# ADDIS ABABA UNIVERSITY

# COLLEGE OF LAW AND GOVERNANCE:

# CENTER FOR FEDERAL STUDIES

**IMPLICATION OF CASSATION OVER CASSATION IN THE ETHIOPIAN FEDERAL CONTEXT: WITH SPECIAL REFERENCE TO THE PRINCIPLE OF SELF-DETERMINATION.**

By: Abdissa Dashura

A Thesis Submitted to Addis Ababa University, College of Law and Governance: Center for Federal Studies in Partial Fulfillment of the Requirements for Masters (MA)

May, 2014

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By: Abdissa Dashura

Advisor: Dr. Girma Gizaw

May, 2014

Addis Ababa,

Ethiopia

DECLARATION

I, **Abdissa Dashura**, hereby declare that this thesis is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

M.A Candidate Name: Abdissa Dashura

Signature: _____

May 2014

# Signed approval sheet by the board of examiners

**IMPLICATION OF CASSATION OVER CASSATION IN THE ETHIOPIAN FEDERAL CONTEXT: WITH SPECIAL REFERENCE TO THE PRINCIPLE OF SELF-DETERMINATION.**

This thesis has been submitted for examination with my approval as University supervisor.

## Approved by Board of Examiners

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Chairman of the centre Signature Date

2) Dr. Girma Gizaw _____ _____

Advisor Signature Date

3) _____ _____ _____

Examiner Signature Date

4) _____ _____ _____

Examiner Signature Date

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## Acronym

| | |
|---|---|
| CCI | Council of Constitutional Inquiry |
| EPRDF | Ethiopian People's Republic Democratic Front |
| FC | Federal Court |
| FDRE | Federal Democratic Republic of Ethiopia |
| FFIC | Federal First Instance Court |
| FHC | Federal High Court |
| FIC | First Instance Court |
| FRFC | Federal Revised Family Code |
| FSC | Federal Supreme Court |
| FSCCD | Federal Supreme Court Cassation Division |
| HC | High Court |
| HOF | House of Federation |
| HPR | House of peoples of Representatives |
| KK | Kolfe Keranio |
| RC | Regional Court |
| RF | Russian Federation |
| NNPE | Nation Nationalities and Peoples of Ethiopia |
| ORFC | Oromya Revised Family Code |
| OSZSF | Oromya Special Zone Surrounding Finfine |
| SC | Supreme Court |
| SFIC | State First Instance Court |
| SFRY | Socialist Federal Republic of Yugoslavia |
| SHC | State High Court |
| SNNP | Southern Nation Nationalities and Peoples |
| SSC | State Supreme Court |
| SSCCD | State Supreme Court Cassation Division |
| UK | United Kingdom |
| USA | United States of America |
| USSR | United Soviet of Socialist Republics |

## Abstract

*The paper strongly emphasize on the implication of Cassation over Cassation in Ethiopian federal context: with special reference to the principle of Self-Determination. Principally, the FDRE Constitution has established ethnic based self-governing federal arrangement in one hand and incorporates separation of powers especially, dual Court (dual Cassation) system in Ethiopian federalism on the other. Besides this ethnic federalism and the principle of self-determination has been established as a cornerstone of the federal system. The main issue to be addressed in this paper is as whether the Federal Supreme Court Cassation division has been exercising its function properly within a scope allocated between the federal government and regional governments, or in the way contradicting with the principle of self-determination. The thesis has also tried to explore the government bodies to take necessary measures based on theory of separation of power in giving the required remedy in the practice of Cassation over Cassation. In doing so the writer has analyzed real cases that are State matters in nature but finally decided by federal Supreme Court cassation division. The writer has also provided interview responses and sample respondents from targeted groups who generously cooperated in giving a proper answers to the questionnaires and further scrutinizing the meaning of Ethiopian federal constitution as experiences of other countries correlated with the objectives of this thesis. After making serious analysis, the writer, eventually, has reached the Following findings: the federal arrangement of Cassation over Cassation in Ethiopian Federalism has emanated from the practical motion in which case distorts the dual court structure and functioning out of the Constitutional terms and it shows negative implication on Ethiopian federal context and particularly on the principle of self-determination. Thus, the power of State Supreme Court Cassation division has been disregarded and prevalence of Cassation over Cassation system has eroded the principle of self-determination that eventually leads to centralization of power in the country. Based on the findings and the conclusions the writer come up with the political theory of federalism must thus be resolved by the Federal Supreme Court Cassation division should be stopped from interfering in state matters. The State Courts should not be subjugated by the center on their own matters. Interpretation or modification of unclear provisions by the concerned governmental bodies as predisposed is an appropriate option in order to alleviate the converging function and the wrong construction of regional laws version through practicing Cassation over Cassation in the modern Ethiopian federal context.*



Key words: Cassation, Cassation over Cassation, Federal Supreme Court Cassation Division, State Supreme Court Cassation Division, Federalism, Constitution, Self-Determination and Court.

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# CHAPTER ONE: INTRODUCTION

## 1.1 .Background of the Study

A Federal system is characterized by the existence of two tiers of government—the Federal Government and the States—which are also independent within their respective jurisdictions and autonomous from one another, with the constitutionally guaranteed distribution of powers between them. Such powers constitutionally distributed between the two tiers of governments are not unilaterally revoked by either of them.

In Ethiopia, the Democratic governance began with the establishment of a Federal system of Regional self-government, i.e. Defacto Federalism, first via Proclamation No. 7/1992 of the Transitional Government and then codified in the 1995 Federal Constitution. These National/Regional self-governments were vested with legislative, executive and judicial powers within their geographic areas in all matters that were not expressly assigned to the central government.

Consequently, Ethiopia introduced a federal form of government with the adoption of the 1995 Constitution named as the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter referred to as the FDRE Constitution or simply the Constitution). It comprises of the Federal Government and the State members.[1] There are nine State members governed by their own State Councils [2] and two chartered cities, Addis Ababa and Dire Dawa, which are accountable to the Federal Government. The principal aim of the new Federal arrangement is to provided the various ethno-national groups - 'Nations, Nationalities and Peoples' - of Ethiopia with the power to **govern themselves** while at the same time maintain the unity of the country through a mechanism of **shared rule**. Through the Federal Constitution, the diverse cultural and linguistic groups of Ethiopia have been accorded the right to almost all aspects of self-determination.

For a sub-national unit to claim to represent the sovereignty of its citizens-a claim separate from that of the National Government it must have its own Constitutional institutions: together with a sub-national legislature, which within the capacities granted in the national Constitution makes the laws that affect the sub-national territory, and a judiciary that enforces the laws enacted by the sub-national legislature. Correspondingly, the Ethiopian Constitution combines Federalism,

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[1]. Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Negarit Gazeta. Year 1.No.1. (Hereinafter cited as FDRE Constitution), Article 50(1)

[2]. The Nine Regional States are Tigray, Afar, Amhara, Oromya, Somali, BeniShangul-Gumiz, Southern Nation, Nationalities and People (SNNP), Gambella, and Harari (Art.47 of the FDRE constitution).

Self-Determination and Division of power (legislative, executive and judiciary) as a solution to previously prevailed unequal relationships among ethno-national groups in Ethiopia.

Though, the FDRE Constitution has put a cornerstone for the establishment of government institutions as per Article 50(2), inter alias, and provides that the three branches of governments. It is an essential area for the study that the provisions of the Federal Constitution that assigns mandates to the Regional states (Article 52) as well as to the Federal government (Article 51), leaving the residual powers with the Regional states as per Article 52 (1).

The judiciary is the third branch of government and is concerned with the organization, powers and the working of the courts. It ensures the protection of human rights, fundamental freedoms, peace and security, good governance and legitimate interests of people. Especially, Supreme Court is an institution which belongs to the judicial branch of highest level, all over the world; plays the role of delivering the last resort decisions, based on the legal traditions of the country of origin to gain a specific aim of ensuring the uniformity and development of the laws. In this scope the discretion of the Federal Supreme Court Cassation Division function in Ethiopian Federalism at apex has become a ground for debate.

In this regard the FDRE Constitution sets up a parallel or dual court structure. FC's are competent to handle Federal matters and State courts entertain state matters. Accordingly, the FSC shall have the highest and final judicial power over *Federal matters*, whereas the SSC shall have the highest and final judicial power over State matters. However, the principle of State matters end within each respective SSC is remain with a premise in Ethiopian Federalism. Hence, the FSCCD has found ways and means of reviewing SSCCD' decisions even when the case does not involve *Federal laws*.

The more vital consideration could be, the notion of ''comity,'' that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.[3] The underlined principle is that the Federal Government cannot interfere in the sphere of jurisdiction allocated to the regional governments. Whereas the state government cannot interfere in the sphere of jurisdiction allocated to federal government.

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3. Supra note at 1, Art.50 (8)

However, Art.80 (3a) of the FDRE Constitution invites the FSCCD to interfere in the Regional state matter states that "FSC has a power of cassation over *any final court decision* containing a basic error of law", and by the same logic Art.10 (3)[4]of Proclamation 25/96 put down similar provisional gaps that criticized by scholars. Some scholars favor the FSC has the power to review state matters. On the other hand other groups of scholars disagree that there is an impossibility at Constitutional level and this trend is further also reinforced by Proclamation No.25/96 in which the FSC has no ground to review State matters and has been challenged by the State Courts on the ground that Art.80 (3b) of FDRE Constitution declares that the SSC has power of Cassation over any final Court decision on Regional matters provided it contains a basic error of law.

The other additional form of absurdity created by FSCCD in its judicial court of last resort has power to quash (casser in French) or reverse decisions of the inferior courts. In countries with civil law legal system, judicial decisions in general do not create precedent and, in theory, are not binding on lower courts. However, the practice of Ethiopian federalism maintain the binding nature of their precedents, often in the guise of challenging the self-governance with regards to the State matters over the competence of the States Court in the real case.

At the end, it is important that each branch of government has constitutionally authorized responsibilities and obligations and has the duty to fulfill those responsibilities. Thus, the Constitution has set up the House of People Representatives, House of Federations and Regional State Council to take necessary measures (e.g. amending Provision of the constitution) despite the fact that the violation of separation or division of power from the potential drawback of new political experiments has materialized. Moreover, the House of the federation is also empowered to adjudicate constitutional dispute including violation of constitutionality matter being supported by the council of Constitutional Inquiry.[5] However, each level of Courts have a Constitutional duty not tress pass in to the others jurisdictions.

With this general overview in mind, the thesis revolves around the problem of Cassation over Cassation in Ethiopian Federalism referring Regional Self-determination. Accordingly, an attempt will be made to limit the discretion of the Federal Supreme Court Cassation Division and

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[4]. Final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.
[5]. Supra note at 1, Art.62 (1, 2)

of the regional States Supreme Court cassation division within their respective jurisdictions as provided in the Constitution and in the subsidiary law as well as to resolve the impact of Federal Supreme Court cassation division review or nullify matters that are purely fall under the regional states Courts.

**1.2. Statement of the Problem:**

The Constitution and the Federation should be honored for the many rights they provided for the Regions and the full liberty and independence they have given to States. In this regard the FDRE Constitution recognizes the right of Nations, Nationalities and Peoples of Ethiopia to Self-determination up to secession in one hand and provides division of powers between the federal and regional governments on the other. However, there are obvious cases of legal ambiguity allowing the intervention of Federal level institutions in the Regional State matters.

In the Ethiopian Federal arrangement, division of power was not only made in terms of legislative and executive functions divided between Federal and State Governments, but judicial authority too. As a result, the Constitution arranges that the Federal Supreme Court shall have the highest and final judicial power over Federal matters as well as State Supreme Courts shall have the highest and final judicial power over state matters.[6] Similarly, the Federal Supreme Court has the power of Cassation over any final court decision containing a basic error of law and State Supreme Court also has power of Cassation over any final court decision on State matters which contains a basic error of law.[7] This is a theoretical characteristic of democratic institutions and political cultures in which case division of legislative powers between two levels of Government also extended to their respective Courts.

Thus, the Ethiopian parallel courts system converges at Federal Supreme Court Cassation Division on the grounds that intervene in reviewing the final decisions of not only on Federal matters but also on state matters, i.e. Cassation over Cassation. On the other hand under art.80 (3b) of FDRE Constitution the State Supreme Court has power of cassation over any final court decision on State matters which contains a basic error of law, which clearly gives the state courts autonomous authority on their own respective state matters. In similar fashion by the principle of

[6]. Ibid. art.80 (1, 2)

[7]. Ibid. art.80 (3a, 3b)

Federalism, the FDRE Constitution establishes regional States along with cultural, linguistic lines or ethnic identities, providing that independent division of power to the region and such established regional state governments have their own respective independent judicial autonomy**.** However, whether the FSCCD to review final decisions of regional courts is backed by legal or constitutional authority is less clarity and invites debate.[8] It is clear that such practices disrespect the principle of Self-Determination which is the heart of Federalism and questioning Regional states enacting their own laws in Ethiopian current practice. Moreover, the Federal experiment of Ethiopia along with its Constitution has whether assessed in light of the existence or congruency with the power of Cassation over Cassation permit a disagreement**.**

These factors have their own direct and indirect impact on the judicial autonomy of the Regional State contained by the Regional's principle of Self-Determination to implement matters assigned to them as well as to ensure dual courts, maintain Federalism and ensure justice. So that the reality in the Ethiopian federal judicial system calls for some research and analysis, since the practice of the FSC to review state cases, that is matters intended to end within the jurisdiction of the state because they are of local importance, under its cassation power, is contradictory to the federal idea. Thus, this thesis seeks to address the issues that with a view of assessing the scope of federalism and self-determination in Ethiopia**:** *How the practice of Cassation over Cassation in Ethiopian federal arrangement, puts the Regional Courts under trouble to decide on their own matters in process to enhance the opportunity of regional self-determination? Or How Federal Supreme court Cassation division affects Ethiopian Federalism in general and principle of self-determination in particular?* Are the crucial issues to be need a solution?

**1.3. Research Questions**

With a view of examining of cassation over cassation in Ethiopian federalism in general and principle of self-determination in particular, the subsequent research questions are to be raised and addressed in brief throughout the study:

1. Are there any grounds that show us Ethiopia adopted an experience from other Federal countries; were Federal Supreme Courts review Regional Courts decision on matters falling under Regional jurisdiction? What are the trends of other countries?

2. What is the extent and scope of the right to self-determination of the Regional States provided in Art.39 of the FDRE Constitution? To what extent the law enacted by Regional council is

[8]. Muradu, Infra note at 12, p. 61

interpreted by Regional interpreting bodies to ensure self-determination?

3. What is the normative scope and limit of the power of Cassation over Cassation in the practice of Ethiopian legal framework?

4. Is there any constitutional base clearly showing that the Federal Supreme Court has a legitimate power to review matters that are exclusively falling under regional matters? Do Proclamation No.25/96 and its successive amendments broaden or narrow down the revision power jurisdiction of the Regional Supreme court powers?

5. How does Cassation over Cassation affect Ethiopian Federalism in general and principle of self-determination in particular?

6. What mechanism or remedies do Governmental institutions make use of to protect from the violation of division of power and how they free from the political atmosphere neutrally exercise their mandates?

### 1.4. Objective of the Study

#### 1.4.1. General objective

The study has forwarded the following point as General objective.

1. To investigate the compatibility between Cassation over Cassation and the principle of self-determination in Ethiopia`s Federal system.

#### 1.4.2. Specific objectives

The study has forwarded the following points as specific objectives.

1. To observe the experiences of other countries court and, especially, having dual judicial arrangement with the Ethiopian current Federal structure.

2. To assess the limitation and scope of matters to be reviewed by Federal Supreme Court Cassation Division in Ethiopian federal set up.

3. To investigate whether there is a legal basis for the Federal Supreme Court Cassation Division to review State matters or cases that settled by State Courts.

4. To address the impact of the Ethiopian Federal Supreme Court Cassation division on the principle of Federalism in general and on the principle of self-determination in particular.

5. To examine how the binding fundamental nature of «precedents» as sources of law in Ethiopian federalism influences the principles of Regional self-determination as well as prejudice judicial autonomy.

6. To explore contributing factors those necessitate cassation over cassation and its draw-back in Ethiopian federalism.

7. To indicate available Governmental institutions and their remedies to protect the violation of division of power through cassation over cassation in the federal arrangement of Ethiopia.

## 5. Literature Review

Different authors have made certain reflections concerning to the interrelation ship between Federalism and division of powers, especially with regards to Supreme Court reviewing ( power to quash)their lower Courts decision, mainly focus on the situations in their country's perspectives with a complete cultural, economic, political, attitudinal and legal system differences compared with Ethiopia. For instance, there is a study by Anna Ohanyan, (2012); **"**judgments on admissibility of a Cassation complaint, addresses the limits of discretion of the Court of Cassation of the Republic of Armenia.[9] On the other hand Lilit Hambardzumyan, (2011) writes a paper, on The Precedent of the Court of Cassation and its application in Armenian legal system.[10] The theses are explore to solve the problem of Cassation in Armenia which is related to Ethiopian FSCCD, whose decision contributes a binding effect or precedent on lower courts like proclamation No.454/05. However, the Republic of Armenia is a unitary form of government whereas the Supreme Court at the top has Cassation division whose decision is the final solution in uniformity of decisions for the country.

**Jan Komárek**, (2009) 'Judicial Lawmaking and Precedent in Supreme Courts: The European Court of Justice Compared to the USA SC and the French Cour de cassation' is also another literature to be explored.[11] He shows how a particular approach to judicial lawmaking while review and precedent shapes answers to these questions and examines them in relation to the US Supreme Court and the French Cour de cassation comparing with the European court of justice. The analysis takes USA is a model for Federal and France is a model for unitary structure of countries.

In the domestic sphere, a number of writers have made certain reflections on Cassation over Cassation of Ethiopian federalism, in different perspectives. But, the issue of cassation over cassation vis-à-vis principle of federalism and self-determination is not been explored in a proper way.

[9].Anna Ohanyan, The limits of discretion of the Court of Cassation of the Republic of Armenia in its judgments on admissibility of a cassation complaint, LLM Thesis (American University of Armenia, 2011),p.1-34

[10]. Lilit Hambardzumyan, The Precedent of the Court of Cassation and its application in Armenian legal system, LLM thesis (Yerevan; 2011), p.1-30

[11]. Jan Komárek, 'Judicial Lawmaking and Precedent in Supreme Courts: The European Court of Justice Compared to the US Supreme Court and the French Cour de cassation' (2008-2009) Cambridge Yearbook of European Legal Studies, p. 1-35

Nationally, **Muradu Abdo** (2007) has written a reflection paper on the review of decisions of State Courts over state matters by the federal Supreme Court.[12] The author takes an issue with the practice and argues that Ethiopia ought to preclude its Cassation Division from having cassation over cassation. Stating in advance his arguments put in the ground that disallowing cassation over cassation would not frustrate the aim of attaining uniform interpretation and application of laws. After importantly reading the constitution and constitutional minutes, he advocates that there is a law that authorizes the FSCCD to review Regional State laws and he proposes the Constitution is subject to amendment. In other way of expression, the review of state matters in Federal Cassation should not be seen as arguments *lex lata* (based on the law as it currently is) but arguments *de lege ferenda* (the law as it ought to be). However; the article has not been evaluating significantly issues of Cassation over Cassation is beyond the constitutional terms in connection with the principle of Self-determination in particular, inter alia, with federalism. Also has not been sufficiently supported with experimental cases decided by FSCCD in opposition to the State courts on State matters and connecting other countries of dual court experience.

On the other hand, **Mehari Radea (2010)** has also written a reflection of observations of Federal Cassation power sources in Cassation over Cassation: case comments (translation is mine).[13]The author takes an argument that the FSCCD has no legal authority having to review Regional State matters. He agrees with Muradu's idea in all aspects except the amendment of constitution, claiming the constitution being not grant the power to FSC to review regional state matters. Without constitutional amendment, he directs that, had it been the intention of the Constitutional framers to confer the power to the FSCCD it did not express "Particulars shall be determined by law". The subsidiary statute that has been enacted, among others, to implement this Constitutional issue i.e., the Federal Courts Proclamation, which also fails to provide federal revision of state court decisions on state matters. Thus, he believes that reading the constitution in compliance with the particular law; one can understand that there is no Constitutional power for FSCCD to review regional matters. The author has similar opinion.

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[12.] Muradu Abdo: Review of Decisions of State Courts over State Matters by Federal Supreme Court. Mizan law Review vo1, No.1 (2007), p.73-74

[13]. Mehari Radea, journal of Ethiopian law: observations of federal cassation power sources and cassation over cassation, vol.24. No.2. (2010), p. 201-213

Similarly, **Assefa Fiseha** (2009), in his teaching materials of federalism prepared under the Sponsorship of Justice and Legal System of Research Institute has tried to write issues of the role of Court, the structure of the Federal and State Court, the jurisdiction of the judiciary in comparative with other Federal countries trend, and finally the power of Cassation over cassation in Ethiopia.[14]He is also the opinion of that the Ethiopian FSCCD to Review States matter is wrong in accordance with the principle of federalism. He argues that due to the bulk of the federal cases, even shared powers could end in the state courts. In short, he puts the practice should not justify the wrong interpretation of the law. The writer has similar idea with Assefa in a sense that the FSCCD have no constitutional granted power to review Regional State matters.

On the opposite side, scholars like **Abebe (2000)**, in his reflection paper, "Apportionment of Jurisdiction under the 1994 Ethiopian Constitution", on symposium proceeding, argues that since the Federal system is a new experience to Ethiopia and Regions do not have a well-developed judiciary it is sensible to confer on the Cassation Division to review state matters.[15] He has also the opinion that without cassation over state matters, the federal government will not be in a position to implement or interpret its laws uniformly. He added that there is a fear of all cases shall be decided or handled by state courts. However, he cannot acknowledge that the capacity and competences of the state courts cannot be in principle justified by the FSCCD at the center. Furthermore, he refuses the Constitution allows Regional States to establish courts based along ethnic and religious lines; potentially creating inconsistencies in the application of the law as well as demoralize regional judicial autonomy.

Finally, other types of information possibly relevant to our particular study to be, The Minutes of the Constitutional Assembly of the present Ethiopian Constitution No 26-29, (Unpublished, 1993) and the Minutes of the Council of Representatives of the Transitional Government of Ethiopia May 4-25 (Unpublished, 1993) are the two important information's for the needs of the two Cassations and its justification in Ethiopian federal system.

## 6. Research Methodology

### 6.1. Research Design

This research has been explored the impact of Cassation over Cassation in Ethiopian federal set

[14]. **Assefa Fiseha**: teaching materials of federalism prepared under the Sponsorship of Justice and Legal System of Research Institute,(2009), p. 435-469

[15]. Abebe Mulatu," Apportionment of Jurisdiction under the 1994 Ethiopian Constitution", Symposium Proceedings, (Ethiopian Civil Service College, 2000). p. 150

up with especial reference to the principle of self-determination in order to suggest the remedies to protect the violation of power. To carry out this research descriptive method is utilized to reveal the impact of Cassation over Cassation on Ethiopian federalism in general and self-determination in particular.

**1.6.2 Sources of Data**

The research mainly relied on primary and secondary data. Secondary data sources include books, journals and articles. Internet sources were also used, particularly the literature for revision of FSCCD against state matters has been carried out. Both federal and state constitution, both federal and state Courts establishment proclamation, other countries legal system and experience…etc are the main sources of secondary data. In addition, studies made by other researchers and decisions of the FSCCD and cases that come to the bench for review were also utilized in analyzing the data collected through interview and questionnaires. The primary data sources have been collected as shown below table.1.1.and.1.2.

**1.5.3. Area Sampling**

To examine this research, it is necessary to select some percent from the total number of courts in both level of SC regular bench and its cassation division, HC and first instance court in a sense of representing the total judges. Hence, out of 44 sample respondents: 28 of them are judges, which amount to 64% percent of the total population is from both levels of Courts .i.e. *Federal and Oromya,* at SC, HC and FIC (KK from Federal, Wolmera and Barak from Oromya woredas) were selected as sample area to collect data on the issues mentioned in the questions and objectives. 36% of the respondent accounts prosecutors, attorneys, teachers and students of legal profession. These sample respondents were selected for the accessibility reason.

**1.6.4 Respondents Sampling Techniques**

Simple random sampling was utilized to collect primary data from five categories of respondents. The first groups of respondents were selected from the judicial personnel (judges) who work in the selected sample courts. The second category of the respondents was public prosecutors who have direct contact with the institution for litigation. The third category was legal attorneys who represent their clients in both levels of Cassation benches. The fourth and fifth category of respondents were randomly selected from the non-judicial personnel have knowledge of the subject matter (teachers and students). In addition to this, interview was made with senior experienced judges at both levels of cassation divisions are importantly rose problems in the study.

**1.5.5. Sample Size**

The following Table 1.1 indicates the total population of the sample respondents.

**Table 1.1 Sample Area and Sample of respondents**

| Key informants | Sample Areas and Sample Size of Key Informant | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Federal courts | | | | Regional courts (oromya) | | | | Public prosecutor | | attorneys | Tea. | Stud. | sum |
| | FSCCD | FSC | FHC | FFIC from KK | SSCCD | SSC | SHC(OSZSF) | SFICW, B | KK | Wolmera vs. Barak. | both level | AAU | AAU | |
| Sample respondents | 4 | 3 | 4 | 3 | 4 | 3 | 4 | 3 | 3 | 3 | 4 | 3 | 3 | |
| total | 14=32% | | | | 14=32% | | | | 6=13.5% | | 4=9% | 6=13.5% | | 44 |

The Courts sample area represents more than sixty four percent of the total respondents and the other represents thirty six respondents. Sample respondents are proportionally distributed in to the sample areas. The researcher believes that the sample size is enough to represent and to draw the required data.

**Table 1.2 Respondents Questionnaire Matrix**

| Questions posed | respondents | N0 | interviewee | no |
|---|---|---|---|---|
| Dual Jurisdiction and structure of courts | judges both at federal and state level | 28 | Senior Judges of FSCCD | 3 |
| | Public prosecutors at both level | 6 | Senior judges of SSCCD | 3 |
| | Attorneys have both levels license | 4 | Experienced attorneys | 2 |
| | Teachers and students of AAU | 6 | Expert of federalism | 1 |
| Legal, political and justice gaps between federalism and cassation | Judges both at federal and state level | 28 | Senior judges of FSCCD | 3 |
| | Public prosecutors at both levels | 6 | Senior judges of SSCCD | 3 |
| | Attorneys have both levels license | 4 | Experienced attorneys | 2 |
| | Teachers and students of AAU | 6 | Expert of federalism | 1 |
| Federal Supreme Court cassation division vs. State Autonomy | Judges both at federal and state level | 28 | Senior judges of FSCCD | 3 |
| | Public prosecutors at both level | 6 | Senior judges of SSCCD | 3 |
| | Attorneys have both levels license | 4 | Experienced attorneys | 2 |
| | Teachers and students of AAU | 6 | Expert of federalism | 1 |
| Consequences of cassation over cassation | Judges both at federal and state level | 28 | Senior judges of FSCCD | 3 |
| | Public prosecutors at both levels | 6 | Senior judges of SSCCD | 3 |
| | Attorneys have both levels license | 4 | Experienced attorneys | 2 |
| | Teachers and students of AAU | 6 | expert of federalism | 1 |
| Governmental mechanisms and Remedies to alleviate the Violation of Power | Judges at both federal and state level | 28 | Senior judges of FSCCD | 3 |
| | Public prosecutors at both level | 6 | Senior judges of SSCCD | 3 |
| | Attorneys have both levels license | 4 | Experienced attorneys | 2 |
| | Teachers and students of AAU | 6 | Expert of federalism | 1 |

The matrix of respondents/ question relationship is presented in the table 1.2 above for sample size. This is helpful in managing the study by identifying key informants and approaching them in respect of their profession and level of understanding on the issues posed.

### 1.6.6. Background and Profile of the Respondents

Profile of the sample respondents is briefly presented as follows. As indicated in the above Table 1.2 different categories of key informants were participated in order to make the research reliable. Thus, an interview was made with senior judges of both levels of Cassation divisions. Questionnaires were also distributed to judicial personnel (judges) from the selected sample courts, to public prosecutors, attorneys, were contacted through questionnaires. Moreover, questionnaires were also distributed to teachers and students of AUU. As indicated above in the Table 1.1, forty four key informants were participated through questionnaires. Totally, 53 key informants, including the interviewed, were participated in the study having five categories.

With regard to their profile, among 17 of the federal courts 10 of them are a degree LLM (MA) and 7 of them are LLB degree holders with a range of eight to eighteen years relevant work experiences. On behalf of regional judges out of 17 judges 7 of them are LLM (MA) degree holders whereas 10 of them are LLB holders with a range of six to 17 years work experiences. In regard to teachers all of them are holders of LLM and students have already finished their masters and with of 5 to 12 years of work experiences. Among others 2 public prosecutors and 2 attorneys are LLM degree holders and others have LLB degree holders with a work experience of 8 to 18 years.

### 1.6.7. Data Collection Techniques

The technique is used to exploit the experience, opinions and practices regarding the issues of Cassation over cassation with special reference to principle of self-determination and other important concepts rose in the study. Questionnaires were distributed for the mentioned key informants as presented in Table.1.2 above. Interview was made with senior cassation bench judges and other professionals. The researcher's personal observation and experience is used as valuable means and serves as the primary sources for the analysis in this study.

### 1.6.8. Data Collection Tools (Instruments)

Questionnaires for key informants and interviews for higher court officials were used to collect the required data from the primary resources. The questionnaires were closed and open ended, where as the interview questions were open-ended, structured, and semi-structured. Check lists were also utilized for document review, questionnaires, and interviews, and also practical cases

decided by FSCCD on State matters as a means to make sure the availability of the required information for this study. These questionnaire and interview questions were prepared in *English* language since both respondents are competent and understanding the language from their experience and educational background.

### 1.6.9. Data analysis

In analyzing the data, relevant tools, which are appropriate to the nature of the data obtained, have been employed to test the findings in relation to the basic questions of the study. Raw data obtained by interview, questionnaire, and personal observation, were structured, systematically organized, and analyzed. The cases decided by FSCCD on State matters have been assimilated with other countries experience to make the study reliable. Interview questions and Questionnaires have structured in qualitative approach. Both key informant questionnaire and interview responses were examined and analyzed in six consecutive weeks.

## 1.7. Scope of the Research

The study is about implication of cassation over cassation on the Ethiopian federal set up especially referring to the principle of self-determination. The connotation of Ethiopian Federal arrangement and the impact of Cassation over Cassation have been assessed in terms of Federal Courts and Regional Courts structures and jurisdictions. One aspect of the power of Cassation over Cassation as horizontal division of judiciary branch in Ethiopian Federal system will be taken for this paper. However; the power of the Federal Supreme Court Cassation Division to review final decisions of any lower Federal Courts decision or Federal jurisdiction is not controversial. It does not constitute the comprehensive review of all available legislation or other issues pertaining to applications to the federal Supreme Court Cassation division.

In short, the study covers only matters that allotted purely to the Regional governments settled by state courts in accordance with state laws. On the other hand matters reviewed by State Supreme Court Cassation Division, but in contrary to the division of power, reviewed by Federal Supreme Court Cassation Division for the second time.

## 1.8. Limitations of the study

During the conduct of the study, the writer encountered many limitations. Time limit within which the study should have been conducted is one of the limitations the writer faced. Since the title has intended to covers the whole problems among each State Court and the Federal Court practices, shortage of time limited the study to Oromya and Federal courts. There were also

problems with some judges and attorneys to cooperate on issues connecting with questionnaires and interviews questions in responding them on time because of their work load. On the other hand the writer encountered in an accessibility of Regional laws which are necessary for the conduct of the research especially, proclamations for the establishment of courts. This has hindered the writer from having access to the Regional laws due to the distance of the Regional States from Finfine. It is for this reason that the Oromya Regional State has been opted to be repeatedly used and cited. However, the writer hopes that the focus made on the Oromya regional States and the conclusions and the recommendations made thereon, can be analogically used for other remaining regions. The third limitation relates to the financial assistance granted for the conduct of the research.

**1.9. Significance of the Study**

The relevance of this thesis has been primarily alleviating the problem that causes violation of division of power with regards to Cassation over Cassation. The study advances the researchers, students, judges and advocates the knowledge and understanding about the scope or power of Cassation over Cassation (state matters reviewed by Federal Cassation court) that can be exercised within Ethiopian Federal system.

Further, the paper seeks to contribute to the existing studies on the Ethiopian federal experience, making a practical analysis, the research hopes this thesis contribute to the understanding of the federations re-evaluating referring the practice of Cassation over Cassation outcomes on the Ethiopian contemporary Federal set up, and consult them a better reform of the system. As a consequence the study suggests a feedback or remedies to the Government bodies either to amend or interpret the Constitution or put an option for courts a means to protect the Federal Supreme Court from violation of power, in order to safeguard the principle of self-determination to maintain the federal system of Ethiopia. Further the study is shows the problems regarding the central and regional government's relationships that needs amend or interpret the FDRE Constitution properly or declare those decisions against the separation of power or Constitution to be unconstitutional.

**F**inally, the study may serve as a stepping stone for further and in-depth studies for researchers, experts, judges, policy designers even law practitioners, to further deepen the study on similar topics to come up with constructive conclusions and recommendations enabling the maintenance of Ethiopian federalism.

## 1.10. Organization of the Paper

This paper is organized in to six chapters, bibliography and appendixes. Chapter one provides an introduction and background of the study. Chapter two offers conceptual framework of Federalism and Self- determination. It outlines the meaning and definition, common basic feature and types of federalism as well as the concept of self determination in general context. Chapter three discusses the concept and development of Cassation. Mostly, here the attention is given to the general overview jurisdiction of Cassation of selected countries. Chapter four highlights Federalism, court system and Cassation in Ethiopian context. Under this chapter the author importantly, explores the concept, development and the legal framework of the power of court system and Cassation in Ethiopia.

Chapter five is devoted to deal the impact of dual cassation on Ethiopian system and principle of self-determination: its practical analysis and evaluation. Relevant cases have been analyzed; the outcome the questionnaire distributed among the targeted groups has been analyzed, evaluated and the responses from interviews have also been integrated with the decided case study. Other countries experience so as to identify and articulate the implications of Cassation over Cassation on Ethiopian Federal set up have also been explored and assimilated with the study. The dual cassation impact on jurisdiction and judicial autonomy; possible gaps and consequences of cassation over cassation have been examined with principle of self-determination. The chapter also emphasizes the government institutional remedy to safeguard the violation of power in light of principle of Federalism has also been examined. Chapter six provides the concluding remarks along with major findings and recommendations. At the end bibliography and appendixes have also provided.

# 2. CHAPTER TWO: CONCEPTUAL FRAMEWORK OF FEDERALISM AND SELF-DETERMINATION

## 2.1. Introduction

This chapter has tried to incorporate the general concept of federalism and self-determination. In the first section, the meaning of federalism has been pointed out from various scholars' perspectives. The distinction between federalism and federations as well as the basic features common to all federations including Ethiopia and others has been suggested. An attempt has also been made to explain the various types of federalism, its origin and formation. The inclusion of these aspects is for the purpose of showing how the skeletal structure of a federal system can endow with possible frameworks within which the constituent sub-units occupy self-determination to administer themselves.

In the second section, the content and meaning, dimension of self determination as internal as well as external; and purposes of self determination has been pointed out from different aspects. Generally, the purpose of this chapter is to provide a highlight on federalism, incorporates basic features of federations, federation and concept of self-determination so as to understand the Ethiopian federal system and the model in which it connects.

## 2.2. Concept of federalism

The concept of federalism can be illustrated by some definitions and its distinction from other institutions can be investigated as following:

### 2.2.1. Meaning and Definition of Federalism

Like most broad political or legal concepts such as "democracy" or "constitutionalism," "federalism" can mean different things to different peoples in the contemporary world .[16]

Etymologically; the word 'federalism' comes from the Latin word, foedus, meaning" covenant".[17]Hence, federalism, being essentially a covenant or a treaty, is a formal agreement among smaller polities to form a larger perpetual polity. John Kincaid suggests that a covenant signifies a binding partnership among co-equals in which the parties to the covenant retain their

[16]A.S. Narang, Ethnic Identities and Federalism 71 (1995); Rubin & Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA 1.REv. 903, 927 (1994), at 910.

[17] Elazar, Daniel and Kincaid John, the Covenant Connection: Federal Theology and the Origins of Modern Politics (Lanham, MD: Center for the Study of Federalism and University Press of America) for a more comprehensive treatment of the federal idea as essentially covenantal, 1984.

individual identity and integrity while creating a new entity, such as a family or a body Politics, that has its own identity and integrity as well.[18]

A covenant also signifies a morally binding commitment in which the partners behave toward each other in accordance with the spirit of the law rather than merely the letter of the law.[19]Stanford Encyclopedia of Philosophy defined Federalism as the theory or advocacy of federal principles for dividing powers between member units and common institutions.[20] An American political scientist William Riker also defined federalism as a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.[21] Ronald Watts said that Federalism provides a technique of Constitutional organization that permits action by a shared government for certain common purposes, together with autonomous action by constituent units of government for purposes that relate to maintaining their distinctiveness, with each level directly responsible to its own electorate.[22]

Robert A. Dahl on his behalf defines federalism as a system of dual sovereignty, "in which some matters are exclusively within the competence of certain local units—cantons, states, provinces and are constitutionally beyond the scope of the authority of the national government, and where certain other matters are constitutionally outside the scope of the authority of the smaller units."[23]As summarized by Nancy Bermeo, Bunce argues that "A federal system exists when there is a layer of institutions between a state's center and its localities, when this layer of institutions features its own leaders and representative bodies, and when those leaders and bodies share decision-making power with the center."[24]

Hence, the meanings are precisely indicates that the layer of institutions we focus federalism as a

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[18.] Kincaid John, Handbook of Federal Countries: Introduction, Montreal and Kingston: McGill, Queen's University Press, 2002.

[19]Ibid.

[20]Stanford encyclopedia of philosophy first published Jan 5, 2003; substantive revision Mar 9, 2010, available at https://www. leibniz.stanford.edu/friends/preview/federalism, accessed at Nov. 23, 2013.

[21] Riker W., Federalism, Handbook of Political Science: Governmental Institutions and Processes, eds. Fred I. Greenstein and Nelson W. Polsby (Reading, MA: Addison-Wesley, 1975), pp. 93-172.

[22] Watts Ronald, Federalism Today, *the background paper written for the International Conference on Federalism* Saint Gallen, Switzerland,2002, pp.7.

23. Robert A. Dahl, "Federalism and the Democratic Process," in Democracy, Liberty, and Equality (Oslo, Denmark: Norwegian University Press, 1986), p. 114.

24. Nancy Bermeo, "The Importance of Institutions: A New Look at Federalism," Journal of Democracy 13 (April 2002), p. 98.

Constitutional arrangement creates executive, legislative, and judicial branches of government at the sub-national level separately from the centre exercise their functions assigned to them. An ideal federal system has both aspects of mutual trust and agreement to live together. Thus, federalism is also defined as a unity that is also characterized by freedom and autonomy.

## 2.2.2. Federalism and Federations

Obviously, federalism is the normative term whereas federation is the descriptive one.[25] As a normative term, federalism basically embodies the idea of self rule and shared rule between at least two tiers of government."It accommodates (preserves) and promotes distinct identities within a larger political union."[26]On the other hand, Federation as a descriptive term refers to the institutional make-up of the federal nation. It embodies such principles as the division of powers, a written constitution, regional representation at the center, equality of both central and regional governments, and regional autonomy. Federation therefore is the employment of the principles of federalism in order to achieve a balance between unity and diversity.[27]

As Preston King argues, the 'chief distinguishing feature of a federation is the territorial grouping of its citizens and the means by which these groups are represented.'[28] The federal principle, which in fact is the organizing principle and encompasses the principles of federalism, underpins both federalism and federation. Embodying the idea of balancing and maintaining unity and diversity, the federal principle is realized through the federal institutions and Constitution established in the federation. The federal principle thus informs how a federal society is organized.[35] Hence, federalism embodies the standards of what a specific nation should follow to share the powers for the sub-national units whereas federation sets the institutional framework which used for implementation of such shared rule and self rule. Thus, federalism is now regarded as an ideology and federation as an institutional expression.

## 2.2.3. Common Basic Features of Federations

### 2.2.3.1. Two orders of government

There is a need to distinguish federations from the other political systems. Scholars have

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[25]. Watts Ronald., *comparing federal systems in the 1990s*. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1996, pp. 6

[26]. Ibid.

[27]. Ibid

[28]. King Preston. Federation and Representation, Toronto: (University of Toronto Press, 1993), pp. 94-101; 95

suggested certain common characteristics that may distinguish federation from other types of political system**.**

Federalism contains two or more levels (or tiers) of government. Such different tiers of government govern the same citizens, but each tier has its own jurisdiction in specific matters of legislation, judiciary, taxation and administration. The jurisdictions of the respective levels or tiers of government are specified in the Constitution as well. The central government is the general government for whole country. The federating unit constitutes other tier of government.

Most federations do have three levels or tiers of government.[29]the third level constitutes the local governments, which have no constitutional status and for all practical purpose it is subordinate to the regional government and it operates on the basis delegated power as if in a unitary government.[30]In Canada and Australia local governments reorganized periodically and are subject to being overridden by the provincial, state, or Lander governments.[31]In Germany the right of local autonomy is Constitutionally protected. [32]

Thus, the autonomy of the constituent units is derived from the constitution, i.e. their legal personality and autonomy is guaranteed by Federal Constitution, whereas the federal government has international personality under international law to represent the constituent units. So the essence of federation in the federal government cannot unilaterally change the status and territorial autonomy of the constituent units like unitary states.

### 2.2.3.2. Division of power

Federations are distinguished from other polities primarily by the fact that political power (commonly related to legislative, executive, judicial and financial functions) is constitutionally divided between the federal government and the states, and that both orders of governments are autonomous with respect to the powers granted to them. This is indirectly based on the dual principle implicit in every federation of the desire to be united and to be autonomous**.**[33]A common feature among federations has been the existence of, powerful motives to be united for certain purposes, on the one hand and deep-rooted motives for autonomous states for other

29. Huegline Thomas and, Fenna Alan, comparative federalism: a systematic inquiry (Broad view press, Toronto, 2006). P.33
30. Ibid .p.33
31. Ibid.p.33
32. Germany Basic law, art.28, second paragraph
33. Assefa Fisseha, federalism and the accommodation of diversity in Ethiopia: A comparative study (Wolf legal publishers, 2006-2007) p.104

purposes, on the other. This underlying notion of federations has implications on the design of federations through distribution of powers.[34]The federal government is often empowered with those powers that are shared in common and the states with those powers considered relevant for the expression of regional identity, hence the famous expression that defines federations as shared rule through common institutions and self-rule for constituent units. Through the former, one of the cardinal values, unity is promoted and through the second, the other cardinal value, diversity is equally promoted.[35]By the virtue of the principle of power division, the Regional Governments are *autonomous a*s far as powers assigned to them in the constitution.

In brief the Federal Government cannot interfere in the sphere of jurisdiction allocated to the regional governments. There is therefore no superior-subordinate relationship between the two levels of government as far as their respective power assigned in the Constitution

**2.2.3.3. Representation and participation of constituent units in the federal governments**

In federations constituent units are represented in the federal government and participate in the federal policy making process. Bicameral representation, at national level of government, is one of the basic principles of federalism. [36]The people or their representatives are usually represented in the lower house of the federal legislative organ.[37]The second chamber usually represents the constituent units.

The nature of representation in the second chambers varies from federation to federation. It is the Lander governments that are represented in the second chamber called, the Bundsrat in Germany.[38]In Canada the senate represents not the provinces but regions[39], i.e. rough regional representation and political considerations (often reward for loyal service to the party in power). In Ethiopia it is the various ethnic groups, referred to as "nations, nationalities and peoples" that are given representation in the second chamber, the house of federation.[40]

Thus, Canadian, Germany and Ethiopian federations not follow equal representation of the constituent unit like the American approach, whereas like the German Bundsrat and Canadian

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[34]. Raoul Blindenbacher and Ronald Watts, "Federalism in a Changing World - a Conceptual Framework for the Conference"in Raoul Blindenbacher and Arnold Koller eds., *Federalism in a Changing World: Learning* (Kingston: McGill-Queen's University Press 2003) at 17

[35]. Ibid p. 17, 35

[36]. Hugline and Fennea, Supra note at. 29, P.59

[37]. Ibid.

[38]. Supra not at 32, art.51

[39]. Hugline supra note at 29, p.190-196

[40]. Supra not at 1, Art. 62

senate, the house of federation in Ethiopia has no law making power.

### 2.2.3.2.4. Written, Supreme and rigid Federal Constitution

The division of power between the federal government and the states is based on a written and Supreme Federal Constitution to which both orders of governments must submit. Federations originate from particular bargains struck at a particular time designed to serve for generations. Written constitutions are, therefore, necessary records of the terms of the bargain. Indeed, to write and adopt a Constitution is to agree to the bargain itself.[41]The distribution of power must be spelt out in a written Constitution and cannot be undertaken orally. All of the federations under consideration have written constitutions. For instance US adopts its constitution in 1789, Canada adopts in 1867, Germany in 1949 and Ethiopia in 1995. In all cases, federations grounded on the written constitution.

The Constitution should be Supreme as it is the source of the authority and as it also regulates the relation of the two tiered governments. Many Federal Constitutions express the essential supremacy of the Constitution. The United States Constitution declares "this constitution, and the laws of the US which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the US shall be the Supreme law of the land".**[42]** The German Basic Law stipulates albeit more generally, the same principle. "Legislation is subject to the constitutional order; the executive and judiciary are bound by law and justice."[43] Equally, the Ethiopian Constitution too declares, "The Constitution is the supreme law of the land..."[44]

Federal Constitutions must be rigid and require the participation of both the Federal Government and the states for their amendment. If the Federal Constitution contains the basic principles governing the relationship between the federal government and the states and if the authority of both governments derives from the Constitution, then it follows that in order to ensure its supremacy, it should not be subject to unilateral alteration by either order of government alone. According to Carl Friedrich, the participation of the states in the amendment of the Constitution is a key feature of a federation.[45]

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[41]. William Riker, *The Development of American Federalism* (Boston: Kluer Academic publishers, 1987), p. 17
[42]. Ronald watts, comparing federal systems, (Montreal: McGill-Queens University press, 1999), P.6
[43]. US Constitution Article VI Section 2.
[44]. Supra note, at 1. Art. 9 sub 1.
[45]. Carl Friedrich, Trends of Federalism in Theory and Practice (New York: Praeger, 1968), p. 6-7.

The right to initiate amendment, the required amount of vote, the procedure and the organs of government involved in the amendment process varies from one federation to another.[46] However, in any federal government the fundamental provisions of the constitution cannot be unilaterally changed by one level of government.[47]

The German Constitution, however, has got a provision often referred to an eternity clause, which made certain provisions of the basic law are not subject to amendment at all.[48]Except the provisions provided for human right dignity clause; the democratic and social federal nature of the state, laws affecting the division of the federation in to Lander, laws affecting the principle of participation of Lander on legislations, laws and other provisions of the Constitution are required two-third majority vote of member of both budestag and the bundesrate to amend. On the other hand the anomaly in the Canadian constitution, the British North American Act of 1867, is that did not have amending provision.[49]

The Ethiopian constitution also requires the participation of both the federal and state governments in all amendment cases. Some of the provisions, mainly those prescribing the procedure for amendment itself, and those governing fundamental rights and freedoms can only be amended if approved by the majority vote in all the states and by a two-thirds majority vote in each of the federal houses.[50]While the majority of the provisions, including those governing the relationship between the federal and state governments, can be amended only if approved by a two-thirds majority vote in a joint session of both federal houses[51] and a two-thirds majority vote of states.[52]The remarkable principle that we want to bring in to attention is that all Constitution does incorporate amendable provisions. However, the Ethiopian Constitution is perhaps more rigid compared to the other federations.

### 2.2.3.5. Umpiring the Federation

Equally important in a federation is the presence of a body that umpires disputes concerning the constitutionality of laws in general and the division of powers in particular. From the principle of constitutionally guaranteed division of power and the supremacy of the constitution follows that

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*46.* Watts Ronald, Supra note at 42, P.125

47.Nature of federalism, http://www.excellup.com/Notes/10_SocSc_Federalism.pdf,accessed at November 23,2013)

[48] supra note at 32, Art 59

[49.] Supra note at 29, P.261

[50.] Supra note at 1 Art. 105 (1) a and 105 (1) b, and c

[51]. Ibid, Art. 105(2) a

[52]. Ibid, Art. 105 (2) b

the last word in settling disputes about the meaning of the division of powers must not rest either with the federal government alone or with the states.[53]

It has already been noted that the constitutionally entrenched division of power is the hallmark of federations. However, the division of powers between the federal government and the states cannot be delineated in such a way as to avoid all conflicts. As R. Davis notes the division of power is artificial, imperfect and a generalized skeletal thing. Political life cannot be perfectly or permanently compartmentalized. The words can rarely be more than approximate crude and temporary, guides to the ongoing or permissible political activity in any federal system.[54] Certainly disputes about the terms of the division of power are bound to occur. Besides, adaptation and the need to adjust and accommodate the division to cope with the new, the unforeseen and the un-intended remains crucial and interpretation is one of such methods. In the USA this is achieved through the Supreme Court. In Switzerland the last word does not seem to rest with the federal tribunal. When federal laws contested for its constitutionality, the people have the last word by referendum as to whether such a law shall become effective.[55]

In Germany, the Constitutional Court takes care of the duty of enforcing the supremacy of the Basic Law. Unlike the US Supreme Court, the Court does not involve itself with the ordinary settlement of disputes. It only handles issues that involve interpretation of the Basic Law.[56]In Ethiopia; the HoF is responsible for adjudicating constitutional cases in general and federal issues in particular.

In sum, an impartial body, independent of the federation and the states, that decides on the meaning of the contested provisions concerning the division of power is essential for a federation.

## 2.2.4. Typologies of Federalism

Federalism can be categorized in various types, such as based on origin: coming together, holding together and putting together; based on operation: Dual or Cooperative, Executive or Legislative; based on mode of state formation: Symmetrical and Asymmetrical, Territorial and Ethno Linguistic.

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[53]. K.C.Wheare, *Federal Government*, 4th ed. (London: Oxford University Press, 1963): 60-61.
[54]. Rufus Davis, *The Federal Principle: A Journey Through time in Quest of a Meaning* (Berkeley: University of California Press, 1978), p. 143.
[55]. Supra note, at 53, p. 18-19.
[56]. Donald Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 2nd ed. (Durham: Duke University Press, 1993), p .3.

A brief explanation of such taxonomy of federalism is to be followed. But, it is also more important to notice that the preceding classification is not exhaustive, because some scholars classified federations in distinct ways.

**2.2.4.1. Coming Together Vs. Holding Together Vs. Putting Together Federalism**

Alfred Stefan proposed three types of federalism based on the paths through which federations have been formed.[57]These are: coming together, holding together and putting together. The first category involves independent States coming together on their own to form a bigger unit, so that by pooling sovereignty and retaining identity they can increase their security. This type of federalism is known as 'coming together' federations. Coming together federations are an outcome of bargaining among independent states interested in creating a more stable and efficient union.[58]In this category of federations, all the constituent States usually have equal power and are strong vis-à-vis the federal government. This has been the case of the USA when the thirteen colonies got together to achieve a more perfect union as an independent state. The history of Australia fits that same pattern, as does even multicultural Switzerland.[59]

The second category is where a large country decides to divide its power between the constituent States and the national government. This kind of federalism is known as 'holding together' federations. In other words, the holding together federations are established from the attempts to keep together an already existing state through the democratic bargaining of the central government with individual regions for the degree of their autonomy.[60] In this second category, the central government tends to be more powerful vis-à-vis the States. Very often different constituent units of the federation have unequal powers. Some units are granted special powers.[61] This has been the origin of the long process of the transition in Belgium since independence in the 1830's from what was supposed to be a unitary nation-state to a new federal state. A similar

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[57]. Stepan, Alfred, Federalism and Democracy: Beyond the U.S. Model, Journal of Democracy, vol 4, no 1, 1999, p.10.

[58]. Ibid

[59]. Juan J. Linz, Alfred Stepan and Yogendra Yadav ,"Nation State" or "State Nation"?: Conceptual Reflections and Some Spanish, Belgian and Indian Data, background paper for HDR 2004.Available at http://hdr.undp.org/en/reports/global/hdr2004/papers/HDR2004_Alfred_Stepan.pdf accessed at Nov. 23, 2013, p.3

[60]. Watts Ronald, Federalism Today, the background paper written for the International Conference on Federalism Saint Gallen, Switzerland, 2002, pp 4.

[61]. Kincaid John., Handbook of Federal Countries: Introduction, Montreal and Kingston: McGill, Queen's University Press, 2002, pp. 9.

process occurred in Spain in the 1970s. The third category is established through a heavily coercive effort by a non-democratic centralizing power to put together a multinational state, some of the components of which had previously been independent states.[62]This kind of federalism is a putting together federalism. The USSR was an example of this type of federalism. The basic difference between holding together and putting together federalism is the imposition of coercive force to seize together the states, in case of putting together and free will of the states is the prerequisite for holding together federalism.

Identifying Ethiopia's federalism into one of the above three stepan's categories has been controversial. For scholars like Andreas Eshete, the 'bargain' that led to the formation of ethnic federalism in Ethiopia was offered by a 'revolutionary overthrow of a unitary state.' He, therefore, considered the Ethiopian federation as a result of the *coming together* of the country's ethnic groups who freely decided to reconstruct their shared political community on a new basis.[63]In contrast, Assefa Fisseha suggested that the formation of federalism in Ethiopia followed Stepan's model of *holding together* federation.[64] Edmond Keller, in his part noted that Ethiopia's ethnic federalism began in 1991 as 'holding together' but receded since 1992 into a monopolization of the political landscape by the EPRDF.[65] Both of the above views, failed to appreciate the fact that the post-1991 political order in Ethiopia was imposed by the EPRDF with little or no participation by other political forces. Another Ethiopian scholar on federalism, Asnake Kefale argues that, the creation and maintenance of Ethiopian federalism resembles more of putting together variant.[66]Efrem Madebo on the other hand said that instead of, putting together federation which is coercive, the formation of holding together federations which is in voluntary basis could have been the ideal choice for Ethiopia.[67]

Hence, Ethiopian federation is a holding together thinking that the country had been stayed under

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[62]. Supra note at 60.

[63]. Andreas Eshete, Ethnic Federalism: New Frontiers in Ethiopian Politics, in First National Conference on Federalism, Conflict and Peace Building (Addis Ababa, United Printers, Plc. 2003, p. 61

[64] .Assefa, Fiseha, Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism, in D. Turton (ed.), Ethnic Federalism: The Ethiopian Experience in Comparative Perspective, London: James Currey,2006, p. 132

[65]. Keller Edmond, Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia, African Journal of Political Science (2002), pp. 7(1).

[66].Asnake Kefale, Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions, (PhD Dissertation, Lidein University, the Netherlands, 2009.), pp 43.

unitary state, for a long period of time, no independent state were exist before the federation crafted.

**2.2.4.2. Executive Vs. legislative federalism**

In the regime of executive federalism the fact that the federal government is responsible for the enactment of federal laws while the states remain mainly responsible for the execution of such laws. On the other hand in the approach of legislative federalism "separate policy areas are assigned to each respective levels of government, with each level then being sovereign within its own field."[67] It apportions responsibility for policy making and implementation to each level of government within its area of policy jurisdiction.[68] The USA and Australia are the primary example which introduces this model of division of power. It also termed coordinate federalism.[69]The Ethiopian and Canadian federations also fall under this category.[70]The executive in federations is widely practiced in Germany and Switzerland and to some degree in India. In these federations administrative responsibility has not coincided with legislative authority. Administration for many areas of federal legislative authority is constitutionally assigned to the governments of the units.[71] The Swiss Constitution states: "The cantons shall implement federal laws in conformity with the constitution and the statute."[72]There are, however, certain ambiguities on some of the powers as to the divisions of responsibility for the execution of federal laws.

**2.2.4.3. Symmetrical Vs Asymmetrical Federalism**

A federation could take the form of Asymmetric or Symmetric federalism in different countries for various reasons.[73] Asymmetric federalism covers defacto and dejure asymetry. On the one hand, Defacto asymmetry refers to the type of asymmetry that is a feature of all federations to some degree, namely differences between subunits in terms of size and wealth, culture or

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67. Supra note at 29. P.146
68. Ibid
69. Ibid
70. Art.50 (2), 51, 52 and 55 and art. 91, 92 of Canadian constitutional .act
71. Ronald Watts, Comparing Federal Systems, 2nd ed. (Montreal and Kingston: Queen's University Press, 1999) at 37; hereinafter called Comparing Federal Systems.
72. Swiss Constitution Art. 46 (1)
73. Watts Ronald, The theoretical and practical implications of asymmetrical federalism, In Accommodating diversity: Asymmetry in federal states, (Montreal & Kingston: School of Policy Studies Queen's University, 1999.), p.23.

language, and those differences in autonomy, representation and influence in the wider federation that result from such attributes.[74] De jure asymmetry, on the other hand, is the product of conscious constitutional design. It refers to the allocation of different amounts or types of powers, or autonomy in certain policy areas; to some subunits of a federation but not others.[75] Symmetric federalism refers to a federal system of government in which the constituent states to the federation possess equal powers. In a symmetric federalism no distinction is made between constituent states.[76]The"coming together" process of federation formation tend to create constitutionally symmetrical federations, whereas federations that are "holding- together" in their origins and intentions tend to have important, constitutionally embedded, asymmetrical characteristics.[77] Charles Tarlton suggests that all federal systems, despite their constitutional symmetry, have an element of asymmetry in federal-regional relations.[78] Various social, economic and political conditions determine each regional state's relationship to the centre and its commitment to the federation. He also adds that the higher the degree of symmetry a federal system has, the more likely it is that the federation will be viable and suitable. The more a system is asymmetrical, the more unlikely it is that the federation will develop amicably.[79] Lovise Aalen suggests that the Ethiopian federal system is constitutionally symmetrical, that means all regular constituent units have the same formal and legal relationship to the federal government. The Ethiopian regional states are the difference in size, as is the case in most federal countries. But the Constitution still maintains that "Member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers".[80]However, when it comes to the social, economic and political conditions of each unit, the Ethiopian federal system is definitely asymmetrical. Due to the fact that "ethnic identity", or language in practice, has been the determinant factor in the delimitation of the constituent units, the various regions are very different from one another when it comes to ethnic composition, size of population and area, economic development and

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[74]Ibid.
[75]Ibid.
[76]. http://www, definitions.uslegal.com, accessed at 27th Nov. 2013.
[77]. Stepan, Alfred, Federalism and Democracy: Beyond the U.S. Model, Journal of Democracy, vol. 4, no 1, 19993, p.9.
[78]. Charles, T. Symmetry and asymmetry as elements of federalism: a theoretical speculation, Journal of Politics, Vol. 27, 1965, pp.87
[79]. Ibid
[80]. Supra note at 1, Art 47(4).

political landscape.[81]

The constituent units have therefore very different capacities to implement the constitutional provisions and the central government's intervention in each region varies. In the Ethiopian federation, symmetry is the norm. However, states have "equal rights and powers, in multi-national politics asymmetry is almost inevitable.

**2.2.4.4. Dual vs. Cooperative Federalism**

Ademola Ariyo categorizes federalism in to two based on the means through which it can evolve.[82] The first category is **dual federalism** in which the Constitution allows for the creation of two separate and independent tiers of government with their own clearly defined areas of responsibility.[83]The second is the **cooperative federalism**, on the other hand, simply refers to making federalism work through cooperation between various levels of government. It emphasizes the partnership between the different levels of government providing effective public service for the nation.[84]In dual federalism the competences between the local authorities and the federation are divided field by field, and each level of law is exclusively competent in its sphere. While, **cooperative federalism** is different there the legal regulation of different levels competes to regulate the same areas.[85]**Dual federalism** is a theory about the proper relationship between government and the states, portraying the states as powerful components of the federal government nearly equal to the national government. In dual federalism the federal government rules by enumerated powers only that means the federal government may rule only by using powers specifically listed in the Constitution; the federal government has a limited set of constitutional purposes; each government unit of the federation and state is sovereign within its sphere; the relationship between the federation and states is best characterized by tension rather than cooperation.[86] **Cooperative federalism** rejects that state and national government must exist in separate spheres. In this type of federalism the federal and state agencies typically undertake government functions jointly rather than exclusively; the federation and states regularly share

81. Aalen, Lovise, Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000 (Bergen: Chr. Michelsen, Institut Development Studies and Human Rights, 2002), pp 25.
82. Ariyo Ademola, Theories of federalism, a paper presented in the Ad-Hoc Expert Group Meeting, UNCC, Addis Ababa, 2003, pp 12.
83. Ibid.
84. Ibid
85. Schutze Robert., From Dual to Cooperative Federalism: The Changing Structure of European Law. Oxford: Oxford University Press, 2009, pp.5.
86. Ibid

power; power is not concentrated at any government level or in any agency; and the fragmentation of responsibilities gives people and groups access to many venues of influence.[87]

Tsegaye Regassa has suggested that Ethiopian federalism seems to be a dual nature at least in theory.[88]He has asserted that while the constitution does not explicitly stipulate the existence of the principle of federal supremacy[89]in the Ethiopian federation, it holds, in consonance with the principle of federal comity, that "The states shall respect the powers of the Federal Government and the Federal Government shall likewise respect the powers of the States."[90] This provision is indicative, at least in theory, of the dual nature of the Ethiopian federation.

However; the national and state governments form two separate centers of power from each of which the other is barred and between which is something like a jurisdictional, "no man's land", into which both are barred from entering. The practical scrutiny also shows that the central government's most of the time finds ways and means to concentrate power and erode dual federalism.

**2.2.4.5. Territorial Federalism vs. Personal Federalism**

In federal countries, the federated entities can be established on territorial base or on personal base. The territorial federalism consists in splitting the national territory in geographical zones, regions, provinces, districts. In the limit of the competences of the federated entities, people and situations localized in these regions will be ruled by the federated entities. However, such territorial government structures can be controversial, due to the fact that the population demographics of such territories are rarely homogenous. The non-territorial or ethno linguistic autonomy can be particularly beneficial in case of heterogeneous region. This federalism consists in giving to individuals a statute allowing them to depend on the rules edited by the federated entity anywhere the individuals are located on the national territory. This so-called 'personal' or 'cultural' federalism involves self-administration over the cultural, linguistic, ethnic, or religious matters of a determined group.[91]

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[87]. Ibid.

[88]. Tsegaye Regassa, Learning to Live with Conflicts: Federalism as a Tool of Conflict Management in Ethiopia, an Overview, Mizan Law review, Vol 4, No 1, 2007, pp. 93

[89]. The principle of 'federal supremacy' or 'federal paramountcy' maintains that the federal government, its laws, and institutions are supreme, i.e., superior to, and override, the state laws and institutions.

[90]. Supra note, at 1, Art. 50 (8)

[91]. Eide R, The Nation-State Fallacy in Joseph Montville (ed.), Conflict and Peacemaking in Multiethnic Societies (New York: Lexington Books/Macmillan, 1991), pp. 12-15.

## 2.4. The concept of Self-Determination

### 2.4.1. Introductory Remark

The concept of right to self-determination evolved in the course of struggle against colonialism. The then, imperialistic rulers and the residents of their colonies in Asia and Europe had different linguistic and cultural backgrounds and by the time of the end of imperialism, new nation states were created with autonomy to the communities having homogenous language and culture. This type of autonomy was later called right to *self-determination*. In fact, the right to self-determination allows people to make independent decision on how they are governed without the intrusion of others.[92]

The right to self-determination stands for those rights that enable one to make decision about oneself. It has become an all-accepted theory that every individual, social group, linguistic and regional community has right to self-determination. However, there is not unanimous view regarding the limit and boundary of the right to self-determination.[93] Hence, we can suppose self-determination in its general term also includes a *uniting ideology of competing powers between central and sub-unit governments*, not only for groups that felt subordinated or disenfranchised inside larger states can be seen as a reaction to imperialism.

#### 2.4.1.1. Content and Definition of Self-Determination

According to the Charter of the United Nations one of the main purposes of the organization is to develop friendly relations among nations (states) based on respect to the principle of equal rights and self-determination of peoples with a view to ensure international peace (Art 1(2) and Art 55). The grant of sovereign power, which includes the right to self-determination up to secession, is clearly inspired by the views of Lenin and Stalin as expressed in the latter's 'Marxism and the National Question' from 1913.[94] In that publication Stalin calls nations sovereign and grants them the right to self-determination, including secession.[95]The right to self-determination is further recognized and provided in international documents. The content of the right to self-

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[92]. Constituent Assembly Restructuring of the State and Distribution of State Power Committee Report on Concept Paper and Preliminary Draft, 2066(2010) p.122

[93]. Ibid

[94]. Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984), p. 33.

[95]. J.V. Stalin, *Marxism and the National Question* (1913), http://www.marxists.org/reference/archive/stalin/works/1913/03.htm (last visited 19, Dec. 2013).

determination provided such as in International Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights.[96]

According to these instruments, the right to self determination includes the right to freely determine ones political status and pursue economic, social and cultural development. This aspect of self determination entitles 'peoples' to secede and found a separate and sovereign state of their own, constitute the organs necessary to run the state, enact and implement policies and laws and exercise all the powers and authorities emanating from sovereignty; the authority to adopt and implement social, economic cultural development policies and implement the same.

Broadly defined, self determination is the "principle by virtue of which people freely determine their political status and freely pursue their economic, social and cultural development."[97]Self determination "forms an integral part of the right of people to choose their own political regime and to be free of authoritarian oppression."[98] It is a right to live under a democratic state. Thus, popular sovereignty is the foundation principle of self determination.

### 2.4.2. Dimensions of self-determination

There are two dimensions of the right to self-determination: external self-determination and internal self-determination:

#### 2.4.2.1. External self-determination

External self-determination mostly involves an entity's move in the international arena thereby determining its international status.[99]In a way external self determination deals with the "status of a people vis-a-vis another people, state or empire."[100] Moreover, external self-determination embraces the right of a people to be free of external interference.[101]There is also a general understanding that external self determination includes secession.

#### 2.4.2.2 Internal self-determination

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[96]. Common art.1 of both International Covenant on civil and political rights and International covenant on Economic, Social and Cultural Rights

[97]. M. Pomerance, Self Determination in Law and Practice. The Doctrine in The United Nations 12 (1982).22

[98]. Donald.L. Horowitz: The Cracked Foundations of the Right to Secede, 14 J. D. 2, 7 (2003).

[99]. E.I. Daes, Native Peoples Rights, 27 Les C.D 126(1986)

[100]. P. Thornberry, The Democratic or Internal Aspect of Self Determination with Some Remarks on Federalism, in Modern Law of Self Determination 113, (C. Tomuschat ed. 1993).

[101]. A. Cassese, Self Determination of Peoples. A Legal Reappraisal (1995), 71-140

Internal component of self-determination is often associated with autonomy or self-government.[102] It can be defined as the "right of each member of the community to choose in full freedom the authorities that will implement the genuine will of the people". Self governance is all about the autonomy of government consists in deciding how the internal structure of government is organized, protecting the territorial integrity and autonomy in the area of organization, deciding on their internal affairs, finance, rule making and regulating the means and duration of relations with other autonomous and semi-autonomous entities.[103]

Right of *autonomy* is more of manifestation of self-governance.[104]Usually it involves exercise of a certain form of governmental powers on matters within the autonomous jurisdiction of a people. In its formulation the autonomy could either be *territorial or thematic*. When right of self-governance is *territorial*[105], it may take the form of component part of a federal government, or of a regional government to which powers have been devolved within a state.[106]The creation of such arrangement involves power allocation, which is usually defined by a Constitution or a law that is above the ordinary law.[107]The area of competence of the units or local government can range from autonomy over most policies and laws in the region or part of the state to a people having exclusive control over the aspects of policy, such as education, social or cultural matters.[108]In such a way, territorial autonomy, particularly federalism defends the cause of cultural groups by providing room for modes of self-governance which are peculiar to local needs and interests while at the same time making cooperation at the center possible.[109]

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[102] Hans-Joachim Heintze, 'On the Legal Understanding of Autonomy,' in Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague/ London/ Boston: Kluwer Law International, 1998), p. 9.

[103]. A. Cassese, supra note at 101, p.97-98

[104]. A. Gunlicks, Constitutional Law and the Protection of Sub national Governments in the United States and West Germany, 18 PUBLIUS 1, 141-158 (1988).

[105]. Territorial autonomy, if it takes the form of federalism, is particularly instrumental only where conflicting ethnic groups are territorially based. D Rothchild 'Reconfiguring state-ethnic relations in Africa: Liberalization and the search for new routines of interaction' in P Lewis (eds.) Africa: Dilemmas of development and change (1998) at 225

[106]. P Alston and H Stiener International human rights in context: Law, politics and morals (1996) at 991.

[107]. 'The jurisdiction of the autonomy should be determined in detail by law and there should be a legal procedure for resolving jurisdictional disagreement' and the existence of the autonomy should not be dependent upon the will of the state. L Hannikainem 'Self-determination and autonomy in international law' in M Suksi (eds.) *Autonomy: Applications and implications* (1998) 91.

[108]. The International Commission of Jurists in its report on Bangladesh stated that 'if one of the constituent peoples of a state is denied equal rights and is discriminated against, it is submitted that their full right of self-determination will revive.' Quoted in McCorquodale (1994) 'Self-determination: A human rights approach' 43 *International and Comparative Law Quarterly* 863

[109]. In a federalism, "the different groups in the constituent states as a whole form a 'nation by will'. The groups do not melt into a central state, but into a voluntary association". H J Heintze 'On legal understanding of autonomy.' in Suksi (eds.) supra note at 102, p. 24.

The formulation of autonomy regimes that cover certain aspects of the lives of groups is essentially *thematic*. One such type of regime is what may be called *personal law*.[110]When autonomy regimes are formulated as such; members of definite ethnic groups will be governed with respect of such matters of civil law like family law (i.e. marriage divorce, adoption) or perhaps inheritance (succession) and by law distinctive to them.[111]

Self governance is also the liberty to experiment with courses by way of laws and institutions.[112] Stated otherwise; exercising a capacity to make laws and policies as well as administer and adjudicate those policies and laws implies the possession of a self governing status. Moreover, internal self-determination is meant participatory democracy: the right to decide the form of government and the identity of rulers by the whole population of a state and the right of a population group within the state to participate in decision making at the state level. Internal self-determination can also mean the right to exercise cultural, linguistic, religious or (territorial) political autonomy within the boundaries of the existing states.[113]

On these bases it is further indicated that self-determination should be re-construed or developed to encompass 'right to democratic governance' on the level of the nation State. In a similar hint, internal self-determination concerns the choice of a system of governance and the administration of both functions of governance according to the will of the governed.

**2.4.3. Constitutional Self-Determination**

According to Paul Brietzke, self-determination, especially in Ethiopia, is all about answering the question "who should clear a path through the political thicket, and how, and who should then be able to walk this path?"[114]

The FDRE Constitution continued the self determination project already instituted by the Charter. However, today the dominant view in legal doctrine gives a wider meaning to self-determination. According to this vision, the right to self-determination of Ethiopia has an internal

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[110]. Supra note at 106, p.991.

[111]. ibid

[112].A. B. Gunlicks, Constitutional Law and the Protection of Sub national Governments in the United States and West Germany, 18 PUBLIUS 1, (1988).

[113]. Dr. Michael c. van Walt van Praag, the implementation of the right to self-determination as a contribution to conflict prevention, report of the international conference of experts held in Barcelona from 21 to 27 November 1998,unesco.p.12

[114]. Paul H. Brietzke, Ethiopia's Leap in the Dark: Federalism and Self Determination in the New Constitution, 39 J.AFR.L 1, 30 (1995)

as well as an external component and secession is part of the external component.[115] The internal component is often associated with autonomy or self-government.[116] Moreover, the FDRE Constitution, under Art.8 (1) declares "all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia." Specifically, the FDRE Constitution recognizes the right of "every Nation, Nationality and People in Ethiopia" to self determination.[117]However, the FDRE Constitution deviates from the Transitional Period Charter, that the provisional charter adopted a conditional right of secession under Article 2(c) of which could only be exercised when the nations, nationalities and peoples were prevented from exercising the other aspects of their right to self-determination.

The Soviet constitution of 1977 has granted a right to secession,[118]but this was just form: there was no intention to actually uphold the right.[119] Similarly, the 1974 SFRY constitution was provided that the quite clearly assigned to all 'nations' contained in the federation the right to self-determination, including expressly the right of secession. Each of the federal republics was seen as the political expression of the constituent nations. Hence the republics had had assigned to them an express right to self-determination and secession. [120]

The South African Constitution also allows for the right to self-determination of a community, within the framework of "the right of the South African people as a whole to self-determination", and pursuant to national legislation. This section of the constitution was one of the negotiated settlements during the handing over of political power in 1994. Supporters of an independent white homeland have argued that their goals are legitimate under this legislation.[121]Implied constitutional self-determination might be grounded in Canadian Federation. Despite the fact that there is no express Constitutional self-determination status for Quebec in the Canadian

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[115]. Kristin Henrard and Stefan Smis, 'Recent experiences in South Africa and Ethiopia to accommodate cultural diversity: a regained interest in the right of self-determination,' Journal of African law, Vol. 44 (2000), 22.
[116]. Hans-Joachim Heintze, 'On the Legal Understanding of Autonomy,' in Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague/ London/ Boston: Kluwer Law International, 1998), p. 9.
[117]. Supra note, at.1, art. 39(1)
[118]. Article 72 of the Soviet Constitution stipulated that each of the 15 union republics had a right to secede from the USSR
[119]. Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984), p.51-52
[120]. Constitution of the Socialist Federal Republic of Yugoslavia, Basic Principles, Section I.
[121]. South African Constitution of 1996, Section 235"

Constitution on the secession initiative, all of the other participants in Confederation would have to recognize" i.e., agreement and cooperation of the central authorities needed. This view was strongly confirmed by the Canadian Supreme Court in a reference concerning the possible secession of Quebec.[122]

### 2.4.4. Purpose of Self-Determination

The usual way of discussing the purposes of self determination is explaining the benefits that the principle bestows on the people that embrace it. Thus, the following are an attempt to discuss the purposes of self determination:

### 2. 4.4.1. Popular sovereignty

The proponents of self determination as an ideal means of achieving the ends of popular sovereignty include such prominent personalities as Woodrow Wilson. Self-determination, they say promote democratic rule as it enables people to pick up their own governments along with the forms of governments.[123] The intrinsic idea of the right of self determination is to provide ever people with the possibility to live under those political, social and cultural conditions that correspond best with its characteristic singularity, and above all to protect and develop its own identity.

### 2.4.4.2. The Collective Rights

Self-determination in a way facilitates the quest for individual and group identities thereby shaping individual and group aspirations to self-rule. In other words," the claim for self-rule "...arises from a desire for freedom and fair treatment by citizens who belong to historically ridicule and deprived cultural communities".[124]

### 2.3.4.3. The Democratic Right

It gives more emphasis on the benefits of self determination that confers via enhancing effective participation in government. This argument from democracy to internal self determination urges in finding "appropriate levels of democratic self government to guarantee effective participation by all in the economic and political life of a country."[125]Internal self-determination prefigures effective self-governance and contains desires to secession. With this regard, A. Eide considers the possibilities of "pluralism in togetherness" and "pluralism by territorial sub

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[122]. MARC WELLER, The Self-determination Trap, Vol. 4, No. 1, 3–28, (2005). P.20

[123]. Thomas M. Franck, The Emerging Right to Democratic Governance, American J.I.L. 86, 47 (1992), p. 50 , CASSESE, supra note at 101, p.97-98

[124]. Andreas Eshete, Implementing Human Rights and a Democratic Constitution in Ethiopia, 21 J.OFOPIN.1, 8-13 (1993)

[125] .H. Hannum, The Specter of Secession: Responding to Claims for Ethnic Self-Determination, 77 FOR. AFF. 2, 13-18 (1998) 126 ibid

division" in addressing the needs of minorities.[127] As such; internal self-determination avails groups multiple layers of opportunities to address their problems.

**2.4. Conclusion**

Even though the definition of federalism has been provided by various scholars in various ways, there are common features that should be reflected from a good federal system. These are a federation should contain two or more levels (or tiers) of government. Thus, Federalism is one of the constitutional principles; it specifies a type of constitution in which there are two levels of Constitutional government: the national and the sub-national. For the sub-national level of government to have Constitutional standing that is, the autonomy to make rules, apply them to particular cases, and govern itself under the rule of law, it must have its own legislature, executive, and judiciary.

In Ethiopia the HoF has no role in law *making* but has a power of Constitutional adjudication, in which it is partial dependent body of the ruling party government to decide on the meaning of the contested provisions of the Constitution. Among the various types of federalism, Ethiopian federal system is likely to be grouped in the symmetrical in equal power sharing for the components, ethno-linguistic cultural territory, legislative, dual structural government and holding together origin type formation. As indicated under Arts. 8, 39, 47, 50 and 52 of the FDRE Constitution each Regional state creates their own governance and governed by their own State Councils subject to make legislation is respectively extended to judicial powers to adjudicate the matters, equally powers and responsibilities are provided in the Constitution. So the existence and authority of each tier fundamental provisions of the constitution cannot be unilaterally changed by one level of government.

Self-determination is generally categorized in to internal and external under the international arena in which the FDRE Constitution adopts the same principle. It guarantees ethnic groups with group rights to preserve their identities, to use their languages, to practice and promote their cultures; to administer and independently decide on their internal matters is essential for ensuring and maintaining federalism as a model of indisputable self governance. A regional government is a set of legislative, executive and judiciary institutions responsible for their respective regional citizens as far as concerned their internal affairs independent from central government domination.

127. A. Eide, In Search of Constructive Alternatives to Secession, in MODERN LAW OF SELF DETERMINATION, ( C. Tomuschat ed, 1993).p. 161-174

**HAPTER THREE: CONCEPTUAL FRAMEWORK AND DEVELOPMENT OF CASSATION**

### 3.1. Introduction

This chapter explores the meaning of cassation from different countries nature has been indicated and also the dimension concept of selected countries cassation within the limits of their Cassation review power has been incorporated. Equally, the historical development of Cassation from institutional and Constitutional aspects has been explored.

The attention of the chapter mostly depends on the jurisdiction and the role of Cassation in selected countries of the world. In this regard, the jurisdiction of Cassation or Supreme Courts power to review the other Court's decision is divided into: Civil Law Traditions, Common Law Traditions and some East European Countries. As well as, how the decision of Supreme Court review binds the other courts is examined with comparing and contrasting Common and Civil Law Traditions as well as its limitations of review has been explored.

Therefore, the purpose of this chapter has to observe the experiences of other countries judicial arrangement with the Ethiopian current Federal set up. Moreover, the chapter explores how the traditional experience of review (Cassation) of Ethiopian federalism is connected.

## 3.2. Conceptual Framework of Cassation

The term 'cassation' comes from the French verb 'Casser' and its literal meaning is to "quash the force and validity of a judgment. **The Court of Cassation (**French: *Cour de cassation)*; is one of France**'s** courts of last resort having jurisdiction over all matters triable in the judicial stream with the scope of review in determining miscarriages of justice or in certifying questions of law.[128] Also Court of Cassation is described as the highest court in France. The court's name derives from its power to quash the decrees of inferior courts, also termed Cour de Cassation.[129]

On the other side, in the Italian laws 'cassation' is setting aside final judgments for errors of law appearing in the opinion of the court of the last resort and referring the case for final determination to appellate court than that which rendered the judgment.[130] while the Russian and

[128]. http//en.wikipedia.org/wiki/court-of-cassation-in French

[129]. Black's Law Dictionary (8th ed. 2004), p.1087

[130]. Authur Englemann and others, A history of continental civil procedure, vol. 7(1969), p. 120

East European countries, cassation means breaking the validity of final judgment of a court of last resort for error of law by highest court substituting a judgment of its own.[131]The Cassation Court to declare cases on the ground that there has been a "*prima facie judicial error,* which may give or has given rise to grave consequences". This admission ground appears to refer to questions of law rather than questions of fact, which is common in European states.[132]

Besides cassation measures, there are other ways of revision or review applicable in countries like England, USA and India:

These methods have their origin England often referred to as ancient writs. These include **certiorari**, **mandamus** and **prohibition**. Though their availability, scope and grounds for such writs slightly differ among the countries such mentioned, their meaning and function is largely the same. The three writs mentioned above have primarily a prerogative nature. **Certiorari** is an order which quashes a decision that is found to be invalid because it is outside the powers granted to the court or tribunal ultra-virus, or has been given in proceedings in which the principle of natural justice where not observed or where there has been an error of law on the face of the record. Prohibition lies to prevent some unlawful action by a tribunal on the granting of an order of **certiorari** where as **certiorari** quashes unlawful conduct, prohibition prevents future or continued unlawful conduct. **Mandamus** is a royal command in England to secure the proper performance of a tribunals function. It is usually sought in addition to an order of **certiorari** and is designed to ensure the performance of public duty. For example **mandamus** would lie to compel a tribunal to hear a case which if had mistakenly decided was not within jurisdiction. [133]

The tasks of supreme courts are to examine the decisions of lower courts and to change or quash decisions that are not in line with the law. In contrast, the highest court of Sweden is typically more restrictive in this regard and only admits cases where a *grave* error has been committed.[134]

In some other jurisdictions there is a listing of which breaches of the law will form grounds for

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[131]. David. S. Clark: the civil law tradition: Europe, Latin America and East Asia, (1994), p. 547

[132]. Hauser v Austria, application no. 37301/03, ECtHR judgment of 7 December 2006, para 52

[133] . Robin. C. White, the administration of justice, (UK: Blackwell, 2nd ed.1991), p.269.

[134]. See e.g. the Swedish Code of Judicial Procedure (1942:740), Chapter 54, Article 10 (2).

acceptability of applications to the highest court (often, primarily procedural errors, or "errors of law", as opposed to "errors of fact"), possibly together with a catch-all clause to also allow for admission of petitions on other grave breaches of the law.[135] Therefore, the Cassation review concept is different from country to country as it shall be review a judicial act within the scope, grounds and justifications presented in the Cassation grievance based on the countries jurisdiction.

### 3.3. Brief Historical Development of Cassation

Though the state for the origin of cassation goes to France, the institution has gained much acceptance and is at work in many east European countries (such as Poland, Rumania…) Italy, Egypt and also in Russia.[136]Cassation has undergone through a good number of changes its relatively young existence from its inception; having different motives and objectives, at different times in its historical development in France. For instance, before the attained judicial centralization, there was an institution of 'demande on cassation', which was an outgrowth of the struggle between the sovereign's bent on the centralizing the realm and the parliaments struggle for retention of local autonomy.[137]Through this institution, 'demande cassation' could be made to sovereign who would assign the demand to the 'counseil des parties' (a section of council of government) which reviews error of law committed in decisions of parliaments, the courts of last resort in a number of French cities.[138]The sovereign's power of cassation was one method of guaranteeing enforcement enactments.[139] One may simply think it to mean that it was just 'the long hand' of the sovereign to keep things under its pace, overriding standards of limitations. When France gained judicial centralization in 18th century, the goal of 'cassation' dramatically changed from obtaining judicial centralization to that of limiting the power of judiciary to apply mechanically the pure text of legislation.[140] Thus 'tribunal de cassation' was created by decree of

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[135].See e.g. the Polish Criminal Procedure Code, Journal of Laws 1997, No. 89, item 555 (entry into force 1 September 1998, last amended 13 July 2012), Article 439, and the Criminal Procedure Code of the Republic of Moldova (No.122-XV), 14 of March 2003, Article 427.

[136].Authur Englemann and others, A history of continental civil procedure, vol. 7(1969), p.118

[137].Mauro cappelletti: the Italian legal system: An introduction; (1967), p. 149.

[138].Ibid

[139] .Ibid

[140]. Ibid

Nov.27, 1770, as non judicial Constitutional organs. The function was to see that courts strictly applied the letter of law and did not legislate.[141]

The last important event in the historical development of Cassation in France is the introduction of code Napoleon, in the 19th C. The code has adopted the principle of separation of powers, which required that the tribunal refrain from usurping judicial powers.[142]Consequently it was permitted neither to interpret the law in a manner binding up on the courts nor to adjudicate the case.[143]Thus, with the recognition of judicial power of interpretation by the code Napoleon, the tribunal de cassation was transferred in to the supreme judicial organ with the power to review error of law committed by the lower courts, its purpose now being evolved in that of attaining uniformity and correct application of law throughout France.[144]Later on, Italy in the code of civil procedure of 1865, adopted the institution of cassation which shared substantially the same characteristics with that had been developed in France.[145]The French model was also initiated in Belgium, Netherlands (Holland), Spain, Greece, and other countries.[146] Also another group of countries, including Germany, Austria, and Switzerland developed a means of attack on judgment known as reversion, by which aggrieved parties may seek review of appellate judgments in Supreme Court.[147]

The development of *cassation* in the Netherlands was heavily influenced by the French during the Batavian Revolution at the end of 18th century. The establishment of the Supreme Court on 1838 brought an end to the Grote Raad van Mechelen and its successor the Hoge Raad Van Holland, Zeeland en West-Friesland which both served as high appellate courts.[148] Similarly, the Supreme Court of Cassation in Serbian is the court of last resort in the Republic of Serbia

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[141] David. S. Clark: the civil law tradition: Europe, Latin America and East Asia, (1994), p.435
[142]. Ibid
[143].Ibid
[144] Ibid
[145] ·Mauro cappelletti: the Italian legal system: An introduction; (1967), p.15
[146]. Ibid
[147]. Ibid.

[148].Geschiedenis van de Hoge Raad".Rechtspraak.nl (in Dutch). De Rechtspraak, 2004-09-18. Retrieve 2013-12-02

Formerly called the Supreme Court of Serbia, it is the court of cassation which reviews and possibly overturns previous rulings made by lower courts. It was established in 1846 by a decree of Prince Aleksandar Karađorđević. In the last years, since it was established, the Court has asserted its authority within judiciary in Serbia and beyond. The Supreme Court of Cassation is today authorized by the Constitution of Serbia and the Law on Organization of Courts.[149] Thus, the development of Cassation in French is a major foundation for the world, including Ethiopia.

### 3.4. The Jurisdiction and Role of Cassation Courts in selected countries of the World

#### 3.4.1. Continental Law Countries

Many of the continental law countries which have Supreme Courts referred to as cassation or revision courts. We will try to investigate the jurisdiction of cassation of French, Switzerland and Germany, as follows.

#### 3.4.1.1. France:

Many continental countries have constitutional courts as well as final courts of petition called courts of cassation (*Cour de Cassation* in French) for adjudication of non-constitutional matters. The Court of Cassation of France is considered as a representative of the Continental law tradition is of great interest for a philosophical study of international practice.[150]

The Court of Cassation is the highest court in the French judiciary. Civil, commercial, social or criminal cases, industrial or labor cases etc are reviewed by cassation. This specialized court never rules on the facts of a case but is absolutely required to interpret a rule of law whether the said rule is substantive or procedural, or part of old or new legislation. This naturally enhances the importance of its decisions.[151]

Apart from being at the apex of the pyramid, there are two other characteristics that single the Court of Cassation out from other courts.

It is unique: "There is one Court of Cassation for the whole Republic". The Court's essential purpose is to unify the case-law and ensure that the interpretation of texts is the same throughout

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[149]. http://en wekipedia.org/wiki/supreme-court-of-cassation-(Serbia)#cite note-1]

[150] .Anna Ohanyan: The limits of discretion of the Court of Cassation of the Republic of Armenia in its judgments on admissibility of a cassation complaint, LLM Thesis (American University of Armenia, 2011), p.15

[151]. Official websiteoftheCourdeCassation de France. / http://www.courdecassation.fr/about_the_court_9256.html#3)

the whole territory. It is the fact that the Court of Cassation is unique that makes it possible to achieve uniformity of interpretation, and hence to develop case-law that must be *authoritative*, *uniqueness* and *uniformity* being interdependent.[152]

Secondly, the Court of Cassation is not a court of third instance after the appeal courts and other courts. Its goal is essentially not to rule on the facts, but to shape whether the law has been correctly applied on the basis of the facts already definitively assessed in the decisions referred to it. In reality, it judges the decisions of other courts: its role is to state whether those courts have correctly applied the law in light of the truth, determined by them alone, of the case brought before them and of the questions put to them.[153] This is why the Court of Cassation does not strictly speaking deliver a ruling on the disputes which are at the origin of the decisions but on the decisions themselves for the rationale of delivering harmonized interpretation.

The other value of the Court de Cassation of France is that, it cannot make law importance. And since the Court does not make law, its decisions can be extremely brief, lacking any 'case law technique' familiar from common law.[154] The fact that in France, the Cour de cassation's *jurisprudence* is not *officially* binding on the lower courts is of crucial importance here. While they do not have the means of moderating the precedent rule like courts below the US Supreme Court, French lower courts are always free to depart from the Cour de cassation's *jurisprudence* and invite the Court to change it so that it is updated to reflect the needs of society. [155]

Therefore, the Cour de cassation quashes a lower court's decision and sends it back to another court for the final decision (while the Court's review is limited to points of law,[156] and the Court's wide supervisory power over the lower courts are the crucial elements giving the Court's *jurisprudence* its force. Cassation is conceived as authorize imposed on lower judges for disobeying the legislator.[157]

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[154]. Jan Komárek, 'Judicial Lawmaking and Precedent in Supreme Courts: The European Court of Justice Compared to the US Supreme Court and the French Cour de cassation' (2008-2009) Cambridge Yearbook of European Legal Studies 11, p.3

[155]. On the role of the lower courts and their decisions see e.g. Marie-Anne Frison-Roche and Serge Bories, 'La jurisprudence massive', (1993) Dalloz, Chr. 287)

[156]. Supra note at 154, p.20

[157].As Zénati in La jurisprudence (Dalloz, Paris 2001) at 43 says, cassation was introduced to the French procedure by the King in the 18th century for the same purpose: to control judicial obedience to the royal authority.

### 3.4.1.2. Switzerland

With regard to the Judiciary, Switzerland has followed the concept of federalism within the civil law system. Accordingly, unlike in the US and in some other common law federal countries, there is no perfect dualism between the Federal and the State judiciary. The main pillars of the Swiss judiciary are the cantonal courts organized by the cantons and have the power to interpret and to apply Federal law as well as the respective cantonal law. The cantons have the constitutional power and responsibility of implement federal law[158]. In Switzerland, as a logical corollary of the horizontal division of power, most legal questions are handled in cantonal courts; with an appeal to the Federal Supreme Court only in relation to federal law.[159]

The Supreme judicial body of Switzerland is the Federal Supreme Court in Lausanne. It exists by virtue of Federal law and in civil litigation it hears appeals against decision of higher cantonal courts. Its main purpose to ensure that Federal law such as the code of obligations: applied uniformly throughout Switzerland that have been violated by the cantonal court, applied in the boundaries set by Federal law are not contravened in the course of the enactment, application and interpretation of law and the administration of justice. In addition it is vested with the power of examine cantonal Court judgments with respect to their conformity with constitutional principles such as due process of law.[161]

Three cantons (Appenzell, St. Gallen and Zurich) have a Court of Cassation as the cantonal court of last instance, to hear nullity appeals against decisions of the Courts of Appeal and the Commercial courts. A nullity appeal is usually available only in cases of gross procedural defects, on an arbitrary determination of facts (which is a violation of cantonal procedural law), as well as on a misapplication of federal substantive law.[160] Two appeals may be filed simultaneously: a nullity appeal to the Court of Cassation and an ordinary appeal to the Federal Supreme Court. The Federal Tribunal will then stay the appeal a proceeding under the Court of Cassation has decided. [161] Therefore, the available appeal remedies are the nullity appeal to the court of Cassation if nullity grounds are concerned and the unified Federal appeal to the Federal Supreme Court.

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[158]. The federal Constitution of Switzerland, Art. 46.

[159].http://www.forumfed.org/federalism/cntrylist.asp?lang=en p.16, viewed 22 march 2014

[160].IBA legal practice Division Committee Newsletter, Nicolas Herzog and George Naegell (2007).p.28

[161].http://www.law- links.ch/schweiz.html#S02, accessed on 22 march 2014

### 3.4.1.3. **Germany***:*

In Germany there are five federal courts with different scope of authority, comprising civil and criminal jurisdiction, administrative, fiscal, and social and the jurisdiction in labor matters. The highest court of general jurisdiction is the Federal Court of Justice. These specialized federal supreme courts are the final arbiters of disputes within their respective subject matter competence. Its most important role is to hear the appeals (Revision) from the decisions by the higher courts of the states and it hears only legal, not factual questions. In this manner Germany courts play quite an important role, which has been strongly criticized, mainly in the light of the separation of powers. [162] In Germany, there is no system of dual courts of the Federation and the Lander. [163]Therefore, a Federal state may adhere either to the dual court structure where each of the units, on the one hand, and the Federal Government, on the other, has its own stratified court structure or to the establishment of only a Supreme Court for the Central Government and other Courts of the units which are independent by themselves but dependent in relation to the jurisdiction of the National Supreme Court.

In Germany, according to the official website of the German Court of Justice, in civil cases, the remedy of appeal on points of law (Revision) is available against final judgments passed by regional and higher regional courts acting as appellate courts. In practice, the possibility of lodging an appeal against a first-instance judgment given by a regional court is very rarely used. Appeal proceedings will only take place if the lower appellate court has granted leave to appeal in its judgment, or if allowed by the court of appeal following an appeal against refusal of leave to appeal. The appeal shall be allowed if the case is of fundamental legal importance, or if the development of the law or ensuring uniformity of the law calls for a decision by the court of appeal. The court of appeal is bound by the leave to appeal granted by the lower appellate court.[164]

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[162]. Neil MacCormick, Robert S. Summers, Interpreting Statutes: A Comparative Study (Applied Legal Philosophy) (Dartmouth Pub Co 1991), p.107

[163]. David Morris, “Judicial Process”, (Pitman Publishing Co., 1992), p. 50

[164].officialwebsiteof:GermanCourtofJustice./accessed30.10.2013/http://www.bundesgerichtshof.de/EN/FCoJ/TaskOrganisation/ Proceedings/proceedings_node.html

In civil law countries the judicial decision is automatically binding on others? The question here is to understand the civil law jurisprudence. In this regard Dawson notes that the debate on whether Germany should have a system of following previous decisions 'had an odd, other experienced quality, since according to him Germany already had a precedent system working order.'[165] On the other hand, Germany though not being a classical country of precedent and not having a binding provision of applying precedent, the precedent has a very important role in all branches of law but their importance varies.[166] As far as a country which is based on the codified system of law, Germany will have no problem of not having precedents, as the judges may interpret law with or without precedent. The precedent also has a duty to fill the gaps of law in Germany.

In brief in the continental countries the SC or court of cassation adjudicates non-constitutional matters on issues of national importance for the purpose of unifying or developing the law of the country, whereas Germany has different field of specialized Supreme Courts.

### 3.4.2. Common law jurisdictions

Common law courts are unified, meaning that there is generally one Appeals Court and one Supreme Court in which any case may be subject to final scrutiny.[167]The jurisdiction of inferior courts, which deal with criminal and civil matters, is limited geographically and according to the nature of the subject-matter.[168]There will also be variance if the country is federal, in which case the rule of law practitioner will need to determine the jurisdiction of federal (national) and state(sub-national) courts. Therefore, we will briefly describe the review powers of courts of common law countries as follows.

### 3.4.2.1. United States of America

The United States blend the functions of judicial review and cassation or the review of lower court decisions. At the apex of federal judicial pyramid is the supreme court of USA whose

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[165]. Supra not at 154, p.19
[166] . MacCormick, D.N., summer, R.S., *Interpreting precedents*, England, USA, 1997, p. 17-20.
[167] .Merry man, *The Civil Law Tradition*, p. 88
[168]. Glendon, Gordon and Carozza Comparative Legal Traditions, p.185

main objective is to provide a uniform interpretation and application of the law of the federal government.[169] Apart from its power to review all decisions of the federal appellate courts, the courts has jurisdiction over decisions of the highest state courts when these courts have decided a questions of federal courts.[170]The Supreme Court jurisdiction over the state courts jurisdiction is confined to reviewing decisions of the highest court of state involving a controlling question of federal law.[171]

The discretionary character of the Supreme Court is set forth in Part III Rule 10 of the Supreme Court Rules, according to which the grant of certiorari will be granted only when the case contested involves a controlling federal question for compelling reasons and "Review on a writ of certiorari is not a matter of right, but of judicial discretion. The followings are the focused area to seek review by the Supreme Court by filing a motion for a writ of *certiorari* considers:

a) United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. [172]

On the other hand Rule 11 of the same Act states that the writ of certiorari will be granted only upon a showing that the case is of such vital public importance as to justify deviation from normal appellate practice and to require immediate determination in the Supreme Court. [173]

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[169] ·Daniel John, American courts (Virginia: west publishing. Co.(1991), p.13.

[170] ·Ibid P.28, and see also Mahlon E. Wilson, federal courts Salt Lake City; Grocer printing company, 1993), p. 39

[171.] Ibid

[172.] Rules of the Supreme Court of the United States 2013, Part III Rule 10

[173]. Ibid, Rule.11

Jurisdiction that is confined to a particular type of cases or that may be exercised only under constitutional limits and instruction of US federal court is reviewed by its Supreme Court. "It is a principle of first importance that the Federal Courts are courts of limited jurisdiction.... The Federal Courts ... cannot be courts of general jurisdiction. They are empowered to hear only such cases as are within the judicial power of the United States, as defined in the Constitution, and have been entrusted to them by a jurisdictional grant by Congress."[174]

The American judicial process is based largely on the English common law system. A basic feature of the common law is the doctrine of "precedent," under which judges use the legal principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. Common law Judges of the lower courts are required to follow the decisions of the higher courts within their jurisdiction.[175]

In common law countries, especially in USA, there are two separate judicial hierarchies below the SC: Federal Courts[176] and State Courts. Both the Federal Courts and the State Courts are subject to the appellate jurisdiction of the Supreme Court to review. In USA the Federal and State Courts exist side by side, the latter, retain a high degree of autonomy, similar to that of the courts of European Union Member States, which escape direct control by the Court of Justice.[177]

In USA cases not arising up on the construction of the federal laws, but in which state statutes and constitutions are to be construed, State Courts will only adhere to and follow their own decision not that of the FSC, although such court decision persuasive.[178] However, decisions of the US Supreme Court on question which have federal nature are absolutely binding on various state courts even the latter courts have inconsistent prior decisions with that of the supreme court.[211] In general, the American doctrine of judicial evaluation was far more concerned with

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[174]. Charles Alan Wright, The Law of Federal Courts v. 7, (5th ed. 1994), p. 7
[175]. Thomas F. Hogan: The Federal Court System**, I**N THE UNITED STATES 3rd ed (2010), p.22
[176]. J. Wroblewski, Meaning and truth in the judicial decision, 2nd ed. (Helsinki 1983), p. 157-179
[177].it stress *direct* control, since there are possibilities of enforcing Member States' courts' compliance (through Member States' liability and also infringement actions), although they are very limited. See Jan Komárek, 'Federal elements in the Community judicial system: Building coherence in the Community legal order', (2005) 42 Common Mkt. L. Rev. 9, 10.
[178]. William Mack and Donald. J. Kiser (ed) 'corpus juries' secundum, A comparative re-statement of the entire American law vol. 21 (1940), p.360-361.

federalism than with separation of powers. It is a wide-known fact, that the discretion of the US Supreme Court is the widest in the list of all other court of the world, be it a civil tradition or common law tradition one.[179] Thus, the American federalism is strictly follow the dual court structures, in which case both levels of highest court have review their own matters without interfering others matters, which makes different among other countries of either common or civil law.

### 3.4.2.2. Canada

Another common law country with a solid legal system is Canada. Like Germany the same is true in Canada, there is no system of dual courts, since there is an indication that appeal is lodged to the Supreme Court only from provincial courts.[180] This means that the Supreme Court of Canada stands at the apex of the Canadian judicial system, and exercises "review, civil and criminal jurisdiction within and throughout Canada". This broad jurisdiction is based on sec. 101 of the *Constitution Act, 1867*, which authorizes Parliament to create a "general court of appeal for Canada".[181]

Exceptionally; the dual legal system operating in Canada the Supreme Court's jurisdiction embraces the civil law of the province of Quebec and the common law of other provinces and territories. The Supreme Court of Quebec (the highest resort in the province) makes decisions in civil cases on the basis of the Civil Code's provisions and very often those cases do not reach the Supreme Court of Canada thus making the Quebec Court of Appeal unofficial last resort.[182].However, the Supreme Court of Canada typically will review cases against provincial Supreme Court decisions or provincial references only in cases of particular national interest and/or when appellate courts in different provinces have reached opposing decisions over the same issue.[183]

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[179]. Anna Ohanyan: The limits of discretion of the Court of Cassation of the Republic of Armenia in its judgments of a LLM Thesis (American University of Armenia, 2011), p.18-19

[180]. David Currie, "Federal Courts" (West Publishing Company, 1968), P. 51

[181]. Constitution Act, 1867 (U.K.), 30 & 31 Vict. c. 3, reprinted in R.S.C. 1985, App. II, No. 5. ss. 92(14), 96, and 100[Constitution Act, 1867]

[182]. Fitzgerald, J. 'CISG, Specific Performance, and the Civil Law of Louisiana and Quebec' Journal of Law and Commerce (1998), P. 291-313

[183]. Widely used textbook overviews are Rand Dyck, Canadian Politics (Toronto: Nelson, 579 583).

Before review, there are three procedures by which cases can come before the Court. First, in most cases, a party who wishes to appeal the decision of a lower court must obtain permission, or leave to appeal, from a panel of three judges of the Supreme Court. Second, there are cases, referred to as appeals "as of right", for which leave to appeal is not required. These include certain criminal cases and appeals from opinions pronounced by courts of appeal on matters referred to them by a provincial government. Third, the Court provides advisory opinions on questions referred to it by the Governor in Council.[184]The Court generally do not give reasons for its decisions on applications for leave to appeal.[185]

The Court's decision whether to grant leave to review is based on its assessment of the public importance of the legal issues raised in the case in question. The Court thus has control over its docket and is able to supervise the growth and development of Canadian jurisprudence as well as serves Canadians by deciding legal issues of public importance, thereby contributing to the development of all branches of law applicable within Canada. In most important cases, the discretionary character of the Supreme Court of Canada contributes to the concentration of the attention of the Highest Court judges on cases of vital importance for the uniformity of law, reducing controversies in the legal practice and development of judicial system and also gives the lower courts more autonomy in deciding the case without prejudice precedents or case-law of the High Court but not an absolute reconsideration of its judgments.[186]

The decision of Canadian Supreme Court is bind all Canadian courts except the court of the province of Quebec.[187] But the particular provincial court of appeal binds all lower courts in that particular province. However they are not bound by previous decision.[188]

### 3.4.2.3. Nigeria

Nigeria operates a common law system. The Nigerian Federal structure provides for both Federal and State courts exercising Federal and State judicial power, respectively. However, there is a greater degree of interdependence between the spheres of government in relation to the judiciary. Most significantly, appeals lie from the high Court's of the States to the Federal Court of Appeal

[184.] Official website of the Supreme Court of Canada / accessed 27.12.2013 / http://www.scc-csc.gc.ca/court-cour/role/index-eng.asp

[185.] Official website of the Supreme Court of Canada / accessed 27.12.2013 /http://www.scc-csc.gc.ca/court

[186.] Official website of the Supreme Court of Canada / accessed 27.12.2013 / http://www.scc-csc.gc.ca/court-cour/role/index-eng.asp)cour/role/index-eng.asp

[187.] H .R. Halo and Ellison Kahn, The South African legal system and its background (1968), p.234.

[188.] Ibid, p. 235

and from there to the Supreme Court of Nigeria. Nevertheless, no State has a court of appeal or Supreme Court. The high court is the highest state court, with general civil and criminal jurisdiction over matters arising within the state, which do not fall within the exclusive jurisdiction of the Federal High Court. Cases from State Courts eventually wind up, on appeal, in a Federal Court of Appeal or in the Federal Supreme Court. [189]

Although the federal status of Nigeria, the federal and the state court systems are not in two parallel lines. It is only to a limited extent that it may be asserted that each state has finally determined on its own affairs. Thus, state high court also exercises appellate and supervisory jurisdiction over junior State courts or tribunals.[190]Thus, at the apex of the Nigerian judicial hierarchy, the Supreme Court which exists only at the Federal level and is the final Court of Appeal.[191] The appellate jurisdiction of the Supreme Court is to hear appeals from the Court of Appeal. The Constitution specifies all the cases in which appeal will lie as of right and makes others subject to leave. The component States Court do not have the degree of autonomy to run their own affairs that is generally enjoyed by the constituent units of a democratic Federation.[192]

In Nigeria the Court of Appeal and all lower courts are bound by the decisions of the Supreme Court. The High Courts and other courts of coordinate and subordinate jurisdiction are equally bound by the decisions of the Court of Appeal. [193]

Therefore, it is better to say that the present Court structure has given rise to an unsatisfactory form of centralized institution, which is dominated by the Federal Supreme Court in which case each state judicial matter concern is reviewed by same.

### 3.4.3. Some East European Countries

#### 3.4.3.1. **Russia**

In Russia the SC is divided into three specialized panels: one each for civil, criminal and military.[186]It exercises the supreme judicial supervision over the legality of the judicial function

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[189]. http://www.thomasfleiner.ch/files/categories/IntensivkursII/N) accessed 24/03/2014

[190]. Ibid

[191]. See section 230(1) of the Constitution of the Federal Republic of Nigeria, 1999.

[192].http://www.thomasfleiner.ch/files/categories/IntensivkursII/Nigeriag3.pdf) accessed 24/03/2014

[193].http://www.nyulawglobal.org/globalex/about.htm)accessed 22/02/2014

[194]. Attila pacz, Courts and Tribunals (Budapest Academia kiads, 1994), p.3.

of the ordinary and special courts functioning within the judicial system of the state. [195]In order to ensure the uniform interpretation and application of the law, it also gives the guidance for the courts under its supervision. [196]Review by the SC on ground of error of law is not another instance of appeal in the judicial hierarchy, but rather a review of the case to correct an error of law committed by a lower court in its final decision.[197] In short, cassation court may set aside or modify court resolutions only when it finds material violations of substantive or procedural law rules that have affected the outcome of the case.

Cassation review is a two-tier process in RF. Upon filing a cassation appeal is reviewed by the relevant judge of the cassation court who is entitled to establish whether there are grounds for carrying out the cassation review. If such grounds are established, the cassation appeal is transferred for review at a Cassation Court session. Otherwise the judge issues a ruling refusing to transfer the Cassation appeal for review. That is the decision of one chamber of the SC, usually at the request of the procuracy, be re-examined by an enlarged civil panel and sometimes the decision of the enlarged panel may be re-examined by the whole sitting 'in banc'.[198] Lastly, certain court acts may be appealed (within three months of becoming effective) at a supervisory appeal court: the Presidium of the SC of the RF. The supervisory court may set aside or modify a court ruling/judgment when it finds that it violates: the rights and freedoms guaranteed by the RF Constitution, international law principles and international agreements of the RF; the rights and lawful interests of an indefinite number of persons or other public interests; and the uniformity of the courts' interpretation and application of law.[199]Thus, strictly speaking there is an opportunity of two times reviews within the general court jurisdictions system in RF Supreme Court.

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[195]. Ibid
[196]. Ibid
[197].Tkrebailas valdimis, the Russian courts Moscow: progress publisher, (1994), p.24
[198]. ibid
[199]. Baker & McKenzie – CIS, Doing Business in Russia (2013), P.8-9: st.petersburg@bakermckenzie.com

## 3.5. Conclusion

The Court of cassation or Supreme Courts depending on the country of origin may have the final or last resort power to review the judicial mistakes of lower courts together with the general conceptual duty to ensure the uniformity in the implementation of the law. In the case of Germany and French the Supreme Court do not have any appellate or original jurisdiction; they are simply called court of Cassation. While the Supreme Court in common law and Russia does have a blend of review and appellate powers. Supreme Court in common law, being the court of last resort makes both Courts the final instance in all cases brought in front of them their decisions is ultimate and their precedents are binding.

The USA legal system is a paradigmatic feature of federal countries, which belongs to the common law traditions, where the jurisdiction of the federal Supreme Court is limited to federal laws and state Supreme Court is to state laws. Whereas the French Cour de cassation, having a feature of unitary countries and represents civil law tradition is responsible for the application of the Civil Code has delegated jurisprudence and broadly supervisory role over lower courts. Thus, in Common Law traditions and nowadays also in most of the Civil law tradition countries the supreme courts are policy-making institutions, some vested with power to review the cases of lower courts, others established with the aim to ensure the uniformity of the legal practice. In this regard the common law and few civil law countries also establishing the law of precedents in a sense of they are not confident enough to trust fully the correctness the decision of their respective lower courts. Among the selected countries Germany, Switzerland and Russian federation hold not a single Court of revision Cassation.

Review of cases in Cassation is given by the Supreme Court if a case involves a question of public importance or if it raises an important issue of law is a common feature. The concluding remark in all cases is that the requirement of an application for review by way of Cassation may arbitrary rejection of cases may defeat the goal of maintaining uniformity in the interpretation, in one hand, and reviewing federated units of laws, especially in federal countries may inevitable to trespass the judicial independence or federated states autonomy, on the other.

# CHAPTER FOUR: FEDERALISM, COURT SYSTEM AND CASSATION IN ETHIOPIA:

## 4.1. Introduction

Chapter two offered the conceptual frameworks of federalism and self-determination in general. This chapter has tried to depict federalism, court system and Cassation in to three separated sections in brief. The first section has provided the general overview on federalism of Ethiopia. This section has tried to review Ethiopian federal system from the perspectives of historical background and emphasis given to the present Constitution about issues like basic features and its ideological basis. Also salient features and extent of self determination in Ethiopian federal context has been added.

The second section highlights the court system of Ethiopia in general. It has been devoted to deal with the structure and subject matter distinction of judicial power with its limitations in order to analysis the courts organization and jurisdiction in Ethiopia. The third section also confers the conceptual, meaning and historical development of Cassation in Ethiopian system of law. It has been tried to assess the Constitutionality and relevant domestic legal instruments so as to test the legal base, and scope of Cassation in Ethiopia. Finally, it has been also examined decisions of Cassation division as precedent under Ethiopian federal system with its consequences on state judicial autonomy and on state councils.

## 4.2. Federalism in Ethiopia

In this section the historical background of Federalism in Ethiopia has been observed together with the modern political history of Ethiopian Federalism.

### 4.2.1. Federalism in Ethiopia: Past

The modern Ethiopian state emerged at the second half of 19th century with the coming in to power of Tewodros II (1855- 1868) in 1855 to the throne.[200]Tewodros initiated his predecessors' mirror image imperial policies of modernization and centralization.[201] After Tewodros's death in 1868, Yohannes IV (1872-1889) in 1872 and he pursued his predecessor's policy of unification, although in a different fashion.[202] By referring to the Emperor's readiness to share power with his subordinates so long as his throne was not challenged and adoption of a more careful policy

[200]. Bahru Zewde, a History of Modern Ethiopia 1855-1974 (Athens, Ohio: Ohio University Press, 1991) at 11.
[201]. Teshale Tibebu, the Making of Modern Ethiopia 1896-1974 (Lawrenceville, NJ: The Red Sea Press Inc., 1995)
[202]. Ibid

of accommodation to regionalism[203], Assefa Fisseha remarked that de-facto federalism in Ethiopia has tried to be realized at the reign of Yohannes IV.[204] During his reign he attempt give the power to the kings, *Rases* and the *Dejazmaches* had full-flagged, judiciary power for the court, political and administrative powers in their jurisdiction. [205] After the death of Yohannes in 1889, Menlik seized the Solomonic title and turned the course of the Empire to the South and followed the twin imperial policies of modernization and centralization.[206]

Ethiopia for the most part has been under a decentralized rather than a centralized system of governance preceded the coming in to power of Emperor Haile Selassie in 1930, leaving certain exceptions of brief unitary attempts by Emperor Tewodros (1855-1868) and Menlik II (1889-1913). One observes a co-existence of a duality of authorities mainly that of the Imperial throne, representing the center and a number of *provincial nobilities* effectively exercising decentralized power. Clapham states, "Historic Ethiopia approximated a federal system."[207]The notion of autonomy and unity fully explain such a period. On the other hand during the Menilik era one finds a merger of functions within the executive, the administration of justice and the executive function proper.

The coming in to power of Emperor Haile Selassie in 1930 and the subsequent issuance of the 1931 Constitution was the first written constitution in the history of the country, marks a new era with the purpose of consolidating his power.[208]It heralded the end of the role of the duality that existed for centuries and did not make any reference to federalism. True to its goal of unification and modernization of the country under an Emperor, it could envisage only a unitary state.

In the midst of the strengthening of the Emperor's resolve for centralization of power, Eritrea joined Ethiopia in 1952 under a United Nations (UN) sanctioned federal arrangement.[209]

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[203]. Supra note at 200

[204]. Assefa Fiseha, Federalism and the Accommodation of Diversity in Ethiopia, A comparative Study, (Wolf Legal Publishers, the Netherlands 2007), pp. 11

[105]. Shiferaw Bekele, Kasa and Kasa Papers on the Lives, Times and Images of Tewodros II and Yohannes IV (1855-1889), (1990), p.306

[206]. Supra note at 215, P.48

[207]. Christopher Clapham, "Constitutions and Governance in Ethiopian Political History," in Constitutionalism: Reflections and Recommendations, Symposium on the Making of the New Ethiopian Constitution (Addis Ababa: Inter Africa Group, 1993) at 29, hereinafter called Constitutions and Governance.

[208]. Ibid

[209]. United Nations General Assembly Resolution No 390 (V)/1952.

The Federal Act as well as the Eritrean Constitution provided for a "federal arrangement" between the two governments. Because it was an arrangement by the international actors, the Ethio-Eritrean federation defies both categorizations of federalism (i.e. of territorial or ethnic or personal). It was neither territorial nor personal. Similarly the arrangement tends to be an aggregative type of federalism in a sense.[210] The government of Eritrea was authorized, as a manifestation of its autonomy, to exercise legislative, executive and judicial powers.[211]The actual division of power under the federal act vested a number of basic functions in the federal government: notably defense, foreign affairs, currency and external trade while reserving residual powers to the Eritrean government. These residual powers included civil and criminal law, police, health, education, natural resources, agriculture, industry and internal communication.[212]The Ethiopian Emperor was the sovereign, the Ethiopian courts were the federal courts and the Ethiopian Ministers were the ministers of the federal government.[213]

The Revised Constitution continued to reinforce the process of centralization. It was in a sense an attempt to catch up with the development in Eritrea. The 1955 Revised constitution made no reference to the federalism, though. It established the supremacy of the constitution and by implication of federal laws. But it did not spell out the federal powers and state powers as such. This silence created a room for an unnecessary involvement of the imperial representatives in the affairs of Eritrean government which ultimately led to the dissolution of the Federation. On the other hand during 1960 the Eritrean assembly voted unanimously to change the name Eritrean *government* to Eritrean a*dministration* and other adjustments connoting its lower position than a federation. On 14 November 1962 again the Assembly voted unanimously for the abolition of the federation.[215]In the end, the constitutional asymmetry between the two contributed to the demise of the federation in 1962,[216] and the trend to centralism was perhaps the cause of mismanagement of the federalism which was subsequently liquidated in favor of unity in 1962.

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[210]. Tsegaye Regassa, learning to live with conflicts: federalism as a tool of conflict management in Ethiopia, mizan law review Vol. 4 No.1, (2010), p. 84

[211]. Supra note at 209, Article 4

[212]. ibid, Article 5.

[213].Tesfatsion Medhanie, "Remarks on Eritrea and a Possible Framework for Peace," in Peter Woodward and Murray F. eds., Conflict and Peace in the Horn of Africa (Aldershot: Dartmouth, 1994), p-20

[114]Tsegaye Regassa supra note at 210, p, 83.

[215]. James Paul and Christopher Clapham, Ethiopian *Constitutional Development*, v. 1 (Addis Ababa: Addis Ababa University Press, 1967). P.384

[216]. Markakis John, National and class conflict in the Horn of Africa, Cambridge: Cambridge University Press 1987

In 1974 Emperor Haile Selassie was overthrown and the Derg (military ruling council) entered the stage. The military junta "continued the process of over-centralization introduced by the modernizing emperors of the nineteenth century", [217]transforming and developing the organization inherited from Haile Selassie in a more explicit structured socialist political system.

Later the Constitution stated that Ethiopia is a unitary state constituting administrative and autonomous regions.[218]It stated that the nationalities are equal and ensured the equality of nationalities "through…combating chauvinism and narrow minded nationalism, [and by enhancing] the equality, respectability of the languages of nationalities as well as through equal participation in political, economic, social and cultural fields and through realization of regional autonomy". Accordingly, the National *Shango* proposed five autonomous regions and twenty-four administrative regions.[219] However; the extent of the administrative and autonomous regions to exercise power decentralized to them was cut off by the workers party of Ethiopians centralized decision-making structure and regional autonomy remained a dream that was never fulfilled.

In general, the historic Ethiopian state was a unitarist state making the least effort to institutionalize federalism or other forms of decentralization. However, there were a full contention between forces of centralization on the one hand, and local governors urging for decentralization and autonomy on the other.

The Charter established the framework for the provisional government and guaranteed nationalities to preserve their identity, administer their own affairs within their own defined territory, the right to participate in the central government based on fair and proper representation, and the right to self-determination.[220]In complete departure from the unitary past, the Charter and the Proclamation devolved power from the center to the self-governing regions and signaled the beginning of a 'holding together' federalism.[221]

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[217].G. Calchi Novati, Conflict and the Reshaping of State in the Horn of Africa, in Triulzi A.,M.Cristina Ercolessi (eds.), State, Power, and *New Political Actors in Postcolonial Africa*, Fondazione Giangiacomo Feltrinelli,2004, p. 97

[218]. See Article 59.

[219] .It issued proclamation 14 of 1987, a proclamation establishing autonomous and administrative regions, the five autonomous regions were Eritrea, Tigray, Assab, Dire Dawa, and Ogaden

[220]. See Article 2 of the Charter

[221]. Alfred Stepan, *supra* note 57, makes a distinction between 'coming together' and 'holding together' federalisms by looking at their origin.

The establishment of National Regional Self-Governments was also provided for in another proclamation.[222]The Charter and the proclamation explicitly provided that the boundaries of the territorial regions are defined on the basis of nationality in order to guarantee the nationalities the right to self-administration.[223]The proclamation specifically enumerated both the powers of the central government and those of the self-governments.[224]

The proclamation implying that except for specifically enumerated powers of the central government, all other residual powers belonged to the regional self-governments.[225]The governing units had legislative, executive and judicial powers in all matters other than those expressly assigned to the central government. Despite the wide range of powers was enjoyed by the central government, the self-governing units had Supreme authority over those matters falling under their competence until they were replaced by new elections with the adoption of the 1995 Constitution.[226]

### 4.2.2. Ethiopian Federalism: Present

The political implications that followed the introduction of the Charter and the proclamation issued to establish national/regional self-governments, of two political developments were clearly observable: these are the choice of ethnicity as a basic principle of political organization of the state, and society and the reconstruction of the Ethiopian centralist and unitary state by introducing a federal system of government.[227]The basic formula of the right to self-determination for ethno-national groups is an important remedy for the resolution of Ethiopia's long-standing problem of the nationality question.

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[222]. Proclamation No. 7/1992, a proclamation to provide for the establishment of National/ Regional Self-Governments Negarit Gazeta 51st year No. 2 Addis Ababa, 14th January 1992.

[223]. James C.N. Paul, "Ethnicity and the New Constitutional Order of Ethiopia and Eritrea" in Yash Ghai ed., Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States (Cambridge University Press, 2000) at 188; hereinafter called Ethnicity and the New Constitutional Order

[224]. See Article 9, for instance, which stipulates that national/regional self governments shall have legislative, executive and judicial powers in respect of all matters within their geographical areas except such matters as defense, foreign affairs, economic policy, conferring of citizenship, declaration of state of emergency, deployment of army, printing of currency and major communication networks. See also Article 10

[225]. See Articles 3(5)

[226]. Certainly this is a judgment in retrospect. It is not yet clear why it was not explicit in stating that the course of political action was federal. Fasil Nahum, Constitution for Nation of Nations: The Ethiopian Prospect (Lawrenceville: New Jersey, Red Sea Press, 1997) p.44 stated, "It was not clear whether it is because it is transitional, the one to be laid down being left to the constitutional process or if it was leaving all options open."In any case it was an evolving federal process. Article 9 of Proc. 7/92

[227]. Supra note at 1, the preamble of the constitution

The 1995 Constitution is a departure from the past in many regards. One such regard is the introduction of a federal form of state structure that envisages two layers of government: federal and regional.[228]There are nine regional and two city governments.[229] Government powers and functions are divided between the regional states on the one hand and the federal government on the other. Each entity exercises legislative, executive and judicial powers within its allocated sphere and is autonomous from one another. In the Ethiopian federation, symmetry is the Constitutional standard.[230]Thus; states have "equal rights and powers."[231]

The powers of the federal government are limited to matters expressly enumerated under Article 51 and Article 55 of the Constitution while state governments have residual power; anything that is not given to the federal government alone or the federal and regional governments concurrently is left to regional governments. This is the hall mark of the constitution except under art 99 regarding taxation power are left to the joint session of HPR and HF. It also provides a limited list of exclusive power of the states under Art.52 (2). Although it appears from Article 51 that the powers and functions of the federal government are exhaustively listed, there is a mechanism for the transfer of some powers, especially civil matters from the states to the federal government when the House of Federation deems necessary to establish and sustain one economic community as per Art.62(8) of the FDRE Constitution. In addition; some powers of the federal government can be delegated to the states as per art.50 (9) of FDRE Constitution.

### 4.2.2.1. Ideological foundation of Ethiopian Federalism

The main purpose of dealing with the ideological basis of Ethiopian federalism at this stage is aimed at assessing whether the ideological foundation have something to do with determining the implication of Ethiopian federal set up of regional governments in governing themselves with all aspects in one or another way.

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[228]. Supra note at 1, Art. 50(2)

[229]. Article 47(1) of the Constitution lists Member States of the federation. It should be noted that the Constitution contains a right of self-determination, including the unconditional right of secession. As a result of secession, internal or external, the number of Member States could either increase or decrease. The city governments are that of Addis Ababa and Dire Dawa, which are accountable to the federal government.

[230]. It is true, though, that in multi-national polities, asymmetry is almost inevitable. See, for instance, Rainer Bauböck (2001), Multinational Federations: Territorial or Cultural Autonomy? (Malmo: Malmo University (Willy Brandt Series of Working Papers in International Migration and Ethnic Relations 2/01)). Bauböck says that "Asymmetry is endemic to multinational federations...." p.11

[231]. Supra note at 1, Art. 47(4)

The preambles of FDRE Constitution clearly puts the motivation and aspiration of the nations, nationality and peoples of Ethiopia, need of federalism for dual purposes.[232] The first one is the interest of living together to build one political community founded on rule of law and capable of ensuring lasting peace, guaranteeing democratic order, and to bring economic and social development. It is to emerge common out look towards common destiny and to create one economic community. The second objectives of the foundation of the federation is full and free exercise of the right to self determination (seek for own autonomy) and equality of nations nationalities and peoples. These driving force are the strong blueprint for formation of federalism in Ethiopia. Hence in Ethiopia, federalism serve as a means to an end the age old centralization of power and means for accommodating identity issue though new problem is inevitable.[233]

The dual objectives of the federation serve as instrument of balancing the tension between self-rule and common rule of the federation. However, federation in Ethiopia came up with novel polity by affirming the ethnic identity, and sovereignty of the people in self-determination up to secession unconditionally.[234] The historical event that affects the federal setup of Ethiopia was the emergence of Marxism Leninism as uncontested ideology of students and their challenges to Ethiopian unity and Amhara domination at the second half of 1960s and first half of 1970s.[235]

It is interesting to cite the relevant provisions students where show that clearly resemblances with the current state building strategy:

… *Given Ethiopia's existing situation, the problem of nationalities can be resolved if each nationality is accorded full right to self-government. This means that each nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its locality, it has the right to determine the contents of its political, economic and social life, use its own language and elect its own leaders and administrators to head its own organ."*[236]

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[232] One can simply reached by looking the preamble of FDRE

[233], Tsegaye Regassa, supra note at 210, p.52-54

[234]. Arts.8, 39, 47, and preamble of the 1995 FDRE constitution.

[235]. Asnake Kefale**,** Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions, (PhD Dissertation, Lidein University, the Netherlands, 2009), p. 63

[236]. Merera Gudina, Ethiopia – Competing ethnic nationalisms and the quest for democracy, 1960-2000 (Maastricht: Shaker Publishing, 2002), p. 82-83

The FDRE Constitution also contains some provisions that Ethnic federalism provides for decentralization and self-government based on ethnicity and "an unconditional right to self-determination, including the right to secession." [237]The rationale behind this constitutional recognition, as highlighted in the preamble of the constitution is to show that "our destiny can be best served by resolving historically unjust relationships". The argument is that if the different nationalities did not obtain any kind of self-government, Ethiopia would soon erupt into war again.[238]

The ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) that innovates ethnic self-determination, the ideological foundation for Ethiopian federalism, asserts that it is intent forthrightly addressing the claims of ethnic groups in the country of historic discrimination and inequality, and to build a multi ethnic democracy.[239]The integration of the internal aspects of self-determination in to the Ethiopian constitution and making it an ideological basis of the federal set up is a necessary approach to the political process in Ethiopia after EPRDF took power. Providing appropriate platform for the use of one's or owns language, promotion of culture, preservation of history, full measure of self governance and equitable representation at both regional and federal level is a matter-of-fact solution to the problems of ethnic identity that will possibly arise owing to uneven treatment or office sharing scenarios.

**4.2.2.2. Salient Features of Ethiopian Federalism**

Ethiopian federal system has its own significant features. The first and clear feature of Ethiopian federalism is ethnicity as the first principle of organizing the State. Ethiopian citizens are categorized into their different ethno-linguistic groupings. Ethnicity or identity has been the driving force behind many of the demands for a measure of self-rule in a well-defined territorial level of government within the Regional State.

The other most important feature of Ethiopian federalism is Constitutionalzing of the right to secede. Article 39 of the constitution provides that all nation, nationalities and peoples of Ethiopia have unconditional right to self determination up to secession. In terms of political theory, secession and federalism are considered to be antagonists rather than friends.[240]

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[237]. Supra note at 1, Art. 39.

[238]. Aalen, Lovise, Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000 (Bergen: Chr. Michelsen, Institut Development Studies and Human Rights, 2002), p. 40.

[239]. Keller Edmond 'Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia', African Journal of Political Science, volume V. number XX(2002), p. 21; Paulos Chanie, Clientelism and Ethiopia's post-1991 decentralization, Journal of Modern African Studies, vol. 45, no. 3 (2007), p. 357

[240]. Yishak Kassa, *Federalism and Self determination in a Multicultural Context: the Challenges of the Ethiopian Experiment*, IFF Summer University 2008 working paper, p. 4

Instituting unicameral legislature in actual operation but bicameral in form at the federal level is the third salient feature of Ethiopian Federalism. Bicameralism is an essential feature of federalism for the rational of preserving the federation.[241] The USA, Germany, and other federal systems use a bicameral system in order to ensure the representation of the interests of individual states and provinces, as well as the population of the country. Under "federal bicameralism", the lower house is typically apportioned on the basis of population; while the upper house is divided amongst the regional units.[242]Both houses have the legislative power in federal countries. However, the HF, the upper house of the Ethiopian parliament, is "composed of representatives of NNP"[243] is a representative of the ethno-cultural groups rather than the states. But the states may have their interests aired through the ethnic groups that come out of them.

System of law of each regional state has been grounded on the customs; cultural identity, traditions, language and historeo-type of its people. Disregarding such elements of identity may lead to the realization of Art.39 of FDRE Constitution. But, the Federal Cassation division review state matters that have been reviewed by regional Cassation vis-à-vis Self-determination. Is this trend of concentration of power and federalism antagonist or harmonizing each other? What possible consequences would happen? Will be undertaken in the coming chapter

4.2.2.3. **The Extent of Self Determination in Ethiopian Federal Setup**

The FDRE Constitution has recognized both internal and external self determination. However, the constitution does not provide any thing about the meaning and extent of self determination.

Self determination is a group right and vested only to the Nation, Nationality and Peoples of Ethiopia. "Nation, Nationality, or People", which defined as "a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."[244]The Constitution clearly specifies the scope of the right to self determination. Internal self determination revealed from the right of "nations, nationalities and peoples" to speak, write, develop their language; to express, promote and develop their culture; preserve their history; and to self government and equitable representation

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[241]. Michael Cutrone, Does Bicameralism Matter? Princeton University press, 2005, p. 8
[242]. Ibid.
[243]. Supra note at 1, Article 61(1)
[244]. Ibid.

in the regional state and federal governments. External right of self determination expressed in terms of secession. However, the extent to grasp in this study is internal self-determination how the Constitution organizes and recognizes the aspects of regional self-governance. In fact, these powers are considered to be the inherent Constitutional power of NNPEs despite of the governmental hierarchy of the territories occupied by their regional autonomy.

The scope of self-determination also embraces the right to a full measure of self government which includes the right to establish institutions of government in the territory which a given group inhabits. It has been proclaimed under the Constitution that the government shall promote and support the people's self-rule which is guided by democratic principles at all Levels.[245]The extent of the exercise of self-determination again incorporate the representation and participation of NNPs at all levels of government structure. By virtue of the Constitution, every nation, nationality or people have the right to be represented in both the state and federal governments. This representation holds the right to participate in the legislative organs as well as executive and judiciary bodies at federal and state levels.

Internal self-determination in Ethiopian federalism requires the promise of division of power issues between federal and regional governments. Thus, it is the objective of the study which is importantly associated with the full measure of self government; *inter alias,* representation of both federal and state government makes understand Ethiopia is a federal country divided into nine regional states[246] and one central government. So that the Federal Constitution represents the supreme law of the land, [247] as it determine the scope of action of the federal government and allocate certain powers to regional states[248]. More specifically, the federal government is entrusted with the authority to deal with national and international issues, whereas it is up to each regional state to handle the remaining questions. As far as concerning article 52 of FDRE Constitution the obligations described are regional matters where the state councils enacted and its interpretation is also ended in the regional courts without the intrusion of central government in order to endorse the principles of self-determination. This indicates that the Ethiopian ethno-

[245]. Yishak Kassa, *supra note at 230,* p. 6
[246]. Supra note at 1, Art. 1 and 47
[247]. *Ibid.* Art. 9.
[248]. See. *Ibid.* Art. 51 and 52, See also Art. 55 that sets the legislative mandate and the jurisdiction of the federal government

linguistic federalism, currently endowed by the constitution to regional states fully and officially to members of ethno-linguistic groups. To cite as specific example cumulative reading of art.34, on cultural and religious marriage, Articles 52(1) and 52(2), on division of power of the Federal Constitutions make it clear that regional states have a legislative power with the respective judicial power on issues of cultural, religious affairs, and complete jurisdiction over civil laws. This is compounded with the right of self-determination and self rule of ethno-linguistic communities here compatible with each individual regional state power set in the Federal Constitutions. This strengthens the States to realize their right to self-determination expanding its scope to the extent of the legislative power with equally important to adjudicate over matters relating to the items above mentioned. The next section highlights on Ethiopian court system from ancient to present in order to understand the development of courts.

### 4.3. The Court System in Ethiopia:

#### 4.3.1. Court System: Past

The history of Ethiopian courts goes back to the early 20th of century. Ethiopia was developed an informal hierarchy of justice administration and reconciliation, starting with elders, passing through officials to the Chilot of the emperor [249] During Menilik, indeed, and adjudication of cases was considered to be the principal function of the executive. For example, in Menlik era of appointment of the ministers in 1908, the Minister of Justice was also the Chief Justice. [250]

During the Emperor, the concept of a tiered court system based on administrative units was introduced. It depicts the structural wise of the Administration of Justice established a four tier court system. It set up the Supreme Imperial Court, the HC, the provincial courts and regional and communal courts. The court system was characterized by a unitary court structure and provided for an integrated hierarchy of courts.[251] The Eritrean Constitution and the Federal Act, which was passed on 10 July 1952 and came to force as Proc. No. 124 of 11 September 1952 (*Negarit Gazeta*), SSC and other courts as may be formed were vested with the judicial power (Art. 85). The court applies all the laws of Eritrea. Whether it also applies federal laws was not clear.

[249]. Paul and Clapham, Ethiopian constitution development. P, 841, 845
[250]. Assefa Fiseha, Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study,(Netherlands, Wolf Legal Publishers, 2005/06), p. 390
[251]. The Administration of Justice Proclamation (Proc. No 2/1942)

The Court under the Constitution of 1987: During the PDRE the judicial power was vested in courts that were established by law. The highest judicial organ was the Supreme Court. It had the authority to supervise the judicial function of all courts in the country. Interpretation of laws during the PDRE was done not only by courts. A state organ such as the Shango, the Council of State and the General Procurator were entrusted with such power was the deficiency of the regime. [252].

For the first time in the Ethiopian system of law, dual court system and parallel structure was established during the transitional Government. Self-governments were empowered to establish their court system with a full jurisdiction to decide on any dispute within the region.[253]There was no vertical relationship between the centre and self-government courts.

Accordingly, the Proclamation No. 40/1993 established for the purpose of structure and powers of courts in both levels: Due to the federal structure of the administration prevalent in Ethiopia today, two court structures were envisaged, the Central Transitional Government and that of National/Regional Self Governments courts. These dual structures of courts arose from the fact that the Central Government and the National/Regional Self Government had different powers and responsibilities which were defined by law. Equally, the present Constitution, which is the concern about the issue of the present thesis, establishes dual court system as discussed below.

### 4.3.2. Court System in Present Federalism

Ethiopia has developed a dual judicial system with two parallel court structures: [254] the federal courts and the state courts with their own independent structures and administrations. Judicial powers, both at Federal and State levels, are vested in the courts. The FDRE Constitution states that supreme federal judicial authority is vested in the Federal Supreme Court and empowers the HPR to decide by a two-third majority vote to establish subordinate Federal Courts, as it deems necessary, nationwide or in some parts of the country. The Federal Supreme Court includes a cassation division with the power to review and overturn decisions issued by lower federal courts and State Supreme Courts containing fundamental errors of law? Besides, judicial decisions of the Cassation Division of the Federal Supreme Court on the interpretation of laws are binding on

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[252]. Heinrich Scholler, Ethiopian Constitutional and Legal Development: Essays on Ethiopian Constitutional Development (Vol. I) (2005), P. 50

[253]. Supra note at 222, Art .9, 10(9)

[254]. In addition to these courts, the FDRE Constitution allows the establishment of Religious and Customary courts

Federal as well as State courts? [255]

There is a Federal Supreme Court that sits in Addis Ababa with national jurisdiction and until present, the FHC and FFIC were confined to the federal cities of Addis Ababa and Dire Dawa. In recent years, FHC have been established in five States.[256]The Constitution directs the creation of three levels of state courts: the State Supreme Court which also incorporates a Cassation bench to review fundamental errors of state law? High Courts or the Zonal Courts, and First Instance Courts or the Woreda Courts.[257]

Having this line of court structure, legal scholars in Ethiopia argues that whether the FDRE Constitution fully adopted dual court. On the one hand Assefa reserving its functionality admit that Ethiopia adopted dual court theoretically.[258]While Fasil admits two sets of courts that expected in federal state but doubt on partial establishment of Federal court.[259]According to Menberetsehay Tadesse, Ethiopian Constitution adopted both dual and unitary court system.[260] Based on this, he argued that in a principle the Constitution under article 79 adopted dual courts "*Judicial powers, both at federal and state levels, are vested in the courts"*. Whereas under article 78(2) became similar to single integrated court system by authorizing the regional courts on federal matters in additional to their own regional matters. Therefore, FDRE Constitution in one hand granted constitutional delegation to state courts on federal matters, on the other hand arguably FSC is apex of all courts in quashing the decision of any courts by its Cassation power. Due to this fact the judiciary in Ethiopia is both dual and similar to integrated court. In light of the spirit of the whole FDRE Constitution that established Regional Courts side by side with that of Federal Court, one can safely conclude that the very intention was with having dual courts.[261]

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[255]. Federal Courts Proclamation Re-amendment Proclamation 454/2005, Article 2(1).

[256]. See Federal High Court Establishment Proclamation No.322/2003. Federal High Courts have been placed in the following states: Afar, Benishangul/Gumuz, Gambella, Somali, and SNNP.

[257]. Supra note at 1, Article 78(3).

[258] Assefa, Fiseha, Federalism and accommodation of diversity in Ethiopia: comparative study (Nijmgen, walf publish, 2005), P.401-405

[259]Fasil Nahom, constitution for nations of motions: The Ethiopian prospect, (The Red sea press inc, law receive, NTo, Ass mara-ertria 1997), P.99-100.

[260.] Menberetsehay Tadesse, "ye Ethiopia Higina Fitihi: Getsitawoch" (November: 1999), Addis Ababa (Amharic version), P.125

[261]Minutes of constitutional Assembly Vol.5 No.27, (Hidar 21-24, 1995, Addis Ababa), PP 18-25, according to the discussion of the Assembly the issue of interference of FC in to Regional and vise versa was the hot issue. The committee on judicial matter come up with top down delegation is constitutionally allowed but Federal court in no way delegated to look the regional matter as if was totally denied by Art.50 (8) of the constitution.

Nevertheless, some of the factors which complicate the relation of federal and state courts are the existence of multiple laws, courts of one system often called up on to interpret and apply laws of another jurisdiction.[262]In addition both court systems may have sovereign to hear particular cases. For example in USA, each federation state courts have constructed their own pyramid of power which each of them is Supreme on their won issue.[263] Like USA, Australia has also two of the longest-running and best-known dual court systems in the world. In each of these countries, local law is enforced in the state court system at the same time as national law is enforced in the federal court system.[264] If there is dual court, there will be no supervision, interference, encroachment and no interaction between federal and state courts.[265]However, cooperative judicial system is still essential because of the Federal Court and State Courts have the same mission and overlap of goals. Thus, in federal structured state, there is no power pyramid in which one is hegemonies or subjugator on top of the other and the other is subordinate.[266]

If a given court has the power to review regardless the mode of review a judgment of another courts, then there must be a superior subordinate relationship between the two.[267]To put it in other words a given court is above the other in hierarchy of the other court system if it reviews the decision of the others. So that, as of necessity, in Ethiopian federalism the federal FSCCD revises regional court's decision that is of purely regional matters.

The World Bank judicial and legal sector assessment shows that the relation between the two court systems is quite complicated in Ethiopia.[268] The study discloses that the effort of Federal Court to intervene the State judicial powers and the responses of the latter towards counter interference [269]as follows:

There is clear divide and revelry between the federal judiciary and state court judges that hampers the development of such ties. It was reported that on one hand Federal Courts acts as if

[262]. Supra note at 1, Art.78 (2)
[263]. How the USA court system work, available at <http://www. layer initiative. Com/law-artcle. html
[264]. http://www.wisegeek.com/what-is-a-dual-court-system.htm(accessed 20/03/2014)
[265]. Michael E.solimine and Tames L. walkers, Respecting the state courts: The inevitability of juridical federalism (west part, England, green wood press, 1999), PP.1-11
[266]. Ibid
[267]. David Morris, supra note at 163, p.4.
[268]. Maria Dakolias, World Bank: Ethiopian Legal and Judicial sector Assessment (2004), p.1-19

[269]. Ibid

they are superior to other courts while at the same state courts actively resist federal interference".[270]Thus, there is no agreement and smooth relationship between the two. The Federal Court tries to control over the State Courts, the State Courts by their turn tries to counter and maintain their sovereignty as much as possible. There is a big distance between them which in effect have negative impact on the efficiency of justice system at all.

The State Courts resist what they perceive in their opinion interference, encroachment on their jurisdiction. Experience of countries following federal-state structure like ours shows that, there is no interference within their respective issues though federal law or federal constitution is superior of them, for example in USA.[271] In such a case the Federal Supreme Court while interpret state laws to entertain power on diversity jurisdiction in conflict, it put off the interpretation of State laws to State courts.[272]

However, when come to the reality the structure of dual court is not recognized without merits. It can be seen in bird's eye view of institutional and functional independency of the two levels of courts. Having said this much about the organization and structure of judiciary under federal set up of Ethiopia, let's have a look at the jurisdiction of federal and regional courts to know how court's are exercising its power within Constitutional limit. Thus, both levels of courts established to act independently on their own subject matter.

### 4.3.2.1. Federal Vs Regional Subject-Matter Distinction and its limits

There are two plausible ways of looking at the issue under consideration in order to determine the respective competence of the Federal and Regional courts. The first technical attempts to solve the problem on the basis of the power-sharing method of the Constitution itself being in consonant with the theory of 'federalism', the FDRE Constitution, broadly defines the powers and functions of both the Federal and Regional governments.[273] Accordingly, as the organization and structure of state/government as a whole, the power-division between the Federal and

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[270]. Maria Dakolias, Ibid, p.15

[271]. Ibid, p.1-19

[272]. Federal-state court relationship available at <http:// www.experience.festival com/a/state court-relationship /id 2099215.hotml.

[273]. Supra note at 1, Art. 51 and 52

Regional governments, simultaneously divides, or, at least, helps in limiting the specific powers of the courts of the two governments.

In this respect, the approach taken by the Constitution is listing down, exhaustively, the powers of the Federal Government; and, then, leaving out all the residual powers that are not expressly granted to the Federal Government-to the Regional Governments. Thus, once the respective powers of the Federal and Regional governments are demarcated, the spheres, or, within the meaning of the FDRE Constitution, the 'matters' on which the respective Supreme Court of the two governments has 'the final say.'[274]

In this regard, the pertinent choice is looking at the problem on the basis of the more specific subsidiary law.[275]This legislation in so listing; the proclamation employed three separate parameters so as to determine the subject-matter jurisdiction of the FC on a given law-suit. These are: the nature and status of the law on which the case is based; the place where the case arose; and, the nature/type of the suit itself, [276] are matters whether limited to federal or State.

The first factor used by the Proclamation is looking at the law on the basis of which the case is instituted. That is, this approach categorises, the type of the case on the ground of Federal laws vis-à-vis States' laws distinction. That is, if the case is based on the Federal Constitution, Federal laws, or, international agreements (treaties), [277]then, it falls under the Federal Courts' subject-matter jurisdiction; and is treated as such. Here, it has to be made clear that 'Federal' laws are laws which are enacted by the Federal law-making organs[278] i.e. (the Federal legislature namely the House of Peoples' Representatives and the Federal Government-Executive Agencies)-on matters that fall within the powers of the Federal Government. Likewise, international agreements-as they are adopted by the Federal legislative organ, (HPR), [279]they, too, are treated as Federal laws. The other factor used by the Proclamation so as to determine the subject-matter jurisdiction of Federal Courts concerns the status of the parties themselves. In other words, if the parties to a suit are those specified or administered by the Federal laws, the power to entertain

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[274]. Ibid, Art 80(1, 2)
[275]. The Federal Courts Establishment Proclamation. No 25/1996.
[276]. Ibid
[277]. Ibid, Art.3 (1)
[278]. Supra note at 1, Art.55
[279]. ibid, Art 55(12)

the case resides in the Federal Courts. To be more specific, See, Art 5(1)-(4)[280]of Proc No 25/96, still another parameter relates to the 'place'[281]where the case arose under Federal jurisdiction. The final test considers the nature or type of the case itself. Accordingly, the cases exhaustively specified under this category are: suits involving matters of nationality, or, issues of business organizations registered or established by the Federal Government; or, those regarding negotiable instruments (such as, cheques, letter of credits, etc.), or, which relates to patent or copy rights, or, one based on insurance policy; and, an application for Habeas Corpus( that is a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal).[282] Therefore, the laws, parties, the place and type of the suit are general distinguishing factors that determine cases falling within the jurisdiction of the Federal Courts.

State laws, by the same token, are laws that are proclaimed by the legislative bodies of the Regional States-on those so-called 'residual powers' or remaining areas. Thus, a challenge which is based on State law would, needless to mention, be within the subject matter of the State, and under the jurisdiction of its courts. However, this may not necessarily be true all the time. This is because there seem to be conditions and instances whereby cases arising under State Laws be regarded as Federal subject matter. Consider the following disputes arising on the grounds of States laws: where the parties to the litigation are those listed under the proclamation.[283]

Consequently, one may argue that State cases are cases that arise on the cases of State Law and that are not categorized under Federal cases. Abebe Mulatu argues that those federal cases not mentioned by Proclamation 25/96 belong to "exclusive state jurisdiction because a federal matter by virtue of this proclamation is narrowly defined."[284]He writes, matters not specifically mentioned under the proclamation as falling under the federal court jurisdiction are presumed to fall under exclusive state jurisdiction. The rest of the federal laws, which are not enumerated, are then understood to be within the jurisdiction of state courts. So the state courts will entertain the case like any state case on the basis of the states 'law of material jurisdiction and the final decision of the state courts on such matter is not appealable or petitioned to the federal court system.

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[280]. Supra note at 290, Art. 5 stipulates that federal courts shall have civil jurisdiction over "cases to which a federal government organ is a party; suits between persons permanently residing in different regions; cases regarding the liability of officials or employees of the federal government in connection with their official responsibilities or duties

[281]. In this regard, the two specified areas are Addis Ababa and Dirre-Dawa; that is, disputes arising in either of those places, would be within the competence of the Federal Courts-regardless of the identity of the parties-as in the earlier case.

[282]. Supra note at 90, Art 5(5)-(10)

[283]. Ibid, Art.5 (1)-(4); Arts 11(1) (b) and 14(2); in Addis Ababa or Dire Dawa (See, Art 80 of the FDRE Constitution)

[284]. Abebe Mulatu, supra note at 15, p.130

In this regard the CCI ruled on the issue of the extent of residual powers of the states called family law. A petition was submitted from the Prime Minister's office to the HoF seeking its advice as to whether the HPR has the competence to enact a federal family code applicable nationwide.[285] If it has a competence, to what extent would this affect autonomy of the states to make laws on the same subject? The CCI investigated briefly Articles 52(1), 55(6) and 62(8) of the FDRE Constitution and ruled that enacting a family code is a state power on two counts. First, the enactment of a family code is intertwined with the culture, tradition, and religion of society. It is an aspect of diversity that needs regional protection. Second, reserve power belongs to the states and such power is not expressly granted to the federal government. Assefa, argue that family law is normally belongs to the states not a federal government authorization.[286]But it briefly noted the importance of Article 55(6) although it stressed that it is not relevant to the issue at hand as the federal Constitution outlines the minimum standards under of the supremacy clause of Article 9 sub 2, 62 sub 1 and 84 sub 2 as enough safeguards in case the HPR enact family laws that contradict those minimum guarantees.

Therefore, State subject matter is a matter that arises on the basis of State Law. It must, however, be seen in light of the principles of federalism "The HPRs is given the power to legislate on matters that are reserved for the federal government. The states have also their own legislatures to enact laws on matters reserved to them. Accordingly State laws are too interpreted by state courts and federal laws by federal courts."

The FDRE Constitution treats the federal government and Regional States in equal footing. Hence, in their sphere jurisdiction, laws enacted by federal government cannot prevail over the federated units. One can argue that, "the constitution does not provide as to which law is prevail in the event of contradiction." Thus, there is no hierarchy of laws between the Federal and State laws. Though the proclamation that provide for the establishment of FC, states that Regional State laws shall not be applicable where they are inconsistence with federal laws.[287] So subsidiary legislation may not affect the constitutionality guaranteed division of power and as a result federal laws are not superior over regional laws.

However, one may come to the conclusion that Federal Courts will have jurisdiction not only

[285]. Ruling of the Council of the Constitutional Inquiry (CCI) *Miazia* 26 1992 E.C. (May 2000, unpublished); cited by Assefa Fiseha, supra note at 14, p.331

[286]. Assefa Fiseha, Ibid,

[287]. Supra note at 275, Art.6 (2)

limited to cases that involve Federal Laws but also when parties under article 5 specified are parties to the suit. Under such circumstances the federal Supreme Court cassation division's power is not contentious even if the case is reviewed by Regional states Supreme Court cassation divisions. Discussing the conceptual and historical overview of Cassation in Ethiopia is a fundamental ground for the study.

## 4.4. CASSATION IN ETHIOPIA

### 4.4.1. Conceptual and Historical overview

#### 4.4.1.1. The Concept and Definition of Cassation in Ethiopia

In Ethiopia, cassation may be taken as a means by which a final decision of any lower court - in relation to which appeal is exhausted - containing a basic error of law is reversed or varied by the Cassation Division.[288]on the other hand, cassation is one of the avenues for the review of judgments. Supreme courts (state supreme courts and the Federal Supreme Court) have cassation powers, meaning the power to review judgments on the basic error of law'.[289]The state supreme courts have the cassation power over any final court decision on State matters [290]and the Federal Supreme Court over any final court decision.[291]The cassation power is to be exercised to correct a judgment of not any error but of a basic error of law. There is no definite definition as to what this error means in the law. From the practice of courts exercising cassation power, however, it can be inferred that almost any material error [292] of law can qualify as basic error of law.[293]

Applications for the cassation review of judgments are first made to go through the panel of three screening judges who determine whether the error alleged in the application has been committed in the judgment presented for a review is a basic error of law and whether it *prima facie* exists. If the judges determine in the positive on both issues, the application gets accepted meaning it is referred to undergo a full hearing before a panel of five judges. So what is from just described

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[288]. Murado Abdo, supra note at 12, P. 62

[289]. In the Ethiopian judicial system, we encounter a dual court system. The first system contains the federal court system while the second one comprises state court system. Both systems, generally speaking, are made of three tiers of courts, first instance courts, high courts and a supreme court at the top.

[290]. Supra note at 1, Art.80 (3) (b)

[291] Id, .Art.80 (3) (a)

[292]. The phrase material error is used to mean errors which are harmful in the line of ―the harmless error doctrine which generally holds that any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. For more discussion see, Harry T. Edwards, To Err is Human, But Not Always Harmless: When Should Legal Error Be Tolerated? New York University Law Review Vol.70, N0.6 (1995), p.1167

[293]. See Muradu Abdo, The Requirement of Basic Error of law, Wonber, (2008), P.33.

Cassation review is similar to appeal except that it is limited to the review of basic errors of law while appeal is a review on the merit for factual and legal errors, including basic errors of law (whatever it means).

### 4.4.1.2. Brief Historical Development of the Institution of Cassation

In the realm of review of judgments, in the Ethiopian legal system, there is such a review called Cassation. Cassation review of judgments was not known to the legislature until end of 20th century, which is later enacted by legislation during the Derg regime. So that the author divided the development of cassation in to two: defacto and dejure cassation.

#### 4.4.1.2.1. Defacto Cassation

From time immemorial the people of Ethiopia have looked to the emperor as the ultimate source of power there is evidence.[394]A number of writer's address this ultimate source of Emperor power during different periods of Ethiopian history was in progress to exercising review. For instance F. Alvarez advocates as it was started during the 16th c.[295]On the other hand J.Bruce, advocates as it was during the late 18th c.[296]Also L.De.Castro[297]writes the beginning of cassation was during Menilik II. However**,** the institution of cassation in Ethiopian legal history goes as far back as the 18th c, though not exactly similar to the present day institutions which was expressed in the Emperors prerogative to review a case after it had been heard elsewhere either by a king or other ruler of a territory up on a petition of an aggrieved party.[298] The desire to see that justice done is often claimed to be the motivation of the various Emperors exercising the power of review,[299]though some others contended that strong desire to see laws declared by them or their desire to make sure sense of equity would have prevalence over the various lords in the country is the dominant secret motive of the emperors act of review.[300]The latter assertion gains strong hold when one observes this stage of the development of cassation in France and Italy.[301]

Reviewing in cassation was introduced in Ethiopia for the first time in the treaty signed between Ethiopia and France in 1908.[302] Article 7 of this treaty states the Emperor had the prerogative to

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[294]. M. Perham, the government of Ethiopia (1948), p. 145
[295]. F. Alvazer, the prester John of the Indies (ed. By C. F. Backingham and G.W.B. Hunting ford, 1961), p. 128
[296].J. Bruce, travels to discover the source of the Nile(1790). V.3, p. 265. Cited by, Robert Allen Sedler, Ethiopian civil procedure (Addis Ababa Faculty of Law 1968). P. 12, 17
[297]. Nella terra Del Negus (1915).v.2.p.131-132 and M.Perham, p.145-147, Sedler, ibid.
[298]. Supra note at 294, p. 12
[299]. Ibid
[300]. E. Embo, "the Rebellion Trialsin Ethiopia" 12 Bull-intl. comm. of jurists, (1961), p.29-30
[301]. Mauro cappelletti, Ibid at 137, P.150
[302]. Yohannes Heroui, 'Brief Notes about Cassation Power and its Procedure', (in Amharic), Ethiopian Bar Rev. Vol .3, No. 1**,** (2009), p.132**.**

review final decisions of the special courts by way of cassation, i.e., for error of law[303]. A full-scale form of cassation was not created.

Cassation began to have resemblance to the present day institution of cassation during the reign of emperor Haile Selassie I, who established a special tribunal referred to as the Imperial Chilot, which deviated from the ordinary courts in peculiar ways.[304]The regular court system was clearly established under Art.109 of the Revised Constitution. The Supreme Imperial Court was the apex of the court structure where the applicant has exhausted his appeal, whereas the Imperial Chilot was made by the provisions of the criminal procedure code and civil procedure code that allow the emperor for review.[305]The two procedures Empower the emperor to review cases in Imperial Chilot, after the cases have exhausted by appeal in regular courts.

Although Chilot is based on the Emperor's sovereign prerogative power significantly different from the exercise of judicial power where two important aspects of motives had been drawn. Firstly, the jurisdiction in **Chilot** is discretionary. The Revised Constitution stipulates that Emperor has duty of maintaining justice through the court as per Art.35, but the Constitution was not grant such a duty to exercise jurisdiction in Chilot. Secondly, in Chilot the Emperor was not duty bound to decided the case in accordance with the provision of the formal law, but may base his decision on principle of "justice and fairness" without reference to the laws.[306]

Under this tribunal the emperor established an organ called "Saber-Semi" meaning a body whose function was to give opinion on questions of law, when such a question had been referred to it by the Emperor.[307]Nevertheless this organ did not possess the power to decide cases in accordance with the law, but can only make recommendation to the Emperor.[308]They should be considered as agencies established by the emperor to assist him in the exercise of his prerogative power to see the justice is done.[309] Thus, the activity does not expose the underlying concept of cassation rather it contributes a further development of cassation.

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[303]. Ibid

[304]. Sedler, supra note at 311, p. 12, 17

[305].art 183 of Criminal Procedure Code Of Ethiopia Imperial Ethiopian Government Proclamation No.185 Of 1961 And Art.322 Civil Procedure Code Of The Empire Of Ethiopia Of 1965 Negarit Gazeta Extraordinary Issue No. 3 of 1965**,** review is an English term equivalent with revision

[306]. Sedler, Supra note at 311, p.18

[307]. Ibid

[308]. Ibid

[309]. Civ.p.C.Art. 361 refer to "his imperial majesty's Chilot." This includes the agencies established by his imperial majesty to assist him in the exercise of Chilot jurisdiction

A model of cassation also prevailed during the Dergue Regime, existed in the period between 1975 and 1987. Proc. No. 52/1975 came up with an interesting provision. The proclamation stipulated that: "Every division of the Supreme Court shall be fully constituted by three judges provided that where the President of the Supreme Court is of the opinion that the complexity of any case so requires, he may decide that a division be constituted by more than three judges."[310]

## 4.4.1.2.2. Dejure Cassation

### 4.4.1.2.2.1. During Dergue Regime

Cassation became the conspicuous part of the Ethiopian legal system for the first time in 1987. Proc. No. 9/1987 was a bearer of news cassation proper. A final decision of the SC or other courts containing a fundamental error of law was supposed to be reviewed by a division of the SC which used to be tentatively constituted.[311]At least five judges used to sit in deciding a case when the President of the SC so decided or where the Procurator General submitted a protest. Where the latter submitted a protest, the President had to refer the matter directly, that is, without any further scrutiny, to the division.

Thus, since 1987 Ethiopia adopted clear legal frameworks regarding Cassation power of the last resort court in the country, expressly gave power to the SC.[312]The purpose of remedy in cassation was clearly legislated to be the correct and uniform application of law throughout the country. Thus, similar to the current situation fundamental error of law was assumed to be reviewed.

## 4.4.1.2.2.2. During the Transitional Charter

Following the overthrow of the Dergue by the EPRDF in 1991, the cassation power was replaced by the Central Government Courts Establishment Proclamation.[313] Two noticeable changes were introduced during the Transitional Period, similar things with respect to the cassation court.

Namely, the Cassation court had the power to interpret the Transitional Period Charter which could be equated with the then Supreme law of the land. It is seems judicial review and in this regard, Article 11 provides: The Central Supreme Court shall have appellate jurisdiction over

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[310]. Proclamation No. 52/75 of Art. (4, 1, [d])
[311]. Art. 22 of Supreme Court establishment procl.No.9/1987
[312]. Ibid, Art.4 and 5
[313]. Art.12 of the procl.No. 40/1993 (Neg. Gaz. 52nd Year.No.25) of the Transitional Government of Ethiopia

judgments of the Central High Court nullifying the provisions or parts of the laws of the Central Government, International Treaties as inconsistent with the Charter, a provision of a National/Regional Constitution or a law to be contrary to the Charter or International Treaty; a decision of the National/Regional Supreme Court nullifying a part or a whole provisions of the laws of the Central Government, International Treaty or the Charter." Finally, interestingly enough the decision of the Cassation division was given the status of precedent. However, during that time the Central Government Supreme Court was not given a mandate to review a final decision of state courts by way of Cassation over the National/Regional matters.

### 4.4.1.2.2.3. The Present FDRE Constitution

Theoretically, Ethiopian legal framework has no problem with division of powers and as well divides the judicial organ, but the duality in function of their assigned matters has a problem. It means both Federal and State Constitutions have recognized the division of power with respect to the judicial organ of last resort called Cassation in each respective tiers of government under Art.80(3a,3b) of FDRE Constitution. However, in contemporary practical situation Ethiopian Federalism with regards to the Judiciary is indicated that the Cassation division of the FSC shall have cassation power over not only federal matters but also over state matters even if SSC have already review their own matters by their own Cassation division.

As we can gather from art.80 (3) of the FDRE Constitution and art.10 of proclamation 25/96, cassation in Ethiopia is a means by which a final decision of courts containing a basic error of law is reviewed by the Supreme Court. The Supreme Court in this regard refers to both the FSC and SSC since the FDRE Constitution gives a power of cassation to both the federal and state supreme courts. With regards to regional states, cassation power is vested in each State Supreme Court.[314]

Any final court decision over any matter by the federal cassation division creates a tension whether includes state exclusive matter. This pragmatic challenging of the power of the Supreme Court whether to review the cassation decision of the states Supreme Court purely on state

[314.] (See Art. 64(2)(a)(c) of oromya Regional state constitution, Art.67 (2)(a)(c) of Afar Regional state constitution, Art. 63(2)(a)(c) of Amhara regional state constitution, art. 63(2)(a)(c) of Benishangul people's regional state, art. 38(1)(a)(c) of Harari regional state constitution, Art. 68(2)(a)(c) of Somalia regional state constitution, Art. 62(2)(a)(c) of SNNP regional state constitution, Art. 63(2) (a)(c) of Gambella regional state constitution, Art. 63(2) (a) (c) of Tigray regional state constitution.

matters is the main cloudy issue in the Ethiopian polity. This point of friction also arises in the same judicial arena, and relates to Art.10 of Federal Proclamation No.25/96, which is not clearly supported by Constitutional provision, and has been challenged by the State courts. Regional States also adopted legislations that empower the cassation division of regional state Supreme Court shall have final power to review regional State matters. [315]

In this regard apart from being at the apex of the pyramid, the French is unique and is one Court of Cassation for the whole Republic.[316] Cassation or review in USA, the apex of federal judicial pyramid is the supreme court of USA whose main objective is to provide a uniform interpretation and application of the law of the federal government.[317.]

To stress, Unlike Ethiopian Cassation, the USA supreme court not review state matters unless their decision involves federal elements. So that the FSC and state highest courts are strictly separate in USA. Again the Ethiopian trend in views of cassation deviates from other countries experience neither dual nor single. Thus, the concept of cassation under discussion is makes unique the Ethiopian federal practice. However the aim of having independent judicial branch is not only to make the judiciary free from other branches, but also it seems to protect judiciary at each level free from undue, unnecessary intervention from any other source i.e. federal court intervention into regional matters.

Thus, the FSCCD Impossibility or possibility of review state matter is the central theme of the thesis identified from legal concept and arguments raised from different angle is emphasized.

## 4.4.2. The Legal Basis and Scope of Review by Court of Cassation

As stated above, currently we do have two different court structures in Ethiopia. That court is at the Federal and State levels. According to Art.80 (1) & (2) of the Federal Constitution of Ethiopia, the Federal Supreme Court and the State Supreme Courts have the highest and final judicial power over Federal and State matters, respectively. Besides, sub 3(a) of the same Article

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[315]. For instance, see Art. 26(e) of Oromya regional state court re-establishment percolation No.41/2008, Art.5 (2) of SNNP regional state court re-establishment procl.No.43/94

[316]. http://www.courdecassation.fr (last visited January 10, 2014)

[317]. Daniel John, Supra note at 169.

empowered the FSC to exercise power of Cassation over *any final court decision* containing a basic error of law. The SSC also has given the same power on State matters by Article 80(3b) of the Constitution. *Under this circumstance whether the power of Federal Supreme Court extends to exercise its power of Cassation over State subject matter is a hot debate.*

We can see different views forwarded on this issue. While some said that the Federal Supreme Court should not have the power to exercise its court of cassation over state matters. The other argument suggests that the FSC have the power to exercise Cassation against State matters. These Two possible opposing arguments can be envisaged as follows:

### 4.4.2.1. Arguments on Impossibility to Review State Matter

The argument hopeful to disallow the Cassation Division from reviewing final decisions of state courts on state matters insists that Article 80[3(a)] of the Constitutional clause suffers from over generalization, the argument goes, and it must be qualified to read: the Cassation Division has a power of cassation over any final court decision relating to Federal matters. The federal principle of division of power strictly, not only is legislative and executive functions divided between the federal government and the states, but judicial authority too is divided.[318] This would lead to a dual set of courts: federal courts applying and interpreting federal laws and another set of state courts applying and interpreting the laws of their states.[319]

Besides, this line of argument has other reasons, which essentially center on the ground of Constitutionality. One is that Article 50(2) of the FDRE Constitution, *inter alias*, states that "the Federal Government is composed of the executive, the legislative and judiciary; the latter organ specifically the FSCCD Court contravenes this Constitutional provision by reviewing disputes of purely regional nature". In other words, following a federal Court structure in the country, the states do have their own separate tiers of Courts with residual jurisdiction over some matters which could be identified by way of inferences; over these matters, regional courts must have a final say; and the federal courts must not review, be it by way of appeal or cassation, over matters squarely falling within the ambit of state Courts. Therefore, this argument advocates us to read the words as "...any court..." in Art 80(3, a) of the present Constitution as "any FC or any

[318]. Assefa Fiseha, supra note at 14, p.436
[319]. B.O. Nwabueze, "The Machinery of Justice in Nigeria", (Butterworth, 1963) at 82

other court rendering a final decision on federal matters." Secondly, this action of Cassation Division also violates another Constitutional stipulation, that is, Article 80(2), which states that SSC shall have the final judicial power over state matters. Since the action of the Cassation Division distorts the system of courts envisaged by the Constitution, the division should reject any petition relating to a matters assigned to state Courts on the ground of lack of authority.[320]

Another reason in support of those who oppose federal review of state court decision comes from a combined reading of Article 80 (3a) of the Constitution and Article 10 of the Federal Courts Proclamation. The former does not provide in an explicit manner that final decisions of State courts on state issues are subject to cassation review at the federal level. The provision simply states that the particulars shall be provided for in a subordinate legislation. The subsidiary statute that has been enacted, among others, to implement this constitutional issue is the FC Proclamation, which also fails to expressly provide federal revision of State court decisions on State matters. In particular, Article 10 (3) of the Federal Courts Proclamation is not clear whether it relates to delegated matters or state matters.[321] On the other hand Mehari automatically reject that both the Constitution and the proclamation are not grant power of state matter reviewed by FSCCD.[322]

A more convincing argument for this view could perhaps be made from the principle of federalism. When a matter belongs to a state jurisdiction to be viewed, the matter is of local rather than of national importance. It is because it is felt that the case allows for regional variation as opposed to uniformity. It is the practice of the FSC to review state cases, that is matters intended to end within the jurisdiction of the state because they are of local importance, under its cassation power, is contradictory to the federal idea.[323]The current practice of the FSC, however, indicates that the FSC does review any state matter so long as it is convinced that there is a basic error of law involved.

Muradu added that the formulation to review is supported with an antecedent that forwarded by Article 12(1) of the Central Courts Proclamation (which corresponds with Article 10(3) of the

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[220]. Supra note at 12, p. 63-64

[321]. Article 10(3) of Proc. 25/96 reads: ... The federal Supreme Court shall have the power of cassation over final decisions of the regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

[322]. Mehari Radea, supra note at 13, p. 201-213

[323]. Supra note at 14, p.468

Federal Courts Proclamation, "the Central SC could hear final decisions of the National/Regional SC made on the basis of the Charter, International Treaties or Laws of the Central Government on matters of right, freedom or interest...." This obviously implies that if a regional SC renders a final decision by applying a regional law, then the Central SC would not have cassation power over that decision. [324]

The very interesting argument does go with the principle of federalism is that called *federal comity* that indicated by the constitution; "the federal government shall respect the power of state and also the state shall respect the powers of federal government".[325] In this case; the federal government includes the three organs of the government that is the legislative, executive and judiciary. Thus, the federal judicial organ which is one part of the federal judicial organ should not interfere in the matters falling with the ambit of state judicial organ. Otherwise centralism or pseudo-federalism which is contrary to the FDRE Constitution will prevail.

Mehari stresses that the FSCCD exercising its power against Regional state matters by Cassation without Constitutional power is not only violating the principle of regional judicial self-determining (governing), beyond that there is a fear that it may create collapse of judiciary body.[326] Similarly, Fasil states problem of cassation over cassation as, "…review and correct decision of another court and particularly of state courts on matters within state jurisdiction seems at first glance out of character in the federal order. The fear may express of diluting the Federal system and eroding the power and authority of states.[327] Thus, he believes that cassation over cassation does not go in line with federalism; for it may weaken state powers and also encroach of state jurisdiction by federal government.

Experience of countries following federal-state structure like ours shows that, there is no interference within their respective issues though federal law or federal constitution is superior of them, for example in USA. In such a case the FSC while interpret state laws to entertain power on diversity jurisdiction, it put off the interpretation of state laws to state courts.[328]

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[324]. Supra note at 313, Art, 12(1)
[325]. Supra note at 1, Art.50 (8)
[326]. Mehari Radea, journal of Ethiopian law: observations of federal cassation power sources and cassation over cassation, vol.1. No.2. (2010), p. 202
[327]. Fasil Nahum, Constitution of Nation of Nations: Ethiopian Prospect (1997), P.102.
[328]. Federal-state court relationship available at <http:// www.experience.festival com/a/state court-relationship /id/ 2099215.hotml.

Furthermore, the minutes of constitutional assembly on Art.80 of FDRE Constitution deals that the provisions meant to transfer the power of Federal Government Courts to State Courts, not to bring the power of state courts to the FC.[329]Thus; the intention of the provision is prohibit the FSC to intervene in the power of the States Courts. If the cassation division of the FSC review the state matters, it means the federal government intervene in the affairs of the State Courts since the division will be oblige to interpret state laws which is contrary to the principles of Federalism incorporated in the FDRE Constitution.

The resulting system was simple enough: state cases were tried in state courts, and federal cases, were tried in federal courts. Our population is distinctively follow their socio-political and cultural norms in which case the regional laws are enacted under such circumstances as interpreted as such manner. That the law in one state is different from the law of a sister state and federal law is of little concern to the citizens or the courts. Therefore, one can draw a conclusion from this proposition that the legal pluralism has been accepted under the FDRE Constitution that, the FSCCD have no power to review the regional matters except the case is decided by way of delegation as per Art.80 (4),(5) of the FDRE Constitution.

### 4.4.2.2. Arguments on Possibility to Review State Matters

This also bases its argument on the same constitutional provision which states that "the Federal Supreme Court has a power of cassation *over any final court decision*"; by broadly interpreting its meaning which includes the decision of the court of cassation of the State Supreme Court.

Abebe Mulatu in his book entitled "Apportionment of Jurisdiction under the 1994 Ethiopian Constitution" argues that since a federal system is a new experience to Ethiopia and because the regions do not have a well-developed judiciary, it is cautious to confer on the Cassation Division of Federal Courts the power to review state matters. For him without cassation over state matters the federal government will not be in a position to implement or interpret its laws uniformly since most of the cases that arise from federal law are within the exclusive jurisdiction of state courts as the current practices show. He forwarded without federal review, the subject-matter dichotomy between state-versus-federal matters shall be disregarded and all cases shall be

[329]. The Minutes of the Constitutional Assembly of the present Ethiopian Constitution No 5, (Unpublished, 1994), p. 31.

decided by state courts with review by the FSC.[330]On this idea Muradu contested that the capacity and the competence of the state courts cannot be in principle justify cassation at the center. Remedial measures against the weak than central supervision and control are obviously the most appropriate options. Besides, one may wonder whether judicial power is more serious than the legislative or executive exercise that is bestowed upon the states by the Federal Constitution.[331]

One may thus adhere to the literal reading of Article 80[3(a)] of FDRE Constitution which provides that "The FSC has a power of cassation over any final court decision..." In other words, the provisions mean that the Cassation Division has the power to review all final decisions rendered by any court throughout the country. Read together, the sub-clauses of Article 80 of the Constitution give us this message: in principle, the FSC and SSC's do have the highest and final judicial power over federal matters and state matters, respectively. After stating this general rule, sub-Article [3(a)] of the same article, partly, provides: "*Not withstanding the provisions of sub-Articles 1 and 2 of this Article*: (a) the FSC has a power of cassation over any final court decision (Emphasis added). From this, one can deduce that the special remedy of cassation is an exception in the sense that even if state supreme courts are recognized to have a final say over state matters, review in Cassation by the Cassation Division in respect of state matters is also permitted.

Reference to the Minutes of the Constitutional Assembly reinforces this column of argument. Initially, the Committee, assigned to work on matters related to the structure and organization of courts had come came up with a sub-article, which only conferred cassation power upon the FSC, without conferring similar power upon SSC. Later on, however, the Committee proposed that a similar power be accorded to State Supreme Courts: [332]

The Committee assigned to work on the structure and powers of courts formulated Article 80 of the Draft Constitution to give the power of review by cassation to the Federal Supreme Court alone. This draft Article does not accord state courts with similar power.

The Constitutional Assembly accepted the idea that the Cassation Division can also review a final decision reviewed through cassation by state supreme courts[333]:

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[330]. Abebe Mulatu, supra note at 14, p.150

[331] Supra note at 12, p. 67-68

[332]. The Minutes of the Constitutional Assembly of the present Ethiopian Constitution No. 26-29, (Unpublished, 1993) at 34 -36.

[333] .Ibid, p.43

The Cassation division of the FSC shall have cassation power over not only federal matters but also over state matters even if SSC have already reviewed such matters in cassation. A party to a case based on state law and decided by a subordinate state court may opt for review by way of cassation in his/her SSC (if there is a cassation division) and if he/she still thinks that the basic error of law is not rectified he/she can submit her/his case to FSC.

However, the Constitutional Assembly did not express this idea accurately in the draft document for Article 80[3(a)] which does not explicitly point out whether the FSC assumes cassation power over both federal matters and state matters. This draft sub-article runs in part[334]: "*The FSC shall have cassation power over any final decision rendered by a state court containing a fundamental error of law"*. However, given the ideas reflected in the Minutes of the Constitutional Assembly, it would be harm to the intention of the framers if we read this draft sub article in such a way that it would not give cassation power to the FSC on state matters.

Others look at the Federal Proclamation No. 454/2005 entered into force as of 14 June, 2005 can also underlined clearly defines that the decision made by the FSC on issues of law has a binding effect not only on Federal matters but also on State matters. This indicates that the FSC has a power to exercise its court of Cassation even on cases that are purely State matters.

### 4.4.4. Precedents in Ethiopian

Although a full discussion of precedent is beyond the scope of this study, the author is supposed to highlight some basic principles because precedent is the binding effect of decision that comes from the FSCCD. Also through precedent the autonomy of the state is questioned and it makes the system law of Ethiopia unified rather than legal pluralism.

Thus, different peoples characterize the system of Ethiopian law differently. Some argue that Ethiopia essentially follows the civil law tradition.[335]Others argue that the system of Ethiopia law is mixed. Not surprisingly, no one (at least to the best knowledge of the writer) has ever written that Ethiopia follows the common law tradition. However, according to Alemew, the FSC

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[334]. See the Minutes of the Council of Representatives of the Transitional Government of Ethiopia May 4-25 (Unpublished, 1993) at 253-256

[335]. See, for example, A. Jembere, *An Introduction to the Legal History of Ethiopia* (Münster: LIT, 2000), p.11.

judge states that the FSCCD now increased up to 13 volumes has the binding effect and it makes the Ethiopian system of law an approach of common law legal system.[336] Briefly, in Ethiopia, as in states such as Québec and Louisiana, the substantive codes follow the continental models while procedural laws follow the Anglo- American traditions.[337] In this regard Girma advocates that it is difficult to identify a single "Civil Law Rule" on any given legal problems.[338] Since, the Ethiopian legal system has, thus, some common law elements, the writer subscribes to the view that Ethiopia's system of law is mixed. In characterizing Ethiopia's legal system as mixed, several factors are taken into account based on historical sources of major branches of the law, material sources of the law, and the status of customary and religious norms.

### 4.3.4.1. Precedent before the FDRE Constitution

Since 1962 there had been, at least on paper, the principle of *stare decisis (or* doctrine of *precedent)* with regard to interpretation in the Ethiopian system decisions of superior courts on matters of law were binding on subordinate courts. This Proclamation No.195/62 was however repealed thirteen years later by the Administration of Justice Proclamation No.52/75. During the transitional government proclamation No.40/93 provided that an interpretation of law made by a division of a central supreme court construed by no less than five judges shall be binding over Federal matters.

### 4.4.4.2. The present Proclamation of No. 454/2005

Ethiopia once again re-introduced the doctrine of precedent into its legal system in 2005 by the Federal Courts Proclamation Re-amendment. Further, though the common law doctrine of *stare decisis* is not applicable in Ethiopia, it would be of interest to note that the recently enacted Proclamation No. 454/2005 inserted sub-Article (4) in Article 10 of the Proclamation No. 25/1996 to explicitly make decisions of the Cassation division of the FSC binding on federal and regional courts at all levels.

*Why the decisions of federal supreme court are made binding on regional courts? Could not it violate the principle of federalism and self-determination? Hence, to address the concept of the proclamation, again the argument in similar fashion goes back to the analysis taken under the legal base and scope of court of cassation review of section 4.4.2.above.*

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[236.] Federal Supreme Court: *Chilot journal. Vol.1. no.2, (2006) p.55*

[337]. An Introduction to the Legal System of Ethiopia. The Faculty of Law of Haile Silassie I University, Unpublished 1964), p.2

[338]. Dr. Girma Gizaw, The World History of Law and Legal Institutions: Ancient, Modern and Contemporary (2007), p.238

For those who admit the first argument provides that the Cassation division can review only the federal laws, the interpretation it gives on federal matters will be binding on the FC, and state courts when they dispose cases on behalf of the FC as delegated to them. According to the American trends, state courts will only adhere to follow their own SSC decision not that of the FSC, which bind the State courts when the matter is of state rather than incorporate federal elements.[339] This argument makes the proclamation unconstitutional based on the principle of Federalism, since the matter is intended to end within the jurisdiction of the state because they are of regional importance than national importance.

For those who accept the second argument which provides that the FSCCD has the power to dispose both Federal and State matters, its interpretation binds not only Federal matters but also over State matters even if SSC have already reviewed State matters in Cassation taking in to account Art.80 (3a) of FDRE Constitution and art.2 (1)Of procl.No.454/05. Though the aim of the proclamation is to enforce the decision of FSCCD in bringing the uniform interpretation and application of laws in the country.[340]This makes the legal system more certain and predictable,[341]and is also enables to enforce the Constitutional rights of every citizen as well as to be treated equally before the law.[342]

Thus, the convincing argument is that a uniform construction and application of laws throughout the country is not expected when it comes to the laws of the units which are expected to be applied uniformly only in the concerned State via State Cassations and such practices is considered as an infringement of the judicial autonomy on their concerning matters and opposes the state Councils making their own laws. The Ethiopian federal based on ethno-cultural formation that guarantees a diversified jurisdiction impossible to advocates for uniformity of law. The consequence of precedent on State judicial autonomy and Councils can be discussed as follows.

### 4.4.3.2.1. Precedent vis-à-vis Judicial Autonomy

The Federal Supreme Court includes a cassation bench with the power to review and overturn decisions issued by lower federal courts and State Supreme Courts containing fundamental errors

[339]. William Mack and Donald. J. Kiser (ed), corpus juries secundum, A comparative re-statement of the entire American law vol. 21.(1940), p.360-361.
[340]The Minutes of the Constitutional Assembly of the present Ethiopian Constitution No.5,(Unpublished, 1994) at 32.
[341]. The minutes of Federal Courts Proclamation Re-amendment reform (2005), p.1
[342]. Ibid

of law. At the same time, the division between Federal and State law is relatively unsettled and, in practice, State Courts often resist what they perceive as encroachment on their territory. All regional States have created their own Cassation benches that tend to have little or no ties to the Federal Court structure. Further, judicial decisions in general do not create precedent and, in theory, are not binding on lower courts. However, in practice, superior courts tend to maintain, de facto, on the binding nature of their precedents, often in the guise of challenging the competence and autonomy of the lower courts.[343]

with regards to the judicial-independence there is an argument against the principle of the doctrine of precedent alleging that it is intervening in judicial independence while giving decisions.[344] In Ethiopian case, judges of different levels of courts are obliged to applied the law that of decision of the Federal Supreme Court. Therefore, State Courts, other than of its own accord, is not bound by the federal Supreme Court's interpretation if the matter is of not federal law, as a result of the *dual sovereign's* concept.

Under our Constitution Art.79 (2), judges are free from any organ of any interference or influence of any governmental body, government official or from any other source. One can argue that government organ or any other source in this case one can understand from Art.50 (2). The independence of the judiciary is important because Federalism creates two levels of government, both of which have standing in under the Constitution. Each level has offices with specific roles that are part of the Constitution. The independence of the judiciary is essential to ensure that the Federal government cannot encroach upon the jurisdiction of the sub-national government.[345]So it is envisaged to make the judiciary independent both internally itself and externally from executive and legislature. This is an institutional independency of the judiciary. In this kind of perception of Constitutional provision, the bindingness of the decision of the FSCCD on States level of Courts will be violation of the independence of the Regional judges. Moreover, since there is no hierarchal relationship between Federal Supreme Court and state

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**343** Maria Dakolias, supra note at 268, p.10

344. William L.Roynolds, Judicial process: in a nut shell, 2nd Ed (1991), p.73.

345 See Christopher M. Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," The American Journal of Comparative Law, 44 (1996): p. 611

courts either in administration and Constitutional structure, indeed the decision delivered by FSCCD is not tenable to binds State courts.

The other argument: precedents are not against the autonomy of the judiciary. In term of fairly interpreting and impartially applying Art.79 (2) of FDRE Constitution, the judiciary is made free from executive and legislative influence as inferred from the minutes of the constitutional assembly. In addition, what is envisaged under the proclamation of No.454/2005 is to make binding the interpretation of law. Interpretation of law involves stating what the existing law actually is by giving meaning to doubtful points of the law. So it is declaration of law.[346]However, there are instances in which the FSCCD beyond their jurisdiction apart from fundamental error of law breaks regional law and substitutes the provisions by federal law will be seen in the coming chapter of sub-section 5.2.2.3.

### 4.3.4.2.2. Precedent vis-à-vis State Council's

The empowerment of state with the power to legislation over the areas of their own mandate is the main feature of federalism. From the introduction of federalism, since 1995 of FDRE constitution, states have been given a legal recognition to exercise legislative power ranges from the acts of promulgating their own making laws applicable to within their own jurisdiction. The aim goes with the principle of federalism that ensures the arrangement of the two levels of government assumes the different sets of responsibilities and manages the affairs of the country.[347]

The legislatures under the States have their own peculiar powers given by the FDRE constitution and each Regional State Constitution. Regional States have legislative powers over those matters not otherwise listed in the Constitution as Federal laws.[348] These are mostly residual power go well together with Art.52 of FDRE Constitution. As it is mentioned under Art.50 (3) of the Constitution "the State Council is the highest organ, of state authority, responsible to the people of the state. Beyond law making power, the State Council has the power to control and supervise over the other organs of the state and certain decision makings as their primary duties.[349]This

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[346]. Supra not at 312.
[347]. Dennis Lloyd, the idea of law, (1991) p.259.
[348]. Ronald watts (2008), compare federal systems 3rd ed., McGill Queens University press.pp.8-9
[349]. Ibid.p.85

shows a valid point of view that laws enacted by States Council can be amended and repealed by same organ and can't be nullified by federal government, i.e. FSCCD. The reason is based on the principles of Federalism and Separation of power, mostly in ethnic Federalism there is even more separation of power, where the matter is associated with ethnic and traditional demands for greater autonomy for the constituent units which formed the majority in law making powers. In this case they use apportionment formulae recognizing ethnic, religious, language, economic and geographic differences for legislative representation as instruments for national integration.[350]In contrary, the current practice is without having proper power or hierarchical order, the FSCCD amend or delete the law enacted by state councils. In principle the Constitutional arrangement of the FSC never endowed to enact the law on behalf of the legislative, either at State or Federal level. Thus, an important protection of regional autonomy is that the Federal Government cannot unilaterally remove the powers of the regional States.

## 4.4. **Conclusion**

The central issue in Ethiopian politics past and present is the struggle between regional and central forces. Apart from the 20$^{th}$c, i.e. (1930-1991) a brief evaluation Ethiopia has reveals for the most part has been under a decentralized rather than a centralized system of governance.

Ethiopia has adopted a Federal Government system in 1995 with the ideological foundation of self determination for each ethnic group as a means for rectifying historical unjust in the country, for one interest of living together to build one political community founded on rule of law and capable of ensuring lasting peace, guaranteeing democratic order. And also to bring economic and social development and for full and free exercise of the right to self determination (seek for own autonomy) by exercising both internal and external self determination. Regional governments independently free from the central government as far as concerning their internal matters. Ethiopian federal system has also expressed in terms of unique features of self-determination, ethnic federation, and uni-cameralism.

The Constitution sets up a parallel court structure at Federal and regional State levels logical corollary of the dual polity in federations but as indicated it is not strictly followed in practice. In dual court system there are state judicial branch to entertain self-rule (matters of the regions) and

[350.] John, k. Johnson and Robert T. Nakamura: A concept on legislature and good governance for UNDP, (1999), p. 14

federal courts to exercise power on only shared rule of the federal government power which is the common issue of the Federation.

In Ethiopia the FDRE Constitution recognizes the Supreme courts (State Supreme Courts and the Federal Supreme Court) have Cassation power. Cassation is a means by which a final decision of any lower court - in relation to which appeal is exhausted - containing a basic error of law is reversed or varied by both levels of Cassation Division. However, reviewing in Cassation was introduced in Ethiopia for the first time during Emperor Menilik II in agreement with France i.e. De facto cassation. The clear legal frameworks regarding to Cassation power, particularly given to the Supreme Court was adopted since 1987 i.e. De jure cassation.

It is arguable by scholars to note that the FSCCD is assuming presently the authority to entertain cases which are decided by the Cassation benches of SSC, i.e. Cassation over Cassation, even though it is controversial as to the power of the Cassation bench of the FSC to review the decisions of the Cassation benches of SSC according to the FDRE Constitution. Its purpose is for uniform construction and application of laws throughout the country at the expense of diversified region. On the other hand, proponents of Cassation over Cassation believe that FSCCD has Constitutional power to review decision of State courts even the matter is concern State matters.

However, the Cassation Division does at present, is not only test the finality decision of State matters other than cases that invite Constitutional interpretation, but also make of state power depends on what the organ of the federal government determines to be a proper delete. This federal organ then can decide what the state government can do and cannot do through its power of interpreting and making the laws. There is a practical problem of the power of the FSCCD over States Court purely on State matter is the main desire to disrespect the sovereignty power of the regional States.

Thus, the current FDRE Constitution has clearly apportioned powers among branches of governments at both levels (federal and the regional States). However, without any convincing reasons the FSCCD reviewing the regional state matters by finding ways and means at its apex is the practical situation.

**CHAPTER FIVE: THE IMPACT OF DUAL CASSATION ON ETHIOPIAN SYTEM AND PRINCIPLE OF SELF-DETERMINATION: PRACTICAL ANALYSIS AND EVALUATION**

### 5.1. Introduction:

The uncertainty powers between different levels of government and the ambiguity of legal order may happen in federal countries not only in terms of legislative and executive functions divided between Federal and State Governments, but judicial authority too. Such disputes can be characterized by the aims of decentralization for the purpose of establishing Regional identification and autonomy within a Federal State on the one hand, and the motive to centralize or concentration of power in order to act effectively on the national on the other.

Therefore, this chapter has been tried to explore the practical occurrences of Cassation over Cassation in Ethiopian federal set up in connotation with the principle of Regional Self-Determination. The question of Cassation over Cassation has been explored by assessing the practical scrutiny of how the FSCCD encroach the regional state autonomy. The chapter has also been discovered the problem of cassation over cassation in jurisdictional and structural aspects in connection with gaps created both at legal and political aspects; the negative aspects and other consequences on state autonomy. It has also been tried to explore the role of each Governmental bodies remedies in protection of the cassation over cassation powers from the actual and potential challenges derived from the political arena. Thus, not only the mere existence but also the legal responsibility and practical efficiency with challenges against the functions of these institutions have been discussed. The Practices have been analyzed and evaluated with interview responses**;** the reaction outcome of the questionnaire distributed among the targeted groups involved; decisions of FSCCD against the Regional State matters that have been already reviewed by SSCCD and other countries experience integrated with different sources of information has been taken in the whole chapter so as to conclude in accurate way and to consolidate the finding of a research.

## 5.2. Practical Instances; Data Presentation, Analysis and Evaluation

### 5.2.1. Practical Instances of the Federal Supreme Court on State Matters

Having the pervious discussions in chapter two, three and four in mind, this part critically shows the practical extent of the FSCCD review against exclusive State cases. Simply the matters that

fall under the domain of the Regional States that have been intended to ended under the Regional State courts now reviewed by FSCCD.

On the other hand according to the noticeable current practice of the FSCCD indicates that not only the Federal matters, but also does it review any state matters so long as it is convinced that there is a basic error of law involved, which contradicts with the very idea of Federalism. In this regard the makers of the Federal Constitution did not predict or intended the Art. 80(3a) FDRE Constitution phrase *any…court decision* would affect the relationships between Regional Governments and the Central Government, especially the principle of self-determination.

Thus, the writer in this thesis want to shows, how the decision of FSCCD while reviewing regional States exclusive jurisdiction, contravene the principle of federalism and self-determination.

The self-evident of FSCCD intervenes into regional matter is for the purpose of correcting fundamental error of laws. In order to address the issue from grass root level, the author observes that the Regional State matter cases or files that have been flow from SSCCD to FSCCD for the past three fiscal years and the journey of cases to FSCCD in diagram have been studied by linking with the data analyzed and evaluated. At the end of this purpose, the coming section starts dealing with the analysis and evaluation of data which is the heart of the study.

#### 5.2.1.1. Cases Comes From State Supreme Court Cassation Division to Federal Supreme Court Cassation Division

This section also revolves around the issues as to whether the Cassation Division of FSC has the power to hear and decided matters given to Regional Courts or whether its jurisdiction is only restricted to matters allotted to the Federal Government and hence Federal Courts.

After the establishment of Federal court proclamation No.25/96, came in to force, there where an unexpected different files came from regional matters reviewed by SSCCD for the second time by FSCCD. To show this pragmatic Cassation over Cassation, there, we have the following figures from the FSC registry.

In 2003 fiscal year about 17,399 applications were filed for Cassation. Out of these, 10,930 applications came from Regional States. This implies 62.8 percents was regarded as the regional affairs that were the FSCCD entertains. Among the nine regions Oromya accounts 4,022 applications, whereas the SNNPs account 2,993 as the next applicants. Among the presented files 7724 of them had rejected by three screening judges because of basic error of law is not

present.[351] As well in 2004 fiscal year 9856 petitions for Cassation were filed; 5,078 of them filed from the region States. This also indicates about 52 percents were come from the Regional courts after it was reviewed by their respective SSCCD for the second Cassation. Among the nine regions Oromya accounts 1866 applicants, and next Amhara accounts 1,287. Among the presented files 6890 of them had rejected by three screening judges in the absence of basic error of law.[352]

Again in 2005 fiscal year 9608 petitions were filed; 5,048 of them came from the region States. This is statically implies that about 52.5 of the files came from the regional courts which is the regional matters reviewed in SSCCD. Among the presented files, 6590 of them had rejected by three screening judges in the absence of basic error of law. [353]

In sum, in the years 2003-2005 fiscal years around 57.5 percent constitutes the work load or inputs for the FSCCD comes from the Regions. When we examine the subject matter petitions, we assessed that they generally related to State subject matters like possessory action with respective to immovable's, ownership of houses raised from the State by that State residents; family cases (marriages, filiations, adoptions, division of matrimonial property); succession, and disputes concerning the breach or validity of contracts. Thus, observed in due course under the subject matter of court distinct jurisdiction, since it is a residual power specially a civil matter, these matters possibly falls within the domain of regional courts.

Whatever the FSCCD had been declared that the Division has the power to review State matters while decided the case, one can say that would not worry about the issue. This is simply almost all of the application filed for the 2nd cassation within the three years had been rejected, even the respondents in such a case did not get a chance to raise objection on the ground of lack of jurisdiction over regional matters. Here the aim of the writer is not in any method hamper the reader in unnecessary statics. Rather the author is interested in showing the issue how much the FSCCD had interfere in the state matters even the matter has been reviewed in its respective SSCCD, and in addition to convince the readers the FSC now reviewing state matters beyond their authority. Thus, the problem under consideration is that to what extent the FSCCD reviewed, and review cases decided by SSCCD are the major intuition of the thesis.

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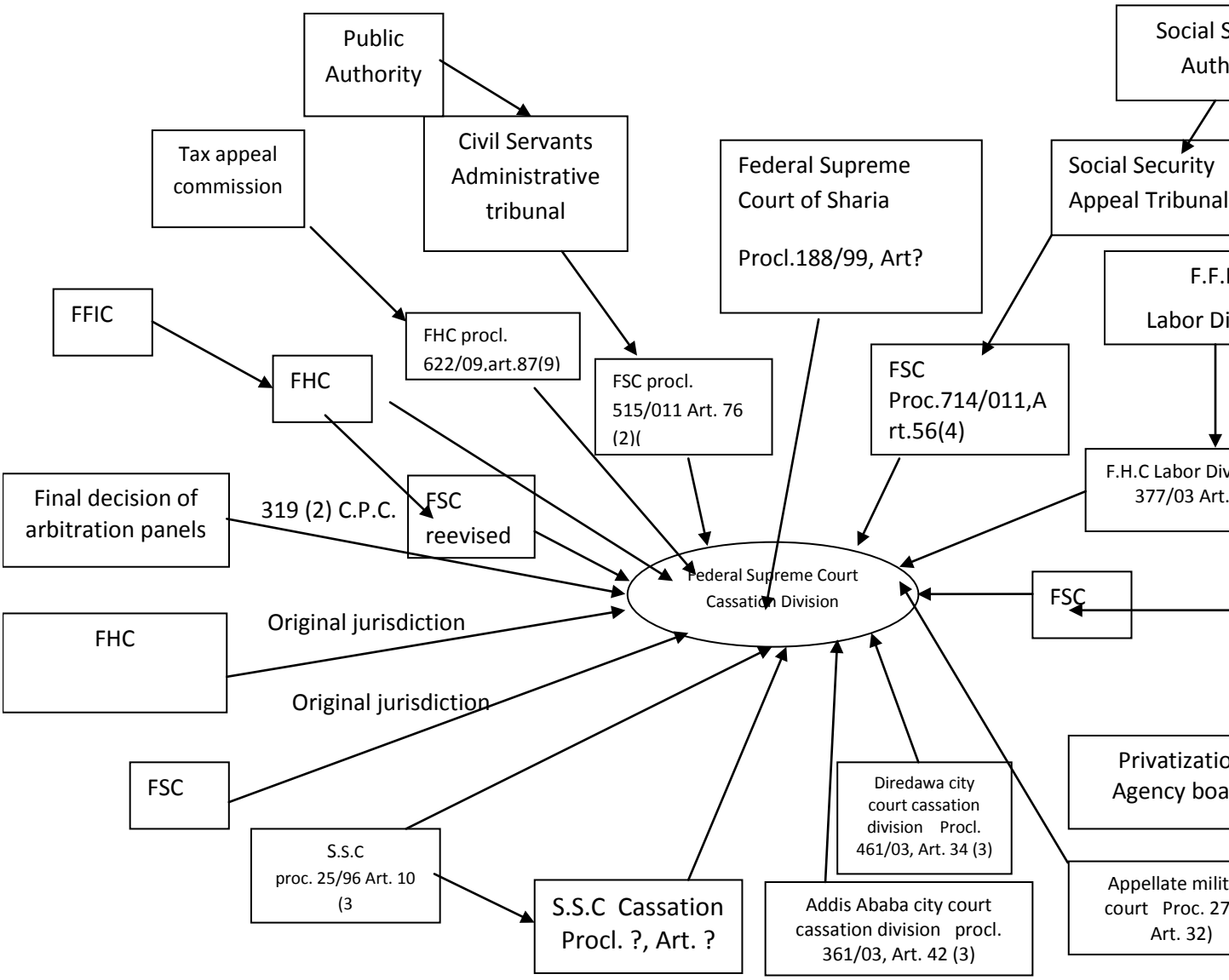
[351]. Federal Supreme Court registrar office files profile from data base, (Addis Ababa, 2003) visited, 22/03/2014

[352]. Ibid

[353]. Ibid

### 5.2.1.2. Journey of cases to federal Supreme Court cassation division from different courts.

Chart.5.1. source: collected from different Ethiopian laws.




N.B: From the above diagram one can understand that whether the FSCCD has legal authority to review cases that emanate from each respective court. Except SSCCD and FSC of sheria there is a clear provision that empowers the FSCCD has to review other courts or tribunals final decision when basic error of laws are consider. From the section 5.2.1.1.shown above 57.5 percent of the cases flow to the FSCCD has been came from SSCCD, but the rest has been flow cases came from other federal courts and other tribunals.

## 5.2.2. Data Presentation, Analysis and Evaluation

The data presentations, analysis and evaluations are carried out in the following five separated sections and have also been divided into posed questions arranged under each check lists. The posed questions that should deserve answers are: the current constitutionally recognized dual court system permits the FSCCD to interfere in the regional states jurisdiction? Or How about dual court and dual jurisdiction under Ethiopian federalism operated in function? What possible gaps are created by Cassation over Cassation? How the cassation over Cassation affects Regional autonomy? Or is the interference of FSCCD in to regional matters compatible with the principle of federalism and Self-determination? Or how Sovereignty at Regional Stats level vis-à-vis with judicial Federalism affected by FSCCD? If it is not compatible with the principle of Federalism and Self-determination what will be the effects or consequences happen? At the end what should the grass root solution? Thus, the arrangement is: 1st the question posed in each check lists have been presented and analyzed. 2nd the legal grounds related with the questions have been examined. 3rd the response of interviews have been linked with the laws and practices. 4th the experience of countries followed by the decided real cases by FSCCD with evaluation has been described. Finally the idea of the author has been contributed.

## 5. 2.2.1. Dual Jurisdiction and Structure of Courts

A Table 5.2.2.1 shown below presents the data concerning issues of dual jurisdictions and dual structures of courts in Ethiopian federalism. For the 1st question, 41.9 percent or 18 out of the 44 of the sample respondents confirmed that judicial power in Ethiopia is clearly divided between Federal and Regional States, while 59.1 percent or 26 out of the 44 sample respondents responded that judicial power in Ethiopia is not clearly divided between Federal and Regional States. This data shows that almost more than half of the respondents believed that judicial power in Ethiopia is not clearly divided between Federal and Regional States.

As provided under Art. 50(2) of the FDRE, the Constitution mainly divide both Federal and State Governments shall have judicial powers. Besides, Art. 50(7) of the same Constitution affirm that State judicial power is vested in its courts. On the other hand the FDRE Constitution provided two sets of courts institutionally, one at regional and the other is at federal level. Under chapter nine the Constitution divides the judicial powers between Federal and regional Courts. Art.79 (1) of the FDRE Constitution states that judicial Powers, both at Federal and State levels, are vested

in the Courts. Also Art.78 (1, 2) of the Constitution shows that both Federal and States governments have opted for a three tiers of courts. But the FSCCD under Art.80 (3a) stands to give the feeling as fourth tier for both levels of governments when we observing the practical activities of the FSCCD shown under section **5.2.1.1, 5.2.1.2**.above and from the proponents of Cassation over Cassation.

Table.5.2.2.1.Dual Jurisdiction and Structure of Courts

| Questions Posed | Responses from Key Informants | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | judges | | | | Public prosecutors | | | | Attorneys At both level | | Teachers vs. Student | | | | Total no | | Total % | |
| | Fed. | | Reg. | | Fed. | | Reg. | | | | Teach. | | Stud. | | | | | |
| | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no |
| Do you observe that judicial powers in Ethiopia are clearly divided between Federal and Regional States? | 9 | 5 | 3 | 11 | 2 | 1 | 1 | 2 | 3 | 1 | 0 | 3 | 0 | 3 | 18 | 26 | 40.9 | 59.1 |
| Do you agree that the Federal Supreme Court cassation division while reviewing State matters have clear and absolute jurisdiction specified both in the FDRE Constitution and proc. No.25/96? | 10 | 4 | 2 | 12 | 1 | 2 | 0 | 3 | 2 | 2 | 0 | 3 | 0 | 3 | 15 | 29 | 34 | 66 |
| Do you agree that the establishment of dual cassation in Ethiopian Federal context justifies the underlying concept of cassation? | 7 | 7 | 1 | 13 | 1 | 2 | 1 | 2 | 1 | 3 | 0 | 3 | 1 | 2 | 12 | 32 | 27.2 | 72.8 |
| Do you believe that the FDRE Constitution establishes superior-subordinate relationship between the federal and state courts? | 2 | 12 | 3 | 11 | 1 | 2 | 0 | 3 | 2 | 2 | 0 | 3 | 0 | 3 | 8 | 36 | 18.9 | 81.1 |
| Total respondent | | | | | | | | | | | | | | | | | | |

Source: Computed from collected data as primary sources

The real federalism with regards to the judiciary is representing in the United States and Australia has two of the longest-running and best-known dual court systems in the world. In each

of these countries, local or regional law is enforced in the state court system at the same time as national law is enforced in the FC system.[354]They are expressed in terms of judicial federalism, i.e. State and FC's are organized in dual system or parallel in structure. On the other hand India and Germany judicial systems are the typical example of single integrated court systems.[355]

The Ethiopian federal structure is not developed compared to the federal systems in the west and, the court system has practically not strictly followed dual system. The Ethiopian practice is between two hearts. To say full-fledged dual, the regional courts in addition to their own jurisdiction, are delegated to exercise judicial power on federal matters and FSCCD for practical motion reviewing state matters. Neither single integrated court system due to the Constitution come up with two sets of courts as per Arts.52 and 79 (1) of the FDRE Constitution.

Finally, the Ethiopian court structure in practice distorts the principle of dual structure as provided under section 2.2.4.4.indicated simply, at least in theory, of the dual nature. The author believes that there is a practical problem of FSCCD rather than a Constitutional problem, in effect that the current structure of Ethiopian federalism distorts the dual structure and jurisdiction.

For the 2nd posed question as indicated in table 5.2.2.1 above 34 percent or 15 out of the 44 respondents replied that the FSCCD while reviewing State matters have clear and absolute jurisdiction specified both in the FDRE Constitution and proc. No.25/96, whereas 66 percent or 29 out of the 44 sample respondents agreed that the FSCCD while reviewing State matters have no clear and absolute jurisdiction specified both in the FDRE Constitution and proc. No.25/96. As shown in the data presented above, among the categories of respondents out of the 28 sample judges, 16 of them say that the FSCCD has no power to review Regional State matters. Out of 14 sample Federal judges, 10 of them support FSCCD review of state matters. On the opposite side out of 14 samples of State judges 12 of them confirm that FSCCD has no Constitutional power to entertain in State matters that have already reviewed by Regional States. The presented data describes that there is a disagreement between the two levels of Courts. The FC needs centralization of power whereas the State Courts advocates for decentralization of judicial power. In this regard Art.80 (3) of FDRE Constitution and FC Proclamation No.25/96 Art. 10 (3) states as follows:

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[354]. http://www.wisegeek.com/what-is-a-dual-court-system.htm (accessed 20/03/2014)

[355]. Assefa Fiseha, Federalism and accommodation of diversity in Ethiopia: comparative study (Nijmegen, wolf publishes, 2005), PP 400-415 in Ethiopia: comparative study

Art. 80(3) states notwithstanding the Provisions of sub-Articles 1 and 2 of this Article;
(a) The Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law. Particulars shall be determined by law.
(b) The State Supreme Court has power of causation over any final court decision on State matters which contains a basic error of law. Particulars shall be determined by law.
Art 10(3) of proclamation no.25/96 read as in cases where contain fundamental error of law, the Federal Supreme Court, shall have the power of cassation over final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

Whatever the argument is raised from different angle, the point of discussion should be: *is cassation power of FSC at apex work for dual court system?* From the phrase "*any…court decision"* indicates *of which matters, federal or both state and federal*? The other issue may be if FSCCD court looks cases that have already been looked by the SSCCD, Which one is the Supreme from *two equal Supremes* on the regional State matters? These questions have also been developed by professionals' through interviews.

From the reading of Art.80 (3b), one of the opponents of Cassation over Cassation believes that the power of cassation is explicitly stated on state matters; while in the Art.80 (3a), it does not limit the power of Cassation of the FSC. It does not specify the FSCCD to federal matters. It simply says "*over any…court decision*". This approach in the principle of dual court structure forces one to interpret 'any court' under Article 80 as any federal matter or any other court rendering a final decision on federal matters without including state court.[356]

He added it is clear that the Constitution in principle empowers each court system to have final judicial powers over their own matters. From the wording of the "*notwithstanding*" one can understand the exception nature of Art.80 (3). However, the exception never excluded SSC, nor clearly authorizes FSC on state matters. Even though FSC has cassation power over any final court decisions, yet SSCCD by further exception have authorized to assume power on any final court decision of Regional matters. This prevents the FSCCD to be free intervention by the pretext of *any final court decision*.[357]

Another unanimous groups or supporters of argument against the FSCCD to review FSC

[356]. Interview with Ato Alemayehu Teganu, attorney both at federal and State courts, 16 April 2014
[357]. Ibid

Cassation decision, the "*any…court decision*" refers the regional court's decision on federal matters limited to of delegation powers.[358] They are also stresses the purpose of Cassation itself not warrants the existence of Cassation over Cassation and the FSCCD power extended to other federal court systems or other tribunals not on State judicial system.[359]Other scholar of Federalism who support the argument against the FSCCD has an opinion that even the subsequent legislation which tried to put SSCCD subjected to FSCCD, is Constitutionality suspected.[360]Because, it makes State courts subordinate to FC by violating the principle of mutual respect in the federal system. Regional state matters reviewed two times as seen from the diagram above (section.5.2.1.2.). However, the SSCCD does not have Cassation power over Federal matters and it is reviewed one time only by FSCCD. Thus, no valid reason at all to have Cassation over Cassation, no two final exist nor two highest'.

On the other hand another partial supporter of Cassation over Cassation has an exceptional idea dealing that based on the Constitutional principle and on issues of National importance even if the subject matter is regional one by looking basic error of law and taking in to account constitutional right of equality principle, especially children's and women's right violated with regards to their well being and common property respectively, Cassation over Cassation is not against the principle of federalism,[361] but on minor local issues cassation over cassation is not reasonable. In this regard one cannot surprise to perceive that the FSCCD is the only source of justice and guardian of rights. However, from the reading of Art.13 (1) of the FDRE Constitution both Federal and State judicial organs at all levels shall have the responsibility and duty to respect and enforce the human rights provided in the Constitution and also the Constitution is not identified minor local issues from other regional matters under Art 52. Regional matter is always regional not federal matters. Whereas another supporter of cassation over cassation argue that the phrase "*any…court decision*" implies that the division has the power to review decisions of both federal and regional state courts.[362]

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[358]. Interviews with Ato Misganu Muleta (a judge at Oromya Supreme Court cassation Division and former Director of Oromya Justice sector professionals training and Legal Research Institute), Ato Teshome Shiferaw (a judge at Oromya Supreme Court cassation Division), Ato Taklit Yemisel (a judge at federal Supreme Court Cassation Division), and Ato Tsegaye Asmamew (a judge at federal Supreme Court Cassation Division) conducted between 28/03/2014-02/04/2014

[259]. Ibid

[360]. Interview with Dr. Hashim Towfik, instructor at AAU, center for Federal Studies and member of the Council of Constitutional Inquiry, 07 April 2014.

[361]. Interview with Ato Ali Mohammed, a judge at federal Supreme Court cassation Division, 07 April 20014

[362]. Interview with Ato Teshager G/silassie, a judge at federal Supreme Court cassation Division cited by Kalkidan Aberra, Ethiopian journal of legal education: precedent in the Ethiopian legal system, vol.2. No.1 (2009), p. 31

In this effect in the USA and Australia, federal law is much better enforced and more uniformly applied by federal courts because there is a full system of lower federal courts. Moreover, state law is a much and develop the meaning of state law independent of federal Courts.[363]

So it is not a valid approach at all to look in to the above cited provisions and conclusively generalize that the FSC has cassation power over Regional State matters, just because there is no clue about that in the two legislations in the principle of dual court federalism, self-determination and Arts.80(2), and 80(3b) reading cumulatively. Likewise, we have no supportive approach to see the purpose of vesting the FSC with a cassation power in those provisions and confidently bound to a conclusion that the purpose empowers it to review State matters via cassation.

The FSCCD has passed a decision regarding on the case of contract of a bid of refrigerator initiated at East wollega HC. The respondent was delivered the object as per the contract to East wollega zone finance office and health office. Latter the applicants refuse payment and the case was arising to the FSCCD after exhaustively reviewed by Oromya SSCCD. The respondent raised a preliminary objection that the case is of regional affairs and already reviewed by SSCCD. The FSCCD reject the defense stating as per Art.80 (3a) and Art. 10(3) have the power to review. However, the FSCCD confirmed the decision Oromya SSCCD decision on civil file No. *53968*, passed at *Hidar* 3, 2003 E.C; after the proceeding has been carried out for 1 year and ten months.[364] In this regard the parties to the contract are residents of Oromya Regional States as well as the issue is civil matter, especially, the contract which is the residual power assigned to the State courts as provided under section.4.3.2.1**.**

Similarly, the issue of validity of marriage was raised at Tigray Regional State social court. The husband take petition to Tigray Cassation bench as the bench revised the decision on ground of invalid marriage. Opposing this decision the wife brought the petition to the FSCCD, claiming that their marriage was valid under law. The respondent opposed the petition on ground that the FSCCD did not have jurisdiction to review the case because it has been reviewed by SSCCD. However, the FSCCD revise the decision on ground of basic error of law.[365] Thus, family case is purely Regional matter and the FSCCD has no legal authority by the principle of division power

[363]. Supra note at 265

[364]. East wollega zone finance office (two parties) vs. Tsegaye Naga, federal Supreme Court Cassation division file.No.53968, Hidar 3, 2003.

[365].Teber Berhe vs Gebremeskel Hagos Federal Supreme Court cassation division, file No.6228

to entertain the residual power which is the mandate the regional State courts jurisdiction.

While in the United States, a model for Ethiopia, there is dual courts; the SSC serve as a state's court of last resort if a case does not involve federal law and then the SSC issues the final and determinative ruling in the case. Further, state courts retained the final power to interpret their own state law discussed above under section 4.3.2.

As understanding from the questionnaire and interview responded above there is a disagreement between the Federal and State courts. State courts claim the FSCCD has no constitutional power to entertain in state matter, and interfere in to state matter is considered as encroach the state power as well as disregard the principle of division of power. Finally, the author is in a position to conclude that Cassation over Cassation is against the very principles of a federal system and has the aim of discouraging self-determination on the ground that interfering in state jurisdictions. Moreover, unlike USA and Australia the practice of FSCCD violates the principle of legislative and dual federalism provided under sections 2.2.4.2 and 2.2.4.4 respectively.

Concerning to the third posed question 27.2 percent or 12 out of 44 sample respondents has the opinion that the establishment of dual Cassation in Ethiopian Federal context has justifies the underlying concept of Cassation, while 72.8 percent or 32 out of 44 of the sample agreed that the establishment of dual Cassation in Ethiopian Federal context has not justifies the underlying concept of Cassation.

As stated above under Art. 80(3) both levels of governments have Cassation power as far as their concerned matters. The Constitutional Assembly at the first glance only conferred cassation power upon the FSC, without conferring similar power upon SSC. Later on, the power conferred upon state courts and recommended for its incorporation in the Constitution to the Constitutional Assembly as stated under section 4.4.2.2 above. Therefore, the later idea is accepted in such a way that the FSCCD shall have Cassation power over federal matters as well as the SSCCD also accord the same on state matters. However, the ideas reflected by the Constitutional Assembly in the minutes and the Constitutional provision is divergent each other and as a consequence the Constitution harm the intention of the Constitutional Assembly draft sub article in such a way that it would not give Cassation power to the FSC on State matters.

Thus, in the writer's opinion the draft minutes not give a good reason to justify in a sense that the Constitutional provision empower the FSCCD has the power to control and review State courts by any means. Because of the concept of federalism, dual court system, and the NNPE's

sovereignty power to ensure the principle of self-determination should be accorded parallel powers. For this an important example passed by FSCCD on the civil file No.53968 provided above disregards the reasons mentioned.

In this regard, Unlike Ethiopian Cassation, the USA Supreme Court not review state matters unless their decision involves federal elements. So that the two Supreme courts are strictly separate in USA. Again the Ethiopian trend in views of Cassation deviates from other countries experience neither dual nor single as indicated under section 4.3.1.

Thus, the concept of Cassation under discussion is makes unique the Ethiopian federal practice. The author believe that the underlying concept of Cassation in Ethiopia as the Constitutional expression of judicial federalism, two untouched court system that are autonomous on their own matters like USA federalism in jurisdiction and structure did not accorded due to the practical problem as provided under section 3.4.2.1.

The final posed question under table 5.2.2.1.is that whether the FDRE Constitution establishes superior-subordinate relationship between the federal and state courts is another contested area under discussion from the opinion of professional respondents. Accordingly, 18.9 percent or 8 out of 44 sample respondents confirmed that the FDRE Constitution establishes superior-subordinate relationship between the Federal and State Courts, whereas 81.1 percent or 36 out of 44 sample respondents not believed that the FDRE Constitution establishes superior-subordinate relationship between the federal and state courts.

In Ethiopia, the principles of mutual respect which govern the relation between FC and State Courts are enshrined in the Constitution under Art.50 (8) in which case there is neither superior nor subordinate between the two levels of governments. To address Art.50 (2) of the FDRE Constitution, courts structure in Ethiopia is dual or parallel. There are federal and state courts. Jurisdiction of federal courts is limited to federal matters and the jurisdiction of regional courts is limited to state matters except delegation as indicated above under section 4.3.2.1. This principle gives rise there is no direct relationship between the FC and RC unless State courts entertain federal cases through delegation as per Art.78 (2) of the FDRE Constitution.[366]

When we compare with USA, each federation state courts have constructed their own pyramid of

[366]. Supra note at 358

power which each of them is supreme on their own issue.[367] The USA and Australia is characterized by the best-known dual court systems of the world where the local or Regional law is enforced in the state court system at the same time as National law is enforced in the federal court system.[368]To put it in other words a given court is above the other in hierarchy of the other court system if it reviews the decision of the others.

So that, as of necessity, in Ethiopian federalism the FSCCD revises SSCCD that is of purely regional matters inconsistent with federalism. The FSCCD reviews a decision without regarding the jurisdiction of Regional State Courts on the issues of two family cases that combined with contract on civil file No. 54827, passed on *March* 29, 2003 E.C and decision civil file No.69657, passed on February 28, 2004 and order the state courts to enforce as of the decision. There is an indication that the ideal disagreement between the two levels of courts in the manner as the World Bank assesses. (See section 4.3.2.)

Therefore, the current Ethiopian dual court structure and dual jurisdiction bends at top through the practical intervention of FSCCD in to State courts, which disrespect or distorts the dual court structure and jurisdiction of Ethiopian federalism. Not only distort the duality structure and jurisdiction of Ethiopian courts, also against its autonomy.

### 5.2.2.2. Legal, Political and Justice Gaps between Cassation and Federalism

In this section the Legal, political and justice gaps created by Cassation over Cassation against Federalism and Principle of Self-determination can be also seen from the perspectives of questionnaires, interviews and practical cases of purely Regional State matters that have been decided by FSCCD. The first posed question is whether the Ethiopian cassation over cassation is consistent with currently prevailed Federal Countries of the world. As it is shown below table.5.2.2.2, 95.5% of sample represents agreed that the Cassation over Cassation of current Ethiopian practice is not established in line with the known prevailed federal countries of the world. While only 5. 5% percent or 2 out of the 44 of the sample respondents agreed that the dual cassation of current Ethiopian practice is established in line with the current known prevailed countries of the world.

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[367]. How the USA court system work, available at <http://www. Layer initiative.Com/law-artcle, hotmail

[368]. http://www.wisegeek.com/what-is-a-dual-court-system.htm(accessed 20/03/2014)

Table.5.2.2.2.Legal, Political and Justice gaps Created by Cassation over Cassation and its inconsistence with Federalism and Principle of Self-Determination

| Questions Posed | Responses from Key Informants | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | judges | | | | Public prosecutor | | | | Attorneys at both levels. | | Teachers and students | | | | Total no | | Total % | |
| | Fed | | Reg. | | Fed. | | Reg. | | | | *Teach.* | | *Stud.* | | | | | |
| | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no |
| Do you perceive that the Ethiopian cassation over cassation is consistent with currently prevailed Federal Countries of the world? | 2 | 12 | 0 | 14 | 0 | 3 | 0 | 3 | 0 | 4 | 0 | 3 | 0 | 3 | 2 | 42 | 4.5 | 95.5 |
| Do you agree that cassation over cassation is well-matched with the principle of Self-determination? | 3 | 11 | 0 | 14 | 1 | 2 | 0 | 3 | 0 | 4 | 0 | 3 | 0 | 3 | 4 | 40 | 9 | 91 |
| Do you agree that State laws made and interpreted by respective State Councils and state judges being subjected to review by Federal cassation division could promote the principle of Federalism and Self-determination (Self-government)? | 3 | 11 | 0 | 14 | 1 | 2 | 0 | 3 | 0 | 4 | 0 | 3 | 0 | 3 | 4 | 40 | 9 | 91 |
| Do you agree that there is a great difference in quality of judges or judgments between the States and Federal Supreme Court cassation division judiciaries? | 9 | 5 | 0 | 14 | 1 | 2 | 0 | 3 | 0 | 3 | 0 | 3 | 0 | 3 | 10 | 34 | 22.7 | 77.3 |
| Total respondent | | | | | | | | | | | | | | | | | | |

Source: Computed from collected data as primary sources

Unlike a single Cassation of French for the country or the American federalism of dual court structures, in which case both levels of Highest (Supreme) court have review their own matters without interfering others matters, Nor as like integrated court system in Germany and Canada the federal state may adhere either to the dual court structure where each of the units, on the one hand, and the Federal Government, on the other, has its own stratified court structure or to the

establishment of only a SC for the central government and other courts of the units which are independent by themselves but dependent in relation to the jurisdiction of the national SC (section 3.4. of chapter three), the Ethiopian Cassation division functionally unique from its counterparts shown above section 5.2.2.1.

Finally, the current Ethiopian situation adopts the USA model in theory and introduces the Nigerian experience in practice (see chapter three). However; the act of FSCCD interpretation is not justify the power of Cassation over Cassation in Ethiopian federal context since there is no superior-subordinate relationships from the constitutional point of view.

When we come to the second posed question, whether Cassation over Cassation is well-matched with the principle of Self-determination is also seen from the respondent's reaction as follows.

As shown in table 5.2.2.2 above only 9 percent or 4 out of the 44 of the sample respondents confirmed that Cassation over Cassation is well-matched with the principle of Self-determination, while 91 percent or 40 out of the 44 sample represent responded that Cassation over Cassation is not well-matched with the principle of Self-determination. This data shows that almost the entire sample believed that Cassation over Cassation is not consistent with the principle of Self-determination. Simply, the FSCCD reviewing State matter is against self-determination.

Similarly, as cited under table 5.2.2.2.above again only 9 percent or 4 out of 44 the sample respondents agreed that State laws made and interpreted by respective State Councils and state judges being subjected to review by FSCCD could promote the principle of Federalism and Self-determination (Self-government). Conversely, 91 percent or 40 out of 44 sample respondent did not agree with the question posed. Thus, the data indicates that almost the entire sample believed that laws made and interpreted by respective State Councils and state judges being subjected to review by FSCCD could not promote the principle of Federalism and Self-determination (Self-government).

*In this regard Art.39 (3) of FDRE Constitution read as Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government…..*

The intensity of the right to self-determination may also be reflected in the breach of self-governance which is one of an inherent element of federalism as provided under (section 2.4.2.2.and 4.4.2.1). Ignorance of the principle of self-governance in favoring shared rule results is an unbalanced treatment as between the Federal Government and the States. The States have

the power to govern their own affairs including State matters under the self-rule principle. However, since state judiciary power has been automatically taken away from them by the FSCCD the probability of the States' self-rule in respect of state matter law and policy is less and as a result, the notion of federalism in terms of state laws turns to be centralization rather than federalization.[369]Decisions of civil file No.54827 and No.69657 described under section 5.2.2.1.on top shown decided by the FSCCD is not in line with the principles of federalism and self-determination.

The opponents of cassation over cassation argues that the practice is not only against the principle of federalism and it is also discourages the Constitutional principle of self-determination since all powers left to the regions now cross checked by the FSCCD. They further argue that the FSCCD is not in a better position to interpret than SSCCD, basically the regional law is enacted taking in to account the regional communities history, culture, language and identity which is the heart of regional self-determination elements.[370]This is also supported by Art.46 (2) FDRE Constitution declare that States shall be delimited on the basis of the settlement patterns, language, *identity* and consent of the peoples concerned.

We observe Art.39 of the Constitution provided that the highest weight power of the right to self determination, including secession has been given to the regional states. So, the federal government, especially FSCCD entrench its hand for mere power of State matters in disregarding the principle of self-government gradually gives rise negative implication on the Ethiopian federalism. According to Taklit the problem created by cassation over cassation is not resolved in the existence of one dominant party system both at federal and state level, but the problem will be out in the open for a solution when the opposing party win by election in one Regional states.[385] Hence, the right to self-determination guaranteed by the Constitution is thinned down by FSCCD.

Since Federalism and self-determination represents a division of power and the concerns of relationship between the federal and state governments, it arises at time FC acts in a manner that may encroach on state government or against state interest, Since there is no superior-subordinate relationship between the two levels of government as far as their respective powers allocated by the Constitution.[371]

[369]. Misganu, Supra note at 358
[370]. Supra note at 358
[371]. Taklit, supra note at 358
[372]. Interview with Ato Abdulselam Siraj, a judge at Oromya Supreme Court cassation division, 02, April 2014

State laws made and interpreted by respective State Councils and state judges being subjected to being reviewed by FSCCD is discourage the principle of Federalism and Self-determination (Self- government). Instead in federal countries the regional states decision interpreted by the central judicial body means that there is a great opportunity and tendency lead the country to the unitary system. So that, Teshome believes that centralized judiciary power in general and revision of state matters by FSCCD in particular is the characteristic feature of a unitary state government.[373]

Whoever wants to talk of the right to self-determination granted to the NNP in Ethiopia may do so by excluding the judiciary power with regards to the regional States matter, inter alias, grants the legislative and executive power is not sound. Thus, the component units of the federation in Ethiopia have the right to self determination by no means eliminate self- adjudicating by own judiciary on own issue. Thus, Constitutional premise which allows an extreme sovereignty for the constituent units, expected to strengthen judicial branch in line of federalism.

In the final posed question, 22.7 percent or 10 out of 44 sample represents agreed with the assertion that there is a great difference in quality of judges or judgments between the States and FSCCD judiciaries, while 77.3 percent or 34 out of 44 percent not believed. The idea that the state judiciaries are played a greater role in state councils legislation and federal court decisions than is willingly admitted. Federalism can also be seen as a means to promote justice in a variety of ways, including matching the benefits of government closely to the society and satisfy the diverse conceptions of justice held by the peoples of the constituent political communities save the costs. But as stated above in section 4.3.2 the FC tries to control the State Courts, the State Courts by their turn tries to maintain their sovereignty. This effect has negative impact on the efficiency of justice system at all. Moreover, their educational background from the same university or equally trained, there is no reason to believe that the quality of state judges does not equal the quality of the federal judges.[374]Thus, the argument raised by Abebe Mulatu is not tenable as provided under section.4.4.2.2.

Thus, with regards to the quality of judges and judgments stating that problems can be remedied only in the FC or another way of saying that state judges are unable to adequately address state laws questions in the state courts is the contradictory idea of federalism and self-determination.

[373]. Teshome, supra note at 358

[374]. Misganu, Supra note at 358

In general, the practice of Cassation over Cassation has negative impact on the Ethiopian Federalism by creating gaps in Legal, Political and Justice Aspects.

### 5.2.2.3. Federal Supreme Court Cassation Division vs. State Autonomy

Under this section how the state autonomy in respect of the state law, the principle of self-determination, the development of regional law, the independency of judges and state council power is affected by FSCCD carried out for discussion.

Table.5.2.2.3. Federal Supreme Court cassation division vs. State Autonomy

| | Responses from Key Informants | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | judges | | | | Public prosecutors | | | | attorneys at both levels | | Teachers v students | | | | Total no | | Total % | |
| | Fed. | | Reg. | | Fed. | | Reg. | | | | Teach. | | Stud. | | | | | |
| | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no |
| Do you think that State Courts are entitled to deliver final decisions on State matters that are never be an area under discussion by federal cassation division? | 4 | 10 | 6 | 8 | 2 | 1 | 1 | 2 | 1 | 3 | 1 | 2 | 0 | 3 | 15 | 29 | 34.1 | 65.9 |
| Do you think that the decision of Federal cassation division on the issues emanating from the Regional States influences the Regional Sates Judicial autonomy? | 8 | 6 | 11 | 3 | 3 | 0 | 3 | 0 | 4 | 0 | 3 | 0 | 3 | 0 | 35 | 9 | 79.5 | 20.5 |
| Do you believe that the decision of federal Supreme Court cassation division in some circumstances contradict with the underlying principle of Self-determination in Federal context? | 9 | 5 | 10 | 4 | 3 | 0 | 3 | 0 | 3 | 1 | 3 | 0 | 3 | 0 | 34 | 10 | 72.3 | 22.7 |
| Do you think that the decision of Federal cassation division over State matter is encourage the development of the Regional legal system? | 4 | 8 | 1 | 13 | 0 | 3 | 0 | 3 | 1 | 3 | 0 | 3 | 0 | 3 | 6 | 38 | 86.4 | 13.6 |
| Do you believe that all decisions of Federal cassation division acquire the status of precedency on State Governments or judicial process? | 7 | 7 | 4 | 10 | 2 | 1 | 1 | 2 | 1 | 3 | 1 | 2 | 0 | 3 | 16 | 28 | 36.3 | 63.7 |
| | | | | | | | | | | | | | | | | | | |

Source: Computed from collected data as primary sources

Under table.5.2.2.3.Above the question posed is that State Courts are entitled to deliver final decisions on State matters that are never an area under discussion by FSCCD. Thus, only 34.1 percent or 15 out of 44 of the sample agreed that the decision delivered by Regional State courts are never subjected to under discussed or reviewed by FSCCD. Conversely 65.9 sample respondents have of the opinion that the decision delivered by Regional State courts are subjected to discussed or reviewed by FSCCD. The data presented states that more than half of the respondents agreed that the decisions delivered by SSCCD are reviewed by FSCCD.

Thus, the greater percent of the sample believed that the decision delivered by Regional State courts are subject to under discussed or reviewed by FSCCD have a correlation with the caseload and the spilling over effect of applicants toward FSCCD is mostly comes from SSCCD (see section 5.2.1.1.above). It shows that cases that is purely regional matter flow to FSCCD is amount to 57.5 percent for the past three fiscal years. In this regard, especially cases that came to Oromya SSCCD in any way not left without presented to FSCCD for second Cassation.[375]

The second posed question is that whether the decision of FSCCD on the issues emanating from the Regional States influences the Regional Sates Judicial autonomy? 79.5 percent or 35 out of the 44 respondents agreed that the decision of Federal Cassation division on the issues emanating from the Regional States influences the Regional Sates Judicial autonomy, while 20.5 percent or 9 out of 44 sample respondents did not agree with the assertion.

Similar question that goes with the second issue is that whether the decisions of FSCCD in some circumstances contradict with the underlying principle of Self determination in Federal context. 72.3 percent or 34 out of the 44 of the sample agreed that the decisions of the FSCCD in some circumstances contradict with the underlying principle of Self-determination in Federal context, while 22.7 percent or 10 out of 44 of the sample do not agree with the question.
In this regard Art.50 (8) of the FDRE Constitution stipulates that there is a mutual respect among the level of governments. The Federal Government shall likewise respect the powers of the States. In similar matters as per Art.52 (1) of the same Constitution residual power is the exclusive jurisdiction of the regional government power where the judiciary is equally apply

[375]. Teshome, supra note at 358

and on this issues the federal courts does not interfere in it.

However, the principle of comity is insignificant. State judges disagreed with a particular decision of the Federal Supreme court cassation division against state matters, [376] however; they should have no argument with federal review of state court decisions involving federal questions (delegation power). On the other way round if there is to be an impression of uniformity in the application of federal law provisions by the state courts, the FSCCD have the last word.

However, Cassation over Cassation against matters of family law is the most contentious issues in the Ethiopian federalism. When we observe FDRE Constitution Arts.51 and 55, family issue is out of the mandate of federal governments. The point is, we have multiple of family codes in the federation, *inter alias,* the Tigray, Oromya, Amhara, and SNNP have enacted their own family law. These family laws incorporates different new principles that deviate from RFFC, because the regional States enacted their family law based on their culture, religion, identity and tradition of the community in the concerned regional states.[377]

Most lawyers interviewed as scholar's debate that the revised federal family law do not considered as federal law, since such power is not vested in the HPR.[378]As stated by the FDRE Constitution and stated in chapter four "All powers not given expressly to the federal government alone or concurrently to the federal government and the states are reserved to the states." Thus, family law is one example.

*Then the issue at hand is raising a question, can the FSCCD has the power to review regional family law entertained by the regional law? If a state family case to be adjudicated by the FSC through cassation, which family law is applicable? If the courts are to apply a federal laws that will be not against the separation of power? If state law has been applied, how can FSC interpret state laws? If the FSCCD applies the federal law is it compatible with state autonomy?*

For the above raised question we have look the practical cases that is Regional matter in nature reviewed by FSCCD. The case was initiated at Oromya regional State Wolmera woreda court between wr. Flekech vs Tadesse Ayano on file No.11136. The applicant raises the validity

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[376]. Cassation decisions files infra note at 379, file No.11136 (1999)

[377]. Federal Supreme Court cassation division decision on file No.11136 for instance the family law of oromya under its art.93 deviates from federal family law (art. 95) by celebration or conclusion of marriage from status of possession respectively.

[378]. Taklit, misganu and Teshome, supra note at 358

of marriage but the respondent denies the validity of marriage. Oromya SC and its cassation division rejects the existence of marriage based on ORFC procls.No.69/95 and 83/96 Art.93 (2) by reading and reasoning in cases where difficult to prove marriage by producing the certificate of marriage and other admissible evidences, the court presume that the marriage has been concluded if the spouse prove that the existence of "*celebration or conclusion of marriage*." However, the FSCCD entertains the case and reviews the decision of Oromya SCCD based on FRFC procl.No.213/2003 Arts.95, 96 and the civil code by using the reason of the phrase "*possession of the status"* of spouse. But the Oromya RFC is recognized spouses should show "*celebration or conclusion of marriage*. (Translation is mine)"[379]

The FSCCD has the power to revise cases that is merely regional matter? As has been provided under section 4.4.2.1.Regional law should be ended at regional court and its basic error of law also resolved by SSCCD. The reason why regional courts have exclusive judicial power over family issue is that for the mere fact it is inherently regional matter and enacted by State council's which could be equally interpreted by their respective courts. Not only family laws but succession, contract and state power of taxation are the other typical examples of jurisdiction which excluded the FC, since they have no interest on the affairs of residual power.[380]The writer also observe from the experience that unlimited cases that are regional issues have been reviewed by FSCCD. The very ground to look family matter by FSCCD is most of the time issues connected with property and other constitutional rights. On this side Ato Ali states that, even what is a purely regional matter is not apparent to the FC since every family matters have connection with equality of spouses on property and children's rights.[381] However, this line of thinking is the effort towards homogenizing everything as of unitary government.

In this regard the writer has of the opinion that the pretext of federal law i.e. civil code which contain property right, extending power of Cassation would lead to absurd interpretation of laws for different reason. For one thing federal laws to become under the subject of federal court, it should be qualified as nature of federal government powers rather the residual power is reserved for states government power on the other thing as stated under section.4.3.2.1. But the FDRE

[379]. Cited by Jamal Qumbi, oromya law journal: Identification of practical problems in regular and irregular union to proof marriage in default of certificate of marriage.vol.1.No.1. (2012), p. 23-27 (translation is mine)

[380]. Misganu, Supra not at 358

[381]. Ali, supra note at 361

Constitution, regional State Constitutions and other legislations has granted the SSC to have power of Cassation on basic error of law arise from state matters.

In the above real case which law could have applicable? As it has been provided under section 4.3.2.1 The FDRE Constitution treats the federal government and Regional States in equal footing. There is no hierarchy of laws between the Federal and State laws. In the above brief case the FSCCD applies the FRFC by disregarding the ORFC. This does not seem to tenable argument. So subsidiary legislation may not affect the constitutionality guaranteed division of power and as a result federal laws are not superior over regional laws. Had it been the FSCCD granted power to review the regional law, as per Art.6 (1(b)) of procl.No. 25/96, it is the ORFC that would have been applied than FRFC.

In this regard, the case analyzed on top by the FSCCD not only applied or interpreted by FRFC as seen the Federal Cassation breaks the Regional law and substituted its decision by FRFC as per Art.95, 96 and 97. This is practically the same as amending ORFC, which is enacted by the regional state council's than correcting the basic error of law. This act is against the principle that the center cannot unilaterally change, abolish or modify the covenant that creates the federal polity as provided under section 2.2.3.2.4. In that sense, sub-national units derive their rights and existence not from the national government but from the Constitution that creates them both. This activity is also against the state autonomy.

As stated above under table 5.2.2.3, 86.4 percent or 38 out of 44 sample respondents believed that the decision of FSCCD over State matter is not encourage the development of the Regional system of law, while 13.6 percent or 8 out of 44 of sample agreed that the decision delivered by FSCCD encourages the development of regional law. In the data presented is almost the entire respondent is believed that the act of FSCCD discourages the law observe from file No.11136.

In this regard the interview is conducted with Ato Teshome show that in cases where all states judicial matter is finally interpreted by FSCCD the norm, culture, identity and tradition of the regional state is not progressive other than such elements eroded from time to time and the laws of the region become move away. [382]Thus, what ought to be is that SSCCD is the last word on what the law is for that state, and it will be prepared to the need for a unified and consistent

[382]. Teshome, supra note at 358

development of body of state law. State courts no less than federal are and ought to be the guardians of interpreting the state laws since the State law is more of apprehensive the State judicial function. Assuring that the achievement of consistency, predictability, and reasonably prompt the finality in State Court decisions can be compatible with the particular state law.[383]

The final posed question for this section is whether all decisions of FSCCD acquire the status of precedency on State Governments or judicial process. Thus, 63.7 percent of the sample respondent disagreed with the question posed, whereas 36.3 percent of the total respondent of the opinion that all decision of the FSCCD acquired the status of precedency on State governments and judicial process. Thus, more than half of the respondents replied that proclamation No. 454/2005 is unconstitutional and out of the concept of federalism.

In this regard "*Federal Courts Reamendment Proclamation No.454/2005 Art. 2(4) states that: Interpretation of a law by the FSC rendered by the cassation division with not less than five judges shall be binding on federal as well as regional court at all levels.*

In the USA the federal Supreme Court decision is mandatory on all lower federal courts, both courts of appeals and district courts. A SSCD decision is mandatory on all appeals courts and trial courts in that state, but not on state courts in other states, and a state court of appeals' decision binds State trial courts in that state.[384]

In the spirit of the proclamation the decision delivered on the family case of Oromya file No. 11136 described on top is delivered by the FSCCD with five judges' review the decision is binding. So how it binds state governments? Are state governments responsible for federal governments? Is the case has an indication of national importance? If the answer is No, why regional states bind by the decisions of FSCCD?

Therefore, without the Constitutional supremacy clause the decision of FSCCD on Oromya Regional State matter is not bind the courts of the region. Because equals treated equally i.e. Federal government and Federal law equal with Regional government and Regional laws respectively.

In a nut shell, proponents of Cassation over Cassation as provided under chapter 4 section 4.4.2.2.argue that fundamental errors of law should be corrected by way of revision of the FSCCD. In effect, they can allege to have uniform application of laws throughout the federation.

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[383]. ibid

[384].Robyn Painter and Kate Mayer, which court is binding? Mandatory vs. Persuasive Cases (2004), p.4-5

They further argue that, by considering decisions of the FSCCD as precedent, we may have predictable justice administration. And, it gives an opportunity for the federal government to supervise regional state courts whether or not there is doing justice properly. However, another opponent scholar argues that, decisions of the FSCCD on Regional states court is not in conformity with the principle of federalism and self-determination, and the effect of the proclamation No. 454/2005 is unconstitutional on regional government.[385] He added that, the FSCCD must not create precedency of Regional state law whenever State law has or might advantage well-represented in-state interests rather than national interests.[386]

Thus, from the point of view the Cassation might be alternation or even against law which directly contravenes the power of regional State Council that is the highest organ in the region to enact laws for the regions. Federal intervention in such a way is not viable solution for regional problems and by far it is against the autonomy and residual power that is given to the State by the FDRE Constitution.

In general, the FSCCD is not only violates the autonomy of State courts, also in amending the provision of the regional state laws which contravenes the very purpose of federalism and self-determination considered to objecting State council's not promote their own law.

### 5.2.2.4. Consequences of Cassation over Cassation

Different ideas here forwarded to indicate cassation over Cassation division's consequences either in positive or negative aspects. This also can be seen in terms of disadvantages and advantages. Based on the below posed questions and interviews this part is analyzed and evaluated according to the following.

The first posed question is concerned whether the dual cassation minimizes the work load or not. As shown under table 5.2.2.4 above, 81.1 percent or 36 out of 44 sample present confirms that the existence of dual cassation does not minimize the work load, while18.9 percent or 8 out of 44 sample respondents Confirm dual cassation does minimize the work load. The data shows that almost the entire sample believed that the revision of SSCCD did not minimize the work load for the FSCCD.

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[385]. Dr. Hashim, supra note 260
[386]. Ibid

Table.5.2.2.4. Consequences of cassation over cassation

| Posed questions | Responses from Key Informants | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | judges | | | | Public prosecutors | | | | Attorneys at both levels | | Teachers and students | | | | Total no | | Total% | |
| | Fed. | | Reg. | | Fed. | | Reg. | | | | Teach. | | Stud. | | | | | |
| | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no |
| Do you think that the purpose of cassation in the Regional states seems to minimize the workload for the second Cassation Division of the Ethiopian federal one? | 1 | 13 | 2 | 12 | 0 | 3 | 0 | 3 | 4 | 0 | 0 | 3 | 1 | 2 | 8 | 36 | 18.9 | 81.1 |
| Do you agree that the existence of a double cassation system is better in helping the country to correct an erroneous than having a single cassation? | 5 | 9 | 3 | 11 | 1 | 2 | 0 | 3 | 2 | 2 | 0 | 3 | 0 | 3 | 11 | 35 | 25 | 75 |
| Do you agree that Regional States cassation division should be expected to bring about uniform and correct development of Regional laws? | 11 | 3 | 9 | 5 | 1 | 2 | 2 | 1 | 1 | 3 | 3 | 0 | 1 | 2 | 28 | 26 | 63.3 | 36.7 |
| Do you believe that the principal aim of Federal cassation division in Ethiopian Federalism is expected to promote integrated uniform interpretation of Regional States laws? | 6 | 8 | 3 | 11 | 0 | 3 | 0 | 3 | 1 | 3 | 0 | 3 | 0 | 3 | 10 | 34 | 22.7 | 77.3 |
| Do you think the existence of the principles of cassation over cassation causes the delay of justice that amount to the judicial injustice as well as court congestion? | 5 | 9 | 12 | 2 | 2 | 1 | 0 | 3 | 4 | 0 | 3 | 0 | 3 | 0 | 29 | 15 | 66 | 34 |
| Do you believe that the Federal Supreme Court cassation division has an implication of pseudo-federalism or judicial semi-centralization on Ethiopian Federalism? | 5 | 9 | 13 | 1 | 1 | 2 | 3 | 0 | 4 | 0 | 3 | 0 | 3 | o | 32 | 12 | 72.7 | 27.3 |
| | | | | | | | | | | | | | | | | | | |

Source: Computed from collected data as primary sources

In this regard for the framers of the Constitution, the main reason for the existence of cassation in the states seems to be to minimize the workload of the Cassation Division[387]: "*... the existence and operation of a cassation division within state supreme courts can have the effect of reducing the workload of the Federal Cassation Division…*"

In this case the writer has conducted an interview at Oromya SSCCD at least 100 percent of litigants who have lost the case in State Cassation take a petition to FSC for the second cassation.[388]This shows true if we observe the above section 5.2.1.1. There was a study conducted by Muradu indicated that in the years between 1996-1998, 1,121 cases came from the SSCCD to the FSCCD and this constituted 50 percent of the workload of the cassation division of the FSC.[389] However, the reading the writer conducted from 2003-2005 fiscal year at FSC registry data base shows that out of 36863 files 21056 files which are purely regional matters comes to the FSCCD for the second review. In short, Regional matter cases that come from SSCCD to FSCCD constitute 57.5%.

In general, the case load is increasing from time to time which evidences that the intention of the drafter of the Constitution is not meet its purpose; even opening up the process endlessly increases legal uncertainty, as the winner has to wait until the losing party identified.

The second question posed is that whether the existence of cassation over cassation system is better in helping the country to correct an erroneous than having a single cassation. For this question 75 percent or 35 out of 44 sample respondents not agreed with the dual cassation system is correct the error than a single cassation, while 25 percent or 9 out of 44 confirm that having Cassation over cassation system is possible to correct the error than a single cassation. The data indicates that a great number of respondents agreed that cassation over cassation is not rectify basic error of law.

From this perspective the issue is highly developed by the drafters of the Constitution to go for State cassation is for the disposition of disputes correctly[390:] their very purpose of dual cassation is to the correct disposition of cases.

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[387]. See the Minutes of the Council of Representatives of the Transitional Government of Ethiopia May 4-25 (Unpublished, 1993) at 253-256.

[388]. Misganu and Teshome, supra note 358

[389]. Muradu Abdo, Some Questions Related to the Cassation Powers of the Federal Democratic Republic of Ethiopia Supreme Court: A Comparative and Case Oriented Study (LL. B Thesis, AAU Law Faculty, 1998, Unpublished): 113-120

[390]. See the Minutes of the Council of Representatives of the Transitional Government of Ethiopia May 4-25 (Unpublished, 1993) at 253-256.

Here, if we observe the brief case seen above between W/ro Flekech vs Ato Tadesse Ayano on file No.11136 that have been reviewed for the second time is not rectify the erroneous, in fact it strengthen the respondents idea. This can give an impression that until now Cassation over Cassation is not in position correctly settled of cases.

The writer has of the opinion that Cassation over Cassation is not rectify erroneous, since state courts have interpret the law of the state matters based on the states culture, traditions and socio-political concern it is not appropriate to correct the error of state issues beyond the concerned state courts.

From the above table with regards to No.3 and 4, how uniformity assured in federal countries is the main questions that are posed for the respondents. For No.3, 63.7 percent or 28 out of 44 sample respondents agreed that state courts Cassation division can bring and develop uniformity of state concerned laws, while 36.3 percent or 16 out 44 of the sample respondents disagreed with the assertion. Again No.4.From the total respondent 77.3 percent or 34 out of 44 sample respondents not confirmed that the principal aim of FSCCD in Ethiopian Federalism is expected to promote integrated uniform interpretation of Regional States laws, where as 22.7 percent or 10 out of 44 sample respondents confirmed it. The data presented above in short describes that a great number of the respondents have the opinion of uniformity of interpretation of law could be limited to their respective Supreme Court competence of Cassation division.

In this regard the framers of the constitution had in mind been the need to have a uniform interpretation of laws throughout the country[391]: The observation of and qualification of having a Cassation division within the FSC is to accomplish the goal of having a uniform interpretation of laws-federal or regional-throughout the country.

Opponents of Cassation over Cassation addresses that, FSCCD reviews state matter deemed to be not bringing uniform interpretation of laws throughout the country due to each state in Ethiopia has made their own laws based on their own assigned power associated within their cultures, traditions and identities. This expansion of federal jurisdiction reflected a concern for minimum, not for uniform, standards of justice for all citizens throughout the country, a concern that has continued to this day.[392]

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[391]. Ibid

[392]. Misganu, Teshome, Taklit, Supra note at 358

On the way to understand the experience of other federal countries like Switzerland, USA and Argentina have, in their respective national SC's, an extraordinary appeal that is limited to the interpretation of federal rules and whose purpose is to achieve and maintain uniform application of federal laws. Moreover, in the US, federal law is much better enforced and more uniformly applied because there is a full system of lower FC's. State law is a much more independent body of law because of the existence of state court systems, which interpret and develop the meaning of state law independent of federal authority. [393]

It is possible to say that regional Cassation may be expected to bring about uniform and correct construction of regional laws while the Federal Cassation should be there to promote uniform interpretation of federal laws. Consequently, each state is expected to promulgate its own law in line with its cultural values and interpretation could be carried out accordingly.

Therefore, this manner of uniformity promotion is against the principle of cultural form of federation as provided under section 2.2.4.5. Or against Ethiopian ethnic based federalism which is the salient feature of Ethiopian federalism combined with principle of self determination, moreover it has the tendency of centralization in opposition to decentralization.

The other posed question under table.5.2.2.4, above is that whether the existence of the principles of Cassation over Cassation causes the delay of justice that amount to the judicial injustice as well as court congestion. Here 72.7 percent or 32 out 44 of the sample respondents believed that Cassation over Cassation causes the delay of justice that amount to the judicial injustice as well as court congestion. On the other hand 27.3 percent or 12 out of 44 the sample respondents not admitted that cassation over cassation causes the delay of justice that amount to the judicial injustice as well as court congestion. Thus, the present data indicates that a great number of the sample respondents have an opinion that of cassation over cassation creates the delay of justice that amounts injustice and make overcrowded of cases.

In cases where the federal Supreme Court exercises power of cassation, it uses more burdensome procedure and hurdles for litigants come from different regions. It add one step procedure which length the end of the case, in effect costly and violate judicial economy. It is not affordable easily by the poor to cover all costs of transportation, interpretation, and advocacy for their case. Put in simply, it make the justices system inaccessible. The language barrier to freely make speeches in

[393].http://www.auilr.org/pdf/8/8-23-10.pdf). P.3. date accesed.20/3/2004

front of the court is another problem.[394] FSC not knows the back grounds of the judgment history done at SSC unless interpreted to Amharic which is the working language of federal government. Apart from costly, it may not original as of the former.[395] Thus, delay in the judicial process leads to the erosion of individual and property rights, especially see civil file No. 53968 discussed under section 5.2.2.1 above.

Another disadvantages that concern about the FSCCD which is precedent in the way that both federal and state courts refer to the decisions of FSC is not doing well how deep they go explaining the similarities or differences between the cases. In this case the court cited the decision and also the holding relation but did not try to explain why this is the most accurate part of the decision that is to be cited and what are the essential fact features that made the judge draw the similarities. It can be inferred that the courts do not have to very deep analyze of two cases.[396]There is an example that the FSCCD delivered a decision on similar issues at different time, for example (NO.52530), the file combined five files of similar cases of which, the central idea is that the power to appoint the liquidator of succession is the jurisdiction of FC or A/A city court? It indicates two things. First judges were not analyzing the present cases whether it is similar enough with the cited cases. Second procl.No.454/96 does not match its purpose of to reduce case flow to the FSCCD. Thus, the disadvantages of Cassation over Cassation practice override its advantages.

At the end the question posed is that whether the FSCCD has an implication of pseudo-federalism or judicial semi-centralization on Ethiopian Federalism. Thus, 77.7 percent or 32 out of 44 the sample respondents confirmed that the FSCCD has an implication of pseudo-federalism or judicial semi-centralization on Ethiopian Federalism, whereas 27.3 percent or 12 out of 44 sample respondents not agreed with the assertion. This presented data describes that the connotation of the FSCCD over the Ethiopian federation appreciates that half heart federalism. Therefore, the concern of FSCCD reviewing over the state matters partially make the Ethiopian federalism among the levels of the two courts came about a period in which federal power is increasing and becoming semi-centralized.

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[394]. Misganu and Teshome, supra note at 358

[395]. ibid

[396]. Interview with Ato Meseret Aboye, attorney both at federal and state level, 16 April 2014

According to Misganu and Teshome, sovereignty of the court and popular sovereignty have direct relationship. In this manner, when the FSC through cassation reverses the decision of SSC on state matters it is considered opposing decentralization of power. On the other hand the federal court reviewing the states court decisions on Regional matters is denying self-governing of NNPs which adversely affect the principle of self-determination (sovereignty) and leads the country from federal to central.[397]

Thus, the FSCCD puts state courts subordinate to federal courts which might call against of state autonomy or anti-federalism due to intolerance of diversity practiced in judicial branch.

Generally, the writer believes that even apart from critics rose above; the countless unintended consequences follow by FSCCD while intervening in matters of regional states. It is of course incontestable and not subjected to argument since the consequence is clear negative results in fact. Closely looking, delay of justice; harm the litigants' right in inconvenience, coasty. It is also disregarding the culture, history and value of federating units for the reason of uniformity.

### 5.2.2.5. Alternative Governmental Mechanisms and Remedies to Alleviate the Violation of Power

Ethiopia's federal and state governments possess distinct responsibilities, and each level of government has its own Constitution and executive, legislative, and judicial branches.[398]The legislative branch of the government consists of two houses of parliament. [399]The two houses of parliaments are the House of People's Representatives ("HPR") and the HF.[400]The HPR is the law-making body, which represents the individual citizens of Ethiopia. Both houses including Regional state councils have the power involve in Constitutional amendment. Both the state and federal governments have independent judiciaries. [401]The Federal Supreme Court is the highest court on federal laws, however, the HF along with the Council of Constitutional Inquiry ("CCI") are responsible for constitutional interpretation and adjudication.[402]Each governmental body either collectively or separately has their own respective activities when one violates the power of the other entrusted by the Constitution. The following table posed an alternative question that

[397]. Misganu and Teshome, supra note 358
[398]. Supra note at 1, Art. 50.
[399]. Ibid. Art. 53.
[400]. Ibid.
[401]. Ibid. Art. 78
[402]. Ibid. Arts. 80, 84

could be carried out by governmental bodies as an alternative remedies.

**Table.5.2.2.5. Alternative Governmental mechanisms and Remedies to alleviate the Violation of Power**

| Posed questions | Responses from Key Informants | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | judges | | | | Public prosecutors | | | | Attorneys at both levels | | Teachers and students | | | | Total no | | Total % | |
| | Fed. | | Reg. | | Fed. | | Reg. | | | | Teach. | | Stud. | | | | | |
| | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no | yes | no |
| Do you believe that parliaments (HOPR, HOF, and State Councils) should be recommended to alleviate cassation over cassation in amending Federal Constitution? | 10 | 4 | 8 | 6 | 2 | 1 | 3 | 0 | 2 | 2 | 2 | 1 | 2 | 1 | 29 | 15 | 66 | 34 |
| Can it be said a better alternative to alleviate cassation over cassation divisions proposing that the Federal cassation division withdraws to review State matters, since the cases are already reviewed by Regional States cassation divisions? | 4 | 10 | 13 | 1 | 3 | 0 | 3 | 0 | 4 | 0 | 3 | 0 | 2 | 1 | 32 | 12 | 72.7 | 27.3 |
| Is it recommendable Regional State courts argue that not to be bind by federal Supreme Court cassation division if the case reviewed by same is purely Regional matter? | 5 | 9 | 14 | 0 | 3 | 0 | 3 | 0 | 4 | 0 | 3 | 0 | 3 | 0 | 35 | 9 | 79.5 | 20.5 |
| | | | | | | | | | | | | | | | | | | |

Source: Computed from collected data as primary sources

The following governmental remedies are the alternatives to alleviate Cassation over Cassation.

## 5.2.2.5.1. The role of: HPR, HF and Regional States councils

Federalism should also play a role in limiting the power through elected representatives in cases where disagreements happen between levels of government for the concentration and abuse of power for the motive of centralization and decentralization.

There is a question posed under table 5.2.2.5.above to indicate whether parliaments (HPR, HF and State council's) should be recommended to alleviate cassation over cassation in amending Federal Constitution. Thus, 66 percent or 29 out of 44 of sample respondents recommend that

parliaments could alleviate cassation over cassation in amending Federal Constitution. On the other hand 34 percent or 15 out of 44 sample respondents disagreed with the recommendation. Thus the data present describes that more than half of the respondents suggested that parliaments should be recommended to amend the Constitution with regards to the provision of Cassation over Cassation from the perspective of the provision is not clear whether include State matters.

Thus, the concerning area as an option raised as the subject matter for amendment by the legislative bodies is the Constitutional provision of Art.80(3a), that the framers of the constitution did not express this idea accurately in the draft document. As a consequence there are two conflicting ideas as provided under section 4.4.2.The 1st would give Cassation power of FSC on state matters. On the other hand, Cassation over Cassation is controversial if the Cassation bench of the FSC to review the decisions of the Cassation benches of SSC according to the whole spirit of the FDRE Constitution and purpose of Federalism.

The Ethiopian Constitution is perhaps more rigid compared to the other federations as indicated under section 2.2.3.4. Among the two types of amendments demonstrated in FDRE Constitution, the majority of the provisions, including those governing the relationship between the federal and state governments, can be amended only if approved by a two-thirds majority vote in a joint session of both federal houses and a two-thirds majority vote of states[403] is an appropriate remedy since the problem is look for conflict of power division.

The interview conducted with senior judges both at State and Federal SCCD have of the opinion that parliaments are not independently act the constitutional mandates assigned to them. They validate their reason, in Ethiopian current practice parliaments are represent one political part system and the leading party dominate both houses in both levels. Hence, the fear is that parliaments are not at liberty to amend the unclear Art.80 (3a) of FDRE Constitution in order to alleviate the practical problem created by cassation over cassation. They are also responded that State Council's could not become practically participated in amending Federal Constitution. Showing their reason that in any aspect the central authority dominates and underestimates the federating units.[404] In this regard the constitutional provision of Art. 104 and 105 suspected functioning as of the spirit of the FDRE Constitution.

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403. Ibid, Arts.105 (1(a) and105 (1b)
404. Taklit, Misganu and Teshome, supra note at 358

The question raised and the answer equally responded is not without merit. It can make to understand how bottom-up federalism undergone in practice. The Constitution, therefore, is in reality a "contract" which is entered in to by the federating units and can only be altered by a prescribed procedure. This "contract" makes provision for the exercise of all governmental functions, either by the central authorities or the group authorities. It is more interesting to see the involvement of regional councils in the amendment of the federal Constitution of Ethiopia. This is because the federal Constitution directly and indirectly incorporates the States interest and is very helpful for the continuation of the federal polity.

If a vote is only involves federal parliament, such a system makes the amendment process impossible to differentiate from a unitary system. However, the author is understanding that the practical situation happening now in Ethiopia is disregarding the regional council's which is the legislative organ of the regions were not involved in the amendment of the Federal Constitution.[405] This shows that how the federal governments not give a place for the regional government in all aspects.

However, constitutional amendment is reasonable as one way of alternative solution to make clear Art.80 (3a) whether it entitles the FSCCD to review either State and Federal matters or only question of Federal mattes observing in conformity of principle of federalism. In this regard Muradu advance his arguments after vitally reading the minutes of the Constitution concluded that there is a law that warrants the review of state matters by Federal Cassation. Hence, he advocates a need for Constitutional amendment in conformity with federalism, i.e. the law ought to be. So that he proposes three options for legislature:[406] Option one: the Cassation Division keeps on reviewing SSC decisions over state matters even if that State has a functioning cassation division (maintain the status quo). Option two*:* to prohibit the Cassation Division from exercising jurisdiction over regional matters where a given state has, in fact, established a cassation division within its supreme court. The third option*:* to take away the power of the Cassation Division over state matters immediately and unconditionally. He would go for the

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[405]. Pursuant to article 105 of the Federal Constitution, the HoF and the HPR have jointly decided that the administration of the concurrent tax powers to be delegated to the Federal Government to avoid administration inconveniences (HoF and HPR Joint Meeting Minutes 1996EC, 2004). Establishing a single tax administration for the concurrent taxes is desirable as it reduces administration costs to the tax agencies and compliance costs to tax payers.

[406]. Muradu supra note at 12, p.71-73

third option. Eliminating review of state matters, on the top of saving cost, energy and above all precious judicial time, would not abort the aim of attaining the uniform and correct interpretation of regional laws since the current Constitution itself envisages the establishment of review through Cassation in the States themselves.

On the other hand, Mehari argues that Constitutional amendment is not as an option since the federal cassation division has no constitutional power to review state matters if one strictly reading the Constitution.[407]Thus, the writer support both amendment and interpretation of the article. However, amendment takes time in arrangement for initiation and discussion by both levels of houses and due to its rigorous procedure as well as the partial party congruence in both levels of government amendment it is difficult. Also it is coasty and moreover the foundation of our constitution, federalism and principle of self-determination did not open a door for FSCCD to intervene in state matter. Although, for clarification or legitimacy of Cassation over Cassation, amendment of Constitutional provision is possible if predisposed than the other options.

Based on the FDRE Constitution, the two parliamentary proclamations (Proclamations 250 and 251) adopted in 2001 clarify the role played by the HF in regards to the Constitutional interpretation. Moreover, Constitutional interpretation made by the HF is necessary in limiting the powers of the government authorities. The phrase '*any…court decision*' of the Constitution itself, procl.No.25/96 Art. 10(3) and 454/2005 could be identifiable through interpretation and adjudicative as a necessity. In this regard the opponent of Cassation over Cassation told that both proclamation No. 25/96 and 454/2005 creates an impact by FSCCD on state matters that is not go hand in hand with principle of federalism and self-determination. According to this scholar of federalism the two proclamations are unauthorized and subject to make invalidate provisions concerned against regional autonomy .[408]

However, there is a fear that the HF is a partial dependent body of the ruling party government to decide on the meaning of the contested provisions of the Constitution. Stringent enough, despite the existing diversity and the states wider powers has been overlooked by FSCCD on the one hand and centralized federal system in practice on the other, only a few cases on intergovernmental conflicts have been brought before the HF. This is certainly because of the

[407]. Mehari, supra note at 13

[426]. Dr. Hashim, Supra note at 360

congruence in the party system at federal and state level. The general view is that the same party organization controls both federal and state level governments and has a centralized party structure; this might weaken the power of the regional governments in a way that undermines regional autonomy. [409]

From that point of view the FSCCD weakens the Ethiopian federal system and directly contravenes with the power of the Regional Court and federalism. So that the writer believes that the constitution is susceptible for interpretation to maintain the federation.

### 5.2.2.5.2. The Role of the Court

If a constitutional dispute exists, the court adjudicating the case does not have the jurisdiction to further investigate or render a ruling on the issue of constitutionality. The courts are required to submit cases to the CCI and HF if they believe that there is a need for constitutional interpretation.

As under above table 5.2.2.5.question posed is that a better alternative to alleviate cassation over cassation over Cassation divisions proposing that whether the Federal cassation division withdraws to review State matters, since the cases are already reviewed by Regional States cassation divisions. Thus, 72.7 percent or 32 out of 44 sample respondents agree with the proposal that federal Supreme Court cassation division should stop reviewing regional matters for the second cassation, while 27.3 or 12 out of 44 sample respondents not agree with the options. On the other hand another alternative question states that 79.5 percent or 35 out of 44 sample represents believed that is it recommendable RC's argue that not to be bind by FSCCD if the case reviewed by same is purely Regional matter, while 20.5 percent or 9 out of 44 sample respondents believed that Regional State courts could be bind by FSCCD even if the case reviewed by federal cassation is purely Regional matter. The data presented indicates that at the first option since the FSCCD has no clear power to review Regional matters it is advisable to stop from reviewing regional matters, otherwise as the second option the regional State courts could show a resistance to not bind by FSCCD on state matters that is already reviewed by the SSCCD. Thus, denying the FSCCD review of state matter assumes that the FSCCD thereby not withdrawing its activity. Surely, the nonexistence of FSCCD review over state matter is not surrender the function of FSCCD to Regional State courts rather respecting the principle of division of power and judicial federalism.

[409]. Assefa Fiseha, supra note at 14, p.470

In general, to improve the practical problem of Cassation over Cassation and in effect to ensure the principle of self-determination and to maintain the federation, the FSCCD should refrain from reviewing regional State matters in a sense of only limited to federal matters. In the same manner, State courts have a better option to show resistance and not surrender their power. On the other hand to exonerate from the potential drawback of new political experiment, interpretation of the Constitution and makes other subsidiary laws invalid which contradicts with the Constitution is the most important political solution. Similarly, amendments of the Constitution and other unqualified legislations by the concerned elected representatives are the other alternative political solutions for the Ethiopian federalism.

# CHAPTER SIX: Conclusion, Findings and Recommendations

## 6.1. Conclusion

The FDRE constitution has created ethnic based self-governing federalism in one hand and incorporates separation of powers especially, dual judiciary (dual Cassation) system within Ethiopian territory on the other. However, the separation of power has converging at the apex of judicial branch through the practice of Cassation over Cassation. The notion has been explored negative implication on the normative content and concept of Federalism as well as the practice is incompatible with the implementation of self-determination.

Though, a federal form of government is characterized by the distribution of powers between the central government and the constituent units. It is also a system of dual sovereignty, "in which some matters are exclusively within the competence of federated units are Constitutionally beyond the scope of the authority of the national government, and where certain other matters are Constitutionally outside the scope of the authority of the federated units. For the sub-national level of government to have Constitutional standing that is, the autonomy to make rules, apply them to particular cases, and govern itself under the rule of law, it must have its own legislature, executive, and judiciary.

On the other hand the regional government is a set of legislative, executive and judiciary institutions responsible for their respective regional citizens as far as concerned their internal affairs independent from central government domination. In this regard the Ethiopian federal system is likely to be grouped in the symmetrical, ethno-linguistic, legislative, dual and holding together type of federalism in which the concept of the study reveals that the NNPs of the component units of the federation have the right to self determination including self-adjudicating by own judiciary on own matters.

The central theme or the thesis is to resolve the practical problem that arises at Ethiopian FSCCD. Looking the other countries experience, Cassation possibly means break the force of validity of decision and SC or cassation courts have the final or last resort power to review the judicial mistakes of lower courts together with the general conceptual duty which is either in policy-making institution or ensure the uniformity for the implementation of the law through which most common law and few civil law countries establishing the law of precedents. Though, the SC is not confident enough to trust fully the correctness the decision of their respective lower courts. Thus, USA is a model of federal countries, representing the common law traditions,

where the jurisdiction of the FSC is limited to review Federal laws and SSC is limited to review State laws. Whereas the French Cour de cassation, represents the civil law tradition responsible for the application of the Civil Code and has delegated jurisprudence and broadly plays supervisory role on its lower courts.

The 1931, 1955, 1987 Ethiopian Constitutions made no reference to the federalism in Ethiopia. Though, in the middle of the strengthening of the Emperor's decided for centralization of power, an arrangement by the international actors was announced, the federation of Ethio-Eritrean. The government of Eritrea was authorized, as a manifestation of its autonomy, to exercise legislative, executive and judicial powers. After the collapse of military junta the Transitional Charter established the framework for the provisional government and guaranteed nationalities to preserve their identity, administer their own affairs within their own defined territory, the right to participate in the central government based on fair and proper representation, and moreover adopt the philosophy of the right to self-determination.

Following the Transitional Charter, the 1995 Constitution declare a de jure federalism which is a departure from the past by a federal form of state structure that envisages two layers of government: federal and regional; There are nine regional and two Chartered Cities of Federal governments; Government powers and functions are divided between the regional States on the one hand and the federal government on the other. Each entity exercises legislative, executive and judicial powers within its allocated sphere and is autonomous from one another in a sense of each state has equal rights and powers.

The justification of federalism as a vehicle to provide self-determination to ethno-cultural Subgroups resonates strongly with the conceptual foundations of sub-national constitutionalism. The Constitution is in some sense an expression of the beliefs of a self-governing populace as to ethno-cultural groups see themselves as sufficiently distinct from the national populations among whom they reside to justify some form of sub-national self-determination, then any sub-national Constitution such a group creates for itself might be very likely to reflect the distinctive character that by premise entitle the group to political self-determination in the first place.

Division of power is the way by which self-determination, sovereignty of NNPs on self issue entrenched on one hand and the shared issue (common interest of) federation is manifested. In this regard the Constitution promotes a dual system of federalism. Corollary, the dual sovereignty exists in executive and legislative branches, so does the judiciary. In this manner the

dual court system ensures that each court system exercise powers granted by the Constitution without supervised by other court systems.

Further, the FDRE Constitution on its preamble endows full and free exercise of the right to self-determination to Regional States, i.e. calling for popular sovereignty within a region that comprises full measure of self-government under Art.39(3) of the FDRE Constitution. In effect, Art.50 (2) of the FDRE Constitution indicates that the Federal Government and the States shall have separate legislative, executive and judicial powers. The judicial organ is again rooted under Art.79 (1) states that Judicial Powers, both at Federal and State levels, are vested in the courts. Similarly, the Constitution seems to make the judicial federalism stronger under Art.80 (1,2) of FDRE Constitution stipulating that it is clear that the Constitution in principle empowers each court system to have final judicial power on their own matters.

For the Ethiopian system of law, cassation may be taken as a means by which a final decision of any lower court - in relation to which appeal is exhausted - containing a basic error of law is reversed or varied by the Cassation Division. Though, Cassation originated from the continental law tradition, reviewing in cassation has been introduced first in 1908 by treaty signed with France and since 1987 Ethiopia adopted clear legal frameworks regarding Cassation power of the last resort court in the country, clearly gave power to the SC. Though, the FDRE Constitution grants the FSC has a power of cassation over *any final court decision* and the SSC as well over *any final court decision* on State matters which contains a basic error of law, the FSCCD search methods and ways to review state matters without federal matter involvement.

Hence, Opponents and proponents of Cassation over Cassation have been grown whether FSC should have Constitutional power to exercise in its court of Cassation power over State matters based on Art.80 (3a) of the FDRE Constitution. The provision that invites the FSCCD interference in Regional state matter the phrase of is “any…*court decision*”. Thus, from the wording of the “*notwithstanding*” one can understand that the exception nature of Art.80 (3). However, the exception never excluded SSC, nor clearly authorizes FSCCD on state matters. Even though, the FSC has Cassation power on *any final court decisions*, yet SSCs by further exception have authorized to assume power on *any final court decision of regional matters*. This precludes the FSCCD to be interfering by the alleged reason of *any…court decision* in to Regional matters.

On the other way round, under Article 80(3)(a) of the FDRE Constitution: "The phrase "*any… court decision'* may not be construed to include decisions of RC's. This is because the scope of Article 80(3a) is limited to the final decisions of federal matters, and does not seem to extend to regional matters as the preceding and subsequent sub-articles of Article 80 of the Constitution refer only to the federal courts of the land. This interpretation is substantiated by Article 10 of the Federal Courts Proclamation that specifies that the types of final decision of regular courts that qualify for review by the Cassation Division of the FSC. The provision makes express reference only to federal matters and does not cover final decisions delivered by state courts over state courts matter. Clearly, Art.10 sub-article 3 talk about the SSCCD whether as regular or in its appellate jurisdiction is not comprises cases reviewed by SSCCD. In this manner cases that are decided by SSC as regular or in its appellate decision is concerning the federal matters that delegated to the SHC and SSC respectively, which is not allowed to be reviewed by SSCCD is the spirit of the subsequent sub-articles of the constitution.

Following a FC structure in the country, the States do have their own separate tiers of courts with residual jurisdiction over State matters which could be identified under Art.52 (1) of the FDRE Constitution. Thus, by way of residual power; over these matters, regional courts must have a final say; and the FC must not have the legal authority to review, be it not only by way of appeal also by way of Cassation. This is what the author has been emphasized that apart from the concept of judicial federalism, 'Cassation over Cassation' and the existence of 'two final' power of court defeats the purpose of multi-cultural Federalism and it is new jurisprudence that have never found in both dual court and unified court systems. Unlike Ethiopian Cassation power, the USA Supreme Court not review State matters unless the State Court entertains a case that involves federal elements.

Therefore, the practice of FSCCD to review Regional state matters is not a valid approach to go with judicial federalism by observing the whole sprit and purpose of the Constitution and understanding the Constitutional principle of regional self-determination reading in conformity with Art.8, 39, 80 (2), and 80 (3b) cumulatively. Hence, there is no reason that the FSCCD by attaching article 80 (3) (a) of FDRE Constitution and Art.10 (3) of procl.No.25/96 to review regional State matters since it defeats the principle of Federalism and inherent power of the Regional States emanating from the Constitution. Further, the logical interpretation of Article 10(3) of Proclamation 25/96 could be limited to the delegated function of the RC's.

The other important issue concerned is that the FSCCD power to review decisions of State Courts on State matters, since the Cassation decisions have become binding. There is thus the need to reconsider the issue because the power of the FSCCD to review state matter goes against the very foundation of the federal set up which dully recognizes the cultural, religious and other diversities of the units. From this point of view the FSCCD binding expression might be against the autonomy of the regional States Court and the regional laws which directly contravenes with the power of regional State Council, i.e. the highest organ in the regional State Government to enact laws for the regions. The self-evident reason of the FSCCD on basic error of laws to ensure uniformity of interpretation and application of laws in all territories of Ethiopia should be limited laws which arise from shared or federal matters. Rather than rely on solid and single legal article, understanding the federalism is presumed to be disregarding the Regional's legal pluralism that enacted based on the cultural, traditional and socio-political identity of the concerned Regional state. Making meaningful federalism with comprises political, social, cultural and economic issues is beyond interpreting the solid law. But, the experience of other FSC countries like USA, Argentina, Switzerland and Australia is guaranteeing uniformity limited to federal laws, not including state laws.

The present practice of FSCCD is clear that it has been conducting beyond its duty in support of Cassation over Cassation. However, the pragmatically evaluation of questionnaires distributed for targeted groups of legal professions, the practical cases decided by FSCCD on matters of regional jurisdiction and the interviews conducted with the legal professionals clearly evidence that the FSCCD has been exercising the power of Cassation over Cassation indicates that opposing the RC's in a sense not independently reviewing their own laws enacted by respective Regional State Council's.

Further, the responses from the interviewed and answers from the questionnaires substantiate that the practical performance of the FSCCD to review regional States matter should not justify because the wrong interpretation of the FDRE Constitution of Art.80 (3a), as well as Art.10 (3) of the procl.No.25/96 interpreted by the FSCCD beyond their power to interpret the constitution disregarding the function of the HF is clear. Also the FSCCD practice distorts the Ethiopian dual court structural set-up. Similarly the Constitution has established permanent self-determination and again the FSCCD practice is now progressively tempering the RC's of power to self adjudicating their regional state matters. Hence, the questionnaire and interviewed targeted group

responses that the power to review regional States matter by FSCCD is not emanate from the Constitutional provision rather than the practical motion of the FSCCD just simply to broaden its powers.

Moreover, the responses from the interviewed and from the questionnaires shows that disadvantages of Cassation over Cassation reveals its advantages Seen from the angle of disputant parties in terms of usurpation of jurisdiction by the FSCCD suffers and has been criticized for delays of justices, congested cases, large backlog of cases, increase coast and maximizes inconvenience. It shows that cassation over cassation has negative consequences on the disputant parties. Nevertheless, the necessary measures could have been not taken by elected Representatives to correct the problem created by the FSCCD practice due to they are a biased dependent body of the ruling party.

In general, the NNPs of the component units of the federation in Ethiopia have unconditional right to self determination, which by no means eliminate self adjudicating by own judiciary on own issue. However, in Ethiopian Federalism the FSCCD does at present time test not only the finality decision of SSCCD over State matters but also delete (amend) the law enacted by state councils as to be a proper chain of rule. This federal organ then can decide what the State Government can do and cannot do through its power of interpreting the laws which is incompatible with federalism and self-determination. Hence, in theory the concept of Court system in Ethiopian judicial federalism is two untouched autonomous on their matter like in USA federalism that is purely dual court system. On the other hand, the practical situation of Ethiopian judicial Federal system is similar with its counterpart Nigeria in terms of unsatisfactory centralization.

Therefore, the thesis gives us ***a finding***: The federal arrangement of Cassation over Cassation in Ethiopian Federalism has emanated from the practical motion in which case distorts the dual court structure and functioning out of the Constitutional expression and it shows negative implication on Ethiopian federal context and particularly on the principle of self-determination. This is of course unconstitutional and against the principle of division of power. Thus, the power of SSCCD has been disregarded and prevalence of Cassation over Cassation system has eroded the State judicial autonomy and the principle of self-determination that eventually leads to centralization of power in the country.

## 6.2. Recommendations:

In the theme has been discussed the implication of Cassation over Cassation in Ethiopian federal set up: with special reference to the principle of Self-Determination. The finding is that the federal Supreme Court Cassation Division has been practically incompatible and contradictory with principle of division of power, principle of Federalism and principle of Self-Determination. Therefore, the writer forwards the following recommendations:

- The jurisdiction of the Federal Supreme Court Cassation Division should be limited to the interpretation of question of Federal laws that enacted by Federal Government. Since unintended consequences reveal the intended objects, come back to the Constitutional separation of power and the principle of self-determination, unconditional and immediate stoppage of the Federal Supreme Court Cassation Division from looking State matters or abstain from reviewing Regional State matters by its Cassation is a better solution to alleviate Cassation over Cassation. This is not because of negative expectation, rather based on the sensitive nature of Constitutionality issues and policy grounds.
- The FSCCD should adopt the experience of other similar federal set up countries like Switzerland, USA, Australia and Argentina. Their respective National Supreme Courts review is limited to the interpretation of Federal rules and whose purpose is to achieve and maintain uniform application of federal laws only, not including state laws.
- State courts should show resistance on the ground of their rights emanating from the Constitution to the decisions by Federal Supreme Court Cassation division while implementing it on their territory. State Courts should not be in a place of imposed themselves subjugating and must not willfully surrender their autonomy resided on them from the NNPs of the regions. The concept is that State courts should thus be stood up to interpret and apply the laws issued by their respective State councils without the intervention of Federal Supreme Court Cassation Division. The recommendation is that State Courts refuse to enforce decisions of Federal Supreme Court cassation division which is unlawful and have Constitutional defects in jurisdiction enable them to refuse such execution.
- Art.80 (3a) of the FDRE Constitution should be interpreted or amended in conformity with the prevailed principle of division of power. In Ethiopian federal context the FDRE constitution should be interpreted in accordance with the principle of the dual court

system, judicial federalism, and in principle of Self-Determination. The researcher is of the opinion that the interpretation of the FDRE Constitution Art.80 (3a) is necessary; the phrase "***any...court decision***" should be interpreted in a sense that such interpretation is limited only to question of Federal laws. Because, the divisibility of sovereignty and Self-Determination do not compatible with the Federal Supreme Court Cassation practice.

- Simplification and amendment of the unclear provision called Art.80 (3a) is necessary; the phrase "***any...court decision***" that invites the Federal Supreme Court Cassation Division to intervene in to the regional State matter is advisable in a sense that such amendment or clarification is limited only to question of Federal laws, if it predisposed interpretation.
- The other subsequent legislations which contravenes with the principle of Federalism and not compatible with the division of power as well as with the concept of sovereignty and principle of self-determination are advisable to be amended or interpreted. Especially, Art.10 (3), 6, and Art.35 of procl.No.25/96 should be amended or interpreted in the manner to exclude regional matters from being reviewed by Federal Supreme Court Cassation Division. Moreover, the proclamation No 454/2005 Art.2 (4) should be amended or interpreted in the manner that its scope of *bindingness* is limited only to federal matters or the amendment or interpretation could in line not to be applicable on decisions of regional State courts on State matters.
- The House of the Federation should make unconstitutional the act or decision of the Federal Supreme Court Cassation Division over State matters alleged to be contradictory to the Constitutional power division up on the recommendation of Council of Constitutional Inquiry. In the viewpoint, all actions and decisions of the State matters that the Federal Supreme Court Cassation Division had been rendered without having valid jurisdiction shall be made *null and void*.
- The new procedural laws in line with judicial federalism (duality of cassation) should be adopted in our country.
- The laws to be amended as well as interpreted should enable the promotion, implementation and respection of autonomy of State Courts powers.

# BIBLIOGRAPHY

## Books


Abebe Mulatu, "Apportionment of Jurisdiction under the 1994 Ethiopian Constitution": Symposium Proceedings (Ethiopian Civil Service College, 2000).

Aberra Jembere, *An Introduction to the Legal History of Ethiopia 1434-1974* (Munster, LIT Verlag, 2000).

Andreas Eshete, Implementing Human Rights and a Democratic Constitution in Ethiopia, 21 J. OF OPIN.1, 8-13 (1993)

Assefa Fiseha, Theory Versus Practice in the Implementation of Ethiopia's Ethnic Federalism, in David Turton's (ed.), *Ethnic Federalism, the Ethiopian Experience in Comparative Perspective*, (James Currey Ltd., Oxford, 2006).

Assefa Fiseha, teaching materials of federalism prepared under the Sponsorship of Justice and Legal System of Research Institute (2009)

Bahru Zewde, a History of Modern Ethiopia: 1855-1991(Athens, Ohio: Ohio University Press, 1991), (2002)

Buchanan, A *Secession: The morality of political divorce from Fort Sumter to Lithuania to Quebec* Boulder Colorado: (Westview Press1991)

Cassese, A., Self Determination of Peoples, A Legal Reappraisal (Cambridge University Press, Cambridge: New York, 1995)

Charles, T. Symmetry and asymmetry as elements of federalism: a theoretical speculation, Journal of Politics, Vol. 27, 1965

Elazar Daniel and Kincaid John, the Covenant Connection: Federal Theology and the Origins of Modern Politics. (Lanham, MD: Center for the Study of Federalism and University Press of America) for a more comprehensive treatment of the federal idea as essentially covenantal, 1984

Elazar, Daniel, *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987).

Fasil Nahum, *Constitution for Nation of Nations: The Ethiopian Prospect* (Lawrenceville: New Jersey, The Red Sea Press, 1997)

Girma Gizaw, the World History of Law and Legal Institutions: Ancient, Modern and Contemporary (2007)

Huegline Thomas and, Fenna Alan, comparative federalism: a systematic inquiry (Broad view press, Toronto, 2006)

Jan Komárek, 'Judicial Lawmaking and Precedent in Supreme Courts: The European Court of Justice Compared to the US Supreme Court and the French Cour de cassation' (2008-2009) *Cambridge Yearbook of European Legal Studies* 11, 399

J.V. Stalin, *Marxism and the National Question* (1913), http://www.marxists.org/reference/archive/stalin/works/1913/03.htm (last visited 19, Dec. 2013)

King, Preston, *Federalism and Federation (*London: Croon Helm, 1982)

King Preston., Federation and Representation, Toronto: (University of Toronto Press, 1993).

Riker W., Federalism, Handbook of Political Science: Governmental Institutions and Processes, eds. Fred I. Greenstein and Nelson W. Polsby (Reading, MA: Addison-Wesley, 1975)

Riker, W., *Federalism: Origin, Operation, Significance* (Boston: Little Brown & Co.1964.

Maria Dakolias, World Bank: Ethiopian Legal and Judicial Sector (2004)

Markakis John and Katsuyoshi Fuki, ed, Ethnicity and Conflict in the Horn of Africa (Athens: Ohio University Press, 1994)

Markakis, John, National and class conflict in the Horn of Africa, Cambridge: Cambridge University Press 1987

Mauro Cappelletti, *Judicial Review in the Contemporary World,* (Indianapolis: Bobbs-Merrill, 1971)

Merera Gudina, Ethiopia: Competing Ethnic Nationalism and the Quest for Democracy, 1960-2000 (Netherlands: Shaker Publishing, 2003).

Menberetsehay Tadesse, '*Ye Ethiopia Higina Fitih Getsitawoch*' (Amharic version) 1999 A.A

Nancy Bermeo, "The Importance of Institutions: A New Look at Federalism," Journal of Democracy 13 (April 2002)

Neil MacCormick, Robert S. Summers, D. Neil MacCormick, *Interpreting Precedents and statute: A Comparative Study (Applied Legal Philosophy) (*Dartmouth Pub Co 1991)

Robert A. Dahl, "Federalism and the Democratic Process," in Democracy, Liberty, and Equality (Oslo, Denmark: Norwegian University Press, 1986)
Ronald L. Watt, *Executive Federalism Comparative analysis Inter institute* (1989)

Ronald L. Watts, *Comparing Federal Systems* 2nd ed. (Montreal & Kingston: School of Policy Studies Queen's University, 1999)

Stanford encyclopedia of philosophy, first published Jan 5, 2003, substantive revision, Mar 9, 2010, available at https://www, leibniz.stanford.edu/friends/preview/federalism, accessed at Nov. 23, 2013

## Articles

Alferd Stephon, *'Federalism and Democracy: Beyond the Us Model'* in Journal of Democracy vol.10 No.4 (1999): 20-33

Assefa Fiseha, "Federalism and the Adjudication of Constitutional Issues: The Ethiopian Experience," *Netherlands International Law Review* LII: 1 (2005): 1-30.

Brietzke, Paul, 'Ethiopia's Leap in the Dark: Federalism and self-Determination in the New Constitution,' *Journal of African Law* 39:1(1995): 19-38.

Clapham Christopher., 'Ethnicity and the National Question in Ethiopia' in Peter Woodward and Conference on Federalism, Conflict and Peace Building (Addis Ababa, United Printers, *Conference on Federalism*, Saint Gallen, Switzerland, 2002

Edmond Killer, *'Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia'* In African Journal of Political science vol.7.No.1 (2002), p. 21-50

Edmond Keller, "Ethnic Federalism and Democratization in Ethiopia," *Horn of Africa*, v. XXI (2003): 30-43.

Kincaid John, "Value and Value Trade Offs in Federalism," *Publius: The Journal of Federalism v.*25. No.2 (Spring 1995): 29-44.

Getachew, Assefa. Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on their Impacts on the Protection of Human Rights, *East African Journal of Peace &*

*Human Rights*, Vol 17, No 1(2011), p. 173-194

Jamal Qumbi, oromya law journal: Identification of practical problems in regular and irregular union to proof marriage in default of certificate of marriage.vol.1.No.1. (2012), p. 1-27

Kalkida Aberra, "Precedent *in Ethiopia"* in Ethiopian Journal of Legal Education vol.2 No.1 (2009), p. 23-43

Mehari Radea, ye federal ye seberina seber siltan Minch gelten bnayew (Amharic version) vol.24, no.1 (2010), p. 201-213

Murado Abdo, *"Review of Decision of state courts over state matters by federal supreme court"* in mizan law review vol.1 No.1 (2007), p. 60-74

Tesgaye Regassa, *'Learning to live with conflicts: Federalism as a tools of conflict management in Ethiopia an overview'* in Mizan law review vol.4 No.1 (2010), p. 53-101

Tsegaye Regassa *"Sub regional constitution in Ethiopia: Towards Entrenching constitutionalism at state level"* in Mizan Law Review vol.3 No.1 (2009), p. 33-69

Tsegaye Regassa, 'Issues of Federalism in Ethiopia: Towards an inventory legal issues 'in Issues of federalism in Ethiopia (Tsegaye Regassa, ed): Addis Ababa University Press, (2009)

Watts, Ronald, "Forward: States, Provinces, Lander and Cantons, International Variety among Sub national Constitutions," *Rutgers Law Journal* 31 (Summer 2000): 941-959.

Watts, Ronald, "Comparative Federalism and Post-Statism" *Publius*: *The Journal of Federalism* 30:4 (Fall 2000).

Watts Ronald., *comparing federal systems in the 1990s*. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1996

Watts Ronald., Federalism Today, *the background paper written for the International Conference on Federalism*, Saint Gallen, Switzerland, 2002

Watts Ronald., *The theoretical and practical implications of asymmetrical federalism, In Accommodating diversity: Asymmetry in federal states*, (Montreal & Kingston: School of Policy Studies Queen's University, 1999)

**Thesis**

Asnake Kefale**,** Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali *and Benishangul-Gumuz Regions*, (PhD Dissertation, Lidein University, the Netherlands, 2009)

Lilit Hambardzumyan, The Precedent of the Court of Cassation and its application in Armenian legal system, LLM Thesis (Yerevan; 2011)

Anna Ohanyan: The limits of discretion of the Court of Cassation of the Republic of Armenia in its judgments on admissibility of a cassation complaint, LLM Thesis (American University of Armenia, 2011)

## Domestic and foreign Laws

Constitution of the Republic of Armenia 1995

Decree No.52/1965, Civil Procedure Code of Ethiopia, *Negarit Gazeta,* Extra Ordinary Issue, 25th Year No.3 Addis Ababa, 8th October, 1965

International Covenant on civil and political rights

International covenant on Economic, Social and Cultural Rights

Proclamation No. 141/2008, proclamation to provide the re-establishment of Oromia courts, *Megalata Oromiya*, 16th year No. 10Finfine-18July, 2008

Proclamation No. 25/96, Federal Court Establishment Proclamation *Federal Negarit Gazeta*, 2nd Year NO.13, Addis Ababa, 15 October, 1996

Proclamation No. 35/2001, The Revised Constitution of the Southern, Nations, Nationalities and People's Regional State

Proclamation No. 454/2005, Federal Court Proclamation Amendment Proclamation, *Federal Negarit Gazeta,* 11th Year No. 42 Addis Ababa 14th June, 2005

Proclamation No. 46/2001, Oromia Regional National State Revised Constitution, *Megalata Oromia,* Adama-27th October, 2001.

Proclamation No. 49/1994, Tigray Regional State Court Establishment Proclamation *Negarit Gazeta Tigray*, 10th Year No.6 Mekele-Hidar, 1994E.C

Proclamation No. 59/2001, The Revised Constitution of The Amhara National Regional State, *Zikre Hig,* 7th Year No.2 Bahir Dar 5th November, 2001

Proclamation No. 69/2002, Proclamation to Provide the Re-Establishment of Amhara Regional Courts, *Zekre Hig*, Bahir Dar (2002)

Proclamation No. 7/1992, a Proclamation to Provide For the Establishment of National/Regional Self-Governments, Negarit Gazeta 51st Year No. 2

Proclamation No.1/1995, Proclamation of The Constitution Of Federal Democratic Republic Of Ethiopia, *Federal Negarit Gazeta*, 1st Year No.1, Addis Ababa 21st August 1995 Constitution.

Proclamation No.322/2003, Federal High Court Establishment Proclamation, *Federal Negarit Gazeta*, 9th Year No. 42 Addis Ababa 8th April, 2003

Proclamation No.45/9994, Revised Constitution of Tigray Regional National State, *Tigray Negarit Gazeta,* 10th Year No.2 Mekele-Hidar6, 1994E.C.

Proclamation Number 250/2001 ' Proclamation of the Council of Constitutional Inquiry, federal Negarit Gazetta of the Federal Democratic Republic of Ethiopia, year 7, No.40, Addis Ababa, 2001

Proclamation Number 251/2001, Proclamation for Consolidation of the House of Federation and Definition of Its Powers and Responsibilities, Negarit Gazetta of the Federal Democratic Republic of Ethiopia, year 7, No.41, Addis Ababa, 2001

Rules of the Supreme Court of the United States 2013

The Constitution of the Federal Republic of Nigeria (1999),

The Constitution of The People's Democratic Republic of Ethiopia, Proclamation No. 1, 1987,

The Constitution of the United States

The SNNP Regional State Court Re-Establishment Procl.No.43/94

## Other documents

Constituent Assembly: Restructuring of the State and Distribution of State Power Committee Report on Concept Paper and Preliminary Draft (2010), No.2066

The minutes of Federal Courts Proclamation Re-amendment reform (2005)

The Minutes of the Constitutional Assembly of the present Ethiopian Constitution No.5,(Unpublished, 1994)

The Minutes of the Council of Representatives of the Transitional Government of Ethiopia May 4-25 (Unpublished, 1993)

The Minutes of the Constitutional Assembly of the present Ethiopian Constitution No 26-29, (Unpublished, 1993)

## Websites


http://www. definitions.uslegal.com, accessed at 27th September 2012.

http://www.law- links.ch/schweiz.html#S02, accessed on 22 March 2014

Stanford encyclopedia of philosophy first published Jan 5, 2003; substantive revision Mar 9, 2010, available at https://www. leibniz.stanford.edu/friends/preview/federalism, accessed at August 2, 2012.

http://www. definitions.uslegal.com, accessed at 27th September 2012.

http://www.forumfed.org/federalism/cntrylist.asp?lang=en p.16, viewed 22 march 2014

http; //en wikipedia.org/Supreme-court of-cassation (Serbia) #cite-note]

Nature of federalism, http://www.excellup.com/Notes/10_SocSc_Federalism.pdf,accessed at November 23, 2013

officialwebsiteof:GermanCourtofJustice./accessed30.10.2013/http://www.bundesgerichtshof.de/EN/FCoJ/Task Organisation/Proceedings/proceedings_node.html

http://www.courdecassation.fr (last visited January 10, 2014)

How the USA court system work, available at <http://www. layer initiative. Com/law-artcle. html *25.http://www.wisegeek.com/what-is-a-dual-court-system.htm*(accessed 20/03/2014)

http:// www.experience.festival com/a/state court-relationship /id/ 2099215.hotml

http://www.auilr.org/pdf/8/8-23-10.pdf). P.3. date accesed.20/3/2004


## Cases


East Wollega Zone Finance Office (Two Parties) Vs. Tsegaye Naga, Federal Supreme Court Cassation Division File.No.53968, Hidar 3, 2003 E.C

Teber Berhe Vs Gebremeskel Hagos Federal Supreme Court Cassation Division, File No.6228,

Yeromwork Tesfaye Vs Ashenafi Tesfaye Federal Supreme Court Cassation Division, File No.54827 Megabit 21, 2003 E.C

Hamiza Sheik Ebrham Vs Abdi Usmael Federal Supreme Court Cassation Division, File No.69657 Yekatit 28, 2004

Wr. Flekech Vs Tadesse Ayano Federal Supreme Court Cassation Division, File No.1113


## Interviews

1. Interview with Ato Alemayehu Teganu, Attorney both at Federal and State Courts, 16 April 2014
2. Interviews with Ato Misganu Muleta (A Judge at Oromya Supreme Court Cassation Division and Former Oromya Justice and Research Institute Center Director, 02 April 2014
3. Interview with Ato Teshome Shiferaw, a Judge at Oromya Supreme Court Cassation Division, 28 March 2014
4. Interview with Ato Taklit Yemisel (A Judge at Federal Supreme Court Cassation Division, 01 April 2014
5. Interview with Ato Tsegaye Asmamew (A Judge at Federal Supreme Court Cassation Division, 01, April 2014
6. Interview with Dr. Hashim Tewfik, Instructor at AAU, Center for Federal Studies and Member of the Council of Constitutional Inquiry, 07 April 2014.
7. Interview with Ato Abdulselam Siraj, a Judge at Oromya Supreme Court Cassation Division, 02, April 2014
8. Interview with Ato Meseret Aboye, Attorney both at Federal and State Level, 16 April 2014
9. Interview with Ato Ali Mohammed, A Judge at Federal Supreme Court Cassation Division, 07 April 20014

# APPENDICES

## Appendix I

**Key Informant Questionnaire**

**Part I**

The purpose of this questionnaire is to collect data for a research paper entitled "***Implication of Cassation over Cassation in Ethiopian Federal Context: with Special Reference to the Principle of Self-Determination***"

This is an independent research being conducted for the partial fulfillment of the Masters Degree in Federal Studies by a prospective graduate student from college of Law and Governance at AAU. The researcher would like to assure that the information provided would be used for research purposes only and all responses will be treated in confidentiality.

Thank you in advance to all whom this questionnaire would appear.

**Part II**

**Personal and Organizational Profiles**

1. Age_____

2. Occupation: put it mark

a) Federal Judge □ e) Federal attorney □

b) Regional judge □ f) Regional attorney □

c) Federal public prosecutor □ g) Instructor of law or federal studies □

d) Regional public prosecutor □ h) student of law or federal studies □

3. Level of education: Put it mark

a) Certificate and others □

b) College Diploma □

c) LLB □

d) LLM (MA) □

4. Your field of Specialization_____

5. Years of Experience_____

**Part III: Questionnaires**

**A) Dual Jurisdiction and structure of courts**

1. Do you observe that judicial powers in Ethiopia are clearly divided between Federal and Regional States? Yes ☐ No ☐

2. Do you agree that the Federal Supreme Court cassation division while reviewing State matters have clear and absolute jurisdiction specified both in the FDRE Constitution and proc. No.25/96? Yes ☐ No ☐

3. Do you agree that the establishment of dual cassation in Ethiopian Federal context justifies the underlying concept of cassation? Yes ☐ No ☐

4. Do you believe that the FDRE Constitution establishes superior-subordinate relationship between the federal and state courts? Yes ☐ No ☐

**B) Legal, Political and Justice Gaps between Federalism and Cassation**

1. Do you perceive that the Ethiopian cassation over cassation is consistent with currently prevailed Federal Countries of the world? Yes ☐ No ☐

2. Do you agree that cassation over cassation is well-matched with the principle of Self-determination? Yes ☐ No ☐

3. Do you agree that State laws made and interpreted by respective State Councils and state judges being subjected to review by Federal cassation division could promote the principle of Federalism and Self-determination (Self-government)?

Yes ☐ No ☐

4. Do you agree that there is a great difference in quality of judges or judgments between the States and Federal Supreme Court cassation division judiciaries?

Yes ☐ No ☐

**C) Federal Supreme Court cassation division vs. State Autonomy**

1. Do you think that State Courts are entitled to deliver final decisions on State matters that are never be an area under discussion by federal cassation division?

Yes ☐ No ☐

2 Do you think that the decision of Federal cassation division on the issues emanating from the Regional States influences the Regional Sates Judicial autonomy?

Yes ☐ No ☐

3. Do you believe that the decision of federal Supreme Court cassation division in some circumstances contradict with the underlying principle of Self-determination in Federal context?

Yes ☐ No ☐

4. Do you think that the decision of Federal cassation division over State matter is substantially encourage the development of the Regional legal system?

Yes ☐ No ☐

5. Do you believe that all decisions of Federal cassation division acquire the status of precedence on State Governments or judicial process? Yes ☐ No ☐

**D) Consequences of Cassation over Cassation**

1. Do you think that the purpose of cassation in the Regional states seems to minimize the workload for the second Cassation Division of the Ethiopian federal one?

Yes ☐ No ☐

2. Do you agree that the existence of a double cassation system is better in helping the country to correct an erroneous than having a single cassation? Yes ☐ No ☐

3. Do you agree that Regional States cassation division should be expected to bring about uniform and correct development of Regional laws? Yes ☐ No ☐

4. Do you believe that the principal aim of Federal cassation division in Ethiopian Federalism is expected to promote integrated uniform interpretation of Regional States laws?

Yes ☐ No ☐

4. Do you think that the existence of the principles of cassation over cassation causes the delay of justice that amount to the judicial injustice as well as court congestion?

Yes ☐ No ☐

5. Do you believe that the Federal Supreme Court cassation division has an implication of pseudo-federalism or judicial semi-centralization on Ethiopian Federalism?

Yes ☐ No ☐

6. Mention advantages and disadvantages of dual cassation in Ethiopian Federalism!

**E) Alternative Governmental mechanisms and Remedies to alleviate the Violation of Power**

1. Do you believe that parliaments (HOPR, HOF and State Council's) should be recommended to alleviate cassation over cassation in amending Federal Constitution?

Yes □ No □

2. Can it be said a better alternative to alleviate cassation over cassation divisions proposing that the Federal cassation division withdraws to review State matters, since the cases are already reviewed by Regional States cassation divisions?

Yes □ No □

3. Is it recommendable Regional State courts argue that not to be bind by federal Supreme Court cassation division if the case reviewed by same is purely Regional matter?

Yes □ No □

## Appendix **II**

**Interview guide questions for judges, legal advocates, and scholars of federalism**

I Abdissa Dashura, a Masters student in Addis Ababa University, kindly requests……..to prepare or inscribe your answer for the following interview questions. This interview guide is prepared for the purpose of gathering information for my Master's thesis entitled ***"Implication of Cassation over Cassation in Ethiopian Federal Context: with Special Reference to Principle of Self-Determination"*** that I am pursuing in AAU college of Law and Governance, Center for Federal Studies. I am grateful for your kind cooperation and investing your precious time to respond to my interview questions. You can refrain from writing your name.

1. The Federal Supreme Court and State Supreme Courts have the highest and final judicial authorities as far as their respective subject matters guaranteed by FDRE Constitution. What problems do you assess in connection to cassation over cassation in light of the principle of Federal system and Regional Self-determination of Ethiopia?

2. Do you think that in Ethiopian federal set up, revision of States legal matters by Federal Supreme Court cassation division is well-matched with the principle of Federalism and self-determination?

3. The Federal Supreme Court cassation division decision is binding on all Federal and State Courts. How you could observe its bindingness on States while by the virtue of FDRE Constitution State laws are enacted by State Councils and interpreted by State Courts?

4. What do you consider the consequences of the Federal Supreme Court cassation division over state legal matters in Ethiopian Federalism and principle of Regional Self-determination? Or what Advantages and Disadvantages are?

5. To what extent the Federal Supreme Court cassation division granted Constitutional rights to review the decisions of State Courts? To What extent the Regional States Supreme Court have final say?

6. What rational reasons may be behind for the failure of parliaments take necessary actions for correction of problems that emanate from the implementation of the principle of cassation over cassation in Ethiopian Federal System? Are they at liberty to exercise their function? Is it State council's practically participated in the amendment? What are the challenges?

7. Do you have any comments regarding to the cassation division reform and its jurisdiction in Ethiopia?