries across the globe, is not excluded from the possibility of religious abuse. Froster (2019) adds that this is due to the reason of faith continuing to play a significant role in public affairs. According to recent surveys such as the Household Survey, over 84% of South Africans stated that they were Christians (Froster, 2019). In addition to that, a 2010 report from the pew research centre stated that an incredible 74% of people indicated that religion plays an integral role in their decision-making process, surrounding values, and morals (Pew Research Center, 2019). Unlike other modern democracies in the 21st century, South Africans express higher levels of trust for churches and religious leaders than they do for government and its leaders or the private sector (Froster, 2019). The religious sector enjoys higher levels of trust because the public perceives government as unreliable.

Kgatle (2017), adds that there has been a huge Pentecostal church wave that has swept over South Africa, which has a strong belief in miracles, healing, and deliverance. The Pentecostal movement has likewise presented bizarre practices that have been reported in many of these churches which the members of the public do not believe are true expressions of faith (Kgatle, 2017). These bizarre practices that have ranged from the alleged commercialisation and commodification of religion, in the form of selling prayer, anointing oil and holy water including selling blessing, have led to a rise in this uncommon and rather unprecedented behaviour. As a result, members of the public have raised concerns, expressing possible signs of religious abuse at the hands of religious leaders.

Following the concerns raised by members of the public calls for the intervention of the CRL heightened, which lead to the CRL as an institution being propelled to investigating as per its constitutional mandate as a Chapter 9 institution. According to the Constitution of South Africa, Chapter 9 institutions are legally mandated by the constitution and are empowered to help promote and protect rights enshrined in the constitution, they help protect citizens and act as a form of ombudsman. To effectively go into the arguments of this chapter it is important to lay down or attempt to detail what power the CRL has as a state institution, and the authority under which it felt necessary to act. The chapter will explore the forms of legal authority governing the CRL as a Chapter 9 institution, such as international law, constitutional law, NPO Act of 1997 of South Africa. By so doing, the researcher hopes to effectively investigate the extent of the role of the CRL commission in freedom of religion and its limitations as per its parliamentary report on the recommendations, following its findings. The objective of this section through the above is to assess and answer the following research question: What are the masquerading symptoms in church practices and state responsibilities in South Africa? To effectively answer this question, the dissertation begins by bringing an understanding to concepts such as commercialisation and commodification. For the purpose of this discussion the understanding of this concepts serves an important role in order to help meet the objectives of this particular chapter.

3.2 The commercialisation, commodification and abuse of the religious sector

What is now termed the prosperity gospel can be traced back to an incident that transpired in the early church as captured in the book of Acts chapter 8 from verse 9 to 24. Where the Bible makes reference to a certain Simon who was a sorcerer and was one said to have worked great miracles in the region of Samaria, through sorcery, which is the use of power gained from assistance or control of evil spirits, dark magic and witchcraft in order to make things happen. This portion of scripture reveals how Simon was someone renowned and celebrated, in addition to this verse 18 reveals that the practice of money in exchange for blessings predates its modern day outbreak in South Africa. As the verse captures Simon seeing the Apostles laying hands on the people to

administer the gift of the Holy spirit, and was immediately drawn by desire and as a result he offered money in exchange for this blessings.

In addition to highlighting the aspect of commercialisation, the passage also reveals that man's lust and desire for power and or better economic status in exchange for money has a long standing history. Below the section reveals examples of how the prosperity gospel found expression in the South African church space over recent years.

The suspicious religious practices began as early as 2013 and ranged from the consumption of snakes, hair, grass and even the drinking and consumption of hazardous liquids like petrol under the disguise of supernatural healing (Reilly. 2014). Ellerbeck (2018) also adds that other reports in the media included a pastor who led people to eat grass and spraying of the insecticide called "Doom" in the face, for purposes of healing and religious worship (Duncan, 2018). Following these incidents, reports against the Seven Angels church in Kwa Zulu-Natal, the Christ Dominion church in Port Elizabeth of sexual harassment, fraud and money laundering surfaced (Phiri, 2017; Mdakane, 2018). Criminal charges were launched against religious leaders, ranging from contravention of the immigration act, sexual assault, fraud, money laundering, tax evasion just to name a few (Jacaranda FM news, 2019). During its investigation the CRL commission found that many of these churches abstracted exorbitant amounts of money from congregants under the disguise of blessings and prosperity, during the commissions hearings, former congregants alluded to how under the belief of attaining material blessings, they were lured into parting with valuable possessions such as cars and money. It is important to note that as mentioned above the notion of false prophets has a long standing history that is traced from the Biblical era (Mapumulo, 2017).

3.2.1 Contextualisation of commercialisation and the commodification of religion.

Masenya and Masenya (2018) help contextualise the manifestation of the commercialisation and commodification of religion in the South African context. It is from this standpoint that the research makes its argument in this section. According to Masenya and Masenya (2018), the concept of commercialisation can be defined as a process in which a new service or product is introduced into the market. In basic terms a

product entering a market to in turn be sold to consumers. However, in the context of the discussion in this regard, which is the commercialisation of religion, it bears the meaning of services or products offered to the church body with a price tag attached to it. In addition to this, the commercialisation of the gospel can be explained as the presenting of the contents of the Biblical message as a commodity and generate material gain. In the context of the discussion commercialisation takes the form of spiritual healing, benefits of a spiritual nature and or an offer of prayer for spiritual needs. In addition to the donations offered to the church in hope or expectation of God repaying more in return (Mapumulo 2017).

For the purpose of this discussion, an important term to contextualise secondary to commercialisation is what Masenya and Masenya, (2018) define as commodification, which according to their writings is the treatment of what cannot be owned by anyone like a form of product that can be bought or sold. In simple terms commodification is referred to as anything exchanged in order for economic value. However, for the purpose of the research and this section in particular, the meaning of commodification in the church context refers to the transforming of church activities into income generating activities, in which congregants are required to pay a fee in exchange for prayer healing or intervention from God. The discussion above helps bring light to the core of the prosperity gospel which has swept over South Africa, it is in light of these findings that the CRL commission deemed it necessary to propose a form of regulation on the religious fraternity in South Africa (Masenya & Masenya, 2018).

Since reports of abuse by church leaders came to public knowledge, there has been a rise in the number of cases reported to the police in different parts of the country. These cases range from allegations of fraud, money laundering, sexual assaults, rape, and assaults. These strides come after many years of allegations of sexual assaults coming from the Roman Catholic Church which have not been fully investigated and resulted in criminal charges (Parliamentary-Committee 2017). The Nigerian born pastor Timothy Omotoso, who founded and established a Jesus Dominion church in Port Elizabeth was arrested on accusations of kidnapping and sexual assault (Fisher, 2020; Ellerbeck, 2018). However, in other parts of the country, there has not been any progress in terms of other

charges laid against religious leaders of faith facing similar charges of sexual assault, apart from the case of self-proclaimed prophet Bushiri from Malawi, who is facing charges of fraud, money laundering and contravention of immigration laws (Nkgweng, 2020). Following Bushiri's court appearance, it was alleged that the religious leader fled the country into his home country Malawi. This then brought attention to South Africa's border security and migration decision-making that makes the public vulnerable (Nkgweng, 2020). The Bushiri matter is still ongoing in the courts and yet to be concluded and remedied the way the courts and the law see fit. Criminal experts argue that it is a complex matter that involves the courts beyond the South African jurisdiction and warrants the application of not just South African Law but international law (SABC News, 2020).

It is alleged that further criminal charges have been laid against Bushiri for allegedly being in contravention of a building lease agreement where his church operated, which case is set to appear in court (SABC News, 2020). In addition, there has been media coverage of former members of Rivers of Living Waters Ministries, who have opened criminal charges against its leader and founder Steven Zondo. The allegations involve rape and money laundering under the disguise of faith, it is alleged that many of his victims have opened criminal charges against him at local police stations, but to no avail (Mitchley, 2021). It is only after the victims turned to the media to seek relief concerning this matter that their claims received attention leading to actual criminal prosecutions (Mitchley, 2021). Zondo has since rubbished the above claims, stating that these are mere attempts to discredit his name and that of his church (Bhengu, 2020). Following this, Stephen Zondo has latter since been required to make his first court appearance during 2021. After the decision to take the matter to trial, several witnesses have taken the stand, citing, and recalling their ordeals. As this case is ongoing in the Johannesburg High court of South Africa. It is necessary to point out that like the Omotoso case this is a step in the right direction concerning acts of gross criminality even in places of worship. However, in the Eastern Cape, an arrest was made after reports came in of a church cult operation that allegedly kidnapped young women and older women and detained them under the illusion of worship and religious practice. The Seven Angels church was founded and led by brothers, who came into the spotlight following its bogus practices that shocked the nation (Simelane, 2018). After months of investigation, law enforcement agencies

gathered enough to raid the alleged premises where they found several women ranging from 16 to 40 years of age and rescued them (Simelane, 2018). Following this, the accused appeared before the court on charges of kidnapping, rape, statutory rape, and assault. Following the above, the trial commenced and continued in the Durban high court (Velaphi et al*.,* 2018). Below is the discussion about what currently exists as the state's responsibility to protect religious freedoms.

3.3 State responsibilities toward religious practice

In its problem statement, the CRL report to parliament cites the controversial news reports concerning pastors who allegedly have been inciting members of their churches to consume things such as snakes, grass, and petrol (CRL Parliamentary-Committee, 2017). In addition to this, the report also highlights reports of members being encouraged to part with large sums of money to receive a miracle or blessings. The CRL in its report argues that it saw the need to investigate religious organisations after community members in their numbers reached out to them by raising concerns. Some community members are reported to have asked whether the government should leave things as they are, or whether they were obligated to act in the best interests of society.

3.3.1 International law

The dissertation seeks to bring to light the importance of freedom of religion as a right, not only locally but also from a global perspective and how the effort to limit this right would impact its international relations with countries that hold this right in high regard (Moeckli et al, 2010).

3.3.1.1 The Universal Declaration of Human Rights (1948) Article 18

According to the Universal Declaration (1948), everyone has the right to freedom of thought, conscience, and religion, and accordingly, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance (Lindholm, 2015). In 1948 a law which was termed the Universal Declaration of Human rights was passed and adopted by the United Nations General Assembly. The Article 18

of the declaration is of interest as it states: everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change their religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance (United Nations, 2002). Article 2 of the declaration also categorically mentions, religion as a fundamental right to be protected as it states the following 'Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or another status (United Nations, 2002). Therefore, based on this international law convention, South Africa as a signatory has a duty to protect religious practice, therefore regulation that protects faith communities from discrimination and abuse is tenable. It is important to note that the protection of religion does not mean prescription of religion as though the state told people what to believe and how to practice their faith. Secondary to this declaration is the constitution, which is the highest form of law that governs and regulates the country.

Most international and domestic legal instruments recognise freedom of religion, belief, and opinion as a basic right. The following legal instruments are those considered to be most relevant in this regard, for this dissertation abstracts from the Universal Declaration of Human Rights (1948) Article 18, European Convention on Human Rights (1950) Article 9, and American Convention on Human Rights (1966) Article 12 (Moeckli et al, 2010). In addition to the above is what is known as the European Convention on Human Rights (1950) Article 9, which is legislation that governs members of the European Union and member states like the Universal Declaration of Human Rights of 1948.

3.3.1.2 The European Convention on Human Rights (1950) Article 9

Article 9 of 1950 of the European Convention on Human Rights recognises individual and collective freedom of thought, conscience, and religion that is exercised either in public or private domains (Lindholm, 2015). Furthermore, adherents have the right to practice through various forms that include teaching, performance, and love. The European convention on human rights tolerates legal limitations on religious freedom as far as they are necessary in a democratic society, in the interests of public safety, for the protection

of public order, health, morals, or for the protection of the rights and freedoms of others (Lindholm, 2015). Lastly, it is important to also bring to the fore abstracts or cite a section of both the International Covenant on Civil and Political Rights Article 19 of 1996, including the African Charter on Human and People's Rights (AFR) Article 8 of 1981. These legal convention articles form part of the crucial legal documents that exist, and form part of the common vision and views held commonly by South Africa and in its foreign relations (Wolfrum, 2008).

3.3.1.3 The International Covenant on Civil and Political Rights (1966) article 18

Just like the European Convention on Human Rights, the international covenant on civil and political rights acknowledges private, public, individual, and collective religious freedoms and freedoms not imposed on one by the other. The nations of the world are charged by the covenant to promote and protect an environment that ensures the realisation of these freedoms in their domains (Moeckli et al, 2010). The covenant emphasises that a person should adopt a belied, meaning, they are not coerced into it by threat or actual violence. Any legal limitations on the freedom of belief are tolerated as far as they enable social order, public safety, public health, and morals. The covenant further admonishes signatory states to the covenant to respect the role and convictions that parents and legal guardians have for the religious and moral instruction of their children (Rautenbach & Venter, 2018). This covenant therefore appreciates that the state shall not have the responsibility for religious and moral education of minors, in other words, the state does not have authority to intervene in family affairs that involve religious practice so long there is no harm to the dignity, health, and security of children.

3.3.1.4 The African Charter on Human and People’s Rights (AFR) 1981 Article 8

The African context of religious freedom also guarantees the right of conscience, the profession, and free practise of religion (Moeckli et al, 2010). The charter adds a unique aspect of religious profession in the typology of religious freedom. This means, governments ought to make a conducive environment for those who want to pursue a career in religious affairs. Any regulation of religion should not exclude or impede the professionals in the sector. The charter makes room for legal limitations on religious

freedom in the interest of law and order (Moeckli et al, 2010). Below is a comparison of some of the Bill of Rights of member states that have international relations with South Africa: their policy standpoint on matters of freedom of religion is a matter of importance as these form part of the rules of engagement (Heyns et al*.,* 2000).

3.3.2 The Constitution of the Republic of South Africa, 1996

The Constitution of South Africa was enacted in 1996 after the first general election held in April 1994. The constitution itself also acts as a legal framework that protects the right to freedom of religion. Section 15 and 31 of the Constitution stipulates what has become the cornerstone of the existence of many religious groups in South Africa. Section 15 (1) of the constitution states that “everyone has the right to freedom of conscience, religion, thought, belief, and opinion. And in addition to that section 31 of the constitution states that persons belonging to a cultural, religious, or linguistic community may not be denied the right, with other members of that community; (a) to enjoy their culture, practise their religion and use their language, and (b) to form, join and maintain cultural, religious, and linguistic associations and other organs of civil society” (RSA, 1996). The era of democratic constitutionalism played an important role in the rising of institutions that help regulate and protect most of the rights found in the Constitution of South Africa 1996. This chapter identifies these institutions and their function towards the creation of a country that promotes and protects the well-being of individuals. With specific reference to the right to freedom of religion, it is necessary to highlight the following legislations and legislative bodies (RSA, 1996). Now in determining patriarchal masquerades, it is difficult to say what in the state fulfilling its legal mandate to protecting religious rights translates to hindering cultural (religious) enjoyment nor its practice such as forming religious associations. However, in the case of South Africa its position as a secular state, requires the state to take a rather neutral position when dealing with matters of religion, and as a result the remedy ought to be one that is unbiased. The CRL in this regard needed to consider the secular nature of the state by ensuring that this position is translated and visible in its proposed recommendation.

3.3.2.1 The South African constitutional provision of religious freedom compared to other countries

The South African bill of rights stipulates the freedom to religion without clear limitations as compared to what other countries provide. The emphasis that communities in South Africa may not be denied a right to belong to or enjoy their religion is important and widely embraced. Like South Africa, most bills of rights in modern democratic regimes recognise "freedom of religion, belief conscience, and opinion" including various approaches for the limitation of freedom of religion and belief (Wolfrum, 2008). But the limitations are not an infringement on the right to religious freedom. Instead by placing clear limitations or by placing abstract statements, all states are trying to approach the issue of freedoms in a more responsible way given the political dynamics of their jurisdictions as is their social contract duty to facilitate a civil society.

The Namibian constitution includes academic freedom in its recognition of religious freedom and practice. However, there are general limitations to the freedoms enshrined. The constitution does not specify what such limitation entails (Heyns et al*.,* 2000). The Constitution of the United States of America under Amendment I, prevents the state from making any law that establishes religion or bars the free practice of religion by the people. Interestingly, the US constitution does not present any limitations on the freedom of religion, in a way being liberally extreme in its interpretation of freedom. Heyns et al. (2000) note that the Courts have developed principles and criteria for religious practice in the US. The Canadian charter of rights and freedoms (1982) section 2 follows the US religious practice traditions that enable everyone to have fundamental freedoms and rights like the freedom of conscience and religion (Prozesky, 1995). There also are general limitations for the freedom in question. Prozesky (1995) further points to section 25(1) of the Indian constitution that allows religious freedom on condition it does not tamper with public order, morality, health, and other provisions. Indian people are by law, allowed to and equally entitled to freely profess, practise, and propagate religion. The Indian constitution adds the phrases, morality, public order, and health, which is what the complaints in South African religious practice are about. Immoral acts of sexual assault, money laundering, robbery, and fraud in the name of religion. Feeding people dog meat,

snakes, grass, and using pesticides on them does not promote health. Neither is the issue of opening churches anywhere without proper zoning provisions by municipalities as is the case in South Africa. The Indian constitution enables every religious denomination or any section thereof to “establish and maintain institutions for religious and charitable purposes. Accordingly, these institutions manage their own affairs in matters of religion” (Prozesky, 1995). The constitution also affords citizens who are religious to own and acquire movable and immovable property, and to administer such property following the law (Prozesky, 1995). According to the German Constitution, the right to freedom of faith and conscience of freedom of creed both ideological and religious are inviolable. Per this constitution, the undisturbed practice of religion is guaranteed and protected. Unlike other rights that have limitations in the German constitution, there is no limitation on religious freedom (Auer, 2005). The drafters of the German constitution approached this aspect of their highest form of law with regard for the provisions found in the International Declaration of basic human rights. What is of interest, though, about this constitution is the Federal Constitutional Court decision to limit the protection of the rights of others and values embodied in the Constitution (Wolfrum, 2008). This is mainly because unlike a democratic constitution, like that of South Africa, the supremacy of the constitution, is like a yard stick and on the other hand federalism consists of specific combinations of limited rule, self-rule, and co-existence of independent forms of government (Auer, 2005).

Following a brief assessment of the above constitutional provisions by different countries. States prefer to remain distant from day to day operations of religious communities but prefer to manage religious practices based on how they affect social order. The limitation clauses take the approach of an application of tests to measure and scale the right in question against the right violated. Three out of the constitutions here explicitly suggest that the right to freedom of religion may be limited to protect the rights of others (Rautenbach & Venter, 2018). In the South African context, it is necessary to again highlight that the limitation clause has a series of tests that the courts need to undergo before allowing the rights enacted in the bill of rights to be limited to protect other rights. Section 36 of the South African constitution makes it a difficult and daunting task by suggesting in simple terms that no limitation ought to be taking place as is expected in an open and democratic society (Prozesky, 1995). Clearly, thinking that no limitation ought

to take place implies absolute religious freedom is inconsistent with the laws of reason. Hence the need for institutions like the CRL that protect and promote freedoms.

3.3.2.2 The Commission for the Promotion and Protection of Cultural, Religious and Linguistic communities (CRL)

When showing commitment to its legal duty to protect the right of religion, the South African constitution created independent institutions that help promote human rights and hold government accountable. The CRL is one such an institution that is constitutionally established in terms of chapter 9 of the constitution as a mechanism to protect democracy. It is an independent body that is regulated by the commission for the promotion and protection of cultural, religious, and linguistic communities Act (CRL ACT) of 1997. It is from this act that the constitutional obligation for the protection and promotion of religious freedom is derived. Because of its independence as a chapter 9 institution and not subject to any state department, the CRL has executive powers and can be seen as part of the state machinery (RSA, 1997).

The powers and functions of the CRL as a chapter 9 institution cited in the constitution was to help protect the legal rights of all South Africans regardless of creed, gender, and or race including the freedom of religion and association. The Constitution of the Republic of South Africa section 181(2) provides for the commission to exercise its powers and functions without fear, favour, or prejudice (RSA, 1996). According to the report (Parliamentary-Committee 2017) although chapter nine institutions are state institutions it is important to note that they are mandated to operate outside partisan politics and political interference by government. In other words, chapter 9 institutions are first protected by the constitution in that they should exist – therefore, no politician can threaten dissolving them. Secondly, no politician in their capacity as government official nor political party representative can command the chapter 9 institution on what case to investigate or ignore. In this case, the independence of the institutions is guaranteed. Although the President appoints commissioners of the chapter 9 institutions, this does not happen unilaterally but through public processes that nominate candidates, and the parliamentary process of interview that leads to potential candidates forwarded to the president to appoint. It follows then that to remove a commissioner is not an easy thing

to do, because there must be another process of investigation by parliament and voting there to impeach them (CRL, 2017).

The CRL as an independent body enables the collective expression of cultural and religious life without the contamination of political bias. This independence is important for a competent and respectable chapter 9 institutions to mediate effectively in the transformation of society. The CRL mandate entails mutual respect and friendship which are essential concepts realise the South African dream of building a nation united in diversity (CRL, 2017). This mandate is also echoed in the provisions of Section 81 of the Constitution. The CRL is emboldened by the CRL Act 19 of 2002 that outlines its scope as investigating, monitoring, and researching the rights cultural, linguistic, and religious communities. This in no way implies managing the affairs of the religious communities. Therefore, the CRL has no role to play in day to day affairs of religious communities nor to say what they should believe and express their faith.

3.3.2.3 The Non-Profit Organisations Act

The Non-Profit Organizations Act of 1997 classifies non-profit organisations as a company, trust, or other associations of persons, which are established for public usage and benefit. All NPOs must be registered with the Department of Social Development (DSD) which is an arm of government that helps regulate NPOs which include churches. The Department of Social Development acknowledges the existence of an NPO (church) through registration and issuing a certificate of recognition (RSA, 1997b). In this regard, religious regulation exists whereby a church that does not have an up-to-date NPO certificate operates illegally. Making it possible for the state to shut its operations down. The requirements of registration are articulated in section 12 of the NPO Act (RSA, 1997). This can be done by completing the required forms and submitting two copies of its constitution, along with any other additional information that will aid the decision-making body in deciding to concern the certification after meeting all the set-out requirements (RSA, 1997). Under this regulatory framework, churches are required to follow good accounting practices; this is set out in Section 17 of the Act which calls for NPOs to submit annual financial reports to the department of Social Development. Therefore, churches that do not compile annual reports and financial statements are non-compliant. Such non-

compliance is another concern that the CRL raised in its investigations about pastors using personal accounts to receive offerings meant for the church- this way operating the church as a personal business. This is another aspect of a masquerade. Section 18 of the NPO act further obligates NPOs to submit the written narration of their activities during the current financial year. This document and other documents are to be made publicly accessible by the Directorate as stipulated in section 25 of the Non-Profit Act of 20. According to the Department of Social Development (2020), the noncompliance of the NPO religious sector is a cause for concern, as a result the DSD sought to mitigate this through conducting a seminar in collaboration with Financial Intelligence Centre Act (FICA), to sensitise members of the community regarding compliance and its importance. According to section 17 and 18 of the NPO Act organisations are required to send annual reports on time, in line with this the department records having received a total of 59118 and out of that number, it is not clear how many religious organisations there are. In addition to the above, other statutory bodies also have regulatory power over NPOs, which provides required oversight and creates a separation of powers within the governmental framework.

3.3.2.4 Regulatory authority bodies affecting NPOs

In addition to the CRL act, it is also important to bring to the fore the following regulatory statutes as churches fall under what are called non-profit organisations (NPOs), because the creation of a church is not for the generation of profit or income but is for public interest and cultural advancement. Below the dissertation will discuss the functions of these statutory bodies that help further regulate organisations classified under non-profit organisations, in this regard the Non-profit Organization's Act of 1997 (RSA, 1997). For the creation of an effective democratically run society, power should not be centralised but ought to be distributed to ensure efficiency and lack of lawlessness. In South Africa this can be seen through the creation of the three wings of the state (FOR SA, 2017). This gives rise to Ministries and most importantly, regulatory bodies which help regulate, maintain order and oversight, with regards to NPOs which include and are not limited to the church. These bodies include the Tax exemption unit in the South African Revenue Service (SARS), the company's registration department within the Ministry of Trade and

Industry, not forgetting the role of the South African Police Service in the prevention of criminal activity. The constitution clearly stipulates that the functions of the CRL Commission are to research, monitor and investigate religious affairs, including promoting and protecting religious communities. In the same breath, the CRL institution is governed by the CRL Act, which outlines the limitations that are put on the CRL. These limitations are where other state institutions get access to enforce laws within the confines of their jurisdiction that interact with religious practice. The CRL has no competence to investigate and charge criminality in religious practice, but it can make recommendations to the SAPS to do that. In addition to this, the CRL institution is also allowed to seek and receive help from other government institutions, to help fulfil their mandate. The South African revenue service is one such institution that assists with the compliance of NGO institution and tax exemptions thereof. Which is why the CRL as required by legislation sought its help during its investigation. However, it is important to highlight the fact that although they are legally mandated, the role of pursuing criminals lies in bodies given authority to persecute and convict (FOR SA, 2017). Reporting, however, is an important part of the regulatory measures put in place concerning NPOs as the lack of reporting amounts to criminality and may also lead to conviction. It is for this reason that opponents of the CRL regulation proposal, argue that further regulation is an unnecessary step because it oversteps the mandate of bodies and institutions given legislative authority, this is seen in the need to disregard the right to freedom of religion and freedom of association, to protect the right to human dignity. It is therefore necessary to highlight that both these rights are enshrined in Chapter two of the constitution which is termed the Bill of rights. And therefore, no right may override a right which is captured in chapter two of the constitution. This chapter will further assess the proposal of "self-regulation" and whether there is any benefit to its proposal (FOR SA, 2017).

The CRL Act raises a critical aspect, which draws light to the idea of co-operation between the CRL Commission and other institutions. In this act the effective execution of the CRL's mandate, is partially reliant on its ability to co-operate with other state institutions. To do this the CRL may (a) make arrangements with other organs of state or constitutional institution, set up to assist the commission in performing any functions. (b) it may delegate its powers to other organs of the state, which are constitutional mandated. The CRL is

required to have made arrangements prior, for the rendering of required services (CRL Parliamentary committee, 2017). Furthermore, where the functions of the CRL overlap with other functions of constitutionally mandated institutions or organs of state, the CRL is obliged to co-operate (Woolman & Aullo, 2005).

3.4 Reasons that led to the proposed regulations by the CRL Commission

According to Mapitsa (2022), the reasons for the proposed regulations came subsequent to the conclusion of the investigative hearings that the commission held. With the intent to assess and evaluate the extent of religious abuse. This came as mentioned in the earlier chapters, due to media reports that surfaced revealing what was deemed as practices of religious abuse to congregants by church leaders. In this section of the dissertation the aim is to bring to the fore the reasoning behind, the call to regulate religion in South Africa. While the dissertation aims to do the aforementioned it is rather important to point out that some of the activities detailed in the findings that have emanated from the investigation are a cause for concern (Mapitsa, 2022). The dissertation briefly discusses for the purpose of the objective of this chapter that the merits of the action to propose regulation, are rooted in the inability of the CRL to understand firstly, its mandate and the scope of its work. Secondary to this the findings of the report, which detailed possible forms of what is deemed as religious abuse ranged, from the commodification, commercialisation and unusual practices under the disguise of healing and finding favour with the Lord in the form of blessings (Mapitsa, 2022). In its 2016 preliminary report the CRL commission detailed why the route to regulate may have been the most amicable solution.

It is as a result these findings and host of other findings which speak to the above, that propelled the CRL to then resort to the proposal of a remedy in the form of regulating the religious sector in an attempt to deal with these substantive issues it found. Critics such as the Freedom of Religion South Africa have argued that although they do not condone the bizarre practices that the CRL cites. However, they are of the view that there is just no legal basis for the CRL commission to propose religious regulation and disregard existing forms (agencies) of law enforcement. The critics argued that this translates to the commission overreaching in terms of its constitutional mandate.

Figure 2 below shows the substantive issues that the CRL said necessitate religious regulation.

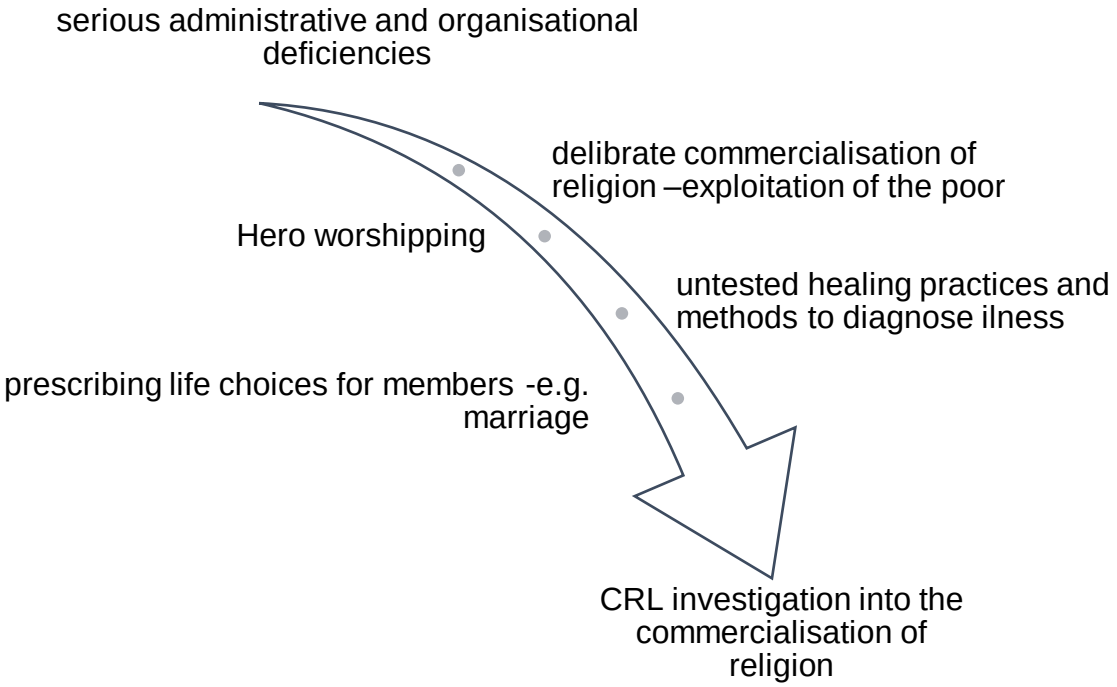

Figure 2 The CRL's justification for religious regulation

According to the CRL (2016), the substantive issues ranged from administrative and organisational deficiencies, deliberate exploitation of the vulnerable and poor in order to gain money from religious practices. Including inviting hero-worship of church leaders, subjecting members to extremist control such as dictating whom they should marry, prescribing and recommending untested methods to diagnoses. But that religious organisations have weak administrative systems is not a matter that requires unique regulation but support and skills development. Which is something that the CRL could coordinate with the DSD or other state agencies. And concerning the exploitation of the poor for profit is something that the CRL could gather preliminary evidence on and recommend the law enforcement to investigate further or prosecute when there is sufficient evidence. Hero worshipping in religious communities is akin to practitioners who achieve celebrity status because of their works. Personality cults are also common in the political arena where individuals become too strong in their political parties or as presidents. There is no legislation even to that effect to limit the rise of strong personalities

in political activity. And it could be that the public believes that someone to resembles divine qualities worth of admiration – now the problem is that the CRL is of the opinion that people should not believe that. Which means that the CRL tampers with the freedom of belief and borders on saying what or whom the people should worship. Of untested methods to diagnose illnesses and prescribe cures is another controversial terrain for the CRL to venture in. Most religious and traditional indigenous practices are outside modern western scientific explanations, it also implies that the CRL has an idea what is tested and acceptable diagnosis and healing methods that people should embrace. This again is the CRL prescribing beliefs. And prescribing life choices is common in religious practices where it is encouraged for one to marry in the same faith, and traditionally arranged marriages are common. The CRL problematises people's beliefs and finds regulation as a solution to it, instead of educating the relevant communities for a cultural reform. Proposing religious regulation on these matters is what the dissertation argues as a form of paternalistic approach that undermines the secular state because a chapter 9 institution ought not to be involved in day to day activities of religious organisations and make subjective judgements of their faiths. In the next section below the dissertation discusses government masquerading symptoms to show how regulation evolves to paternalism.

3.5 Paternalistic masquerades in religious regulation.

Government restrictions towards religious practices in many parts of the globe such as Asia, North Africa, Germany, Saudi Arabia, and many others, have been reported to have grown significantly over the years (Bandow, 2020). These restrictions can be identified as masquerading symptoms for those in government to use the state institutions to suppress people's desired lifestyles and cultural aspirations (Grim & Finke, 2006). In Algeria, for example, more than 280 Ahmadis were persecuted because of their religious beliefs in 2017 (Bandow, 2020). In addition to that in the same year, the Saudi Arabia government authorities demolished a 400-year-old Shiite majority neighbourhood and displaced thousands of people in the government's attempt of anti-terrorism efforts (Grim & Finke, 2006). The Chinese government is reported to have sent hundreds of thousands of Uighur Muslims to "re-education camps" (BBC news, 2019). Research has also shown

that in countries such as Laos, religious groupings are required to get permission from government authorities to hold religious services, gather, establish new congregations, and build houses of worship (Baronavaski, 2021). Which means, the organisations will not be able to build houses of worship without government permission. This need for permission passes as a limitation of religious freedom and extends to religious persecution when government would allow one religious group to do what it needs and while denying the other group an opportunity.

In some instances, studies have shown that government's expression to protect the governed or promote their interests can lead to favouritism and the exclusion of other groups (Neo et al, 2019). The legal requirement for registering religious organisations for operations has been put to effect in regions like in Europe, Sub-Saharan Africa, the Asia Pacific region covering 4 of at least ten countries (Baronavaski, 2021). In 2017 studies showed how this had adverse effects on the ability of some groups to conduct their religious activities. This trend has also been reported to have taken effect in other regions such as North Africa, the Middle East, in eight out of ten countries (Baronavaski, 2021). In some cases, governments recognise only a specific set of religious groups and deny registration to all others, withholding official recognition. Elsewhere, bureaucratic hurdles create difficult registration processes that disadvantage certain groups (Neo et al, 2019). For instance, in Eritrea, the government recognises and registers only three religious groups which are the Roman Catholic Church, Sunni Islam, and the Evangelical Lutheran Church of Eritrea, and since 2002 no other groups have been registered or allowed to perform religious activities and services (Majumdar, 2019). In addition, in Belarus, there are extensive bureaucratic and legal requirements to be recognised, minority religious groups, such as Baptist groups and Jehovah's Witnesses, remain unregistered and face challenges in conducting their respective religious activities (Majumdar, 2019). This policy of discrimination and placing bureaucratic obstacles represents paternalism because it is an indirect way of determining which religious group gets to operate and serve the community. In other words, people will not follow a religion whose adherents have no opportunity to operate. It is an indirect way of suppressing those religions without inviting direct political opposition and rebuke by the international community.

3.6 Concluding remarks

The above-mentioned raises the question of whether it is justifiable in a democratic society to regulate not only a constitutional right but a fundamental right. Many of the matters raised by the CRL are matters mostly of a judicial nature and would require the intervention of the courts and many other legal instruments empowered by the constitution, with the judiciary being at the helm of the proceedings. The role of the state in matters of legality and law enforcement become an overreach, and what is of importance is that the issues raised in this document, whether true or false do raise concerns about the effectiveness of all these institutional bodies and what needs to be done to ensure improvements where there seems to be a lack. Following this chapter's discussions, the theoretical foundations of paternalism include interference in another's affairs, ignoring another's consent, promoting the general good, reducing harm, and reasonableness. The theoretical questions that arise from it include whether it is possible for paternalism to cause harm and not promote good, whether paternalism can be unreasonable. The debate about religious regulation as is proposed by the CRL seems to have led to the affected parties doubting government's policies about protecting the right of belief and conscience. The next chapter is about identifying what in the CRL proposal signifies paternalism.

4 CHAPTER 4: POSSIBILITIES OF PATERNALISM MASQUERADING IN THE CRL COMMISSION RECOMMENDATIONS

4.1 Introduction

In this chapter, the dissertation presents the findings of the study undertaken to investigate how the recommendations of the CRL Commission indicate elements of paternalism or government overreach into personal affairs. To effectively do this the dissertation embarked on a study of the CRL Act, the South African constitution including the parliamentary report tabled by CoGTA Committee and the CRL Commission as presented in the previous chapter. It is important to begin by addressing the scope of the powers and jurisdiction of the CRL Commission to determine the extent to which it overreaches its mandate through religious regulation. The CRL like other chapter 9 institutions has had to be more active than before responding to social concerns when state institutions responsible for service delivery and law enforcement have failed. This period of enhanced activity by chapter 9 institutions is a good indicator of a vibrant democracy and engaged citizenry who call on it to keep political office bearers in check. The dissertation begins by assessing the proposal for self-regulation, which is broken down into subsections in order to comprehensively assess the proposal for self-regulation, as proposed by the CRL commission. These subsections are presented in the dissertation as follows

4.2 The CRL findings and proposal for religious "self-regulation" in South Africa

The CRL (2017:34-37) in its findings maintained that “current practices in the religious sector infringe on constitutional rights of congregants and violate existing legislation.” Therefore, diligent self-regulation is necessary for compliance with the law, ethical and community responsibilities. The commission further noted that existing legislation needed to be enforced in the face of human right violations. This aspect of constitutional infringement and human rights violations through religious practices is not so much a bad report on religion – rather a judgment on the police and criminal prosecution agencies that are not investigating and charging religious practitioners who contravene the law. The other finding related to the need for the DSD to cancel the registration of religious

organisations that operate as a businesses and making a profit that exceeded the over legal provision for NPOs and PBOs. The CRL also argues that such organisations should be referred for criminal investigation. In this finding, the party at fault is the DSD and SARS who are not monitoring the financial operations in the religious sector. Such investigation would count as legitimate law enforcement and not intimation of religious organisations. This lack of law enforcement extended to the home affairs department who are not implementing the immigration act adequately or minimising the abuse of VISA applications. As a result, there are more foreign pastors who do not have the necessary visas to reside or work in the country who are not arrested. As a result, there is a notable increase in religious organisations and leaders of foreign origin that are more inclined to amassing money – leading to illicit financial flows. This again is an aspect that border control and financial institutions could address working with state agencies, not a new regulation framework for religion.

The CRL noticed weaknesses in organisational capabilities of religious organisations where these although working as voluntary organisations, had to embrace their duty in promoting religious freedom linked to ethical and community responsibility. This entails avoiding fraudulent activities and strengthening cooperation with the law enforcing agencies to prosecute offenders. The CRL in commenting about the organisational weaknesses extends to the need for religious organisations to have a finance committee in place chaired by a duly elected member and treasurer. This administrative part is what the DSD should have control of as far as ensuring that NPOs have suitable founding documents and that they comply with them. The CRL also found lack of succession planning to be a cause of divisions in religious organisations, the commission recommended that religious organisation should elect leaders in accordance with their founding documents. Up to this point, the recommendations do not present facts that necessitate legitimate regulation of religion in South Africa. The issue of success planning can be resolved in courts with members are aggrieved and have suitable basis of non-compliance. This is the case with political parties that contest in court to nullify the outcomes of internal leadership election processes. The problem is that of administrative or organisational governance weaknesses by religious institutions and lack legislative oversight by state institutions.

The idea of self-regulation came in the form of a proposal after the investigations conducted by the CRL commission which began on the 3rd November 2015, with the intent of investigating the "commercialisation of religion". Following this, the Commission set out its recommendations in a detailed report that was published after the commission had been concluded on the 23rd of March 2016. Below the research will assess motivational reasons given by the CRL in its report, which will be followed by its recommendations as proposed to parliament. According to the CRL chairperson Ms Thoko Mkhwanazi-Xaluva

> The investigation study was a necessary task, to investigate the commercialisation of religion and the abuse of people's belief systems. Not excluding the day to day running of these institutions, where the funding goes to and how much it is, including the collection of monies and their governing principles (CRL, 2016).

The above excerpt about the CRL chairperson is among the aspects that raised concerns about paternalism whereby the state wants to know the amount of monies donated to the religious organisations, what the money was used for, and the day to day operations of the organisations. This is effectively the state being the supervisor over religious organisations. Critics of the CRL argued that the churches already submit annual and financial reports to the DSD as per the legal requirements. Therefore, there should not have been a need for the commission's investigation. Instead, the CRL should have called for law enforcement and advocate for the institution of legal charges against the offending organisations and leaders.

4.2.1 Moral reasons for proposed "self-regulation" by the CRL.

According to the CRL (2017), several reasons warrant the proposal of regulation as set out in its recommendations. According to the report, there seems to be a need for the sector to be given powers to regulate itself to give the respective religion the respect they deserve. Here the CRL is more concerned that religious organisations do not have sufficient respect – one may ask as to respect from whom and for what purpose. The CRL is actually interested in establishing the peer review committee in an effort to

professionalise the religious sector according to section 5(1) of the CRL act (CRL, 2017:41). This aspect of professionalising religious practitioners as in according them necessary respect is what the CRL is truly interested in, and not the other side-line issues of administrative corruption and human rights violations. This way of professionalising religious practitioners will have them affiliate to the CRL and thus subservient to its dictates. Therefore, religious regulation is a masquerade, more so with the CRL fully aware that it would face opposition in this regard – hence it asserts that "the proposal to regulate the religious institutions and practitioners as professionals is in line with the Constitution and the Bill of Rights. Professionalising the religious sector cannot be deemed to be unconstitutional" (CRL, 2017:41).

The rationale for professionalising religious practitioner's links with what the CRL conceives to be a peer review council of religious groups to authorise individual religious leaders a licence to operate (CRL, 2016). This religious community considers the peer review council as a professional board that will work based on a proposed criterion. As some of the requirements entail a certification from a theology school, compliance with governmental institutions such as SARS, a compliance certificate that allows for the erecting of a building and adherence to all safety requirements required. In addition to this the CRL also requires all religious bodies, to have a founding document, and constitution. Now what the CRL is asking for to enable religious organisations to operate is a duplication of duties in that SARS monitors tax affairs, municipalities are responsible for monitoring that buildings have compliance and safety records. While the requirement for one to have a qualification for a theology school to practice in religion borders on discrimination on the count of education. Which is inconsistent with the constitutional right. The constitution does not set criteria for the right of religious freedom, because this is a naturally inherent attribute of one's dignity and identity. The criteria are a contradiction and is presented as not binding where the CRL proposes that freedom of association should not be neglected when affiliating to the proposed body. Now, if one does not want to belong or associate with the state legislated structure that wants certification – where does it leave them, as illegal religious practitioners? Hence this dissertation's concern about paternalism because those who refuse to affiliate to the CRL structure expose themselves to victimisation and possible arrest.

4.2.2 The benefits of the proposed regulations by the CRL Commission.

To assess the benefit of the proposed regulation, the dissertation looks at both sides of the equation, which are those for and those against parties such as the CRL, FOR SA (Freedom of Religion South Africa), SACRRF (South African Council Religious Rights and Freedoms), and the Department of Cooperative Governance and Traditional Affairs (CoGTA). Including opinions from the broader public in the form of articles and or written submissions. Like any other idea, there have been opposing views concerning the regulation of religion in South Africa. Many of those opposing arguments say the proposed regulations amounts to a limitation to the right of freedom of religion. To assess the validity of this statement adequate reasoning had to be put forward together with legal evidence (SACRRF, 2017). The CRL argues that their intention is not to infringe upon the right to freedom of religion but a focus on the protection of ordinary South Africans from harmful practices (CRL, 2016). This protection from harmful practices is possible through the establishment of a self-regulatory body that would oversee the day-to-day running of the religious sector (SACRFF, 2017). The CRL strongly believes creating a regulatory body that is self-regulatory affords religious South Africans the freedom to practise their religion without any fear or favour (SACRRF, 2017).

According to the CoGTA (2018), the CRL expressed the following benefits that warranted the regulation of religion in South Africa. Firstly, it would assist religious institutions to create an environment where they could effectively regulate themselves without the interference of the state and further hold any person responsible who brought religion into disrepute. But the religious sector already operates in a terrain that through fraternal associations, and existing religious councils it can hold accountable those practitioners who err on matters of dogma and moral conduct. Religious organisations are already self-regulating and can use the courts when there is a need. Secondly, the proposed amendment to the CRL Act further states that its enactment will ensure not only protection but also a guarantee of the protection of religious rights in the country. In other words, where religious organisations do not confront the courts about practitioners who err, and law enforcement agencies are not moving against law breaking organisations. The CRL would find a way through legislation to sanction these religious practitioners. Therefore,

the CLR is on a mission of self-empowerment and is inviting the legislature to enable it with functions that the law enforcement agencies enjoy. It will no longer be a monitoring and educational institution alone but a policing one too. Thirdly, regulation will further help the religious sector protect freedom of religion and guarantee its protection in the country to give space and the capacity to help resolve the challenges within the sector. This argument does not present anything new in the religious space because there is nothing endangering or threatening the religious sector in South Africa currently. Neither is there anything threatening religious freedom. Therefore, the CRL is calling for policy solutions on a matter that is not threatening social order. If the handful religious practitioners were in prison today, there would not be a need for regulation because the harmful elements are removed from society. Fourth, the CRL is of the view that its proposal emerged because of loopholes that have been identified within the sector about enforcing the law, and as a result, it felt that its constitutional mandate could help bridge the existing gaps and close the current loopholes. Since issues like tax evasion in the religious sector have been identified, together with issues such as the issues of commercialisation and the abuse of congregants, the CRL views the amendment of the Function as a beneficial approach to help remedy all the findings after its investigation was held across the country. However, the loopholes that the CRL identified in the existing legislation are not what religious legislation can solve. These are loopholes in the tax administration, immigration, and NPO governance, which when addressed and laws strengthened would lead to the decline in religious abuses.

4.2.3 Regulation is a benefit more to the State than to the Faith sector.

When reading the recommendations of the CRL at face value one can be easily convinced that the intentions are solely for the good and the benefit of the faith sector. That religious organisations will manage their affairs and practices; self-generating criteria to admit and expel members. This way of believers will know who is a publicly and peer reviewed legitimate religious practitioner and organisation they can associate with. Therefore, the CRL moral reasons are based on protecting the reputation of faith so that those who want to believe do not lose trust in the religious institution. Including to give the public some confidence that the state is doing its best to protect citizens from

masquerading actors in the religious sector. This way, the state fulfils its social contract obligation of providing security to its citizens.

But this dissertation examines the other side of the coin. The possibility of regulation as a masquerade of paternalistic control of the religious sector. More than anything, the proposal is aimed at ensuring that the CRL has more power to intervene in cases of alleged abuse within the religious sector. This reveals the real driving factor for the proposal leans to the side of gaining more power, as a form of control over the social aspect. According to Nsereko (1986) the church regulation phenomena is not new on the African shores, as many African states have resorted to want finding ways to control or exercise a level of control over the church. This can be traced to the existence of church subordination under the state. Scholars such as Nsereko (1986), point out that religion or faith is like a skin, and everyone wears it differently. As a result, the idea to separate the church from the state is one that is sensible to protect this important aspect of humanity. Thus, countries such as Liberia, the separation between the church and the state is a critical aspect in order ensure that the state does not find itself meddling in the affairs of the church and religion. This is mainly because unlike previously during the reign of kings the state does not have a monopoly of allegiance of the people, but it is a shared allegiance with the church or religion. Therefore, like many states, the idea of shared allegiance is one that is unwelcomed (Nsereko, 1986).

In South Africa, one such statutory regulatory body that regulates religion was introduced through the inception of the traditional healers' organisations, which was established to regulate the high number of traditional healers and herbalists, this body required the amendment of existing legislation, which is mandated to guide and monitor the traditional healers. This body like the medical board of South Africa, requires traditional healers to be registered, which in turn allows them to fully operate and administer medicinal aid. In addition to this it is the CRL argues that this move was made to ensure the safety and the protection of ordinary South Africans. There are already bodies and regulatory frameworks such as SARS, DSD to name a few that already help remedy the issues of concern raised and highlighted by the CRL Commission report. These bodies as stated above are mandated to help the commission execute its mandate, as far as overlap and

or powers and functions out of its reach. It is therefore highly to establish an umbrella body to regulate religious affairs in the Christian faith. The other aspect that the CRL fails to make clear is the fact that religious regulation should apply to certain religious organisations such as the charismatic Christian faith group. As these findings are centred around the dealings of organisations such as ECG, Raboni Ministries, Alp Lukau Ministries, and Incredible happenings under Mboro. Just to name a few that hold common beliefs of the tangibility of the supernatural and the manifestation of the power of the Holy Spirit, such as the raising of the dead, receiving of miracle money in bank accounts. Therefore, in a strategic move to avoid backlash from targeted religious organisations, the CRL proposed a blanket approach affecting all Christian charismatic religious groups. This way, the CRL painted all faith organisations with one brush, punishing others for the sins of another. This is a masquerade on the side of the CRL that reveals its paternalist intentions for the following reasons:

First, creating an umbrella organisation will do more harm than good because it presents unjustifiable limitation on the right to Freedom of religion, such as the limitation of the freedom of association, as religious bodies, will be forced to affiliate in an open and democratic South Africa. Secondly what is concerning in the CRL proposal is the need to issue registration certificates to religious bodies who comply with the requirements set out in the proposed regulatory Act (CRL, 2017). Which means the umbrella body will be able to revoke the certificate along with the right for the religious leaders and organisations to operate. This is a dangerous development in religious governance that could make arbitrary rule possible. Meaning, those with power can manipulate or target religious organisations that do not fit their political rhetoric and vision. This is like, the umbrella body revoking the certification of the religious leader who speaks against government. It is important to note that the CRL through being a Chapter 9 institution is an executive arm of the state and therefore the statements made of non-interference are to a large extent untrue. The CRL through the umbrella body would be able to limit others freedom to operate – having licensing as a prerequisite of practicing religious belief is not in keeping with the claims of freedom of religious expression. This amendment is taking away the people's liberties.

In addition to this, what the proposal raises unintentionally, is how easily governmental overreach can take place within the parameters of a democratic society under the pretext of collective good and benefit. The CRL shares in the executive arm of the state, the proposed amendments are an overreach into other arms of the state such as the Judiciary. In other words, the CRL umbrella body will mediate in claims about pastors involved in sexual abuse and other criminal activities. Yet, such criminal mediation is the function of the police and justice system (News24. 2017). The proposal will therefore make it possible for the CRL umbrella body to accept cases that should have been presented to the police and courts. It is in a way, defeating the ends of justice for people to report criminality to the CRL instead of the police. What the CRL should be doing, is issue a report of abuses and instruct the police to prosecute those involved. Not to seek for religious regulation. The proposal to execute the same function constitutes a governmental overreach and is non-concurrent with the separation of powers that help facilitate the existence of a democratic state (ma, 2017). The researcher is of the view that under the constitution, it is the Judiciary that ought to have the final say on matters of religion and not an organ of state or executive arm of the state; this will help guarantee the protection of freedom of religion in a democratic country (News24, 2017).

After carefully considering the above, it is important to bring to the fore the response from members of the religious community such as a non-profit organisation called FOR SA (Freedom of Religion South Africa). Below are some of the reasons why members of that religious Christian community followed the report to parliament raised concerns of infringement to the idea of freedom of religion. In addition, this chapter seeks to highlight any form of state legal intervention following the pressing of legal charges against some pastors who formed part of the respondents in the CRL investigation and hearings (News24, 2017).

According to FOR SA (2018), the tabled report by the CRL was brought forward and debated before CoGTA Committee in October 2017 with inputs came from various faith communities, denominations, academics, and lawyers. In the discussions there was consensus that the reports of incidents that have been taking place in places of worship were accurate. It was also a commonly held view that the response of the CRL in this

regard was unnecessary, and not the solution (Parliamentary-Committee 2017). The inputs included chastisement for the CRL that it could have also involved other state institutions mandated for executive functions like investigations and audits. The SAPS, SARS, and the DSD could also have been involved to explain their role in the religious governance. They further argued that the constitution would have to be amended to afford the CRL the power, which it exerted when it conducted this investigation. In other words, they imply that the CRL infringed Section 15 of the Constitution of the Republic of South Africa, which affords the right to freedom of religion and expression.

FOR SA (2018) which is a forum of different members of the faith community proposed a solution-driven measure to the challenges found in the religious sector. CoGTA Committee rejected the proposed regulations because of their view that the National Consultative Conference (NCC) allows the religious sector to discuss all the challenges they faced as a sector and develop solutions that will ensure self-regulation. According to CoGTA Committee, the NCC could be the best-suited structure for religious governance. Eventually, CoGTA Committee agreed with the proposed solution by many who made submissions at the hearings and supported the development of a charter for self-regulation, i.e., a “Code of Conduct” for religious practitioners and organisations (Parliamentary Committee, 2018). The Evangelical Association of South Africa (TEASA) organised for the creation of the code of conduct in May 2018 (Ntlha, 2019). More than 70 senior religious leaders in the City of Johannesburg met and gave a mandate to the South African Council for the Protection and Promotion of Religious Rights and Freedoms (SACRRF). The SACRRF wrote the South African Charter for Religious Rights and Freedoms (which defines religious rights and has the subscription of approximately 22 million South Africans in the faith community). It was further suggested that the above-mentioned charter should be used as an instrument to help develop the corresponding responsibilities in the form of a Code of Conduct for religion and to prepare and circulate this for comment and inputs.

Following the above, in February 2019 at the Rhema Bible Church in Randburg organised a gathering in partnership with the CRL and the National Religious Leaders Council (NRLF), which is chaired by Pastor Ray McCauley. Delegates rejected the agenda

proposed to develop an accountability system in the form of a peer review committee; and preferred not to consider a constitutional legislative framework. In addition, they did not want to approve a Code of Conduct solely developed by the CRL, which allegedly ignored the draft developed by the SCARF (FOR SA, 2018). In this, one sees that Rhema Bible Church is sympathetic to the CRL proposal and failed to mobilise the faith community to support it. And the CRL's lack of willingness to consider the inputs from faith communities make its proposal less appealing for acceptance by those it will affect most. Following this, the delegation felt that it was misguided for the CRL to make decisions concerning how the church should regulate its affairs, and that the CRL should not involve themselves in the processes that the church needs to undertake, such having new members being added to the "steering committee." These are some of the proposals rejected by the members at the February 2019 meeting (FOR SA, 2017).

Members of the religious community such as FOR SA and SAHRC are amongst the most visible voices that have spoken out against the proposals presented by the CRL to COGTA. Amongst other issues, the key common concerns raised were first, that the CRL forms part of the organs of the state according to its definition in both the constitution and the CRL Act itself. In addition to this, the commissioners are individuals appointed by the President, and this constitutional mandate and the presidential appointment were never intended to afford the CRL and its chairperson a form of control or power. It is their view that whoever is appointed may have power and a say over "state-endorsed churches," this further potentially opening doors for the mainstream church to become silenced on issues that concern the state or issues which may implicate the state (FOR SA, 2017). According to FOR SA (2017), the CRL's proposal re-ignites the historic church-state relations where government's involvement in faith matters signifies a clear overreach of the legislative powers and prerogatives by the CRL as an institution. The CRL's attempt "to assume this function through an amendment of the CRL Act is therefore an attempt to grab power." It is the view of FOR SA (2017) that these attempts are nothing short of misguided, unconstitutional, and amount to the State capture of religion.

In addition, the peer review structure as proposed by the CRL has received widespread criticism from member organisations such as FOR SA who argue that this proposal is

nothing short of a power grab tool. They argue that the CRL is asking for one committee (that is a handful of people) who will oversee all Christian faith organisations in the country. This is a caretaker committee according to critics, and an expression of religious paternalism. The CRL asserts that this is their idea of self-regulation; however, the suggested Peer Review Committee is defined as an advisory body to the CRL (EWN, 2018). Meaning, the body will advise the CRL on matters of religious governance, and thus, the CRL will now be involved in religious operations while it is also judge of misdemeanours therein.

According to the CRL, the primary task of the Peer Review Committee is to establish and license Umbrella Organisations, which will function as specialised support, advice, oversight, governance, and capacity building for churches. Figure 3 below is the reflection of what the proposed CRL peer review hierarchy that would facilitate self-regulation by faith organisations.

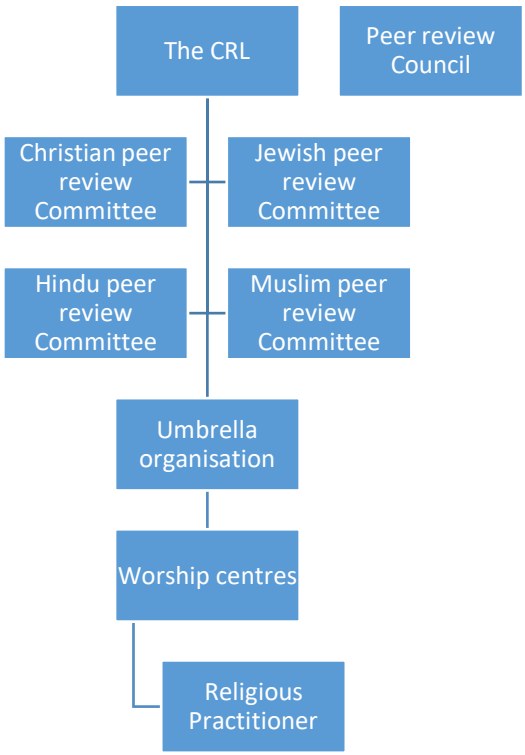

Figure 3 The proposed CRL religion specific peer review committee, adapted from (CRL, 2017:42)

The CRL (2017:43) wants to fulfil its legal mandate to have a database in place for religious organisations, institutions, and experts. This is the category of religious practitioners in the proposed hierarchy to help people verify legitimate organisations and professionalise religious leadership. The practitioners operate at a worship centre (local church), meaning no practitioner should be recognised who is not located to some geographical point in time. The local churches will form their own umbrella bodies for fraternal support, guidance and pooling resources (CRL, 2017:43). The umbrella organisations will serve as disciplinarians in unbecoming practices, capacity builders, mediators in disputes, and organisational builders of local churches. These umbrella organisations will also have to be known by a peer review committee. Where necessary, the umbrella body will recommend to the peer review committee and eventually, the CRL to remover a practitioner/local church from the register. Now the question becomes how the peer review and CRL will debar an organisation from practicing a religion on the basis on not having a licence. This is where the paternalist factor comes into the picture. That there is a dictated code of conduct for religious practice – no more an individually determine thing according to liberty (CRL 2017:43). This dissertation argues that it is possible for the CRL to form a peer review committee as an educational and not regulatory instrument where religious practitioners can meet and deliberate about the trends and changing context of religious freedom. The peer review committees will be the final voice in appeals and disputes related to their specific religion and subsidiary umbrella bodies. Although the peer review committee advices, the final decision-making power lies with the CRL. Now this will be a big transition in religious governance in South Africa, where currently the CRL has no authority to decide on any religious organisation's affairs; this regulatory structure will place all religions under the decision-making powers of the CRL in unpreceded ways. From here, the people who are not happy with the CRL decides will have to go to court for appeal.

The CRL wants the peer review committee to which religious organisations should apply for licensing to operate on condition that they meet minimum standards of good governance, ethics, and acceptable religious behaviour (EWN. 2018). The criteria are supposed to ensure that religious organisations remain on a good spiritual path. The concerns about the umbrella body are that it would be susceptible to political and

nefarious intentions in religious governance. To the extent that those in decision-making positions using technical reasons to exclude or victimise religious communities that are at odd from the norm. In other words, the peer review committee will be the one determining what people ought to believe and how to practice that belief. It seeks to ensure homogeneity, which contrasts with the idea of freedom and one determining own conscience. It is therefore unavoidable that the CRL will take decisions about the acceptability of doctrinal belief and expression. Even though not necessarily the intention of the CRL's recommendations, the result will be that the State will have the ultimate power to silence any church or faith leader who teaches on matters which are deemed "unacceptable" by the State (EWN, 2016). This is especially considering the evident global shifts in morality and ethics concerning matters such as morality, corruption, same sex marriage and transgender issues, and family roles. This proposal is opposed to the constitutional right to Freedom of Religion found and detailed as a fundamental law (EWN 2018)

4.3 The weakness of the CRL report to the CoGTA portfolio Committee

The negative aspect of a blanket approach to religious regulation is the harm it would bring to the organisations that are governed well and have no part in abuses. This is what Mill (1859:32) meant in that "the greatest harm done is to those who are not heretics, and whose whole mental development is cramped, and their reason cowed, by the fear of heresy." According to the SACRRF (2018), the CRL proposal of having the peer review council as the final arbiter before one goes to court is equal to it placing itself at the help of all religious organisations. And this if legislated, would frustrate those who want to approach the courts directly because it may be argued that they did not exhaust the full process of appeal within the CRL legislated framework. This is also like defeating the ends of justice and discouraging the victims to give up their cause. The CRL does not even set the minimum time that appeals should be processed. It is possible, given the diversity of religious denominations, that number of appeals is so large that it takes years for one to have their turn. This is something unheard of in a constitutional state in which religious freedom is valued and upheld." FOR SA (2018) respectfully submits that this would bring a fundamental change to the role of the CRL as a Chapter 9 institution, which

would also require a rather controversial constitutional amendment to the existing legislation. To strengthen this argument Section 185(1) of the constitution as it stands including the CRL Act in no way give the CRL competence to function as an appeal body on matters related to these legal frameworks; it merely grants the commission provision or power to function as an advisory body (RSA, 1996).

Due to the separation of powers in South Africa's political system, the CRL findings to amend current legislation had to be ratified by the affected parliamentary committee as the legitimate institution for law-making. After an extensive investigation, the CRL commission was of the view that it would be necessary to amendment the CRL Act of 2002 to ensure that religion as freedom was not only guaranteed but also protected (CoGTA Committee, 2018). According to the CRL (2019), this would help create an environment where religious institutions could effectively regulate themselves and not leave this to the state. Public responses to the CRL potentially unconstitutional recommendations led the CoGTA parliamentary portfolio committee calling the CRL to explain itself. The report tabled before the committee established that a lot of organisations argued that the commission in its entirety did not engage an adequate public participation because only about 85 denominations were invited to participate in the hearings; ii) and that there were several disagreements surrounding the constitutionality of the recommendations by the CRL, therefore, the idea of religious regulation should not materialise (CoGTA Committee, 2018). Many denominations argued that that self-regulation has been an effective method that needs no changing; iii) the committee does agree with CRL that the commercialisation of religion is a constitutional infringement on human rights that needs addressing; but the committee argued that CRL is not the institutional body that is meant to be dealing with the regulation of the sector. But rather, as per requirement according to the act that governs, the institution, CRL is to seek counsel state organ bodies such as DSD, SARS and the CIPC.

Considering the above, it is necessary to highlight the recommendations CoGTA Committee proposes as an institutional body to help resolve the situation or issues brought to the fore by the commission following its investigation of abuses in the religious sector.

4.3.1 CoGTA Committee recommendations concerning the CRL report

Following the issues above raised by several faith organisations the committee further proposed the following recommendations as per their mandate and oversight role. The effect of the adherence of these are binding to the effect that, the authority for law-making and decision-making in that effect rests upon parliament. This is in accordance with parliament's constitutional mandate. According to the law-making process in South Africa, the power to enact or pass a bill rest upon the parliamentary actors involved in the law-making process. It is therefore necessary to point out that in matters of procedure draft bill proposals need to be submitted to parliament for scrutiny. It is on this premise that parliament may provide recommendations or reject proposals (SACRRF, 2018).

The committee suggested that i) a National consultative committee which also includes the CRL should be formed to give a platform to discuss the issues affecting the religious sector. The consultative committee would establish a charter for self-regulation and a code of conduct for the sector which is officiated and recognised by legislation which in this instance would be ensuring that the establishment of this act does not in any way infringe on the rights found in chapter 2 of the constitution of the Republic of South Africa. ii) the committee felt that it was necessary to propose the strengthening of the mandate of a body such as the Independent Communications Authority South Africa (ICASA) for it to penalise broadcasting of misleading media. This includes strengthening the NPO Act to improve the registration of religious organisations. And improvements on Income-tax legislation to monitor the fiscal compliance in NPOs and people involved in them who derive material benefit encourage registrations of religious institutions (Parliamentary Committee, 2018).

To strengthen the recommendations brought forward by CoGTA Committee it is necessary to bring to light the concerns of different religious bodies regarding the proposed recommendations of the CRL Commission. Below the researcher sets out the concerns of FOR SA as an organisation regarding the CRL report and the proposed recommendations and the consequences from a constitutional perspective if implemented. Including what FOR SA proposes as practical employable solutions.

4.4 Signs of paternalistic behaviour in the CRL proposal

The fundamental sign of paternalism in the CRL report is the limitation on the freedom of religion that the legislative amendments will bring. What has been made clear by many members in the religious sector such as FOR SA is that they do not in any way condone the acts done in the name of religion and healing. Religious leaders argued that the Bible sets out ways in which the administration of healing should be conducted and even though Jesus is seen using some unconventional methods, it is always done in a manner that protects the human dignity of those being healed (CRL, 2019). The idea of the promotion and protection and its extent are set out in the governing legislation such as the Constitution and the CRL Act 19 of 2002. Considering the present legislation, the CRL is already empowered to execute its mandate. The apparent need for an amendment will lead to an overreach into other functions of the state which already have existing bodies that exercise control and protection of basic human rights (FOR SA, 2017). When assessing the CRL Act 19 of 2002 a misinterpretation of the legislation in terms of its powers is at play, or the knowledge exists, hence the need to propose an amendment of the existing legislation (Parliamentary Committee, 2018).

Section 36(1) of the Constitution says the rights enshrined in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. The limitation should also consider the nature of the right (Freedom of religion and religious practice), the importance of the purpose of the limitation (reducing commercialisation of religion and abuse of believers) and whether there are less restrictive means to achieve the purpose (establishing a peer review committee and umbrella organisations). This is intended to generate an understanding of what legal grounds and justification the CRL Commission relied on in its written submission to Parliament (Mndende, 2013). What the relation between the limitation and its purpose is whether there are less restrictive means to achieve the purpose. Section 36(2) states that except as provided in subsection (1) or any other provision of the constitution, no law may limit any right in the Bill of Rights (RSA, 1996). Crucially, the researcher argues about the firm expression that no law may limit any right found in the Bill of Rights. This is an

understanding of what the nature of the right to freedom of religion is and what the limitation of the right in question would mean in a constitutional democracy (Mndende, 2013).

The question in context here is the application of the limitation clause in the right to freedom of religion. That is why the researcher uses the limitation clause to assess whether there are necessary grounds for the CRL's commission's proposal of regulating religion. Below is a brief explanation of the evolution of the limitation.

4.5 The evolution of the limitation clause in the constitution of South Africa

According to De Vos and Freedman (2014), the rights are not absolute, in other words, they can be limited by the rights of others as well as competing social interests. When confronted with the idea of the limitation of rights the drafters of the interim constitution were faced with three possible options which were, i) to merely set out the different protected rights without the implementation of any form of formal limitation device; ii) the option of inclusion of rights-specific limitation clauses such as those found in international and regional human rights instruments such as the European convention for the protection of human rights and fundamental freedoms; iii) an inclusion of a general limitation clause applicable to all the rights protected under the constitution (De Vos & Freedman, 2014).

It is important to point out that under both the final and interim constitution the drafters chose a general limitation clause by a law of general application, when necessary, reasonable, and justifiable in democratic societies (Van Coller, 2020). The South African constitution permits for the limitation of rights in a manner that does not impair the right or freedom in question, in other words, religious regulation should not impair the freedom of religion that people ought to enjoy. In practice, the court considered a list of factors together in a balancing test. This was in the matter between the State vs Makwanyane and another. The approach in question highlighted the need for two requirements which were necessity and reasonableness, removing justifiability and adding the proportionality test, which is a call for the balancing of different interests (Taylor, 2005). In context to this study, the CRL is trying to balance the interest of believers who are victims of religious

malpractices along with the freedom of religious practitioners who should enjoy the freedom to preach their faith. Below the researcher highlights the two-stage approach to the limitation of rights that was adopted in the final constitution and how this is a necessary route that ought to be taken by the courts of law and not only legislators in parliament, in part attempting to show why the limitation or the regulation of the freedom of religion is rather a difficult task to do in a constitutional democracy (Taylor, 2005).

4.5.1 The two-stage approach to the limitation of rights

Since the adoption of the final constitution in 1996, the court has followed mostly the two-stage approach. According to this approach, the starting point is answering the question of whether the provision in question infringes the rights protected by the substantive clauses stipulated in the Bill of Rights. And if this is found to be the case the next question now becomes whether the infringement is justifiable. Again, it is necessary to borrow from the legal framework that exists in the form of case law where this two-stage approach has been set out in more detail to gain an understanding of its full scope (Taylor, 2005).

In Ex Parte Minister of Safety and Security and Others and Re S v Walters and Another, the apex court set out this two-stage approach, noting the following: Firstly, the threshold inquiry aimed at determining whether the law in question constitutes a limitation on one or other guaranteed right. To effectively do this entails examining, the scope and content of the relevant protected right/s, and the actual meaning and or effect of the infringed law to see whether there is any limitation of the former by the latter. Section 39(1) and (2) of the constitution guides the interpretation of the above to promote the values of a democratic and open society that is based on equality, human dignity, and freedom. If after consideration of the above as a test no form of limitation is found then it is deemed to be the end of the matter (Taylor, 2005). Now in context to the CRL proposal, the faith communities are concerned that the recommendations will limit their freedom of religion by opening a wide array of possibilities for the authorities to arbitrarily certify or withdraw certification of religious practitioners and organisations. This would lead to some faith communities being deemed illegal and allow law enforcement agencies to harass and arrest them.

Considering the above it is clear that the proposal for the regulation of religion in the South African context has a long route that requires not only legislators to decide to that effect but the courts of law as it is not merely a policy framework matter but a matter that requires the courts to apply their minds based on legal tests as the effects of any decision to this effect can result in lengthy legal proceedings. Therefore, in Chapter 3 of the research the dissertation alluded to the need to consider that this decision cannot be taken in isolation from the many role players that have an obligation from a constitutional mandate perspective (Witte & Green, 2012). It is also important to consider that courts have over the years alleged to have made errors when it comes to the application of the two-stage approach by straying both implicitly and explicitly. An example to hand is in the matter between Christian Education South vs Minister of Education, where the court had to rule on the matter of corporal punishment within the education system (Witte & Green, 2012). Where members of the Christian religious community argued that according to their religion the beating of a child is justifiable and cannot be viewed as child abuse or assault. In this matter, however, the court opted for the justification of the infringement of the right and/ or right infringed upon by measure and did not consider whether the rights in question were infringed upon. According to the Bill of Rights the court merely just assumed that the rights in question may have been infringed, the existence of such an error also then brings into question the measures or tests that exist to assess infringement or non-infringement (Witte & Green, 2012). So is the case with religious regulation that CRL proposes, it is like using corporal punishment on all religious organisations and practitioners for the mistake committed by a few. Such corporal punishment (religious regulation) would limit the freedom of religion that the people enjoy.

From a legal eye, the question that follows is what justifies the infringement of one right over the other, within an open and free democratic South Africa, this research will deal with this question. Over the years it has become apparent that the decisions viewed as for the greater good often raise questions of constitutionality and the infringement of some rights to protect other rights. This is the case with the COVID-19 lockdown limitations on people's freedom of movement, right to choose medical treatment that led to people being arrested, some fired form their jobs and taking vaccines whose capacity to limit the spread of the virus have always been questionable (Mapitsa, 2022).

4.6 The proposed religious regulation is not in the interest of religious freedom

In this section of the dissertation, it is necessary to borrow the words of the apex Court in the Christian Education matter where the court highlighted that the question of how far a democracy must and can go in affording their religious members room to define which laws they would obey, and which ones would they not (Mapitsa, 2022). This leeway to choose religious beliefs is in keeping with an open and democratic society which is based on equality and human dignity. Such a society can achieve harmony if all its members agree and accept that certain norms and standards are binding. Following this, those deemed as believers should not in any way be coerced into having to choose to obey their faith and obeying the law because the state and church do not agree in terms of principle. And as a result, the two may be in conflict (FOR SA & SACRRF, 2018). The latter is what the dissertation argues is at display, looking at the CRL proposed recommendations for regulation. The CRL is effectively a state institution and intends to be recommendations by the CRL commission which according to legislation can be deemed as the state. Allowing this proposition simply as stated above is a direct limitation of the right to freedom of religion that is found in Section 15 of the constitution. Judging by the set framework established to effectively evaluate the justification, according to the dissertation the reasons given by the CRL commission do not suffice (FOR SA & SACRRF, 2018). If anything displays the extent to which other organs of state should extend their service offering to afford protection for the vulnerable and minority. The dissertation stands in agreement with the report from COGTA which summed up as follows: that it firstly applauds the commission for taking the matter under investigation. Secondly that its proposal for regulation is out of its [CRL's] jurisdiction. This was because many of the tasks it took on to conclude its findings, are functions and powers that are afforded to other organs of the state such as the South African Police Service, South African Revenue Service, the DSD, just to name a few (FORSA & SACRRF, 2018).

The dissertation is not arguing against the protection and promotion of the basic human rights that the commission is claiming to be protecting but points out that the proposal in this instance may be incorrect and may do the opposite of what the commission claims to want to achieve. It would do this by causing an infringement on the right stated in

Section 15, which is the right to freedom of religion and association, which through various cases the judicial system has attempted to bring clarity surrounding the dangers of the application of the limitation clause on certain human rights (Rautenbach & Venter, 2018). The human rights declaration is the reason behind the enactment of the right to freedom of religion and the history behind it finally being considered a basic human right. It is evident that any law that seeks to limit this basic human right would undergo strict scrutiny and rejection in a country governed by the principles of freedom and equality. An in-depth review of why the regulation of religion, in this case, is no solution and not in the interest of those who claim to be protected is necessary to bring an understanding of why this exercise would not serve its purpose. It would rather cause harm in a society that stands firmly against discriminative practices in any form (Rautenbach & Venter, 2018).

To expound on the above, the dissertation interprets what international law states, as the South African legal statutes are influenced in their creation and existence by existing international law. In addition to this, a brief overview of and comparative exposition of the interpretation of freedom of religion in other countries in and outside of Africa is given.

4.6.1 South African case law on freedom of religion.

In this section, the focus moves from the understanding of international law to its expression in the South African constitution. To do this it was necessary to find instances within case law that exist to assess the response of the courts when faced with matters of freedom of religion, within the context of South Africa and the interpretation thereof within an open and democratic society. Landmark cases have evaluated the strength and importance of the laws enshrined in chapter 2 of the constitution. The cases help bring an understanding to the view of the courts surrounding the extent to which the state may exert and express control over basic rights and freedom (Leatt, 2017).

In Prince vs President of the Law Society of the Cape of Good Hope (2002), the applicant wanted to be admitted to the law society and had fulfilled and met all the requirements that qualify one following the relevant act. This was subsequently then denied by the law society of the Western Cape Province, then denying him access to do the required community service. The law society stated that the above applicant was not fit and proper

to be admitted and registered as an attorney. This was following the discovery of two previous convictions for being found in possession of dagga. According to the facts presented, the applicant was a member of the Rastafarian religion. And was merely practicing their religion (Coertzen & Peter, 2014). According to the Rastafarian religion, the usage of marijuana is a significant part of their religion, as it is used for a broad set of things such as culinary, ceremonial, spiritual, and medicinal use. It is for this reason that the applicant felt that the decision taken by the respondent violated their freedom of religion and expression as stipulated in Section 15 and guaranteed by Section 31 of the constitution which protects the right of an individual who belongs to a religious minority group to practice their religion (Henrico, 2019). In addition to this, the applicant appealed to the courts that the decision infringed on their right to freely choose their profession as stipulated in section 22. The applicant wanted to set aside the decision made by the law society concerning registering his contract for community service (Coertzen & Peter, 2014). In addition, the Attorney General and Minister of Justice sought leave to appeal as respondents in the case and the leave was granted. Considering the above facts before the courts it is necessary to reveal the intent behind the usage of this case concerning the research topic; to do this it is necessary to briefly engage the merits of the case, abstracting bits of crucial information in summary format (Coertzen & Peter, 2014).

Prince argued that the absence of an exemption violates his freedom of religion. The court has made it clear that it is not its business to be concerned with whether a particular practice is central to a religion because that is a matter of faith and belief. Since the use of cannabis is claimed to be central to religion by Mr. Prince and these allegations are not denied, the court concluded that they must therefore be accepted. The court stated that "there is no question about the genuineness of the appellant's religious belief" as he has demonstrated that he is a bonafide member of the Rastafarian religion (Prince vs President of Law Society). Taking the above into consideration translates to a form of precedence that has been set by the courts regarding religious practices within different denominations. What is necessary to take note of is the comments made by the legal experts who have undoubtedly expressed that the idea of religion and its practice is a personal matter, most importantly the aspect of its expression (Prince vs President of Law Society).

In addition to the case above it is also necessary to present the case of Christian Education South Africa vs Minister of Education (2000). Because it highlights several important points to be mindful of when dealing with the issue of the freedom of religion and views of violations or proposed violations to protect the rights of others (Henrico, 2019). The applicants challenged what is known as section 10 of the South African School Act, which expressed the prohibition of corporal punishment in all schools, including what are known as private schools. According to the facts before the court, the applicants were an umbrella body of 196 independent Christian schools (Woolman & Bishop, 2013). The applicants in this matter argued that the section in question was an infringement on their constitutional rights to freedom of religion and should be deemed unconstitutional (Christian Education South Africa vs Minister of Education.) To drive their point home, the applicants referred to some scriptures or verses in the Bible, which in some instances prescribe corporal punishment as an acceptable way of disciplining a child (Woolman & Bishop, 2013). For instance, the scripture found in the book of Proverbs 22:15 states "foolishness is bound in the heart of a child, but the rod of correction shall drive it far from him"; including Proverbs 23:13-14 which says "do not withhold discipline from a child, if you punish with a rod he will not die. Punish him with a rod and save his soul from death" (Woolman & Bishop, 2013). Using the above, the applicants argued that corporal punishment formed an integral part of their religion as Christians, they further argued that the state, through prohibiting its usage even though parents have consented, is then an infringement of their right to freedom of religion.

In this matter, the court held that the freedom of religion may be hampered by measures that force persons into acting or refraining from acting in a manner that is viewed to be contrary to their beliefs. In addition, the courts recognise that religious practices involve interaction with fellow believers and in this case section 31 of the constitution makes room for the practice of religion in a communal setting with others. The court took the stance of assuming that section 10 of the South African Schools Act indeed limited the parent's religious rights under sections 15 and 31 of the constitution. Following these assumptions, the court turned to the question of whether South Africa's law was reasonable and justifiable within an open and democratic society, and further if the state has the power to limit these rights as per section 36 of the constitution (Pieterse, 2000). However, the

crucial question in this matter is if the failure of the law to consider the applicant's religious beliefs was by any means both justifiable and reasonable. The Constitutional court did not oblige parents to choose between obeying the law of the land and following their conscience. Apart from the authorisation of corporal punishment by educators, the schools were in no way prevented from exercising their religious beliefs. It is important to note that the law was aimed at achieving an important objective of protecting the physical and mental integrity of children even though this was done by limiting the right to freedom of religion (Pieterse, 2000).

In its conclusion the court held that the making of an exception would take away from the moral symbolic and importance to reduce the level of violence, having said this the court was then of the view that the law was justifiable and reasonable and therefore cannot be deemed as unconstitutional. With specific reference to this case, the interference, and the limitation of the right to freedom of religion was outweighed by the objective the law is designed to achieve. The limitation clause as it stands gives room for courts to duly engage in these exercises (Pieterse, 2000).

The unanimous court’s identification of the underlying motivation in this case held that the problem in any democratic and open society is based on human dignity, equality, and freedom. Likewise, religious freedom and conscience must be regarded with the seriousness that is needed. It is indeed how far such a democracy can or must go as far as allowing members of religious communities to choose for themselves which laws they will adhere to and which ones they will not (Pieterse, 2000).

For this dissertation, it was necessary to bring to the fore these two South African landmark cases, as the judicial decisions clarify the issues of limitation to subsequently protect other interests of society. What is important to note is that the issue here or the proposal brought forth by the CRL commission is not something the courts have been faced with, where the question of paternalistic decisions or stances taken by those in positions of power against ordinary members of the state (Petersen & Marshal, 2019). The question of whether or whether not paternalistic stances can be justifiable, has also surfaced in the litigation of these cases. As a large portion of the reasons for limitation are a result of the view that individual persons are unable or fail to protect themselves.

And therefore, require a messianic figure that would come to their rescue before self-destruction takes place (Petersen & Marshal, 2019).

In conclusion, symptoms of masquerade are at play here as the umbrella body suggested by the CRL is constituted by the CRL itself. This includes the election of who needs to form part of that umbrella body that is deemed necessary to roll out paternalistic methods. The courts have ruled on the importance of allowing individuals to practise and express their beliefs without any form of interference, regardless of whether the activities are viewed as questionable in the eyes of the beholder (Petersen & Marshal, 2019). The court in Prince vs President of the law society of the Cape of Good Hope argued that

“Beliefs that believers hold sacred and central to their religious faith may strike non-believers as bizarre, illogical, or irrational. Human beings may freely believe in what they cannot prove. Yet even though their beliefs are bizarre, illogical, or irrational to others or are incapable of scientific proof, does not detract from the fact that these are religious beliefs to enjoy the protection guaranteed by the right to freedom of religion. The believers should not be put through a process of having to prove their beliefs or faith. For this reason, courts should not enter the debate of whether a particular practice is central to a religion unless there is a genuine dispute as to the centrality of the practice” (Henrico, 2019).

The court confirmed that religion was and remains a personal relationship between an individual and their God, and how a person chooses to express this is not a matter that should be interfered with by third parties. The CRL's proposal seems to be using the masquerade of protecting the rights of others to give limitation to the rights found in Sections 15 and 31 of the constitution, respectively. While there are an extensive number of judgments that have over the years asserted the danger of doing this in an open, democratic society such as South Africa (FOR SA, 2017b). What is striking in these findings is that the CRL's proposal is not a new phenomenon in many parts of the world such as one-party states, Muslim states, and some Asian states, where the dominant religion is that of the government, which in turn translates to discriminatory practice against minority religious groups that exist. They enforce limitations on the freedom of religion and the freedom of expression (FOR SA, 2017).

4.7 Concluding remarks

The objective of this chapter was to assess or look into how the CRL commission indicates elements of overreach into personal affairs, the dissertation in this regard began by firstly assessing the proposal for “self –regulation”. The section then also looked into the weakness of the CRL report to the COGTA portfolio committee, from there it discussed the COGTA committee recommendations concerning the CRL report. In addition to this the section also discussed signs of paternalistic behaviour in the CRL proposal, followed by the evolution of the limitation clause in the constitution of South Africa, this section is divided into four subsections to help effectively help meet the objective. In conclusion the CRL effort to be involved in the day-to-day operations of faith communities, its active role in certification, and disqualification of religious communities and leaders results to its overreach in personal affairs and choices about religion. It will result in the CRL stopping to be an impartial institution. It is yet to be clear whether the proposal affects only the Christian faith community or other faiths in the country. If the latter, then it would be discrimination against Christians, or on the other hand, the promotion of the Christian faith to the exclusion of other faiths. In that case, the CRL proposal is a suggestion to establish restrictions on the right to freedom of religion and its expression thereof, which is a clear-cut mark of paternalism. Regulation therefore opens religious organisations to political influence where government now determines who is a legitimate and illegitimate pastor or faith organisation. Such religious regulation would inevitably come with the limitation of the right to religious freedom. For the concluding purpose of this section it is necessary to bring to the fore two recommendation in the CRL report that display this overreach, it is also important to pay attention to the choice of words used in the report tabled by the CRL, the words should and must carry an authoritative and instructive connotation. The recommendations in question are the fourth recommendation, which says, although religious organizations exist as voluntary Organisations; the CRL should provide what it perceives as essential assistance with regards to organisations, in order to get their house in order and to assure compliance with laws that exist. According to the research the proposal plainly suggests intention to overreach and extend its arm into rather private affairs. Secondary to this according to the CRL, each religion would then have accredited umbrella organisations that are

associations, which according to the commission will be given powers to recommend the licensing of institutions and individual practitioners. What is then striking in this regard is the power to even go as far as revoking licensing, the issuing and the revoking mechanism is indication of overreach and an exerting of power and control. The dissertation sought to highlight and reveal the above in its approach (SACRRF, 2018). One can therefore agree with Mill (1859:12) that “freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to others for his religious belief” … and as Mill correctly added which is applicable to South Africa that “theological quarrels, has added its weight to the scale” that would suppress religious freedom.

5 CHAPTER 5: STRATEGIES TO LIMIT RELIGIOUS ABUSES AND ENSURE RELIGIOUS FREEDOM THROUGH RELIGIOUS REGULATION

5.1 Introduction

Religion is an integral part of society touching politics, healthcare, and education (Oakley & Kinmond, 2013). This section explores the possible strategies through which religious regulation can help reduce the commercialisation of religion and religious abuse while promoting religious freedom at the same time. This chapter comments about religious abuse to help find remedial solutions to it. The proposed solutions that the study present should help protect and promote human rights in a manner that is dignified and justifiable. To effectively do this, the dissertation details its findings about masquerading symptoms in religious practices. As well, as comment about how the CRL proposal in response to the abuses imply paternalism.

5.2 Findings based on research questions

Having explored literature and analysed both sides of the debates about religious regulation in South Africa, the dissertation comes to the following findings.

5.2.1.1 On what the problem of paternalism in the proposal for religious regulation in South Africa is

The failure to self-regulate emboldens religious practitioners and leads to religious abuse in South Africa (mainly in the Christian community because the Muslim, Jewish, and Buddhist communities seem more disciplined and little bad reports about their practices) It was inevitable that public pressure would case the state to intervene. The commercialisation of religion and abuse of religious beliefs requires careful policy and procedural guidance. The problem of paternalism is when the CRL proposes to be actively involved in the day-to-day activities of religious organisations. Which does not promote a healthy and safe church culture in addition to healthy and authentic leadership. What should be noted is how this will state regulation of religion will undermine the principle of a secular political community where the state needs to be neutral. The CRL is effectively proposing to be the leader of religious organisations, which will undermine

its (CRL's) role in monitoring and defending religious communities because the CRL be the judge and jury in religious matters. This is a conflict of interests proposed. It can be argued that the route the commission opted for was meant to help combat and alleviate the problem of religious abuse. However, what has really been in the spotlight is the method that is proposed to help solve this prevalent issue within society (Dlamini, 2016). The researcher is of the view that although the commission was able to pinpoint and diagnose the issue, the remedial approach for the diagnosis is a mismatch and will not be able to help create an environment where rights are enjoyed freely without inflicting any harm (Dlamini, 2016). What should be made clear is that the researcher is in no way condoning acts of human right violations that are masquerading as religious practices, in fact the researcher is of the view that there are other remedial approaches to help solve such challenges. The dissertation argues that the proposed approach is really one that singles out Pentecostal/charismatic church groupings, and this is evident in the selection pool chosen to conduct the investigation done by the CRL. Looking at the respondents in the report of the CRL commission, the imbalance points out that there is an unwillingness to view this as a general religious issue, but the intention is to view it as a Pentecostal church issue. As a result, the main idea here is that the Pentecostal church and its expression of freedom of religion is separate from the norm, is taboo, and unconventional. Their central concern is to manifest the Holy Spirit, and there is no control on what may be manifested, this is different to conservative churches that do not embrace the move of the Holy Spirit (Dlamini, 2016).

5.2.1.2 On the theoretical linkages between paternalism, religious freedom, and religious regulation

Looking at the state and religious community relationship dating back to the time of pre-democratic era in South Africa. It is important to acknowledge that the relationship has undergone a drastic change from what it used to be. And as a result this change was brought about by the increased revolt against the system of Apartheid and its policies, which then led to the quest for a democratic South Africa. The Church was divided along racial lines with white churches mainly aiding the paternalist policies of the apartheid regime including on matters of prohibiting interracial romantic relationships. The white

church was not a powerful voice of reason against ills in society and injustice within the ranks of government and its unjust system of rule. On the other hand, the black church was active in hosting political activists' meetings of political consciousness and support the struggle for liberation. At the time of the political transition the black church drew closer to offices of political power in negotiating arrangements for a government of national unity. According to Du Plessis (2016), the statements made by the Archbishop Desmond Tutu following the peaceful political transition, hinted at the separation between the church and state, this is because Bishop Tutu said "it's time to focus on the real business of the church". This could well be interpreted as plainly saying the church has no business being involved in the business of government and marked a clear understating in the religious sector not to engage in political projects but honour the political authority; likewise, the political authority would not solicit the church's support to enforce public laws (Du Plessis, 2016). Bishop Tutu's statement was at the pivotal time also when he announced retirement from political activism because the new democratic dispensation was over and the black church could no longer see the state as an enemy but a partner in social development. As a result, this statement became a reality as the church began to really take a stance of differing on matters of policy standpoints of government that are not aligned to religious beliefs and values, further causing a drift and tear in the once unified relation that had emerged.

From afar it looks as though the CRL in its proposal for religious regulation, has the interest of the members of the religious community at heart, but however the analysis of its recommendations have revealed the contrary. Instead of communicating its role to protect and promote, the dissertation argues that there are elements paternalism and overreach. This is clear in how the CRL opted to find solutions to the allegations of religious spiritual abuse. It is then for this reason that the dissertation argues that the response of the CRL in the formation of its proposed regulation on religion is one that displays issues of deep-paternalism and overreach rather than actual state moral obligation and duty. Over the years it has become a norm in many parts of the world that the strength of a government lies in its ability to win over or have an influence over all aspects of society. It is no surprise then that the government in South Africa understands just how much power civil society groups have and their influence therein. On the other

hand, it could be argued that this is the state's way of reaffirming its position as the sole entity that has the best interests of the people at heart (Du Plessis, 2016). In addition, more than the voice of conscience, the church is not a cheerleader for political parties as seen during electioneering.

It is as though the church is standing by as the state dictates what is good in society and when speaking up, the church is likened to reactionary conservative voices that have no interest in the welfare of individuals. A great reference for this is the recent announcement by PRASA to effectively ban the activities of preaching on commuting trains, as a quest for restoring the affordable mode of transport, after its break down. While South Africa is a secular state, many have expressed that there is no tangible rational for this new rule. (Simelane, 2018). The argument is centred around matters of religious freedom and expression, within a secular democratic state and how regulations impact and infringe on the rights afforded in section 15 and 31 respectively, and ultimately lead to possible paternalism. Some commuters argue that this move was one not thought through and as a result will impact those who benefited from these train sermons. (Du Plessis, 2016).

Another point of reference is the legalisation of same sex marriages, which was also met with high levels of rejection as marriage officials within religious communities refused to officiate or preside over any marriages of that nature at all. Chapter 9 institutions such as the Human Rights Commission raised concerns around this issue, pointing out that rejection of the acceptance of the rights of the LGBTI community as equal members of society amounted to discrimination on members of the community (Woolman & Bishop, 2013). On masquerading symptoms in church practices and state responsibilities in South Africa

According to Ward (2011) the main masquerading symptom on the side of religious practitioners and faith organisations is the misuse of the power. The misuse of power in faith communities has enabled the perpetuation and concealment of abuses like pastors who enrich themselves with monies donated for the advancement and benefit of religious communities (Ward, 2011). This includes church boards that do not hold pastors accountable for the tax avoidance and non-reporting to government as expected by law. The misuse of power and concealment of abuses extends to sexual violations that are

not reported to the police, at times efforts are made to buy the silence of victims (Jacaranda FM News, 2017). Therefore, the misuse of a position of power, leadership, or influence within a faith community to control members of that group is prevalent. This to the extent of fraternal associations meant for self-regulation failing to hold each other accountable. The masquerades in faith communities have emboldened the abuser to publicly chastise critics and whistle-blowers by using scriptural references like thou shall not touch the anointed of God and blessed are you when they insult and persecute you and falsely accuse you (Jacaranda FM News, 2017). The abusers who use the pulpit for personal benefit have eventually gained power over the religious group or individuals within it. It is important to note that spiritual abuse can happen in every religion and in every denomination (Ward, 2011), it is not something only limited to the Christian community in South Africa.

This can be traced in different parts of the world where religion forms part of the basic make up of society, the masquerading symptom on the side of government was its immediate response, which involved, religious regulation as a form of means to an end. (Nyoka, 2019). But the CRL proposal is letting these abuses in cultural and traditional healing practices go by. Other state institutions like ICASA, SARS, SAPS, and the DSD have not received enough criticism for their failure to implement the already existing laws about financial reports, tax avoidance and land use by-laws. The justice system and CRL have not advocated well enough to change laws or institute processes that make it possible for criminal charges against religious leaders who sexually abuse people even though those people have not laid a charge. The excuse that the SAPS cannot prosecute when there are no charges brought forward indirectly promotes the abuses. The political proximity of religious leaders to those in politics (politicians who use churches for electioneering) has also made senior government officials to keep quiet about religious abuses – as it happened in South Africa, it is civil society that pressured the CRL to act (Nyoka, 2019).

On both sides, the CRL as a state institution to protect religious freedom has failed fulfilling its research and public education mandate. Likewise, the faith community has failed to self-regulate nor educate the believers about religious manipulation and

exploitation, enforced accountability on pastors, the censorship of decision-making and lack of transparency on church finance, including empowering victims to overcome secrecy and silence, pressure to conform, misuse of scripture or the pulpit to control behaviour.

A huge complication that one does not know how to overcome yet, and a matter for research in the future is how people abused and manipulated by religious leaders continue to support and protect them even though the leaders are brought before the courts for criminal charges. The researcher notes this as a point of concern as in its true sense Christianity is not an allegiance to a fellow human being but an allegiance to a sovereign God, and no other God. Some people continue going to churches whose pastors have been reported to have performed a fake miracle or committed crimes – it is as though the people want to believe what they want to believe, and support whom they want to. Could this be the freedom of religion and the right of conscience that the constitution provides for, and it would prove to be paternalism, when the state compels these people to stop believing and following whom they would choose. Is it freedom if the state leaves people to believe event to their own detriment? These are the additional questions that researcher continues to wrestle with that this report cannot contain.

5.2.1.3 On elements of paternalism and government overreach into personal affairs based on the CRL proposal

The paternalist intention in the CRL proposal is the focus to regulate religious denominations that have a Pentecostal belief and practice. This is because the CRL assumes some Pentecostals religious practice to be bizarre, illogical, or irrational and therefore, unconstitutional. Hearing Prince vs President of the Cape Law Society, the constitutional court confirmed people's freedom to believe "even if their beliefs or the expression thereof by way of practice seem bizarre, illogical or irrational" in the eyes of others (Van Coller, 2020). The CRL report has brought the spotlight on church and state relations but most importantly issues of human rights violations within the church denominations. Even though this is not the core focus of the research, it is necessary to highlight it in this chapter this issue and how it presents itself.

Law enforcement in the form of criminally charging religious practitioners is not paternalism, and that is what the state should be doing. This is what is needed to limit religious abuses and commercialisation of religion without really stripping the church from its position within the confines of society. Over the years, reports of church leaders using religion to cover abusive acts have surfaced. These incidents of abuse have been alleged to have taken place in different denominational settings and proves that it cannot be a phenomenon that can singularly be attributed to Pentecostal churches as it is made out to be (Van Coller, 2020). Hence the need to highlight that religious abuse has been a long-standing issue that has revealed itself in multiple ways within the religious and/or spiritual sector over the decades. As a result, there has not been too much attention given to it as it has been the case with the loud outcry made by individuals against incidents within the modern day charismatic or Pentecostal churches. This alone calls for concerns as it displays considerable bias. This is evident in the respondents selected to appear before the commission itself, where a great number of those respondents seem to come from charismatic churches rather than suggested random sampling that includes traditional churches, Islam, Judaism, and other faith groups in South Africa (Van Coller, 2020).

It is of importance to bring into remembrance that many of the issues that are being dealt with and investigated are not issues that are new or specific to the religious sector. In fact, in this section the researcher seeks to highlight this aspect, to further support the view that the proposed regulation legislation, is aimed at ensuring that the grip of religion on society is released and in turn the state becomes once again the sole trustee concerning the lives of ordinary citizens (Pieterse, 2000).

One of the main reasons for the proposed regulation is the findings on issues of white-collar crimes, such as the alleged fraud, money laundering, including the commercialisation of religion as the CRL puts it (Masenya and Masenya, 2022). The CRL's call for religious regulation should be analysed from an understanding that the noted acts of criminality in the churches also occur elsewhere in cultural organisations and broader context of the country in which corruption and self-enrichment is pervasive. What does not make sense is the idea that the state can in the case of religion solve this

problem by legislation while other organisations in society are excluded from sector specific regulation. Which they have failed to find ways of dealing with generally and at greater extent for all these years (Pieterse, 2000). The idea that the state can solve corruption and abuse outside the state is ironic as, it is common knowledge that corruption that has existed for years and continues to exist is the very reason South Africa as a country is faced with the many challenges it faces from economic and service delivery perspectives (Leatt, 2017).

A similar amount of energy is required when it comes to the state's ability to combat and do away with corruption and money laundering within the state itself, what is evident is that the state could deal with corrupt dealings and abuse swiftly if they were not directly involved. This is concerning and adds to the view that this proposed move by the state institution is an attempt to exert paternalistic methods that seek to control and limit the existing religious freedom (Leatt, 2017). The behaviour in question is one that is seen and duplicated, and as a result becomes a norm throughout society, mainly because the state has never been seen effectively dealing with criminal acts of this nature and bringing all those found guilty to book, especially if they are members of the state themselves. In essence when state institutions are weakened by corruption, the result is in many cases is an evident sense of lawlessness in different sectors of society and quite sadly, even the church in this case (Leatt, 2017). The CRL's failure to grasp the bigger picture in the researcher's view will prove to be highly costly and will result in unintended consequences.

Paternalistic approaches have now become a way in which states tackle social and economic issues which it is confronted with, instead of looking to what could be the root of the problem. The state has opted for a proposal for simply putting a limitation to the freedom of religion and freedom of expression. With the hope of acting in what is viewed as the best interest of those they govern, they are perceived to not know any better (FOR SA & SACRRAF, 2019). Below the researcher seeks to draw into play the abstracts from the preliminary and final report of the CRL commission with specific reference to sections such as the questions posed to the participants. Including the findings and the proposed recommendations laid out. From this, the researcher aims to propose possible alternative

solutions to mediate the salient issues investigated by the CRL (FOR SA & SACRRAF, 2019). Religious leaders and religious organisations have voiced their concern on the following issues that are in their view clear signs of state control. This view is in line with the argument put forward by the researcher, in the confines of a democratic state, government responses to concerns raised by the ordinary members of society are crucial to creating a harmonious state (FOR SA & SACRRF, 2017a). The following proposed regulations have led to the need to conduct this research to evaluate the validity of the statement put forward. The focus here is on points such as the Peer Review Committee, which will fund the umbrella organisations, the licensing of the so-called umbrella organisations. Assessing the proposed way, they are to be implemented, really poses the basis of the question put forward by the researcher. Paternalism in practice is the controlling nature of the state, which is fuelled by their view of incapability of the citizens. In this case, it is the view that the religious body is unable to deal with matters of internal nature, using the mechanisms that are already in place (FOR SA & SACRRAF, 2019).

Herein are the abstracts *with own emphasis* of the proposed recommendations that are viewed as solutions to the issue. More than anything the usage of words in the proposed recommendations seem to suggest that is far from what is put forward in the compiled report. In its report the CRL suggests that the *introduction of the umbrella body as a mechanism will assist in terms of playing a regulatory role, by suggesting that they will play a broad policing role* (EWN, 2016). *Through allowing people to be able to lay complaints with them about religious organisations or individual religious practitioners, in addition to this they will have disciplinary powers over such organisations and practitioners*. The commission further proposed *an appeal procedure manifested by the Peer Review Committees and the Peer Review Council for those who are not satisfied with the Umbrella Organisation's handling of complaints* (EWN, 2016). The intention at display is to exert a level of control and oversight on religious groups as a whole and not just the few. This is the cause of the problem. In this case the word "permission" takes a central role in the discussion of these regulatory mechanisms. According to the CRL, *the religious organisations need to be given permission by the proposed bodies to exist, and to have their day-to-day execution of functions monitored and evaluated according to the set criteria* (EWN, 2016).

What raises questions is what qualifies the CRL body in matters of doctrine and how this single yardstick could be used to assess right and wrong, in every different denomination and religions per se. Added to the above is the use of the umbrella body or peer review mechanism as a body that will also in turn receive complaints from the broader public on matters of any alleged misconduct (Coertzen, 2014). When assessing this proposed responsibility, it is quite clear this is more likely to fall into the scope of policing as the measures proposed are aimed at eradicating the alleged conducts of gross human abuse. And because of that it is more sensible to allow the South African Police Service to exercise its authority and function in this regard as per its constitutional mandate (Coertzen, 2014). In addition, the proposed regulations also speak to the distribution of licences, which is essence are given through meeting or fulfilling requirements. What is of concern here is that the same body according to the CRL proposal will also be given the power to revoke the licence if religious organisations fail to comply with the set criteria (Coertzen, 2014). In a democratic society and in terms of the aspects of freedom as set out in the constitutional framework, an implementation of such an act or the amendment of the existing act to accommodate such, is an infringement on the right to exercise religious freedom (Coertzen, 2014). Under normal circumstances it is more sensible to propose the amendment of legislation having firstly consulted those governed by the legislation and having done an extensive amount of research to fully understand how the proposed legislation can and will affect those in question. Again, in a democratic society, legislative framework is not meant to infringe on one's basic human rights (Pieterse, 2000). The researcher is of the view that, should the above be legislated, it would be the start of legal disputes that are never ending between the state and members of the religious communities (Pieterse, 2000). The disputes will involve arguments that religious regulation infringe on the right of association where the peer review committees expels and debars practitioners. Also, others who do not want to associate with the state organisations may claim that the state is prescribing belief for them.

5.2.1.4 Limitations to the functions and powers of the CRL

To this research, it is of importance to understand that with every power given, there is a form of limitation. This form of limitation that exists is so that absolute power is not given

to a single entity. According to Woolman and Aullo (2005) the CRL is mandated to primarily develop humanity, peace, friendship, national unity, and tolerance, amongst cultural, religious, and linguistic communities. Although the constitution and the CRL act empowers, the question of limitations has been one that has been prevalent amongst members of the Christian charismatic community. This comes from the view that the CRL may have overstepped in terms of its powers and privileges. Thus, the researcher is of the view that there is a need to highlight these limitations that are said to exist.

It is important to note that, these limitations that exists, are not meant to have a crippling effect on the enforcement of the powers afforded to the CRL. The CRL Act in its nature is said to leave, a wide door open, concerning using other litigation strategies or methods. Unlike other chapter 9 institutions, the CRL Act does not in any way give the CRL any basis for which it may bring a claim to court. According to parliament the CRL, should possess no right to ensure the enforcement of its recommendations. Thus, it may however make recommendations to the organs of state directly impacted or those who may be impacted. In addition to this the CRL may bring relevant matters to the attention of organisations or organs of state, and where appropriate make necessary recommendations to the organ of state or authority in question.

However, it must be noted that this form of limitation has never really stopped other chapter 9 institutions, such as the Commission for Gender Equality (CGE). The CGE, has no litigation in its name, but it has managed to do this through lending support to or taking part in cases that bring to light important gender issues. This standpoint of the CGE has in turn help establish a precedent that the CRL may opt to follow suit. In addition to this another proposed alternative route, is namely allowing the South African Human Rights Commission to ligate on the CRL's behalf.

5.2.1.5 Regulation of religion masquerading as the bigger picture of paternalistic state interference

Below the researcher argues that there is nothing wrong with the legislative frameworks as they are but everything wrong with the state's inability to see the bigger picture, which

is how the weakening of law enforcement agencies may have contributed to the growth and spread of this problem.

To effectively deal with an issue, an inquest into the conditions that allow or give rise to a problem, needs to be thoroughly investigated. In this case what the CRL needed to investigate as part of its research function what could have caused a breeding ground for abuses within the religious sector in South Africa. By bringing this argument to light it is important to mention that the researcher in no way seeks to downplay the acts of criminality that have taken place in places of worship in the name of religion (Kumalo, 2013). It is necessary to add that the researcher finds these acts shameful and demeaning to the sacred nature of religion, not just in South Africa but all over the world. The bigger picture here is the need to restore the dignity and effectiveness of government institutions such as the South African Police Services and other institutions by finding ways to rid them of corruption from within, which has led to their weakening and ineffectiveness. Why this has not taken place to this effect considering the damage that has and continues to result is still a question that needs to be answered and has been left unanswered for years (Kumalo, 2013).

It would really be a futile exercise to seek to reconstruct the legal frameworks that govern religious freedom and or any right for that matter. Without considering the need to work on those entrusted with ensuring the implementation of these reworked frameworks. Sadly, the CRL is more concerned with exercising a paternalistic approach towards solving the problem by proposing firstly regulation that will be affected by policing that is exercised by a team appointed and created by the Commission to conduct the Commission's objectives through this proposed amended regulatory framework. A team constituted to monitor and evaluate including effecting law an order within the religious sector, which is commonly known to be the South African Police Services constitutional mandate (Kumalo, 2013). The quest to gain control at all costs of the state in the form of the CRL Commission has neglected an important aspect which is the fact that an environment that is conducive had to have existed or was created, that allowed an environment for religious leaders to commit such crimes. Without any regard for the consequences that may follow according to the law and statutes of South Africa (De

Rebus, 2020). What is even more striking being the realisation of just how far the commission aims to go in terms of its proposal, of religious regulation. It seems that in its attempt to effectively roll out the proposed regulation, the state institution in question seems willing to overstep boundaries and overtake functions of not only the Police Services but the Judiciary as well (Pityana and Villa-Vicencio, 1995).

5.3 Critical reflection on findings: the CRL proposal, a possibility of misdiagnosed solutions

According to SACRRAF (2018), the CRL said there is a need to implement regulative measures to help effectively deal with the issues that have been reported to be taking place within the walls of mostly Pentecostal churches. The commission following its findings, concluded that it would be necessary to re-evaluate and dictate what the freedom of religion and its expression should entail, arguing that the current measures to ensure the protection of human rights does not suffice and a more tightened grip is necessary in this case. In its proposal the Commission proposed that Parliament considers passing the idea of the creation of an umbrella body that will function as a regulatory body over different religious organisations, as a way of creating a system of accountability within the sector (SACRRAF, 2018). What is of interest here is that the commission also deems it necessary to have a say with regards to who is elected in the proposed umbrella body. Which then really brings question of paternalistic behaviour from the state, because in the process of drawing up the proposed method of approach. There was no consultative measure that sought to really understand the structure and accountability methods that exists within many of these religious organisations. What was done instead without testing the methods which already exist was to merely assume their ineffectiveness, which leads to designing a regulatory system based on lack of understanding (SACRRAF, 2018). This is one of the main reasons the leaders of the religious community rightly voiced their disapproval of this approach, stating that this was beyond the scope and mandate of the CRL Commission. In addition to this, the leaders in question and religious civil society movements have argued that the proposal to form an umbrella body is regulating religious freedom and practically undermining the ability of

other institutions that have a constitutional mandate over organisations in terms of their existence and operations (News24, 2015).

The fact that the CRL can make such a proposal clearly indicates that there was a masquerade at play and the church abuse issue comes at a time where the state had moved to a centralised approach to its governance, which stems from the need to protect and guard the hard-gained political control. If indeed the steps which were taken are in the best interest of the people, the immediate question would be, why the same energy and effort was not put in, when reports of Catholic priests allegedly molesting young boys, including traditional healers ill-treating their initiates surfaced over the years, were not those acts on the same scale of violation? (News24, 2015). It is important that the state ensures that it exercises strict lack of bias in its approach to dealing with societal ills that present themselves; by so doing the state stands a better chance of really gaining the trust of those it governs. According to News24 (2015), it has become increasingly normal in modern day times for people to find alternative safe havens if the state is failing in that role; naturally, people are creatures that find comfort in safety and refuge. As a result, any place that can offer that convincingly is bound to draw people in numbers. In this case religion proves to be a rather strong force of influence that should not be under-estimated by the state. It is for this reason that the state needed to propose dialogue with religious leaders to help resolve the issues that were found following the investigation that was launched (Lindholm, 2015). Simply assuming the persecutors' role and then further becoming part of the decision-making process can be viewed as a form of injustice, in a "perfect utopia" what would have made sense is extending an olive branch in order to help facilitate a dialogue that includes leaders of the faith communities in order to effectively come up with solutions that are specifically designed to deal with problems of this nature from a faith-based perspective together with law (Villa-Vicencio, 1992).

As faith-based leaders argue that the Bible for example has clear methods to approach issues that arise that are contrary to the belief, it even goes as further as giving guidelines on how to identify a false prophet in the New Testament, specifically written to the modern-day church by Paul. In addition to this the Bible also speaks of what measures and steps are to be taken when one has been found to be in contravention, this applies

to all members of the church including the church leader in this. It is on this basis that the members of the Christian faith community have spoken out against the proposal to regulate, arguing that church has clear set guidelines, and these together with the laws that govern should suffice (Lindholm, 2015). In their statement FOR SA, clearly states and acknowledges that this behaviour and actions against people, should not be tolerated and in cases where such cases are found the law should rightly act in the best interest of the victims. Considering this dissertation seeks to contribute to finding an alternative route to respond to and effectively deal with the issue in question, as in a democratic society a healthy relationship between the state and civil society is instrumental towards a harmonious living environment, even though the state cannot please all members of civil society. It is necessary to argue that with the Christian community forming over 70% within the South African population, it is in the state's best interest to find ways of collaborating with religious leaders than working against them (Lindholm, 2015).

5.4 Recommendations: religious regulation for limiting religious abuses and ensure religious freedom

Below the researcher concludes this final chapter with recommendations which can be explored to effectively deal with the problem in a way that would ensure that the rights of the religious sector are not trampled on.

5.4.1 The importance of establishing a cohesive relationship between the Church and State

Over the course of the years in many countries like the United States and South Africa, just to name a few, the reality of the strength of organised civil society groups has proven to be a force not to be taken lightly. Through this it has become evident that the power of unity and common goals is enough to completely alter the course of society by steering it to a different direction altogether (Pieterse, 2000). In the same breath it is necessary to mention that the civil society organisations have an important role to play to help create a thriving democracy and effectively help keep the state accountable to its people. Civil society organisations help shape and drive policy making and decision-making within the confines of society founded on the principles of democracy. A misconception exists that

makes people feel that the church rejecting the proposed regulation has the intention to just enjoy rights but not acknowledge that every right is coupled with a responsibility (Pityana and Villa-Vicencio, 1995). For South Africa, social cohesion is necessary, and most importantly, the state's relation with civil society organisations and religious organisations in this case is critical, as it facilitates an environment where the state is held accountable as it conducts its business and executing its constitutional mandate.

After the call for regulation, it can be argued that the current relationship status of the state and religious community has proved to be weakened and challenged, for both parties this non-positive play out of the relationship is not beneficial and does not serve in their mutual interest. For a democracy that was built on consultation, this method of approach remains the cornerstone for it to thrive and grow. When consultation lacks, the reality is often a misdiagnosis of a solution to resolve a problem (Pieterse, 2000). According to the researcher this is the crux of the problem and further resulted in an evident misplacement of what would be the solution for religious/ spiritual abuse. It is important to highlight how the shift to democracy may have directly impacted the state–church relationship. Below, the researcher will briefly deal with the latter and how this may have an influence on the paternalistic more centralised approach that has been used by the state when dealing with the issue of misuse of power within the body of the churches (Pieterse, 2000). Considering the above, the researcher firmly argues that the state may have jumped the gun in terms of its approach to the matter and that an amicable approach in this regard could have been the far better option. This approach could have been one that takes a less restrictive means to an end, which according to the dissertation would involve a rather considerate approach that takes into account the rights and freedoms captured in Section 15 and 31 of the Constitution respectively. The real issue here could be the fear of affording the church enough room to be able to return to its position of being the ultimate decider of right and wrong. Disregarding basic human rights as was the case during apartheid when the church had an indirect influence on the state and the execution of its policies and laws (Fourie, 2003).

5.4.2 Alternatives to religious regulation

These are recommendations emanating from the analysis the report by the CRL to parliament and the responses of organisations within the religious sector including religious leaders. Although the aim of the research was to bring about solutions, the way the solutions are constructed, must be mindful of the human rights that are afforded to those within this sector. The researcher in his quest found that the proposed regulations that were recommended by the CRL Commission did not display or show any signs of a guarantee of their effectiveness in dealing with the problems that were identified.

For this reason, the dissertation proposes the following alternatives, (1) the CRL in its recommendation proposes that there be scrutiny of doctrines, through founding documents. However, it is necessary to approach this aspect of things using a non-interference approach, with issues of doctrine. The reason for this is to avoid a situation where the CRL as a state institution finds itself in contravention of the Constitution and section 36 by prescribing what people should teach and practice in matters of faith; 2) the approach the CRL used as a state institution to try convince other institutional bodies of the state of the need to amend existing legislation, the same could be done by the CRL to encourage the need to revive and strengthen weakened bodies to effectively execute their constitutional mandates; 3) there is absolutely no reason a form of cooperative governance can't exist between all institutions of government directly involved in terms of the mandate to ensure the adherence to all laws that govern. The dissertation proposes intra-governmental relations in-between all ministries involved; 4) from conducting this research, the researcher notes with concern the gap that exists regarding civic education on matters of religious practice. Thereby proposing that it is necessary to employ measures to educate and inform leaders of religious communities and members of their constitutional rights and the other legislative frameworks that are in existence that govern them. These educative reforms can range from compliance, financial literacy, and social wellbeing; 5) the church administrative processes should ensure that founding pastors of the religious organisation be excluded from the board that runs and administers the church but assumes an ex-officio role. In addition to this, and most importantly, the CRL ought to play a role of encouraging and educating religious leaders of the importance of

using skilled individuals within the church or those outsourced to help with the administration and recording of the finances, amongst other functions; 6) the CRL as a state institution, should ensure that it maintains an unbiased stance, which is not influenced by personal world views and beliefs, when approaching its work, as this affects the credibility of its function and work; and 7) the CRL should put more focus and emphasis on building a healthy and solid relationship with members of all religious communities and attempt to understand each religion based on its uniqueness and not what is right and wrong on the superstructure of their beliefs. The current stance of being an “enemy” will not benefit either party and it would most certainly hinder the intent of a constitutional and democratic South Africa.

5.4.3 Penalties for churches functioning illegally in South Africa

In South Africa, all state organs or state intuitions are empowered by the constitution and different legislations that govern them, respectively. Considering this it is also important to highlight that because of this authority given by the constitution and legislations, failure to comply with the necessary requirements in these institutions may have unintended consequences (King, 2017). Below the paper addresses whether or whether not non-registration with the DSD has any penalties for local churches in South Africa. The DSD has been at the helm of recent arguments concerning the proposed need to regulate churches in South Africa, while members and leaders of religious organisations argue that, not being registered with the department does not have any legal implications. It is necessary to test the validity of this statement through addressing the effects of not being a legally recognised worship centre. According to King (2017) in 2015 self-proclaimed prophet Shepard Bushiri, helped bring to the fore why even though religious organisation leaders may argue that there is no legal penalty for non-compliance with the DSD, this view may not be entirely true.

Inter-governmental relations and inter-ministerial relations, also help government ensure the necessary requirements from a compliance perspective are also met, to operate legally as a church. In 2015, Bushiri was faced with a challenge after. His application for a zoning certificate for a church he wanted to erect in Randburg was rejected, by the municipality, through by Laws that govern (Fulhonest, 2019). This resulted after failure to

comply with requirements required in land schemes which are empowered by municipal by laws and the infrastructure development plan, including the Municipal Systems Act, 32 of 2000. The following penalties are legally binding to any entity that is not legally recognised as a legal entity in terms of the law and or provisions stipulated in the Non-Governmental Act, including failure to comply with required income tax and or application for PBO exemption as a registered legal entity (Fulhonest, 2019).

According to the Development and management Act 16 of 2013, “a person may be accused of an offence and is liable upon conviction to a fine or imprisonment or to both a fine and such imprisonment if they use land in a manner other than prescribed by a Development Management Scheme without the approval of the municipality. In addition to this failure to comply with a notice, direction or instruction referred to in this By-Law constitutes a continuing offence and in such case the offender is liable to a fine for every day such offence continues” (Development and management Act 16 of 2013).The Development and management Act 16 of 2013 states that a municipality in question may also impose or issue out instruction to affect the following penalties to churches that have been erected and functioning illegally within the jurisdiction. The Development and Management Act further notes that local authorities may issue a compliance notice “to instruct the person to cease the unlawful utilisation of land or construction activity or both, without delay and within the period determined by the municipality. And may include an instruction to i) demolish, remove, or alter any building, structure, or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period determined by the municipal manager; ii) upon failure to a person may be prosecuted for and convicted of an offence contemplated for in the above-mentioned act on conviction of an offence, the person will be liable for the penalty as provided for; iii) in addition to this a person may be required by an order of court to demolish, remove, or alter any building, structure, or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned or to cease the activity”.

Although members of the religious community argue that one may not need legal compliance to operate a church in South Africa, or further register with the DSD, the

noncompliance in this regard has other replica effects that come because of non-compliance in terms of official registration that declares one as a legal entity. As a result of this, what is understood is that compliance with one institution aids towards attaining compliance for overall compliance with other governmental departments that one needs to comply with, to be able to establish a church in this country (Fulhonest, 2019).

5.5 Conclusion

That faith communities as NPOs register with the Department of Social Development (DSD) for legal status could be a good thing because the CRL will not be a player and referee of misdemeanours in religious practices. Effectively, these organisations should be registered outside the commission for it to play an oversight role for which it is intended. To also hold the chapter 9 institutions accountable, it is expected for these to report to specific portfolio committees in parliament where the process is also open to the public to comment on the quality and progress of work, they do. This open forum is a good development for open democratic governance. The next section details the limitations of the CRL powers and function when it makes findings after monitoring and investigating (CRL Act 19 of 2002).

Religious leaders (FOR SA, 2018) have argued that the CRL commission in its recommendations seems to have forgotten the constitutional aspect of non-prejudice because its proposal is not “self-regulation” but a broad-scale regulation of religion. Such regulation, the leaders argue would not be constitutional and can be a symptom of paternalism expressed in countries in parts of Africa, Asia, and Islamic regions across the globe towards or against religion (FOR SA, 2018).Suffice to say that the religious or spiritual abuse as is known cannot and should not be attributed to a single church group but should be investigated on a large scale to be able to effectively deal with the many forms in which it presents itself in different religious spaces. The researcher is of the view that the commission failed to deal with this issue in a way that seeks to find ways to alleviate the problems but opted for the approach of finding ways to neutralise the power and influence the church has over people within society (Van Coller, 2020).

In the above the dissertation sought to draw attention to the possibility that the CRL Commission may have proposed an incorrect antidote, this is because of its inability to approach the situation at hand with the care it deserves and opted to use methods of suppression to temporarily deal with the situation. Also, merely dealing with the issue at face value and therefore neglecting the underlying issue which is abuse. The dissertation expounded on the possibility of an incorrect antidote with specific reference to the proposed recommendations (Woolman & Bishop, 2013).

According to this act the CRL is proposing that it be given the authority to become law enforcement agents by taking over policing function and appeals of rulings it made, which are in normal circumstances under the jurisdiction of the courts. To effectively implement the regulation, the attempt is to prosecute and judge and ensure that the final decider power of what is right and wrong what members of the religious communities do. However, the irony is that the desperate attempt by the state to assume the position of a messiah who saves the day, will result in more dreadful consequences than actually doing any good. It is a case of switching roles with the alleged perpetrators and assuming the role of afflicting another form of disregard of basic human rights (van Aardt, 2020). Having made the above findings and proving that the proposed regulations are a masquerade, with no intention of aiding the victims but more to do with exercising power and feeling a sense of control over those governed.

Hopefully, this dissertation and its recommendations help the debates and engagement with the CRL to reconsider the proposal for religious regulations and opt for an approach that seeks to uphold and respect basic human rights. Which are the rights captured mostly in chapter 2 of the constitution and are rights which are deemed to be rights that an individual is born with and entitled to by virtue of being human. It is important that state institutions develop a clearer understanding of their role to serve and protect its constituency, also considering its constitutional mandate of creating and ensuring a conducive environment: where rights and freedoms are enjoyed, with responsibilities in mind and adhered to. The understanding of all the above-mentioned goes a long way in building a united, harmonious South Africa, for all those who live in it, regardless of colour, creed, gender and religious belief or ethnicity. Lastly, in line with the above the all-

encompassing strategy or recommendation has to do with religious education, as through this instrument acceptance of the multi diverse nature of the South African religious community with be understood. The dissertation in conclusion has sought to draw from other countries such as Indonesia and Austria in terms of how to best apply the educational methodology, the researcher believes that this could be an instrumental tool to curb possible religious paternalism.

Like South Africa, Austria and Indonesia are faced with a challenge of religious diversity. Philpott, (2013) highlights that this is as a result of both countries having historically shown commonality regarding issues of pluralism and diversity. In this context it is important to note the instrumental role of religious education, because religious education has a significant role regarding the promotion of religious freedom among the communities (Philpott, 2013). The benefit of education as an all-encompassing strategy and recommendation, is in this context that members of the community can learn about upholding and respecting diversity. This ensures that religious rights do not threaten the rights of others. Another benefit is that religious education also creates an environment that allows interreligious tolerance and understanding (Bagir, 2013).

The dissertation in this section uses both Austria and Indonesia as case studies, South Africa can learn from in this context. The dissertation here discusses frameworks or methods that can be applied to protect and promote religious freedom by educating members of society about religious diversity and the place of constitutional rights in religious practice (Philpott, 2013). In order to draw from this approach, the dissertation suggests three general approaches, mainly Mono religious, Multi religious, and Interreligious, which are applicable in the application of religious education in these two countries (Bagir, 2013). The first suggests the teacher presenting aspects of a new religion while allowing the dominance of another, the second speaks to offering knowledge concerning all religions, while the third and final has to do with acknowledging religious pluralism and aims to see the probability of enrichment that is mutual among religions (Bagir, 2013). Using the two countries as case studies and points of reference, for religious freedom and religious education in South Africa, the section will highlight

lessons from both countries in application their application of one of the three approaches above.

From the Indonesian perspective religion is seen as a worldview and forms part of the ideology within the country. From this lens religion is an important value that directs life in general, religion in this regard is closely associated to the religious culture in Indonesia and its part of life in general (Parker, 2014). It is for this reason religious education is an important part of the ideology of Indonesia, the curriculum that is used nationally and has a rather strong influence in religious education. Hence it is important in Indonesia for children from as early as preschool to university level to pass and follow religious education (Bagir, 2013). In addition to the above the dissertation looks into religious education and its application in Austria. According to Marboe, (2013) freedom of religion and conscious is one of the rights which are guaranteed to everyone, this is in line with the constitutional Act on the fundamental rights of citizens. This frame work constitutes the most important forms of provisions pertaining religion. A noticeable provision is that every religious community and church has the right to exercise religion in public (Marboe, 2013). In the context of Austria, the fundamental bases between the state and religions, is the above constitutional provision and guarantees. It is for this reason that it is important to note that in Austria people may practice their religion despite it having a negative or positive bearing on the state. As stated above the positive aspect is the state's duty and role to protect, which involves the role to make favourable conditions for the freedom to practice one's religion (Marboe, 2013).

On the other hand, the negative bearing aspect which entails the duty to uphold and respect, which translates to protection against forced involvement in religious activities by the state and against infringement of personal freedom (Parker, 2014). The secularization pattern in Austria affects the pattern form of religious education in Austria, Because of the above mentioned the process of interreligious dialogue is/ will be affected (Gabriel, 2013). In conclusion religious education must be noted as having an important role in so far as promoting an environment that will enable religious freedom within a society that is pluralistic in nature. Lastly considering all this the researcher firmly believes

that the usage of these models combined can help deal with the research question, a broader look into the possibility of implementing the above is necessary (Gabriel, 2013).

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