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Distance Education Division

The case of Constitutional interpretation
under Ethiopian Legal system

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Table of Content

	page
Chapter one	
Acknowledgement -----	I
Table of Content -----	II
I. Background of the study -----	1
II. Introduction -----	1
1.1.1 statement of the problem -----	2
1.1.2 objective of the study -----	3
1.1.3 Significance of the study -----	3
1.1.4 Scope-----	4
1.1.5 Limitation -----	4
1.1.6 Methodology of the study -----	4
1.1.7 Organization of the study -----	4
Chapter Two	
2. General overview of Constitutional interpretation -----	6
2.1 Definition of constitutional interpretation -----	6
2.2 Historical Background of Constructional Interpretation ----	10
2.3 The need for Constitutional Interpretation -----	12
2.4 Organs Empowered to Interpret the Constitution -----	13
2.5 Interpretation by Ordinary Courts -----	16
2.6 Interpretation by Constitutional Court -----	17
2.7 Interpretation by a political Organ -----	18
Chapter Three	
3. Constitution under Ethiopian Legal System -----	19
3.1 The Council of Constitutional Inquiry of the FDRE -----	20
3.2 organization of the council -----	20
3.3 Conclusion and Recommendations -----	22
3.3.1 Conclusion -----	22

3.3.2 Recommendations ----- 24

Bibliography -----26

Chapter one

I. Back ground of the study

Introduction

In Contemporary world, establishment of state with out constitution is unthinkable the sprit of almost all states and its government in the world lies on a document in which it's over all transaction is drafted.

Particularly, in a federal state the constitution establish different organs and levels of government where as, it regulates the distribution of power between them. Moreover, it also grants fundamental rights of the citizens. Similarly, when we look at the constitution of many countries it confers specific powers to the three government organs i.e Legislative, executive and judiciary. Generally, constitution refers to a blue -print of a given countries, socio – economic & political condition.

The legality of any action conducted by government organ or individual in a given countries is to be determined against the constitution. That is all government in conduct and individual action has to be undertaken in line with the constitution. However, due to its generality nature it would be unwise to expect the constitution to regulate every aspect of governmental and its citizen's interaction. Hence, the constitution itself delegates a power to different government organ to enact detailed rules and regulation so as to touch every corner of countries affairs. As of instruction that would be maintained among citizens and as well as individuals and governments organs from the outset the power to secure fairness, justice through applying ordinary law of the land is reserved to justice system (mainly court)

Due to certain common feature of laws, an individuals may vary in opinion, attitude and understanding over certain fact of the law, which in turn end them

To allege contradicting claim as of that fact and become point of contention among or between them. Such kind of conflict, through” interpreting the law” meaning that by examining the claim alleged by examining the claim alleged by one side and contested by the other against the provision of relevant law of the land. In doing this ,the court

may give a meaning to vague ,ambiguous and some times contradict terms and provisions of that law . For this purpose, it may try to get exact intent of the legislature. This is called “Interpretation of the law”

However, as we have already said, constitution mostly deals with government aspect of a given country. It confers specific powers to the three organs governments. These three organs have to act on the base of the power given to them by the constitution .Thus, every action including ,law rules ,regulations and decision made by these government organ is to be judged against the provisions of that mother law. Since many nature of the law also holds true for the constitutional disagreement may arise concerning constitution provisions .Or simply ,a given action may contested as being infringing the very provision of the constitution or it may be considered as it conducted beyond constitutional limit, and through conducted in circle of mandate but alleged to be conducted wrongly. Should any such conflict arise between the different organs and levels of government or should any doubt exist as to the extent of the rights of the citizens, the provisions of the constitutions which deals with those issue need to be interpreted to resolve such conflict or doubt.

1.1.1 Statement of the problem

Earlier it is indicated that “interpretation of law “ is an action of resolving disagreement or clearing doubt by ordinary court through looking point of contention with in the lenses of ordinary law .

Similarly, Constitutional interpretation refers to solving conflict involving constitutional matter through looking it in a lenses of constitutional provision . Literally, interpretation means explaining of what is not immediately plain or explicit. Thus ,constitutional interpretation is the act the result of explaining of what is not immediately plain or explicit or unmistakable as being in accordance with or authorized by the constitution of state.

For governmental actions and laws to be constitutional and hence, valid.It has been said that they must be consistent with the basic principles. If they are in conflict with the constitution ,they will be declared unconstitutional and there fore ,invalid. The purpose is to ensure and safeguard the supreme position of a constitution in a given legal system . Mean while, this is not the very targeted of this

paper ,but indeed, it is simply to take us toward the main point of the paper. That is, determining who is to decide if conflict exists between government actions and constitutional provision? Or whether there is a breach of constitutional provision?

In a simple term, which organ of the government is mandated to solve a conflict involving constitutional provision? And who is responsible to interpret the constitution and to declare any law or action repugnant to the constitution in valid? Does the ordinary court mandated with this power ? what experience do another countries has in this regard? in what manner does Ethiopian legal system handle this matter? Is there difference among states, as how they answer such questions? Which practice is most appealing? What serve as aground for Ethiopian practice in this respect?

I.1.2 **Objective of the study**

The main objective of this paper includes the following.

- A. Searching for full information concerning the difference of interpretation of law and “constitutional interpretation”
- B. To conduct in depth analysis of problems related with constitutional interpretation in Ethiopian legal system in relation to different legal system
- C. To add valuable information that help rise public awareness about constitutional interpretation.

1.1.3 **Significance of the study**

This paper is expected to forward suggestion for body with issues of constitutional interpretation and that promote the realization & the prevalence of democratic system and constitutional principle.

- It will suggest certain points that help create awareness for the society at large about constitutional interpretation.
- Finally ,it will serve as a source for further research on the area

1.1.4 Scope

Since this study has mainly focused on “constitutional interpretation the author of the paper refer those data source related with it, thus it may refers only to FDRE constitution and some other sources based on its importance

1.1.5 Limitation

Since the issue of constitution interpretation in the county is resent phenomena , the other fears that the scarcity of resource materials may affect the quality of its end result. In addition, among many other financial difficulties ,shortage of time and literature worsened outhor fear. Nevertheless,the outhor will work diligently to construct meaningful paper much as possible.

1.1.6 Methodology of the study

Since the focal point of the paper directly related with constitution and it is one of legal research the author will employ methodology which is relevant to legal research.

There fore, most data inputs will be gathered from secondary data sources , such as, legal documents , articles, books ,magazines, booklets, pump lets. If there is a chance, the author may further refer to decide case involving constitutional matter.

1. 1.7 Organization of the study

This paper will contain three chapters. The author intended to not count the last part of this study as a chapter the first chapter of this study consists proposal part and deals with six subtopics. These are back ground of the study as a mina topic under this introduction, statement of the problem, objective, significance, scope, limitation of the study methodology of the study and organization.

The main part of the paper will contain 2 chapters under chapter one the paper will shade light over international perspectives of constitutional interpretation .It will serve as a clue for the remaining part. That is it gives detailed information about definition of the very term “constitutional interpretation “ itself try to unaware why there is a need for constitutional interpreting” issue to be deals here under different

topic is that of organ responsible for interpreting the constitution through study will be conducted here by looking for different countries experience and practice.

Then the 3rd chapter will be all about Ethiopian stand in constitutional interpretation .It will began with constitutional frame work. What it say about its interpretation? Organ responding for doing the task of constitutional interpretation is one of subtopic here under this chapter. Similarly, it will raise the role of ordinary court in this business.

Finally, the study will conclude all what dealt about in it and then recommend some typical information under conclusion and recommendation.

Chapter Two

2. General overview of constitutional interpretation

2.1 Definition of constitutional interpretation

The ultimate question of contemporary politics is how a society committed to the idea of constitutionalism, organizes itself and understands itself. Society that value the security of defined state ,one with known powers and known limits.¹

Constitution is one of instrument to come up with a words touching bottom of like issues. That is to mean constitution is a document up on which the society and authorities to be created by them make a commitment to respect what is held in it. It is a means by which society put a limit on a government by delimiting the boundaries of their powers domain .²

Hence, for the constitution can provide that security only those charged with administrating it are ready when necessary to suspend their own deeply held value and preferences. They are required to submit on particular occasions to general rules, to government of laws, not men³

Constitutional restaurant in this circumstance depends critically on a shared regard for the constitution itself .That is why it seems dispensable to see the constitution as more than a collection of words, the sense of which to be worked out from impersonal sources.

It will need, rather to be perceived as the work of real human beings who possessed qualities-legitimacy, intelligences, wisdom, skill & sensitivity⁴

Moreover, every politically united communities in the world today have some document up on which they established their coexistence, such.

1.LR103n2kay pdf-powered by google doy north western university law.2009 USA page-25

Document meant to regulate if not in detail but in general every aspect of that societies existence .Such document elucidate untouchable endowment of the people & generally every modern written constitution confers specific powers to an organization or institution entity, established up on the primary condition that it abides by the said constitutional limitation. According to Scott Gordon.⁵ political organization is a constitutional to the extent that it contains institutionalized mechanism of power control for the protection of the interests and liberties of the citizenry. That is to say it describe activities of officials of different government branches that fall within or outside of their out horrifies domain. And action can be declared ultravires if it done beyond that limit and declared as of against a violation of rights by official would be ultra virus because (constitutional) rights is a restriction on the powers of government.

Unfortunately, due to generality nature of constitutional provisions are not immediately plain to be applied without becoming point of contention scope of powers granted to a given organ of government in a constitution may cast doubt as to its extent due to generality and ambiguity of provision in which it addressed likewise an extent of citizens right might be vague that in turn may cause disagreement. In such case “interpretation comes to picture.

Problems susceptible to be come about due to vagueness , ambiguity & doubt as to the extent or precision of the constitutional provisions need to be solved through interpretation .mean while before going deep down in to discussion of the subject, for easy understanding of reader .it is wise introducing the nation of the very term understanding of reader, It is wise introduction the nation of the very term “constitutional interpretation” and the mechanism used to interpret the constitution, namely “constitutional review” or sometimes “judicial review”

⁵.Taken from [http//:www](http://:www)

The concept of constitutional interpretation is created from two terms called constitutional and interpretation (review) it can also interchangeably use with “construction”.

Webster defines the term constitutional as in according with or authorized by the constitution and interpretation as “an act or the result of interpreting; as explaining of what is not immediately plain or explicit or unmistakable (interpretation of law) ⁶

According to the above definition constitutional interpretation is the act or the result of explaining of what is not immediately plain or explicit or unmistakable as being in accordance with or authorized by the constitution or a state.

Due to certain common feature of laws, an individual’s as between and or among themselves May hold different perceptions over certain fact of the law which in turn leads them to allege inconsistent claim as that fact and become point of contention among or between them such kind of conflict is to be settled in court of law through examining that claims against provisions of relevant law in various lenses of legal interpretation. This process may be done through conducting examination either in a lense of “original intent of drafters” or “purpose” (objective of legislation)⁷

Whatever lenses might be applied interpretation of ordinary law is a process by which a court tries to solve justifiable claim due to disagreement through applying provisions of relevant law by giving a meaning to any vague ambiguous and some timer contradicting terms and provisions of that law.⁸

Similarly, in most but not all modern states the constitution has supremacy over all action and ordinary statues law. Constitution by large deals with government aspect of a given country. In such state it confers specific powers to the three organs of government .These there organs have to act on

6. Webster’s new international dictionary p.488and116

7.for more refer at <http://www>

8.ibid

The basis of the power given to them by the constitution .Thus every action including law ,rules regulation & decisions made by these organs is to be judged against the provisions of that mother law. If action done beyond the domain of their power or though being in its compartment but done in a wrong way .These scenario may happen same times not is a plain manner since most nature of the law also holds true for the constitutional provision contending claim may arise between government organ over power distribution due to un clarity of constitution provision dealing with that power or they may be lacuna is a constitution. Such gap may given a situation in which a given action of an organ may be contested by the other as being done against constitutional provisions .Simply that action may be contested as if it conducted beyond constitutional limit or though conducted in circle of mandate not edged to be conducted wrongly.

Should any such conflict arise between different organs & levels of government or should any doubt exist as to the extent of the right of citizens the provisions of the constitution which deals with those issues need to be interpreted to resolve such conflict or doubt. ⁹

According to some literatures, constitutional review is a mechanism used to resolve disputes between branches and levels of government and excludes the general power to review the constitutionality of law, which is separately designated as judicial review. ¹⁰ On the other hand ,judicial review in the Anglo-American sense is not limited to reviewing the constitutionality of laws only .It is the power of judges, ultimately those of the supreme court, to interpret the constitution and to refuse to enforce measure that is on their opinion are in conflict with the constitution. ¹¹ Judicial review is the practice of courts of passing on the constitutionality is properly raised in a judicial proceeding .In this sense, under the judicial review power we also find constitutional. In this sense, under the judicial review power we also find

Farm, M. the interpretation of statute(Lahore pintail press.1970)p.32-34

10

Kommers, Donaldp the constitutional jurisprudence of federal republic of Garmany,2nd ed

11. peltason j.wcorwin and peltason understading

Constitutional and judicial review being used interchangeably. Both carrying the same meaning in another literature.¹²

Therefore, the power of judicial review is more extensive than is defined at the beginning of the last paragraph .But it is a power exercised by courts only .If it is another organ, like the Ethiopian parliamentary house that is exercising the power to interpret the constitution, it would be inappropriate to make use of the term “judicial review” constitutional review on the other hand ,does not restrict itself to organ . It is generally seems to be applicable in such instances.

2.2 Historical Background of Constitutional Interpretation

Under this part the paper will focus on the history of constitutional interpretation in a comparative perspective by focusing mainly on the history of constitution interpretation in America and Germany. The subject of constitutional review gained considerable attention only after 1803 when the American Supreme Court in Marbury Vs Madison asserted its power to review the conformity of legislation with the constitution and to disregard a law held to be unconstitutional .In this case Marbury had been appointed by president Adams to a minor government position just a few hours before Adams vacated his office (at the expiration of his term) in favor of the new elected president Thomas Jefferson up on taking presidential office Jefferson directed his new secretary of state James Madison ,to refuse to deliver Marbury’s commission. The paper appointing him to office which Adams has signed Marbury then sued Madison for special court order called writ of mandamus (It’s a court order directed to an officer requiring the officer to perform certain ministerial duty that is a non discretionary act as required by law) to compel Madison to do his duty and deliver the commission and thus permit him (Mar bury)to take Office.

12.van wyk, David Jon Dotard, Berths De visitors and Dennis Davis(eds),Right and constitutionalism the New south African Legal Order,(New York: clarendon press1994)p5-6

Marbury initiated his in the Supreme Court instead of stating his action in the lower federal court .He did this because an act of congress (the Judiciary Act of 1789) expressly authorized people to bring original action for writs of mandamus in the Supreme Court. At the first argument of the cause the issue arose whether congress could in according with the constitution authorize the initiation of original suits in the Supreme Court since Article 3 of the constitution limited the jurisdiction of the Supreme Court to appellate cases except in every specified instance not relevant to this case.

Chief justice Marshall gave a judgment by viewing their argument of both sides and said. Mar bury had sought the wrong remedy in invoking the original jurisdiction of the Supreme Courts.

Section 13 of the congress Act of 1789, which says the supreme court shall also have appellate jurisdiction from the circuit courts and of the several states in the cases here in after especially provided for and shall have power to issue rights of prohibition to the district courts .when proceedings as source of admirals and maritime jurisdiction and rights of mandamus .In cases warranted by the principles and usages law ,to any court appointed or persons holding office under authority of the US Marshall accepts Marbuary's position by saying that the congress act of 1789 led him Mar bury to come to the right tribunal.

The constitution under Art 3 however, says the Supreme Court shall have original jurisdiction in all cases affecting ambassadors other public ministers and consuls and those in which the state shall be party. In all other causes the court shall have appellate jurisdiction. This provision gave the supreme court original strides only over a few specified disputes such as those involving ambassador or states and Mar bury fit none of the classification .

Thus the chief justice conjured up a clash between section 13 of the congress act and Art 3 of the constitution .when to laws conflicted he reason that the inferior must give way to superior and the constitution was superior to an ordinary statute and was to that fundamental charter that the judges has sworn fidelity . The court therefore was bound to refuse to apply any act of congress in conflict with the constitution.

Thus it was suggested to the court that this particular act of congressional statute. The clause authorizing Marbury to bring an original action in the supreme court was in conflict with the constitution. Therefore, It was argued the statute was unconstitutional and therefore unenforceable.

This case makes a landmark for the present idea of judicial review. To day many countries of the world have been practicing this issues and the constitution is deemed as the supreme law in many countries and either regular counts or other specific organs are empowered to entertain cases concerning this issue the paper will discuss the organs of interpretation in detail in the second chapter.

When we look at the constitutional review history of Germany, it emerged in its modern form in the 19th C; it functions as basis tool for the resolution of constitutional disputes among and within. The individual states of the German empire and often between the states and the National government. Currently Germany used the federal constitutional court to resolve issues of constitutional review .This court have the authority not only to settle. Constitutional review .This court has the authority not only to settle Constitutional controversies but also to try impeachments of the Federal president to review decisions of bun stag (upper house) related to the definition and administration of Federal law. Judicial review of both legislative action and executive action is taken place before the constitutional court . The power of the courts all about judicial review. Public acts may be rendered unconstitutional if they are against with the Basic law of Germany. This act of the FCC may make it similar to that US supreme courts however the FCC has many powers than that of the US supreme courts next the paper will look at the essence of constitutional interpretation.

2.3The Need for Constitutional Interpretation

One may ask why there has been different form of constitutional interpretation than other laws .When we look at the constitution of many countries it confers specific powers to the three government organ. Many Countries it confers specific powers to the three government organs i.e legislative, executive and judiciary. These three government organs have to act on the bases of the power given to them by the constitution when government official exercises a power not granted to the government by

the constitution and that act is constitutional and it will be considered as and void.

Chief justice Marshall portrayed judicial review as necessary adjacent to both a written constitution and a government deriving its power conferred by the constitution and sustained by the principle of separation of power conferred by the constitution and sustained by the principle of separation of power. The power of the people superior to both at this time the issue of constitutional interpretation may arise and needed to put this the issue of expression. Constitutional review is the means of protecting the government from itself and from the excesses of instrument of controlling the government . when we look at this conception we can say that constitution serves as a limit to government power.

Constitutional interpretation is also needed so as to seek the true intent of the constitution framers and its adopters. Beside, fundamental right and freedoms which are provided in constitution will also necessitate constitutional interpretation.

Generally, Constitutional law needs interpretation when the following conditions occur:

1. when the law decisions of government officials are in contradiction with the constitution.
2. when the provision of the constitution is vague or difficult to understand .
3. when there are issues not covered by the constitutional laws occur.

Whenever the above listed condition occurs in the application of the provision of the law and justice need we are obliged to interpret constitutional law.

2.4 Organs empowered to Interpret the Constitution

For governmental actions and laws to be constitutional, and hence valid it has been said that they must be consistent with the basic principles stipulation and provisions of the constitution. If they are in conflict with the constitution, they will be declared unconstitutional and therefore, invalid the purpose is to ensure and safeguard the supreme position of a constitution in a given legal , but who is to decide if conflict organ to

which the power to interpret the constitution and to declare any law or action repugnant to the constitution invalid is vested?

Many countries such as Germany , Austria and Italy have established constitutional court with exclusive jurisdiction to deal with constitutional issues on the other hand in countries like U.S.A Canada Australia and Japan the power to interpret the constitution is vested in the courts .(which is the standing of the writ) we also find a hybrid system with the other extreme, the Ethiopian Constitution has entrusted the power to interpret the constitution to one house of parliament , i.e . the House of the Federation .

Those who hold that the ordinary courts shall have the power to interpret. The constitution bases their argument on the fact that: the constitution is law accordingly. Since it is the power and duty of the judicial organs to interpret and apply the law to the concrete before them they should also be

13.Basson Dion South Africa interim constitution text and notes(South Africa):juta and coltd.1995,148,158

Competent to interpret the constitution .And the supremacy of the constitution can be well protected by the courts when they have the completion to decide whether other organs of the state have acted constitution in stead of an ordinary legislation, administrative regulation in so doing , it is alleged to have served as a check on the legislative and executive branches of government .

In relation to the above argument supporters in the U.S say that In a government of divided functions , someone must keep the states congress and the president within their prescribed powers . The court remains the institution best suited to this task. ¹⁶ Supporting this line of argument , Alexander Hamilton wrote the following “ the judiciary from the nature of its functions will always be the least dangerous to the political rights of the constitution . Because it will be the least in a capacity to annoy or injure them. The judiciary has no influence over either the sword or the purse---¹⁷

The proponents of a constitutional court interpreting the court interpreting the constitution agree with those in favor of ordinary courts that a court should interpret the constitution, but differ on the type of the organ.

For them the court should be outside of the structure of the judiciary one of the reasons being separation of power, this is based on the continental belief that constitutional review is a political act. ¹⁸ The constitution is a political document, and it should be given to a separate court outside of the ordinary court structure, so as not infringe upon the separation of powers doctrine the other reasons are the absence of the principle of state decision and

14 Mauro Cappaletti and John Clarke Adams, *Judicial Review of Legislation, European Antecedent and Adoption* Harvard Law Review V79 (1965-66)p1214

15 Henry J. Abraham *The Judicial Process*. 6th ed New York Oxford University press 199 p 30

16 Alexander M .*The Least Dangerous Branch, The supreme court at bar of poitates* New York Bobbs -Merrill colnc Publisher 1957 p 46

17 Bickel, cited at note 10 p 14

18 Kommers, cited at note 4 p 3

The continental lawyers, tradition to apply the law that has been duly enacted without questioning and determining its validity.¹⁹

Generally, however, both agree the constitution. The highest overall authority of the land is a law, its ultimate interpretation should rest with the highest court. Of the law examples are the federal supreme Court in the United states and the federal constitutional court in Germany.

On the other hand, there are critics arguing that the constitution is “supreme law” because it emanates from the people. Therefore ,the most politically accountable and responsible agency , parliament had more of a claim to interpret the constitution than does the least politically accountable and exposed agency the courts. ²⁰ The Ethiopian constitution framers have followed this line of argument when determining the organ to be entrusted with the task of interpreting the constitution .

Either way, there is the notion that courts or some other tribunal should interpret the constitution and determine the constitutionality of a law or an action of the constitution and determine the constitutionality of a law or an action of the government as the guardian of the supremacy of the constitution. The writer of this paper has divided the organs empowered to interpret the Constitution in to two broad categories : ordinary courts and other tribunals. Each category will be discussed at length in the next sub section with reference to countries that have adopted such a system.

2.5 Interpretation by ordinary Courts

In the United sates Japan, Canada, Norway, India are countries that follow this principle. They practice the power to interpret the constitution is vested in the ordinary courts which examine regular civil or criminal cases in many countries which have adopted this system. The judicial review power is given to the highest court or the land having constitution. where the jurisdiction of the highest court of the land is made exclusive by law as to.

¹⁹ Capelletti cited at note 8p.1207-1224

²⁰ Peltason, cited atnote 5.p28

All or certain kinds of constitutional issues such issues are forwarded to this court when they in other tribunals. This is a centralized type of judicial review.

There is also a decentralized type of judicial review in a number of countries where the highest court of the land shares this power with other courts throughout the country such an example is the United states where any federal court can declare any statue –state or federal invalid under the federal constitution and refuse to enforce it as state courts can declare federal statutes in valid under the federal constitution or state statutes invalid under either the federal or a state constitution.²²

However, the final authority to determine as to whether a federal statute is in conflict with the federal constitution is that of the federal Supreme Court. The decentralized system practiced in the United States is followed by a number of countries such as Brazil, Argentina, Canada, Colombia, Denmark , Norway, Mexico and Japan. In these countries , there is the possibility of approaching the highest court instead of going to the lower courts. ²³ And though theoretically it is said that constitutional issues can be handled in any court in theoretically it is said that constitutional issues can be handled in any court in these countries , in practice the resolution is generally limited to the highest court which may also posses a limited area of exclusive jurisdiction that can not be touched by any other court .

2.6 Interpretation by Constitutional court

Germany , Austria , Italy , Turkey, Yugoslavia, and some other countries have a centralized system of judicial review through their constitutional courts specially mentioned are Germany, Italy and Austria that have empowered their special constitutional courts to guard against infringement of their constitutions by legislation and other governmental action. ²⁴

21 Antiea vsheshter James Adjudicating constitution issues(London: Oceana Publications,1985) p3

22 Carr, Robert Marvel H.Bernstein and Walter F Murphy, American Democracy in Theory and Practice,4th ed (NEW YORK: Holt, Rinehart and Winston Inc,1963)p499

23 French Constitution Art 61

24 Abraham, Cited at note 9 p29

The work of constitutional courts is generally described as being superior in the sense that , judges who specialize in deciding constitutional questions will function that , judges who specialize in deciding constitutional questions will function more effectively and satisfactorily in reviewing constitutional issues than judges whose case load primarily `involves private law or statutory matters. Constitutional courts , besides all constitutional also serve as arbiter in disputes between organs of government at the national level. ²⁵

The write of this paper looks some in detail in the next chapter.

2.7 Interpretation by a political Organ

The third type of organ for constitutional interpretation is an organ that's neither the regular court nor the constitutional court in which politically represented organ entertaining this task.

Nations having a socialist form of government and therefore adhering to the political theory of unity of power typically confer the power of constitutional interpretation not up on the judiciary rather upon the legislative branch of government. The constitution of the people's republic of china is an example of the format. When we look at the Chinese system the 1982 constitution of the people Republic of china gave the power of following the marking of the constitution / constitution supervision / to the peoples national congress and the power of interpreting the constitution is given to the permanent committee of the peoples national congress.

25 ibid p 294-300

Chapter three

3. Constitution Under Ethiopian legal system

The 1995 constitution of the federal democratic republic of Ethiopia establishes two parliamentary houses: the House of people's representatives and the house of the federation. The house of the federation is composed of representatives of Nations, Nationalities and peoples who are elected for a term of five years. In this house each Nation Nationality and people is represented by at least one member and by one additional representative for each one million of its population .²⁶ Members may be elected directly by the people when the state councils hold election to that effect or they may be elected indirectly in which case the election are made by the state councils themselves. ²⁷

Therefore, House of the Federation is the political organ of the government.

It is to this house that the constitution has granted the power to interpret the constitution i.e whether an action or a law of the federal government and the states is in violation of the constitution will be decided by the House of the Federation. At this point .it is important to raise the question of whether this power would not be a violation of the separation of power principle as this house is parameter house. The power to enact law is vested in the House of people Representatives . Under the constitutional provision which lists the power and functions of the House of the federation is very different from that of the House of peoples Representatives as its competence revolves around the Constitution one of which is the power to interpret the constitution. ²⁸

26 The Federal Democratic Republic Of Ethiopia 1995 proclamation No 1 Fed. Neg Gaz: Year 1 Art ,61(1)67(2)

27 Ibid, Art 61(3)28 Dr. Fasil Nahum Constitution for a Nation of Nations: The Ethiopian Prospect;(Asmara :The Red sea press Inc,1997)p73

Thus the larger the population of a state is the more representatives it will have these responsible bring with them and manifest the interest of their people or their political party .and as they hold the majority seat in the house they will outvote the minority when they make decisions . The minority will be disadvantaged . as a result it is only the interest of those states which have the larges number of population tat will be protected .

3.1 The Council of Constitutional Inequity of The FDRE

The House of the Federation, having been made the interpreter of the constitution has organized the council of constitution inquiry as per Article 62(2) of the constitution to accomplish this task entrusted to it. Issues that require constitutional interpretation (constitutional disputes) reach the House of the Federation via the Council. The council does not have the power to decide constitutional disputes on their merits it only decides whether there is a need for constitution interpretation. If there is investigates the matter and submits its recommendation on how the case should be resolved to the House of the federation, it will be dismissed if brought by an interested party or remanded to the court in which the case is pending. ²⁹ Therefore , the role of the council of constitutional inquiry is to investigate and Federation is not bound by the recommendation of the council since it can even on appeal reverse a decision of the council finding on grounds for an issue requiring constitutional interpretation . If the house of the federation accepts the recommendation, It gives decision with a final binding force, but it must be born in mind that most of the task of interpretation will be undertaken by the council even though it is the House of the federation which has a final say on constitutional issues . In this connection it is necessary to see the power of courts to interpret the constitution if any since the constitution explicitly given this power to the House of the federation. Are courts precluded from interpreting the Constitution?

3.2. Organization of The Council

The task of organizing the council of constitution inquiry is vested in the House of the Federation ³⁰. This has been carried out some nine years back members of the council are eleven in number and include the Chief Justice and vice Chief Justice of the Federal supreme court who serve as president and vice president of the council respectively six legal experts appointed by the president of the republic after having been nominated by the House of peoples representatives and three persons designated by the House of the Federation from among its members . The constitution is silent as to whether the three people who are designated by the House of the Federation need to be legal experts or not. As a matter of fact, none of them are legal experts. The dual

characteristic feature of the Constitution i.e that the constitution is a legal as well as apolitical document must have been taken in to account. If non lawyers not only the legal aspects but also the political implications will be considered when interpreting the constitution . The rest of the Members have a background of legal education at least an LLB Degree from the Addis Ababa University.

The task of establishing organizational structure which can ensure expeditious execution of its responsibilities is entrusted to the council itself. No organizational structure has yet been established. As such organizational structure implies a division in to panels or senates which will enable the council to have specialization usually courts be it regular or constitutional courts empowered to review constitutional issue sit division's benches senates and panels, this practice is appreciated to be worth and desirable by scholars.
32

Even if the council can not be out in the same position and status as courts as it lacks, the decision making power which is possessed by the House of the Federation its task is comparable to what is done by courts to reach a decision, when they are presented with a constitutional dispute .Hence if there is a division in to panels it will make the activity of the council much easier. The writer hopes that this practice will be adopted on the near future when more case start reaching the council.

Pursuant to Article 84(4) the council has drafted its rules of procedure. It has been approved by the House of the Federation and is expected to appear in the Negara Gazette Accordingly. The council is a par-time tribunal and holds regular meetings every three months. These Rules of procedure not been detailed out in the writers opinion, they either have to be amended so as to be specific or supplemented by another act.

32 Antieau C J adjudicating constitutional issue,(London; Oceana Publications,1985)p6

33 The rules of procedure of the council of constitutional inquiry of the Federal Democratic Republic of Ethiopia Art,3

3.3. CONCLUSION AND RECOMMENDATIONS

3.3.1. Conclusion

The constitution as the supreme law of the land , manifests the will of the citizens of a state and the very objective of the process of interpretation is to ascertain this will. In many countries of the world constitutional interpretation is carried out either by the ordinary courts or constitutional courts established for that purpose. Ethiopia has in a very unique way granted this power to the House of the federation. This House is composed of representative of the deferent Nations, Nationalities and people of Ethiopia who are claimed to be in a better position to know the interest or will of those they represent.

However, constitutional interpretation requires knowledge of the methods of interpretation. For this purpose, the constitution establishes the council of constitutional Inquiry . The council which is composed of mostly legal experts will recommend to the House of the federation how an issue that requires constitutional interpretation should be decided. Generally the role of the council of constitutional inquiry is to give assistance and the final decision making power rests with the House of the federation . There is a possibility council to require interpretation . but this decision of the Council is subject to appeal to the House of the Federation, which means that the House of the federation can reverse the council's decision.

The study in this paper has discussed. Though not exhaustive the nature of constitutional interpretation under the FDRE constitution, because of the fact that Ethiopia does not have a clear constitutional interpretation principle. In a democratic state one test of an institutions success is its durability which will be realized only when it lives up to its expectation. Hence, it might be too early to take a baut the merit or other wise of constitutional interpretation by the House of the federation that courts. In the opinion of the writer , this is the only merit of entrusting this power to the House of the federation.

However, both the House of the Federation and the council of constitutional inquiry do not sit all the year round. The House of the federation meets biannually and the council quarterly. Because of this it takes long time to have a case decide in addition constructional

interpretation requires a thoroughly conducted research work which in effect means that a long period of time as well as expertise is needed, but the house of the federation lacks expertise how is it to go on deciding when a case rejected by the council is brought to by way of appeal and the houses reverses the decision of the council. Constitutional issues as can be observed from the experience of other countries need both time and expertise since a decision once pronounced becomes binding on subsequent similar cases. The decision in effect becomes a law.

Besides, an organ or institution empowered to interpret the constitution must be independent of any political influence . There is no question that the members of the house of the federation as the political representatives of the deferent nations .nationalities and peoples will be influenced by their party politics, since the number of representatives of a state is determined in proportion, holds the majority seat in the state and hence will dominate those states with the smallest population. As a result, it will dominate those states that is going to be protected .Then where is the goal that this unique were the result of the disregard of the rights of nations nationalities and peoples and ensuring full respect of their rights. The minority will have little or no say at all. The decision of the majority will be imposed upon them .

As to the competence of the council and ultimately of the house of the federation neither the constitution nor the rules of procedure of the council do specify what this power .That is the power to decide constitutional disputes encompasses the rules of procedure is a mere copy of the constitution in this regard. The only clearly provided competence is the power to decide on the constitution of laws .This creates problem. Especially, for those who are interested to bring issues to the council, and since it is not clearly provided, the council will be obliged to consider unnecessary requests as well while this could have been avoided. There is also a problem on the house of the federations power to decide on the constitutionality of laws. The council accepts only legislations and not regulations and directives as to the latter ones.It is for the ordinary courts to decide whether they are constitution and hence, applicable or not. Two courts may then decide differently on similar issues as a result of which inconsistency in the decisions of the courts will be created.

3.3.2 Recommendations

Having said the above by way of conclusion, the writer presents the following as recommendation.

- Ethiopia needs to have own principle of constitutional interpretation which suits to the federal system of government.
- The house of the federation is the only capable organ to interpret the constitution. Unless we intend to make each and every constitutional decision political including those decisions on constitutional complaint granting it the power to interpret the constitution so as to decide constitutional disputes does not servant purpose for the public. we can not prelude either ordinary or constitutional courts from entertaining this power, merely on the ground of lack of accountability. The house of the federation may be motivated by party politics and ethnic affiliation. Although an organ entitled to the constitution has to be independent of any political influence. If we take courts on the other hand, they are impartial and independent. Besides what is advisable is an organ which is accessible all the time and not a par time organ shall assume this power. Therefore , the constitution has to be amended to the effect of establishing another institution endowed with the power of constitutional review.
- The best solution would be to establish a constitutional court which is separate from the ordinary court structure. The rationale for choosing this system instead of giving this power to the ordinary courts is primarily since Ethiopia is under the continental law system which means that courts do not refer to precedents divergence of opinion in many courts can be avoided. Secondly constitutional courts have the experience or competence in handling complicated constitutional issues. Lastly, time and expense of litigating constitutional issues through the hierarchy of state and federal courts . . . Eventually, the supreme court resolves the matter can be avoided. Unless of course competence is given to the federal supreme court with a full and final decision making power, It should be working all the year round. Especially ,to enable individuals to have easy access to constitutional safeguarding mechanism.

- If there is the fear that the interpretation will be done by an unaccountable body since courts are not accountable to the people themselves or else leaving politically sensitive issues that affect nations Nationality and peoples to the house of the federation, all other power can be entrusted to the constitutional court. But the organization of the court has to be made in such a way as to be representative in respect of ethnicity and gender. This is so as to keep with requirement of the so called equal treatment and affirmative action clauses which are enshrined in the constitutional division in to panels ,or senates is also important because it enhances specialization
- There is lack awareness on the part of the public. The people should be made fully aware of their constitutionally guaranteed rights and in the event where those rights are not respected by governmental organs. They should be in a position to know what recourse they have. In this regard, it is necessary of the organ interpreting the constitution, whether it remains to be the house of the federation or anew constitutional court is established and under what circumstance those competences may be invoked must be provided. Regulations and directives must also be considered by the same organ when constitutionality is challenged by an interested party so as avoid the inconsistency that would otherwise be created in the decisions review by the house of the federation is changed. It would be hard to characterize this very system as being democratic.

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