

CHAPTER SEVEN

DATA ANALYSIS: Becoming acquainted with the environment

7.1 INTRODUCTION

In the previous chapter I investigated my first premise. The findings prove that learners do not have adequate knowledge of the right to freedom of expression in terms of the spectrum of expressions included in this right. Most of the learners know that they can speak their mind, but only a few know that the right to freedom of expression includes more than speech.

In this chapter I shall investigate the data in regard to my second premise.

7.2 PREMISE 2: SOME LEARNERS DO NOT KNOW HOW TO EXERCISE THEIR RIGHT TO FREEDOM OF EXPRESSION

My second premise is that some learners do not know how to exercise their right to freedom of expression. The assumptions that underpin this premise are that some learners:

- tend to absolutise the right to freedom of expression; and
- do not know how to limit the right to freedom of expression.

Data regarding this question was found in the answers to the first three questions (see addendum I) of phase 1 in the questionnaire, as well as the focus group interviews of the second phase (see addendum S)

The questions were:

- What do you think you are allowed to do under the protection of your right to freedom of expression?
- What do you think you are allowed to do at school under the protection of your right to freedom of expression?
- What do you think you are not allowed to do at school under your right to freedom of expression?

It was determined in the previous chapter that most respondents know that they can speak their minds in terms of the right to freedom of expression. Only a few know that reading or writing is part of their right to freedom of expression or that it includes symbolic or artistic expression. As the latter was a wide field to explore, I decided to explore only the symbolic and creative expression in phase 2 during the focus group interviews. This decision was further motivated and inspired by *Antonie* ("Antonie", 2002) that deals with symbolic expression in schools. Furthermore, this is the area that causes the most critical incidents and problems in practice. One often hears of incidents at school, because learners and school administrators are uncertain of how to handle this issue correctly. The recent incident in which Sunali Pillay, a 15 year old schoolgirl, obtained an interim court order to prevent the

Durban Girls' High School from conducting a disciplinary hearing that could have resulted in her suspension or even expulsion for wearing a nose-ring (Broughton, 2005), serves as an example.

My assumption was that most learners would know that they can read and write their mind under the right to freedom of expression. This assumption was rejected in the previous chapter; although it still proved my premise that some learners have limited knowledge of their right to freedom of expression. As my assumption was that most learners would not know that they have a right to symbolic or creative expression, I opted to focus only on symbolic and creative expression during the focus group interviews (see figure 6.2).

I assumed that most learners would not have a clear understanding of their right to symbolic or artistic expression. When interpreting the data, however, I realised that the analysis of my findings echoed what I had already discovered during the first, exploratory phase. In other words, although the findings from the questionnaires indicated that most learners do not know that they have a right to symbolic and artistic expression, phase 2 indicated that when they are confronted with the right to symbolic and artistic expression, they realise that it is included under the right to freedom of expression and they dealt with the focus group interviews in the same way as with the questions in phase 1. In testing my second premise, I consequently used the data from both phase 1 and phase 2, which clearly correlated and crystallised the same findings (see § 8.1).

In order to analyse the data systematically, I categorised it into two patterns deduced from the data. Coincidentally these two sections correlate with the two assumptions. The notions of absolutising and the limitation of the right to freedom of expression are discussed next.

7.3 ABSOLUTISING THE RIGHT TO FREEDOM OF EXPRESSION

Some respondents stated that they understand the supremacy of the Constitution, e.g. *The Constitution is much more important than school rules*¹¹¹ 1:287 (302:303). This is in agreement with the literature which indicates that the Constitution is the supreme legislation in South Africa and that no other law, policy or rule can contradict the Constitution. The moment any other law contradicts the Constitution, it has no legal value and will not be binding in a court of law¹¹² (Bray, 2000a; Limbach, 2001; Van Vollenhoven, 2003).

The understanding of the supremacy of the Constitution, however, has resulted in an attempt by learners to absolutise the right to freedom of expression. Many of the respondents have the perception that the right to freedom of expression is an absolute right. Knowing that all the fundamental human rights are guaranteed in the Constitution, because they are entrenched in the Bill of Rights (Bray, 2000a), some learners seem to think that these rights can never be limited. In this respect they feel

¹¹¹ Die Grondwet is baie belangriker as ons skoolreëls.
¹¹² Section 8 of the Constitution.

that they can say what they want to whenever they want to, at any time and at any place, as the right to freedom of expression is an entrenched right in the Bill of Rights:

- *You have the right to say what you want when you want. And nothing or no one can stop or prevent you* 5:2 (16:19).
- *Being able to voice your opinion about events and individuals. Free and behave in any way freely, without fearing any consequences* 5:13 (65:67).
- *You have a right to say anything you want at any place and at any time you want* 4:20 (90:92).

Respondents indicated that the right to freedom of expression allows them to advertise, form their own opinion, be taken seriously, and that their opinions are always acceptable:

- *It also means that if I feel strongly about a situation (right or wrong) I am allowed to voice my opinion on that subject and be taken seriously* 3:15 (42:45).
- *No one may tell me that my opinion is incorrect* 3:3 (20:21).

They are under the impression that, regardless of the mode of expression, the right to freedom of expression is always absolute: *It means that you can say anything you want to in words, mouth, dance, art [sic]* 3:22 (71:72). Respondents feel that they have the absolute right to express themselves in any way they want to, e.g. through their hairstyles: *To do hairstyle that I want in my hair e.g. braiding, 'scruling'* 2:81 (301:303). The above-mentioned responses indicate a large extent of absolutising. Learners want to speak out if they disagree with someone or something, yet these respondents feel that no one may disagree with their point of view.

During the focus group interviews the same patterns discovered during the analysis of the questionnaires were visible. There is a definite tendency for some learners to think that the right to freedom of expression is absolute. Therefore one respondent's reaction to the scenario (see addendum S) sketched for them, in which Jonathan was suspended for wearing an earring to school, was:

*I would have fought, because I firmly believe that you do not come to school to look tidy for the rest of the people. I do not come to school to impress other people - I attend school to learn. This is the only reason why I am at school*¹¹³ 1:2 (18:22).

When the discussion later turned to the limitation of rights, the same respondent said:

*This again is like religion. You either believe or you don't believe at all. You either have your right 100% or you do not have it at all. I don't think that they can only give you a small portion of it [your right]*¹¹⁴ 1:218 (1191:1194).

One must remember that the entrenchment of the rights in the Constitution does not guarantee that one's rights will not be violated. No right is absolute and all rights can be limited (Bray, 2000a); (see § 3.2.7.1).

¹¹³ Ek sou gefight het, want ek glo vas dat jy kom nie skool toe om netjies te lyk vir die res van die mense nie. Ek kom nie skool toe om ander mense te impress nie – ek kom skool toe om te leer. Dis die enigste rede hoekom ek hier is.

¹¹⁴ Dis weer soos met geloof. Of jy glo of jy glo glad nie. Dis óf jy het voluit jou reg of jy het nie 'n reg nie. Ek dink nie hulle kan vir jou 'n klein deeltjie daarvan gee nie.

Respondents also indicated that they can speak their mind on different issues. Some respondents mentioned a variety of aspects to discuss under the right to freedom of expression. One respondent feels that s/he can speak his/her mind on contentious issues:

... if you want to speak about a subject that raises tempers, e.g. abortion, then speak. If you feel for/against the subject, speak your mind. You are allowed to say it. No one is allowed to tell you what you can and can't believe. If you believe that way that is your right 3 281 (101:106).

Another respondent indicated issues relating to South Africa: *It implies that I have the right to give my opinion on any issue in South Africa*¹¹⁵ 1:27 (66:67) and even the way the school is run: *You are allowed to give your opinion on a certain topic in class or give your opinion or ideas to the way the school is being run* 3:48 (186:188). Seventeen respondents indicated that they can speak about issues concerning themselves:

- *You have the right to give your opinion about matters concerning you. When something offends you, you may speak out against it*¹¹⁶ 1:17 (40:41).
- *You have the right to speak your mind in different areas e.g. politics, economics etc. You can speak your mind*¹¹⁷ 1:16 (39:40).
- *You may speak your opinion about decisions about which you are not happy*¹¹⁸ 1:61 (159:160).
- *To agree to disagree to certain things such as in winter when we write June exams I have the right to ask the principal if we could wear our school tracksuits or to give my opinion on things regarding myself and fellow peers. On things that I feel are correct or incorrect* 3:39 (148:153).
- *I think I am allowed to say what is bothering me and what I don't like about a certain thing* 4:44 (191:192).
- *Oppose teachers, fellow students, the governing body, the principal, etc. about anything that you do not agree with or found offensive or obscene in any way which influenced you directly or indirectly* 5:37 (174:178).

A variety of issues were mentioned that learners believe are subsumed under their right to freedom of expression, for instance to speak about their beliefs, emotions and morals: *... to me [respondent] it is an open opinion about what your ideas and morals are!* 5:19 (40:41).

Learners also feel that they have the right to agree or disagree on matters and that they can speak, even if what they say is false: *It does not matter whether right or wrong, it is your opinion* 1:26 (64:65). They are allowed to speak out about their dislikes. The right to freedom of expression also allows them to talk about their rights and even to remind the educator about their right: *You must be able to tell your teacher that you have the right to do this or that and the teacher must respect your rights* 2:73 (267:269). This right also gives them the authority to tell if someone is breaking rules or the law: *... if a same one [sic] has done something wrong you must tell your teacher or principal or one of the LRC*¹¹⁹ 2:61 (218:220).

¹¹⁵ Dit beteken dat ek die reg het om my mening en siening oor alle sake in Suid-Afrika te lug.
¹¹⁶ Jy het die reg om jou opinie te gee oor sake wat jou raak en jou pla. As iets jou persoon aanvat kan jy daarvoor praat.
¹¹⁷ Jy het die reg om jou mening te lig [sic] op verskeie gebiede, bv. politiek, ekonomie, ens. (You can speak your mind).
¹¹⁸ Jy mag jou mening uitspreek oor besluite wat geneem word waaroor jy nie gelukkig voel nie.
¹¹⁹ Learners' Representative Council.

Learners, however, do not only think that they can say anything, but also that they can talk to anybody under their right to freedom of expression. The right to freedom of expression also means that the learner can speak to any person, even to the educator, if they have a problem: *To go to any teacher [to] talk to [them] if I have any problem at home* 2:58 (212:213). Learners understand that they can speak their mind at any time: *To have a say whenever I want to ...* 2:44 (158:157). Respondents indicated that they can speak their mind anywhere, and specifically in court, at school and in the classroom:

- *I think you are allowed to express your opinion, especially in the court*¹²⁰ 1:45 (114:115).
- *You are allowed to express your opinions freely in class and school and speak freely* 3:33 (90).

Learners feel that the right to freedom of expression is absolute and therefore they can speak in any manner and that no one can tell them that their opinion is wrong and that their opinion will make a difference. Of the 690 quotations 17 indicate that they can speak their mind without fearing negative consequences: *It is my right to express my own opinion without being prosecuted*¹²¹ 1:14 (36:37).

Respondents indicated that the right to freedom of expression allows them to express their sexual orientation, express themselves physically or in any way they want to in order to be heard: *Expressing my religion, my sexual orientation and expressing the way I want to be heard* 2:49. They also indicated that they can use their right to freedom of expression to have their own way and that it provides that they need not be influenced by anybody or anything, and that they do not need to conform to any one else's ideas:

- *To express your opinion and to say how you feel without being influenced by other people*¹²² 1:20 (47:48).
- *I don't feel I have to conform to any given way* 3:13 (38:39).

A clear pattern is visible in the data. Many respondents seem to absolutise the right to freedom of expression, while very few are aware of the fact that the right to freedom of expression allows them to express their religion and beliefs. Of those who do, the majority appear to absolutise the right: *... pray wherever and whenever ...* 5:17 (88).

It is clear from the literature that the right to freedom of expression tends toward the absolute, as it is important for the development of a democracy (Beatty, 1995; Clayton & Tomlinson, 2001; De Waal *et al*, 1998; Dugard, 1978; Gordon, 1984; Türk & Joinet, 1999) (see § 4.2). This tendency is also clear in the minds of some learners. Although there is a tendency internationally to view the right to freedom of expression as a core right in a democracy and even though it tends toward the absolute, it is clearly not absolute.

¹²⁰ Ek dink jy mag jou siening stel, veral in 'n hof.

¹²¹ Dis my reg om my EIE mening bekend te maak sonder dat ek vervolg word.

¹²² Om jou mening te lug en te sê wat jy voel, sonder om beïnvloed te word deur ander mense.

To summarise, learners know that they have a right to communicate (or to speak) according to their right to freedom of expression. There is a tendency among them to regard this right as important and as guaranteed (entrenched) in the Bill of Rights. As a result, some respondents seem to absolutise this right in terms of content (what they express), addressee (to whom they express a view), time (when they express), place (where they express) and manner (how they express). The right to freedom of expression can be limited, as can any other right. As there has been only one South African school-related case to test the limitation to the right to freedom of expression in schools, the principles determined in US case law are useful guides to possible limitations in South Africa.

I shall now focus on what I have deduced from the data in phase 1 in terms of the assumption that some learners seem to absolutise the right to freedom of expression, before turning to what the data of phase 2 says on the same topic. This will be facilitated by several network displays generated by Atlas.ti™.

7.3.1 Verbal expression

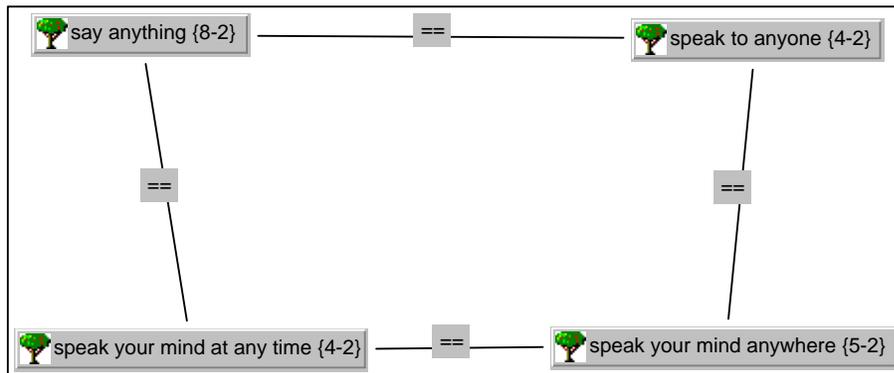


Figure 7.1 Depicting the absolutising of the family of verbal expression¹²³

From figure 7.1 one can deduce that some learners think that they may say anything to anybody at any time and at any place. The clear pattern that has evolved from the analysis of this data is that some learners believe that the right to freedom of verbal expression is absolute and may never be limited, as it is guaranteed under the Constitution. These four codes are associated with one another as they indicate what is said to whom, and when and where it is said.

7.3.2 Non-verbal expression

In regard to non-verbal expression, one can deduce that some learners know that they may express themselves via the media: *You may for instance write to a newspaper or magazine to give your opinion on an issue*¹²⁴ 1:39 (101:102). Part of this code is the code to “speak your mind on posters”, as this is a way of speaking your mind in the media: *You can voice your expression in school in many*

¹²³ The legend to read the symbols in the Atlas.ti™ generated network displays is explained in figure 2.3 at § 2.15.2

¹²⁴ Jy mag byvoorbeeld vir 'n koerant of tydskrif skryf en jou mening oor 'n saak lug.

ways. *Through letters, posters ...* 5:33 (155:156). The code “to be listened to” is part of the code “to speak your mind in the media” as you are “heard” through the media. Apropos this code, the

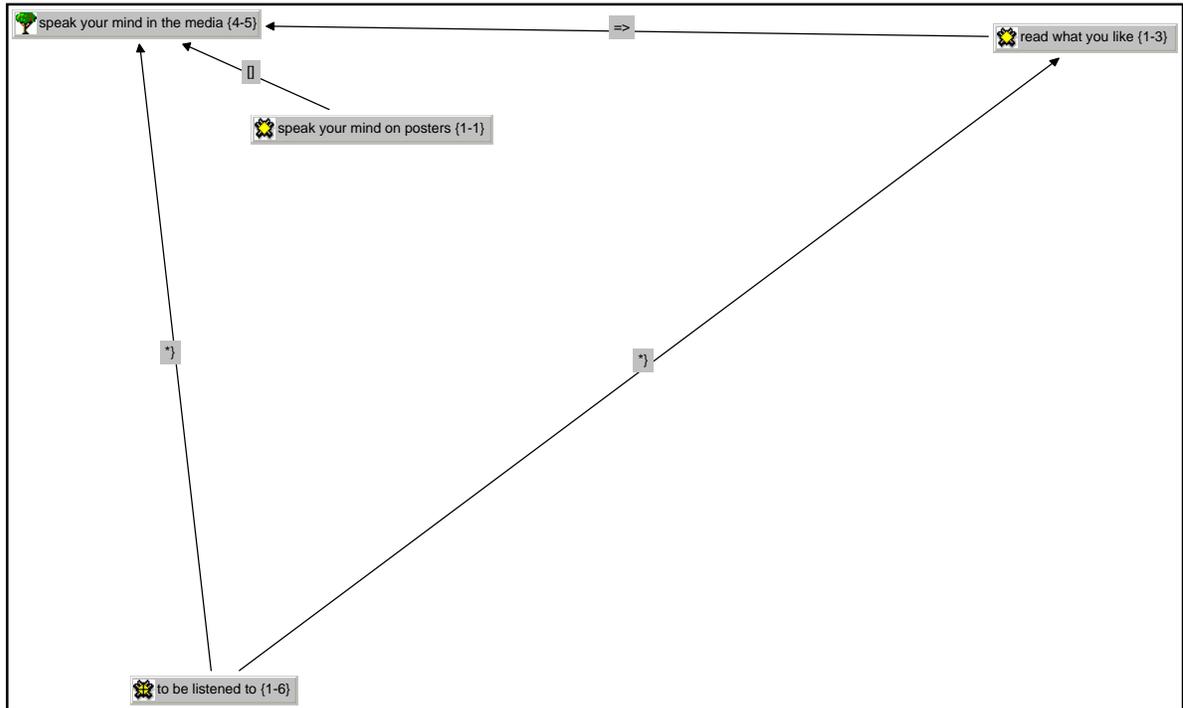


Figure 7.2 Depicting the absolutising of the family of non-verbal expression

respondents indicated that they have to be listened to: *That everyone has the right to speak his mind and that it would be listened to*¹²⁵ 1:21 (49:50). The code “read what you like” has a causal connection to the code “speak your mind in the media” as you can only read if something is written and the right to freedom of expression also allows everyone to read anything: *... I can read what I like ...* 3:101 (36) and learners have the choice of reading what they want to read. This also tends to the absolute as they do not indicate any limitation. The pattern of absolutising the right to freedom of expression is also configured by way of non-verbal expression.

7.3.3 Appearance

The fact that some learners also tend to absolutise symbolic expression can be deduced from the data generated by Atlas.ti™ in the network display (figure 7.3). Some learners think that they may appear in public as they wish to in order to freely represent what they stand for (believe in):

To me freedom of expression means being able to say, wear and do whatever you feel interprets you as a person. Its [sic] all about feeling free to be who you are and represent what you stand for as an individual 5:8 (35:39).

This implies that they can wear anything at any time: *Wearing what I want to wear at my own time* 2:90 (35:39). They may even choose their own hairstyle and clothes in order to communicate

¹²⁵ Dat elkeen die reg het om sy siening te stel en dat daarna geluister sal word.

(express) who they are: *I can wear my hair how I want to, I can wear the type of clothes that I want to wear ...* 3:81 (34:35).

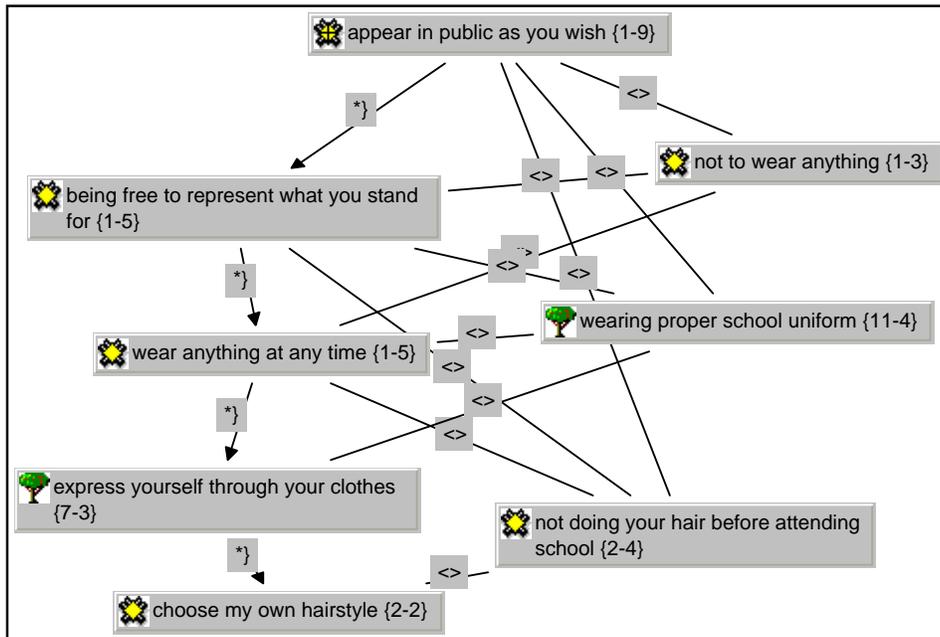


Figure 7.3 Appearance: absolutising the right to freedom of the family of symbolic expression

7.3.4 Acting (doing)

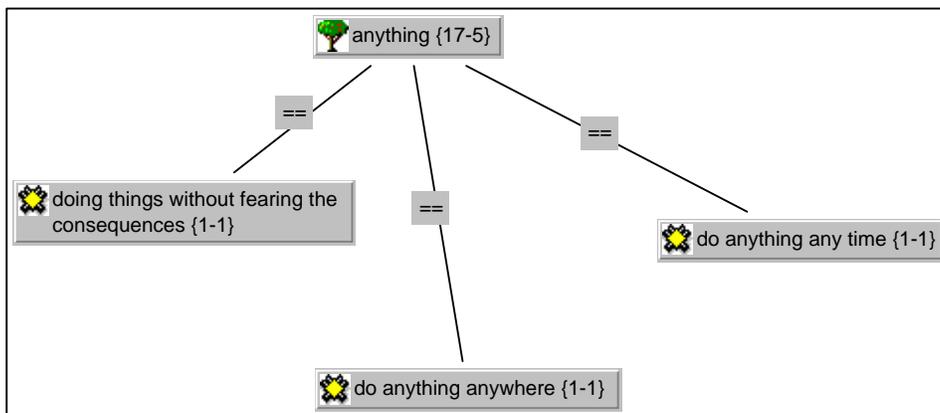


Figure 7.4 Depicting the absolutising of the family of symbolic expression by means of the category of doing

A number of codes indicate clearly that learners think that they can do anything whatsoever under the right to freedom of expression:

- *Anything you want [to do]. You are allowed to express yourself in any way ...*¹²⁶ 1:46 (117:118).
- *You have a right to do anything you really wanna [sic] do* 2:4 (24:25).
- *... I do everything that I want under the protection of [the] right ...* 2:32 (115:116).
- *Under my protection of right I can do what I want* 2:39 (135).
- *Having the right to do whatever you want ...* 4:16 (72).

Some respondents explored this issue by stating that they can do anything without fearing the consequences:

Freedom of expression means being able to express yourself about things that occur in life. Its [sic] like being free without any oppression from other people. You can do things without anyone saying no to those thing [sic] 4:4 (24:28).

Some respondents also indicated that they can use their freedom of expression at any place and at any time: *Every person have [sic] a right to do everything, everywhere and anytime* 4:8 (42:44). The codes also echo the pattern that some learners think that the right to freedom of expression is an absolute right.

7.3.5 Art

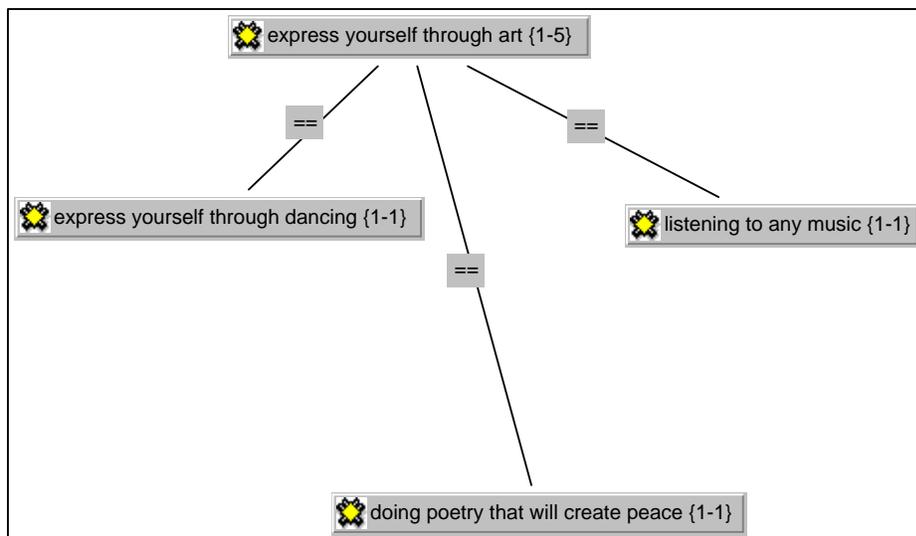


Figure 7.5 Depicting the absolutising of the family of symbolic expression by means of the category of art

Only a few learners are aware of the fact that they can express themselves through their art:

It means that I can express myself in any way that I want and not get in trouble. Like get arrested or thrown out of school. I can express myself in different ways like clothing, art and even my culture 4:10 (48:52).

A number indicated that they can express themselves through poetry and dance and by listening to their choice of music:

¹²⁶ Net wat jy wil. Jy mag jou op enige manier uitdruk.

- *It means that you can say anything you want to in words, mouth, dance, art [sic] 3:22 (71:72).*
- *I am allowed to do free speeches or poetry ... 2:54 (201).*
- *... I can listen to any music ... 3:39 (35:36).*

The use of art echoes the tendency to absolutise the right to freedom of expression.

7.3.6 Religion

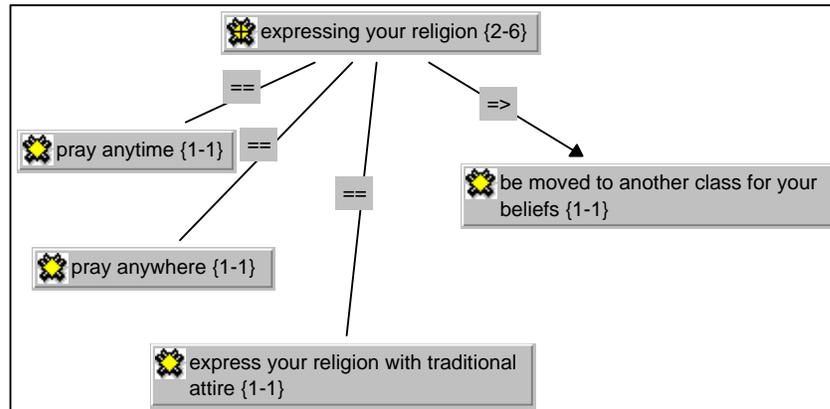


Figure 7.6 Depicting the absolutising of the family of symbolic expression by means of the category of religious expression

The pattern of absolutising the right to freedom of religious expression can be seen in figure 7.6. Although only a few learners indicated the awareness that religious expression is encompassed in the right to freedom of expression: *That you have the right to express who you are and your religion/culture ... 5:5 (28:29)*, there is also a tendency to absolutise this right by indicating that under the right to freedom of expression they are allowed to pray anywhere and at any time: *Dress as I like, pray wherever and whenever ... 5:17 (88)*. The right to express their religion is also associated with their right to express their religion through traditional attire: *You can state your viewpoint on certain things. Maybe even fashionably, e.g. if you [sic] a Muslim woman you'll express parts of your religion through your traditional attire 5:24 (115:118)*. This tendency in the community is clear from, among others, the *Antonie* case ("Antonie", 2002) (see § 5.4.1) and critical incidents such as the Sunali Pillay incident (Broughton, 2005; Rademeyer, 2005) (see § 7.2).

7.3.7 Culture

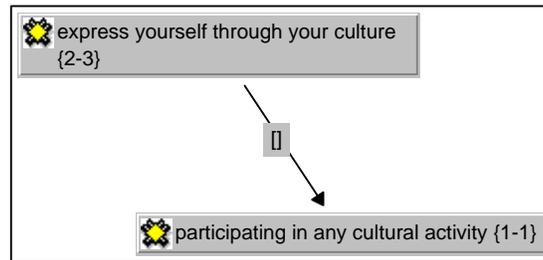


Figure 7.7 Depicting the absolutising of the family of symbolic expression by means of the category of cultural expression

Although almost no respondents are aware of the fact that the right to freedom of expression includes the right to express their culture, the three respondents who mention it, also tend to absolutise the right since they mention that it allows them to participate in any cultural activity:

- *It means that I can express myself in any way that I want and not get in trouble. Like get arrested or thrown out of school. I can express myself in different ways like clothing, art and even my culture* 4:10 (48:52).
- *That you have the right to express who you are and your religion/culture...* 5:5 (28:29).
- *I am allowed to take part in any activity, sport or culture ...* 3:41 (159:160).

The pattern of absolutising the right to freedom of expression, also by means of cultural expression, can be deduced from the following quotation: *I am allowed to take part in any activity, sport or culture and may choose any subjects. This is a form of freedom of expression as individuality is developed* 3:41 (159:162).

I shall now look at a network display generated by Atlas.ti™ to discuss what can be deduced from the focus group interviews in regard to absolutising.

7.3.8 Symbolic and artistic expression

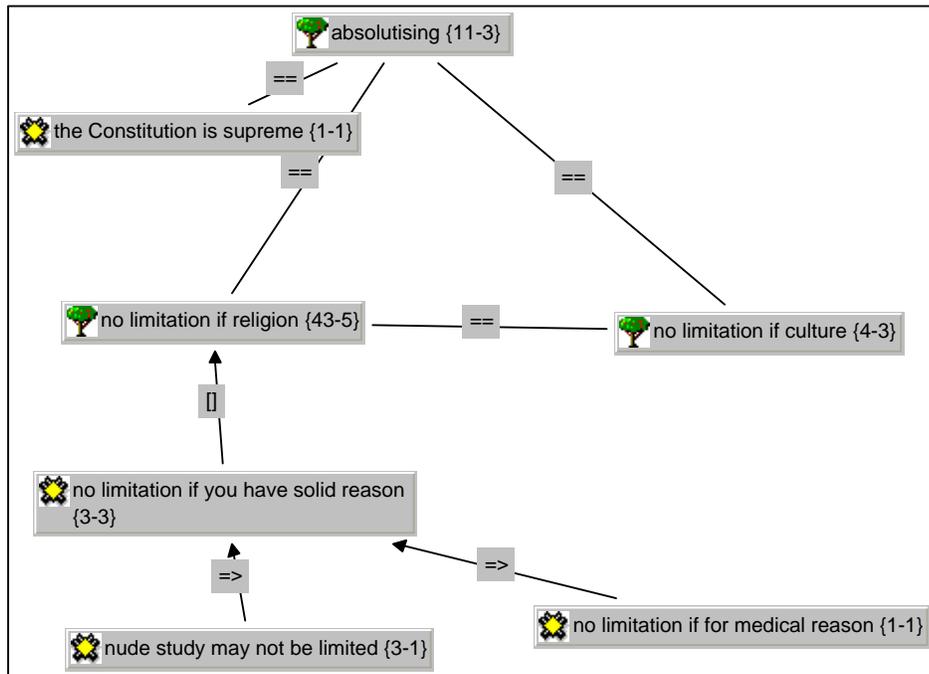


Figure 7.8 Depicting the absolutising of the family of symbolic and artistic expression

This network display generated from the focus group interviews echoes the same pattern discerned in phase 1, i.e. that some learners seem to absolutise the right to freedom of expression:

- *The thing is: I don't think you can prohibit the right like your right and give a little bit of your right. This again is like belief. You either believe or you don't believe at all. You either have your right 100% or you don't have it at all. I don't think that they can give you only a small portion of your right*¹²⁷ 1:218 (1190:1194).
- *Yes, it is. If this is my point that I want to express, who then has the right to take it from me, because I have the right to express my opinion as I wish to*¹²⁸ 1:2879 (160:162).
- *It says a lot to me. You can wear what you want and do with your hair as you want*¹²⁹ 1:313 (1024:1025).

It seems that some learners seem to absolutise this right because of the supremacy of the Constitution: *The Constitution is more important than our school Code of Conduct*¹³⁰ 53 (302:303). This respondent seems to understand the relationship between the Constitution and the school's code of conduct correctly, because no other law or subordinate law can state something that contradicts the Constitution. It seems that because of this, respondents seem to absolutise the right instead of

¹²⁷ Die ding is: Ek dink nie jy kan die reg soos jou reg verbied nie en bietjie van jou reg gee nie. Dis weer soos met geloof, of jy glo of jy glo glad nie. Dis of jy het voluit jou reg of jy het nie 'n reg nie. Ek dink nie hulle kan vir jou 'n klein deeltjie daarvan gee nie.

¹²⁸ Ja, dit is. As dit my punt is wat ek wil oordra, wie het dan die reg om dit van my weg te vat, want ek het die reg om my opinie te lug soos ek wil.

¹²⁹ Baie sê dit vir my. Jy mag aantrek soos jy wil en met jou hare doen wat jy wil.

¹³⁰ Die Grondwet is mos baie belangriker as ons skoolreëls.

balancing it correctly with other rights when exercising it. In the same vein, one respondent feels that a nude study will never be wrong as it is part of the absolute right to freedom of expression:

I do not think you should be criticised at all for drawing a nude picture because I remember in Grade 9 in OBE, we got a picture of De Le Kwa and it's actually got an open breast there. So if they can show you nudity within your school curriculum, you have to be able to hand in a nude picture 3:220 (1089:1094).

The above-mentioned code is viewed as the cause of the code of “no limitation if you have a solid reason”. This indicates that if you need to draw a nude picture for art, you have a solid reason for doing it and if you have a solid reason; your right cannot be limited. Another solid reason given by some respondents for not limiting their right to freedom of expression is for a homosexual person to wear an earring to school: *Yes that would be good enough because we don't, we don't oppress or oppress [sic] the gays 4:164 (222:223)*. Having a solid reason for not limiting the right to freedom of expression is viewed as being part of the code “no limitation if religion”. Many respondents feel that their religion is a solid reason for not limiting their right to freedom of expression. There is an overwhelming consensus (43 codes) that the right to expression of religion is untouchable, sacred and may not be limited:

- *I don't think that should be. I think the school should respect your cultures and images and things like that. So they should find space within the code of conduct for things like your religion and culture 5:202 (214:218).*
- *Again, the dreadlocks are fine, because I don't think it [sic] would bother anyone. The first week it [sic] might bother them then they will be accustomed to it [sic]¹³¹ 1:179 (1000:1002).*
- *She is going her own way and she does not bother the rest of us or our religion. She doesn't comment against our beliefs. I think this is the same as the previous earring scenario. Then you have the right to do it. I think the hat is taking it a bit too far ...¹³² 1:311 (986:990).*
- *If it's got [sic] some symbolic meaning to it. It is all right. But to wear a stud or sleeper for a guy it does not really represent anything. It is just there you know... 3:27 (209:212).*
- *But this thing is that people believe in your religion that you have to show other people that you are religion [sic]. With the freedom of expression you are showing kind if it's true that you can wear an earring it's true what you are trying to say that an earring and that is the same thing, but there is a difference. Because one is expressing your religion and believe and the other one is also a believe [sic] but it's not the proper place to express it. In your religion you express throughout your whole life and just to wearing [sic] an earring is a fashion statement kind of thing. It's like a phase or fashion statement. And that kind of statement isn't the school and the place for that. Religion is throughout your whole life and these kinds of statements are not at school. Like other religions Christians wear crosses to show that they are religious. Jewish people wear their hats on top [sic] and it's go on like that [sic]. Those places should be everywhere in your life and this is just fashion or expression there is place for that like when you go out to shops and things like that or paint your hair red or whatever you want to do 5:206 (249:269).*

The respondents indicated that religious expression is absolute and may not be limited. The code “no limitation if religion” is associated with the code “no limitation if culture” as one very often expresses one's religion in one's traditional, cultural way:

¹³¹ Weer, die dreadlocks is fine, want ek dink nie dit gaan enigiemand so baie pla nie. Die eerste week gaan dit die mense pla, dan is hulle gewoond daaraan.

¹³² Sy gaan haar eie gang en sy los die res van ons en ons geloof. Sy gaan nie teen in wat ons glo nie. Ek dink dan net dit is dieselfde as die oorbelstorie van die vorige een. Dan het jy die reg om dit te doen. Ek dink die hoed is bietjie ver, want ...

I think that if you can incorporate the same way that Muslim people wear scarves and Jewish people wear hats and that. Christian people don't really wear anything except for crosses, little signs so this is our way of saying it so I think Christian people should be allowed to wear something small like that, not something loud and extravagant like Muslim people are allowed to wear the thing on top of their head, but I think it's certain colours and that all or something like that. I know that you can't in a way like go too far goes extravagant that really looks. The same with allowing the traditions and cultures out there that should be allowed 5:218 (491:504).

It seems that the assumption that learners know that they can speak their mind under their right to freedom of expression has been corroborated (see § 6.3). Learners, however, do not necessarily understand how to exercise the right correctly. A second phenomenon evident from the data is that many respondents seem to think that the right to freedom of expression is an absolute right and may, in terms of its entrenchment in the Bill of Rights, never be limited. The literature and case law prove this to be a misconception. International law, foreign law, case law and the South African Constitution point out that the right to freedom of expression can be limited.¹³³ The respondents do not understand that the right to freedom of expression can be limited and balanced by other rights and believe that once they have a guaranteed right, it can be absolutised without any responsibilities being attached to it.

The *Edwards v. South Carolina* 372 U.S. 229 (1963) case ("Edwards", 1963) determined that an unpopular viewpoint may be expressed at any place in a peaceful manner. The criterion that limits the right to freedom of expression is thus the manner or way in which the opinion is expressed. Furthermore, the principle has been determined that freedom of expression may be limited if it could lead to unrest or result in material and substantial interference with the school's routine. See the following cases in § 5.2: *Terminiello* ("Terminiello", 1949), *Garner* ("Garner", 1961), *Cox v. Louisiana* 379 U.S. 559 (1965) ("Cox", 1965), *Burnside* ("Burnside", 1966), *Blackwell* ("Blackwell", 1966), *Brown* ("Brown v. Louisiana", 1966), *Tinker* ("Tinker", 1969), *Guzick* ("Drebus", 1970), *Taylor v. State of Louisiana* 419 U.S. 522 (1975) ("Taylor", 1975), *Fraser* ("Fraser", 1986) and *Hazelwood* ("Hazelwood", 1988). Learners' right to freedom of expression can, in terms of USA case law, be limited in terms of place, time, content and manner. I shall now interpret the data in regard to the second assumption which addresses the limitation of the right to freedom of expression.

7.4 LIMITING THE RIGHT TO FREEDOM OF EXPRESSION

Despite the above-mentioned data, a surprisingly large number of respondents indicated that there are qualifiers in regard to exercising their right to freedom of expression. The focus will now be on what I can glean from the data about balancing the right to freedom of expression. In this section the respondents' comments on balancing the right to freedom of expression in general will be discussed. These qualifiers are not necessarily attached to a specific mode of freedom of expression, like communicating, acting, etc. Figure 7.9 depicts a flow chart of respondents' view on limitation of the right to freedom of expression and will serve a framework for the discussion of the data.

¹³³ Section 16(2) and 36 of the Constitution.

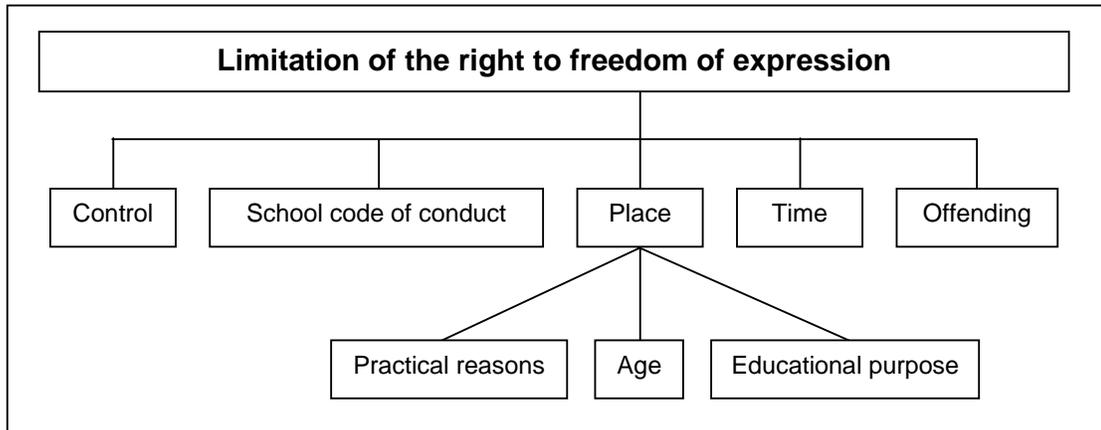


Figure 7.9 Limitations to the right to freedom of expression as identified by the respondents in the focus group interviews

Of the respondents, 17 indicated that one should respect the rights of other people while exercising one's right to freedom of expression. The respondents state specifically that one is required to respect educators, other learners and their points of view:

- *I'm not allowed to dismiss another person's (pupil's) view without taking it into consideration and giving valid facts. I'm not allowed to swear, make noise, disrespect, etc. 2:87 (346:349).*
- *I think I'm not allowed to criticise other kids or make fun of them and I'm not allowed to disrespect my teachers 2:80 (298:300).*
- *You are not allowed to talk to the teacher the way you like and tell them that you have the right to say no. That is not allowed 2:91 (359:361).*
- *To talk to teacher the way we like and say we have freedom of expression 4:94 (384:385).*
- *I cannot always have what I want to have like [sic] for an example a good teacher. I can also not have abandoning [sic] other children's freedom of expression 5:42 (204:207).*
- *I am allowed to not abuse my freedom to my thoughts and opinions. I'm allowed to respect and treat everyone's opinion 4:62 (275:277).*
- *I am allowed to do free speeches or poetry having in mind it will bring peace, not actually hurt others. I am allowed to bring peace among others 2:54 (201:204).*

Only one respondent balanced the right to freedom of religious expression by stating that one can express one's religion only if one does not slander someone, or while respecting the rights of others:

I think that I am allowed to stand up for what I believe in and no-one is allowed to tell me that I can't as long as I am not infringing on other people's rights for e.g. if I believe strongly in Christianity, I can voice that as long as I don't slander 3:29 (107:111).

Of the respondents, 11 indicated that one of the biggest qualifiers governing the right to appear at school as one wants to, is the school's dress code. This right does not allow one to choose what to wear nor does it allow one not to wear the prescribed school uniform:

- *Wearing items of clothing that do not correspond with the school code of conduct 3:61(245:246).*
- *Cuss [sic] at teachers and peers. Put on different uniform or accessories to be artistic 5:43(208:209).*

In other words, one is not allowed to wear anything of choice to school, nor can one wear just any hairstyle when attending school:

I am not allowed to tell how I feel about my school uniform or my hair, they [sic] are the ones who decide for me what to wear and what to do. They make rules for me 2:89 (354:357).

Some respondents indicated that they can choose their own hairstyles while others said that they may not, under this right, wear whichever hairstyle they prefer to school while wearing school uniform. This contradiction is in line with what the data reflects about the other modes of expression. Some learners think that the right to freedom of expression can be absolutised while others know that it may be limited. From the above quotations it is evident that some learners believe that the right to freedom of expression may be limited by the school rules.

Furthermore, they indicated that when exercising their right to freedom of expression they need to behave and use the right in a responsible way. While exercising this right they still need to obey the law and school rules as well as their educators:

- *As long as I don't touch a person in such a way that I break other laws¹³⁴ 1:88 (220:221).*
- *I am allowed to not abuse my freedom of thought and opinion 4:62 (275:277).*
- *Something drastically wrong (burn a bathroom to be heard, strike) 5:39 (194:195).*
- *There are rules at school that we have to abide by. Once we (you) break those rules, you are over bounding [sic] 5:38 (189:193).*

Respondents also indicated that while exercising their right to freedom of expression, they are not allowed to humiliate or slander, use hate speech or offend. They are also not allowed to influence someone negatively:

- *I am also not allowed to abuse anyone through words and use the excuse that I am allowed to perform the act because it's my right to freedom of expression 3:63 (250:253).*
- *To be vulgar and rude to others such as my peers and teachers 3:70 (218:219).*
- *I am not allowed to call another learner names 4:90 (378:378).*
- *Cause damage to property or other people by expressing my views 3:54 (222:224).*
- *You are not supposed to do hate speech towards other cultures or races¹³⁵ 1:80 (202:203).*
- *Offend or impact anybody negatively in any way with your own actions 5:48 (230:231).*

This is in line with section 16(2) of the Constitution in which the right to freedom of expression is inherently limited (see § 3.4.2.2). The above quotations seem to indicate that respondents are aware of the fact that the right to freedom of expression is indeed not absolute, but can be limited in terms of its inherent limitation in section 16 (2) of the Constitution.

Respondents further stated that they can exercise their right to freedom of expression as long as they do not disrupt the class, make noise or damage property:

- *Interfering with classwork [sic] 3:59 (244:244).*
- *Cause damage to property or other people by expressing my views 3:53 (215:217).*

¹³⁴ Solank ek net nie 'n persoon op so 'n wyse sal raak dat ek ander wette oortree nie.
¹³⁵ Jy mag jou nie aan haatspraak teenoor ander kulture of rasse skuldig maak nie.

The data coding process was enlightening. I anticipated that learners would not know that their right to freedom of expression can be limited. Although a fairly large number of respondents are under the impression that the right may not be limited, it was pleasantly surprising to find that some learners do indeed understand that the right to freedom of expression is not absolute and may be limited under certain circumstances.

These respondents also seem to absolutise this right and understand that they are legally allowed to do anything if they wish to convey a message. A respondent indicated that the right to expression is also limited in this regard and indicated that s/he can do anything provided s/he does not break the law:

- *You are allowed to open, view and express your opinion. You are allowed to act and voice your opinion as long as it's justified, reasonable and in a fair manner, and in a responsible manner* 5:14 (77:80).
- *As long as I don't touch a person in such a way that I break other laws*¹³⁶ 1:88 (220:221).

During the focus group interviews most of the respondents indicated that the right to freedom of expression can be limited. The respondents' understanding of the limitation to the right to freedom of symbolic or artistic expression resulted in a fascinating pattern. While a fair number indicated that the right is absolute (see § 7.3), an overwhelming number echoed the existence of limitations of this right. One respondent said about the boy who wore an earring to school: *He is abusing the responsibility of the fact that he can express himself as an individual and I do not think that ...* 3:177 (152:153).

I shall now focus on the limitations to the right to freedom of expression as expressed in the data and displayed in figure 7.10 that was generated by Atlas.ti™. As all the codes indicated in figure 7.10 are limitations to the right to freedom of expression, I have indicated that they are all interrelated, since they are all associated with one another as reasons for limiting or balancing the right to freedom of expression. I shall then discuss each code indicated as a limitation.

7.4.1 Limitation in order to control

Some learners clearly believe that the absolutising of the right to freedom of expression will result in chaos in school and society:

- *Yes, but remember now. If everyone can say what they want to do, what they want to wear as they wish to. Just think how everything will be*¹³⁷ 1:12 (62:64).
- *All the people will wear what they want and then there will be no order anymore*¹³⁸ 1:267 (70:71).
- *And there will be no discipline at school, because everybody wants to do whatever he wants, you might wear jeans, you might wear something else, there won't be discipline* 4:15 (141:142).

¹³⁶ Solank ek net nie 'n persoon op so 'n wyse sal raak dat ek ander wette oortree nie.

¹³⁷ Ja, maar onthou nou, as almal kan sê wat hulle wil doen, wat hulle wil aantrek soos wat hulle wil - dink net hoe sal alles wees.

¹³⁸ Al die mense sal aantrek soos hulle wil en dan gaan daar nie orde wees nie.

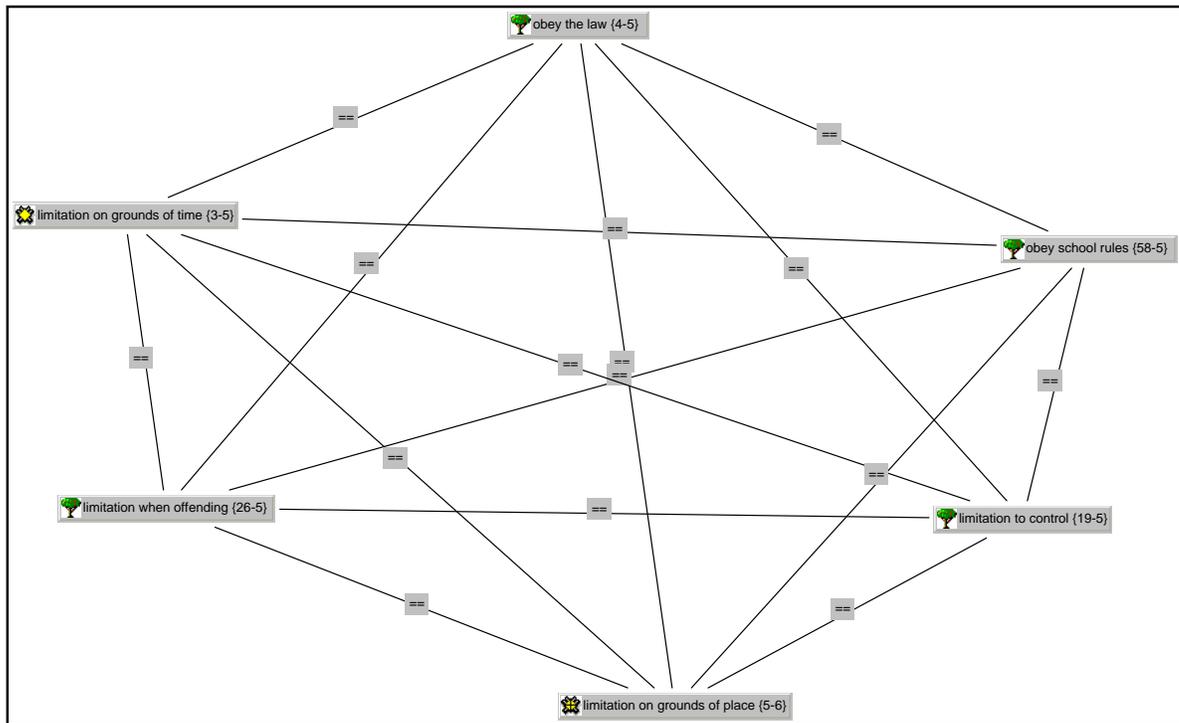


Figure 7.10 Depicting the pattern of limitations to the right to freedom of expression

- *That is the same way of saying I come to school with a gun and I shoot five people and I my particular feelings and moods because I don't like maths [sic] so I killed half the class. That's the truth. It is the same comparison. You have to take it like that as they should perhaps say I convey positive particular feelings and not negative. Change the word. It's very difficult because if you take anything you can say anything and you can turn it the same way you want it to go. Because you can just say a simple sentence and had it said oh now you are saying that you hate me. Just from a simple sentence. Anything like that you can change 5:121 (965:977).*

As the main purpose of the law is to create order and harmony in a society, original statutory law or any subordinate law¹³⁹ may be used to limit any fundamental right. This means that the law is intended to create order; and if human rights are absolutised, chaos will reign. This principle has also been established in USA case law, viz. that the right to freedom of expression may be limited if it could lead to substantial disruption at school ("Blackwell", 1966; "Burnside", 1966; "Drebus", 1970; "Tinker", 1969) Schools need an operational code of conduct for learners to ensure that control, order and harmony exist in schools.

7.4.2 Limitation in terms of the school code of conduct

Learners believe that the school's code of conduct is the single most important principle or guideline that limits the right to freedom of expression. I sensed a distinct authoritarian influence in the learners' perspective here. The code assigned by far the most (58 times) during the focus group interviews was

¹³⁹ Subordinate law refers to regulations and conditions promulgated in terms of statutory law and has the same legal force as statutory law.

“to obey school rules”. In many cases the respondents argued that the right to freedom of expression is absolute in society but it can be limited by school rules:

Freedom of expression is fine at home but at certain places and certain times you've got to abide by certain rules. When you come to the school, you know that you are part of that group and from eight in the morning until two thirty in the afternoon you've got to abide by those rules and instructions and have respect 3:7 (56:62).

When asked to juxtapose the authority of the Constitution and the school rules, the respondents appeared confused. Some regard the school rules as the supreme law at school, while others know that the Constitution reigns supreme. The respondents, who know that the Constitution is supreme, tend to absolutise the right. Other respondents were confused after the focus group interview and believe that they have been tricked into obedience by school authorities:

- *The school is against hair that stands like that. It must be tied and combed; cut behind the ears for boys, but the ends keep standing out. The school has the rule and she must obey. On the other side there is the Constitutional right to expression or religion which states that she may do it, but the school rule states that you are not allowed to do it¹⁴⁰ 1:309 (958:964).*
- *There is a Constitution and the school code of conduct is based on the Constitution, but they try now in the Schools Act, school code of conduct, whatever... it contradicts the Constitution. When you are outside the school you can wear whatever you want; you may look as you want to. When you arrive here [at school] everybody must look alike otherwise it does not look correct and you will be scolded or whatever¹⁴¹ 1:271 (106:112).*
- *I really do not know. That is a difficult situation but I think again the child would be wrong because the child challenged authority and the child knew that what he/she did was wrong because it is stated, there is proof you know and the court would be on the school's side 3:191 (319:323).*

As a result of the authoritarian culture in South African schools (see § 1. 2) most of the codes of the data were applied to the limitation of school rules. It seems that respondents view school rules as superior to the Constitution. If the school has a code of conduct and learners know about it, there is no reason to disobey it. Few respondents indicated that their right to freedom of expression can be limited by other laws or by the Constitution. Some also indicated that the right to freedom of expression can be limited in terms of time and place or when offending someone.

I shall now discuss the last three limitations according to the interpretation of the coded data.

7.4.3 Limitation in terms of time

Not many learners indicated that the right to freedom of expression can be limited at specific times. In other words, these respondents understand that there are certain times at which this right can be limited and that one cannot claim it absolutely:

- *There is also a time and place for it [freedom of expression] 3:133 (880).*

¹⁴⁰ Die skool is teen hare wat so staan. Dit moet vasgemaak word en dit moet ordentlik gekam word, agter die ore gesny word vir die seuns, maar die punt bly staan, die skool het daardie reël en sy moet dit doen, maar O.K. aan die ander kant dit is haar Grondwetlike reg tot uitspraak of godsdienst dat sy dit mag doen, maar die skool se reëls sê jy mag dit nie doen nie.

¹⁴¹ Die Grondwet is daar en die skoolreëls word eintlik gebaseer op die Grondwet, maar hulle probeer dit nou in die skoolwet, skoolreëls, whatever - dit stry nou eintlik teen die Grondwet. As jy buitekant die skool is, mag jy aantrek soos jy wil, mag jy lyk soos jy wil. As jy hierso kom, moet almal presies dieselfde lyk anders lyk dit nie reg nie, en word jy uitgetrap – whatever!

- *Freedom of expression is fine at home but at certain places and certain times you've got to abide by certain rules. When you come to the school, you know that you are part of that group and from eight in the morning until two thirty in the afternoon; you've got to abide by those rules and instructions and have respect 3:7 (56:62).*
- *But they need to get punished and correct it, not necessarily correct it by picking on them in front of everyone, but correct it so that everyone knows that that was wrong. And that opinion was not that's wrong but against the law. That's right to have your own opinion, because I am sure there is a hundred of people that believe LSD is the way to go. But it was wrong what they did. It was the wrong way to express it and it's not the type or the place. So it is very difficult to say that this freedom of expression act should be in this place in this time. There are so many limitations and that. I don't think that it was correct by singing LSD and that in front of everyone cause I mean that's again imposing on people that don't like LSD and think LSD and all LSD 5:234 (1071:1086).*

These respondents are aware of the fact that the right to freedom of expression can be limited at specific times. It is interesting that all three quotations indicate this time as equal to the time at school. One can thus argue that this equals the limitation as a limitation in terms of place, in this case, the school.

The first respondent stated the limitation in terms of time succinctly. Although one has a Constitutional, protected and entrenched right, school is not the time or place for it. The second respondent has a similar view, and mentions that school rules overrule the Constitutional right. The school rule legitimates the limitation in terms of time (school time). The third respondent elaborates the same theme and says that there are several reasons why the right to freedom of expression should be limited at school, i.e. the school is not the time (or place) to express something that contradicts the educational purpose of the school. As school time is identified as the criterion for the limitation I shall survey the data regarding limitation in terms of place.

7.4.4 Limitation in terms of place

Respondents indicated that the entrenched right to freedom of expression is not absolute, but may be limited in terms of place (also see § 7.4.2) e.g.:

I am sure there is an area where you could express yourself and not break the school rules. By the way [Person D] and the poetry club and that they all express themselves and they are in the school. They express themselves every Friday afternoon or whenever they have their things and they like poetry contrary about today's [sic] society, poetry about the happenings at the school and that anyone like to come and listen to their poetry and they say like that then express themselves. And that is like nothing to do with wearing an earring or wearing dreadlocks or wearing something like that... 5:241 (1405:1416).

This respondent indicated that the right to freedom of expression can be limited at school, but that schools can create certain forums in which the right to freedom of expression can be exercised. This indicates a clear understanding of this right and the way to exercise it in a school. As the right to freedom of expression is a core right in a democracy, tending toward the absolute, there are reasons for limiting it at schools, but since schools deal with young people who need to develop to their fullest potential to function optimally as responsible citizens, schools should offer a forum for the development of this right.

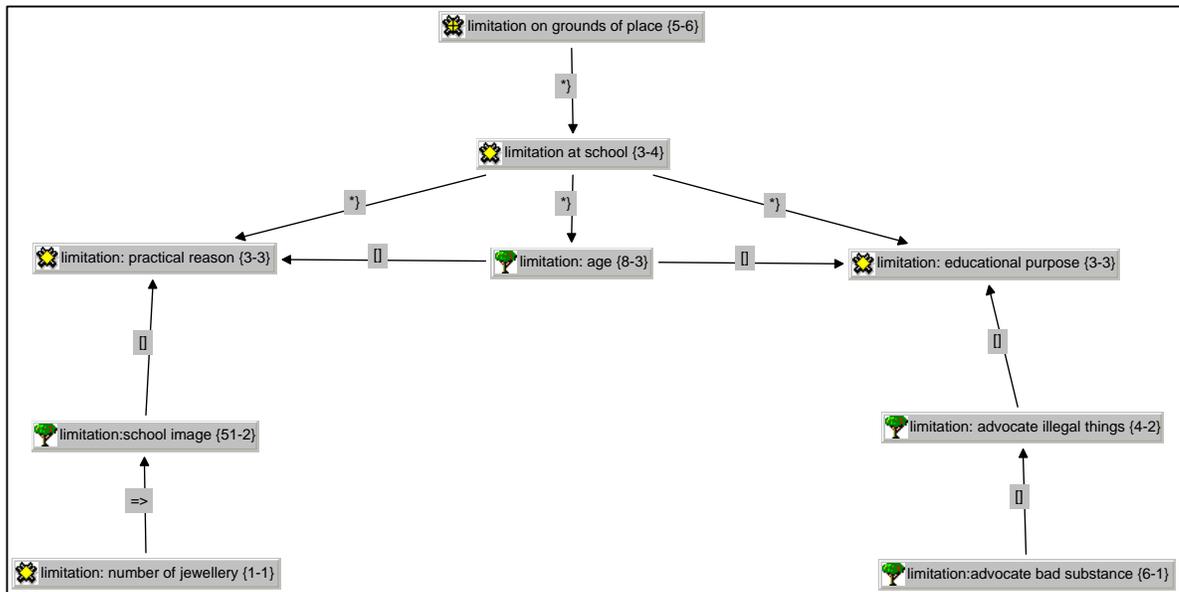


Figure 7.11 Depicting the pattern of limitations to the right to freedom of expression in terms of place

Respondents put forward three reasons for limiting the right to freedom of expression in schools, viz. practical reasons, age and educational purpose. I shall start by discussing the variable of age as I view it as the overarching variable for limitation in schools.

7.4.4.1 Age

All learners at school are minors and they lack *iudicium*¹⁴² (see § 1.5 and § 4.2.3.1) (Bondesio, Beckmann, Oosthuizen, Prinsloo, & Van Wyk, 1989) and could therefore harm themselves and those around them. Someone should look after them to ensure that this does not occur. The educator's duty of care plays an important role here as the educator needs to see to the welfare of the minor in place of the *pater familias*.¹⁴³ Since children lack *iudicium*, they have limited responsibilities and are often unable to make correct decisions. Educators need to assist them on their path to adulthood, but also need to protect them from harming themselves and those around them. Therefore the fundamental rights of learners' as minors may be limited in order to protect their own rights, as well as the rights of those around them. Age is therefore definitely a variable in limiting rights. The younger the child, the less responsibility s/he will have, and the more his/her rights may be limited. As the school is the place where a child is prepared for adult life, the school may definitely limit the child's rights. A respondent who clearly understands the concept expressed the following view: *Yes, but remember it is because we are older. I mean when I was in standard six ...*¹⁴⁴ 1:325 (428:429).

¹⁴² Discretion/ judgement.

¹⁴³ Good, prudent father of the family.

¹⁴⁴ Ja, maar onthou dit is ook omdat ons ouer is. Ek meen toe ek in standerd ses was ...

Other respondents also indicated that schools are allowed to limit the right to freedom of expression in terms of age:

- *Because if you are under 18, I mean dancing like that ... 4:124 (1028).*
- *As I say there is an age restriction some of us are under 18 we are not allowed to see like [sic] naked things. We are still young so she is promoting for us to look for naked things. We can't allow people to draw naked things 4:188 (1231:1233).*
- *He doesn't know to decide for that. But if I decide I want to wear a dress I know what comes with wearing a dress I know that girls wear dresses I know that guys are not supposed to wear dresses then I can decide because like I am sure at a certain age like 16 when you are an adult I am consider you will not I am sure 16 is a certain age for something like [Person H] said at 16, 18 and 21 and your age is that you get certain responsibilities 5:240 (1364:1373).*

The educational aim of schools is to develop minors and lead them to adulthood in order for them to fulfil their responsibilities in society as effective citizens (Clayton & Tomlinson, 2001; De Waal *et al*, 2001; Gordon, 1984) (see § 4.2.1.2 and 4.2.1.3). This educational purpose of schools may also be used as a variable to limit learners' right to freedom of expression (Zirkel, 2003).

7.4.4.2 Educational purpose

One of the school's main aims, amongst others, is to develop minors into adults who can fulfil their societal responsibilities (Clayton & Tomlinson, 2001; Gordon, 1984). Schools may therefore limit the right to freedom of expression in order to ensure the realisation of this aim. Three codes were assigned apropos the fact that the school has an educational purpose and can therefore not allow expressions that contradict this purpose:

You know not everyone has a strong personality. You get people who are big enough to say no and get up and walk, but you get people who follow and if you allow that to happen in class it is going to happen more often, more people are going to start doing it and then the people who are going to follow them are going to deal consequences [sic] and then they go back and they say but I started because there was this rap song that was in my path 3:217 (103:1041).

This respondent understands that learners are minors in a specific sociological context and that they are faced with many choices and peer pressure on their journey to adulthood. It is therefore of vital importance for the school, in striving to achieve the educational purpose, to limit inappropriate choices.

Another respondent mentioned:

It's not, I know it's against the law to do certain Satanist acts and that and that is against the law. So people should not be allowed to wear things that are against the law. I know it's doing something like doing Satanist acts like skinning cats and killing people that's all against the law so it's promoting something wrong. In a way the school tries to put up a good image wearing one of these badges in the community is promoting the wrong idea and that should be taken off 5:64 (938:959).

Although the right to freedom of symbolic expression would allow one to wear an emblem advertising one's belief, it can be limited if that belief is against the morals and values of society. Four additional codes were assigned that indicated that the right to freedom of expression can be limited if that expression advocates illegal conduct. These four codes are part of the code "educational purpose", as the educational purpose is not to advocate anything illegal (see figure 7.11). The next quotations illustrate this:

- *But you can't promote drugs because the law doesn't approve it 4:185 (1152).*

- *It goes against like the school's ethos and that LSD is against cause it using your body [sic]. It's also it's not just in the school it's a lawful thing. I mean LSD is against the law 5:235 (1101:1105).*

It is, however, not only illegal substances and acts that stand in the way of achieving the educational purpose. The school may not advocate harmful substances, even though they may not necessarily be illegal. The following two quotations were selected from six of the responses which referred to this aspect:

- *... think is because they are promoting to do drugs as they say it gives them power so I think that the school can suspend them. I think that the school can suspend them, because they are promoting something that is not good for our health 4:182 (1088:1090).*
- *It brings on a very wrong message. I don't think the Constitution allows that kind of lyric to be written 5:127 (1043:1045).*

On considering the 13 responses (see figure 7.11), it appears that some learners are aware of the fact that the right to freedom of expression can be limited at school because of its educational purpose.

I shall now discuss the third variable identified by the respondents as a legal limitation to the right to freedom of expression at schools.

7.4.4.3 Practical reasons

Bearing in mind that the school has to achieve its educational purpose and that it needs to look after the minors in its care, there are some practical measures the school needs to enforce to ensure that it runs smoothly. Three respondents mentioned this as a reason to limit the right to freedom of expression:

No. I have two things for that sorry it's impractical to wear jewellery to school just generally because if you wear jewellery to school people do like to steal it and then also again with the code of conduct it's the same as the earrings and jewellery and that but also not just the feeling of expression is that people do steal at schools 5:207 (293:299).

It is, however, debatable whether this really is an acceptable reason for limiting a constitutional right. Schools ought rather to aim toward creating an environment in which the value system that underpins society is so clear that something like stealing will not occur. Then again, one must bear in mind that learners are still minors and are still being guided toward adulthood. They lack discretion and may steal because they do not fully consider the consequences.

As part of the practical reason for limitation, one can also add the code "school image". It was assigned a mammoth 51 times. Arguments in regard to dress codes and school discipline in ensuring a better school environment in order to reach the educational purpose are the focus here.

- *In which direction is this school heading? I must take out my child. Is this school going in that direction? The parents will not be satisfied¹⁴⁵ 1:170 (950:952).*
- *We are here to look tidy. We are a school. We must have a good image to the outside¹⁴⁶ 1:265 (45:46).*

¹⁴⁵ Waarheen gaan hierdie skool nou. Nou moet ek my kind uithaal. Gaan hierdie skool nou so uitdraai? Die ouers gaan bietjie onrustig wees.

- *I think the school tries to create an image. When the school opens its gates and everyone walks out, everyone will see this is a pupil from school A or B. The school uniform indicates the school that you attend and shows that you are proud of your school ...*¹⁴⁷ 1:277 (137:142).
- *Yes, but remember we are informed daily during assembly that we are soft targets if we are untidy*¹⁴⁸ 1:316 (1088:1089).
- *Look, the school informs us all the time that everyone is individual but I don't think this is exactly what they allow us, because they want everybody to look alike. Everyone must act the same. Everyone must say and believe the same things. They nail you the moment you try to be different*¹⁴⁹ 1:318 (1096:1101).
- *Because it is normal for girls to wear earrings in their ears and it looks better. It gives a bad impression. I know a lot of people, not just adults think that if a guy wears an earring he is the gangster type. Now imagine being in a school uniform, what impression that gives about [sic] your school. That school got [sic] a lot of gangster boys. You know people stereotype. You know people could judge you. A lot of people judge a book by its cover. So he should not wear the earring. He should not. It is wrong* 3:180 (180:187).
- *If you are in civvies [sic] I think it would be fine because then no one would say you sell people are going to say that child from [school C] because they don't know your name. They are not going to say what [person A] looks like in her school uniform, they are going to call the school and I think your school uniform is pathetic and people are going to get a bad impression of the school* 3:215 (854:863).
- *There are some dyes that will be allowed at school like a blonde dye that would be approved. Here at school our uniform is maroon so they would not* 4:176 (851:852).
- *It's not just the fact that it is wrong. It's against the code of conduct. The school aims to give you uniformity in the school to give a good visual for the community so they need to get rid of the earring but you can wear [it] out of the school in your own time you can wear it not in the school. If all the boys aren't wearing earrings then you shouldn't wear it* 5:190 (16:18).

This code generated significant findings, e.g. schools are very concerned about their image. This is understandable as schools are in an open and competitive market in regard to recruiting learners. Quotation 1:170 indicates that parents will move their children to another school if they realise that the image of the current school does not match their expectations. Parents of course demand the best education and values for their children, so this reaction is understandable. In the overwhelming response regarding the importance of school image, there is a strong authoritarian influence, which is in agreement with the notion of authoritarian leadership. Minors (learners) are not supposed to question, argue or be different from the norm. This authoritarian culture is still so palpable in schools, that I suspect a degree of indoctrination in this regard. Quotation 1:316 indicates that learners are told daily that they will become soft targets if they are untidy, i.e. if they look different from the others or do not conform to the expected image.

This notion is echoed by quotation 3:180 that implies that learners who do not conform will be stereotyped and judged by their external appearance. This is effectively summarised by quotation

-
- ¹⁴⁶ Ons is hier om netjies te lyk. Ons is 'n skool. Ek meen. Ons moet 'n goeie beeld na buite toe dra.
- ¹⁴⁷ Ek dink die skool probeer 'n beeld skep. So wanneer die skoolhekke oopmaak en almal loop uit, dan sal almal kan sien dit is [skool A of B]. Die skoolklere wys van watter skool jy kom en wys jy's trots daarop ...
- ¹⁴⁸ Ja, maar onthou daar word elke dag vir ons gesê in graadopening as ons nie netjies is nie, is ons klaar 'n teiken.
- ¹⁴⁹ Kyk, die skool sê die hele tyd vir ons. Almal is individueel, maar ek dink nie dit is presies wat hulle toelaat nie, want hulle wil hê almal moet presies dieselfde lyk. Almal moet presies dieselfde optree. Almal moet presies dieselfde dinge sê, glo, ens. Sodra jy net 'n bietjie anders as die res wil wees dan nail hulle jou daarop.

1:318. The purpose of the school is to develop all individuals to their fullest potential to become responsible citizens in a democracy. Individuality should therefore be emphasised and enhanced. Although this message is preached, the example by way of enforcement through the school code of conduct, conveys the opposite message, i.e. that there must be uniformity and that uniqueness is taboo. This notion is also reflected in the fact that respondents indicated that the school rule is superior to the Constitution – thus a school rule is unquestionable and not debatable. The question arises as to whether schools are developing critical citizens to reach their fullest potential in a democratic society, or whether factors like the school image that resonates in dress codes, etc. is conveying the opposite message and working against the educational purpose.

The next code, “limitation: amount of jewellery” can also be viewed as contributing to the school image:

Sometimes the girls wearing more than two bracelets at school, they don't approve of that. If you are wearing a bracelet you should wear maybe one or two not more than two 4:166 (301:302).

The above quotation shows that that school authorities will act against the wearing of a number of bracelets in order to improve the school image. People against the wearing of large amounts of jewellery or who advocate uniformity, may rightfully argue that the wearing of too much jewellery may be a safety risk. The question is whether the right of learners to express who they are can be limited (or rather violated) if the expression of the right is not a threat to the safety of anyone at school, if it does not work against the educational purpose of the school, does not interrupt the school or does not infringe any fundamental right of any stakeholder.

I now turn to the last limitation to the right to freedom of expression as deduced from the data.

7.4.5 Limitation when offending

There were 26 responses in regard to this limitation of the right to freedom of expression:

- *If you wear a shirt that offends somebody's religion, you will not be allowed to wear it. The school will ask you to take it off¹⁵⁰ 1:55 (818:819).*
- *... as I understand the Constitution you have the right to say or do what you want, but it must not harm other people. The moment you do something like that in front of the class, you affect them, it does not matter how you think about it; you will affect them in one way or the other and I think the problem is there where you have affected them. I don't think that what you have done is the problem. The problem is that you have affected them with it ...¹⁵¹ 1:227 (1236:1246).*
- *The issue is the way that you were raised ... He thinks it is wrong. It would harm him¹⁵² 1:321 (1249:1255).*

¹⁵⁰ As iemand 'n hemp dra wat jou geloof gaan aantast, gaan jy dit nie mag dra nie. Die skool gaan vir jou vra om dit uit te trek.

¹⁵¹ Soos ek die Grondwet verstaan, het jy die reg om te sê wat jy wil of te doen wat jy wil, maar dit mag nie skadelik wees teenoor ander persone of soiets nie. En sodra jy soiets doen voor die res van die klas, dan affekteer jy hulle, maak nie saak hoe jy daarvoor dink nie, jy gaan hulle affekteer op een of ander wyse en ek dink die probleem is daar waar jy hulle geaffekteer het. Dit wat jy gedoen het, dink ek nie is die probleem nie. Die probleem is dat jy hulle geaffekteer het daardeur

¹⁵² ...
Dit gaan ook hier oor hoe jy grootgemaak is. Hy dink dit is verkeerd. Dit is skadelik teenoor hom.

- *I think yes. I think the fact that she asked made the statement that she might be a little more serious than some of the kids who just experiment. But the fact that growing your hair and actually having dreads is taking it further. So I think. O.K. - she asked. The principal denied it. Why stop there you know? If you know how you feel, what you really want, and then she said she is going to wear a cap made in the colour of her school uniform. To just make the dreads whatever. Why not allow her that freedom to expression to experiment? It is not harming anyone in her school. It is not harming anyone in her class. It is not going to do anything to her. Give her the right to express herself and if that is what she really wants why stop her from doing it? 3:199 (559:571).*
- *You see all the classrooms but I think the whole school is embarrassed [because] of what you are doing 4:119 (992:993).*
- *They will definitely say take it off. I mean it's gonna [sic] offend so many people 'cause it's Satanism and it's wrong 5:219 (511:513).*
- *In a way. I think your freedom of expression is in your mind and you can believe whatever you want to yourself because you are not gonna [sic] offend yourself but as soon as you start publishing your views and showing others out there who do not want to see it [sic], it's offending on them. That is why you should respect other people as well with responsibility not to offend other people's expressions. I am not saying look here I've got, I like say I don't know, [Person Y] doesn't like this then I keep telling him all these things that he doesn't like ... 5:238 (1293:1304).*

The respondents indicated that their right to freedom of expression can be limited the moment that they offend someone. Offending someone includes a variety of actions, e.g. one may not offend someone's religion (quotation 1:55), neither may one harm them or express anything that will affect them negatively (quotations 1:227; 5:238), or even just embarrass them (quotation 4:119). The matter to consider, however, is under which circumstances one person actually offends another. Quotation 1:321 indicates that different people will be offended by different things, and what is acceptable for one will be offensive to another, depending on the way they were raised. On the other hand, to further complicate the issue, it could be construed as offensive when someone expresses something that is against someone else's belief or values, but a person may not limit the right to freedom of expression if it does not offend or harm him/her (quotation 3:199).

It is evident from the data that some learners vaguely understand that other people's right to dignity must be protected and that everyone therefore has a responsibility to balance their rights when exercising them. The data, however, does not indicate that learners have a clear understanding of how and when to limit this right. It is necessary to consult the literature and case law in regard to this issue. Expression that is legally obscene will be limited, as it constitutes breaking the law of the country ("Roth", 1957). The problem, however, is that not all expletives, which include vulgar, indecent or offensive words, are necessarily legally obscene (see § 4.4.2.1) and they are therefore not automatically limited. The courts need to determine whether such expression should be limited or not. The principle that an unpopular expression or offending expression cannot be limited *per se* because a person disagrees with the view or if the offensive word was not meant for the person in question can be used as a guideline ("Cohen", 1971) (see § 5.2.14).

The right to freedom of expression can, however, be limited in terms of place ("Fraser", 1986; "Schenk", 1919), and one of the places where the right to freedom of expression tends to be limited to a fairly large extent, is the school. The reason for this is that learners lack *iudicium* and the school has an educational purpose. School authorities, however, must be careful not to limit the right to freedom

of expression on the grounds of the learners' lack of *iudicium*, and in the process harm the development of the individual in a democratic society by creating an authoritarian society of citizens who obey without questioning. This will hamper the development of the skill of critical thinking.

Another aspect that needs to be considered is the fact that a person's expression can offend others, as quotation 1:1227 indicates, i.e. the expression could be harmless to one person, but it has the potential to offend someone else. It is not possible for no expression to be allowed because all expressions have the potential of offending someone, since opinions differ. It is impractical to accept that anyone who disagrees with someone's expression should feel offended by such an expression. That is why the courts have decided that expression cannot be limited just because someone disagrees with the expression or because the expression is unpopular ("Brown v. Louisiana", 1966; "Cox", 1969; "Edwards", 1963; "Garner", 1961; "Taylor", 1975; "Thornhill", 1940). This is a very important twist in the argument, because if this were the case, expression, which is the core of critical thinking and democracy, would be limited. The findings indicate that learners are aware of the sensitivity pertaining to the right to freedom of expression, but they are not certain as to when it can be limited and exactly how it should be limited.

7.4.6 No limitation

Although most of the learners in the focus group interviews indicated an understanding of the necessity for some limitation to the right to freedom of expression at school, almost all of them agreed that certain issues are beyond limitation. While drawing this network display generated by Atlas.ti™ I was pleasantly surprised to notice that Atlas. ti™ had automatically generated the relationships between the different codes.

There was an overwhelming consensus (43 responses) that although the right to freedom of expression can be limited at schools for various reasons, the right to expression of religion is untouchable, sacred and may not be limited:

- *I don't think that should be. I think the school should respect your culture and images and things like that. So they should find space within the code of conduct for things like your religion and culture 5:202 (214:218).*
- *Again, the dreadlocks are fine because I don't think it would bother anyone. The first week it might bother them then they will be accustomed to it¹⁵³ 1:179 (1000:1002).*
- *She is going her own way and she does not bother the rest of us or our religion. She doesn't comment against our beliefs. I think this is the same as the previous earring scenario. Then you have the right to do it. I think the hat is taking it a bit too far ...¹⁵⁴ 1:311 (986:990).*
- *If it's [sic] got some symbolic meaning to it. It is all right. But to wear a stud or sleeper - for a guy it does not really represent anything. It is just there you know ... 3:27 (209:212).*
- *But this thing is that people believe in your religion that you have to show other people that you are religious. With the freedom of expression you are showing kind if it's true that you can wear an earring it's true what you are trying to say that an*

¹⁵³ Weer, die dreadlocks is fine, want ek dink nie dit gaan enigiemand so baie pla nie. Die eerste week gaan dit die mense pla dan is hulle gewoond daaraan.

¹⁵⁴ Sy gaan haar eie pad en sy los die res van ons en ons geloof. Sy gaan nie teen wat ons glo nie. Ek dink dan net dit is dieselfde as die oorbelstorie van die vorige een. Dan het jy die reg om dit te doen. Ek dink die hoed is bietjie ver, want ...

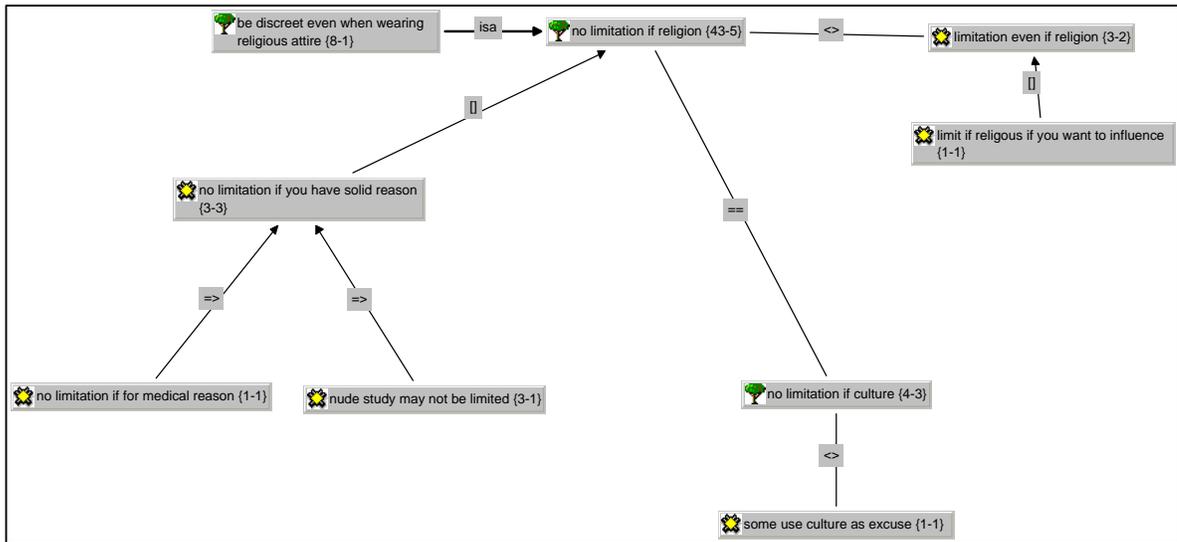


Figure 7.12 Depicting the pattern of no limitation to the right to freedom of expression

earring and that is the same thing, but there is a difference. Because one is expressing your religion [sic] and belief and the other one is also a belief, but it's not the proper place to express it. In your religion you express throughout your whole life and just to wearing [sic] an earring is a fashion statement kind of thing. It's like a phase or fashion statement. And that kind of statement isn't the school and the place for that. Religion is throughout your whole life and these kinds of statements are not at school. Like other religions Christians wear crosses to show that they are religious. Jewish people wear their hats on top and it's go on [sic] like that. Those places should be everywhere in your life and this just fashion or expression there is place for that like when you go out to shops and things like that or paint your hair red or whatever you want to do 5:206 (249:269).

Quotation 5:202 states that the respondent firmly believes that the right to freedom of expression of religion should not be limited and that schools should adapt their codes of conduct accordingly. According to the respondents religious attire might be foreign to some cultures and schools, but learners will become used to it and then it will not be contentious at all (see quotation 1:179). One respondent then links religious attire to jewellery, stating that religious attire, e.g. the Rastafarian hairstyle is acceptable, as long as the learners wearing it do not bother other learners. They believe that religious attire can be worn as long as the wearers don't try to influence others or attempt to convert others to their religion. The same respondent feels that boys can wear earrings as long as they do not bother other learners. Yet, the same respondent disapproves of the Rastafarian wearing a hat to hide the Rastafarian hairstyle (see quotation 1:311). This is contradictory, and I surmise that the hat is not acceptable because it is not part of religious attire or perhaps because it is not good for the school's image. If the first reason applies, then this respondent should find the wearing of the earring which is also not religious attire, problematic. If the latter is the case, one can argue that the wearing of earrings might also be limited because of the school's image. This is an indication of the vagueness and confusion among learners on the issue of freedom of expression. Another respondent indicated clearly that symbolic (religious) expression is acceptable, but if the expression is a matter of fashion, it

will definitely not be acceptable (see quotation 3:27). Quotation 5:206 summarises the feeling of the respondents effectively by arguing that religious attire should not be limited as it is part of a person's being, while fashion does not touch a person's existence. A number of respondents argued that even the right to freedom of religious expression can be limited:

Because your religious status is your family. It is your own private life and you should not put it out there for others to see what your status is because obviously some people will start misusing it 3:187 (280:283).

Part of this argument is echoed by a respondent who stated that the right to religious expression may be limited if someone's purpose is to influence other people:

... I would differ slightly because I think that everyone has their own right on what they believe in, but as long as the people do not imply to the other people that the one is better or worse. I think they should just keep it to themselves because if you believe in your religion and that is what you stick to, you don't need to influence others that believe in another 3:197 (417:423).

Some respondents also indicated that although the right to religious expression should not be limited, the right is not unconditional. When exercising the right to freedom of religious expression, one must still be discreet when wearing religious attire:

- *It's the same like the other things. Accept the Muslim scarves and the colours and the Christian badges, but that is not too extravagant and doesn't look out of place it looks neat and tidy. That's it 5:229 (743:747).*
- *And can't you tie your..., I know that I don't know how it works but you guys get ... and it's grown long at the back and the school doesn't want that. Can't they tie their dreadlocks up in a certain way, or something? 5:225 (712:716).*

A second reason given by a few respondents for the right not to be limited is when someone has an appropriate reason, e.g. A

- boy may wear an earring if he claims that he is gay;
- medical bracelet may not be limited; and
- nude study in the art class may not be limited.

Religion can be added to the list of solid reasons, as almost all the respondents indicated that the right to freedom of religious expression may not be limited (see quotations above).

Another reason given by respondents for not limiting the right to freedom of expression is when it is regarded as a cultural expression. This is of course associated with the right to freedom of religious expression:

I don't think that should be. I think the school should respect your culture and images and things like that. So they should find space within the code of conduct for things like your religion and culture 5:202 (214:218).

In contrast to the previous point, one respondent alerted the group to the fact that some learners will abuse the system and use culture as an excuse to express themselves, even if they do not really attach the cultural significance to such modes of expression:

Sometimes people use culture to like break the rules. If you don't like school to have rules like that, to say no, it's part of the culture, which I think it's [sic] just nonsense 'cause some cultures don't allow ... so some people use tradition as the excuse 5:203 (220:224).

The data indicates that some respondents have a sense of the fact that rights can, under specific conditions, be limited. It seems that they do it instinctively and do not apply principles.

The next category concerns the data that indicate that the respondents are uninformed about the right to freedom of expression. It needs to be spelled out that the mismatched data was collected only during phase 1 via the questionnaires. As the respondents were confronted with real-life scenarios during the focus group interviews they were already situated within a freedom of expression context.

7.4.7 Mismatched data

Qualifiers given by respondents in regard to mismatched data form the focus here, but are not linked to the right to freedom of expression. This section indicates that although these respondents do not understand the right to freedom of expression, they do understand that rights are not absolute and can be balanced. Although some respondents indicated that they do not understand the meaning of the right to freedom of expression (see § 6.2.4), it is significant that some of the respondents indicated that they know that rights in general can be limited. These findings echo the earlier pattern which indicates that rights are not absolute, but must be limited.

A number of respondents indicated what people are not supposed to do under the right to freedom of expression, although they addressed it as the right to education. They indicated that according to the right to freedom of expression at school one has the responsibility to attend school, not to be late for school and not to leave school early or play outside during school time:

- *I think we are not allowed to bunk periods and not to wear everything that we want also not to disrespect our teacher's and other students 2:92 (362:364).*
- *We are not allowed to go around during school hours 4:75 (316:317).*
- *... not allowed to come to school whenever I want to and not allowed to come to school late 4:92 (380:381).*
- *... Go home before after school without having a good reason ... 4:93 (382:383).*

One also has the responsibility to do one's schoolwork, not go to the toilet during periods and not to do homework at school:

- *I think I don't have to disrespect anyone and I have to do the work I have been given 2:85 (327:328).*
- *Not to write home/school work ... 4:93 (382:383).*

Three respondents indicated that a learner can be punished for doing wrong things, while six respondents indicated that learners are not allowed to receive corporal punishment:

- *I think if there is anything wrong I have to report it and if I have done something wrong I have to be punished 2:42 (146:148)*
- *It means a lot because nowadays we live a free life there are [sic] no longer corporal punishment in many schools 2:17 (52:54).*
- *I think I must be under my right at school, because teachers they do [sic] not allowed to abuse school children, such as to punish a child 2:55 (205:207).*
- *Beating. Not allowing children without uniform to come to school because some kids have no money at home 2:82 (312:314).*

Respondents also indicated other limitations to their right to freedom of expression, e.g. smoking, littering, gambling, using drugs or alcohol and making jokes:

- *I am not allowed to smoke or do any illegal things, like not following school rules, fooling around during school hours and not listening to my teacher when she's warning me. The most important thing that I am not allowed to do is taking [sic] drugs 4:71 (304:309).*
- *I think I shouldn't do the wrong things like smoking, taking drugs, drinking alcohol, etc. I think I should follow the school rules 4:79 (321:323).*
- *I am not allowed to smoke, gamble or misbehave at [sic] any circumstances. I am not allowed to be late or absent without any reasons 4:83 (343:345).*
- *At school I am allowed to keep my school clean, respect teachers and do school work when they gave [sic] us, and I am allowed to be punished if I do something wrong 4:46 (206:209).*

Although these respondents do not have even a vague idea of the meaning of the right to freedom of expression, they understand that rights are limited.

Respondents indicated that they have to respect the rights of others, including educators and learners:

- *I must have discipline and respect other people at the school, being faithful, being punished when I did something wrong [sic] 4:50 (223:225).*
- *I think I am allowed to respect my rights and others' rights as I want to be respected and I don't want to be a shame to my race. I want to be proud, including [of] my party [the] ANC, because with it I have rights 4:27 (122:126).*
- *At school I am allowed to keep my school clean, respect teachers and do school work when they gave [sic] us, and I am allowed to be punished if I do something wrong 4:46 (206:209).*

When exercising rights, one needs to be respectful. These respondents show no particular understanding of the meaning of the right to freedom of expression. Although respondents have a vague understanding of human rights, they do not understand the right to freedom of expression.

Some respondents say that everyone must be respected and protected:

- *Everybody has the right to be protected, even if you are grown up. A person has the right to be protected against crime, etc. 4:36 (158:160).*
- *I am not allowed to smoke, gamble or misbehave at [sic] any circumstances. I am not allowed to be late or absent without any reasons 4:83 (343:345).*

A number of respondents believe that you may not humiliate anyone, carry dangerous weapons, or discriminate:

- *We must follow the rules of school and listen to the teacher even if we know that our rights is [sic] to feel free to our school. We must not be allowed to carry a dangerous weapon through our school premises, that is true. We know we have our right, but we must follow the rules 2:68 (232:233).*
- *It is a freedom of expression because everyone has a right. This time we have no apartheid and violence because we have a right 4:14 (67:79).*

Eight respondents said that learners are not allowed to break school rules. Another six said they may not break the law and one said learners have to obey the educator:

- *We must follow the rules through our Constitution. We must not be like before 1994. We want our government to listen to us about this section 16 of the Constitution. We must behave well not be negative through [sic] our Constitution 2:45 (158:162).*
- *If we learners do as we wish, nothing is going to get right, we are going to bunk classes, go home, even if it's not yet school out and most of the learners expect teachers to be responsible for what they did in [sic] purpose 2:76 (285:289).*

Although what these respondents said is correct concerning rights in general, they did not link it at all to the right to freedom of expression, which is an indication that they do not understand the right to freedom of expression. One respondent said that they are not allowed to abuse their rights while other respondents said that people may not abuse children:

- *I am probably not allowed to abuse my rights 2:75 (284).*
- *It means anyone in our country has the rights and because some of the parents abuse their children or the guardians abuse the children 4:9(45:47).*
- *I think that we are allowed to do under the protection of our right, because life that we are living now it is not the same (comparing [sic] to the old one). Now we look at same things where, we as children facing [sic] abuse from our parents, guardians. But now it is freedom and it gave us phone numbers to child abuse [sic] 4:28(127:133).*

It is clear from the responses in this section that some learners only have a broad awareness of rights but are still not able to differentiate among the different rights entrenched in the Bill of Rights. If this is the case, one could definitely not expect these learners to have knowledge of the details entailed under the right to freedom of expression.

7.5 CONCLUSION

My second premise, that learners do not know how to exercise their right to freedom of expression, has been substantiated. Although the data in regard to the assumptions was not quite what I expected, it was a pleasant surprise to realise that most learners know that rights are not absolute and may be balanced. Although some respondents still believe that the rights are absolute, the majority know that they are limited. There is, however, a tendency among learners to know the concept of human rights and its limitations vaguely, but they are not able to differentiate between the rights specifically. Therefore they have a general understanding of human rights and their limitations under the umbrella of the right to freedom of expression, but do not really know what the right to freedom of expression *per se* implies, or how it should be specifically limited or balanced. The fact that some respondents believe that the right to freedom of expression is absolute while others know that it can be limited, corresponds with the literature and case law (especially in the USA), where the line between the right and the limitation or violation of the right is unclear. Respondents have an instinctive feeling that the right to freedom of expression may be limited, especially in schools, but are not sure how to implement such limitations. There is still a lack of basic principles to apply in limiting the right to freedom of expression.

The in-depth interview will form the focus of the next chapter. The aim of the in-depth interview is to determine whether a learner who actually sued her school for violating her right to freedom of expression has a better understanding of this right than other learners. I shall also use the data from phase 3 to crystallise the data from phase 1 and phase 2.