



SEEK WISDOM, ELEVATE YOUR INTELLECT AND SERVE HUMANITY!



## **THE ROLE OF ETHIOPIA FEDERAL SUPREME CASSATION BENCH IN THE ENFOCMENT OF SOCIO-ECONOMIC RIGHTS**

Prepared by: Kassie Melkam Zewudie

ID GSE/4200/11

Adviser: Dr Wubshet Shiferaw (PhD)

**A Thesis Submitted To the College of Law and Governance Study, School of Law, Addis Ababa University, In Partial Fulfilment of the Requirements for the Masters of Laws (LLM) Degree in Human Right.**

September, 2024

Addis Ababa, Ethiopia

## DECLARATION

**Kassie Melkame**, hereby declare that this research paper is original and have 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.

Name: Kassie Melkam

Signature: \_\_\_\_\_

Date Sep. 9/2024

Confirmed by:-

Woubishit Shfraw (PhD) (Advisor)

Signature \_\_\_\_\_

Date Sep.9/2024

**ADDIS ABABA UNIVERSITY**

**SCHOOL OF LAW**

**Approval of Sheet**

THE ROLE OF ETHIOPIA FEDERAL SUPREME CASSATION BENCH IN THE  
ENFOCMENT OF SOCIO-ECONOMIC RIGHTS

BY: Kassie Melkam Zewudie

Approved by

Woubishit Shfraw (PhD)

Signature\_\_\_\_\_

Advisor

Abdi Jibrile

Signature\_\_\_\_\_

Examiner

Getahun Almahyehu

Signature\_\_\_\_\_

Examiner

## CONTENTS

DECLARATION .....	i
ACKNOWLEDGEMENT .....	v
ACRONYMS .....	vi
ABSTRACT.....	vii
CHAPTER ONE.....	1
1. Introduction.....	1
<b>1.1. Background of the Study</b> .....	1
1.2. Statement of the Problem.....	3
1.3. Objectives of the Study.....	5
1.3.1. General Objective .....	5
1.3.2. Specific Objective .....	5
1.4. The Research Questions.....	5
1.5. Methodology and Methods of Data Collection.....	6
1.6. Scope of the Study .....	8
1.7. Significant of the Research .....	8
1.8. Limitations of the Research .....	8
1.9 Literature Review.....	9
1.10. Organization of the Study .....	11
CHAPTER TWO .....	12
SOCIO-ECONOMIC RIGHTS AND REMEDIES FOR THEIR VIOLATION IN HUMAN RIGHTS LAW .....	12
2. General Over View on Socio-Economic Human Rights.....	12
2.1.1. The Concept of Human Rights.....	12
2.1.2. Ground for the Human Right Existence.....	12
2.2. The Legal Grounds and the Types of Socio-Economic Rights.....	13
2.2.1. The Legal Grounds of Socio-Economic Rights .....	13
2.2.2. The Types of Socio-Economic Rights .....	14
2.3. The Justifiability of Socio-Economic Human Rights .....	14
2.3.1. The Concept of Justifiability.....	14
2.3.2. Types of Justiciability .....	15
2.4.2. Socio-Economic Rights and Their Justiciability under the Ethiopian Legal System.....	17
2.4.2.1. The Existence Legally Guaranteed Socio-Economic Rights .....	17
2.4.2.2 The Existence of an Institution Having Judicial or Quasi-Judicial Power to Adjudicate Socio-Economic Rights.....	19

2.4.2.3. The Available of Remedies .....	21
CHAPTER THREE .....	23
OPPORTUNITIES AND CHALLENGES FOR THE JUDICIARY TO ENFORCE SOCIO- ECONOMIC HUMAN RIGHTS: COMPARATIVE ANALYSIS .....	23
3.1. Opportunities and Challenges in Nutshell .....	23
3.1.1. Granting the Power of Constitutional Review for Judiciary .....	23
3.1.2. Recognition of Justifiability in National Legal system .....	24
3.1.3. Existence of Organized and Capable Litigants .....	25
3.2. The Enforcement of Socio-Economic Rights in South Africa and India .....	26
3.2.1. Republic South Africa .....	26
3.2.3. India .....	27
CHAPTER FOUR .....	29
The ROLE of FDRE FEDERAL SUPREME COURT CASSATION for the ENFORCMENTS of SOCIO-ECONOMIC HUMAN RIGHTS .....	29
4.1. The Concept of Enforcements of SERs before the Federal Supreme Court Cassation .....	29
4.2. The FDRE Judiciary Structure .....	30
4.3. The role of the Ethiopian courts for the Enforcement of Human rights .....	31
4.3.1. The Cassation System .....	32
4.3.2 The Power of the Cassation .....	32
4.4 The Role FDRE Federal Supreme Court Cassation Bench to Enforce Socio-Economic Rights: Based on Case Analysis .....	33
4.4.1. The Decisions Which Show the Positive Role of the Cassation .....	33
4.4.2. The Decisions Which Show the Inadequate Role of the Cassation .....	38
4.4.2.1. Inadequateness Emanated from Legal limitation .....	38
4.4.2.2. Inadequateness Emanated from Jurist Limitation .....	40
CHAPTER FIVE .....	49
CONCLUSION and RECOMMENANDATIONS .....	49
Conclusion .....	49
Recommendations: .....	51
BIBLIOGRAPHY .....	52
Books .....	53
Cases: .....	55
Interviews: .....	57

## **ACKNOWLEDGEMENT**

First and above all, I would like to thank the Almighty God with His Mother St. Marry for their help in my entire life. It is their help that gives me strength to accomplish everything I wish.

A heartfelt gratitude deserves to my advisor, Dr. Wubshet Shifraw for his constructive advising and comments, and diligent cooperation without which the task would have been hardly easy. My wife, Mulye Gataneh, your love, care and patience are the soul of the paper. Dagnachwe Worku, Dr Teferi Gebru, Ali Muhamd, Almaw Welie, Yadeta Gizawu, Aron Degol, Amha Mekonen and Hbatamu Erkihun, thanks for all the goods you did to me. I owe you all.

## **ACRONYMS**

Art	Article
ACHPR	African Charter on Human and Peoples' Rights
FDRE	Federal Democratic Republic of Ethiopia
HOF	House of Federation
CEDAW	Convention on the Elimination of Discrimination Against Woman
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
CSO	Civil Society Organization
SER	Socio-economic Rights
HPR	House of People Representative
CCI	Council of Constitutional Inquiry
CRC	Convention on the Rights of the Child

## **ABSTRACT**

*The Federal Democratic Republic of Ethiopia recognizes all level of human rights and guaranteed. This constitution imposes a duty on the judiciary to enforcement and protects all human rights is in line of the international human right practice and laws. The Federal Supreme Court Cassation Division Bench as apex court and binding decision maker on the national litigation in its more than 15 years' experience rarely applied the FDRE Constitution provisions that declared on the socio-economic rights and the international human right instruments particularly human right laws directly connected with the socio-economic rights.*

*One of the root causes for the cassation to enforce socio-economic rights is the denying of constitutional review power. This article contends that legal and jurist limitation in the cassation bench contributes to the unacceptably low enforcement of socio-economic rights. The author supports his position and show the legal and the practical gaps and challenges based on the cassations' judgments. By doing this the author put forward recommendations for constitutional and legal reform and other relevant solutions. The author has also consulted the laws and cases of other countries and relevant literature with a view to identifying normative standards and practices from which Ethiopia could lesson.*

**Key-terms:** Socio-economic rights, Enforcement, cassation, remedies, Ethiopia

# CHAPTER ONE

## 1. Introduction

### 1.1. Background of the Study

Currently, at international level human rights are given recognition by international community. Human beings are entitled human rights simply because they are human. Human rights are recognized to respect, protect and fulfill the fundamental interests of human beings. At the present time, the international community has not only given recognition for human rights but also it has agreed and formulated laws for their protection and enforcement, that is why, different international human right instruments like UDHR, ICCPR, CRC, ICESCR, etc. proliferated.

Adopted on 16 December 1966, the ICESCR is the only international treaty covering all economic, social and cultural rights. With the UDHR and the ICCPR, it constitutes the International Bill of Rights, the basis of all the international treaties dealing with human rights. Since the adoption of the ICESCR in 1966, advocates of the SER have been complaining that it has no an appropriate oversight body and implementation mechanism like its counterpart ICCPR, despite a theoretical affirmation to the effect that they have equal status. This lack of mechanism for the effective realization of the SER remains a global challenge of large proportions of people.

Ethiopia has accepted and ratified such international human rights instruments. Moreover, the FDRE Constitution makes all international human right instruments ratified by Ethiopia an integral part of the land and it recognized that human rights and freedoms are inviolable and inalienable.<sup>1</sup>

World history shows us, unlike theoretically, it is not as such easy for governments to respect and protect human rights in practice. That is why as discussed below including based on case analysis in the current world; in different countries there exist serious human right violations like the right of liberty, the right of housing, the right of property, the right of food, etc. by the very government officials and third party. It is presumed that all human rights have remedies and the

---

<sup>1</sup> The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proclamation No. 1/1995, Art,9(4) and 10 47,Federal Negarit Gazeta, 1<sup>th</sup> year, No.1

remedies should be granted by the courts by citing either the FDRE Constitution and international human right laws or the ordinary domestic legislations according to the context of the actual case and the existed legal system.

According to the Constitution and ordinary legislation, human rights are enforceable through judicial and quasi-judicial mechanisms. However, constitutional provisions are rarely invoked and applied by the courts. There is an erroneous tendency to take all cases in which constitutional provisions are invoked or the constitutionality of a law or decision is questioned as ‘constitutional disputes’ that are within the jurisdiction of the House of Federation.<sup>2</sup>

Contrary to this position, comparative experiences of South African and Indian constitutions provide remedies for the protection and enforcement of socio-economic right violation. some scholars, by referring the Indian Supreme Court decision, argued that the judiciary is not only ultimate guardian of the human rights of the people but it also protects unremunerated rights by interpreting the fundamental rights and widened their scope<sup>3</sup>.

Human rights without remedies are meaningless. Ubi Jus Ibi Remedium is a Latin legal maxim which means "where there is a right there is a remedy". The maxim states that the person whose right is being infringed has a right to enforce the infringed right through any action before a court of law. The Apex Court of India explained this maxim if a man has a right; he must have the means to vindicate and maintain it, and also a remedy.<sup>4</sup> The law presumes that there is no right without a remedy; and if all remedies are gone to implement a right, the right in the purpose of the law ceases to exist.<sup>5</sup>

The FDRE Constitution under article 13(2) of its provision imposed a duty on the courts to respect and enforce human rights like any other organs of government. However, the Constitution does not expressly provide the kinds of the remedies for victims unlikely India and South Africa constitutions. What makes it worst, the FDER Constitution denied the Ethiopian

---

<sup>2</sup> Sisay Alemahu Yeshanew, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia (2008) 8 African Human Rights Law Journal 293

<sup>3</sup> Amartish kaur, Protection of Human Rights in India: a Review (2017) 2 Jamie Law Review 24

<sup>4</sup> Jatindra kumar Das, Code of Civil Procedure,(PHI Learning Private Limited, 2014) 6

<sup>5</sup> Ubi jus ibi remedium: where there is a right, there is a remedy (ipleaders.in), <<http://blog.ipleaders.in/ubi-jus-remedium/>>, accessed on March 21/2024

courts the power to interpret the constitution, particularly the invalidation of proclamations which contrary to the constitution.

On the other hand if it is not possible to bring alleged violations of human rights before the national courts or other adjudicative bodies, human rights protection becomes ineffective in practice. Consequently, the national constitutional framework shall establish bodies that are empowered to handle such allegations and enforce the rights. These bodies shall likewise be empowered to remedy the violation effectively<sup>6</sup>.

This motivates the writers to explore the kind of remedies available for human rights violation victims particularly for socio-economic rights in FDRE Constitution. In addition to this, the researchers will examine the role of the FDRE Cassation Bench for the enforcements of socio-economic rights in practice as the binding decision maker.

## **1.2. Statement of the Problem**

The right of victims of human rights violations to get remedies is a well-established and basic human right that today is enshrined in universal and regional human rights treaties and instruments. Yet, the state objected judicial enforcement of socioeconomic rights since they believed that it restricts the scope of democratic decision-making.<sup>7</sup> Due to this victims left without an effective remedy for socio-economic rights, and rarely victims obtain adequate reliefs for socio-economic rights violation.<sup>8</sup>

The FDRE Constitution imposed a duty on the courts particularly on the FRDE Cassation Bench as binding decision maker<sup>9</sup> for the lower courts to enforce the constitutional guaranteed human rights including the socio-economic rights.

---

<sup>6</sup> Thomas Trier Lisbeth A.N. Thonbo ond Others, The Danish Institute for Human Rights drafted The Constitutional Protection of Human Rights, a part of its Endeavour in the Middle East and North Africa 24

<sup>7</sup> Natasha G. Menell, Judicial Enforcement of Socioeconomic Rights: A Comparison between Transformative Projects in India and South Africa, (2016) 49 Cornell International Law Journal 727

<sup>8</sup> Id, p.735

<sup>9</sup> The FDRE Federal Courts proclamation, 2021, Proclamation No. 1234/2021, Art,26 (3), Federal Negarit Gazeta, 27<sup>th</sup> year, No.26

Despite the constitutional recognition of socio-economic rights under the Federal Democratic Republic of Ethiopia Constitution, such as the right to education, health, housing, and social security, their enforcement remains limited and argumentative. The judiciary, particularly the Federal Supreme Court Cassation Division, which plays a pivotal role in interpreting and standardizing the law, has not consistently developed a jurisprudence that strengthens the enforceability of these rights. While the Cassation Division has the mandate to correct fundamental errors of law and ensure uniform interpretation, its engagement with socio-economic rights has been sparse, inconsistent, and often restrained by traditional notions of justiciability and separation of powers.

This has raised critical questions about the role of the Cassation Division. In particular, the underutilization or narrow interpretation of socio-economic rights by the Cassation Division limits the transformative potential of the Constitution. Furthermore, there is a lack of clarity on whether the Cassation Division considers international human rights instruments, ratified and incorporated into domestic law, in its rulings on socio-economic matters.

This thesis seeks to explore whether the Federal Supreme Court Cassation Division of Ethiopia has effectively contributed to the enforcement of socio-economic rights in Ethiopia, what legal and institutional limitations hinder its role, and how judicial reasoning could be developed to support broader enforcement of these rights. The core problem lies in the gap between the constitutional promises and their practical realization through the highest court's jurisprudence.

As a result, the researcher have tried to find out and show the hindrance of such constitutional and statutory gaps to FDRE Supreme Court Cassation Bench to enforce socio-economic rights and to give effective relief for the claims of socio-economic rights violation under the FDRE constitution and other laws of Ethiopian. In addition to this, the researcher tried to examine and show the Cassation Bench as the binding decision maker the role it played to enforce the socio-economic rights in practice in positive and negative sides through its decisions by compare with the decision of the HOF.

### **1.3. Objectives of the Study**

#### **1.3.1. General Objective**

To critically examine the role and effectiveness of the Ethiopian Federal Supreme Court Cassation Division for the enforcement of socio-economic rights through its tool I.e. binding interpretation of law, with a view to assessing its contribution to the protection and realization of such rights under the Ethiopian constitutional and legal framework.

#### **1.3.2. Specific Objective**

The specific objectives of this study are:-

- To explore how the Cassation Division has interpreted socio-economic rights in its binding interpretation of law.
- To assess the consistency and adequacy of the Cassation Division's jurisprudence in upholding socio-economic rights.
- To identify legal, institutional, or practical challenges faced by the Cassation Division in enforcing socio-economic rights.
- To evaluate the impact of cassation rulings on lower courts concerning socio-economic rights.
- To recommend reforms or improvements to enhance the Cassation Division's role in socio-economic rights enforcement.
- ✓ Showing the layout for Cassation Division's for the Enforcement of the Socio-economic rights in its binding decisions by comparing with the role of the South Africa and Indian courts' experience.

### **1.4. The Research Questions**

Thus, in this particular research, the primarily focus is examining the role of the cassation for the enforcement of socio-economic rights in the existing jurisprudence and looking answers to questions relevant to it. Accordingly, the research ultimately attempts to answer the following key questions. Better to put the questions as:

- To what extent has the Ethiopian Federal Supreme Court Cassation Bench contributed to the enforcement of socio-economic rights under the Ethiopian constitutional and legal framework?
- What legal and institutional challenges hinder the Federal Supreme Court Cassation Bench in enforcing socio-economic rights in Ethiopia?
- Is the Cassation Bench effectively interpreting and applying international human rights norms related to socio-economic rights within the Ethiopian legal context in its binding interpretation of law?
- What are the limitations and potentials of cassation decisions as binding precedents for advancing socio-economic rights in Ethiopia?
- How does the Cassation Bench reconcile socio-economic rights enforcement with judicial independence and constitutional interpretation in Ethiopia?
- How does the approach of the Ethiopian Cassation Bench to socio-economic rights compare to that of other constitutional or supreme courts in South African Constitutional Court and Indian Supreme Court jurisdictions?

## **1.5. Methodology and Methods of Data Collection**

This thesis will employ a qualitative, doctrinal legal research design, supplemented by case study analysis. The focus of the study is on interpreting legal texts, judgments, and legal doctrines to evaluate the role played by the Ethiopian Federal Supreme Court Cassation Bench in the enforcement of socio-economic rights.

In order to conduct this research, the researcher will examine the provisions of the FDRE Constitution in general, and specifically the provisions related to socio-economic rights, Federal Supreme Court Cassation decisions, relevant legislation related to socio-economic rights, legal commentaries and journal articles, international and regional human rights instruments, General Comments recommended by the Human Rights Committee, books, and academic theses.

The researcher undertook a close reading and interpretation of statutes, constitutional provisions, and judgments to comprehend the legal framework and judicial reasoning. Additionally, the

researcher conducted a detailed examination of selected Cassation Bench and House of Federation decisions that address socio-economic rights, including the right to housing, equality, labour, and social security. The researcher did not limit the study to the domestic legal framework; rather, a comparative analysis was conducted with the judiciary's role in South Africa and India in enforcing socio-economic rights through judicial review.

To gain insight into how socio-economic rights are perceived and enforced in the Cassation Division, as well as the strengths and limitations of the Cassation Division in enforcing these rights, semi-structured interviews were conducted. When conducting the semi-structured interviews, the researcher intentionally selected individuals who were knowledgeable and could provide relevant insights, such as Constitutional Inquiry experts and Civil Society leaders. The target interviewee categories included judges and former judges.

In addition to the interviewees, to conduct this thesis, the researcher selected binding judgments from the Cassation Division and the House of Federation that involve socio-economic rights, such as the right to healthcare, housing, equality, and social security, based on their relevance. This selection was made because these cases involve clear socio-economic rights and have a clear cassation decision that is binding, sets a precedent, or clarifies the law, and have a significant impact on the enforcement of socio-economic rights in Ethiopia.

When selecting cases, the researcher took into account a representative sample of cases that reflect the diversity of socio-economic rights, such as the right to housing, labor, health, and social security. At the time of selection, the researcher also considered decisions that expand or clarify the scope of socio-economic rights, decisions that limit or restrict socio-economic rights, and decisions that establish a new precedent for socio-economic rights. After selecting decisions from the Cassation Division and the House of Federation based on these conditions, the researcher analyzed the content of the decisions and other relevant documents, as well as decisions from the Indian Supreme Court and the South African Constitutional Court.

## **1.6. Scope of the Study**

Theoretically, this research is mainly about an appraisal of the role of the FDRE Supreme Court Cassation Bench for the enforcement of the socio-economic rights using the available remedies in the FDRE Constitution, other domestic laws, the binding decisions of Cassation Bench and HOF as well as the international human right laws with special reference to South Africa and India Courts' experience.

This research is conducted specifically on the role of the FDRE Supreme Court Cassation for the enforcements of socio-economic rights with compared to the South Africa and India Courts' by assessing the remedies enshrined in the FDRE constitution as well as international and regional human rights instruments. In addition to these, the researcher examined the binding decisions rendered by the FDRE Supreme Court Cassation and HOF in Ethiopia.

## **1.7. Significant of the Research**

This research would show the limitations of the FDRE Cassation Bench for the enforcements of socio-economic rights and grant remedies for the victims of the violation of these rights. Due to this, the research could be used as an input for legal drafter to amend FDRE Constitution and other relevant laws as laws. In addition to this, it can be used for concerned institutions to empower the judges and other lawyers and other interested persons to increase their legal knowledge and skill in general on human right issues and specifically socio-economic rights.

## **1.8. Limitations of the Research**

- Among others, shortage of time has been the prime limitation as opposed to the required time for an in-depth study. Access to unpublished or non-digitized case law may be limited.
- Since the Cassation Division's and the House of Federation judgments are in Amharic Language barriers faced during the translation in to English.
- Lack of extensive literature specifically focusing on the Ethiopian Cassation Bench's role in socio-economic rights enforcement.

## 1.9 Literature Review

As explained above, the role and the power of the apex court to adjudicate socio-economic rights vary from legal system to legal system. Based on their historical and philosophical reasons, the constitutions of various states empowered the regular courts particularly the Supreme Court to interpret the constitution. Some countries have strong judiciary with judicial review power in which South Africa<sup>10</sup> and India<sup>11</sup> are notable case. On the other hand, some states like Ethiopia<sup>12</sup> have fragile judicial system in their legal history and not trust their ordinary courts to empower them in order to adjudicate constitutional review. Even though the constitutional review granted to the HOF in Ethiopian, the regular courts have a duty to protect and enforce the human rights through adjudication<sup>13</sup>. Sides to side the victims of the socio-economic right violation have the right access to justice before regular courts including the FDRE Supreme Cassation Bench<sup>14</sup>.

‘Access to justice’ is a term with diverse meanings. In a narrow sense, it is often equated with access to judicial remedies. However, access to justice can also be used in a wider sense to seek freedom from systematic and entrenched injustices such as poverty, inequality and discrimination<sup>15</sup>. The FDRE constitution recognized the right access to justice for the violation of these rights in its Article 37.

It is difficult to deal with all literatures in the area but an attempt is made to see briefly some of the important works which have directly or indirectly connection to this paper. The first work which has direct connection with this thesis Sisay Alemahu’s published paper. After he explored different Ethiopian court cases and experience said that ‘‘Ethiopian courts generally tend to avoid adjudicating cases based on constitutional provisions (including the ones on human rights)

---

<sup>10</sup> The constitution of the Republic of South Africa, Adapted on May 1996 and amended on 11 October 1996 by the Constitutional Assembly, Art.7-39

<sup>11</sup> The constitution of India (Modified the 1st Decembe, 2007), Article 12-35

<sup>12</sup> Supra note 1, Art,10-47

<sup>13</sup> Id, art. 79 and 13

<sup>14</sup> Id, art. 37

<sup>15</sup> <<http://voelkerrechtsblog.org/access-to-justice-for-socio-economic>>, Access to Justice for Socio-Economic Rights: Lessons from the Indian Experience, accessed on March 21/2024

even where such provisions are invoked and are relevant.’’<sup>16</sup> On the other hand Assefa Fiseha after providing Variety logical reasons such as the strict reading of Amharic version of article 84(2) of the FDRE constitution and the nature of the supremacy of parliament he concluded that the regular courts have the power to interpret the constitution for the enforcement of the human rights<sup>17</sup>.

Takele Soboka in his part argued that when there is confusion of power where is it for regular court or the HOF on the litigation of human right issue at hand , it is better to give for regular courts in order to keep the appeal right and the right to be hear as well as to avoid the partiality.<sup>18</sup> On the other hand Gatachew Assefa suggested that the Ethiopia regular courts have a power to interpret the constitution in order to carry out their constitutional duty to protect and enforce the human rights. He support his argument based on the constitution drafters intention by referring and interpret the constitutional munities.<sup>19</sup> In addition to the above, there are some researches and publications work done on the remedies for victims of human right violation before court of law internationally<sup>20</sup> and national<sup>21</sup>.

However, as far as to my knowledge and finding there is no specific research yet done on the role of the FRDE Supreme Cassation Bench for the enforcement of socio-economic rights. Therefore, the writers will address new issues that had not been addressed by aforementioned scholars concerning the role of the FRDE Supreme Cassation Bench to enforcement of Socio-economic rights under Ethiopian legal framework.

---

<sup>16</sup> Supra note 2, p. 8

<sup>17</sup> Assefa Fiseha, Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HOF), (2007) 1(1) Mizan Law Review 15-16

<sup>18</sup> Takele Soboka, Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory, (February 2011) African Journal of International and Comparative Law 224

<sup>19</sup>.Getachew Assefa, All about Words: ‘Discovering the Intention of the Makers Of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation’ (December 2010)22(2) Journal Law of Ethiopia139-169

<sup>20</sup> Supra note 3 p.24

<sup>21</sup>. Kidus Meskele Ashine, and Tekete LabenaTera, The Right to Reparation for Human Right Violation in Ethiopian Legal Frame work (2017)31 Journal of Poverty, Investment and Development An International Peer-reviewed Journal 2

## **1.10. Organization of the Study**

This paper is organized in five chapters. The first chapter deals with the background of the study, statement of the problem, research question, literature review, and objective of the study, significance of the study, research methods, limitation of the study and the scope of the study.

Chapter two gives a brief explanation on rights and remedies for the violation of the rights. Particularly, it deals with the concept of human rights in general and in particular on socio-economic human rights, the character of human rights, human rights in the FDRE constitutions, the justifiability of socio-economic human rights, the remedies for the violation of socio-economic human rights violations.

Chapter three explain briefly about the role of the judiciary in the enforcements of human rights in the context of socio-economic human rights. It attempt to address the opportunities and obstacles for the judiciary for the enforcements of human rights such as the recognition of judiciary review in the national constitution and other domestic laws, the recognition of human rights justifiability in the national legal system, the availability of remedies for the human right violation in the national legal system and the national judicial independent and capacity. Furthermore, it deals with the experience of India and South Africa legal system in this regard.

Chapter four mostly emphasizes on the power and role of the Cassation for the enforcement of socio-economic rights in Ethiopia. Experience of the Cassation Bench and its strengths and weaknesses in enforcing the socio-economic rights in its binding decision compare to the Hof binding decisions is going to be addressed in it. The last chapter of this study is about conclusion and recommendation

## CHAPTER TWO

### SOCIO-ECONOMIC RIGHTS AND REMEDIES FOR THEIR VIOLATION IN HUMAN RIGHTS LAW

#### 2. General Over View on Socio-Economic Human Rights

##### 2.1.1. The Concept of Human Rights

.Different scholars have tried to frame the concept and the definition of human rights. Durga Das Basu has defined human right as “minimal rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration.”<sup>22</sup> Accordingly, human rights are the entitlement of individuals being a human being and the benefits that a human being can claim from the government. On the other hand, the state has a duty to provide and fulfill to the claimer according to its capacity.

According to the United Nations human rights are inherent to all human beings irrespective any ground that including all generational rights.<sup>23</sup> According to Jatindra Kumar Das human rights can freedom from discrimination, by gender, race, ethnicity, national origin or religious, freedom from want, to enjoy a decent standard of living, freedom to develop and realize one’s human potential, freedom from fear, of threats to personal security, from torture, arbitrary arrest and other violation acts, freedom of thought and speech and to participate in decision making and form associations, and freedom of decent work, without exploitation.<sup>24</sup>

This freedom classification included all kinds of human rights. These are international civil and political rights, the socio-economic rights and third generation rights.

##### 2.1.2. Ground for the Human Right Existence

There are different reasons for the very existence for human rights. There are five moral principles underpinning the Declaration such as the equal status of human persons; the need for

---

<sup>22</sup> Jatindra Kumar Das, Human Right Law and Practice, (Delhi-110092, 2021)2

<sup>23</sup> <[https://www.researchgate.net/publication/342946672\\_Understanding\\_Human\\_Rights\\_PDF](https://www.researchgate.net/publication/342946672_Understanding_Human_Rights_PDF)>, accessed April, 4/2024

<sup>24</sup> Supra note 22, p.6-7

the protection of the physical and psychological integrity of the person; the right to meaningful agency; the requirement for full participation in the political, economic, social, cultural, scientific, etc. life of the society; and the right to minimum welfare.<sup>25</sup> From this one can infer that the reasons for the existence are to keep the equality of human beings, to give a minimum safeguard to human being through human right institutions in holistic approach by increasing the participation of the society in economic, cultural, political and other issues that are necessary for a person.

## **2.2. The Legal Grounds and the Types of Socio-Economic Rights**

### **2.2.1. The Legal Grounds of Socio-Economic Rights**

Socio-economic rights are recognized in other different international and regional human right instruments in a scatter manner. For example, the right of education is one component of the socio-economic right recognized in different international as well as regional human rights treaties Such as the ICESCR<sup>26</sup> CEDAW<sup>27</sup>, ACHPR<sup>28</sup>, CRC<sup>29</sup>, CRPD<sup>30</sup>, ACRWC<sup>31</sup>, ICERD<sup>32</sup>

---

<sup>25</sup> Steven Wheatley, *The Idea of International Human Rights Law* (First Edition, Oxford University Press, 2019)175

<sup>26</sup> Art.13 and 14 of the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)

<sup>27</sup> Art.10 of the Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) (CEDAW)

<sup>28</sup> Art. 17 of the African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (Doc.CAB/LEG/67/3.)

<sup>29</sup> Art.28 and 29 of the Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

<sup>30</sup> Art.24 of the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) (CRPD)

<sup>31</sup> Art.12 of African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999 (Doc. CAB/ LEG/24.9/49.)

<sup>32</sup> Art.5 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD)

and UDHR<sup>33</sup>. Here the African Charter on Human and Peoples' Rights is unique that for its recognition of the indivisibility and interdependence of all generations of rights.<sup>34</sup>

The Vienna Declaration comes to exist and state that "all human rights are universal, indivisible and interdependent and interrelated...."<sup>35</sup> This Declaration put all human rights as inseparable and at equal foot.

### **2.2.2. The Types of Socio-Economic Rights**

Knowing the types of socio-economic right has the key significant to identify the role of the Cassation Bench for the enforcement of such rights in litigation process. One can simply identify from the reading of text of the Covenant<sup>36</sup> socio-economic rights included the right work, the right of the employees to establish trade union, the right to social security, the right to adequate standard of living, the right to health and education.

Socio-economic rights consists social rights in one hand and economic rights on the other hand. "social rights are those rights necessary for adequate standard of living including right to health, shelter, food, social care and right of education"<sup>37</sup>, whereas, economic rights refer, for example, the right to property, the right to work, which one freely chooses or accepts, the right to fair wage, a reasonable limitation of working hours, and trade union.<sup>38</sup>

## **2.3. The Justifiability of Socio-Economic Human Rights**

### **2.3.1. The Concept of Justifiability**

The issue and the concept of justiciable and non-justiciable of SERs are still argumentative. The International Commission of Jurists explained the issue of justiciable as "the ability to bring

---

<sup>33</sup>. Art. 26 of the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR).

<sup>34</sup> Esmael Ali, Rethinking Justiciability and Enforcement of Socio-Economic Rights in Ethiopia: International Context and Comparative Perspective (2013)5 Jimma University Journal of Law 110, 135-136

<sup>35</sup> Vienna Declaration and Program of Action, U.N. World Conference on Human Rights, June 14-25, 1993, art. 5, U.N. Doc. A/CONF.157/24 (Part 1) (1993)

<sup>36</sup> Supra note 25, article 6, 7, 9, 11-13

<sup>37</sup> Magdalena and etal, Human rights Reference Handbook, (University for Peace,2004)9

<sup>38</sup> Ibid

action and claim a remedy before on independent and impartial body for any violation that has occurred or likely occurred.”<sup>39</sup>

Some writers also explained the issue of justiciability as follow:

*Justiciability is a fluid concept, but it is a broadly understood as the quality of rights to be enforced by an independent judicial or quasi-judicial organ in an adversarial procedure that results in the issuance of remedies. It depends on the availability and power of judicial or quasi-judicial enforcement mechanism as well as the normative content of right*<sup>40</sup>.

From the above two explanation one can understand that the issue of justiciability related to getting access to justice from regular courts or quasi-judicial organs for victim when there is or likely occurrence of human right violation.

### **2.3.2. Types of Justiciability**

There are two types of justiciability. These are institutional and normative justiciability. Justice Brennan explained normative justiciability in a negative way as “a dispute is non-justiciable or more correctly raises a political question-if there is a lack of judicially discoverable and manageable standards for resolving it.”<sup>41</sup>

The FDRE Cassation Bench decide that if the case at hand is a political<sup>42</sup> issue then, it is non-justiciable and the regular courts have no power to render decision on the political cases. In this case the applicant was the politically appointed for the position since he was the representative of people, However he removed from the government position. He claimed to return the post up to the cassation bench. But the cassation dismissed the application by reason out that the removal of

---

<sup>39</sup> Fikire Tinsea Birhane, Justiciability of Socio-Economic Rights in Ethiopia, Exploring Conceptual Foundation and Assessing the FDRE Constitution and Judicial Prospective (2008) Beijing Law Review 323-324

<sup>40</sup> Getachaw Assefa, Yonas Biremta and Muradu Abdo (Eds.), Economic, Social and Cultural Rights in Ethiopia, (March. 2016) 18

<sup>41</sup> Aharon Barak, The Judicial in Democracy , ( Princeton University press,2006) 178-179

<sup>42</sup> Ato Tizazu Aragawe vs Beshangule Guemze Regional Government, decision of the Federal Supreme Court Cassation Division Bench, Cassation File No. 63417, decided on July 15, 2003 E.C.

the political assigned officials by the concerned body is one of the accountability mechanisms that provided in article 12(2) of the FDRE Constitution and the issue is non-justiciable.

Aharon Barake explained an issue is institutional justiciability when either the domestic or the international law provided the regular courts or quasi-judicial that can interpret and enforce the law when litigation is raised.<sup>43</sup>

## **2.4. Human Rights in General and the Socio-Economic Rights in Particular in Ethiopian**

### **2.4.1. Human Rights in General under Ethiopian Legal System**

The current FDRE Constitution entered into force on 21 August 1995. In this constitution in its preamble human rights is reflected from the outset which emphatically affirms “the full respect for individual and people’s fundamental rights” as a condition precedent and foundational principles for the success of this sparkling ambition.<sup>44</sup>

The FDRE Constitution as it provided in its chapter three from article 13 to 44 devotes more than one third of its content to provisions on fundamental human and people’s rights. The FDRE constitution recognized civil and political rights, socio-economic rights and group or solidarity rights. The protected civil and political rights in the FDRE constitution are the right of life, to security of the person, to liberty, protection against cruel, inhuman, or degrading treatment or punishment, the right to equality and equal protection of the law, freedom of thought and expression, the right of assembly, demonstration and petition and e.t.c.<sup>45</sup> On the other hand the group rights recognized under the FDRE constitution are the right to self-determination up to secession, the right to development and the right to a clean and healthy environment are clearly enshrined.<sup>46</sup>

---

<sup>43</sup> Sup era note 41, 183

<sup>44</sup> Adem Kassie, Human Rights under Ethiopia Constitution; A Descriptive Over View,(Spring 2011) 5 (10 Mizan Law Review 43

<sup>45</sup> Supra note 1, Art. 14-37

<sup>46</sup> Id, Art. 39, 43 and 44

In addition to these substantive parts of the human rights, there are provisions in the FDRE constitution that deal with national policy principles and objectives<sup>47</sup> which either establish important guarantees or have direct relevance to the interpretation of fundamental rights.

Since all human right covenants and other human right instruments ratified by Ethiopia are integral parts of the land, any human rights which recognized under the international and regional human right instruments are enforceable under Ethiopian legal system.

The Constitution imposes a responsibility and duty to the respect and enforcement of fundamental rights and freedoms at all levels of the federal and state legislative, executive and judicial bodies<sup>48</sup>. The FDRE Supreme Court Cassation Bench is an apex court which has a duty to enforce human rights when the cases bring before it. As explained in detail in chapter four of in this thesis the FDRE Supreme Court Cassation Bench as an apex court, its decisions are binding in all courts of Ethiopia including itself.

#### **2.4.2. Socio-Economic Rights and Their Justiciability under the Ethiopian Legal System**

In order to consider a certain domestic legal system has guaranteed justiciable socio-economic rights, there is a need for the fulfilment of three normative preconditions such as the existence of legally protected rights (claim); the existence of an institution having judicial or quasi-judicial power to adjudicate socio-economic rights (setting); and the availability of remedies (the consequence of the claim).<sup>49</sup> The researcher tried to explore in detail these three pre-conditions in the context of Ethiopian Legal system.

##### **2.4.2.1. The Existence Legally Guaranteed Socio-Economic Rights**

The litigants to bring legal action before court of law, there should be legally protected and guaranteed rights in the domestic legal system. If someone claims a right that has no legal protection before Ethiopian Courts, then the courts quash the case since there is no cause

---

<sup>47</sup> Id, Art. 85 – 92.

<sup>48</sup> Id, Art. 13 (1)

<sup>49</sup> Amare Tesfaye, The Justiciability of Socio-Economic Rights in Federal Democracy Republic of Ethiopia, (LLM Thesis, Addis Ababa, December 2010, Unpublished)86

action.<sup>50</sup> So, investigating the types of SEC rights that are recognized and protected in the Ethiopian legal system is mandatory.

All international agreements ratified by Ethiopia are an integral part of the law of the land.<sup>51</sup> Since the international and the national human right instruments, ISCERC and African Charter on Human and Peoples' Rights, are the part and part cell of the Ethiopian domestic laws the Ethiopia courts including the cassation can render a decision on cases of socio-economic bring before it by citing ISCERC and African Charter on Human and Peoples' Rights.

The socio-economic rights are such as the right of property, the right of labour, the right of health, and the right of education are legally recognized and protected under article 40, 41 and 42 of the FDRE Constitution. On the other hand article 43 of the FDRE Constitution in its caption says 'the right of development'; it seems the third generation rights. However, article 43(1) provided that "... the right to improved living standards", which is also relevant in the realization of socio-economic rights. This phrase enables for the inclusion of implicit rights, like the right to adequate food, housing, clothing, clean water, through interpretation in line with ICESCR. Therefore, there is a wide margin for deriving other rights from the phrase '...improved standard of living'.<sup>52</sup>

From the above FDRE Constitution provisions one can concluded that the incorporations of various ESC rights in Ethiopian legal system. Those provisions declared that Every Ethiopian has the right to freely engage in economic activities; to choose his/her means of livelihood, occupation and profession; and equal access to publicly funded services. It further requires the state to allocate ever-increasing resources to provide social services; provide funds for the rehabilitation of persons with available means; and to pursue policies aimed at expanding job opportunities for the poor through undertaking programmes and public works projects. The

---

<sup>50</sup> Ato Dejen Belachew v. Ato Nesru Awel, decision of the Federal Supreme Court Cassation Division Bench , Cassation File No. 45247, decided on June 17/2002 E.C. In this file the cassation as per 231 (1) (a) of the Ethiopian Civil Procedure Code decided that cause of action is the fact or facts which entitles a party to seek redress in a court of law. The term connotes every fact which if traversed; it would be necessary for the plaintiff to prove in order to support his right to the judgment of the court

<sup>51</sup> Supra note 1, Art. 9 (4)

<sup>52</sup> Supra note 49, p. 51.

FDRE constitution also guaranteed different labour rights which included the right to association the right to form trade unions for collective bargaining purposes; the right to strike; equal pay for equal work; paid leaves; reasonable limits to working hours; and a healthy and safe work environment.<sup>53</sup>

Therefore, in Ethiopia socio-economic rights are recognized and protected by the supreme law of the land I.e. the FDRE Constitution, by international and regional human rights instruments. Constitutionalising the socio-economical rights leads to constitutionalise the litigation to realise those right.<sup>54</sup>

#### **2.4.2.2 The Existence of an Institution Having Judicial or Quasi-Judicial Power to Adjudicate Socio-Economic Rights**

Sisay Alemayehu pointed out that the substantive and institutional aspects of justiciability of human rights are guaranteed in Ethiopia.<sup>55</sup> From this Sisay's argument one can drive two crucial issues on the justiciability of human right in FDRE Constitution. The first one is that all generational human rights are justiciable in Ethiopia and the second one is since in the FDRE Constitution accepted the institutional and substantive justiciability, the regular court or quasi-judicial including the cassation bench can enforce socio-economic rights through their decisions.

When one explored the international human rights experiences, there is the standing that the Socio-economic rights are equally justiciable and enforceable with the civil and economic rights.<sup>56</sup>

The Africa Human Right commission in the two cases brought before it decided the issue of justiciability of socio-economic rights. The Africa Human Right commission in the cases of Centre for Economic and Social Rights and Social and Economic Rights Action Centre (SERAC) & Another v Nigeria and in the case of Malawi African Association and Others v Mauritania recommended that as per article 16, 14, and 18 of charter since human rights are indivisible, the socio-economic rights such as the rights property, health the right of food,

---

<sup>53</sup> Supera note 44, p.53-54

<sup>54</sup> Adem Kassie Abebe, *The Potential Roles of Constitutional Review in the Realization of Human Rights in Ethiopia*, doctor legum (LLd), University of Pretoria) 37

<sup>55</sup> Supra note 2, p.23

<sup>56</sup> See, General Comment 31 for ICCPR and General Comment 9 of the ICSECR

clothes, the right of hygiene and family life are adversely affected. This clearly indicates how such a right are interpreted and treated as a justiciable right.<sup>57</sup>

Even though the Africa Human Right commission recommendation is not a binding since it is one of the acceptable authoritative interpretation of the human right institution in Africa which is Ethiopia ratified the Charter it can be the guideline for the Ethiopian regular as well as quasi-judicial organs of the government.

The FDRE Constitution Article 37(1) grants everyone the right to bring any ‘justiciable’ matter to judicial and quasi judicial bodies and seek decisions there from. The courts based on article 13 (2) of the FDRE constitution have a duty to interpret the normative human rights contents that are guaranteed in chapter three of the FDRE constitution.

The FDRE Constitutional Assemblies in their discussion they are recognized that for the violation of human right the victims have the right access to justice as follow:

*Despite democratic government is established by the constitution, owing to the low culture of protection and enforcement of democratic and human rights or considering the constitutionally provided rights may be violated because of ideological and other differences, enshrining the right of access to justice of every individual of justiciable matter is found to be mandatory.*<sup>58</sup>

The FDRE Constitution framers also clearly conferred to the court not only access to justice for human right violation but also the discussants give the power for the court to interpret the constitutional provisions including the human right provisions.<sup>59</sup>

The Federal Courts establishment proclamation number 1234/2021 in article 11(3) provide that the Federal High Court render decision, judgment, or order in order to protect justiciable human rights specified under chapter three of the constitution. This proclamation gives power to the

---

<sup>57</sup> Fikire Tinsa, Justiciability of Socio-Economic Rights in Ethiopia: Exploring Conceptual Foundations and Assessing the FDRE Constitution and Judicial Perspective, (2018) 9 Beijing Law Review 333

<sup>58</sup> Yemane Kassa, The Judiciary and Its Interpretive Power in Ethiopia: A Case Study of the Ethiopia Revenues and Customs Authority (LLM Thesis, Addis Ababa, December 2011, Unpublished)114

<sup>59</sup> Ibid

federal courts including the cassation cases arising under the FDRE Constitution and international treaties accepted and ratified by Ethiopia.<sup>60</sup>

In practice there are instances that the Federal High Court has entertained the socio-economic rights particularly the right of adequate food and the right of properties even though the court quashed the case due to different reasons.<sup>61</sup> This case showed that in Ethiopian legal system the regular courts recognized that the socio-economic rights are justiciable.

Based on the Constitutional Minutes, the legal and practical reasons socio-economic rights are not only legally protected but also justiciable rights in Ethiopia legal system.

#### **2.4.2.3. The Available of Remedies**

The term remedy means ‘the range of measures that may be taken in response to an actual or threatened violation of human rights’.<sup>62</sup> Remedies may be granted either judicial or quasi-judicial. The term “judicial remedies” is ... a relief which the legal system guarantees in a judicial proceeding for the enforcement or the defense of substantive rights.<sup>63</sup>

Either the judicial or quasi-judicial remedies guaranteed in the international, regional and domestic laws. The human right remedies guaranteed article 8 of UDHR, 2(3) (a-c) of the ICCPR, and other international human right instruments.

The FDRE constitution as opposed to the South African and India constitution not provided expressly the remedies for human right violations. However, from article 37(1) and 13(2) of the FDRE constitution one can derive different human right remedies that are available in international human right instruments. On the other hand there are different human right remedies provided in the FDRE constitution at different provisions such as invalidation of laws contrary to the constitution<sup>64</sup>, composition<sup>65</sup>, habeas corpus<sup>66</sup> for unlawful detention.

---

<sup>60</sup> Supra note 9, art.3(1) (a)

<sup>61</sup> Yeshe Mekonen and etal (98 persons) v. Addis Ababa City Mayor office etal. the decision of the Federal High Court, File Number 228448, June 9/2015 E.C

<sup>62</sup> Mizanie Abate, Rethinking Litigation Grounded Enforcement of Constitutional Rights in Ethiopia, (August 2022) 32 Ethiopia Law Journal.132

<sup>63</sup> International Encyclopedia of Comparative Law, Civil Procedure: Types of Relief Available (Judicial Remedies)3

<sup>64</sup> Supra note 1, Art. 9(2)

Generally in the Ethiopian legal system all human right including the socio-economic rights are justiciable. Because the precondition a right to be justiciable have meet. Therefore, the Ethiopian courts including the Federal Supreme court should entertain cases of socio-economy right equally with civil and political rights.

---

<sup>65</sup> Id, art.40(8)

<sup>66</sup> Id, art.19(4)

## CHAPTER THREE

### OPPORTUNITIES AND CHALLENGES FOR THE JUDICIARY TO ENFORCE SOCIO-ECONOMIC HUMAN RIGHTS: COMPARATIVE ANALYSIS

#### 3.1. Opportunities and Challenges in Nutshell

Adem Kassie pointed out there are three normative and institutional preconditions that determine the success of the constitutional rights litigation in any country such as justiciable constitutional rights, an independent constitutional adjudicator, and organized and capable litigants.<sup>67</sup>

##### 3.1.1. Granting the Power of Constitutional Review for Judiciary

The New Encyclopedia of Britannica defines judicial review as “the power exerted by the courts of a country to examine the actions of the legislative, executive and administrative arms of the government and to ensure that such actions conform to the provisions of the constitution.”<sup>68</sup> The courts which have constitutional review can quash the laws enacted by House of Peoples Representative or other organ of the government which is contrary to the Constitution and it can reverse the decision of the executive or administrative organs’ decisions that contradicted with the Constitution and other laws.

Constitutional review is an important tool to ensure the realization of human rights<sup>69</sup>. In order to achieve the enforcement of human right in genera and socio-economic rights in particular the modality of granting the constitutional review power is a crucial point. There are two kinds of granting of the constitutional review in the national legal system. The first modality that incorporates in USA<sup>70</sup> constitution is granting the power of constitutional review to regular courts. The second modality is granting the constitutional review power out of the regular courts

---

<sup>67</sup> Supra note 54, p.26-28

<sup>68</sup> The New Encyclopedia Britannica (15<sup>th</sup> ed.1986)

<sup>69</sup> Supra note 54, p.32

<sup>70</sup> Supra note 17, p. 8. In UAS in principle all level of courts have the power of judicial review. Due to this irrespective the level of USA’S court can declare any law or administrative decisions which are unconstitutional.

such as Constitutional Court in Germany constitution<sup>71</sup> or the House of Federation in FDRE constitution.<sup>72</sup>

The courts which have constitutional review power are stronger to enforce the socio-economic rights<sup>73</sup> than those judicial review power denied in the domestic legal system. Because, if the regular courts have judicial review power, then they can declare the laws which violates human rights unconstitutional and the can cancel the administrative decisions that degraded or violate human rights. On the contrary, those courts which have not constitutional power cannot challenge the laws or administrative decisions even though they clearly violate human rights in the cases brought before them. The latter courts are remaining silent as toothless dog. Therefore, one can conclude that denying constitutional review power is one of the obstacles to enforce human right in general and socio-economic rights in particular. That is why as discussed in below constitutional review has played a significant role for the realization of human rights in India.

### **3.1.2. Recognition of Justifiability in National Legal system**

As we tried to explore the concept and the types of justiciability in chapter two of this thesis, the issue of justiciability is related to the litigation of human rights in general socio-economic in particular. Litigation is fundamental to build the international justice and is becoming an increasing tool for human right movement throughout the world.<sup>74</sup> As the practice of different countries legal system shows litigation before court of law is the basic instrument to develop human right in general and for socio-economic rights in particular not only in the international arena but also in the domestic legal system.

Different domestic legal system categorizes the rights based on the types of right as justiciable and non-justiciable based on the police justification when the constitution ratified and enacted. Adem kassie asserted that the issue of justiciability has direct relationship with the constitutional review that is the existence of justiciable rights determines where there is the potential for the

---

<sup>71</sup> Id, p.9

<sup>72</sup> Supra note 1. The commutative reading of article 62 and 83 FDRE Constitution gives that the constitutional review generally is given to the Federal House of Federation.

<sup>73</sup> Supra note 7, p. 732-735

<sup>74</sup> Supra note 54 , p.28

constitutional review.<sup>75</sup> It means if the socio-economic rights guaranteed in the constitution as justiciable rights and if there is a strong independent constitution interpreter organ, then the litigation on socio-economic rights mostly will be successful. This scenario actually happened and noticed as a good example in South Africa legal systems.

### **3.1.3. Existence of Organized and Capable Litigants**

Constitutional complaints are ‘the lifeblood and enabling prerequisite for judicial review’<sup>76</sup>. In the principle of the litigation the court cannot render the judgment on the issues which were not claimed as the relief by the plaintiff or by the defendant in the counter-claim<sup>77</sup>. For the protection and enforcement of the socio-economic rights through litigation well-organized, capable and vibrant claimants that lodge cases to get remedies before the judicial or quasi-judicial for the violation of human rights are crucial.

The well-organized, capable and vibrant claimants for human right violation are the lawyers who have interest on human rights litigation and the civil society organizations (CSOs) that are establish to defend the human rights violation.<sup>78</sup>

The CSOs and the human right lawyer to defend the victims of human right violation, the public interest litigation system should adapt in the domestic legal system. The concept of public interest defined as follow:

Public interest litigation is a “legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected”.<sup>79</sup>

If in a domestic legal system public interest litigation is recognized then, as per its concept the CSOs and the lawyer who have interest and capacity to litigate on behave of the victims of the

---

<sup>75</sup> Supra note 54, p.37

<sup>76</sup> Id, p.42

<sup>77</sup> The Civil Procedure Code Decree, 1965, Decree No.52, Article 182(2), Negarit Gazette Extraordinary of 25<sup>th</sup> year, No.3

<sup>78</sup> Supra note 54, p.42-48

<sup>79</sup> Yenehun Birlie, Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features (2017) 11 (2) Mizan Law Review 306

human rights violation can lodge the case before the court of law. Because, in public interest litigation process the claimant is not required to have vested interest on the case. In other words in the public interest litigation to bring legal action the plaintiff is not to be expected the victim of the human right violation.

### **3.2. The Enforcement of Socio-Economic Rights in South Africa and India**

The means of enforcement and the kinds of remedies that are given for victims vary country to country as per their legal system variation. The researcher tried to examine South Africa and India legal system that Ethiopia takes lesson.

#### **3.2.1. Republic South Africa**

The Republic of South Africa constitution guaranteed human rights.<sup>80</sup> The constitution of South Africa also provided the kinds of reliefs that can be decided by courts which seems, appropriate for the claims such a declaration of right<sup>81</sup> and judicial review for constitutional court.<sup>82</sup> Article 37 of the Republic of South Africa constitution expressly allowed the public interest and action popular litigations. The constitution does not only provided the remedies for the victim but it also enable the volunteers to be a voice for the victim without secured consent from the victim and permission from the government organ.

The Republic of South Africa constitution recognized the socio- economic rights as justiciable matter.<sup>83</sup> Due to this, the South Africa constitutional court in the case between Minister of Health V. Treatment Action Campaign rendered a decision on the right of health that the government provided for the victims the HIV drudge so called Nevirapine for HIV patient pregnant women.<sup>84</sup> The Court also in the case between Republic of South Africa v. Grootboom (2000) decided that the government must to implement a “coherent house program directed towards the progressive realization of a constitutional right. However a government housing

---

<sup>80</sup> Supra note 10, Art.7-39

<sup>81</sup> Id, Art 38 and 167

<sup>82</sup> Id, art.167

<sup>83</sup> Id, art. 38

<sup>84</sup> Mark. S. Kende, The South Africa Constitutional Court’s Embrace of Scio-economic Rights: A Comparative prospective, (2003) 6 Chapman law Review 147-149

project violated this obligation because it failed to prioritize assistance to those “living in intolerable conditions or crisis situations.”<sup>85</sup>

The right of health and the right of housing are the typical socio-economical rights. Having in mind this, the Republic of South Africa Constitutional Court decided on these rights against the government. In other words, the Constitutional Court decided that the government should protect, respect and fulfill these rights to the society at large. These decisions showed that the crucial roles of the domestic constitutional courts for the enforcement of the socio-economic rights.

### **3.2.3. India**

The Indian constitution has given due consideration to the recognition and protection of human right. The philosophy and objective of the constitution of India is enshrined in the preamble which includes the protection of the dignity of an individual.<sup>86</sup> It also provided remedies for the human right violation victim from habeas corpus to judicial review for regular Supreme Court.<sup>87</sup> Due to this, the India Supreme Court not only protects and enforces the enumerated rights but also it tied to enforce and protect un-enumerated rights as well. The India Supreme Court in *Meneka Gandhi V. Union India* interpreted the right of life and to widen its scope and deduced un-enumerated rights such as “right to live with human dignity”.<sup>88</sup>

Since socio-economic rights are considered the directive principles of state policy the India Constitution is not as such strong for the second and third generation rights. Due to this the Indian constitution makes such rights not justiciable which cannot be claim before court of law.<sup>89</sup> However, the supreme court of the India tried to entertain the socio –economic right through the means of interpretation as shown in two cases. The first case is the case of *Bandhua Mukti Morcha*<sup>90</sup>. In this case the India Supreme Court not only ordered the state to release bonded laborers but also required the state to ensure that laborers earn a minimum wage in the future.<sup>91</sup>

---

<sup>85</sup> Ibid

<sup>86</sup> Supra note 11, Art.12-35

<sup>87</sup> Id. Art.32

<sup>88</sup> Supra note 3, P.24-25

<sup>89</sup> Super note 11, Art. 35-51

<sup>90</sup> Supra note 7, p. 734

The second case in which the India Supreme Court rendered a decision by entertaining the socio-economic rights is the case of “Right to Food” litigation case. In this case the Court declared a duty on the part of the state to provide emergency nutrition and issued forty-nine various interim orders between 2001 and 2005 implementing its judgment at a detailed level of social policy, touching on everything from school lunches to accountability.<sup>92</sup>

The Indian apex court in developing public interest litigation system based on 'judge-led' and 'judge dominated' movement, 68 Public interest litigation, which provides for the right to free legal aid, has contributed a lot in litigating destitute living and working situations of the mass of the people.<sup>93</sup>

From the above decisions and explanation the supreme court of India carried out its duty to protect and enforce socio-economic rights as by using its inherent power, i.e. interpretation as a tool. In these cases the India Supreme court entertained on the right of labor and the right of food which are the typical socio-economic right. So, these decisions have showed the role of the Indian Supreme Court for the enforcements of socio-economic rights.

---

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Supra note 34, p. 135-136

## CHAPTER FOUR

### **The ROLE of FDRE FEDERAL SUPREME COURT CASSATION for the ENFORCMENTS of SOCIO-ECONOMIC HUMAN RIGHTS**

#### **4.1. The Concept of Enforcements of SERs before the Federal Supreme Court Cassation**

Since the title of this thesis is ‘the role of FDRE Federal Supreme Court Cassation Bench in the enforcement of SERs’, it needs some elaboration about the title’s idea. Human rights in general and SERs in particular can be enforced by different government organs (such as the legislature, executive and the judiciary) and non-governments institutions.

In this thesis purpose enforcement of human rights in court of law refers to the legal mechanisms and process through which individual can seek protection and redress when their right are violated. As dealt in this thesis (for instance in chapter three of this thesis the Indian and South Africa courts role dealt) courts can play a crucial role in upholding these rights by interpreting constitutional provisions, applying international human right treaties, and issuing judgments that hold violators accountable.

When the searcher crafted the title of this thesis, he thought that enforcement of human right before the cassation means that individuals can seek legal redress from the cassation through appeal when there is basic error of law. The cassation as apex court can order various remedies to address the violation, when it finds out basic error of law. Since the cassation decisions which are ordered on the basic error of law are binding in all courts in national wide including the cassation itself, its precedent will used as a cornerstone on forward.

Here, when the researcher said that enforcement of SERs, it does not mean simply executions of decision order of court. On the other hand it does not mean the judiciary as organ of government organ ore the cassation as a bench will allocate budget for the enforcement of SERs. So, when the researcher said that enforcement of SERs the cassation using the tools of interpretation ascertaining or determination of the meaning of and the normative contents of the legal provision of SERs. Since contemporary constitutions generally provide that their bill of rights should be interpreted generously and holistically<sup>94</sup>. Due to this, the cassation should interpret the SERs’ normative content generously and holistically to carried out its duty to protect and fulfill.

---

<sup>94</sup> Supra note 44, p.46

## 4.2. The FDRE Judiciary Structure

Ethiopia follows the federalism system since 1995. Due to this, in Ethiopia there are the federal and regional governments<sup>95</sup>. In addition to the federal and regional governments, there are two city administrations such as Addis Ababa<sup>96</sup> and Diredawa<sup>97</sup> which are directly responsible to the federal government.

As per the FDRE constitution an independent judiciary is established<sup>98</sup> and the judiciary structure follows the government structure. There are federal courts at the federal level which have jurisdictions on the federal matters<sup>99</sup> and there are courts at regional level that have jurisdictions on the state matters<sup>100</sup>. Besides the federal and regional courts, the Addis Ababa<sup>101</sup> and Diradawa<sup>102</sup> city administration courts are established which have the jurisdiction on the matters concern the city administration.

The federal and the states courts have three levels such as federal and the state supreme courts, the federal and the state High Courts and the federal and the state First Instance Courts.<sup>103</sup> The city administration courts structure is different from the federal and state court structure. In the city administration court the level of courts are the city First Instance Court, Appellate Court and the city court Cassation Bench. In other word, in the city courts structure the High and the Supreme Court level unified in one level and named appellate court<sup>104</sup>.

---

<sup>95</sup> Supra note 1, art. 1, 46 and 47

<sup>96</sup> Id, art. 49 (3)

<sup>97</sup> The Diredawa Administration Charter Proclamation, 2004, Proclamation No. 416/2004, Article 51, Federal Negarit Gazeta, 10<sup>th</sup> year, No.60

<sup>98</sup> Supra note 1, art. 78(1)

<sup>99</sup> Super note 1, art.50 (2), 78 (2) and 80(1). The FDRE Federal Courts proclamation, No. 1234/2021 provided in detail the matters that are entertained by the federal courts.

<sup>100</sup> Supra note 1, Art. 50 (2), 78(3) and 80(2)

<sup>101</sup> . The Addis Ababa City Government Revised Charter Proclamation, 2003, Proclamation No. 361/2003, Article 41-45, Federal Negarit Gazeta, 9<sup>th</sup> year, No.86.

<sup>102</sup> Supra note 97, Art. 31-37

<sup>103</sup> Supra note 1, art. 78 (2) (3)

<sup>104</sup> Supra note 97, art. 34 and supra note 101, Art. 42(2)

### **4.3. The role of the Ethiopian courts for the Enforcement of Human rights**

The FDRE constitution in principle provided the separation of powers by stipulating that legislative, executive, and judicial powers of the federal government.<sup>105</sup> All these organs of the government are imposed the duty to respect and protect the human rights<sup>106</sup>.

In Ethiopia courts as a judiciary institution and third wing of the government are duty bound to protect and enforce human rights by giving remedy for such violations<sup>107</sup>. The National courts play a fundamental role in this enforcement as long as the authorities respect their final decision and the courts have a reputation of being independent, impartial, efficient and representing the highest quality.<sup>108</sup>

The judicial power of the Ethiopian court emanates from the Constitution.<sup>109</sup> In Ethiopia the judiciary power is not exclusively given to the court and the constitutional review is conferred to the HOF.<sup>110</sup> However, the Ethiopian courts in order to carried out their constitutional duty and to guaranty the right of access to justice<sup>111</sup> which is constitutionally protected right, they should give remedies cases bring before them for human right violation by interpreting the national laws in light to the international human right normative content and scope.<sup>112</sup> In addition to this, the Ethiopian court must apply the international human right laws that are ratified by Ethiopia and the international human right laws which are developed as customary laws internationally. Therefore, the courts should be the ultimate guardian of the human right enforcement. Because they have inherent power to give remedies for issues are justiciable including the human right litigations.<sup>113</sup> On the other hand the courts should

---

<sup>105</sup> Supra note 1, Arts.55 (1), 72(1), 79(1)

<sup>106</sup> Id, art. 13(1)

<sup>107</sup> Tsegaye Regassa, Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia, (September 2009) 3 (2) Mizan Law Review.328

<sup>108</sup> Supra note 6, p.25

<sup>109</sup> Simeneh Kiros, Binding Interpretation of Law in Ethiopia: Observations in Federal Supreme Court Cassation Decisions, (March 2024) 18 (1) Mizan Law Review 9

<sup>110</sup> Id, p.9-10

<sup>111</sup> Supra note 1, art. 37

<sup>112</sup> Supra note 1, art.13(2)

<sup>113</sup> Commercial Bank of Ethiopia vs Ato Petiros Aklilu and etal, decision of the Federal Supreme Court Cassation Division Bench , Cassation File No. 225144, decided on October 28/2015 E.C.

make check and balance when there are human right violations by giving the remedies for human right violation.<sup>114</sup>

#### **4.3.1. The Cassation System**

As mentioned former cassation bench is one of the Supreme Court division bench. The term cassation is derived from French word the cassier which means to quash.<sup>115</sup> On the other hand the term cassation gives the Amharic meaning which means cut down.<sup>116</sup> The historical background of cassation in Ethiopia is back to the 20<sup>th</sup> Century (1907).<sup>117</sup> Since the historical back ground of the cassation in Ethiopia is not as such relevant for this research, the researcher explored the reason why cassation system adapted in the FDRE Constitution and structure of the cassation in the FDRE Constitution and the practical adjustments.

There are different reasons for the framer of the FDRE Constitution for incorporation the cassation system and conferred the power that the decisions are rendered not less than judges is a binding. Among the reasons to have uniform interpretation of laws in the Ethiopia, to keep the equality of the citizens before the law as per article 25 of the FDRE Constitution, in order to develop the predictability of the decision of the courts, and to spread the speedy and apropos justice in Ethiopia.<sup>118</sup>

#### **4.3.2 The Power of the Cassation**

The power of the Cassation is rendered on any matters that have basic error of laws<sup>119</sup>. The FDRE Federal Supreme Court Cassation Division Bench decisions' that are given by not less than five judges are binding for any level of the federal and regional courts including the

---

<sup>114</sup> Ato Tsegaye Tesfaye v. The Ethiopia Mental Industrial Development Institution , decision of the Federal Supreme Court Cassation Division Bench , Cassation File No.192823, decided on October 23/2013 E.C.

<sup>115</sup> Bisrat Teklu & Markos Debebe, Change for Aptness: Fighting Flaws in the Federal Supreme Court Cassation Division, (2013) 5 Jimma University Journal of Law 43

<sup>116</sup> Mehari Redae, Cassation over Cassation and its Challenges in Ethiopia, (September 2015) 9 (1) Mizan Law Review 178

<sup>117</sup> Supra note 115, p.45

<sup>118</sup> Hirko Alemu, The Binding Interpretation of the Federal Supreme Court Cassation Division: A Critical Analysis of Its Novelty and Rickety (2022) 11 (1) Oromia Law Journal 43-52

<sup>119</sup> Supra note 1, art. 80(1) (a)

cassation rendered the binding decision itself unless the decision is reversed by seven and more than nine judges<sup>120</sup>

The power of the Cassation to review matters based on basic error of law is limited to only eight matters such as the cases that are disposed by misinterpretation of the legal provisions or applying irrelevant law to the cases, by not framing appropriate issues or by framing an issue irrelevant to the litigation, by denying an awards judgement to a justiciable matter, by giving an order in execution proceedings an warranted by main decision, in the absence of jurisdiction over the subject matter in dispute and an administrative act or decision rendered in contradiction with the laws.<sup>121</sup>

The issue of cassation over cassation is raised due to the Federal Cassation decisions' that are given by not less than five judges are binding the Regional Cassation. The Federal Cassation has power to review the Regional Cassation decisions' on three matters such as those are decisions that are given in violation of the FDRE Constitution, in contravention the FDRE Federal Supreme Court Cassation Division Bench binding decisions and the cases that are disposed by misinterpretation of the legal provisions or applying irrelevant law to the cases which have national importance and affect public interests.<sup>122</sup>

#### **4.4 The Role FDRE Federal Supreme Court Cassation Bench to Enforce Socio-Economic Rights: Based on Case Analysis**

##### **4.4.1. The Decisions Which Show the Positive Role of the Cassation**

There are many cassations' binding decisions that are the land mark for the legal system in the protection and enforcement of human rights. However, the researcher selected some decisions that show the strength of the cassation bench for the protection and enforcement of human rights.

The first eyes break decision of the cassation in the enforcement and protecting the human right is the case of Miss Tsedale Demissie v Mr Kifle Demissie<sup>123</sup>

---

<sup>120</sup> Federal Courts Proclamation Re-amendment Proclamation, 2005, proclamation No.454/2005, art. 2 and proclamation no. 1234/2024, art. 26

<sup>121</sup> Supra note 9, art.2(4)

<sup>122</sup> Ibid,, art.10(1) (c) and 2(1), 2(4)(a) and 2(4) (h)

<sup>123</sup> Miss Tsedale Demissie v Mr Kifle Demissie, The decision of the Federal Supreme Court Cassation Division, File 23632, the date of the judgment November 6, 2006.

In this case the issue was who would be the tutor and guardian of the child compare to the father of the child and his aunt to keep the interest of the child at hand. The cassation rendered the binding decision that since the father of the child come to the litigation after for 10 years without care of his child with the intention to take the child's inherit from his mother. The cassation concluded that since this acts of the father of the child is never keeping the best interest of the child, based on article 36 of the FDRE Constitution and article 3(1) of the CRC the aunt of the child would be the tutor and guardian of the child..

The second decision that can shows the typical strive of the cassation for the protection and enforcement of human right is the case between the House of Federation and etal vs Qase Mamo yitafu.<sup>124</sup> In this case the cassation decided that the appellants should pay composition for respondent's child who is the age of 13 years an injury reached when the appellants gave a transports service without fee (disinterested relationship). Here the Ethiopian tort law is not provided a compensation for disinterest relationship but the cassation rendered the decision based on the FDRE constitution Art.36 (2), 15, and 25, and Art.6 (2) and 6 (1) of the CRC and Art 4(1) and 5(1) of African Child Right Convention which Ethiopia is ratified.

In those two cases the cassation bench became wonder since it developed its own mechanism of interpretation rather than refer to the CCI. Even though in both case the family and tort are laws enacted by HPR protect and enforce the children's property interest using its own interpretation mechanism. This mechanism of protecting and enforcing the human right can be implemented through the doctrine of the constitutional avoidance even though in the cassation decisions not provided expressly.

Mizanie Abate pointed out this mechanism of human right protection and enforcement by comparative analysie as follow:

*In case of human rights violations, in particular, both the human rights treaties to which Ethiopia is a party and the Bill of Rights of the Constitution could be pertinent to contest a law or a decision. Where these options are on the table, countries take different approaches to determine which one to use. In US, a matter should be decided based on human rights conventions in so far as they are judicially enforceable. This approach is the manifestation of the doctrine of avoidance. In*

---

<sup>124</sup> House of Federation and eteal v. Qes Mamo Yitafu, The Decision of the Federal Supreme Court Cassation Division, File Number 92020, The date of the decision December 15, 2005 E.C.

*France, on the other hand, 'if both treaty and the constitution can be used to challenge a statute, courts need to give priority to the constitutional issue and refer the case to Constitutional Council.' For the reasons already mentioned above, the court in Ethiopia should manage to settle the dispute based on the international treaties and avoid referring the matter to the CCI.*<sup>125</sup>

Mizanie Abate tried to show the Ethiopian legal system indirectly adapted the Doctrine of Avoidance in Ethiopia as follow:

*The doctrine of avoidance, although not explicitly provided in the Constitution or the HF or CCI Proclamation, is implicit in articles 83 and 84 of the Constitution which require the intervention of the CCI and HF where there is a need for constitutional interpretation. So, application of the doctrine of avoidance should be entrenched through progressive interpretation of these provisions or legal reform.*<sup>126</sup>

Where the cassation used the doctrine of avoidance knowingly or not (because in such decision there is no indication) it tried to protect the socio-economic rights directly or indirectly.

The third cassation decision that can be example and also the lower courts used in day today activities to protect and enforce the human right in general and as well as the particular socio-economic right is the case between Yeman Girmay General Contractor PLC vs China CECMC Limited Company.<sup>127</sup>

Related to this cassation decision Mizanie Abate pointed out the role of the remedy interdict in socio-economic right significant since it saves the potential violations as well as it is ordered by courts on the government to fill file its positive obligation<sup>128</sup>.

The cassation plays a great role by rendering the interdict before the formal file open before court. Because in this case the cassation give decision that the prior interim measure should

---

<sup>125</sup> Mizanie Abate, Rethinking Litigation Grounded Enforcement of Constitutional Rights in Ethiopia, (August 2022) 32 Ethiopia Law Journal.154

<sup>126</sup> Id

<sup>127</sup> Yeman Girmay General Contractor PLC vs China CECMC Limited Company, The Decision of the Federal Supreme Court Cassation Division, File Number 191402, date of Judgment September 26, 2013 E.C.

<sup>128</sup> Supra note 125, p.168-169

be given before the regular file open in order to keep the interest of the plaintiff<sup>129</sup>. As per this binding decision the lower courts tried to protect and enforce the human right such as the right of life, the right of property and other rights.<sup>130</sup>

The fourth decision of the cassation decision is the criminal litigation takes place between J. Agri. Pok Private Limited Company etal vs Ethiopia Revenue and Custom Authority. In this case the cassation bench had rendered any person cannot be convicted due to the inability to pay debt as per Art- 13(2) FDRE constitution and Art11 of ICCPR. In FDRE Constitution and other laws there is no law that prohibits conviction of the accused due to the incapability of paying of the debt. The cassation struggle to protect and enforce the right of the accused by transplanted the provision that provided in the ICCPR. This decision tells that the cassation used the international human right instruments for the gape filling role when the Ethiopian law is vacant to resolve the issue at hand.

The 5<sup>th</sup> decision of the cassation that shows the positive forward of the role of the cassation for the enforcement and protection of the socio-economic right is the Ato Jawar siraj and eteal vs The Federal Ministry of Justice.<sup>131</sup> In this case the accused persons (appellants) wanted to take medical treatment from the private hospital under the control of the police. But the respondent refused with reason that the peace and security of the private hospital is not ascertained. However, the cassation decided that the main duty of the government is to keep peace and security so that it should give safeguard for the applellants) and they have a right to be treated in the private hospital This decision shows that the cassation tried to enforce the right of health of the accused persons.

The 6<sup>th</sup> decision that shows the strength of the cassation is the case between the Ethiopian National Election Board and the Hareri National Congress.<sup>132</sup> Because in this decision the cassation bench by go far raised two basic things that can be the corner stone for the lower courts further to enforce the human rights. The first one is that the cassation clearly expressed

---

<sup>129</sup> Supra note 127

<sup>130</sup> Orthodox Church VS Aba Sawiros Monger and etal, decision of the Federal High Court, the File Number 300652, decided on February 30/2015 E.C. In this case the court order injunction before the plaintiff open the regular file in order to save the life and the property of the plaintiff itself and its follower.

<sup>131</sup> Ato Jawar siraj and eteal vs The Federal Ministry of Justice, The Decision of the Federal Supreme Court Cassation Division File Number 203051, Date of Decision February 22,2013 E.C.

<sup>132</sup> Ethiopian National Election Board and the Hareri National Congress, The Decision of the Federal Supreme Court Cassation Division, File Number 207036, Date of Decision May 19, 2013 E.C.

in this decision that the regular courts can apply the constitution provisions since the court establishment proclamation number 1234/2021 in article 3(2) give a power to litigate the issue based on the constitutional provisions. Dr Teferi Gebru who is the one presiding judge in this cassation decision and also currently the judge of the cassation argued that the courts have a duty to implement the constitution to protect and enforce the human rights.<sup>133</sup>

The second is that even if there was a request that the issue has constitutional issue so that the case should be referred to the HOF however the cassation responded in its decision that the case required simple application of the constitutional provisions and since there is no need of constitutional interpretation so that no need of send the case to the HOF. By doing this the cassation resolve the issue by itself. This way of solving the litigation will be the typical lesson for lower courts since in this decision the cassation rendered the binding decision that the duty of courts to apply constitutional provisions when it needed to protect and enforce the human rights..

Dr Teferi Gebru argued that if the court wanted to protect the human right the law give wide power except the constitutional interpretation when there is the conflict of the proclamation with the constitution. He strength his argument by raising that as per law it is the courts discretionary power whether the issue at hand needs constitutional interpretation and referred to the HOF or not. So the court has wide power that to protect and enforce the human right using the different interpretation rules before refer the case the HOF.<sup>134</sup>

The 7<sup>th</sup> decision that shows the strength of the cassation is the case between Amahra Credit and Saving Institution v. Ato Wendson Waja.<sup>135</sup> In this case the lower courts decided that the creditor to take the investment land of the debtor and rent by itself as per rural land administration regulation number 51/1999. The cassation reversed the decision that even though the regulation allowed for the creditor the power of sale but the proclamation of the land is not allowed to the creditor the power of sale. In such contradiction based on the hierarchy of law the proclamation is prevail to the regulation. At the end the cassation safe

---

<sup>133</sup> Interview with Dr Tefri Gebru, (The judge of the Federal supreme Court Cassation Division Bench), August 15, 2016 E.C., Addis Ababa, Ethiopia

<sup>134</sup> Ibid

<sup>135</sup> Amahra Credit and Saving Institution v. Ato Wendson Waja, The Decision of the Federal Supreme Court Cassation Division, File Number 186494, Date of Decision September 26, 2013 E.C.

the debtors right of property by denying for the creditor the power of sale and without refer to the HOF.

Ato Habtamu Erkihun One of the presiding judge in this case as well as the presiding judge in the cassation at the time of conducting the research said that the courts should follow different interpretation before refer to the CCI and HOF and save the time of the litigants and give the speedy trial.<sup>136</sup> He supported and cited this decision is one of the instance how laws are interpreted and how courts can enforce the human rights and socio-economic rights in particular.

Dr Teferi Gebru argued that even though it is not adequate the cassation played a great role for the enforcement and the protection of socio-economic rights. He supported his argument that if one makes the research the whole decisions of the courts from regional courts to the federal courts in the holistic approach, there are many decision on the right of properties and labour cases which are concerned on the socio-economic rights in the date today activities of courts.<sup>137</sup>

#### **4.4.2. The Decisions Which Show the Inadequate Role of the Cassation**

The FDRE courts have limitation to protect and enforce human rights that emanate from the legal limitation, misconception and jurists limitation.<sup>138</sup> The legal limitation may be originated either from the constitution or from other laws<sup>139</sup>.

##### **4.4.2.1. Inadequateness Emanated from Legal limitation**

The prohibition of the cassation from constitutional review and granted the power to the HoF has two great impacts. The first one is the cassation cannot defend the human right violations that originated from the proclamations.<sup>140</sup>

---

<sup>136</sup> Interview with Ato Habtamu Erkihun, (The judge of the Federal supreme Court Cassation Division Bench), August 21, 2016 E.C., Addis Ababa, Ethiopia

<sup>137</sup> Interview with Dr Teferi Gebru Supra note 133. He support his argument by saying that the new labour law proclamation 1156/2011 included the collective disputes definition by adapted the cassation decision. It is the great role of the cassation as an input for the amendment of law.

<sup>138</sup> Carol Ngagn, Judicial Enforcement of Socio-Economical Rights in South Africa and the Separation of Power Objection:-The Obligation to 'Take Other Measure, (2014) 14 Africa Human Right Law Journal 665

<sup>139</sup> The expropriation of land holding for public purpose, payment of composition and resettlement (Amendment) , 2024, Proclamation Number 1336/2024, Art.5, Federal Negarit Gazeta, 30<sup>th</sup> year, No.41

<sup>140</sup> Property Mortgaged or pledged with Bank, 1998, Proclamation number 97/1998, art. 4 and 3, Federal Negarit Gazeta, 4<sup>th</sup> year, No.16

The second negative impact of the courts denying the constitutional review is that even though the cassation itself or the inquiry of cassation decided based on laws in favour of the human right victims, its decisions are quashed by the HoF since the latter act as itself the appellant court. Here are two typical cases on the socio-economic rights that the HoF reversed the decision of the cassation and the decision the inquiry of cassation.

The first case is the case between Public Servants' Social Security Agency v. Ato Ergetie Medibew and etal.<sup>141</sup> In this case the respondents claimed their pension should be respected and the cassation decided in favour to them. The HoF heard that the appellant's agents the impact of the decision of the cassation on the government budget. The appellant's agents showed the significant impact on the government budget if the cassation binding decision is not retained at the time of oral hearing. The HoF reversed the decision of the cassation respondents left without pension and social security of them.

The second case that the HoF quash the cassation inquiry decision is the case between the Addia Ababa City Adminstaration Credit House enterprise and etal v.Ato Adimassu Kassa and etal.<sup>142</sup> In this case the respondents claimed that the appellant should give priority at the time of Condominium house lot as per directive 21/2005 for those who paid the full amount of money of the house and cassation inquiry decided in favour to them as per the directive. However the HoF using its constitutional review power repealed the directive and reversed the cassation inquiry.

The scheme of condominium is one of the mechanism in which the government ascertained access to house<sup>143</sup>, socio-economic right, for the citizens who have no house with the low selling cost. Condominium house transfer to registered persons based on lot who saved the required amount of money based on the types of the scheme of condominium house. The respondents saved their money by trusting the appellants since they are the organ of the government. However the appellants breach their trust since as one branch of the executive

---

<sup>141</sup> The Public Servants' Social Security Agency v. Ato Ergetie Medibew and etal, Decision of the Federal House of Federation, The Federal HoF, File Number 81/12, decided on September 26,2013 E.C

<sup>142</sup> The Addia Ababa City Adminstaration Credit House enterprise and etal v.Ato Adimassu Kassa and etal , Decision of the Federal House of Federation , File No.105/16, decided on September 26/2016 E.C.

<sup>143</sup> Condominium Proclamation, 2003, No. 370/2003, Federal Negarit Gazeta, 9<sup>th</sup> year, No.95. In this law at its preamble clearly expressed that the purpose of the scheme of Condominium house is that the government provided house with low cost to the society in order carry out its duty providing house as far as its economic capacity permit.

organ of the government they made contract with the respondents with one hand and when the effect of the contract affect them, they invalidate the contract using the other hand that is the HoF.

Those two cases tell that the decision of the courts including the cassation binding decisions have no meaning without the goodwill of the HoF. Almwu Welie said that the denying of constitutional review from courts and give to the HoF make the courts lame in the legal system.<sup>144</sup> On the other hand Yadeta Gizawu who is the team leader of the constitutional teaching and awareness of CCI said that the denying of constitutional review of court makes them weak to enforce laws and to provide justice as expected them. He added that it creates perception on the society the courts are powerless since their decision are reversed by the HoF<sup>145</sup>

#### **4.4.2.2. Inadequateness Emanated from Jurist Limitation**

The Other legal limitation that imposed on the regular courts is if the matter bring before them are non-justiciable issues. The courts including the cassation bench cannot issues that are the non-justiciable as provided in article 37(1) of the FDRE constitution. As expressly discussed in the above, the issues of human rights are subject to litigation before the Ethiopian regular courts. However the cassation bench as noticed and observed in its different binding decisions either due to the misconception or jurist limitation not carried out its duty to protection and enforcement of socio-economic rights.

From the below analysed of cases on can infer the expansion of jurist limitation in addition to the legal limitation. By ‘Jurist limitation’ refer to the practice by which the judiciary has consciously or unconsciously succumbed to political pressure, academic criticisms or imposed unnecessary restriction on its legitimate power to the extent of frustrating its proper functioning<sup>146</sup>. It means there is no judicial activism and the judges due to different factors lack a confidence to entertain human right issue on favour to the victim through the tools of interpretation.

---

<sup>144</sup> Interview with Ato Almwu Welie, (Advocate), August 17, 2016 E.C., Addis Ababa, Ethiopia

<sup>145</sup> Interview with Yadeta Gizawu, (The Team Leader of the Constitutional Teaching and Awareness of CCI), August 17, 2016 E.C., Addis Ababa, Ethiopia

<sup>146</sup> Supra note 138, p.665

The first case is the Case Ato Ashenafi Amare et al V. the Ethiopian Revenues and Customs Authority.<sup>147</sup> In this case the appellants claimed that the respondent terminated the employment contract illegal and dismissed and claimed the relief in the first place to return their former position and if any good reason that they cannot return to their former position they claimed an alternative remedy their right to be heard should be respected and any relevant remedies should be given by the cassation. They appealed for cassation to get relief for such violations. But the cassation quashed the file since the power gave for Authority by law and the matter is non-justiciable.

In this case though the appellants strongly argued both in the oral as well as in written their right to be heard, is violated by the respondent, the cassation rejected the case with the reason that the proclamation 578/2008 article 19(1) (b) and regulation 155/2008 article 37(1) (2) conferred the power to decide on such issue to the other organ out of court the issue is non-justiciable.

The researcher argued the misconception of the cassation that it had made fault and show its failures to protect and enforce the human rights in the following reasons.

In the first place the proclamation nowhere of in its provisions expressly prohibited the cassation to review the decision of the Authority. So it is presumed that the parent law enacted in conformity to the FDRE constitution by respecting the right to be heard. On the other hand the power of determining where the given matter is justiciable or non-justiciable is the power of the House of People of Representative.<sup>148</sup> Since nowhere of the proclamation excluded the cassation to review the decision of the Authority, it means the HPR is not categorised this matter non-justiciable in the proclamation.

On the other hand the regulation in article 37 prohibited the reinstatement of the employee who had dismissed by the Authority through any court judgment. Let assumed it amounts speculation of the cassation to review the authority's decision. Had the cassation bench wanted to be the guardian of the human right, it had many legal and logical optional reasons to review the decision. The first one is using the law hierarch methods of interpretation. Since the proclamation had yet not prohibited the cassation to review of decision and the regulation

---

<sup>147</sup> Welday Zeru et al V. the Ethiopian Revenues and Customs Authority, decision of the Federal Supreme Court Cassation Bench, file No.51790, decided on May 24, 2011

<sup>148</sup> Supra note 58, p.116

prohibited the cassation could set aside the regulation which contrary in its parent law in order to protect and enforce the right to be heard and the right of labour. Because in Ethiopia legal system as the council of constitutional inquiry ruled the cases that involve conflict between primary and secondary legislation, there is really no constitutional issue and the power to give remedy is the courts.<sup>149</sup>

Yemane Kasa pointed out that the misconception of the cassation as follow:-

*Our constitution provides that judicial power may be taken away from ordinary courts and given to other institutions that follow legally prescribed procedures. This should not however be construed to mean that those matters vested to other institutions exercising judicial power are made non-justiciable. Rather, it was meant that for some policy and practical reasons, it was made that some judicial powers should be given to other institutions. If a matter is non-justiciable before ordinary courts, it is also non-justiciable in other institutions that exercise judicial power.*<sup>150</sup>

Had the cassation taken in to consideration this legal concept at the time of rendered the judgement, it had not quashed the appellants claim and it had been tried to protect and enforce their human right through its decision.

Even though the parent law never excluded the cassation from the review of the Authority decision, let assume in the foot of the cassation that the proclamation prohibited the review. Had the cassation wanted to carry out its constitutional duty and to be the guardian of the human right it could use constitutional avoidance principle that had done in the case of Miss Tsedale Demissie v Mr Kifle Demissie.<sup>151</sup> Here the cassation were aware of applying constitutional avoidance mechanism of interpretation to keep and enforce human right since the Miss Tsedale Demissie v Mr Kifle Demissie(date of judgement October 26/2000 E.C) was decided before the case of the Case Ato Ashenafi Amare et al V. the Ethiopian Revenues and Customs Authority(date of judgement may 16/2003 E.C).

---

<sup>149</sup> Supra note 67, p.170

<sup>150</sup> Supra note 58, p.126

<sup>151</sup> Supra note 123

The second decision of the cassation that is examined by the researcher is the case of Government House Agency V. Ato Daniel Kassa et al.<sup>152</sup> In this case even if the latter claimed the termination of lease /rent contract/ is discriminatory and unfair which violates their constitutional guaranteed human right, in article 25 and 41 i.e. right of equality and socio-economic rights since among 702 persons only 22 person prohibited from conclusion of lease contract the majority presiding judges decided that the agency has a freedom of contract to terminate as well as since it decided by the Agency Board the issue is non-justiciable.

However, in this case one of the presiding judges provided his dissenting opinion. He argued that the right of respondents as per article 13/2/ of FDRE constitution should be interpreted in line of international human right conventions that Ethiopia accepted and the experience of other countries courts. He strength his argument for his dissent opinion when the right to access to justice interpreted in line of article 14(5) of ICCPR and art .7(1) (A) of AHPRC, the issue at hand whether the act of the Agency is discriminatory or not can be proved by evidence and has no the issue of policy and politics. He further argued in the judgement that the Agency established for both profit and to allocate the scarcity of house to the public by the government. He said that if this is so, the respondent claim should be seen as the right of equal access to public property and service provided in Article 41(1) of FDRE constitution and art 13(3) of AHPRC. The agency should have criteria to give such service to be accountable and transparent as per Art.12 (1) (2) of the FDRE constitution. Finally he concluded that the respondent claim is justiciable matter which can be entertained by court.

Here one can notice that the dissenting opinion is similar with the Indian Supreme Court and South African constitutional court decision that analysed in chapter three of this thesis.

The writers of this paper had interviewed the owner dissenting opinion about the Ethiopia judges and court capacity to protection and enforcement human rights. He responded that most of the time judge are tried to refrain from deciding the issues based on International Human right Instrument and the Constitution since the fear the accountability due to the lack of job security. He added the judges' viewed that citing the constitution in decision and judgment seen as sin<sup>153</sup> On the other hand Almwu Welie who was one of the presiding judge

---

<sup>152</sup> Government House Agency V. Ato Daniel Kassa et al , decision of the Federal Supreme Court Cassation Division Bench, Cassation File No. 42150, decided on October 15, 2003 E.C.

<sup>153</sup> Interview with Ato Ali Muhamed, (Advocate), August 20, 2016 E.C., Addis Ababa, Ethiopia

in this cassation case, said that the majority judges presiding the case were loss the concept of the justiciable matter and the dissent opinion was correct.<sup>154</sup>

This case is a typical example for socio-economic right that brought before cassation bench. Had the cassation wanted to be the shield for socio-economic right, it could not be quash the case because of the following reasons. The first reason is that it had been used international human right instrument authoritative source of interpretation that was given by the UN Human Right Commission:

*It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations. Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.*<sup>155</sup>

In the case of Government House Agency V. Ato Daniel Kassa etal the main claim of the respondents was to be equal use from the resource of the public. Had the cassation been applied this general comment a base for entertained the case and interpret the international human right instrument, ICSECR, that Ethiopia ratified and the this law is an integral part law of Ethiopia it had not rejected the case. Because it is known and understandable that allocating the public house with law rate of rent is one mechanism of fulfilling the right of adequate housing of the Ethiopian government.

The second reason is had the cassation been applied the mechanism for the enforcement and protection a ‘cross-cutting rights’ in this case, it had not rejected the appellate claim. Here Cross-cutting rights’ mean those rights that straddle, underlie or facilitate the exercise of both civil and political rights and socio-economic rights such as the right to equality, due process of law and judicial protection.<sup>156</sup> Since the claim of the 22 persons, respondents, was not

---

<sup>154</sup> Interview with Ato Almawu Welie, Supra note 144

<sup>155</sup> General Comment 3 of the ICSECR ph.14

<sup>156</sup> Supra note 49, p.76-77

required extra resource from the government to protect and enforce by the cassation rather they claimed being to be treated equally with other persons.

The third reason is that had the cassation applied the human right violation approach<sup>157</sup> to solve this case, its decision was favour the victims. Because the victims claimed one of the state duties that cannot defend based on progressive of economy since they claimed the minimum core obligation of the state that in the right to bet treated equally and not discriminated. In addition to this, they claimed available resource and no need of new investment on the side of the duty bearer, state, to fulfil their claim.<sup>158</sup>

The fourth reason is that had the cassation applied integrated approach(interpret the human right laws based on indivisibility, interdependence and interrelatedness) to solve this case that applied by the African Human Right Commission and the India Supreme Court, its decision was favour the victims.<sup>159</sup> Since as the dissented judge in the case pointed out the constitutional rights and rights guaranteed in different international and regional human rights were under question, the cassation should interpreted following that human rights are interrelated and cannot stand separately so as to achieve the very existence and purpose of them.

The fifth reason is that the Ethiopian courts have a power and a duty to determine the scope of normative content of human rights protected in the FDRE constitution in line of the international human right instruments.<sup>160</sup> Had the cassation before decided refer the normative content of the right of access to adequate housing, it had known that legal security of tenure (both the individual<sup>161</sup> and the public house) is one of the normative content of this right.<sup>162</sup> Entertaining litigation to investigate and check whether the termination of the house

---

<sup>157</sup> Supra note 34, p.150. Human right violation mechanism of entertaining of the human right litigation states that socio-economic rights are considered to be violated when the state fails to fulfil the minimum core obligations of the rights.

<sup>158</sup> Ibid, p.150-152

<sup>159</sup> Ibid, p. 152-157

<sup>160</sup> Supra note 1, art. 13 (2) and 41.

<sup>161</sup> The Rent Control and Administration Proclamation, 2024, Proclamation No. 1320/2024, Federal Negarit Gazeta, 30th year, No.23, Based on this law the Ethiopia government tried to control and administer the house rent in order to carried out the duty to protect the right of adequate housing.

<sup>162</sup> General Comments No.4 on Article 11(1) of the CESCR; The Right of Adequate Housing, 13 December 1991, Contained on Document E11992/23. As per to this general comment the normative contents of the right of

rent is based on the law and without discrimination is no need of extra knowledge of judges and if the decision is in favour the appellants then it also not required the state to invest extra house and only allocate the existed house equally. Contrary to the conclusion of the cassation this case is justiciable and it could not be quash.

In the cassation there are indicators of the jurist limitation to entertained human rights issue. In the above two cases the respondents were the wing and organ of the executive. One thing makes sense here is what Ali Muhamed said. He said that if in the litigation the government is a party then, the judges and the courts' presidents in order to avoid the grievance and liability that come from the government then, they wanted to quash in favour to the governments. He added that once the cassation decided precedence on such matters case may flow as flood so that there was an intention to quash such case and develop closed door policy. To put in other words he said that the judges and the presidents said that cases that are the executive is a party to the litigation should be 'cooked closely' to avoid the flow of the same cases and grievance from the executive.<sup>163</sup>

Habtamu Erqihun expressed his observation that there are judge who never contribute an idea for a year in the cassation bench. He reasoned out that the recruiting mechanism of judges which bases on nation and religious makes the cassation bench weak and it contributes judges of the cassation lacks skill and knowledge. There is no guideline to recruiting and assign from Supreme Court judges to the cassation bench. Until this research conducting the handover of judges in the cassation depend on the discretion of the Supreme Court leaders.<sup>164</sup> All Almawu Welie<sup>165</sup>, Ali Muhamed<sup>166</sup> and Habtamu Erqihun<sup>167</sup> agreed that the lack of the law on the assigning of cassation bench judges from the supreme court judges contribute for the lacks skill and knowledge who presiding in the cassation bench. Ali Muhamed added that there were judges who presiding in the cassation bench had written the judgements without any legal provision due to lack of diligence.

---

adequate housing are legal security tenure, availability of service, material, facility and infrastructures of the house, affordability of the rent, habitability and accessibility of the house and the house provided to the society should keep the culture of the residents.

<sup>163</sup> Interview with Ato Ali Muhamed, Supra note 153

<sup>164</sup> Interview with Ato Habtamu Erkihun, Supra note 136

<sup>165</sup> Interview with Ato Almawu Welie, Supra note 144

<sup>166</sup> Interview with Ato Ali Muhamed, Supra note 153

<sup>167</sup> Interview with Ato Habtamu Erkihun, Supra note 136

Amha Mekonen who is an advocate and founder of Lawyers for Human Rights said that judges who presiding in the cassation should not only decided based on rule. He added that they should be the philosopher of law and they could not be bared by the administration and procedural issues in order to protect and enforce human rights. In doing this they should interoperate the human right normative content that is provided in the constitution in line to the international human right instrument. He further said that the cassation should decide by take in account the policy of socio-economic right strategically and not limited to the victim that bring the case at table. He reason out his position that the courts inherently have a power to protect and enforce through their decision<sup>168</sup>

The researcher agreed with Ato Amha Mekonen idea. Since there is no clear exclusion of the socio-economic rights as non-justiciable right in the FDRE Constitution, the regular court including the cassation can adapted the international practice as per article 13(2) of the FDRE Constitution.

From Ali Muhamed, Almawu Welie, Amha Mekonen and Habtamu Erqihun interview one can inferred that due to the personal capacity of the judge, the lack of the assigning and recruiting of judges in the cassation, the fear of executive organ of the government and other reasons the existence of jurist limitation.

The FDRE Constitution devotes more than one third of its content to provisions on fundamental human and people's rights.<sup>169</sup> This amount of constitutional substantive guarantee has no value unless the cassation as the final and binding decision maker tried to protect and enforce by carried out its constitutional duty imposed in article 13(2) of the FDRE constitution. .<sup>170</sup>

If the cassation is not tried to be the shield of the human right in general and for socio-economical right in particular, using the afore mentioned different mechanism of interpretation, then the guarantee given in the international human rights and the constitution seems meaningless.

---

<sup>168</sup> Interview with Ato Amha Mekonen, (the Director of Lawyers for Human Rights and Advocate), August 20, 2016 E.C., Addis Ababa, Ethiopia

<sup>169</sup> Adem Kassie, Human Rights under Ethiopia Constitution; A Descriptive Over View,(Spring 2011) 5 (10 Minan Law Review 43

<sup>170</sup>. Interview with Ato Ali Muhamed, Supra note 153

When we examine the four cases discussed in the above that the HoF and the cassation quashed the executive wing of the government is the party in the litigation. On the other hand the cases which the cassation tried to protect and enforce the human rights by the interpretation of the principle of constitutional avoidance, hierarch of law and other mechanism the government is not a party. One can inferred from those decided cases that in most of the time if the government is a party in socio-economic rights litigation, then both the HoF and the cassation decided in favour of the governments.

## **CHAPTER FIVE**

### **CONCLUSION and RECOMMENANDATIONS**

#### **Conclusion**

Human rights are given for everyone since he/she is a human being. The proper Protection and enforcement of the socio-economic rights based on the economic capacity of the country will reduce the blow-out of undignified life of the societies since socio-economic rights related to the basic needs of a human being

Having human right and guaranteed by international or national laws does not mean that there is no violation. From the inception of the concept of human right until today there are many violations of human rights either by government or individuals or by groups. When there is a violation there should be remedies for victims such violation which given by neutral body, i.e. court to keep the principle of check and balance between the organ of governments. The adjunction of human right issue by court should not be limited to the civil and political rights; it should be extended to Scio-economic rights since human rights are interrelated and interdependent.

The Ethiopia constitution guarantees access to justice and it imposes a duty on the courts to interpret the human right laws in line of the international human right laws. It means the Ethiopian courts granted a power to transplant the human right remedies that are available in the world including the other countries keeping the context of the Ethiopian legal and the limitation imposed by the constitution. Cognized it, when the socio-economic rights litigation at the table of the Ethiopian courts, they should take lesson from South Africa and India courts and grant the best remedies since socio-economic rights are justiciable in Ethiopia.

The judiciary as institution and as one wing of the government should be equipped both legally and financially in order to be a watch dog of human right in general and socio-economic rights in particular. On the other hand the cassation bench as the apex and the binding decision maker should entertain the socio-economic right litigations not only rule base but also it should decide take into account the policy justification and the theoretical foundation of such rights. In addition to this, the cassation when it render decisions on such right litigation it should interpret the constitution and international human right instruments that Ethiopia ratified to keep the rule of law, good governance and to make check and balance

the organ of governments which can be lesson for lower courts and other organ of governments.

Even though the cassation in its binding decisions play role to protect and enforce human rights, it is not adequate as the apex court. The cassation in practice due to the misconception, legal and jurist limitation yet not carry out it's to enforce and protect socio-economic rights.

## Recommendations

Based on the above mentioned findings, the researcher forwards the following points as recommendation.

- The cassation do not have the power to review the constitutionality of laws of any type, it shall play an activist role in reviewing the compatibility of executive acts with parent legislations to make executive in check and balance by employ all sort of effort to realize human right in general and socio-economic rights in particular.
- The Cassation shall approach to laws that have adverse impact on judicial power in caution and shall not side the other branches. It shall employ general principles such as the separation of powers and its inherent power to guard judicial power to protect and enforce socio-economic rights.
- The FDRE Constitution should be amend and come up with provide expressly the human rights remedy clause including the socio-economic rights, it should give the power of constitutional interpretation for regular court or establish neutral constitutional court and the constitution should provide that all human rights including the socio-economic rights as justiciable matter.
- The Federal Supreme Court should enact the guideline which provides the assigning of judges for cassation bench from the Supreme Court judges based on skill, knowledge and diligence.
- The judiciary as institution should create awareness and make capacity building as to human rights in particularly socio-economic rights scope and their implication.
- The Cassation and the HoF as a binding decision makers and human right guardians should render a decision on the socio-economic rights irrespective the party in the litigation and they should at time of decision making only take in to consideration the law and the case at hand.
- The judges presiding in the cassation as ultimate decision maker of the litigation should strive to be a watch dog of socio-economic rights by adapting different techniques of interpretation to overcome the legal and jurist limitations
- The laws such as the federal administration procedural proclamation and other laws that limits the power of the courts to review the regulation and the decision of the Council Ministries contrary to the constitution since they are obstacle for regular courts to entertain the human right issues they should be amended

## **BIBLIOGRAPHY**

### **Laws:**

1. The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proclamation No. 1/1995, Federal Negarit Gazeta, 1<sup>th</sup> year, No.1, 1995
2. The FDRE Federal Courts proclamation, Proclamation No. 1234/2021, Federal Negarit Gazeta, 27<sup>th</sup> year, No.26, 2012
3. The Federal administrative procedure proclamation, Proclamation No. 1183/2020, Federal Negarit Gazeta, 26<sup>th</sup> year, No.32, 2020
4. The constitution of the Republic of South Africa, Adapted on May 1996 and amended on 11 October 1996 by the Constitutional Assembly
5. The constitution of India (Modified the 1stDecembe, 2007)
6. The Civil Procedure Code Decree, 1965, Decree No.52, Negarit Gazette Extraordinary of 25<sup>th</sup>year, No.3, 1965
7. Federal Courts Proclamation Re-amendment Proclamation No.454/2005, Negarit Gazette Extraordinary of 11th, No.42, 2005
8. The Diredawa Administration Charter Proclamation, 2004, Proclamation No. 416/2004, Federal Negarit Gazeta, 10th year, No.60, 2004
9. The Addis Ababa City Government Revised Charter Proclamation, 2003, Proclamation No. 361/2003, Federal Negarit Gazeta, 9th year, No.86, 2003
10. A Proclamation to Define the Power and Function of the House of Federation Proclamation No.1261/2021 Federal Negarit Gazeta, 27th year, No.43, 2021, Council of Inquiry Proclamation No. 798/2013, Federal Negarit Gazeta, 19th year, No.65, 2013
11. Condominium Proclamation No. 370/2003, Federal Negarit Gazeta, 9<sup>th</sup> year, No.95, 2003

## **Books**

1. Jatindra kumar Das, Code of Civil Procedure,(PHI Learning Private Limited, 2014)
2. Thomas Trier Lisbeth A.N. Thonbo ond Others, The Danish Institute for Human Rights drafted The Constitutional Protection of Human Rights, a part of its Endeavour in the Middle East and North Africa
3. Jatindra Kumar Das, Human Right Law and Practice, (Delhi-110092, 2021)
4. Steven Wheatley, The Idea of International Human Rights Law(First Edition ,Oxford University Press, 2019)
5. The New Encyclopaedia Britannica (15th ed.1986)
6. International Encyclopedia of Comparative Law, Civil Procedure: Types of Relief Available (Judicial Remedies)
7. Magdalena and etal, Human rights Reference Handbook, (University for Peace,2004)
8. Aharon Barak, The Judicial in Democracy , ( Princeton University press,2006)
9. Cordula Droege, The Right to Remedy and Reparation for gross human rights violations a practitioner's guide
10. Black's Law Dictionary,(8th Edition)

## **Journals and Theses**

1. Sisay Alemahu Yeshanew, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia, (2008)276, African Human Rights Law Journal
2. Adem Kassie, Human Rights under Ethiopia Constitution; A Descriptive Over View,(Spring 2011) 5 (10) Minan Law Review
3. Mark. S. Kende, The South Africa Constitutional Court's Embrace of Scio-economic Rights: A Comparative prospective, (2003) 6 Chapman law Review
4. Amartish kaur, Protection of Human Rights in India: a Review, (2017) Jamie Law Review

5. Natasha G. Menell, Judicial Enforcement of Socioeconomic Rights: A Comparison between Transformative Projects in India and South Africa, *Cornell International Law Journal*
6. Tsegaye Regassa, Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia, (September 2009) 3 (2) *Mizan Law Review*
7. Simeneh Kiros, Binding Interpretation of Law in Ethiopia: Observations in Federal Supreme Court Cassation Decisions, (March 2024) 18 (1) *Mizan Law Review*
8. Dr.Assefa Fiseha, Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HOF), (2007) 1(1) *Mizan Law Review*
9. Takele Soboka, Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory, (February 2011) *African Journal of International and Comparative Law*
10. Adem Kassie Abebe, The Potential Roles of Constitutional Review in the Realization of Human Rights in Ethiopia, doctor legum (LLd), University of Pretoria)
11. .Getachew Assefa, All about Words: ‘Discovering the Intention of the Makers Of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation’ (December 2010)22(2) *Journal Law of Ethiopia*
12. Fikire Tinsea Birhane, Justiciability of Socio-Economic Rights in Ethiopia, Exploring Conceptual Foundation and Assessing the FDRE Constitution and Judicial Prospective (2008) *Beijing Law Review*
13. Getachaw Assefa, Yonas Biremta and Muradu Abdo (Eds.), *Economic, Social and Cultural Rights in Ethiopia*, (March. 2016)
14. Amartish kaur, Protection of Human Rights in India:(2017) 2 *Jamie Law Review* 24
15. . Kidus Meskele Ashine, and Tekete LabenaTera, The Right to Reparation for Human Right Violation in Ethiopian Legal Frame work (2017)31 *Journal of Poverty, Investment and Development An International Peer-reviewed Journal*

16. Esmael Ali, Rethinking Justiciability and Enforcement of Socio-Economic Rights in Ethiopia: International Context and Comparative Perspective (2013)5 Jimma University Journal of Law
17. Bisrat Teklu & Markos Debebe, Change for Aptness: Fighting Flaws in the Federal Supreme Court
18. Mehari Redae, Cassation over Cassation and its Challenges in Ethiopia, (September 2015) 9 (1) Mizan Law Review
19. Hirko Alemu, The Binding Interpretation of the Federal Supreme Court Cassation Division: A Critical Analysis of Its Novelty and Rickety (2022) 11 (1) Oromia Law Journal
20. Amare Tesfaye, The Justiciability of Socio-Economic Rights in Federal Democracy Republic of Ethiopia, (LLM Thesis, Addis Ababa, December 2010, Unpublished)
21. Fikire Tinsa, Justiciability of Socio-Economic Rights in Ethiopia: Exploring Conceptual Foundations and Assessing the FDRE Constitution and Judicial Perspective, (2018)9 Beijing Law Review
22. Yemane Kassa, The Judiciary and Its Interpretive Power in Ethiopia: A Case Study of the Ethiopia Revenues and Customs Authority (LLM Thesis, Addis Ababa, December 2011, Unpublished)
23. Mizanie Abate, Rethinking Litigation Grounded Enforcement of Constitutional Rights in Ethiopia, (20...) 32 Ethiopia Law Journal.

### **Cases:**

1. Ato Tizazu Aragawe vs Beshangule Guemze Regional Government, Federal Supreme Court Cassation Division Bench , Cassation File No. 63417, July 15/2003 E.C.
2. Lawyers for Human rights v. The FDRE Prime Minister Office and others, Federal High Court, File Number 300832, February 13/2016 E.C
3. Miss Tsedale Demissie v Mr Kifle Demissie, Federal Supreme Court Cassation Division, File 23632, November 6, 2006.

4. Ato Jauar siraj and eteal vs The Federal Ministry of Justice, The Decision of the Federal Supreme Court Cassation Division File Number 203051, Date of Decision February 22,2013 E.C.
5. Ethiopian National Election Buard and the Hareri National Congress,Federal Supreme Court Cassation Division, File Number 207036, May 19, 2013 E.C.
6. Amahra Credit and Saving Institution vs mr Wendson Waja, Federal Supreme Court Cassation Division, File Number 186494, September 26, 2013 E.C.
7. House of Federation and eteal vs Qes Mamo Yitaferu, Federal Supreme Court Cassation Division, File Number 92020, December 15, 2005 E.C.
8. Yeman Girmay General Contractor PLC vs China CECMC Limited Company, Federal Supreme Court Cassation Division, File Number 191402, September 26, 2013 E.C.
9. Orthodox Church VS Aba Sawiros Monger and others 1(32 persons),Federal High Court, the File Number 300652, February 30/2015 E.C
10. Commercial Bank of Ethiopia v. Ato Petiros Aklilu and etal, Federal Supreme Court Cassation Division Bench , Cassation File No. 225144, October 28/2015 E.C
11. Ato Dejen Belachew v. Ato Nesru Awel, Federal Supreme Court Cassation Division Bench , Cassation File No. 45247, June 17/2002 E.C.
12. Ato Tsegaye Tesfaye v. The Ethiopia Mental Industrial Development Institution, Federal Supreme Court Cassation Division Bench, Cassation File No.192823, October 23/2013 E.C.
13. Yeshe Mekonen and etal (98 persons) v.Addis Ababa City Mayor office etal. Federal High Court, File Number 228448, June 9/2015 E.C
14. Government House Agency V. Ato Daniel Kassa etal, Federal Supreme Court Cassation Division Bench, Cassation File No. 42150, decided on October 15, 2003 E.C.

**Interviews:**

1. Interview with Ato Amha Mekonen, August 20, 2016 E.C., Addis Ababa, Ethiopia
2. Interview with Ato Ali Muhamed, August 20, 2016 E.C., Addis Ababa, Ethiopia
3. Interview with Ato Almawu Welie, August 17, 2016 E.C., Addis Ababa, Ethiopia
4. Interview with Ato Yadeta Gizawu, August 17, 2016 E.C., Addis Ababa, Ethiopia
5. Interview with Dr Tefri Gebru, August 15, 2016 E.C., Addis Ababa, Ethiopia
6. Interview with Ato Habtamu Erkihun, August 21, 2016 E.C., Addis Ababa, Ethiopia