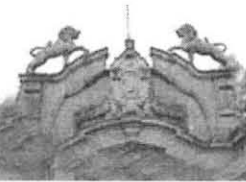


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**SECULARISM: THE SCOPE AND IMPLICATION OF NON-
INTERFERENCE CLAUSE IN ETHIOPIAN CONTEXT**

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ACRONYMS

Civ. C. - Civil Code

COM-Council of Ministers

CSO- Charities and Societies

CSOA- Charities and Societies Agency

EHRC- Ethiopian Human Rights Commission

EIASC- Ethiopian Islamic Affairs Supreme Council

EOTC- Ethiopian Orthodox Tewahido Church

Eur. Ct. H. R. - European Court of Human Rights

FDRE- Federal Democratic Republic of Ethiopia

HOF- House of Federation

HPR- House of Peoples Representatives

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CHAPTER ONE

INTRODUCTION AND ORGANIZATION OF THE PAPER

1.1 Background of the Study

It is indisputable that the state and religion have been fenced in one compound from long time. Throughout history and throughout the world, religion and government have been closely intertwined.¹ State and Religion have many interactive histories. They have interacted for long at least till the commencement of a strong feeling towards the separation of state and religion by the advocates of such separation.

Renaissance thinkers, both in philosophical as also in political sphere, gave a distinct impetus in the direction of secularism,² however its conception was vague in that time. The strange issue in 18th c. was that the American Bill of Rights recognized this concept giving at least some considerable shape. The first amendment of the US (Bill of Rights) Constitution clearly stipulated that *the congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.*³ Even since such time, this concept was under dilemma until the in-sighting letters of Roger Williams and Thomas Jefferson.

Secularism has not longer been a simple and clear idea easy to understand and apply. Even Americans, where in the concept got considerable shape, were in debate what really secularism means. The first amendment was interpreted in different manner. Before the 1947 decision on Everson V Board of Education, there was no certain and predictable interpretation. The concept was fragile and malleable even to the 'owners' of the concept themselves.

The phrase separation of state and religion is derived from a metaphor first used by Roger Williams in a letter to John Cotton and then by Thomas Jefferson in a letter to the Baptist

¹ Edd Doerr, *The Importance of Church-State Separation*; in Barry F. Seidman and Neil J. Murphy (eds.) *Toward a New Political Humanism* (New York, 2004) P-1

² J. M. Shelat, *Secularism: Principles and Application*, (N. M. Trippathi Private Ltd., Bombay, 1972) P-27

³ US Constitution First Amendment;

Association of Danbury, Connecticut.⁴ Jefferson wrote “I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion or prohibiting the free exercise thereof; thus building a wall of separation between the church[religion] and state.”⁵

The wall of separation as claimed by the two well-known politicians was not an easy terminology in American history and elsewhere. The concept has been defined in different ways without certainty and consistency. The concept was understood in different manner in different decisions. The Justices have followed the accommodation model, strict neutrality and benevolent neutrality models in different cases.⁶ This makes it difficult to have the true and consistent meaning of the establishment clause in American history. Whatever the inconsistencies in the ‘pioneer’ state are, the US courts played their role in giving some level of shape to this concept.

The concept of secularism did not limit its expansion only to the territory of US. Instead this constitutional philosophy spread out in some other countries. For instance France, Turkey, India and others have accepted the notion of secularism in different sequence. The explicit stipulation of the concept of secularism in the 1946 and 1958 French constitutions is one of the instances secularism expanded.⁷ Ataturk’s long-lived dream of creating a secular republic of Turkey finally became a reality in 1937, one year before he passed away. In that year, the word ‘secular’ was added to the constitution as one of the fundamental characteristics of Turkish republic.⁸ It was in the 1949-50 debates of Constituent Assembly that the concept of secularism got concern in India.⁹ All the constituent Assembly members agreed on the necessity of establishing a secular state so that India became secular state despite its unique feature.¹⁰

⁴ R. F. Thiemann, *Religion in Public Life: A Dilemma for Democracy*, (George Town University Press, Washington D.C, 1996), P-42

⁵ Saul K. Padover (ed.), *Thomas Jefferson, Letter to the Baptist Association of Danbury Connecticut*; (Duel, Sloan and Peace Press, New York, 1943), P-519 as quoted by Supra Note 4, foot note 3, p-42.

⁶ See R. F. Thiemann, Supra Note 4, p. 42-66

⁷ French Constitution (1946 and 1958), Art 1; it says “France is ... a secular republic”

⁸ Turkan Saylan, *Laiklik Ve Demokrasi Kolokyumu (Colloquium on Secularism and Democracy)*; in *Laiklik Ve Demodراسي (Secularism and Democracy)* (Ibrahim O, Kabogulu (ed.), 2001) as quoted by Adrienne Katherine Wing and Ozan O. Varol, *Is Secularism Possible in a Majority Muslim Country? The Turkish Example*; in *Texas International Law Journal*, Vol. 42, No.1 (2006-07) , foot note 156, P-18

⁹ Shefali Jha, *Secularism in the Constituent Assembly Debates, 1946-50*; in *Economic and Political Weekly* Vol. 37, No. 30 (2002), P-3175

¹⁰ Ibid, same page

These and other countries have adopted/incorporated this principle in their constitution or other higher laws shaping and reshaping the concept in view of their legal, political and historical philosophies. The first two of the above mentioned countries, for instance, follow the strictest type of secularism. And India follows the accommodation type of conception of secularism. In each country there are unique political features and histories. For this reason, the meaning and conception of secularism is different from country to country. Even the concept may change its shape in laps of time. It is too difficult to reach consensus on unified and comprehensive meaning satisfying each philosophy.

Beyond the debate over its conception, many have challenged its importance. Some have really counter attacked the separation of state and religion. Nevertheless, for many rationales, some countries have adopted this concept aftermath of steady march. As a constitutional principle, it has a great deal of values in guiding other constitutional issues. Moreover, it outright religion from public sphere, if possible, to safeguard the sovereignty of the people. Some argue that secularism is a path to modernization and nation building.¹¹ Others add that freedoms are better guaranteed if the state is secular.¹²

After accepting the principle of secularism as constitutional philosophy, the next question is as to its scope. There are a significant variety of relationships between religions/beliefs and the state. At one extreme, there are states in which there is no meaningful division between religion and the state; at the other extreme a state may dedicate itself to secular ends and prosecute all religions and beliefs that do not conform to a state ideology.¹³ Both extremes may not be compatible with the principle of secularism. To pursue a compatible mode, countries have been following their appropriate path in view of their relevant factors which made them to accept the notion of principle of secularism.

As J.M. Shelat well clarified, ingredients of secular government are; promoting individual freedom of religion, separating secular and non- secular functions, and non-discrimination or equality aspect.¹⁴ These elements in structured way can be non-establishment, non-interference

¹¹ Talal Assad, *Formation of the Secular; Christianity, Islam, Modernity*, (Stanford University Press, 2003), P-181

¹² Michel Troper, *French Secularism or Laicite*; in *Cardozo Law Review*, (2000) Vol. 21: 1267, P-1267

¹³ Ibid, same page

¹⁴ See J. M. Shelat, at *Supra Note 2*, P-80

and common citizenship. Accepting or rejecting these ingredients has a significant message in order to consider the scope of secularism in a country. Depending on this, we can say the scope of secularism is different from country to country. In aggregate, there are strict secularist states, accommodation type of secularist states and cooperative secularist states.

The fact of expansion of the concept of secularism in Ethiopia is not far from the above situation. The history of Ethiopian governance system is not far from the above histories in other countries. The state and the government had strong relations. Before 1931, state and church [religion] in Ethiopia were unified.¹⁵ This time was a time where the state and religion were strongly intertwined at minimum in *de facto*. Since there was no distinct sphere for both the government and the church/religion, there was a *de facto* established religion system. Even The Emperor's two consecutive constitutions (the 1931 and 1955) were not in a position to recognize the concept of secularism. Worst of all, the 1955 revised constitution stipulated that *the Ethiopian Orthodox Church was the established church of the empire and is as such supported by the state.*¹⁶ Thus, the state established a *de jure* state religion. This constitution had been enforceable till 1974.

From 1974 onwards, the status of EOTC as state religion came to an end after the coming in to power of the Dergue regime. The Dergue Regime took many measures towards separation of religion and state. One of the crucial progresses in this regime was a constitutional stipulation of separation of state and religion. In the 1987 Constitution, it clearly enshrined that *state and religions are separate; the legal status of religious institutions shall be determined by law.*¹⁷

But the measure was blamed to have been attempted to substitute the sense of religion by *Socialist Marxist-Leninist Ideology*. The Socialist Marxist-Leninist Ideology was towards the socialist idealist, which promotes a *religion of non-religion.*¹⁸ For that reason, the Dergue Regime which took this ideology as pillar of the philosophy of the entire state was anti-religion. It is at least in doubt to say anti-religion governments are secular; secularism doesn't necessarily

¹⁵ James C. N. Paul and C. Clapham, *Constitutional Development of Ethiopia* (Haile Sellassie I University in Association with Oxford University Press, 1967) Vol. 1, P-288

¹⁶ The 1955 Revised Constitution, Art 126

¹⁷ 1987 Dergue Constitution, Art 46(3)

¹⁸ S. Clement Leslie, *the Rift in Israel: Religious Authority and Secular Democracy* (Routledge Kegan Paul Ltd, London, 1971), P-73

mean to be against religion.¹⁹ To summarize, the concept of secularism has got recognition, if we say, from the occasion of 1974 revolution of Ethiopian people.

The current Ethiopian Constitution has incorporated this constitutional principle in its second chapter which is the guiding and fundamental principles of the constitution. The FDRE Constitution adopted and incorporated the 'golden' concepts of secularism in chapter two-Art 11. This provision, which is entitled "*Separation of State and Religion*", has two concepts. The first clause -Art 11(2)-enshrines the non-establishment clause i.e. *no state religion*. The second clause envisages the Non-interference clause i.e. *state shall not interfere in religious matters and religion shall not interfere in state affairs*. Actually the second clause has two substantial components. The interference aspect is a two-faceted concept. The non interference aspect imposes a duty on both institutions. This development has to be acknowledged and appreciated.

But the main problem here in Ethiopia is to define the scope of state and religious matters. For such reason, knowingly or unknowingly one of the institutions has been observed interfering on the domain of another. This practice may be either from the problem related to the lack of guiding principles (i.e. *the legal lacunae*) respecting such respective matters or from intentional interference under the guise of discharging their respective duties.

To conclude, the main theme of this Thesis will be to assess such legal and practical problems in Ethiopia. To be specific the thesis will deal the scope and the implication of the non interference clause under Art 11 (3) of the current Ethiopian constitution.

1.2 Statement of the Problem

It is clearly stipulated under FDRE Constitution that *state shall not interfere in religious matters and religion shall not interfere in state affairs*.²⁰ In the first place, the law has no clear guideline as to which state matters or religious matters are. In fact the constitution is a juridico-political document which proclaims only the guiding principles. In the second place, even if we guide our selves reasonably and rationally and so that define state and religious matters, there will

¹⁹ See J. M. Shelat, Supra Note 2, P-6

²⁰ FDRE Constitution Proclamation No.1/1995, art 11(3)

inevitably be controversy from personal or institutional interest. The worst thing is that it may be manipulated, if the law does not enshrine specific guiding principles.

Uncertain and unprincipled arrangement on secularism causes inconveniences, as it does not provide sufficient protection against the aggressive claims of strong religions.²¹ Moreover, we may not defend the aggressive interference of the state. Unless we objectively implement secularism, it may disrupt the whole constitutional provisions.²²

The consequences of the above problems are far-reaching even that may dismiss the whole constitutional commitment. Under the guise of state matter, the state may interfere in pure religious matters. And under the guise of religious matters, the religion may interfere in state matters. In such circumstance, the state necessarily will seize the right of religious freedoms. Interference of religions on state matters, on the other hand, is creating state religion and so that disturbing the whole civil religion. Civil religion is a unified and strong feeling towards shared and common goals of the nation as a whole.

The main theme of this Thesis, therefore, is to examine the scope and implications of non interference clause in crude. In specific terms, this Thesis deals to the scope of religious and state matters. Boundary of interference and non-interference and its implication is also dealt with. Moreover, it will deal as to the grounds of interference, if any.

1.3 Scope of the Study

This thesis doesn't deal with all things related to secularism. Secularism has many dimensions: *non-establishment aspect, non-interference aspect and common citizenship*. From such issues, my point of focus is the Non-interference clause. The non-interference aspect by itself has its own complexities. It may have an aspect of individualistic immunity to exercise freedom of religion. But my main deal is the institutional independence of both state and religion as entities. To do so, I will deal with the Ethiopian context in view of some well-established legal systems and practices.

²¹ Andra Sajo, *Constitutionalism and Secularism: The Need for Public Reason*; in *Cardozo Law Review* Vol. 30, No. 6 (2009), P-2402

²² Michel Rosenfield, *Can Constitutionalism, Secularism Religion be Reconciled in an Era of Globalization and Religious Revival?* In *Cardozo Law Review* (2008-2009) Vol. 30:6, P-2351-54

1.4 Objective of the Study

The main objective of this study principally is to deal with the scope and implication of Non-interference clause-Art-11(3) of the FDRE Constitution. It also aims to assess the practice in view of such legal framework. In doing this, the study have the following specific goals to achieve:

- to give an overview of the international legal and practical regime on such matters;
- to assess the legal *lacunae* in regulating scope and implication of the non-interference clause;
- to draw the demarcation line between state and religious matters as much as possible and its implication;
- to assess the practice in Ethiopia in view of the laws in Ethiopia: the constitution and other laws;
- to make some conclusions and recommendations on the issue and to try to alleviate the problem.

1.5 Significance of the Study

After its completion, this study will have the following functions:

- Serves as an input for further prospective research on similar or related issues;
- Serves to the parliament to enact laws on such issue by giving some clue as to the scope and implication of the non-interference clause;
- Serves to the practitioners to act in such manner that their practice fit with the scope of non-interference clause.
- Serves everyone to have some clue on the notions of state and religious matters.

1.6 Research Questions

- What is the notion and scope of non-interference?
- What are state matters and religious matters?
- Is there any overlap between state and religious matters?
- Where did lie the boundary of demarcation in state and religious matters?
- What are legal and institutional mechanisms to umpire the disputes?
- When could one interfere with the other, if there is possibility to interfere?
- What will be the consequence if one interferes with the other?

1.7 Methodology of the Study

The methodology to employ in this study will include primary and secondary sources. Firstly, I have consulted books, internet publications, Journals, articles and such other sources to assess the experience of other countries and Ethiopian in general. Secondly, I have consulted both stakeholders (the state and religions) and make an interview with personalities in both institutions. To achieve my objectives, I again collected cases and study the practice.

1.8 Limitation of the Study

In doing a research, limitation and challenges are unavoidable. Fortunately, I have faced some challenges although I challenged well and discharge my duty. The limitations are:

- Lack of relevant materials on Ethiopian secularism
- Bureaucracies to contact personalities to interview
- Difficulties to access official documents
- Financial and time costs

CHAPTER TWO

SECULARISM: GENERAL OVERVIEW

2.1 The Notion of Subject Matter of Secularism

In order to deal with secularism, we have to say some thing on the relation of state and religion. It is all about the interaction or separation of state and religion. Throughout history and throughout the world, religion and government have been closely intertwined.¹ However, from time to time, the relation or interaction has become loose, at least in some areas. Many writers have exerted their pen on the interaction of state and religion. However, the main deal to this Thesis is the separation aspect.

To that effect, the renaissance thinkers, both in philosophical as also in political sphere, gave a distinct impetus in the conception of secularism,² however its definition was vague. It was not till the 18th c. that the concept of secularism has taken its modern shape.³ For instance, in that time, Holyoake coined the word '*secularism*' intending to *differentiate his atheistic position from the theistic pronouncements*.⁴ We can conclude that till this notion got space in the First Amendment of the American Constitution, the concept was not as such clear.

The first amendment of US Constitution (the Bill of rights) clearly stipulated that *the congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof*.⁵ Even since such time, this concept was under controversy until the letter of Roger Williams and Thomas Jefferson was written. This letter, to some extent, gave some clue to understand the notion although it did not give clear meaning to the terminology in the First Amendment.

The phrase, *separation of state and religion*, is derived from a metaphor first used by Roger Williams in a letter to John Cotton and then by Thomas Jefferson in a letter to the Baptist Association of Danbury, Connecticut.⁶ Jefferson wrote "I contemplate with sovereign reverence

¹ Edd Doerr, *The Importance of Church-State Separation*; in Barry F. Seidman and Neil J. Murphy (eds.) *Toward a New Political Humanism* (New York, 2004), P-1

² J. M. Shelat, *Secularism: Principles and Application*, (N. M. Trippathi Private Ltd, Bombay, 1972), P-27

³ Ibid, p-17

⁴ Ibid, p-24

⁵ US Constitution, First Amendment (1789)

⁶ R.F. Thiemann, *Religion in Public Life: A Dilemma for Democracy*, (George Town University Press, Washington D.C, 1996), P-42

that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion or prohibiting the free exercise thereof; thus building a wall of separation between the 'church' and state."⁷ This is the most distinctive concept that American constitutional system has contributed to the world.

As Edd Doerr said, church [religion]-state separation then is, as most say, as American as apple pie; nevertheless hurricane winds are blowing that would topple Jefferson's wall.⁸ The main point here is to let every one that the concept of secularism is an American born. The origin and development of secularism is actually dealt in section 2.2. Now what is expected is to understand what the notion secularism mean.

Even Americans, where the concept was alleged to have been born or at least acquired a shape, were in debate what really secularism means. Before the decision written by Justice Hugo Black in 1947 on the case between *Everson v. Board of Education of the Township of Ewing et al*, the clear meaning of this notion was not adopted. But since this decision was decided, the wall of separation got some level of meaning. The separation principle in the above land mark case was put in this way; the *establishment of religion clause* of the First Amendment means at least this:

Neither a state nor the Federal Government can set up a church. Neither can pass laws, which aid one religion, aid all religions, or prefer one religion to another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to "erect a wall of separation between church and state."⁹

Secularism has not longer been a simple and clear idea easy to understand and apply. It has become a fluid, flexible notion, whose content can be extended and which can be variously

⁷ Saul K. Padover (ed.) *Thomas Jefferson, Letter to the Baptist Association of Danbury Connecticut*; (Duel, Sloan and Peace, New York, 1943) P-519; as quoted by Supra Note 6, foot note 3, p-42.

⁸ See Edd Doerr, Supra Note 1, p-4

⁹ *Everson V Board of Education*, 330 US 15.16

interpreted.¹⁰ Different scholars define the concept in view of their perspective. Different countries employ this constitutional philosophy in different ways in view of their historical antecedents. We may not, so that, expect unified and comprehensive definition of secularism.

Yilmaz Aliefendioglu, in the article of Adrienne Katherine *et al*, notes that *the most common definition of secularism is the separation of religion and state*.¹¹ Nevertheless, this narrow definition doesn't encompass many important characteristics of secular government.¹² Similarly, it may be easy, as Talal Assad added, to think of secularism simply *as requiring the separation of religious from secular institutions in government but that is not all it is*.¹³ Abstractly stated, examples of this separation can be formed in medieval Christendom and in the Islamic empire and no doubt else where too; what is distinctive about secularism is that it presupposes new concepts of religion, 'ethics' and 'politics' and new imperatives associated with them.¹⁴

One scholar defines the concept as the very term '*secular*' derives from a Latin term meaning *this world*.¹⁵ This definition seems to stick secularism with only atheistic value or material world. However, this is a kind of thinking before 17th c. by renaissance thinkers. It doesn't give much weight to accept this as definition. The concept of secularism is not necessarily about atheism. It is not again about devoid of theism, as we will see a bit later in dealing the scope of secularism.

Some others, in defining secularism, connected the notion with sovereignty of the people. They stuck with the idea that *sovereignty is fully and unconditionally vested in the people; i.e. the will of the people as opposed to God's (divine) word, would determine the laws and regulations*.¹⁶ This definition gives sense being it differentiated religious laws from state modern law. But it doesn't comprise elements of secular government. The only situation that the ecclesiastical and secular law is different may not make a state secular country.

¹⁰ Maurice Barbier, *Towards a Definition of French Secularism* (2005), P-2

¹¹ Adrienne Katherine Wing and Ozan O. Varol, *Is Secularism Possible in a Majority Muslim Country? The Turkish Example*; in *Texas International Law Journal*, Vol. 42, No. 1 (2006-07) P-5

¹² *Ibid*, P-5

¹³ Talal Assad, *Formation of the Secular; Christianity, Islam, Modernity* (Stanford University Press, 2003) P-2

¹⁴ *Ibid*, p-2

¹⁵ Jonathan Sarna, *the Rise, Fall, and Rebirth of Secular Judaism*, P-6

¹⁶ Yilmaz Aliefendioglu, *Laiklik Ve Laik Devlet (Secularism and Secularist Government)*, in *Laiklik ve Demokrasi (Secularism and Democracy)* (Ibrahim O. Kaboglu (ed., 2001), P-86; as quoted by Supra Note 11, foot note 96, P-13

J.M. Shelat on the other hand defers 'secular' government/state from 'secularism'. He notes that *where as the concept of a secular state concerns the division of authority into secular and spiritual, the non-interference by one with the other in its own separate field of action and neutrality of the state in matters of religion, secularism is an ideology which seeks to provide a theory of life as against the one provided by religion.*¹⁷ This definition clearly makes a difference between *secular state* i.e. the end; and *secularism* which is a process to achieve the end i.e. to be secular state. But it seems circular. To mean secular state is a state which reaches the climax of secularism. Whatever the cycle be, he coined significant conception. Nevertheless, his definition may not be accepted in some countries like India.

The reason is that in India the concept of secularism is not understood in such a manner. The term secularism is often rendered as '*Dharma Nirapekshata*' which approximately means '*religious neutrality*'.¹⁸ As we can see in section 2.5, the Indian neutrality is towards positive equality or impartiality. Secularism is not only about positive/equal treatment. This is not again comprehensive definition.

Some argued that the notion *secularism* has two conceptions. One, *secularism-as-separation*; and two, *secularism-as-neutrality*.¹⁹ The first notion is in wider range connotes there is no state religion. The second concept, neutrality, has two meanings. In the first instance, it designates the absence or exclusion of religion from the public sphere of the state. We may then speak of *neutrality-as-exclusion* which recalls the negative character of secularism.²⁰ Neutrality also referees to the states impartiality, which implies equality between religions.²¹

While the two forms of secularism (separation and exclusion) are distinct but coexist together, they have something in common; i.e. the exclusion of religion from the public sphere/state. This demonstrates the negative character of secularism which is the correct and precise definition of French secularism as Maurice Barbier said.²² But, this definition may not work for India and other nations as mentioned above.

¹⁷ J. M. Shelat, Supra Note 2, P-8

¹⁸ Badrinath Rao, *The Variant Meanings of Secularism in India; Notes towards Conceptual Clarifications*; in Journal of Church and State (2006), P-48

¹⁹ See Maurice Barbier, Supra Note 10, P-2

²⁰ Ibid, P-10

²¹ Ibid, P-10

²² Ibid, P-10

Scholars like Richard K. Fenn may argue that the definition of secularism is highly confined with time and place.²³ These scholars construed themselves to clarify secularism. Because, time will tell us what secularism is; place is too. For instance, the definition of secularism in US before and after the decision of *Everson v. Board of Education* was different.²⁴ The definition of secularism in France before and after 2004 (the law on conspicuous symbols) is different.²⁵ And moreover, these issues have been varied from place to place. In a country, some issues can be compatible with the principle of secularism and may not be in others.

From the above attempts to define secularism, we might take some clues to understand what secularism is. But true that no one could get comprehensive definition or meaning to the concept. However, a crucial concept like secularism can't and shouldn't be left undefined or defined so vaguely so as to render it meaningless.²⁶ Because, if the concept remains somewhat ambiguous, the state can use it judiciously to abuse politically and legally and generates inter-communal acrimony, thus the very purpose of secularism that is ensuring harmony and amicable relation among the diverse communities, is inevitably defeated.²⁷

The best way out, as Badrinath Rao notes, is to explicate some inviolable features of secularism and to conceive ways of implementing them.²⁸ In other words, this noble concept (secularism), ideally, must be made operational.²⁹ In contrary to this claim, some politicians insisted towards leaving secularism undefined or to define it case by case basis. For instance, in 1976, H. R. Gokhale, the Minister for Law, Justice and Company Affairs of Indian government, made a long speech in the Lok Sabha on the '*necessity*' of defining secularism; this was what he had to say:

Let anyone say that "secularism is incapable of definition. Well if that argument was to be accepted, even democracy in that sense is incapable of definition; because is it not understood in different ways in different countries? In the same way, we can understand what...Secularism ...stands for."³⁰

²³ Richard K. Fenn, *Time Exposure: the Personal Experience of Time in Secular Societies* (Oxford University Press, 2001), P.1-15; And Anil Nuaria, *Relationship Between State and Religion; Antimonies of Passive Secularism*; in *Economic and Political Weekly*, Vol. 24 No.8 (1989), P-405

²⁴ See R.F. Thiemann, *Supra* Note 6, P-42

²⁵ See Maurice Barbier, *Supra* Note 10, P.17-18

²⁶ See Badrinath Rao, *Supra* Note 18, P-60

²⁷ *Ibid*, same page

²⁸ *Ibid*, same page

²⁹ *Ibid*, same page

³⁰ Debates before Lok Sabha, Fifth Series (New Delhi: Lok Sabha Secretariat, 1976) P-59-60 as quoted by *supra* Note 18, Foot Note 34, P-62

Actually the above assertion may not strictly mean that defining secularism is not necessary. But it is towards the stand that defining secularism may not be as such necessary. As to this government official, it is possible that we can give a meaning to the concept case by case basis. But as said above, rendering the concept un-defined may lead the concept to be prone to manipulation by the interpreter, either religions or the state.

What ever the debate on this issue may be, secularism is very difficult concept to define. It may not be difficult to understand how fragile and malleable secularism is. Secularism as a constitutional concept defies clear definition...*it is crude ore rather than a refined metal.*³¹ To the difficulty of defining secularism, Michel Troper adds to speak of the state separate from religion is a mere tautology; as soon as there is a state, there is a separation and all that remains is our second category-*religion and state are separate and each remains confined to its own autonomous sphere.*³² All that we can do is attempting to distinguish models of separation.

Likewise, Adrienne Katherine Wing and Ozan O.Varol don't believe in the presence of a unified and comprehensive definition of secularism in the practical world. As to these scholars, it is very important to mention theoretically perfect secular characteristics to understand what secularism is and which secular state is.³³ These general characteristics are six.

The first element is as to *sovereignty*. Sovereignty belongs to the nation and not to Devine body.³⁴ This element prohibits the divine sovereign. In ancient empires, sovereignty was belonged to the divine power. In such theocratic regimes, going against the government is equivalent to going against God. There was a unity of state and religion so that there was no concept of secularism. If we see this element in view of Ethiopian situation, the first two constitutions (1931 and 1955) were towards accepting divine sovereignty. And the Dergue Constitution was against the divine sovereignty. The FDRE constitution sticks with the sovereignty of Nations, Nationalities and Peoples (NNPs) of Ethiopia, not divine power.³⁵ These and related issues are to be dealt in section 2.6. But for the purpose in hand, I can say that in Ethiopia, the sovereign power resides in Ethiopian NNPs and not in other body.

³¹ See Anil Nuariya, supra Note 23, P-405

³² Michel Troper, *French Secularism or Laicite*; in Cardozo Law Review, (2000) Vol. 21:1267, P-1270

³³ See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, P-56

³⁴ See Yilamaz Aliefendioglu, Supra Note 16, Foot Note 20, P.75-76

³⁵ The 1995 FDRE Constitution Proclamation No.1/1995; the Preamble and Art 8

The second characteristic is *separation of religion and state*.³⁶ This means that religion doesn't affect the government's affairs, i.e. laws and regulations are not based on religion. This character may become difficult, where there is an overlap between secular issues and religious matters. For instance, in Human Rights and welfare aspects, the matters may overlap. The government and religious laws may have common and shared roles. So it may be difficult to know which influenced the other. In clear sense, FDRE Constitution recognizes this concept under Art 11 (1) alleging that *state and religion are separate*.³⁷

The third element is neutrality *towards all religions*.³⁸ As has been clarified earlier, neutrality may have two aspects: *neutrality as exclusion and neutrality as impartiality*. If this is so, which type of neutrality is a characteristic of secularism? I think this notion differs from country to country. For instance in France and Turkey, negative notion of neutrality (*exclusion*) applies; and in India positive notion of neutrality (*impartiality*) applies. (This issue again will be dealt in section 2.5 of this Thesis). Indeed, a state shouldn't have a state religion and one should not be treated above the other. Likewise, individuals, irrespective of their religious affiliation, are equal before the law.

The FDRE constitution under Art 25 clearly stipulated non-discrimination clause on the grounds of ...religion. And Art 11(2) of same, unequivocally, stipulates that there shall not be state religion. Moreover, Art 3(2) of the constitution, which talks about emblems of the Flag that claims equality of religions, is not less significant. But, the main question here may be which type of neutrality/secularism is recognized in Ethiopia.

The fourth one is that the *education and the legal system are to be secular*.³⁹ The legal system doesn't contain laws based on religion and the education system is based on logic and science and not religion and dogmas. This element is somewhat controversial. Because countries who proclaimed themselves secular like Ethiopia may accept legal pluralism.⁴⁰ The compatibility of legal pluralism with the principle of secularism is at hot debate. (This issue will be discussed in chapter-3 of this paper). In addition to the legal system, the Education should be held in a situation enabling the promotion of rationality. To do so, the public schools should be free from the

³⁶ See Yilamaz Aliefendioglu, Supra Note 16, Foot Note 22, P-76,

³⁷ See FDRE Constitution, Supra Note 35, Art 11(1)

³⁸ See Yilamaz Aliefendioglu, Supra Note 16, Foot Note 24, P-76

³⁹ Ibid, Foot Note-27, P-76

⁴⁰ See FDRE Constitution, Supra Note 35, Art 34(5), Art 78(4), Art 78 (5) cumulative reading

influence of religions and religious theories. Regarding this issue, the FDRE constitution cautions that *education shall be provided in a manner that is free from any religious influence*.⁴¹

The fifth criterion is *requiring freedom of religion and conscience*.⁴² Secularism doesn't mean the absence of religion from society. Individuals have to be free to adopt and manifest their religion and beliefs in both the private and the public sphere. But, this may be limited in some justified manner. Whatever it may be, the FDRE Constitution, under Art 27, stipulated that *everyone has the right of freedom of religion, belief and opinion including non belief*.⁴³

The last, but not least, criterion is that secular regime is based on pluralism, which requires the government's respect for all religion and all religious beliefs.⁴⁴ This is to mean the government shouldn't interfere on religious matters. And it should defend it self from religious interference on it matters.

To conclude, it is important to note that the forgoing characteristics describe a theoretically perfect secular government, which, to our knowledge does not exist.⁴⁵ This imperfection may be from historic background of countries, their philosophy, religious composition, and other factors.

2.2 Origin and Development of Secularism

As to the time and the where-about of origin of secularism, it may be difficult to fix a day, a month and a year or a specified place. It is a process and development of different thinkers in different times and places. What could make us agreed is the idea that secularism is not an ancient and forgotten history. It is a recent phenomenon even not earlier than 17th c. The development is again different in the continents for many factors. But, it is mostly argued that secularism is a political doctrine arose in the Modern Euro-American.⁴⁶ In this section, we will see whether this allegation is true or not and other relevant issues are discussed.

J.M Shelat argues that the renaissance thinkers, both in philosophical as also in political sphere, gave a distinct impetus in the direction of secularism.⁴⁷ The idea that *a society can't exist unless*

⁴¹ Ibid art 90(2)

⁴² See Yilamaz Aliefendioglu, Supra Note 16, Foot Note 29, p-77

⁴³ See FDRE Constitution, Supra Note 35, Art 27

⁴⁴ See Yilamaz Aliefendioglu Supra Note 16, Foot Note 31, P-78

⁴⁵ See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, P-6

⁴⁶ See Talal Assad, Supra Note 13, P-1

⁴⁷ See J. M. Shelat, Supra Note 2, P-17

its members share certain values can be found in the theories of numerous thinkers in the 18th c.; above all, Rousseau in his *Theory of Civil Religion*.⁴⁸ In his *Theory of Social Contract*, Rousseau congratulated Hobbes as ‘*the only one who correctly saw the evil and the remedy who dared to propose reuniting the two heads of the eagle and restore all to political unity without which neither the state nor the government would be well-constituted*’.⁴⁹ Their effort was all about creating civil religion.

But for Rousseau, Christianity, which was ‘*naturally authoritarian*’, was incompatible with that system. He, therefore, distinguished between religious opinions, which do not concern the sovereign and the values essential for preserving society, which the sovereign has the responsibility of maintaining.⁵⁰ Each citizen may have his own religion; the doctrine of that religion concerns him alone, but there is a profession of purely civil faith, the articles of which the sovereign has the task creating, not exactly as religious doctrines, but as feelings of sociability without which it is impossible to be either a good citizen or a loyal ‘subject’.⁵¹ These Philosophies were towards erecting some level of wall between religion and civil faith.

In spite of numerous and radical political and constitutional changes, Gallicanism has never been completely abandoned till 1790s, especially in France.⁵² Although a great deal of philosophies spread out in the world, secularism was not adopted and flourished/developed as constitutional philosophy until the erect of the US Constitution in its legs.

The idea of secularism was firstly articulated by Roger Williams, the Rhode Island⁵³ Maverick, who seems to have been influenced by John Locke and finally flowered under Thomas Jefferson and James Madison in Virginia during and immediately after the Revolution.⁵⁴ By 1786, thanks in part to Madison’s brilliant 1785 Pamphlet, *a Memorial and Remonstrance against Religious Assessments*, the church [religion] state separation principle become law in Virginia setting the pattern that the other states would sooner or later follow.⁵⁵

⁴⁸ See Michel Troper, Supra Note 32, p-1274

⁴⁹ Ibid, P-1274

⁵⁰ Ibid, p-1274

⁵¹ Ibid, P-1274

⁵² Ibid, P-1275

⁵³ Rhode Island was the only free state from established state religion in the British colonization; See Edd Doerr supra note 1, p.2

⁵⁴ See Edd Doerr, Supra note 1, p.2

⁵⁵ Ibid, p.2

The first congress meeting in 1789 was a landmark to the concept of secularism. It drafted twelve amendments, ten of which were approved and ratified.⁵⁶ After much discussion, the two houses of congress settled on the following wording for what became the first amendment ‘*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...*’⁵⁷ Even though the establishment clause and free exercise clause have entertained much debate as to their scope, they are the first in-sighting clauses which gave a clue to the concept of separation of state and religion.

From the above assertions, we can understand that separation of church and state; of religion and government is probably the United State’s most important single contribution to the political theory and practice.⁵⁸ When we say this, it cannot mean that the only state which contributes the notion of secularism to the globe is United States. French philosophers did their label best on the conception the idiom. What is true here is that US was the most actor in giving a due shape to the concept of secularism. But the ‘*pioneer*’ didn’t utilize its product lonely. This political theory has been spreading out in the world. Now a day, many countries, if not the majority of the world, have been perusing this ‘*golden*’ concept in their constitutional or political philosophy.

But it may be very difficult to assess all secular countries in this scope-wise Thesis. The best way I opt is to deal with some experiences which are very important to my deed. I have no criteria here; but the most recognized secular states like France, Turkey and India are dealt here. Remind that the American case is discussed above. Other experiences are dealt here in brief.

France

As I have clarified earlier, the march of the enlightenment has a great deal of effects in political and constitutional development of France. But it was alleged a total failure to adopt secular philosophy to this country.⁵⁹ For this matter, with the dilemma between secularism and maintaining social cohesion, France didn’t realize the conception of separation of state and religion till 1905.⁶⁰ But, in the mean time, the country declared its being secular state.

⁵⁶ Ibid, p.3

⁵⁷ Ibid, p.3

⁵⁸ Ibid, P-1

⁵⁹ See Michel Troper, Supra Note 32, P-1275

⁶⁰ Ibid, P-1276

The law before 1905 contains neither an explicit reference to such separation nor the word '*laicite*'⁶¹; but in its first two articles, it announces the principle of freedom of conscience and the refusal by the state to recognize any religion as state religion.⁶² Actually these concepts are elements of secularism. We can say, therefore, that the law of 1905 marked the beginning of French secularism. However, even after such stipulation, the main challenge was to delimit the territory of both the state and religious matters.

The foundation laid by the 1905 law had paved the way to the explicit stipulation of the concept of secularism in the 1946 and 1958 French Constitutions.⁶³ The later constitution is still enforceable in France. This is a brief history of French secularism. But we can conclude that secularism in France is an embryo with about 50-60 years of age.

Turkey

The present Turkish Republic is the ancient Ottoman Empire. World War I marked the virtual end of the Ottoman Empire and the beginning of the Turkish republic.⁶⁴ Almost after three years of battle, Ataturk (Mustafa Kamal) and his militia defeated the allied forces carving out a modern republic from the ruins of the *Ottoman Empire*, the sick man of Europe.⁶⁵ Ataturk found the establishment of a secular regime to be critical in the development of the newly founded republic of Turkey. He said "Look at our history; those who did their real belief under the disguise of religion deceived our innocent nation with big words like share'a; you will see that what destroyed this nation, what caused its collapse, was always the deception hidden under the curtain of religion."⁶⁶ Accordingly, most of Ataturk's reforms were aimed at the separation of religion from state.

Even though the first constitution (the 1921) established a democracy, a secular order was not yet in the works.⁶⁷ Art 2 of the constitution stated that *the official religion of the republic of Turkey would be Islam*.⁶⁸ Though a secular government doesn't have an official state religion, this

⁶¹ *laicit* is a word to explicit the separation of state and religion

⁶² Ibid, p-1276

⁶³ 1946 and 1958 French Constitution, Art 1; it says "France is a secular republic"

⁶⁴ See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, p-11

⁶⁵ Ibid, Foot note 84, P-11

⁶⁶ Sadi Borak, *Ataturk Ve Din (Ataturk and Religion)*(2004), P-63 as quoted by Supra Note11, Foot Note 85, P-12

⁶⁷ See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, P-13

⁶⁸ Ibid, P-13

provision was at the time a *necessary evil*. Were Ataturk claim the state's secularity, the whole thing he imagined to happen would collapse. He was silent for a time being till his dreams achieved.

By the Turkish Grand National Assembly (TGNA), the mission of Ataturk continued to achieve. In 1928 the constitution was amended so that Art 2 was removed and Turkey became neutral with respect to all religions.⁶⁹ This assembly under Ataturk's leadership also implemented several reforms to help the nation better understand Islam and prevent those who aimed to use religion as political tool from deceiving innocent believers. For example for the first time Qur'an was translated to Turkish so that people could read it and understand what it states, as opposed to blindly believing 'religious experts with hidden political agendas.'⁷⁰ This task may be against the principle of secularism but turkey did that for its historical, demographical and other political factors.

Ataturk's long-lived dream of creating a secular republic finally became a reality in 1937, one year before he passed away. In that year, the word '*secular*' was added to the constitution as one of the fundamental characteristics of Turkish republic.⁷¹ Ataturk was very lucky that he achieved what he believed to be.

Through a series and systematic reforms and by making compromises when necessary, Ataturk and his supporters succeeded in transforming arguably the most fundamentalist regime in the world into a secular and democratic republic.⁷² The surprise is here; Ataturk and his supporters accomplished in less than twenty years what would have normally taken more than five to six hundred years.⁷³ For this fascinating achievement, the former British Prime Minister David Lloyd George said, "*The centuries rarely produce a genius; it is our [Britain] bad luck that the great genius of our era was granted to the Turkish nation.*"⁷⁴ This really indicates that how much the deeds of Ataturk are magical and fascinating.

⁶⁹ Ibid, p-16

⁷⁰ Ibid, P-17

⁷¹ Turkan Saylan, *Laiklik Ve Demokrasi Kolokyumu (Colloquium on Secularism and Democracy); in Laiklik Ve Demodراسi (Secularism and Democracy)*(Ibrahim O, Kabogulu (ed., 2001) as quoted by supra Note 11, foot note 156, P-18

⁷² See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, p-18

⁷³ Supra Note 66, P-165 as quoted by supra 11, foot not 164, P-19

⁷⁴ Baki Ilkin, Deputy Undersecretary of the Turkish Foreign Ministry as quoted by supra Note 11, foot note 165, P-19

The Principal development of secularism in Turkey continued. The 1924 constitution was replaced by the 1961, then by the 1982. These constitutions have a due concern to the principle of secularism. Especially the current constitution (the 1982) has many safeguarding provision for secularism. These can be to oblige political parties to conform to Turkish secular value, giving the provision dealing secularism special status that can not be amended, enacting constitutional court to dismiss unconstitutional laws.⁷⁵

To conclude, Turkish republic demographically is comprised of 99% Muslim population.⁷⁶ Contrary to popular western belief that all majority Muslim countries are theocrats, Turkey is a democratic and secular state; among 52 Majority-Muslim-States, the constitutions of only two countries, Turkey and Senegal, prescribe secularism.⁷⁷ Note only compared to majority Muslim nations, Turkey have provisions so vigorously promote secularism than most European countries.⁷⁸ Moreover, the Turkish secularism is very strict than any model of secularism else where as can be assessed in section 2.5.

India

In india, the concept of secularism is very recent development. It was in the 1949-50 debates of Constituent Assembly that the concept got concern.⁷⁹ The debate over the incorporation of the principle of secularism took up most of the Assembly's time; nevertheless this debate was not fruitless. All the Constituent Assembly members agreed on the necessity of establishing a secular sate.⁸⁰ But the debate again was which type of secularism was fit with Indian religious diversity. The approach in India was all about equal respect for all religions,⁸¹ unlike the Western model of secularism. This issue can be evaluated in the section talking about the scope of secularism.

Others: Europe, Arab World, South Africa and Nigeria

Unlike Christian states in the world, most Majority-Muslim countries didn't recognize the principle of secularism as we noted a bit earlier. The only majority Muslim states which

⁷⁵ See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, P.20-22

⁷⁶ Ibid, Foot Note 2, P-3

⁷⁷ Ibid, p-3

⁷⁸ Carolyn Evans, *Freedom of Religion under the European Convention on Human Right* ;(Oxford University Press, 2002) P-19

⁷⁹ Shefali Jha, *Secularism in the Constituent Assembly Debates, 1946-50*; in Economic and Political Weekly Vol. 37, No.30 (2002) P-3175

⁸⁰ Ibid, P-3175

⁸¹ Ibid, 3180

recognized secularism in their constitution are Turkey and Senegal. It might be the nature of the religion or the composition of the society or other factors that made them so. Whatever the reason is, in the Arab world, secularism got a minimal acceptance.⁸²

Likewise, in Europe except Turkey, as pined earlier, most states do not adopt secularism in strict sense. But France is becoming a strict secularist state as said. For that matter, French constitution described *France is a secular... state*.⁸³ The German basic law (1994) states that there shall be no state church [religion], although its preamble refers to “responsibility before God and human kind of German people.”⁸⁴

Some constitutions in Europe reveal that the state has strong links with the church [religion]. The constitution of Greece [1975 as amended in 1986) begins “in the name of the holy consubstantial indivisible trinity.”⁸⁵ It adds the “prevailing religion in Greece is that of the Eastern Orthodox Church of Jesus Christ.”⁸⁶ States like UK follow/adopt an established church [religion] system; it established the Church of England to be state church [religion].⁸⁷ The above mentioned states are not the only countries which follow the established religion model; but these are some of the examples.

When we come to Africa, most African countries have not adopted the concept of secularism. Let alone others, even South Africa with history of great deals of atrocities in relation with discrimination, did not enshrine principle of secularism in its constitution. Its constitutional preamble begins with the Christian religious phrase “*May God Bless Our People*”.⁸⁸ The provision which deals on freedom of expression also declared that *religious observance by the state*, in fact in some circumstances, is possible on religious institutions.⁸⁹

When we come to Nigeria, the unique federalist state, it can be seen from its constitution that secularism is one feature of its constitutional philosophy. For the first time, the concept got

⁸² Bing Bing Wu, *Secularism and Secularization in the Arab world*; in the Journal of Middle eastern and Islamic Studies (in Asia) Vol.1, No.1, p-55-65

⁸³ French Constitution (1958), Preamble,

⁸⁴ German Basic Law (1949) Art 137,

⁸⁵ Greece Constitution (1975 as amended 1986) Art 3,

⁸⁶ Ibid, Art 3

⁸⁷ See Carolyn Evans, Supra Note 78, P-21

⁸⁸ South African Constitution (1996), Preamble

⁸⁹ Ibid, Art 15

cognizance in Nigeria in the 1979 Constitution, after the 1977-78 constitutional conference.⁹⁰ However, the concept has not been as such apposite to Nigeria for different factors; especially for lack of legal and institutional set up to execute that principle.

In aggregate, the western born secularism is spreading to the world at least in steady manner. Its development is not as such rapid. Because, Secularism is a voluntary limit on the state by itself; it is not a right. Therefore, citizens may not claim it as of a right. Even they may not challenge the government claiming secular state as of a right.⁹¹

2.3 Importance and Rationale of Secularism

Without importance and necessity, secularism may not be adopted. Whatever the debate and the force brought about secularism to the political playing field, it has its own rationale. As J.M. Shelat confirmed, *the real cause for the emergence and growth of the principle of separation was the deprivation of the liberty and rights of the people as a result of the union of state and religion.*⁹² Secularism was the first curing medicine to diseases of violation of religious freedoms.

To strengthen this idea, James Madison said that during almost fifteen centuries has the legal establishment of Christianity been on trial; what have been its fruits? More or less in all places, pride and indolence in the clergy; ignorance and servility in laity; superstition, bigotry and persecution in both were intensified.⁹³ Both of the above ideas are towards the assertion that secularism protects the public from infringement of rights.

Scholars like Badrinath Rao argues that secularism's chief merit, if actualized, is that it dichotomizes politics and religion in hermetically sealed areas and insures that the one does not cast a baleful influence on the other.⁹⁴ This helps to set a clear divide between faith and reason. Moreover, the public sphere and the private sphere could travel in their path so that no one influences the other.

The other rationality is minority protection. A state confronted with multiplicity of sects had, in varying degrees, to separate its own interests from those of the sects. If its interests are not separated from the religious sects, it may discriminate minority religions since there is no

⁹⁰ Omotola J. Shoal, *Secularism and the Politics of Religious Balancing in Nigeria* (2009) p-4

⁹¹ Ibid, P-1

⁹² See J. M. Shelat, *Supra Note 2*, p-17

⁹³ James Madison, *Memorial and Remonstrance*; in Edd Doerr, *supra Note 1*, p-1

⁹⁴ See Badrinath Rao, *Supra Note 18*, P-77

comparable reciprocal commodity from them. Neutrality was the only way of avoiding their hostility which would precipitate disorders and even a civil war.⁹⁵ The danger is especially severe to Indian type of secularism; i.e. impartial equal treatment; because, each religion needs assistance from the state. But the state may not be in a position to entertain all religions equally. If the religious groups have adopted a religion as “identity” and if it overlaps with territorial sovereignty, as is in Nigeria, its danger may be too severing.⁹⁶

Secularism again has due relation with modernity and nation building. Jose Casanova points three elements in the secularization thesis which have been taken to be essential to the development of modernity.⁹⁷ These are:

1. Increasing structural differentiations of social spaces resulting in the separation of religion from politics, economy, science and so forth;
2. The privatization of religion with in its own sphere; and
3. The declining social significance of religious belief, commitment and institutions.

If, as Casanova clarified, the state is free from religious influence and vice versa is true, the state inevitably will travel in the path of modernity and individual right of conscience and religious freedom be guaranteed. Moreover, in shared values, they can be cooperative so that nation building can be realized.

Andras Sajo again believed secularism has much to do with modernity and public order. He said, in order to sustain modernity, or to sustain public order as ordered liberty, one needs a considerable level of secularism.⁹⁸ Irrespective of religion and religious values, public reason is the primary criterion of secular state. This rationality enhances modernity. When the public become modernized and believe in public reason, the solidarity and the cohesion will be strong.

Most argue that freedoms are better guaranteed if the state is secular.⁹⁹ But some argued that secularism is not necessarily important to the guarantee of freedoms and rights. Arcot Krishnaswami noted that “historically the mere existence in a country of an established church

⁹⁵ See J. M. Shelat, *Supra* Note 2, P-21

⁹⁶ See Omotola J. Shoal, *Supra* Note 90, P-1

⁹⁷ See Talal Assad, *Supra* Note 13, P-181

⁹⁸ Andras Sajo, *Constitutionalism and Secularism: The need for Public Reason*; in *Cardozo Law Review* Vol. 30, No.6 (2009) P-1

⁹⁹ See Michel Troper, *Supra* Note 32, P-1267

[religion] or of a state religion usually connoted sever discrimination and sometimes even out right persecution directed against dissenters.” But, he warned that this is not always the case and that an established church in some countries today is more of a historic relic than a threat to religious freedom.¹⁰⁰ This indicates that irrespective of the adoption of secularism as constitutional principle freedom of religion can be protected. This issue can be dealt in the next section.

Nikki R. Keddie rests on the discontents of secularism. Instead of separation of church and state, secularism has sometimes been used to justify and in force aggressive political control over religion and its institutions.¹⁰¹ The whole idea here is that under the guise of perusing secularism, the government may intervene on the domain of religion. But it seems silly to think like this. When could the state interfere on domains of religions if the state is secular? If the state interferes as said, the state is not secular. Even if the state is observed interfering on religious matters, we may not blame principle of secularism. Instead, only the state is to be blamed.

In General, secularism has the following advantages. In the first place, secularism helps for better guarantee of freedom of religion. In second place, it guarantees equality of religions. At third place, it advocates the non interference of religion on public sphere and vice versa. Moreover it advocates public sovereignty as opposed to divine power. But, only the adoption of principle of secularism is not sufficient. Instead, there should be a well-crafted legal rules and institutionalization to achieve the above rationale.

2.4 Secularism and Freedom of Religion

True and indisputable that, most world countries have recognized freedom of religion and non-discrimination on the basis of religion. But same numbers of countries do not adopt secularism as a constitutional philosophy. Some argued that to accept principle of religious freedom, it is no need to come to such consensus that requires separation of religion and state or necessarily leads to disestablishment; while some states have traveled that path, others have not.¹⁰² This may be even the reason why International and Regional Human Right Instruments didn't recognize the principle of secularism. The treaty members only took the common denominator minimum

¹⁰⁰ Krishna Swami study, in Supra Note 78,

¹⁰¹ Nikki R. Keddie, *Secularism and its Discontents*; in Daedalus, Vol.132, No.3 (2003) P-16

¹⁰² See Carolyn Evans, Supra Note 78, P-22

shared values. This is the Principle of Margin of Appreciation in human rights law which is beyond my scope of study.

The above assertion may not be persuasive and satisfactory. Although religious freedom doesn't strictly form part of secularism, it can never be separated from it, as Yared Legesse said.¹⁰³ Maurice Barbier adds freedom of conscience and worship (religion) are not integral part of secularism, even if there is a link between the two.¹⁰⁴ He adds secularism is now nothing but a means in the service of the above ends.¹⁰⁵ Both scholars argued that there is a strong relationship between freedom of religion and secularism. However, the later insists that these freedoms pre-existed secularism and can exist without it, as it indicated by countries that do not practice secularism but which fully respect religious freedom.¹⁰⁶

Although writers insist that freedom of religion and other related freedoms be realized/protected irrespective of the acceptance of secularism, I am not in that position. Actually their wish is a pious wish. I am not challenging the good of protection of freedoms even in the absence of secularism as constitutional philosophy. But this may be a mare night. Assume there is an established state religion which can be subsidized, positively discriminated, and take other aids from the government. In doing so, the government is discouraging the other religions and even utilizing public money to religious activity as well.

Even the government may prohibit religious conversion as did the Arab Muslim countries.¹⁰⁷ The Prophet was believed to have said that 'he who changes his religion must be killed'; although the authenticity of this statement is questioned by some Muslim writers.¹⁰⁸ Whatever it may be, secularism is a guarantor of freedom of religion and from religion. But it may not necessarily mean that unless a country is secular it wouldn't do so. Things are relative; so the main stand here is that a country which adopts at least some level of secularism has a weighty likelihood to protect freedom of religion. Here we have to remind that the level of secularism can be different from country to country depending on different factors as clarified repeatedly.

¹⁰³ Yared Legesse, *Secularism as an Umpire- Player; the Case for substantive neutrality*, (unpublished article, 2008) p-100, as quoted by Tekalign Fanta, *Managing Religious Conflicts: a Study of the Legal Framework with Particular Reference to the 2006 Muslim- Christian Conflict in Oromiya*, (Unpublished LLM Thesis, 2008)

¹⁰⁴ See Maurice Barbier, *Supra* Note 10, P-4

¹⁰⁵ *Ibid*, P-6

¹⁰⁶ *Ibid*, P-7

¹⁰⁷ See Tekalign Fanta, *Supra* Note 103, p.43-45

¹⁰⁸ M .Mahaduri, *The Islamic Concept of Justice* (1984) P-177 as quoted by *supra* note 78, Foot Note 40, P-27

2.5 Scope and Ingredients of Secularism

In order to deal with scope of secularism, we have to be clear with the definition of secularism. But in the definitional aspect, it is very difficult to reach on consensus what the concept is meant and what it comprises. Because, the concept is slippery and fragile that can change its shape. It is to mean that the concept of secularism in short is amoeba. What is expected from us here is to reach on at least some consensus on the shape irrespective of the countries' philosophy. But, it should not be forgotten that no perfect secular state exists in the world. Taking the imperfect secular nature in mind, what is expected to see here is experiences in the world.

There are a significant variety of relationships between religions or beliefs and the state. At one extreme, there are states in which there is no meaningful division between religion and the state; at the other extreme a state may dedicate itself to secular ends and prosecute all religions and beliefs that do not conform to state ideology.¹⁰⁹ The first category is nearly non-secular and the later is similar to anti-religion. Both of these extremes are not by any means types of the secular model. The first case is towards unity of religion and state; and the second is towards atheism.

The right way here is to now the scope and elements of secularism. As J.M Shelat well clarified, ingredients of secular government are; promoting individual freedom of religion, separating secular and non- secular functions, and non-discrimination/ equality.¹¹⁰ These elements in organized way can be non-establishment, non-interference and common citizenship.

2.5.1 Non Establishment

The origin of this concept is the American legal system in 1780s. This is to denote the notion that the government shouldn't and couldn't establish any religion. In the extreme cases, the state should not do any act which prohibit or inhibit religions. In United States, for this matter, the state is independent of any particular religion.¹¹¹ We have to remind that acts inhibiting or prohibiting religious conducts may have characteristics of non interference aspect; interference may have establishment aspect. There is no watertight division between the two. In aggregate, non-establishment is all about the non participation of the state on establishment of religion/non-

¹⁰⁹ See Michel Troper, Supra Note 32, P-1267

¹¹⁰ See J.M. Shelat, Supra Note 2, p-80

¹¹¹ See Michel Troper, Supra Note 32, P-1267

religion or religious/non-religious behaviors. However, pragmatically it may be too difficult to do so, since the actor in religion and in states is the public.

The whole concept of non-establishment is that the state should be neutral to all religions. This neutrality may be either negative or positive. If the neutrality is negative, the American model comes to consideration; and if the neutrality is positive/impartiality, the case concerns Indian model. The first model concerns the state of being distant from all religions. The Indian model is towards promoting all religions equally. But the latter case is blamed as a multiple establishment.¹¹² Helping all religions may be having many established religions.

2.5.2 Non Interference Clause

This clause can be called the free-exercise clause in the original American stipulation in the First Amendment. The whole thing over this issue is to differentiate state domain and religious domain and then protect one from the interference of the other. If one thinks of secularism as two adjacent but separate fenced-off areas, neither the state nor religion should trespass in to the territory of the other.¹¹³ But the case may be different in different countries. For instance, in America, the state is neutral for all religions and religious affairs so that free exercise clause is more protected- i.e. *exclusion*. But in Turkish and France, the state may interfere and limit the freedoms- i.e. *exclusion*. Both approaches employ the exclusion type of neutrality. But in the former case the excluded party is the state. In the second case, the excluded entity is religion.

Because of the difference between the philosophies of countries on the principle of secularism, the role that religion plays in most countries is different; its scope is too. It may be very bizarre for someone to hear the president of United States say “God Bless America” at the end of his Addresses to the nation; see “In God we trust” on American Currency....¹¹⁴ These and other related sayings and conducts in secular states may be amazing. But it is under inquiry whether these sayings and conducts are against non interference clause.

However, such conducts and talks are very strange to France and Turkey secularism. Let alone such speech and symbols, persons in public place are prohibited to wear a headscarf.¹¹⁵ Michel Rosenfield argued here that a militant brand of secularism, promoted by France and Turkish

¹¹² See J.M. Shelat, Supra Note 2, p-27

¹¹³ See Adrienne Katherine Wing and Ozan O. Varol, Supra Note 11, P-6

¹¹⁴ Ibid, P-7

¹¹⁵ See cases, Leyla Sahin V Turkey before EHRC in Turkey and cases on conspicuous symbols in France

laicite, often seem downright or hostile to religious freedom.¹¹⁶ This indicates that, the more strict the philosophy become, the more probable to trespass the freedom and vice versa.

2.5.3 Common Citizenship

This is towards recognizing every one as a person, irrespective of his religion or belief. Let alone a secularist state, a state which doesn't adopt model of secularism may guarantee this right. Because, it is the pillar of right of equality. In secular states, religion doesn't get into consideration in public sphere. I.e. the rights and freedoms under the constitution and other laws are to apply to the public where the law justified that without discrimination. Therefore, it is inevitable that common citizenship be protected. If the law discriminates without justified grounds in the basis of religion, we can say that religion interferes in public sphere.

All the above elements are parts and parcels of secular state. However, the main and crucial elements are *non-establishment and non-interference* clauses. Both elements should be guaranteed, protected and implemented as well. But sometimes they may contradict with each other. For instance, if a state allocates a budget to build a worship place or to publish religious books to those who are serving the country in defense force, the two values may contradict. To help them to exercise their freedom of religion in proper manner is achieving the mission of free exercise clause. However, helping religious entities, by any means, amounts to establishment of religion. In some cases, they may overlap. This issue will get answer in the third chapter.

To conclude, the scope of secularism may be narrowed down or widened up depending on the models of secularism which countries follow. In crude generalization the models can be militant secularism, agnostic secularism, confessional secularism, official religion but tolerance (unique), and millet based secularism.¹¹⁷ Each model has its own distinct character. Countries may adopt one of these models taking their history, religious composition, and other factors in to account.

The militant type of secularism is followed by the French Republic and Turkey Republic, which keep religion completely out of the public sphere.¹¹⁸ This model of secularism may not be reduced to only separation of religion and state but it represents a special breed of secularism apart from those models found elsewhere. The version of secularism in these two states is

¹¹⁶ Michel Rosenfield, *Can Constitutionalism, Secularism Religion be Reconciled in an era of Globalization and Religious Revival?* In *Cardozo Law Review* (2008-2009) Vol. 30:6, P-2349

¹¹⁷ *Ibid*, p-2349

¹¹⁸ *Ibid*, P-2349

stricter than the version that most western nations, including US, have implemented.¹¹⁹ The scope of secularism here is wide and even the state may interfere on the domain of freedom of religion. For example, both states banned wearing of headscarf. However, religions are less likely to influence the public sphere.

The agnostic secularist model is a model seeking to maintain a neutral stance on religions.¹²⁰ This model is close to the American conception of secularism. The American conception of secularism is towards negative type neutrality/secularism i.e. *exclusion*. In US model, the state is expected to be idle in promoting one religion or all religions or religious practices.

The third type is cooperative/accommodation type of secularist model.¹²¹ This model is typically the Indian type of secularism. Religions in India, as repeatedly said, are to be treated equally. Impartiality does not prohibit the help/promotion of religions. If the help is apportioned without discrimination to all religious entities, the state is not prohibited to give special help to religions. The only limitation on the state is to treat all religions impartially.

The fourth and fifth models are official religion but tolerance model and millet based secularism. These models are not as such important to understand the concept of secularism. Because, in these models, there is no meaningful separation between the state and religion.¹²² These models have either an established religion save tolerance or a mix of state and religion. The first is adopted by UK and the later is natural to Israel. In the later case, the religious status may be counted as if it were an identity. The Jewish identity is to mean Jewish religion.¹²³

2.6 Secularism in Ethiopia: a prelude

Secularism in Ethiopia has only a short history as it was formally embraced only three decades. Before the 1987 Dergue Constitution, there has been no time in Ethiopia's constitutional history when there has not been a state religion.¹²⁴ Before 1931, there was no constitution in Ethiopia, let alone the enhancement of the concept of secularism as constitutional philosophy. We can say

¹¹⁹ See Adrienne t Kathrine, Supra note 11, Foot Note 34, p-6

¹²⁰ See Michel Rosenfield, P-2349

¹²¹ Ibid, p-2349

¹²² Ibid p-2349

¹²³ Clement Leslie, *the Rift in Israel: Religious Authority and Secular Democracy* (Rout Ledge Kegan Paul Ltd, London, 1971), P-73

¹²⁴ Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Red Sea Press Inc.1997) P-5

that before that time, state and church [religion] were unified.¹²⁵ It is less important to deal with secularism before this time (1931), being the governance system was not far from theocracy. Since there was no distinct sphere of the government or the church/religion, there was a *de facto* established religion system.

The *de jure* (legal) established religion system began in 1931. Actually the 1931 constitution didn't say anything on separation of state and religion and even on freedom of religion. But the 1955 revised constitution under Art 40 recognized freedom of exercising religious rites of one's choice.¹²⁶ However, this constitution gave special status to the Ethiopian Orthodox Church (EOTC). In connection to this, the constitution stipulated that *the EOTC founded as the established church of the empire and is as such supported by the state.*¹²⁷ Moreover, the civil code under Art 398(1) stipulates that the EOTC is regarded by law as a person.¹²⁸

After that constitutional recognition of the EOTC as an established state religion, the emperor was expected to profess the Ethiopian orthodox faith.¹²⁹ And the name of the emperor was to be mentioned in all religious books and services. It is not amazing if the emperor select priests and if 'He' is anointed by the bishops. The reason is that in the time of the emperor, there was no meaningful separation of state and religion. The law and the practice in this time highly enhanced the extreme sisterhood of the EOTC and the state. That sisterhood may have a great deal of consequences on other religions.

The state of having an established religion may be hostile to other un-established religions. The very fact that one religion would be considered the state religion and was given state protection and material assistance naturally disadvantages all the others.¹³⁰ If there is unity of state and religion, it may be too difficult to talk about the concept of secularism. If that is so, it may be again difficult to think the importance of freedom of religion as has been dealt in the preceding sections. The constitutional space to freedom of worship in the 1955 revised constitution might, therefore, be alleged somewhat façade.

¹²⁵James C. N. Paul and C. Clapham, *Constitutional Development of Ethiopia* (Haile Sellassie I University in Association with Oxford University Press, 1967) Vol. 1, P-288

¹²⁶ See the 1955 Revised Constitution, Art 40

¹²⁷ Ibid, Art 126

¹²⁸ Civil code of Ethiopia art 398(1)

¹²⁹ Kenneth R. Redden, *the Legal System of Ethiopia*, (The Machine Company, Virginia, 1968) P-19

¹³⁰ See Fasil Nahoum, *Supra* Note 124, P-125

When we come to the Dergue regime, it was the first time when the concept of secularism as a constitutional doctrine got conceived. In the 1987 Constitution, it clearly enshrined *state and religions are separate; the legal status of religious institutions shall be determined by law*.¹³¹ More over, Dergue took many measures to wards separation of religion and state. But that measure was not to mainstream secularism. Instead it was to substitute the sense of religion by Socialist Marxist-Leninist ideology. This ideology was, in aggregate, against religion.¹³²

Even religious leaders who protested against the socialist ideology were killed and imprisoned. Money religious leaders were forced to teach this philosophy in the manner contrary to their religious tenets.¹³³ This was a way to atheism. But as Shelat has said earlier, secularism is not necessarily towards atheism.¹³⁴ We can conclude that in both regimes, there was no sense of secularism, if we see them in view of strict criterions of secularism.

But in the 1994 FDRE Constitution, the principle of secularism got flourished. Art 11 devoted its full space to the concept of secularism. It recognized the basic elements: non-establishment and non interference clauses. In the first place Art 11(1) stipulated that *state and religion are separate*. Art 11(2) enshrines in clear terms that *there shall be no state religion*. Art 11(3) puts the non-interference aspect, which is my concern. This issue, thus, is dealt in the next chapter.

¹³¹ The 1987 Dergue Constitution, Art 46(3)

¹³² Richard J. Arneson, *Marxism and Secular Faith; in The American Political Science Review*, Vol.79, No.3 (1985), p. 627-640

¹³³ Addis Zemen Newspaper, January 16, 1997, P-3 Col.1

¹³⁴ See J. M. Shelat, Supra Note 2, P-6

CHAPTER THREE

SCOPE AND IMPLICATION OF NON-INTERFERENCE

3.1 Non-Interference: the Notion, Meaning and Scope

As I have clarified in the last chapter in brief, it is at least clear that secularism has two crucial or substantial elements. The first is Non-establishment which prohibits establishment of religion in explicit sense or aiding religions in implicit manner. The second element is non-interference clause which highly relates with the trespass of the state on religious matters and vice versa. Where the state enacts a state religion or helps it in clandestine manner, it can be said the establishment clause is infringed. But, it is too difficult to prove whether the second element is infringed. There are a lot of sophisticated complexities in the non-interference aspect. The problem begins from its notion and conception.

The foremost complexity is that it is too difficult to draw a line on the boundary between the state and religious matters. Nevertheless, we may not be idle to try to draw line. Unless we reach to some consensus on the notion, it could be difficult to have some common understanding on the issue at hand. However difficult the notation is, we have to reach at least to some level of consensus on the meaning and scope of non-interference clause. The following few paragraphs are exerted to enable the reader to have at least basic knowledge or understanding on the matter.

In dealing with non-interference, it doesn't mean that the state couldn't regulate the religious conducts and religions couldn't participate in social affairs. When one speaks of non-interference, one doesn't deny that the state always governs religious conduct because the state commands it or at least recognizes/permits it.¹ But, we have to remind that the scope and implication of non-interference depends on the models of secularism countries adopted. Given that it consists the position of excluding religion from the public sphere, secularism depends on the way in which that sphere is defined and hence on the conceptions of the state.²

¹ Michel Topper, *French Secularism or Laicite*; in *Cardozo Law Review* (2000) Vol. 21: 1267, P-1271

² Maurice Barbier, *Towards a Definition of French Secularism* (2005), P-19

Shelat argued that the establishment clause (in US) doesn't mean a ban against regulation of a conduct either by the federal government or the state government whose reason or effect happens to coincide or harmonize with the tenets of one or more existing religions.³ In time of problems, the state may not remain idle. It is inevitable to the State that it will take a measure to avert unwarranted or unwise interferences from 'outsiders'. The 'outsiders' can be institutions that are beyond the government legislature, executive and judiciary like NGOs.

Secularism in its noninterference aspect is some kind of separation of church and state, which serves popular sovereignty indirectly by excluding churches from the exercise of public power. Separation places the religion outside the realm of the secular power to a very great extent. This amounts to a constitutionally prescribed limit on sovereign popular power, and it reflects separation of powers concerns: a union of secular and ecclesiastical control would equal tyranny, irrespective of the fact which one of these entities has absolute power.⁴

Secularism in the sense of separation means that non-secular bodies shall not exercise secular power, not even by the grace of the sovereign. Vice versa; secular bodies shall not exercise ecclesiastical power (the principle of church autonomy or non-interference). This is not to say that secularism necessitates that the famous wall of separation never be crossed.⁵

As rightly pointed out by Lech Garlicki, most religions cannot be exercised in a proper manner if the believers are deprived of the possibility to act collectively. Thus, individual freedom of religion cannot be guaranteed unless there is a collateral guarantee for the freedom to find and to operate a church or other religious community.⁶ No man is an island- entire of itself; everyone is a piece of the continent, a part of the main so that institutional arrangement is necessary. And moreover, these institutions have to be protected. From that guarantee, autonomy is the pillar one. Religious autonomy has three senses. These can be formal, normative and doctrinal to mention.

³ J. M. Shelat , *Secularism: Principles and Application*, (N. M. Trippathi private Ltd, Bombay, 1972), p-50 see Foot note 41critically

⁴ Andras Sajó, *Constitutionalism and Secularism: The need for Public Reason*; in *Cardozo Law Review* Vol.30, No.6 (2009) p-2406

⁵ *Ibid*, p2407

⁶ Lech Garlicky, *Collective Aspects of the Religious Freedoms: Recent Developments in the Case Law of the European Court of Human Rights*, in *Censorial Sensitivities: Free Speech and Religion in a Fundamentalist World* (Andras Sajó ed. 2007), p-218, 219

Religious autonomy relations in the *formal* sense are relations between a faith community and some other public or private party, such that the faith community has what Hohfeld called “immunity” and the other party has a Hohfeldian “disability”.⁷ The faith community’s immunity from a suit and the other party’s want of power to sue or take jurisdiction to adjudicate that case may be comparable interests from two forces. Thus, we may not expect either complete immunity or complete disability.

The *normative* concept of autonomy is towards the idea religious institution ought to enjoy immunities from certain forms of regulation. And government ought to be disabled from requiring or inquiring into certain form of religious life or religiously motivated conduct because such arrangements promote moral or political-moral autonomy or some conception of it.⁸ The main source/justification for such autonomy is a grounded norm-moral, political or legal unlike formal autonomy. The later is only jurally based relation (this can be conscientious objection).

The third phase of the autonomy, *doctrinal* concept, is as to administration of the relations between religion and other parties. The modes of balancing, ranking orders, priority of the autonomy in bearing a decision are concerns of the doctrinal autonomy of religions. Here the formal or normative reasons may be weighed and so that reaches on decision which takes priority and prevails over the other. Both the autonomy and disability are *qualified*. But to the maximum possible, the government and religions have to be *inter-independent*. ‘*Inter-independence*’ is a phrase used by professor G. Scharffs to conceive an autonomy or mutual respect between religion and state.⁹

As the above mentioned scholar clarified well the “inter-independence” aspect is to be contextualized. Professor Scharffs observes that one of the strategies that will often be adopted under a conception of “inter-independence” is heightened scrutiny, where under the autonomy interests of individuals will be weighed against the autonomy of interests of the State.¹⁰ So we have to pay attention to the context in which individual autonomy-the autonomy of the state and

⁷ Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (Walter Wheeler Cook ed. 1923) P.8-9, 36,50,63 Quoted by Ronald R. Garet, *infra* note 8, p-1355

⁸ Ronald R. Garet (Prof), Three Concepts of Church Autonomy; in Brigham Young University Law Review (2004) (here in after BYU L. Rev.), P-1356

⁹ Brett G. Scharffs (Prof.), *The Autonomy of Church and State* (2004) in BYU L. Rev., P-1253-8, 1311 as Quoted by Ronald R. Garet *Supra* Note 8

¹⁰ *Ibid* as Quoted by Ronald R. Garet in *Supra* Note 8, Foot Note 12, P-1307

the religion-are at stake. In such case, we have to strike a balance between the autonomy of the state, the individual and the religious entity.

To the contrary of the above arguments, Professor Hamilton strongly argued that ‘*church*’ [*religious*] autonomy shouldn’t be encouraged.¹¹ The arguments are from the angles of rule of law, republican duty and the no harm principle. The first argument is that in the presence of secular law applicable to all, religious entities should not be immune from that law. If they are immune from the governing law, it is against the idea or ideal of rule of law. The second is that the republican form of government is all about public interest than private interest (including religious entities). Thus, to immune religions is against the public interest. Thus to immune religions is against the public interest. Thirdly, he rests on the premise that the exercise of rights doesn’t extend to harming others as happened or to happen in securing religious autonomy.

For the above mentioned reasons, Professor Hamilton contends that autonomy or immunity of any institution-including religious institutions from the rule of law is intolerable.¹² But Ronald R. Garret argues otherwise alleging that immunities are some what recognized in public law for different public goals; and these immunities may not be necessarily against the idea or ideal of rule of law.¹³ Analogously, immunity issues can work to church (religious) autonomy. True, however, that some versions of immunities for religious entities are strongly disanalogous.¹⁴

As to the second ground (being a republican) of Professor Hamilton to oppose religious autonomy, Ronald R. Garret responded that we may not get a public right (Public good) unless there is a private good.¹⁵ Right that in our world there are so many diversities in political philosophy, moral ideals, religious values and others too. In presence of such diversities and diversified interests, we may not think of always that the state should protect only the common interest of the public. Since difference is natural, the state should accept to treat such distinctness and promote pluralism. Were the ideas, values and philosophies in this globe identical or similar, there would be a challenge to democracy and any other life stance. Democracy may not flourish in the absence of opposition and expression of diversified ideas.

¹¹ Marci A. Hamilton (Prof.), *Religious institutions, the No-harm Doctrine, and the Public Good*; in *BYU L. Rev.*, (2004), P-1099-1216

¹² Hamilton (Prof.), *Ibid*, P-1112

¹³ See Ronald R. Garret, *Supra* Note 8, P-1365

¹⁴ *Ibid*, P-1365

¹⁵ *Ibid*, p-1265-67

The no-harm doctrine of Professor Hamilton is again challenged here. Almost every right covers conduct that is not purely self-regarding; instead consequences for others include injurious effects.¹⁶ Much of the legal system consisted of rules that allowed people to harm others and enabled policy makers to see clearly that there were good reasons to allow people to act in ways that harmed the interest of others.¹⁷

State of Separation is built on a concept of the constitutional distinctiveness of religions and religious institutions. However, this distinctiveness doesn't have to be an all or nothing proposition. Clarified otherwise, the distinctiveness is not absolute. Instead, *separation*- a sense of boundary between state and *some aspects* of institutional behavior- functions much like the constitutional right of privacy as a check on totalitarianism.¹⁸ Totalitarian regimes typically try to control intimate aspects of their subjects' lives. If the right of privacy, at least in part, insulates the realm of the spirit from state control, the constitutional distinctiveness of religious institutions-those that nurture the spirit directly-rests on comparable foundation.¹⁹

When we say non-interference, we may not always mean that the religion is immune from any law at all. Non-interference clause does not provide immunity from conformity of law on the grounds of a religious equality and freedom from coerced conformity.²⁰ If the law immune them at all, there may be a great deal of negative consequences on the public and at state in extreme cases. They may go against the rights of the being or take measure to coup against the government. Religion coupled with race and ethnicity, tops the charts as a source for abusive paradigms. It is at least nominally at the center of conflicts across the Middle East.²¹ The main challenge for constitutions, then, is to accommodate the diversity of religions or religious views in a secular shell.

The state should make reasonable efforts for accommodation. Accommodation can be defended on personal autonomy grounds. Further, for the same reasons of personal significance church

¹⁶ Ibid, P-1368

¹⁷ Joseph Singer, *the Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld* (1982); in WIS. L. Rev. P.975,985; as quoted by Ronald R. Garet, in Supra Note 8, Foot note 37, P-1368,

¹⁸ Ira C. Lupu (Prof.) and Robert W. Tuttle (Prof.), *Sexual Misconduct and Ecclesiastical Immunity*; in BYU. L. Rev.(2004), P-1807

¹⁹ Ibid, 1807

²⁰ See J. M. Shelat, Supra Note 3, P-35

²¹ Edward Wong, *the Conflict in Iraq: Government, Top Iraq Shiites Pushing Religion in Constitution*, N.Y Times Feb 6, 2005 \$1, P-1 as quoted by David Gray, in Infra Note 34, Foot Note 41, P-35

autonomy (as an instrument of free exercise of religion) is to be protected, including exceptions (immunities) to general rules, e.g., in employment, or in matters of religious truth that might otherwise amount to harassment.²² But what happens if such an overprotected entity enters the public sphere, especially with the intention to reconquer it and will claim that its positions be treated as at least one of the possible grounds for legislation?

Having in mind the patrolling duties of secularism in a constitutional system, a constitutional jurisprudence should respond to non-secular constitutional arguments in order to sustain the fundamental constitutional values behind secularism, namely popular sovereignty in a polity of (mentally) autonomous critical citizens.²³ In most democracies, Political power is largely dispersed, and ordinary citizens have, at least formally, ultimate political authority and the right to express themselves in the process of governance.²⁴ Thus, the laws themselves should be enacted at the will of the people and for secular justification. Both liberal *social contract* theory and *utilitarianism* provide a justification for the government and its powers and an explanation for the citizen's duty to obey that are independent of religious truth.²⁵

The principle of separation is not inconsistent with the sovereignty of the state.²⁶ The church though separate and autonomous is still within it. Some of its affairs, secular in nature, are liable to be regulated by the municipal laws. It is only the religious belief which is accepted as the individuals' private activity and not a public business; one's right to practice is exercisable within the frame work of the laws of the state.²⁷

As Michel Rosenfield aptly expressed, it is one thing to up hold the principle of secularism and quite another to define it precisely and lay down ways of implementing it. Nevertheless, Constitutional accommodation of secularism and religion would depend above all on achieving the following essentials:

First, it is imperative to set a clear and workable divide between Faith and Reason.

Second, it is necessary to elaborate a conception of secularism that is truly *areligious* and

²² See Andras Sajó, *Supra* Note 4, p-2421

²³ *Ibid*, P-2421

²⁴ Kent Greenawalt (Prof.), *Religiously Based Premises and Laws Restrictive of Liberty*; in *BYU. L. Rev.* (1986), P.250-51

²⁵ *Ibid*, P-250-51

²⁶ Evelyn Hanshaw, *Our Federal Constitution, a Programmed Approach to the Constitution of the USA* (Prentice Han Inc. 1965), P-14

²⁷ See Shelat, *Supra* Note 3, P-32

that neither favors nor disadvantages any religion or the non-religious. *Thirdly*, a way must be found to institute a public sphere that is clearly and firmly delimited from the private sphere and that is entirely amenable to the rule of areligious secularism. *Lastly*, the private sphere must be populated by religious and non-religious ideologies that are susceptible of being veritably treated equally-i.e., of benefiting of *substantive* as opposed to merely *formal* equal treatment and that are amenable to confining their expression and activities within the precincts of the private sphere.²⁸

3.2 Implication of Non-Interference: State vis-a-vis Religion

3.2.1 State Non-Interference on Religious Matters

Secularism has become to mean that the state had no business to intervene in the relations between man and his God, even if the motif for the intervention was to give aid and comfort to the man in those relations.²⁹ The state should not be an author or co-author of religion or non religion. Thus, it can't and should not involve in innovation of religion. Thus, at times the state - the legislature, executive and judicial authority-should limit itself to permitting of the organization and practice of religion and it neither commands nor prohibits that.³⁰

Religious freedom in most countries is either part of liberty or freedom or non discrimination so that no person could be arbitrarily or unreasonably deprived of that right by the state.³¹ To limit religious freedom, there should be well-grounded rationale. Legally prescribed limitations, Necessity and Proportionality aspects are the crucial prescriptions to limit freedom of religion. In the clash of conflicting interests between the state and the individual's conscience, the state must show a compelling interest before restricting the free exercise of religion.³² This assertion is a concern of individualized freedom of religion. But it has a lot to do with institutional independence of religions. Because, their institutional independence is a corollary freedom.

²⁸ Michel Rosenfield, *Can Constitutionalism, Secularism Religion be Reconciled in an Era of Globalization and Religious Revival?* in *Cardozo Law Review* (2009) Vol.30:6, P-2339

²⁹ See Shelat, *supra* note...P-10

³⁰ Badrinath Rao, *The Variant Meanings of Secularism in India; Notes towards Conceptual Clarifications*; in *Journal of Church and State* (2006) P-55

³¹ See Shelat, *Supra* Note 3, P-32-35

³² Leo Pfeffer, *Brief for Synagogue Counsel of America and National Community Relations Advisory Counsel*; as quoted by J. David Holcomb, in *Infra* Note 127, Foot Note 164, P-79

There is always a tension between the secular law to be applied uniformly as the sovereign law and the religions to seek immunity from legal regulation and sanction. There are also parties who have a claim from religious institutions on the basis of the formal/secular law. This pressure is understandable, but an optimal legal arrangement should balance the concerns of the liability system that liability be fairly and efficiently placed, on the one hand, with constitutional concerns regarding structural autonomy of religious institutions, on the other.³³

Religion may be a dangerous beast, and in rare company it has ability to inspire and justify the targeted violence that is a hall mark of abusive regimes.³⁴ I.e. religion may justify war and for that matter the constitutional preference for secularism seems to gain some traction. Thus, the state is expected to govern religious conducts in view of the general public interest. But, it should take care about the conscientious objectors. As to conscientious objectors, an expansive view of the free exercise clause is recommended. The case like leaving Jehovah Witnesses not to be recruited for military service is protecting conscientious objectors.

Recently, religious institutions have been participating in business to keep their economical independence so that they need to be governed by some sort of corporate law. As religious entities arguably held in society do not enjoy blanket legal immunity from litigation, the need to incorporate has evolved from a tool of convenience into a business necessity.³⁵ This aspect of regulation by the state law doesn't amount interference. Because the participation is purely secular so that it could be regulated by the secular law.

To conclude, state interference may be manifested by action or inaction. The first aspect is intrusion of the state on the matters which otherwise would be internal affairs of religions. The inaction aspect on the other hand is the state of being idle in the matters it should perform for the well implementation of religious freedom and autonomy of religions.

³³ See Ira C. Lupu, *Supra* Note 18, P-1795

³⁴ David Gray(Prof.), *Constitutional Faith and Dynamic Stability: Thoughts on Religion , Constitutions, and Transition to Democracy*; in MARYLAND L. Rev., Vol. 69:26, (2009), P-35

³⁵ Elizabeth Gingerich, *Unraveling the Establishment Clause: Legal and Other Practical Concerns for the Church 'Business'* ; in Rutgers Journal of Law and Religion Vol. 10, No. 39 (2009), P-3

3.2.2 Religious Non-Inference on State Matters

Constitutionalism exists only where political powers do not ground their public affecting decisions on transcendental concerns. When constitutional law insists on secularism, it insists on the possibility of a reason-based political society.³⁶ Views may be seen to rely on faith. But the public should not present arguments based on faith which defend itself from critique. Because, religion will run the danger of having to rely on a ‘*Just because I believe*’ argument.³⁷

Turkey has strongly secularist constitution whose ‘*armed forces*’ have gone to some length to defend the state from religious influence.³⁸ The constitutional preamble includes a paragraph that says *as required by the principle of secularism sacred religious feelings shall in no way be permitted to interfere with state affairs and politics.*³⁹ Ataturk’s policy on secularism was to remove religion from the public realm and reduce it to a matter of faith and practice of the individual, so that the principle of freedom of religion was to protect ‘*individualized religion*’ only.⁴⁰

The Turkish constitution again prohibits the exploitation or abuse of religion or religious feelings for the purpose of personal or political influence or for even particularly basing the fundamental social, economic, political and legal orders of the state on religious tenets.⁴¹ More over political parties are prohibited from adopting programs that conflict with the “principle of secular republic.”⁴² However this may be misleading.

It is true that religion may serve fundamental identity needs of the individual; as such beliefs and related *emotions* are worthy of protection. But this is not a sufficient ground to allow the re-colonization of the public sphere by sentiments of pride and indignation and concepts of self-development in an organized form.⁴³ Further, there is a public order concern here: strong

³⁶ See Andras Sajo, Supra Note 4, p-2401

³⁷ Andrew J. King (Prof), *Accommodating Religion and Law in the Twenty-First Century*; in U. MD. L. J. Race, Religion, Gender, and Class Vol. 6:7 (2006), p-18

³⁸ Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* ;(Oxford University Press, 2002), P-19

³⁹ Ibid, P-19

⁴⁰ Istar B. Gozydin, *A Religious Administration to Secure Secularism: The Presidency of Religious Affairs of the Republic of Turkey*; in Marburg Journal of Religion, Vol. 11, No.1, (2006) p-1

⁴¹ Turkish Constitution (1982/87), Art 24

⁴² Ibid, Art 68

⁴³ See Andras Sajo, Supra Note 4, p-2421

religions are often count themselves as if they were missionary and command to save the souls of *others* and the whole world by imposing their own values on the rest of the society, not allowing accommodation for other beliefs and life forms. This may have a vast consequence.

Neither citizens nor officials should aim to prohibit actions in a liberal society just because they believe the actions are wrong from a religious stand point.⁴⁴ For instance, President J.W. Bush justified his recent veto of funding from *Embryonic Stem Cell Research* on non religious grounds although it is widely believed that the basis for his decision was religious grounds in nature.⁴⁵ In his veto announcement, J.W. Bush stated that the bill crossed “a moral boundary that our decent society needs to respect.”⁴⁶ His veto message didn’t implicate religion but stated that the bill would manipulate human life and violate dignity.⁴⁷

At the extreme case and to our surprise, framed displays of the Ten Commandments were removed from the interior walls of a county court house in Kentucky.⁴⁸ To strict separation advocates, this act is appropriate. Because they advocate that the religious values shouldn’t intrude the state/secular values and places at extreme case. Actually this has a great deal of advantages and rationale as well. Symbols in public place may irritate some groups not adhered to such symbol.

In theory, Pfeffer believed that, religious references such as court oaths that include “so help me God” and coins that declared “in god we trust” may violate the spirit of secularism.⁴⁹ However, he viewed such symbols and utterance to be largely ceremonial; more importantly, as a practical matter they were too difficult to challenge.⁵⁰ But, the fact that it is difficult to challenge does not relieve the state of infringing of the principle of no-interference at least in theory.

⁴⁴ See Kent Greenawalt, Supra Note 24, P-246

⁴⁵ Lucia A. Silecchia, *Faith in the Public Square: Reflections on its Role and Limitations from the Perspective of Catholic Social Teaching*; in U. MD. L. J. RACE, RELIGION, GENDER AND CLASS Vol. 6 No. 69 (2006) as quoted by Andrew J. King in Supra Note 37, P-17

⁴⁶ Charles Babington, *Stem Cell Bill Gets Bush’s First Veto*; Wash. Post July 20,2006 A4 as quoted by Andrew J. King, in Supra Note 37, Foot Note 45, p 17

⁴⁷ M.E Sprengel Meyer, *Stem Cell Veto Isn’t End*, De Gette Vows Rocky Mountain News (Denver. Colo.) July 20, 2006 4A as quoted by Andrew J. King in Supra Note 37, Foot Note 46, P-17

⁴⁸ *Mc Creary County V ACLU of Kentucky*, 545 U.S. 844/ 2005

⁴⁹ Leo Pfeffer, *Church, State and Freedom* (Rev. ed. Beacon press, 1967) P-240, as quoted by Andrew J. King in Supra Note 37, Foot Note 254, P-91

⁵⁰ Ibid P 238, in Andrew J. King, Foot Note 256, P-91

Secularism by no means precludes the religious person to engage in political activities not as a religious person but as a citizen in line with equality of citizens.⁵¹ The extreme case is in Japan. Japan constitution intends to guarantee freedom of religion and separation of religion and state. Exceptionally, this freedom of religion is understood to include a right of political participation. If religious adherents refrain from interfering with public welfare, they do not violate the constitution when they seek to realize their religious goals by participating in politics.⁵² Consequently, Japans religious associations can become political powers.

Mostly non-profit organizations are exempted from the general governing law of tax liability. Religious institutions are treated in same manner. But the tax-exempt-status is not without limit. In US, political participation of religious entities can deprive such status. Even implied political endorsement could undermine the 'Churches' non-profit status.⁵³ In US history, the only church stripped of its exempt status was a small New York Church which purportedly ran ads in its bulletins in 1992 spurning Bill Clinton only several days before the 1992 presidential election.⁵⁴ The Internal Revenue Service (IRS) stripped this church of its tax exempt status retroactive to January 1, 1992.

Constitutional arrangement is not an act of faith. The *Lemon* test requires that for a statute to be constitutional, *it first . . . must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive entanglement of government with religion.*⁵⁵ However, Natural law may oblige us to reflect moral ethic independent of religious interpretations.⁵⁶ We could refer to such a natural law as a non- religious or secular ethics.⁵⁷ Every intrusion in secular laws, secular administration and secular adjudication may not be alleged an interference of religion. Because there are issues neither religious nor secular but norms or morals from a natural law. Where these moral norms influence the secular state, we may not say always that religious ethics intrude the boundary of secular aspect.

⁵¹ D. Giannela, *the Strict Neutrality Principle*; in Harvard L. Rev. Vol. 81, No. 3, (1968) P-154

⁵² Keiko Yamagishi (Prof.), *Freedom of Religion, Religious Political Participation and Separation of Religion and State: Legal Considerations from Japan*; in BYU L. Rev. (2008), P-920-21

⁵³ See Elizabeth Gingerich, in Supra Note 35, P-6-7

⁵⁴ Branch Ministries Inc. V. Richardson, 970 F. Supp. 11 (D.D.C-1997)

⁵⁵ *Lemon v. Kurtz man*, 403 U.S. 602, 612-13 (1971) ;For Canada, see *Chamberlain v. Surrey School District*, No. 36 (2002) 4 S.C.R. 710 (Can.)

⁵⁶ John P. Reeder Jr., *What is a Religious Ethic?* in Journal of Religious Ethics Vol. 25, No. 3 (1997), P.169-173

⁵⁷ *Ibid*, P-169-173

3.2.3 Status of Atheism in Respect to Non-Interference

While, as a purely political matter, few constitutional movements can declare open hostility to religion, there seems to be a good case for setting a tone with constraint and then letting religion die a natural death.⁵⁸ This is towards atheism or non-religion at all. Some may declare one religion as a state established religion but treat others equal. Other states may declare one religion as a state religion and neglect other religions and atheists in any way. The first example, as dealt in the second chapter of this paper, is United Kingdom. The examples to the latter case can be the Arab Muslim countries.

But everyone has to beware that Secularism is the guarantor of both freedom of religion and freedom from religion.⁵⁹ When we talk about freedoms, we are always at the position that every one has the right to both sides of such rights: *to have or not to have*. Freedom of religion, thus, is towards both to the freedom of having or not to have a belief on supreme divine. Therefore, the state should take care as to non-believers in each of its acts related to individualized or institutionalized freedoms.

Ideally the public sphere should be neither religious nor anti-religious, but areligious.⁶⁰ Nevertheless, religious convictions may influence moral perspectives which in turn influence opinions about desirable law. Many laws derived from religious convictions in this way will restrict the liberty of others who do not share the convictions.⁶¹ No one asserts that any aspect of liberty or freedom has no place in religious conviction. But the main question is whether that conviction influenced the law or the practice without secular purpose.

The absence of plausible independent secular ground to laws often be directed against other religions and atheists. This puts in danger the equal citizenship of believers and non-believers; further the case will inevitably violate the neutrality of the state.⁶² Therefore, the absence of neutrality of the state on such issues amount interference on atheists' freedom not to believe.

⁵⁸ See David Gray, in *Supra* Note 34, P-36

⁵⁹ Esra Demir, *Secularism and the Distinction between Freedom of Religion and the Right to Manifest Religion* (2000), P-1

⁶⁰ See Michel Rosenfield, in *Supra* Note 28, P-2334

⁶¹ See Kent Greenawalt, in *Supra* Note 24, P-246

⁶² See Andras Sajó, *Supra* Note 4, P-2426

3.3 Inter-Independence: Mutual Respect of State and Religion

3.3.1 State Matters V Religious Matters: The dilemma

Dichotomizing secular issues from spiritual ones is easier in theory than in practice.⁶³ For example, in western history, of which the United States is a product, religion and government have to be distinguished or distinguishable in theory; in actual fact they are linked in a variety of ways and to varying degree.⁶⁴ However, we shouldn't keep our hands bent and with no try to draw considerable boundary.

In 16th c., Martin Luther understood the notions of *spiritual* and *secular* matters and the terms acquired meaning. He conceived that the former is *earthly life* and the later is about *life in heaven*.⁶⁵ To him everything in the world related to every material aspect even by the religious entities was secular aspect, thus, was exclusively the task of secular political authority.⁶⁶ But, it is too difficult to say everything related to the soul is spiritual so that be left to the religion itself. In 20thc, however, the meaning of the usual German word for spiritual, *geistlich*, seems to be confined largely to what in English would be called "*Clerical*" or "*priestly*".⁶⁷

In the broadest sense of the word-'*spiritual*' or '*spiritual law*' -to be sure, virtually all our laws may be said to have a spiritual aspect, virtually all our laws are intended to promote right conduct; virtually all have a moral dimension; virtually all purport, at least, to foster right relations among people. Yet some laws are so much more spiritual than others that the difference in degree becomes different in kind.⁶⁸ Actually the boundary between the sacred and the profane, the moral and the political, the spiritual and the secular, the material and the psychological, the body and the soul, the time-bound and eternal, the dimensions of life are in dialectical tension.⁶⁹

⁶³ See Badrinath Rao, Supra Note 30, P-20- P-49

⁶⁴ Edd Doerr, *The Importance of Church -State Separation*; in Barry F. Seidman and Neil J. Murphy (eds.) *Toward a New Political Humanism* (New York, 2004) P-1

⁶⁵ Harold J. Berman, *The Spiritualization of Secular Law: the impact of the Lutheran Reformation*; in J.L. and Religion, Vol. 14 (2000) P-316 -516

⁶⁶ Ibid, P-316

⁶⁷ Ibid, P-341

⁶⁸ Ibid, P-347

⁶⁹ Ibid, P-348

The other challenge to define the boundary is the fact that the role of religious institutions has been becoming dual. They may and can perform purely religious phenomena or non-profitable functions which are beyond spiritual ones. When these institutions perform function indistinguishable from other segments of the non-profit world, the law should treat them as their secular counter parts are treated; when, however, religious institutions act in uniquely religious ways, making connections with the world beyond the temporal and material concerns that are the proper jurisdiction of the state, the legally distinctive qualities of such institutions emerged.⁷⁰

In aggregate, religious matters are those matters which are highly related to the internal organization and conducts of the religion. These matters are neither temporal nor secular in effect and justification. But secular matters are matters highly related to temporal life and whose effect and rational is highly connected to the modern state formation and popular sovereignty.

Sometimes state matter and religious matters may overlap or contradict each other. This is because; first we can't with scientific precision delimit the true and proper activities of the two- *the 'church' and the state*. It would be impossible to draw a clear cut line between the proper activities of the two. Secondly, while the 'church' and the state are abstract entities, the people in them are the realities so that it is impossible to establish a dichotomy in them, as citizens and as member of religious sects.⁷¹

3.3.2 Legislative Laws vis-a-vis Spiritual Laws

John Rawls urge us to build our constitutional principles on some foundation other than theological conceptions of autonomy because such conceptions are the wrong places to look for political arguments in a republican government which under modern condition adhered to reasonable pluralism.⁷² And it has to give priority to popular sovereignty on the laws which are expected to regulate public relations as a whole. Thus, the laws to be adopted are those which can apply for all without sectarian assumption unlike religious laws.

Where a state decides to submit itself to certain religious rules, one might think that this constitutes a clear case of religious domination of the state. Yet the domination is unilaterally

⁷⁰ Ira C. Lupu and Robert W. Tuttle, *the Distinctive Place of Religious Entities in our Constitutional Order*; VILL. L. Rev, Vol. 47 (2002) P-92 as quoted by Ira C. Lupu and W. Tuttle, in Supra Note 18, Foot Note 56, P-1807

⁷¹ See J.M. Shelat, in Supra Note 3, P-34-35

⁷² John Rawls, *the Idea of Public Reason Revisited*; in U. CHI. L. Rev., Vol. 64, (1997), P-765 as quoted by Ronald R. Garet in Supra Note 8, Foot Note 23, P-1361

instituted by the state-it only exists by virtue of a *legal norm*, created by the state and thus the power of religion is the consequence of legislation by the state.⁷³ But to this writer, this assertion is not persuasive. Because, the very initial to adhere to religious views without secular purpose is against principle of secularism irrespective of being the decision is made unilaterally.

The frequent sub-text in constitutional debates about religion is that constitutions should, on the whole, be secular documents, descriptive of secular institutions, and fundamentally protective of norms and practices susceptible to secular justification.⁷⁴ The assumption is that constitutions could do just fine without the good will of religion. While religion and constitution are odd couples, indeed the fact is that they live together in some form everywhere constitutions found.⁷⁵

The legal norms the state produces should not be inspired by religious norms. They do not make themselves the propagandists of a system of values.⁷⁶ A religiously motivated law that undermines democracy or that cannot be translated in a way that fits into democracy remains problematic. A specific version of pluralism is localism, modeled partly on *Yoder*.⁷⁷ In the *Yoder* case, the Amish and Mennonite communities sought exception from the state compulsory schooling laws, being their faith tradition teaches a much more insular or sectarian ideal. If the tolerance of *Yoder* is applied broadly we run the risk of societal and national disintegration.

Laws adopted by the government should rest on some secular objectives; they should seek to promote some good that is comprehensible in secular terms.⁷⁸ The most debatable issues of legislation in the contemporary globe are prohibiting homosexuality and abortion. Many argue both of these issues are not public issues so that should not be criminalized.

Criminalizing homosexuality can be opposed: one, such matters of individual choice is none of the states business.⁷⁹ The basic idea as to Locke is that a government should protect the rights of individuals against infringements by other.⁸⁰ Since consenting acts by two people that do not infringe the rights of others, and since people do not need the protection of government against

⁷³ See Michel Troper, *Supra* Note 1, P-1270

⁷⁴ See David Gray, in *Supra* Note 34, p-26

⁷⁵ *Ibid*, P-27

⁷⁶ See Michel Troper, in *Supra* Note 1, P-1271

⁷⁷ *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

⁷⁸ See Kent Greenawalt, *Supra* Note 24, P-251-5-2

⁷⁹ *Ibid*, P-252

⁸⁰ *Ibid*, P-252

their own inclinations to perform such acts, no occasion for criminal penalties.⁸¹ The second argument against restrictions, found most familiarly in John Stuart Mill's "on liberty" urges that *people should have the power to live their own lives as they wish, so long as they do not harm others.*⁸² If they are denied this power, the regime of penalties and inhibitions of desire will inevitably cause suffering and frustration.

The third argument against prohibition rests on actual and likely patterns of enforcement. Efforts to enforce such laws are unavoidably ineffective and convictions are rare.⁸³ I am not arguing that homosexuality should be encouraged. But what I am insisting is that the inhibition of acts should be based on secular justification rather than fearing the divine punishment. The divine punishment may not be all agreed.

Actually, some proposed secular justification as to the criminalization of same-sex intercourse. These justifications can be: the act is psychologically self-destructive, the need to protect family protection of children from sexual advancements by adults, physical dangers of unrestrained sexual relations, HIV/AIDS and the general moral.⁸⁴ Kent Greenawalt insists that with the exception of the criminal prohibition of incest, which one believed supportive on rationale secular grounds, the author's judgment was that the "*rational secular argument against prohibiting private sexual acts among adults are far stronger than the rational secular arguments in favor of prohibition.*"⁸⁵ The only reasons may be however religious or moral ones.

Kent adds the aim to forbid homosexual acts on the above grounds is at odds with basic premises of liberal democracy. We may start with proposition that a liberal society has no business dictating matters of religious beliefs and worship to its citizens.⁸⁶ It can't preclude acts of worship that causes no "secular harm" deepening on what religious truth constitutes. Thus, we can conclude that liberal society should not rely on religions to prohibit activities that either cause no secular harm or do not cause enough secular harm or warrant their prohibition.⁸⁷

⁸¹ Ibid, P-252

⁸² Ibid,P-252

⁸³ Ibid, P-252

⁸⁴ Ibid,P-253-4

⁸⁵ Ibid,P-254

⁸⁶ Ibid, P-255

⁸⁷ Ibid, P-255

To conclude, the analysis can be generalized a simple belief, whether religiously based or not, that acts are morally wrong is never an appropriate ground for prohibition. To support prohibition in a liberal society, one must be able to point to some genuine damage or danger to individuals or society.⁸⁸ The bar on legislation extends to some non-religious as well as religious views of wrong. But because a non religious moral view is much less likely than a religious one to have notion of wrong that can be detached from notions of ordinary harm, the bar mainly concerns religious reasons for prohibition.⁸⁹

The other issue regarding the trespass of religion in the public sphere is the case of abortion. The relevant but contesting case was *Roe v. Wade*.⁹⁰ Many debates and arguments were exerted towards the issue from the religious personalities, moralists, politicians and secular rationalists in the time of the decision of the court or after then. Most religions believe that ensoulment is the beginning of life.⁹¹ But it is difficult to know the clear cut time when the fetus got ensouled. Medical doctors insist that life begins immediately after fertilization.⁹² But the issue is whether any thing which has life be protected by law.

Religious viewers and moralists prefer to protect that life. But such views are not always acceptable. Because, our public morality- the moral standards we mention for every one, not just the ones we insist on in our private lives- depends on a consensus view of right and wrong in simple sense.⁹³ Moreover, the values derived from religious belief will not and should not be accepted as part of the public morality *unless they are shared by the pluralistic community at large, by consensus*.⁹⁴ Even the consensus may not be sufficient. The reason is that Nazism, Fascism and slave trade were accepted by the majority as good in history.

In democracy, things are to be adopted by majority after their secular rational justifies that.⁹⁵ Democracy may not kill it self. When there emerge a situation which can kill democracy, it will

⁸⁸ Ibid, P-259

⁸⁹ Ibid, P-259

⁹⁰ *Roe v. Wade* 410 U.S.113 (1973)

⁹¹ See Kent Greenawalt, *Supra* Note 24, P-299-95

⁹² Dr. Seyoum Antonios (Med. Dr), *Panel Discussion on "Pro-Choice V. Pro-life: Abortion a Choice or Not"* On Oct. 29, 2010

⁹³ See Kent Greenawalt, *Supra* Note 24, P-267

⁹⁴ Address by Governor Mario Cuomo to the Department of Theology at the University of Notre Dame (Sep 13, 1984) Reprinted in *N.Y. Review Books* Oct 25, 1984, P-32 as quoted by Kent Greenawalt, in *supra* note 24, Foot Note 39, P,267

⁹⁵ See Kent Greenawalt, in *Supra* Note 24, P-267

defend itself from that action- i.e. *militant democracy*. I.e. in the guise of democracy, anything which can be accepted by majority vote may harm at least the minority. Thus, we may not be expected to accept every thing which is supported by the majority unless that acceptance is justified by rational grounds.

Some tried here to support their argument in rational justification to accept or oppose the prohibition or restriction of abortion. Michel Tooley argues that a thing can't have a right to life unless it is capable of having an interest in its continued existence, that it can't have such an interest unless it is *capable of conceiving a continuing self*, and that, therefore, neither fetus nor new born babies have a right to life.⁹⁶ This argument may mislead many. Since the right to life is a natural right which one be possessed by a mere birth, it might be silly to fail to protect that right. Actually, Tooley's argument may serve for issues in private law.

On the contrary, the Supreme Court in the Roe v. Wade case has fixed "the *chance of life outside the womb*" as a criterion to legal protection of the fetus.⁹⁷ But this parameter is not objective and easily conceived. The main issue here will be to get answer to the question when could a fetus have a chance to live outside the womb.

In general, the debates deferred from *pro-life* advocates and *pro-choice* advocates. But, the main issue is which should prevail. The first group wants a protection of life from the moment of fertilization. The pro-choice advocates that the mother has full right to abort or to deliver the child conceived as of right. This issue was at the peak of the 1984 US presidential election debate. A Democrat, Walter Mondale explained that the Republican platform's position that federal judicial appointments should be "pro-life" embodied a religious test of office; President R. Regan responded that abortion was a constitutional, not a religious, issue.⁹⁸

Both groups may have many justifications. But the reason can't be based on a mere religious ground. By default, the rational justification may overlap with religious justifications, or at extreme case the religious value may be grown to moral-values and supported by relevant majority consensus. Thus, it may be tolerable to restrict abortion by the secular.

⁹⁶ Michel Tooley, *In Defence of Abortion and Infanticide*; in J. Leignberg (ed.), *The Problem of Abortion* (1984) p-120-33 as quoted by Greenawalt in Supra Note 24, P-267

⁹⁷ See *Roe v. Wade*, in Supra Note 90

⁹⁸ Presidential Debate of Oct,7 1984, at Louisville, KY, Reprinted in N.Y Times Oct 8, 1984, B4 & B5 as quoted by Kent Greenawalt in Supra Note 24, Foot Note 24, P-295,

The problem is here. Certain reasons that seem to satisfy the public reason requirement might be problematic, being hypocritical. A position that claims that it argues against abortion in the name of protecting the health of women while in reality is concerned about the sanctity of life is not honest, and abuse of the argument, and lack of honesty, shall not be judicially rewarded.⁹⁹

Likewise, in the guise of public reason, national religious holidays and Sunday observance are typically justified as satisfying the need of weekly rest and family togetherness. However, Andra Sajo rightly expresses that the fact that the national holiday or the Sunday/Sabbath overlaps with a religious dictate is simply not addressed.¹⁰⁰

Any application of federal and state statutes and administrative regulations to church operations in US ostensibly triggers the assumption that such interference is violative of first amendment of the constitution.¹⁰¹ The proscription of state regulation of religion's secular internal affairs, however, has been obfuscated.¹⁰² For instance, matters of worker safety, financial accountings, academic performance in parochial schools and student truancy of same represent just a sampling of governmental regulation on religious affairs.¹⁰³

To conclude, to utilize the potential role of religions to the maintenance of dynamic stability, constitutions should not establish or endorse a single religion, and constitutional authorities should avoid adopting religiously based truth claims as state policy in the absence of compelling secular justifications.¹⁰⁴

3.3.3 State Executive vis-a-vis Religious Executive

Secularist precaution is primarily concerned with the maintenance of public reason as a foundation of political and policy decisions. This cannot be abandoned for the sake of accommodation of less aggressive religious positions. Otherwise, secularism will be undermined by a fundamental paradox: when we provide protection to religious beliefs and practices we run the risk that we abandon the demand for public reason. The unconditional prevalence of freedom

⁹⁹ See Andras Sajo, in *Supra* Note 4 , p2424

¹⁰⁰ *Ibid*, p-2423

¹⁰¹ See Elizabeth Gingerich, in *Supra* Note 35, P-4

¹⁰² *Ibid*, p-4

¹⁰³ *Ibid*, p-5

¹⁰⁴ See David Gray, *Supra* Note 34, p-37-38

of religion is also unsustainable. After all, it is not true that all sincere religions or beliefs deserve equal protection in their manifestation, whatever *manifestation* is dictated by the religion.¹⁰⁵

Secularism, in its interference aspect, is to mean political authority should not promote particular religious views, that religion and state should be substantially separate, that government officials should not dictate the decisions of religious organization, and that religious authorities should not possess secular political power authority by virtue of their clerical position.¹⁰⁶

The right to designate leaders and spokes persons for the faith is one of the corollaries of freedom of religion. Non-interference aspect precludes the state from instituting a system of licensure for the clergy or other servants in religious entities.¹⁰⁷ In an established church system, refusal to certain laws may have consequences. For instance, a secular minister of church and education in Norway dismissed a clergy man from his state post who refused to carry out certain of state functions in protest of a new, liberal abortion law.¹⁰⁸ This indicates that the state has the ability, at least in some circumstances, to require a Minister either to behave in a certain way or to resign though the issue involves a pure religious matter.

In established church system, the state is given a considerable right to interfere with the organization and even religious requirements of a state religion.¹⁰⁹ In particular, the state will have a role in setting criteria for employment and dismissal of employees of the church. In England, as regards the appointments of ecclesiastical office, the power rests in the sovereign. The Church of England being of the established church of the realm can advise the crown concerning the appointment or disposal of any office or preferment in the Church of England.¹¹⁰

3.3.4 State Judiciary and Religious Dispute Resolution

It is undeniable fact that religion and religious entities are established to distinctive purpose beyond the temporal aspect of the globe. In their exercise of that freedom (liberty), the state is expected to guarantee a protection to them to achieve the alleged purpose. That guarantee may be either to refrain from interference or let others not to interfere. The regular courts are at

¹⁰⁵ See Andras Sajo, Supra Note 4, p-2419

¹⁰⁶ See Kent Greenawalt, Supra Note 24, p-251-52

¹⁰⁷ See Ira C. Lupu, Supra Note 18, P-1809-10

¹⁰⁸ See Carolyn Evans, Supra Note 38, P-85, Foot Note 91

¹⁰⁹ Ibid, P-85

¹¹⁰ See J.M. Shelat, Supra Note 3, P-41

optimal duty to enforce such right (freedom). Where the state or other parties interfere on the free exercise forum, the court is expected to avert that intrusion so that the religious entities can exercise their right freely or settle internal disputes by themselves. At the other side, courts are expected to entertain religion-neutral issues in religions and religious institutions in view of neutral secular law.

There are many corollary freedoms which need distinctive protection in relation to freedom of religion. These freedoms are mostly linked to decision making. From these freedoms, the pillar is the right to settle, free from state interference, internal disputes whose resolution depends up on judgments about theological principles or issues of religious polity.¹¹¹

Non interference clause precludes both federal and state governments form any act of censorship to religious creed. They can't do any judicial inquiry into the truth or falsity of religious views.¹¹² While the civil power (court) exercises complete control over all matters, whether temporal or ecclesiastical, it refrains from exercising any ecclesiastical functions; the sovereign is the supreme governor of the realm in all spiritual or temporal causes.¹¹³

In US, courts for many years have applied the doctrine of *ministerial exception* to a broad variety of norms that otherwise govern the employment relation. With respect to employees in a position of spokes person for the faith- member of the clergy, professor of theology or canon law, director of religious music, and other positions *defined by function rather than title*-religious organization are immune from claims that would entail judicial evaluation of an employee's performance or a prospective employee's qualifications.¹¹⁴ This immunity is qualified. If the claim doesn't entail judicial evaluation of employee's performance or a prospective employee's qualification, the regular courts can entertain such cases.

The other instance is a rule barring courts from settling church property disputes by asking which faction has departed from the teachings of the [religion] is a religious autonomy doctrine in the formal sense. I.e. a free exercise interest is ecclesiastical self determination.¹¹⁵ Now again, we have to take caution that the '*self rule*' is not an absolute autonomy. Consequently, to decide a

¹¹¹ See *Ira c. Lupu*- Supra Note 18, P-1808

¹¹² See Evelyn Hanshaw, in Supra Note 26, P-14

¹¹³ See J.M. Shelat, in Supra Note 3 ,P-41

¹¹⁴ See *Ira C. Lupu et al*, in Supra Note 18, p- 1811

¹¹⁵ See Ronald R. Garet, in Supra Note 8, P-1355

case before it, a court must strike a balance between state autonomy, individual autonomy and “Church” autonomy.¹¹⁶

The essence of “inter-independence” may not do well in striking issues where mutual respect failed. For instance, in the *Yoder* case, the Amish and Mennonite communities sought exception from the state compulsory schooling laws, being their faith tradition teaches a much more insular or sectarian ideal.¹¹⁷ In such case, the judiciary is duty bound to weigh the interests of the state, the religious institution and the individual interests of the parents and the child.

In the late 1970s in USA, court decisions indicated precluding civil courts from adjudicating disputes, concerning both property and personal, arising from within a particular faith community.¹¹⁸ But by the turn of the millennium, several of the building blocks in the edifice of separationism have crumbled, and a competing paradigm of neutrality or even-handedness between religion and secularity had taken center stage.¹¹⁹ The developments become manifest in a number of discrete moves in the Supreme Court.

The first and for most is that the court in *Jones v. Wolf* uphold the authority of lower courts to adjudicate internal church dispute in *those situations in which religion neutral legal principles permit judicial resolution without involvement in matters of the theological principle or ecclesiastical structure.*¹²⁰ More over, the decision in *Employment Division v. Smith*¹²¹ narrowed or eliminated the free exercise doctrine calling for strict judicial evaluation of burdens imposed on religious freedom by religion neutral, generally applicable legal norms.

3.4 Overlap Between State and Religious Matters: Corporate Social Responsibility

The tensions between religion and politics in the first instance are the result of their different aspiration. As political and ‘*economic beings*’, we are forced to concern ourselves with proximate causes, with sustaining our individual and communal lives on earth; as religious beings we are drawn to a concern with the possibility that our life stretches beyond this time and place, that we are part of a larger project or destiny that we cannot understand, arising in a

¹¹⁶ Brett G. Scharffs (Prof.) P-1258-1328 as quoted by Ronald R. Garet, in Supra Note 8, , Foot Note-19, P-1360

¹¹⁷ See *Wisconsin v. Yoder*, Supra Note 77, P-207

¹¹⁸ See Ira C. LuPu etal, in Supra Note 18 , Foot note 39, P-1802

¹¹⁹ *Jones v. Wolf* 443 U.S 595 (1979)

¹²⁰ See Ira c. Lupu, in Supra Note 18, P-1802

¹²¹ *Employment Division V. Smith* 494 U.S. 872 (1990)

hidden beginning and bearing us to an as yet unknown destination.¹²² In the former case, we dwell in this world; in the latter, we are wayfarers who pass through it. In both instances, however, we are compelled to act here and now on the earth.

Since the societies in the legal system and the religious institutions are similar, both the state and religion may have contributions to the society. Thus, one can believe that, while the state is necessarily always conceptually separate from religion, from a legal and practical point of view on the contrary, no separation is possible.¹²³ This is to mean that there are so many issues where religion and state intersect. Welfare services provided by religious organizations may be accessible to all citizens equally though the task of welfare is state's duty in principle.

Secularism does not rule out that there is place for religions in public life, and to some extent even in government activities.¹²⁴ In the case of government welfare and cultural services where no government power or constraint is used, and where the goal of the service is purely secular (even if it overlaps with some religion dictated duty), there can be place for denominational service provisions. As long as the service provided is not conditioned on religious criteria that would amount to the ecclesiastical use of public power, it can be tolerable.

Religion and politics are necessarily entangled, and it is thus inevitable that groups with different ideological/theological beliefs will attempt to use political power for their purposes. As a practical matter, concerning our own survival and well being, we seek to eliminate the factors that cause suffering and death and increase the factors that provide happiness and long life.¹²⁵ Religions are not beyond this fact. Consequently, they may struggle for survival and for that matter may entangle in state matters. The idea of a secular society in which religious groups are excluded from bringing their moral convictions into the political realm seems to Michel Gillespie as awful as the notion of a theocracy in which only a single sect is allowed to participate in politics.¹²⁶ It is social fact and inevitable that religions could participate in secular matters which benefits the whole population. Even, they may exert a pressure on political debates and marches.

¹²² Michael Gillespie, *Beyond Secularism: The Inevitable Entanglement of Religion and Political Life* (Duke University, 2008), p-5

¹²³ See Michel Troper, in *Supra Note 1*, P-1270

¹²⁴ See Andreas Sajo, in *Supra Note 4*, p2407

¹²⁵ See Michael Gillespie, in *Supra Note 122*, P-4

¹²⁶ *Ibid*, p-24

Some strongly argued that *while religious bodies have the right to speak out on moral or political issues, the state must provide a secular justification for its legislation.*¹²⁷ The religious institutions may not be prohibited from that participation. But the state should take care as to the influence by such religion. Participation in public discourse is not the same as deciding a public policy on religious grounds, and promoting that particularistic agenda through law. There are many instances where policy proposals reflecting religious positions are accessible, tolerable and even acceptable to non-sectarian members of society.¹²⁸ But, their purpose is duty bound to satisfy secular mission.

The separation of church and state, for instance, has not limited the church's active role in US politics as James E. Wood Jr. has said. He aptly expressed that *the courts have never denied the right of the churches to participate actively in public life.*¹²⁹ He adds *separation of church and state was never understood to exclude religion from public life... rather United States has a long tradition of religious groups actively engaged in the political process seeking to influence politics and the legislative process.*¹³⁰

Pfeffer strengthens the above assertion. While in principle church state conflicts have and will arise when religious institutions participate in the political activism, the church is not necessarily wrong in entering politics.¹³¹ Pfeffer adds:

There is nothing which can prevent ministers from using their Sunday ceremonies to urge their parishes to vote against a bingo referendum or to urge the president not to send ambassador to the Vatican.... Nor is there anything in the laws which can constitutionally prevent priests from denying the sacraments to citizens who vote for communist candidates or even to legislators who vote in favor of birth-control legislation.¹³²

On the other face, some argued that standing outside the political process, religious groups can function as both advocates of *social policy and critics of secular order*. To mention otherwise, it is only from a *counter cultural* position that religion can influence the state without being co-opted by it. Thus, religious groups must take a position limiting them if they wish to influence

¹²⁷ J. David Holcomb, *Religion in Public Life: the 'Pfefferian Inversion' Reconsidered*, in 25 J.L. and Religion 57 (2000), P-82

¹²⁸ See Andras Sajo, in Supra Note 4, p2426

¹²⁹ See James E. Wood as quoted by J. David Holcomb in Supra Note 127 Foot Note 268, P-93

¹³⁰ Ibid Foot Note, 268, P-93

¹³¹ See Pfeffer, in J. David, in Supra Note 127, Foot Note 274, P-94

¹³² Ibid, Foot Note- 274,P-94

government policy.¹³³ Alexis De Tocqueville warns that the church cannot share the temporal power of the state without being the object of a portion of that animosity which the latter exerts.¹³⁴

Vincent M. Di Lorenzo raises very important question saying: *was there noting relevant that religious leader or group had to say on corporate social responsibility?* He was surprised by the fact that most scholarly writings are merely doctrinal in that they examine only what the law permits rather than intending to examine why the law permits... or to explore what the law should be.¹³⁵ In recent times, however, religious men and religious entities have been participating in public and political agendas as this scholar noticed. The following instances have been mentioned as significant instances.

In 1986, the National Conference of Catholic Bishops wrote a letter entitled "*Economic Justice for All*" and latter wrote a companion letter entitled "*Decade after Economic Justice for All*" in 1995.¹³⁶ The whole idea behind these documents is summarized as follows:

The economy exists to serve the human person, not the other way around. Economic life should be shaped by moral principles and ethical norms. Economic choices should be measured by whether they enhance or threaten human life, human dignity and human rights...The moral measure of any economy is how the weakest are faring. The measure of our economy is not only what it produces, but also how it touches human life, whether it protects or undermines the dignity of human person, and how it promotes the common good. All owners of capital must contribute to creating a more just society. Wide spread distribution of property can help avoid excessive concentration of economic and Political concentration. Government shouldn't replace or destroy smaller communities and individual initiatives; rather it should help them to contribute more effectively to social wellbeing and supplement their activity when the demands of justice exceed their capacity. Governments must provide Regulations and a system of taxation which encourage firms to preserve environment, employ disadvantage workers and create jobs in depressed areas.¹³⁷

There are these and other different perspectives in the above mentioned documents. The whole point, however, is ensuring social justice rather than promoting free market. One may not agree

¹³³ See Selechia as quoted by J. King Holcomb, in Supra Note 127, Foot Note-41, P-16

¹³⁴ See Alexis De Tocqueville as quoted by J. King Holcomb, in Supra Note 127, Foot Note 42, P-17

¹³⁵ Vincent M. Di Lorenzo (Prof.), *Legislative and Public Policy Debate: Should the Social Viewpoint of Religious Group Play No Role?* In MARGINS Vol.1:48, P-489

¹³⁶ Ibid, Foot Note 12 and 13

¹³⁷ Ibid, P- 493-96 (foot not omitted)

with or endorse this position. But it is undeniable fact that a large number of people could endorse this position. Therefore, representation of large constituency for such viewpoints signifies the relevancy of such participation in public debates.¹³⁸

Commentators agree that the right to free speech permits religious groups and leaders to present their views to government decision makers such as the legislature and executive.¹³⁹ It would be a hollow right of free speech in the political arena if religious groups and leaders could speak but decision makers were absolutely forbidden to listening former's position.¹⁴⁰ This is to mean that the influence of religious groups to their viewpoints is permissive as it can be looked into by the decision maker; but the decision maker should not necessarily deny that view of point.

But we can't assure that the above position is always true and certain. Sometimes the views by religious groups may be endorsed by the legislature. For instance, in one case in US, the Supreme Court has sustained legislative enactment, even when the state legislature cited religious view points as a primary justification for the enactment.¹⁴¹ Yet it has also ruled such enactments unconstitutional when based solely on religious view points.¹⁴² From the above assertions, we can understand there is uncertainty in decisions. Even constitutional lawyers disagree too the matter. Some opine that religious view points should never form the sole basis for legislative decisions.¹⁴³ Others urge that religious viewpoints should form the basis, in whole or in part, for legislative decisions generally or for some purpose of legislative decisions.¹⁴⁴

Remind that not every viewpoint put forth by religious group or leader is a religious view point.¹⁴⁵ The difficulty is, off course, in defining what constitutes a religious belief. Vincent M. Di Lorenzo preciously concluded that *we shouldn't kill the message because of the messenger*.¹⁴⁶ Science or law can benefit from the viewpoints of religious groups or leaders. This is certainly true, for example, when such groups or leaders are addressing social issues on the basis of social

¹³⁸ Ibid, P - 496

¹³⁹ Stephen L. Carter, *the Culture of Disbelief*(1993), P-106

¹⁴⁰ See Vincent M. Di- Lorenzo, , in Supra Note 135, P-497

¹⁴¹ *Bowers v Hardwick*, 478 U.S 186, 211 (1986)

¹⁴² *Edwards v Aguillard*, 482 U.S 578, 585 (1987) See Foot Note 26 of Vincent M. Di Lorenzo, in Supra Note 135

¹⁴³ Michel J, Perry, *Religion in Politics: Constitutional and Moral Perspectives* (1997), P-36-38

¹⁴⁴ Carter- P-111-12, as quoted by Vincent M. Di Lorenzo, in Supra Note 135, Foot Note - 29

¹⁴⁵ See Vincent M. Di Lorenzo, in Supra Note 135, P-498

¹⁴⁶ Ibid, P- 498-500

view points. The perspectives are both novel and representative of abroad constituency. As a result, they can enrich the academic and public policy debate.

The strike between religious rite and non-religious one is difficult. If we do not demarcate these issues objectively, it may be difficult to ensure the implementation of non-interference clause. In one case decided by Supreme Court of Japan, there was a difficulty to identify which acts were religious and which rites were cultural. The case was between *Kakunaga and Sekiguchi*.¹⁴⁷ Prior to the building of the Tsu City Gymnasium, the mayor of Tsu, kakunaga Kiyoshi arranged to a ground breaking ceremony on January 14, 1965, with the local Shinto priest officiating. The ceremony performed by the Shinto priests was 'traditional'; they petitioned the gods for their approval praying for the construction to go smoothly, without incident or mishap. The city paid the priests Y40, 000 with city funds for their services and paid another Y3, 663 in offering.

The court held that complete separation between religion and state is virtually impossible in an actual system of government.¹⁴⁸ It added even if the ceremony was performed in the style of an existing religion, as long as it remains within the bounds of well established and widely practiced usage, most people would perceive it as a secularized ritual without religious meaning, a social formality that has become customary at the start of construction works.¹⁴⁹ Professor Keiko Yamagishi urges that Japan should have specific act or proclamation to demark these two values in optimal manner.¹⁵⁰

As earlier said, it is tempting to conclude that religion is a dangerous beast, given the histories related to it. But, the history of religion in the world is not all bad. Religion and religious figures are prominent in the pantheon of peace makers: from Gandhi to Martine Luther King, to Desmond Tutu and Alex Boraine.¹⁵¹ More privately, religion is a common motivator for acts of charity and love too numerous to list. Religion, then, is an important player in the construction and maintenance of dynamic stability.¹⁵² Thus, it may be difficult to make religions out off the domain of all secular maters.

¹⁴⁷ *Kakunaga V Sekiguchi*, 31 MINSHO 533 (Sup. Ct. July 13, 1977)

¹⁴⁸ See Keiko Yamagishi, in *Supra* Note 52, P-932

¹⁴⁹ *Ibid*, P- 935-940

¹⁵⁰ See John P. Reeder Jr., in *Supra* Note 56, P-37

¹⁵¹ See David Gray, in *Supra* Note 34,-P- 378

¹⁵² See J. David Holcomb, in *Supra* Note 127, P-378

3.5 Interference related to Religion-based Schools, Universities, and Charities

Secularism has a lot to do with the above institutions. These areas are gray and sensitive where secularism has many influences and implications. In aiding religious schools, both clauses- the *non establishment and free exercise*- could be violated at the same time. The funds are not only establishing religions but also are a violation of the free exercise of religion since they force people to pay what constituted a religious tax. Tax aid to non-public religious schools would necessarily either increase taxes on tax payers or decrease support for public education.

For instance, it is already well known that US public schools are seriously under funded and that with in virtually every state funding for public education has long been inequitably disturbed.¹⁵³ The Fleishman report to the New York governor Nelson Rockefeller more than 30 years ago concluded that it would be cheaper for the state to support the non public schools.¹⁵⁴ This indicates that the funding of religious schools inevitably harms the public schools which are mainly and substantially administered by public money.

While there may be a free exercise right to someone's children to parochial schools, it doesn't follow that the state must fund the schools. For tax payers, to support religious education that may be contrary to their own faith, may be counted as a violation of the free exercise of religion.¹⁵⁵ Because, they are obliged to pay additional tax to make others' religion flourished at the expense of their conscience. Pfeffer feared that granting funds to parochial schools for even basic services such as text books and transportation costs (justified on the child benefit theory) would open the door to other types of aid and eventually direct subsidization.¹⁵⁶

Religious teaching in curriculum is the other controversial issue. In US, public Schools are not in a position to give religious courses in the formal curricula. The principle is that public schools should serve a uniquely public function.¹⁵⁷ But, in Turkey, there is an obligation to arrange a religious course in the curricula of public schools; and that is necessary evil. In the militant type of secularist state, Turkey, religious teaching in public schools is not only permissible but

¹⁵³ See Edd Doerr, in Supra Note 64, P-6

¹⁵⁴ Ibid, Foot Note 15, p-6

¹⁵⁵ See Andrew J. King, in Supra Note 37, p-61

¹⁵⁶ See Pfeffer, in J. David Holcomb in Supra Note 127, Foot Note 23, P-61

¹⁵⁷ See Edd Doer, in Supra Note 64, Foot Note 33, p1-4

mandatory.¹⁵⁸ The case stretches from the elementary school till universities. The Turkish government feared the fundamentalist religious schools which it alleged against the security and modernity of the country. Thus, prohibiting religious teaching in public schools may make students go to such fundamentalist religious schools and may learn fundamentalist ideals.

As to charities, especially religious charities, Edd Doerr strongly reminds that there is no doubt that religion-related charities have done enormous *good* in America and elsewhere.¹⁵⁹ Let alone charity organizations which are mostly established for welfare purpose, mere religious entities are becoming players of pivotal role in social affairs. Thus, it may not be surprising to protect them. But the protection needs caution. The reason is that under the guise of charity organization, the state may interfere in pure religious matters. On the other face, the religious charities may execute their religious mission in the coat of charity.

In US, Charities receiving tax-aid were required by the civil rights laws, to avoid discrimination in hiring and providing services and to avoid proselytizing.¹⁶⁰ However beginning with President George W. Bush, efforts are being made to eliminate the non-discrimination requirements either by law or executive order, and to allow these charities to promote religion itself if they wish.¹⁶¹ But this has a great deal of negative effects as the Texas fundamentalist writer Marvin Olasky well expressed:

President Bush's charitable choice expansion would clearly violate the church state separation principle; it would have government pay religious groups for what they have always done on their own; religious minorities could suffer discrimination under the plan; participating churches could lose their 'prophetic edge' and become domesticated branches of the civil bureaucracy; government will be forced to choose among competing religious programs, with the most politically connected getting more than their 'fair share', non sectarian secular programs could become second-class and underfunded; the promoters of 'charitable choice' often use the idea for partisan political advantage; president Bush has used dishonest tactics and appeals to religious prejudice to win support for his program.¹⁶²

¹⁵⁸ Adrienne Katherine Wing and Ozan O. Varol, *Is Secularism Possible in a Majority Muslim Country? The Turkish Example*; in Texas International Law Journal, Vol. 42, No. 1 (2006-07), P-28-31

¹⁵⁹ See Edd Doerr, in Supra Note 64, P-8

¹⁶⁰ Ibid, P-8

¹⁶¹ Ibid, P-8

¹⁶² Albert J. Menendez and Edd Doerr, *the Case Against Charitable Choice : Why President Bush's Faith-Based Initiative is Bad Public Policy* (Silver Spring, MD: Americans for Religious Liberty, 2001) as quoted by Edd Doerr, in Supra Note 64, Foot Note 22, P-8

3.6 Legal Pluralism and Non-interference: The Compatibility of Religious Courts

Depending on the societal composition, countries mostly adopt a legal and institutional mechanism. One form of such mechanisms is legal pluralism by which disputes can be settled in respect of religious/customary courts and regular ones in their respective jurisdiction. Its justifications and rationale are different from state to state. The main question here is not as to these justifications; instead it is towards the compatibility of these courts to the principle of secularism.

As to the case of religious courts, the African Commission Court of Human Right stated that *it is fundamentally unjust that religious laws should be applied against non-adherents of the religion.*¹⁶³ The court insisted that *everyone should have the right to be tried by a secular court if s/he wishes.*¹⁶⁴ Actually this argument is not against legal pluralism. Instead, the problem is judging non-adherents by religious courts. I.e. the adherents of religion are not obliged to be tried in secular neutral laws and courts. The sin, according to this argument, is to apply religious laws and religious court procedures for all the citizenry. In such case, the supreme sovereign is a divine power rather than the people.

Contrary to the acceptance of legal pluralism, many argue against such concept. If the state allows cultural and religious groups complete freedom to define family and inheritance matters, those groups may trample on the rights of individuals within the group and may discriminate in ways that are unacceptable to the society.¹⁶⁵ Cultural or religious groups may not be permitted to stop people from having access to laws and procedures that are available to all. Some extremists urge that legislative reform is needed to prohibit religious organizations from purporting to exclude the jurisdiction of the courts in family and inheritance law matters.¹⁶⁶

The employing of religious law in family proceedings would deprive women of rights that are available to them in the civil courts. There is a serious issue as to whether a woman's consent to such arbitration is freely given. There is again a real issue as to whether genuine consent is given

¹⁶³ *Amnesty International and others V Sudan* (2000) AHRLR 297 (ACHPR, 1999); in Heyns and Killander (eds. 2007) compendium of Key Human Rights Documents of the AU (3rd ed. 2007) p-176

¹⁶⁴ *Ibid*, p-176

¹⁶⁵ One Law for All: campaign against Sharia courts and tribunals, p-1

¹⁶⁶ *Ibid*, p-7

in a case where a woman is clearly acting against her own interests.¹⁶⁷ Whilst religious freedom is a private affair and should be protected, such protection must be subject to the fundamental human rights principles.¹⁶⁸ No one can be deprived of her/his civil right and liberty even in her/his own consent.

Tolerance and accommodation of minority groups who seek to engage in alternative dispute resolution must be balanced against a firm commitment to individual autonomy and principles of justice, fairness and equality for all. The fundamental tension that must be addressed is between respect for a minority group and protection of a person's individual rights within that minority. But, legal pluralism is not challenged for the only reason that it is against the above principles. Using public money to non secular sectarian purpose is questionable.

The other challenge is its being source of competition. In Canada, for instance, there was an arbitration law that permits binding religious arbitration. It was used by Christian religious courts. In 2003 the Ontario Islamic Institute of Civil Justice announced its intention to establish a sharia court that would offer binding family arbitration to Ontario Muslims; there was a government proposal to allow this.¹⁶⁹ However, after much campaigning by women's rights groups, in 2005 the government of Ontario decided to ban all religious courts/tribunals from deciding family and inheritance law matters on the basis that there was a serious risk to the rights of individuals within minority groups. As part of the process, a public education program was launched to make vulnerable women aware of their rights under Canadian family law.

From the above assertions, we can understand that there may be a competition to have religious courts by denominations. If this is so, the whole religious sect may claim to enact legally established court. In such case, the whole population may consent that its dispute will be settled by such courts. In this time, it is inevitable that the powers of regular courts-the list dangerous branch-could be stripped. Then, the regular courts may be left with little power. Ethiopia is not far from this problem. Most religious entities in Ethiopia have been claiming a status of legally established religious court. This claim is akin to the EOTC. This issue is discussed in the next chapter.

¹⁶⁷ Ibid, p-6

¹⁶⁸ Ibid, p-1

¹⁶⁹ Ibid, p. 5-6

The controversy on religious courts is not new to Nigeria too. Conflicts over the status of sharia law have dominated constitutional politics and ethno-religious relations in Nigeria for decades. Most recently, the adoption of stringent Sharia Codes by 12 Muslim-Majority-States in Northern Nigeria, beginning with Zamfara in 1999, was particularly contentious provoking broad concerns about the viability and survival of Nigeria's innovatively structured multi-ethnic federal system.¹⁷⁰

The 1999 Nigerian constitution provides in its Section 10(1) that *the government of the federation or of a state shall not adopt any religion as state religion*. But the recent introduction and implementation of the *Sharia criminal legal code* in the above mentioned states created complications on the neutrality of the state; Omotola strongly argued that the politics of Sharia contradicts the secular clause.¹⁷¹

Some of the areas in religious dogmas or traditions are in a conflict with the secular law. For example sharia law is incompatible with the following values:

First, the Sharia law orders unequal division of estates between male and female children. Secondly, the state of Custody of children is questionable. One of the commonly used doctrines removes boy children from their mother and gives them to their father at the age of 7 in the event of divorce. Girl children are removed at puberty. In some cases, the mother loses residence in the event of remarriage. Thirdly, Maintenance; the Nikah or marriage contract contains pre-set rules for the amount of payment on divorce. Again this does not reflect individual requirements or circumstances. Fourth, the evidence of women before the religious court is worth half that of a man. Fifth, Bigamy is permissible.¹⁷²

Here what can be argued is that religious courts may be important to the satisfaction of the religious community. But, the problem is that it is inevitable to them to get funded and to propagate religious creeds in the secular sphere. For religious entities, it may be tolerable for the sake of reciprocity. A religion may tolerate the establishment of one's religious court since the next step could be to the former. However, we have to be curious as to the status of atheists. They have '*nothing*' to get from such arrangement. It is debatable whether they can settle their

¹⁷⁰ R. T. Suberu, *Religion and Institutions: Federalism and the Management of Conflicts Over Sharia in Nigeria*; Journal of International Development, Vol. 21 No. 4, p. 547-560

¹⁷¹ Omotola, Jeremiah Shola, *Secularism and the Politics of Religious Balancing in Nigeria* (2009), p-7

¹⁷² See One Law for All, in Supra Note 165, p.3-4

disputes in respect of their view. But, if we recognize each religious or agnostic value in public sphere, it is inevitable that the sovereign would be the religious or non-religious entities rather than the real sovereign- *the people*.

If we recognize religious courts and fund those by public money, we are denying atheists to freedom of conscience. Because, in doing so, the state is obliging them to pay tax for propagation of religion which is against their creed. Indirectly, the state enhances the values of religion against non-religion, thus, interfering on religious freedom. As I have repeatedly clarified, using public funds for sectarian religious conducts is against the neutrality principle of secularism. Funding religious courts is not far from this fact.

3.7 Legal and Institutional Mechanisms to Umpire Dispute Respecting Interference

A dispute in federal systems is unavoidable in contesting for powers. The dispute may come from the conflict of separation of power or contest for imposing some force on one level of government or branch of government. What is salient in federal systems is to enact a body which can umpire the constitutional matters or disputes.¹⁷³ This institution can alleviate a dispute between the new or old legislations and practices of governmental organs as well with the basic and supreme law, the constitution.

Likewise, religions and government have a claims and competition for '*power*' in secular states. The competition may not be similar with the contest for power of conquering of sovereignty or separation of power in strict sense. But, it has some sense of contest for power of governing own issues by own selves. For that matter, it is inevitable to have a dispute to limit or demarcate their respective issues. Consequently, it could be proper to have legal and institutional arrangement to enable them to umpire or solve the disputes.

3.7.1 Dispute Between Religions/Non-Religions and the State

The main dispute between state and religion may be emanated from the problem of drawing a line between state matters and religious matters in legal as well as in pragmatic state of affairs. For that matter, countries may decide to enact appropriate laws and institutions to umpire the dispute in light of their historical and philosophical aspects. Unless this is so, it is unimaginable to realize the religious and belief freedoms and corollary of same.

¹⁷³ R. Watt, *Comparing Federal System*, (McGill Queen's University Press, 3rd Ed. 2008,) P-159

At the outset, the concept of secularism should be conceived in well manner by the citizenry. Where secularism is not rooted in the political institutionalization, capable of generating sustainable social capital, it may be difficult to achieve the purpose alleged.¹⁷⁴ If there is no sense of trust among the citizenry, the essence of secularism may fail. In such case, both parties claim entanglement to the other's domain. The trust can be built in legal and institutional arrangement.

The legal means stretches from the constitution to specific laws which govern the relation of state and religion. Mostly constitutions put provisions governing the relations between religion and state. Thus, it delimits the boundary between these 'fronts'. Moreover, international or regional treaties and Human Right Courts may recommend doing so as the European Human Right Court did.¹⁷⁵

And the institutional mechanism may be to enact appropriate constitutional interpreter or an executive organ which can do on the performance of religions. This institution is under duty to review subsidiary laws and executive acts in view of the constitution. Keeping in mind of the necessity of umpiring body, constitutions may adopt different mechanisms for reviewing the constitutionality of laws and decisions of the government organs as well.¹⁷⁶ Consequently, countries may decide to enact appropriate body to do so in light of their historical and philosophical aspects.¹⁷⁷ Moreover, Countries may be led by competence, efficiency or other parameter beyond the historical and philosophical aspect.

For that matter, there are three well-crystallized models of constitutional interpretation in our world, which can be US, European and Swiss Models.¹⁷⁸ But, we also had unique model, among other federations, in making the federal second chamber, HOF, as the sole guardian of the

¹⁷⁴ See Omotola J. Shoal, in Supra Note 171, p-2

¹⁷⁵ in its Recommendation 1804 (2007) on *State, Religion, Secularity and Human Rights*, the Parliamentary Assembly of the Council of Europe "reaffirms that one of Europe's shared values, transcending national differences, is the separation of Church and State. This is a generally accepted principle that prevails in politics and institutions in democratic countries." In Eur. Parl. Ass., Recommendation 1804: *State, Religion, Secularity and Human Rights*, 27th Sess., Doc. No. 11298, p-1.

¹⁷⁶ Getachew Assefa, *Yehigmengist Tirgum Be Ethiopia: Atekalay Eyita (Constitutional Interpretation in Ethiopia: general perspective)*; in Womber (2nd half yr, 2007) P -67 (translation mine)

¹⁷⁷ Assefa Fiseha, *Constitutional Adjudication in Ethiopia: Exploring the experience of HoF*; in Mizan Law Review Vol.1; No.1 (June 2007), P-6.

¹⁷⁸ Ibrahim Idris, *Constitutional Adjudication under the 1994 FDRE Constitution*; in Ethiopian Law Review Vol.1 No.1, P.65.

constitution.¹⁷⁹ What is undeniable here is that each model has its own distinct feature and procedure. Irrespective of these differences, however, most countries in the world have been practicing some form of Constitutional Review. True that it is not the place here to deal such issues. This writer is inconvenient in time and space to deal with all salient features of each model and each system in each country in this scope-wise Thesis.

In aggregate, the state could not judge in its own case. The state should not decide on disputes between it and religions as to their domains. In other words, the state should give that power to decision makers which are independent organs. Unless that is so, it is inevitable that one will interfere in the domains of others.

3.7.2 Dispute Between Religions or Non-Religions

These disputes may be *inter-religious* or *inter-non-religious* tensions. The main responsibility to settle these disputes resides on the state under which the believer and the religious institutions are residing. There is no, at least in formal sense, other institution to take that 'responsibility' other than the sovereign. Thus, it will take the pivotal role in umpiring such tensions.

The first issue to be raised here is the case of religious truth. The theological arguments in favor of religious freedom often begin with the assumption that their religion is the true religion.¹⁸⁰ The truth of any particular religion is, however, a matter of considerable debate and contention. Truth, if we seek, is one and single; it cannot be two or more. One plus two cannot be three and four at the same time. But in religious phases both can be true. The state or other organs are expected to tolerate such 'truth' despite its dubiousness.

The state, as the only sovereign, may not leave each 'truth' unregulated at least in time of manifestation. If it accepted each view in public sphere, there would be a question of reliability. There may be no truth at all, if the religious dimensions are different. Look statements like "□ □ □ □ □ □ □ □ □ □" (there is nothing called as Trinity).¹⁸¹ On the contrary, there are religious truths towards the Holy Trinity. If we seek the truth, it will be difficult to choose from

¹⁷⁹ See R. Watts, in Supra Note 173, P-159

¹⁸⁰ See Carolyn Evans, in Supra Note 38, p-28

¹⁸¹ Aba Samuel, □□□□□□ □□□□ □□□□ □□□? (Is there religious tolerance in Ethiopia?) Addis Ababa, Mega printing (2000),p. 129 (translation mine)

these two. State cannot decide on religious truth. If it decides that, it will inevitably interfere in interpretation of internal religious creeds.

The other dispute between religions may be getting legal personality. The contesting issue is who should get legal personality. In the *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) v. Bulgaria*, the applicants, who represent one of the two competing groups within the Orthodox Church, complained that by the Religious Denominations Act of 2002 they could participate in the administration of that religion or could establish independent religious entity; however, in the following years, the Bulgarian Government forced the Orthodox community to reunite under the leadership of Patriarch Maxim and deprived the applicant organization (the rival leadership) of any control over part of the community's affairs and property.¹⁸²

The Court (Eur. Ct. H. R) found a violation of Article 9 of the Convention. Indeed, neither the unity of the Church, even though it was a matter of the utmost importance for its adherents and for Bulgarian society in general, nor the Government's purported aim of securing respect for the precepts of religious canon could justify State action imposing such *unity* by force and disregarding the position of numerous Christian Orthodox believers in Bulgaria who supported the applicant organization.¹⁸³

My concern here is not to prove the truthfulness or falsehood of religious creed or religious values. The role of the state, too, cannot be to do so. The main duty of the state is to tolerate those views unless the alleged truths do not harm the public. To do so, the state is expected to treat all religions starting from granting legal personality. It cannot decide on the unity of same.

3.7.3 Intra Religion Dispute: Employment, Corruption and other Disputes

Unlike inter-religious tensions, intra religious disputes are very sensitive issues. To deal with such disputes may be counted as even to open the *Pandora's Box*. As to the immunity from judicial determination of theological principles; i.e. *to resolve intra faith disputes*, no comparable doctrine of immunity exists in other organizations, non profit or other.¹⁸⁴ Otherwise mentioned, the internal disputes in one religion are mostly immune from other external or state organ. But

¹⁸² Holy Synod of the Bulgarian Orthodox Church (*Metropolitan Inokentiy*) v. *Bulgaria*, App. No. 35677/04, 2009 Eur. Ct. H.R., <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>

¹⁸³ *Ibid*, p 149, 155

¹⁸⁴ See Ira C. Lupu, in *Supra* Note 18, P-1811

this may have serious consequences. For instance, the disputes in religious faiths may be against the national security, public safety and other interests (e.g. to defend the public from any corrupted practices.)

As can be observed from the last sections, in US, there is a concept of ministerial exception. In the late 1970s, the communities of religious entities were immune even from criminal liability. But after 1990s, the immunity from criminal liability was eroded. In Ethiopia, again there are cases where the religious institutions have been treated differently from other institutions. Such cases can be employment issues¹⁸⁵, disputes on managerial hierarchy in religious entities.¹⁸⁶ An employment relation between religious organizations and employees, where their task or duty is related to spiritual aspects of the former, is left to the religious entities themselves. The appointment and withdraw from managerial task is again left to them.

As to institutional arrangement, countries exceptionally may establish governmental institutions to oversee the disputes in religions. For instance, in Turkey, the presidency of religious affairs took the power to see these issues.¹⁸⁷ Ethiopian approach, in formal sense, seems similar to the Turkish approach since one of the Directorates in the Ministry of Federal Affairs took that power. These and other relevant issues are thoroughly discussed in the next chapter.

¹⁸⁵ Proclamation No. 377/2003 Labour Proclamation No. 377/2003, NEGARIT GAZETA, art3 (the Council of Ministers may, by regulations, determine the inapplicability of this Proclamation on employment relations established by religious or charitable organizations)

¹⁸⁶ See FDRE Supreme Court cassation decision on *Deacon Mihret Birhanu etal V HamerWorq St. Marry Church*, Cassation File.No.18419

¹⁸⁷ Istar B. Gozydin, *a Religious Administration to Secure Secularism: The Presidency of Religious Affairs of the Republic of Turkey*; in 2006 Marburg Journal of Religion, Vol. 11, No. 1, p-1-8

CHAPTER FOUR

THE CASE IN ETHIOPIA: PROSPECTS AND CHALLENGES

4.1 Legal Frame Work on Non-Interference

In state formation, society is the first and at the peak which is to play the pivotal role. Then the society will give the power to administer itself to the government by virtue of the social contract theory. To enable them to regulate the conducts of the government, they need *some form of agreement or contract*; if that contract is not performed well, the power giver, the public, can take even by force.¹ The main point here to stress is as to the need for some level of contract which could bind the government/state and the public.

That sort of contract can be either constitution or other higher law with similar level of constitutions. To be specific and implement these higher laws, proclamations by the legislature, regulations by the executive can be issued or enacted. These laws regulate the relation between the state and the people. Relation between the state and religions is one of the areas which need regulating laws. For that matter, many countries have constitutions and legislature made laws to govern the relations between the state and the public respecting religions.

In general terms, the legal framework of countries to regulate the interaction of the state and the public can be constitutional and other laws to give effect to the constitution. Ethiopia is not far from this arrangement. In Ethiopia there is the supreme law of the land and other parliament-made laws to guarantee regulation of rights.

Thus, I will scrutinize and summarize these issues in relation to Ethiopia to help the issue being dealt be clear – i.e. *non- interference aspect of secularism*. The first sub section will examine the constitutional aspect; and the second one is devoted to other laws subordinate to the constitution and helps the former be implemented in healthy mode.

¹ James C. N. Paul and C. Clapham, *Constitutional Development of Ethiopia* (Haile Sellassie I University in Association with Oxford University Press, 1967) Vol. 1, p-121-126

4.1.1 Constitutional Framework Respecting Non-Interference

The FDRE constitution is very generic that two-third of its full text (provisions) is devoted to Human Rights. From almost Art 7-44, there are a bundle of fundamental rights and freedoms. Moreover, the constitution under Art 13(1) obliges all organs of the government to respect and enforce these rights and freedoms (chapter-three).² This sub provision doesn't give minimal concern to other chapters in saying "*chapter three*". Because, the supremacy clause, Art 9, rightly declare that *all citizens, organs of the state, political organizations, other associations as well as their officials have the duty to ensure observance of the constitution and to obey it.*³

Fortunately, Ethiopian constitution recognizes and guarantees freedom of religion under Art-27. This fact was dealt in section 2.6 of chapter two. Freedom of religion is mostly claimed as private; especially in Ethiopian constitution, since this freedom is enshrined under the category of fundamental rights and freedoms, the freedom is principally claimed by individual.⁴ What ever its brand may be, in Ethiopia, there is a wide range of freedom to exercise the right save permissible limitations.

However, my main focus is not the state of and the scope of freedom of religion. Instead, the main deal of this thesis is towards the institutional aspect of religions beyond the individualistic value. Actually, it may be difficult to put a watertight division between individualized freedom of religion and institutional independence of religious institution.

Interference on institutional arrangement of religious entities may be blamed as if it was against principle of secularism but it might not be against freedom of religion. Because the interference may be positive to the advancement of religious freedom at private level but degrades the institutional independence. For instance, to make an explicit budgetary arrangement for building of worshipping places may be against the principle of secularism but may have a rationality to advance exercising of freedom of religion. In the same manner, interference on private level of freedom of religion may not be necessarily against secular principles. There is a negative

² FDRE Constitution Proclamation No. 1/1995, Art 13(1)

³ Ibid, Art 9(2)

⁴ Fasil Nahoum (Dr.), *Higemengist Ena Mengist Behaimanot Zuria* (Constitution and Government about Religion) (Translation mine) (a Paper Presented in Country-Wise Conference on Religious Issues in Collaboration with Ministry of Federal Affairs, (2008)), P-8

interference (failure to do) in religious freedoms but may not necessarily be against the principle of non interference aspect of secularism. Failing to help the public to implement human rights like freedom of religion is against freedom of religion but it may be consistent with the principle of secularism.

Despite conceptual and technical distinctions, freedom of religion has corollary rights from which secularism in its non-interference aspect is the basic one. I.e. protected individuals can establish equally protected entity. Ethiopian constitution, for that matter, gave a high level of spot in express manner that religious entities/communities are equal.⁵ Fasil Nahoum aptly expresses that FDRE constitution under Art-3(2) has given an honorable and in precious space to religious institutions.⁶

This can be observed from the above mentioned sub article-i.e. Art-3(2), which deals the Ethiopian honorable and dignified Sovereignty mark—the *Flag*. It says *the national emblem on the flag shall reflect the hope of the Nations, Nationalities, Peoples as well as religious communities of Ethiopia to live together in equality and unity.*⁷ We can see here that religious communities are compared with and put together with the highly respected, sovereign and corner stones of the federation- *Ethiopian Nation's Nationalities and Peoples*. This indicates that how much a crown bench is given to religious communities.

The equality aspect has a great deal of values and related messages. The main message of equality is firstly non-discrimination- *either positively or negatively*. Non- discrimination in the positive aspect is to treat all religious entities equally; if the government gives a tax-free land to one of the religions but fails to do so to the other, the government is treating religions discriminatorily so that contravenes the secular clause. Nondiscrimination in the negative sense is to mean to be neutral from direct or indirect help for all religions. In strict sense, it seems to exclude all acts which can advance religions. In this case, the state is expected to do that 'exclusion' neutrally to all religions without preference to one or some religions.

⁵ See FDRE Constitution, Supra Note 2, Art 3(2)

⁶ See Fasil Nahoum, Supra Note 4, P- 2

⁷ See FDRE Constitution, Supra Note 2, Art 3(2)

Beyond the equality aspect, Ethiopian constitution guarantees the religious self-determination, *not actually up to secession*. This is to mean that Ethiopian laws including the supreme law of the land recognize not only equality of religions but they also grant due concern to religious institutional autonomy in their own 'territory'. But that autonomy does not include an absolute immunity from the laws of the country. For this matter, the constitution enshrines Art-11(3) which reads: *The state shall not interfere in religious matters and religion shall not interfere in state affairs*. This sub provision has a far-reaching consequence that guarantees the autonomy of religions. So many issues, however, may be raised here. What does non interference imply? What are state matters and religious ones too?

When we talk about the autonomy of religions, it should not be forgotten that the people is sovereign. In Ethiopian context, the Ethiopian Nations Nationalities and People are the holders of sovereignty; the supreme power resides in them.⁸ Thus, it should be reminded that no sovereign is other than the NNPs of Ethiopia in the nobler approach of Ethiopian constitution. Constitution adopted by the Sovereigns is the supreme law of the land. Fortunately, Ethiopian constitution declared itself that *it is the supreme law of the land*; any law, customary practice or a decision of an organ of state or a public official which contravenes this constitution shall be of no effect.⁹ . Thus, a religion cannot claim immunity from regulation by the laws of the nation (*from which the constitution is the supreme*) alleging that the laws of the state is not compatible with its creeds and traditions.

This may not be always true. The reason is that there is a concept of conscientious objection. As to this aspect, Ethiopian constitution has a clue in Art 17(4) (b). It says "*forced or compulsory labour*" shall not include, in the case of conscientious objectors, any service exacted in lieu of compulsory military service.¹⁰ This indicates that some religious creeds or traditions can be tolerated so that they can be immune from regulation by public laws. This, however, cannot be always true. It is in an exceptional case. If we accept the case as a principle, the supreme law may be religious creeds and traditions rather than the constitution and other state laws.

⁸ Ibid, Art 8

⁹ Ibid, Art 9(1)

¹⁰ Ibid, Art 17(4) (b).

Now it is worthy to see the issue prone to debate in this time and at the time of the drafting stage of the FDRE constitution. The debate may continue even for the future unless some sort of solution is articulated. One of the debates was as to the emblem to affix on the Flag which indicate the equality of religions. The debate in the Constituent Assembly had two directions. One group supported and stuck that the emblem in the Flag should contain a message which indicates equality of religions.¹¹ The other group exert that the reflection of religious equality in putting symbols on the emblem of the flag would undermine the public.¹²

Ato Daniel Belayneh, who was representative of Region 14, strongly opposed the affixation/reflection of religious symbols on the emblem. (*There was an allegation that religious marks like cross, moon and star were to be reflected on the emblem to indicate equality*). The reason as he clarified was that it could be too difficult to think all religions would fly the Flag which contains a symbol of other religions.¹³ Ato Daniel added that to put a reflection of all religions on the emblem of the Flag might advance the recognition of new satanic religions¹⁴ which are not advised to flourish in Ethiopia. He was against the atheistic values.

Finally Art 3 (2) of the constitution enshrined in the shape as it has now. The Constituent Assembly decided on this sub provision as 517 votes in favor.¹⁵ While that much debate on the reflection of the emblem on religious equality, no issue was raised as to what “*equality*” mean.

Having that problem unsolved, the Constituent Assembly turned its face to the non-interference clause-one sect of secularism. The first two sub-provisions under Art 11 were not prone to debate. But the non-interference aspect was much contested area. Shaleka Admase Zeleke regarding this issue said that art 11(3) implies that *state is governed by a constitution but religions are governed by god’s law*.¹⁶ This saying may not answer the issue at hand in direct and explicit manner. But indirectly, it can have a good response to that case. If state is governed by constitution, it can’t be governed by religious laws as to *its matters*. And if religions are led by

¹¹ H.E. Ato Kuma Demeksa and Advocates of Such Stand, A Speech in The Constitutional Assembly of Ethiopia; in the Minutes of the Constitutional Assembly, (1994), Vol. 2, P-5

¹² H.E. Ato Yohans Assefa, A Speech in Supra Note 11, Vol. 2, P-2

¹³ H.E. Ato Daniel Belayneh, A Speech in Supra Note 11, Vol. 2, p-3

¹⁴ H.E. Ato Daniel Belayneh – Ibid

¹⁵ The Minutes, Vol. 2, P-10; 517 Votes in favor, 4 Votes in opposition and 4 Votes abstained

¹⁶ H. E. Ato Shaleka Admase Zeleke, A Speech in Supra Note 11, Vol. 2, p13-14

god's law, they may not be regulated by secular law as to *their matters*. The respective laws may not be fit to regulate the matters in the other entity.

To strengthen this idea, one of the members of the Constituent Assembly, Ato Shemsedin Ahmed, expressed that the main point to give emphasis here under Art 11(3) is only to show the state is secular and religions are eternal/spiritual.¹⁷ The proper provision to regulate the individual's religious freedom is dealt somewhere in the constitution i.e. Art 27.¹⁸ This indicates that the relation here is between the state and religions as an entity but not between the state and individuals. Therefore, when we say state matter and religious matter, it seems a matter which is highly related to the domain of being entity. But this may mislead us. Because the matters in entities are, at the same, time matters to individuals.

As to non-interference, Ato Ali Abdo said that: when we say the state shall not interfere on religious affairs, it is to mean the state as a state can't do religious tasks and government workers/employees are expected to manifest their religion beyond the working hours of their regular service. On the other face, to mean religions shall not interfere in state matters is to mean that a religion can't force others to accept its creeds in condemning the governmental ones.¹⁹ The second aspect is as to the sovereignty question; i.e. Religion cannot and shouldn't be sovereign.

The approach in the contemporary Ethiopia, as Fasil Nahoum said, *doesn't make a state an advocate of atheistic values; it does not mean too that the state propagates one's religion.*²⁰ Instead the declaration of Art-11(3) is only towards the neutrality of the state from religious values.²¹

In general, the recognition of separation of state and religion in constitutional frame work helps both entities could discharge their respective duties. Moreover, it helps each can journey the farthest possible in liberal sense in its domain.²² Whatever opinions have been observed from scholarly writings or from the Minute of the Constituent Assembly, it is still difficult what the scope and implication of non-interference clause is.

¹⁷ H.E. Ato Shemsedin Ahmed, A Speech in Supra Note 11, Vol. 2, p-14

¹⁸ H. E. Ato Shemsedin Ahmed, Ibid,

¹⁹ H. E. Ato Ali Abdo, A Speech in Supra Note 11, Vol. 2, p-15,

²⁰ See Fasil Nahoum, in Supra Note 4, p-6

²¹ Ibid, p-6

²² Ibid, p-6

4.1.2 Other Laws Respecting Non-Interference

It is indisputable that constitutions use economical and precise language. True that, most constitutions stipulate main principles and major issues. The parliament/legislature then is expected to proclaim specific laws which are relevant to execute the constitutional provisions. These laws in broad sense can be either private laws or public laws. The first category can regulate the private relations; and the latter governs the relation between individuals with the state on behalf of the public.

In Ethiopian context, private laws can be laws like the civil code, family code, and law of contracts and others which regulate civil or individual relations. And the Criminal Code and Tax law which regulate the relation between the public and individual persons (legal and physical) are some of the public laws. Both categories of laws have something to say on religious institutions and their status.

The 1960 civil code of Ethiopia, declares that there *shall be no interference with the exercise, in accordance with the law, of the rites of any religion or creed by residents of the Empire, provided that such rites be not utilized for political purpose or be not prejudicial to public order or morality.*²³ This code stipulates smartly the non-interference aspect of secularism. But this provision doesn't see the bi-lateral inter-dependency. It only proclaims religious freedom and limits. It doesn't deal the state of interference of religions on the state in unequivocal manner.

Other provisions of the civil code which deal with “*autonomy*” of ‘*religious institutions*’ are Articles from 394 to 482. Art 398(1) stipulates that the Ethiopian Orthodox Church is regarded by law as a person.²⁴ But churches, religions, associations other than the Ethiopian Orthodox Church shall be subject to the special laws concerning them.²⁵ Failing such special laws, these groups shall be deemed to be ‘*associations*’ falling under the provisions of *this chapter* dealing with associations.²⁶ The part dealing with associations is Chapter II of BOOK I, Title III of the Civ. C.

²³ The Civil Code of the Empire of Ethiopia; Proclamation No. 165/1960, Negarit Gazeta Extraordinary (1960), Art-15

²⁴ Ibid, Art- 398(1)

²⁵ Ibid, Art 407(1)

²⁶ Ibid Art 407(2)

We can see here that the EOTC is a privileged church over other religions. Other religions are deemed to be mere associations unless special law is proclaimed /enacted to the effect that they can be treated as religions like the EOTC. Unfortunately, no other law has been enacted to such effect till this moment. Therefore, these religions are being seen as if they were associations and be governed by the Civil Code and the 1966 Association Registration Regulation.²⁷ This have many negative effects on religions as can be dealt in section 4.2.1.

Theoretically, the problem was not tangible to other religions alone. Because the rights vested to the legally established state religion, EOTC, were to be prescribed by administrative laws.²⁸ It seems true that it was with difficulties in deciding internal matters. Because, it seems only those rights vested by the governors as to the wish of the latter were the only rights to exercise by the church. As to the above provision, its powers were not expected to be inherent to the nature of the church. Getting this fact in consideration, it may be too silly to think that EOTC was treated in equal manner with other religions. Because, thinking like this may be amazing since the EOTC and the state were thought “*consanguine in blood and flesh*”. Therefore, to this writer, it is persuasive to think that the rights and duties prescribed under the administrative law were secular matters to be exercised by EOTC in addition to the religious affairs.

Recently, Ethiopian laws have been granting due space to religious equality and some level of autonomy to them. For instance, the federal and state family codes recognize religious marriage irrespective of the identity of a religion.²⁹ The criminal code accepts the equality of religions.³⁰ The Charities and Societies proclamation (CSO proclamation here in after) clearly stipulates equality of religious entities.³¹ But the surprise is that the practice and the laws applicable in 1960s have been continuing to serve in this time even after the declaration of honorability and equality of religions.

²⁷ Association Registration Regulation, Legal Notice No 321/1966; Negarit Gazeta (1966)

²⁸ See Civ. Code, in *Supra* Note 23, Art 398(2)

²⁹ Proclamation No.213/2000, the Revised Family Law, Federal Negarit Gazeta (2000), Art 3 and almost all of state in their family code recognize so

³⁰ The Criminal Code of The Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, preface

³¹ A Proclamation to Provide for the Registration and Regulation of Charities and Societies, Proclamation No. 621/2009; Negarit Gazeta (2009), Art 14(4) (k)

4.2 State Interference on Religious Matters

4.2.1 Legislative Interference on Religious Matters

Art 9(2) of the FDRE constitution clearly says *all... organs of the state... and as well as their officials have the duty to ensure observance of the constitution and to obey it*. The legislature is one of the organs of the state so that it should discharge its duty. The House of People Representatives (HPR here in after) has the power of legislation in all matters assigned by the FDRE constitution to federal jurisdiction.³² In regional states, The State Council has the power of legislation on matters falling under State jurisdiction.³³ In exercising the above powers, both the HPR and the State Councils should give due concern to the duty to ensure the observance of the constitution.

Non-interference clause enshrined under Art 11(3) is one of the basic principles of the FDRE constitution. Thus, HPR, State Council or other body which take power to legislate/enact a law by representation/delegation³⁴ may not overlook the above duty. Actually, the limitation clause under the right to freedom of religion under the FDRE constitution provides a better justification in limiting legislations regarding religion in Art-27(5).³⁵ But this limitation does not regulate the relation between the state and religions in direct and explicit manner. It applies mostly to individualized manifestation of freedom of religion.

Anybody with legislative power is, therefore, expected to see its prospective laws in view of the constitutional provisions (non-interference clause in this case). However, laws, as will be dealt, have been observed intruding on religious matters. The first laws to be dealt in this section are the 1960 Civil Code and the 1966 Association Registration Regulation.

As mentioned a bit earlier, the 1960 Civil Code stipulated the EOTC in a privileged position over other religious entities. The other religious communities have been treated as if they were associations. But treating religious institutions as mere associations have a great deals of

³² See FDRE Constitution, in Supra Note 2, Art 55(1)

³³ Ibid, Art 50(5)

³⁴ Ibid, Art 77(13); Council of Ministers (CoM) may enact regulations pursuant to the power vested by HPR.

³⁵ Ibid, Art 27(5); it says *Freedom to express or manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, peace, health, education, public morality or the fundamental rights and freedoms of others, and to ensure the independence of the state from religion*.

negative consequences as has been seen in chapter two of this paper. After the enactment of CSO legislation, Charities and Societies are being registered and their conduct is regulated by same. But religions are left with no relevant and updated law. The former law continues to apply.

That law is the 1966 Association Registration Regulation. That regulation was issued by the Ministry of Interior pursuant to the authority vested in it by article 479 of the Civil Code of the Empire of Ethiopia. It has been continuing to apply on the registration of associations since no law is enacted for such purpose. In the 1966 Association Registration Regulation, there are so many instances where the state could interfere on religious matters.

For instance, the Memorandum of Association should and shall contain the criterion for the qualifications for membership in the association including any fees and dues payable by members.³⁶ Secularism mostly leaves the internal organizations and the criterion to membership to religions themselves. If the state assesses the criteria of believers to be a member, it is investigating the creeds of religions. The worst thing is again manifested here by requiring the Memorandum of Association of religions to contain the qualifications for membership regarding the fees and payments. This may mean that the members may be obliged to pay some amount of money or other payment to be a member. If such elements are absent, the legal personality may not be granted at all. This provision inevitably will let the executive to intrude to the internal affairs of religions.

The other instance where this law intrudes or permit let others intrude is the case where the manner of election or appointment of the directors and agents of the association should be mentioned.³⁷ The case by itself is not bad. But the main question is what the state shall do when the procedure of appointment of such personals are not specified or infringed. There is a situation where the office shall advice the founders in writing as to the relevant defects and such remedial measures in respect thereof as may be necessary.³⁸ In such case, the registration office may give recommendations on the arrangement of religious internal matters as it needs rather than the need of religious institutions. Ultimately, the executive will inevitably intervene on the

³⁶ See Association Registration Regulation, in Supra Note 23, Art 6(4)

³⁷ Ibid, Art 6(7)

³⁸ Ibid, Art 8(2)

appointment and election of directors and officers, if that association (religion in our case) doesn't apply the alleged procedure.

Worst of all again is the registration body may deny the registration where the particulars of the memorandum of association are alleged false or misleading.³⁹ This indicates that the registration institution may investigate the truthfulness or falsehood of the particulars in the memorandum of association. The particulars in the memorandum of association may be either acquisitive or spiritual. The former types of particulars are mostly weighed in view of rational minds and scientifically. But when we come to the spiritual ones, they can be transcendent truths whose truthfulness can only be clear to the believer. For instance, the religious institution can mention its main objective and mission is to see Jesus Christ be here in the earth leaving the heaven in near future. But the truthfulness or falsehood of this and other particulars cannot be proved by the registration agency. If they try otherwise, it is inevitable that the institution interferes in the internal pure matters of the religious organizations; i.e. interpreting religious creeds.

Art-10(1) of the above mentioned regulation also obliges the religious board of management of an association shall notify the office in writing of the time and location of any general meeting of the members of the association, not later than seven days prior to the date of such meeting.⁴⁰ This situation is again an intrusion of state in internal arrangement, how and when to bear a meeting.

Every Association shall keep adequate accounts and records of income and expenditure and shall make the same available to inspection from time to time or at any time up on request by a duly authorized official of the office.⁴¹ This act may be tolerated since it defends religious institutions from corrupted deeds extending in this time.⁴² But this regulation doesn't work to all religions. For instance, it does not apply to the EOTC being it is a legally established Church, as some said.

On behalf the Charities and Societies Registration Agency (CSOA here in after), Ato Bzouyene Gebre-Egziabher clarified that this regulation is only applicable to other religious institutions.⁴³ Thus, the EOTC may not be expected to be audited or to renew its license of legal personality.

³⁹ Ibid, Art 8(2)(a)

⁴⁰ Ibid, Art 10(1)

⁴¹ Ibid, Art 12(1)

⁴² Confidential interview with one of the figure officials in EOTC

⁴³ Interview with Ato Bzouyene GebreEgziabher, A Legal Advisor of the Commissioner and Officer of Monitoring and Evaluation in the Charities and Societies Agency, (Sep. 15, 2010)

Reporting is also an obligation to other religions save EOTC.⁴⁴ This seems against the constitutional principle of religious equality.

The office of registration has a right to supervise the management of associations.⁴⁵ In this case, the office even can order the convocation of a general meeting; i.e. the office can call a general meeting on behalf of the members where the board of management fails to do so by a written request of 10% of the members.⁴⁶ A superfluous provision is included in the Association Registration Regulation which declares *where any substantial portion of the members thereof have been convicted by a competent court of any crime arising out of or in connection with the activities of the association, the association shall be dissolved.*⁴⁷ Again here the regulation permits the executive to interfere on the arrangement of meeting as to how and when to do so. This fact is incompatible with the mission of religious institutions. The number of members in religious institutions doesn't substantially affect the mission of religions unlike other business or non-profit organizations.

The other law which has relevance to the issue being dealt is the Flag proclamation. We have seen earlier the issue of religious equality in the last section that the emblem of the Flag has contained a message to treat religious communities equally. To enforce such and other Flag-related issues, the Flag Proclamation No. 654/2009 was proclaimed.

The proclamation has scope of application within the territorial boundary of the Federal Democratic Republic of Ethiopia including Regional States and Administrative Cities.⁴⁸ Therefore, it is indisputable that the proclamation applies to all physical or artificial persons within Ethiopian territory or outside of Ethiopia in the conditions stipulated under Art 3(2) of the proclamation.

The first issue is as to the honorability of the Flag. Art 17(1), regarding this issue, says *any Ethiopian national have the responsibility and duty to pay due honor to the Flag of the federal*

⁴⁴ See Association Registration Regulation, in Supra Note 23, Art 13

⁴⁵ Ibid, Art 14

⁴⁶ Ibid, Art 14(1)

⁴⁷ Ibid, Art 15(3)

⁴⁸ The FDRE Flag Proclamation, Proclamation No. 654/2009, Negarit Gazeta (2009), Art 3(1)

*democratic republic of Ethiopia.*⁴⁹ Giving such level of honor to a Flag and to impose such duty on religious organization may be against the internal dogmatic or tradition of religions. As to the interview with Ato Abiy Agena, a Jehovah Witness follower, the state of giving high standard of honor for non- Divine aspects is against the will of God. He adds:

giving ultimate respect and honor to “temporal things”, whatever their mission is, is counted as if we believe in “gods” or ‘idols’ which is inflicting to the believers. Beyond that, being Flags are manifestations of sovereignty (territorial integrity) it is against our belief while our belief is “boundary-less.”⁵⁰

The proclamation has detailed rules as to the particulars of the Flag to fly in different instances. One of such specification is that in public holydays, the size of the Flag flown in the streets shall be size No. 5, i.e. 90cm X 180 cm.⁵¹ Ethiopian law recognizes religious holydays as public holydays. In such ceremonies, the religious entities may fly Flags or symbols in the streets or in their buildings. For instance, the religious entities which are to celebrate at least their own religious ceremonies may fly different types Flags. But What if, on the contrary, fail to comply with the prescribed requirements?

The Flag Proclamation insisted that the Flag is single. Art 16 declares the unity of the Flag.⁵² There is only one Ethiopian Flag no other. What if religious institutions use the Green, Yellow, Red Flag without the emblem? The answer is in the proclamation itself. Art 23 stipulates to use the Flag without its emblem as provided under the proclamation is punishable for 5000 birr or rigorous imprisonment up to one year.⁵³ This penalty will be twofold where the infringement is committed by a legal person, i.e. up to a fine of 10,000 birr.⁵⁴

But as to one confidential interview with EOTC priest and gospel preacher, religions may have spiritual interests and meanings on the colors and shapes of the Flag. For instance, he said, the Orthodox Church uses the Green, Yellow and Red colored Flag to memorize St. Marry as called

⁴⁹ Ibid, Art 17(1)

⁵⁰ Interview with Ato Abiy Agena, A Jehovah Witness Church Pastor in Piazza Atbia, (Oct. 4, 2010)

⁵¹ See Flag Proclamation, in supra note 48, Art 11(7)

⁵² Ibid, Art 16

⁵³ Ibid, Art 24(2)

⁵⁴ Ibid, Art Art 24(3)

Belt of Merry (*yemariam Mekenet, in Amharic*); thus, it may be unreasonable and forced intrusion of the state in the affairs of the religion.⁵⁵

Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 is the other law which should be left uncovered here. It regulates even religious conducts, writings and other audio video deeds of the religious organs. Actually, it is disputable that whether this law is applicable to religious Media. But since the law does not put an exception;⁵⁶ we should not make an exception by ourselves. Thus, it is presumed that this law applies to all persons in the empire. If that is so, it is inevitable that this law regulates religious Media.

Actually, most religious Media have committed many infringements of law.⁵⁷ But infringement of law may not suffice to justify the regulation of religious media by the above proclamation. Regulating their conduct by a proclamation which serves for the secular freedom of expression is somewhat unreasonable. Their purpose is different one another. Even the rationality of freedom of expression may not serve to the religious media. The main rationale to justify freedom of expression are assuring self fulfillment, truth finding, participating in decision making and to build peaceful and stable society.⁵⁸ However, the main rationale behind religion is transcendental one which mainly sticks with revelation or to be righteous before God or other supreme being.

However, even in cognizance of such difference, the government has been observed regulating the spiritual presses in accordance with the press proclamation. For instance, on February 16, 2008, Islamic newspapers *Al Kidus* and *Selfefia* were closed and the publishers imprisoned alleging that they have infringed the Freedom of the Mass Media and Access to Information Proclamation and the criminal law of Ethiopia.⁵⁹ If this case continues unalleviated, the consequence may be devastating to religious entities to propagate their religion.

⁵⁵ Anonymous interview with the orthodox church servant

⁵⁶ Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 has put an exception to that effect nowhere in the entire proclamation

⁵⁷ Religious Medias and infringement of Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 available at http://www.ethiopianreporter.com/index.php?option=com_content&view=article&id=2526:2010-06-20-14-46-13&catid=130:2009-11-23-08-46-54&Itemid=615

⁵⁸ Craig R. Ducat, *Constitutional Interpretation* (16th ed. 1998) p-912

⁵⁹ Universal Periodic Review 2009, ETHIOPIA

4.2.2 Executive Interferences on Religious Matters

As clearly stipulated in Art 13(1) and Art 9(2) of the FDRE constitution, the executive is expected to ensure the observance of the constitution and it should obey the constitution. Since Art 11(3) of the constitution is one of the constitutional provisions, the executive has to observe the implementation of that sub provision in discharging its duty. The executive is expected not only to ensure the observance of the constitutional provisions but it also should refrain itself from interference on religious matters.

In a secular state, neither of the organs can inhibit nor advance any religious dogma, faith or sect of religion.⁶⁰ In the case at hand, the executive is not expected to do so. Again it should not censor religious creeds.⁶¹ But the practice in Ethiopia is very perplexing.

The problem begins from the registration and renewal of certificate of legal personality. The laws to apply for registration and regulation of religious conducts are the 1960 civil code and the 1966 Association Registration Regulation 321/66.⁶² I have clarified a bit earlier that these laws are not compatible with the purpose and objective of religious organizations.

Now what I have to see is the situation in the executive i.e. the CSOA. This agency is doing on registration of religious organizations in addition to other charities and societies. It is not clear in the proclamation whether the power to register religious organizations is granted to it. The CSO proclamation clearly stipulated that the religious organizations are excluded from this legislation.⁶³ But it does not say anything as to the power of the agency respecting religious entities. However, we cannot deny the fact that there is no institution companionable to this deed other than this Agency.

In order to carry out registration, the CSOA has adopted internal working rules. These working rules contain so many pre-conditions for the registration of religious communities. Assessing the

⁶⁰ Evelyn Hanshaw, *Our Federal Constitution, a Programmed Approach to the Constitution of the USA* (Prentice Han Inc. 1965), p-14

⁶¹ Ibid, p-14

⁶² Internal Working Rule of CSOA, See Annex 2, p-1

⁶³ See CSO Proclamation, in Supra Note 31, Art 3(2) (a)

religious entity's compatibility with the Agency's internal working "rules" is the main undertaking here in the Agency.

From the specified preconditions, the most debatable and handy to my objective are the following. The fiscal year of the religious organization, the criterion for membership, the rights and duties of members, the state of termination of membership, Bank-account signers are expected to be specified in the memorandum of association.⁶⁴

Meeting, election and procedure of decision making are expected to be specified in the memorandum of association.⁶⁵ The government shouldn't be expected, in secular state to know how religious leader are elected. The government may not be expected to require the democratic nature of electoral process. All of these preconditions need internal assessment of religious organization. Religions may say the leader will be elected after one sees a hallucination or daydream.

The amazing thing here in the deed of this agency is that it orders how to amend and dissolve the religious organization; *the amendment of memorandum of association and the dissolution of the religious institution are to be effected by two third majority vote of the General Assembly.*⁶⁶ This seems very comical. The government is deciding how to dissolve religious entities while that decision could have been decided by the religion itself.

The Agency working rules continue to intrude to the internal affairs of religions. It declares that the religious institution can't and should not make relations with institutions whose purposes and objectives are not similar with the former; the rule prohibits any relation, cooperation, or the giving or receiving of material or money.⁶⁷ These bodies may be political parties/organizations, or those who can have a danger to the security and peace. For the sake of national security, rights may be limited. But, in doing so, the limits should be prescribed by law, necessary and proportional. However, mere receiving of money from any where may not be necessarily against the security or peace of the country.

⁶⁴ Pre-Conditions for Registration of Religious Organization, see Annex 1, p-1

⁶⁵ Ibid, p-1

⁶⁶ Ibid, p-1

⁶⁷ See Annex 2, in Supra Note 62, at point 2(c), p-1

The other duty on religious organizations is to make a report of annual performance and audit in a month after the end of the fiscal year.⁶⁸ This reporting system may be protective of the followers from unwanted embezzlement. But that rationality may not serve for all religions. The EOTC is not duty bound to do so. As to this issue, Ato Bzouyene replied:

all knew that religions are equal; but one can't deny that the EOTC is recognized by law as a legal person; one may not expect the EOTC to be registered again. Consequently, it has not been registered from 1960 till this time. But others are not in the same position. Therefore, they are expected to be registered.⁶⁹

But, to this writer the reason is not satisfactory. Because to be recognized as a legal person is not and can't be a factor to preclude auditing or reporting of annual performance. The only reason, as Pastor Ayitegeb clarified is to give unique respect to the major or old/historical religions.⁷⁰ This reason gives sense to this writer. The EIASC till 2004 has not been registered but with no ramification.⁷¹ The reason was, as to the 2004 Ethiopian International Religious Freedom Report, their protest to the Prime Minister Office.⁷² Had the only reason for registration and reporting been non-recognition by law as a legal person, the failure to renew and report by the EIASC would have consequence. It seems for this reason that Hajji Seid Asmare said the Islam religion is being treated satisfactorily since ever they have been treated before.⁷³

A mere failure to report annual performance and audits may have a great ramification to new religions. But, it has nothing to do with the "historic" religious entities -*EOTC and Islam*. But this kind of treatment against supreme law of the land may have far reaching negative consequences. The state shouldn't treat some as if they were '*step children*' but others as '*real children*'. This type of discrimination doesn't go with the constitutional declaration of equality of religious entities. Let alone the government, physical persons could not treat '*illegitimate*' child and adopted child unequal with the child in regular marriage in succession laws.⁷⁴

⁶⁸ Ibid, at point 3, p-1

⁶⁹ Interview with Ato Bzouyene Gebre Egzeabher, in Supra Note 43

⁷⁰ Interview with Pastor Aytegeb Birhanu, the Seventh Day Adventist Church Pastor in the Main Center(Stadium), (sep. 16, 2010)

⁷¹ Ethiopian International Religious Freedom Report (2004), p-3

⁷² Ibid, p-3

⁷³ Interview with Hajji Said Asmare, Head of Monument Protection and Public Relations in EIASC, (Oct. 8, 2010)

⁷⁴ See Civ. C. in Supra Note 23, Art 836

The other point as to the practice of the CSOA is to order the religious institution to publicize the name in news paper.⁷⁵ The main rationality to this publicizing is to know whether there is an opposition to the establishment of that new religious organization. As to Bzouyene G/Egziabher, the very purpose is to know whether that religion is really new. He, in clear manner said that:

to publicize in news paper will help the existing religions from overtaking of their name and their good will by the new comers. No religion can be established in the name of others. And if the alleged new religion is 'secessionist' from the existing religion, the act of publicizing will help the 'rampant' religion whether the former was seceded in peaceful means without embezzlement, corruption or other misconducts. In the later case, the agency could not register the secessionist religion, unless the rampant religion permitted to do so.⁷⁶

By this case, the Islamic League of supreme council was dismissed. The main reason was that it got legal personality with the same name of the Ethiopian Islamic Affairs Supreme Council.⁷⁷ After it got legal recognition, its certificate of legal personality was revoked by the CSOA where the EIASC alleged the former acquired the latter's name.⁷⁸ To me Islam and Islamic league as nomenclature are different. The first is a general terminology to the Islamic religions. And the later is a league in that terminology i.e. specific issues which can't fit with the Islamic League might have gotten a space in the general terminology. In such situation to have different and independent institutional arrangement is necessary.

Had the argument of the CSOA been true, the institutions like protestant, catholic or orthodox entities couldn't have been an institution independent of one another. They are parts of Christianity so that no differences would be possible as the case at issue. But, for different dogmatic and traditional differences, these entities under Christianity have got independent legal personality. The case is not different for the Islamic one. In Islamic religion, there are sects like Kharajite, Shiite, and Sunni Muslims. So it would not be amazing if that is true in Ethiopia.

In like manner, there could be an Islamic sect which has a difference from the recognized Ethiopian Islamic Affairs Supreme Council. But, Muslims like Hajji Seid Asmare insit that the

⁷⁵ See Annex 2, point 10, p- 5

⁷⁶ Interview with Bzouyene GebreEgziabher, Supra Note 43

⁷⁷ Ibid

⁷⁸ Ibid

only legally recognized Islamic religious Institution is EIASC; every institution which needs to be under the Islamic dogma and practice are expected to be registered under the willingness of EIASC.⁷⁹ But to me it is unwise to accept such reasoning. If that was true, no religious pluralism would be in the globe.

For instance, in orthodox Christianity, there may be difference on dogmatic and practices so that one may need to depart itself from the existing or ‘*main*’ religion. In that time it could be unfair and absurd to deny its difference and deny recognition. If that is so, to make that position under the main “*branch*” is against the institutional right of new religions. If difference was not recognized, all religions in this time would have been under one institutional umbrella. Thus, we have to take care about this issue in giving legal personality.

Really, it can be amazing to say two religions or business organizations can have identical names. But, we have to take concern as to the objective and purposes of these institutions. They are very different. The first are not established for profits but the later. However, if the names of the religious organizations are identical, the right to sue and the duty to be sued may be prone to difficulty. Their similarity may mislead every one.

However, the *effect* of misleading is highly and substantially different in religious organizations and other organizations – *especially business organizations*. In business organizations, the main goal of the institutions is to get profit so that their profit shouldn’t be affected by unfair competition. The good will of businesses has significant meaning to them. However, the main goal of most religious institutions is to get the believers revelation and sit in the right side of the divine in the forthcoming world or forever. Their good will doesn’t have *strict relation* with their objective.

As a tradition, Ethiopian religions which have much number of followers affix the name ‘Ethiopian’ before their name. For instance, EOTC and EIASC are the principal ones which affix the prefix “*Ethiopian*” before their principal name. This seems the main factor which misleads these religions to count them selves as if they were the only religions. This perception has been developed true for most followers in the Islamic and Orthodox Christianity.

⁷⁹ Interview with Hajji Said Asmare, Supra Note 73

This perception seems being accepted even in the Seventh Day Adventist Church in Ethiopia. It has opposed the establishment of the Oromyan Seventh Day Adventist Church.⁸⁰ For that matter, the CSOA rejected the granting of legal personality alleging that the only Seventh Day Adventist Church is the one established before.⁸¹

In aggregate, if the state accepts the majority religion's argument and rejects the legal personality of the new religious institutions, *it is impliedly deciding on dogmatic and traditional issues of religions*. In such case, the state is deciding on religious entities what to follow and how to follow. In rejecting the recognition of legal personality of the new religions for the above reasons, the state is recommending the 'new' religions to accept the existing majors' dogmas and practices and act same.

The other issue as to the executive interference on religious interference is deciding directly the dogmas and religious verses. In Waghimra Zone⁸², there has been persisting dispute since 1990 between the Orthodox Church followers in Serer Bale-Egziabhere local church. The issue was that group of the local church called 'evil eye' ('budas' in the local tradition), couldn't serve in the local church as priest, deacon or in other capacity. The reason was that these groups can't serve in the church as *dictated by the biblical verses*.⁸³ The other group strongly opposed that the bible doesn't recognize such discrimination and what is specified verse by the first group is an "old testament" verse.⁸⁴ Actually I have no detailed knowledge on bible. But the main issue here to me is who should solve such disputes.

For about 15 years the local church has been closed. For alleviating such problem, the government took measures like advancing the societies consciousness teaching its being traditional of the above perception. And more over, it interprets the bible as to the concerns of the crafts men in dispute. For that matter, the Zonal Office of Communication prepared a module on October 2007 on the interpretation of the bible as to the issues in hand.⁸⁵ Moreover, on January 2008 the same executive organ printed out a module to mainstream the equality of

⁸⁰ Interview with Pastor Ayitegeb Birhanu, Supra Note 70

⁸¹ Interview with Buzouyene GebreEgceabher, Supra Note 43

⁸² Waghimra Zone is one of the Administrative Units in Amhara National Regional State

⁸³ Priest Gebeyaw Belete, the Representative of Rampant Group of Serer Bale-egziabher Local Church

⁸⁴ Ato Misgane Tegegne, the Representative of Secessionist Group of Serer bale-Egziabher Local Church

⁸⁵ Be EdeTtibeb Balemuyawoch Lay Yalewun Hualaker Astesaseb Lemastekakel yewota Ekid (a Plan to Alleviate the Problem Related to Back Ward Outlooks towards Crafts Men) (translation mine) (Oct, 2007)

persons in what ever issue and where ever and the biblical interpretation on the alleged problem.⁸⁶

Both documents were as to the meaning of the crafts men in the bible and status of them in the Christianity faith. Finally, these documents /writings concluded the bible stands for equality and discrimination is impossible. After then, on May 7 of same year, the government officials including the head executive of the Zonal Administration held a meeting in the locality and told the community accepts the governmental decision so that the crafts men should serve in the local church as a priest, deacon and in other capacities; the community strongly opposed the allegations of the local government.⁸⁷ A day after that meeting, the local government militia armed with necessary equips took journey to the locality to execute such decision.⁸⁸ After then, the locality armed with traditional equipments and guns blocked the government force and front was formed. Thanks to the wise man, the leader of the government force, of the militia gives up the mission and gave surrender so that the front cooled down without any loss of life or bodily harm.

I am not interested here in analyzing the situation of the front. But the main and immediate cause for this conflict was the governmental interference in interpreting the dogma of the bible. I would prefer if they (crafts mean) were treated equally wherever. But, the implementation couldn't be achieved in such measure and arrangement. One, that kind of measure may aggravate the issue and violence would persist. Two, such kind of issues are to be left to the religious institutions as religious matter. The religious institution could solve the dispute in amicable arrangement. If not, the other group may establish another local church and the government should help them to do so. For instance, the government can help the group by enabling them in registering as an independent religion and in lending tax free land. But I am not saying other measures shouldn't be taken.

The other thing relating to the executive interference is sponsoring ceremonies of religious holly days. Now a day, most religious ceremonies are being broadcasted in governmental Media. That includes making religious ceremonies transmitted in audio- video Medias live. For instance

⁸⁶ Waghimra Ene Ede Tibeb,(Waghimra and crafts deed) (translation mine) (Jan. 2008)

⁸⁷ May 7, 2008 – Meeting was held in Hamusit

⁸⁸ May 8, 2008 – Armed Militia Marched to the Area – i.e. to Serer

Meskkel ceremony (the finding of true cross) and most Muslim holydays are permitted to be transmitted in electronic media. If such is true for the Muslims and Orthodox Christian and is celebrated in special cooperation with the government, other new religions may inevitably claim so. But, the government may be unable to do for all having scarcity of money, time and premises.

In the above case, the public premises such as the stadium and other public places are to be closed. Moreover, the Medias for public service are occupied by ceremony of one or some group of the community. But, we have to be aware that the public needs the media and the premises for public purpose. In such case, the public interest should prevail. Actually, tolerance obliges us to remain silent on such practices. But, tolerance presupposes reciprocal benefit.

Governmental organs may argue that these kinds of ceremonies are source of governmental revenue in connection with tourism. But that rationality should have worked for all religious ceremonies of all religions. If that kind of special treatment is to some religions but to others, it can be inevitable that other religions may fight for that level of acceptance so that dispute may arise. Moreover, it is interference in the religious matters of newer religions. Because, the state is impliedly making hierarchy of religions.

Again that type of support is against the followers of non-religious values. Their place, their money, their time are “stolen” by the government for religious purposes. But no reciprocal benefit is to atheists. Their public money should have been used properly for public purpose.

Executive speeches and religious symbol are the other interference on religious domain. In relation to this, President Girma Wolde Giorgis the state of saying ‘May God bless Ethiopia’ (በግብርና ግብርና ግብርና) in the opening and completion of his speeches either in parliament or in other occasions may be against secularism in broad sense. The idea may be inflicting to members if there is a member who adheres to non-religious value. It even may be against religion adherents where their Supreme Divine is not God.

The issue worth noting in this subsection is the interference of the executive is participation on the appointment of religious leaders and participation in internal disputes of religions. In the Full Gospel Church, the Ministry of Justice totally dismissed the leaderships of the church and call

two different leadership's General Assembly together, on the same decision.⁸⁹ The federal government interfered during 2003 in the internal affairs of the EIASC by participating in the installation of EIASC officials following an internal power struggle; a Ministry of Foreign Affairs representative attended the election sessions to demonstrate the government's interest in the issue.⁹⁰ In the disputes of the EOTC at Synod level, the participation of Ministers like Seyoum Mesfn and Dr. Shiferaw Hailemariam in the session was questionable.

Burial ceremony and procedure is the last issue worthy noting here. How to bury a corpus is an issue to the religious entities. Where to burry is again an issue to religious institutions. Even after the death of a person, religions have an interest on the corpus to the sake of revelation in the transcendental world (life after death). But there is an issue of scarcity of land; especially in cities. Thus the government may have a regulation to that action. Thus it may take a measure to burn the corpus. Andras Sajo argues that people are buried for centuries not because it facilitates resurrection but for public health reasons.⁹¹ As to him, it could be possible to burn or enact a law to regulate how and where to burry. The time is now. The land in cities is becoming too expensive to provide to funeral purpose.

If the government does not regulate that, the tensions on the place and conduct of funeral ceremonies may reach climax. For instance Muslims, "along with members of the Ethiopian Orthodox Church" attacked a Christian man's funeral and subsequently filled in the plot where he was going to be laid to rest.⁹² After the family appealed to the local government, no actions were taken to allow them to conduct a proper funeral and burial. Because of that hostile environment, the family was forced to journey "96 km from its home" in order to bury its beloved one. The case was similar in Waghimra Zone.

⁸⁹ Letter of Ministry of Justice; as Quoted by Tekalign Fanta, *Managing Religious Conflicts: a Study of the Legal Framework with Particular Reference to the 2006 Muslim-Christian Conflict in Oromiya* (AAU, unpublished LL.M Thesis, 2008) foot note 60, p-42,

⁹⁰ See Ethiopia; International Freedoms Report, *Supra* Note 71, p-3.

⁹¹ Andras Sajo, *Constitutionalism and Secularism: The need for Public Reason*; in *Cardozo Law Review* Vol. 30, No.6 (2009), p- 2401

⁹² *Universal Periodic Review* 2009, ETHIOPIA, *Supra* Note 59

4.2.3 Judicial Interference on Religious Matters

The first law which permits court to interfere on religious matters is the Civil Code. Under its art 403 it stipulates that bodies referred in Chapter I of Title II Book I obliges them to be liable for any damage arising from that fault or act of their organs or servants in accordance with the provisions of the title of the civil code *relating to extra- contractual liability and un-lawful Enrichment*.⁹³ Therefore, the religious organizations are liable for the acts they committed or failed to act. This state of liability may not be criticized. But there are situations where the implementation of some provisions becomes difficult.

For example a religious news paper writer on behalf of his/her religion may be alleged to have defamed some other religious leader. Let say some one writes *there is no God at all but believers in Orthodox Tewahido are following that vacuum*. An adherent of One –God may say *there is nothing as said trinity; how does one equals with three?* This kind of assertions may be defamation to adherents of Christianity. But we have to remind that the religious creeds in our religion are always true. Sayings against such ‘truths’ are defamation. By religious facts, there are many controversial issues.

Whatever their complexities may be, defamation under Art 2044 of Civ. Code is committed *where a person by his words, his writings or by any other means acts in such a way as to make another living person detestable, contemptible or ridiculous and to jeopardize his credit, his reputation or his future*.⁹⁴ Having fulfilled such cumulative requirements, the truthfulness of the alleged statements is the very defence of the alleged defendant.⁹⁵ But the defendant should adduce a proof of the accuracy of those charges against him. To do so, what he may adduce is the holy books or traditions of his religion. In such case, the court as an interpreter of the law will assess the admissibility of such proof. In this time, it is inevitable to intrude to the dogmas and traditions of religious communities. We can say, therefore, the legislature leaves a loop hole to the judiciary to intrude in religious affairs.

⁹³ See Civil code, Supra Note 23, Art 403(1)

⁹⁴ Ibid, Art 2044

⁹⁵ Ibid, Art 2047

The other principal and perplexing issue is the recognition of religious courts. The constitution has principally recognized the judiciary as the prime dispute settler. *Judicial powers, both at federal and state levels, are vested in the courts.*⁹⁶ But Art 78(4), Art 78(5) and Art 34 (5) of the constitution have a clue as to the probability of the establishment of religious and customary courts. And more over Art 37(1) which deals about right of access to justice as one ground to have religious or other judicial organs other than the judicial branch. These sub provisions are here put in the shape they had in the constitution to suit the reader:

Art-78(4) Special or ad hoc courts which take judicial powers away from the regular courts or *institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.*

Art-78(5) *pursuant to sub-Article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.*

Art-34(5) *This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.*

Art-37(1) *Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.*

Some argued that all the sub provisions mentioned above have to be interpreted narrowly and consistently as they are exceptions to the principle. Therefore, the establishment of religious courts has to fulfill the requirements under Art 78(4) (i.e. *take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established*). Let alone religious courts which are sectarian and may be contrary to the secular principles, special or ad hoc courts are prohibited to be established, if they took Judicial power and do not follow the legally prescribed procedures.

⁹⁶ See FDRE Constitution, Supra Note 2, Art 79(1)

Permitting religious courts to entertain secular matters is impliedly accepting religious laws in the legal system. If that is so by public money, there is a deed of injustice where the religious laws are against the constitutional principles. But I am not only concerned with the constitutionality of the establishment of these institutions. But once they are established, they are expected to act as if they were judicial organ. If they interpret the dogmatic value of the religion having entertained the secular matters, we can say the judiciary is interpreting the religious law by the sponsorship of the state.

Whatever the dispute is perplexing the Sharea court is the first and primary in Ethiopia in getting legal recognition by Federal Sharea Courts Consolidation Proclamation No. **118/99**. But in decision making, it is inevitable that a difference could arise. The main issue here, therefore, can be who should decide on difference of dogmatic Islamic laws in the Sharea court. Can, for instance, a plaintiff in religious courts apply to CCI/ HOF for interpretation? The only provision which shade a light to the issue at hand is art 20(6) of the above proclamation. It says;

the Chief *Kadi*⁹⁷, on his own initiative, or suggestions made to him by divisions of the court or up on petitions made by parties to a dispute, direct cases involving a basic difference between divisions of the federal supreme court of Sharea, as regards interpretation of Islamic Law, to be heard by a division composed of not less than five kadis.⁹⁸

Let the initiative or suggestion got acceptance and more than five kadis mere composed and interpret the Islamic Law. The problem is here; in ties the decision is to be in majority being this is a decision making process. Unfortunately, the kadis can be atheist or adherents of other religion but may have sufficient knowledge to sharia law and recruited or appointed as Kadi. Such Kadis may interpret the Sharia law but against the majority of the Muslim community or the *Uolama Council of Islam*, the highest Islam law interpreter.

As to the dogmatic interpretation of Islamic Laws, Hajji Seid Asmare, the head of public relations in the EIASC (Ethiopian Islamic Affairs Supreme Council) bitterly opposes the above

⁹⁷ Kadi Means a Judge appointed and sitting at any level of courts of Sharea, See art 2(1) of Federal Courts of Sharia Consolidation Proclamation No.188/99

⁹⁸ See Sharia Courts Proclamation above, Art 20(6)

approach. The power to interpret religious laws and their implication shouldn't and can't be left to only five judges (kadis) which can be completed only in simple majority vote.⁹⁹ In the EIASC, there is one Council which deals the interpretation and implications of Islamic Laws. This council is a group of "scholars" in Islamic Holy Books and laws called the Uolama Council (ሀዕለታዊ ሀሳብ ሰ/ሰሰ) .¹⁰⁰ While this Council is in life, the government/legislature shouldn't give such power to the kadis at the cost of the Islamic decision making on own matters.

As to the interpretation of religious dogmas, the worst of all, even beyond the above case is that the determination of criteria for appointment. *Any Ethiopian who is trained in Islamic law in Islamic Educational Institutions or has acquired adequate experience and knowledge in Islamic law...*¹⁰¹ But the principal actor to appoint Kadis is JAC (Judicial Administration Council).¹⁰² In doing so, it is inevitable to test the candidate as to his knowledge of Islamic law. To accept or reject, JAC is expected to search for knowledge of the candidate by comparing what the Islamic laws say and how much he knows too.

The other issue is as to the Witches. Witches have been accused and imprisoned in the past five years. One of their charge is they simulated the public saying "*We can fly, we can cure HIV, we are even source of revelation.*"¹⁰³ If the public belief that '*fact*', the truthfulness of the question (the issue) are not to be examined by the courts/ governmental organs, unless their deed or manifestation is against the public interest, health, moral and other limitations. If we, in strict sense, want to limit manifestation of freedom of religion, the limit is to be on the believers. We can't sue "God" or Angles .

4.3 Religious Interference on State Matters

In chapter three, I have dealt with issues related to religious interference on governmental matters and what they mean. In conclusion, the religious creeds and practices shouldn't intervene on state matters laws, executive deeds and courts. But in Ethiopia, there are instances where such interferences are persisted.

⁹⁹ Interview with Hajji Said Asmare, Supra Note 73

¹⁰⁰ Ibid

¹⁰¹ Sharia Court Proclamation, Supra Note 97, Art 16(1)

¹⁰² Ibid, Art 17

¹⁰³ Tamrat Gellela and other Witches have been accused and punished for their allegation; See Google Amharic Newspaper reprinted on Oct. 20, 2010

Firstly, it could be better to see religious influences on legislation. As I have seen in the literature, homosexuality, abortion and bigamy in laws should be prohibited or permitted by due rational ground. Whatever it may be, our law prohibits the first two acts in the name of morality and permit bigamy in some cases; however, ultimately the reason is the religious creeds.¹⁰⁴ Homosexuality is not to be prohibited for rational grounds dealt in chapter three of this paper. Actually the philosophy of countries on the moral standards and morality is different. The public morality in US and other developing states like Ethiopia is very apart. The consciousness of the traditionalist and religious strictest people and liberal one on such matters is again different. Therefore, we could not claim that the practice in US should work here in Ethiopia. We can predict how much the people could become aggressive and how to respond to the issue.

The law and the government are expected to regulate the conducts of the citizen. But what we have to remind is that the ultimate power resides on the NNPs of Ethiopia. This in practical terms means that they can influence the laws and decision of the state. The ultimate concern for group rights in Ethiopia may indicate that the influence of religious entities as *an entity* may obtain a due respect by the government in opposing homosexuality. More over about above 95% of the population is adherent of religion. For that matter, the majority inevitably will decide on the opposition of homosexuality. In such case, we can say that the public decides on the issue for whatever reason. We should accept that decision being majority decision is the prime instrument in democracy.

Although laws are enacted without rational ground, it could be necessary evil to accept that law. But accepting that law may not mean the law is independent of religious influence. And ultimately we cannot say religion interfered in state matter. Fortunately, the Ethiopian criminal code recognized the criminality of homosexuality. Art 629 of this code clearly expresses whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.¹⁰⁵

The other issue is abortion. The provisions of the criminal code to regulate abortion are here specified to ease the analysis. Art 545 of the criminal code declares that the intentional

¹⁰⁴ FDRE Criminal Code, Supra Note 30, Art 629, 545 and 650 respectively governs Homosexuality, Abortion and Bigamy

¹⁰⁵ See FDRE Criminal Code, Supra Note 30, Art 629

termination of a pregnancy, *at whatever stage* or however effected, is punishable according to the following provisions, except as otherwise provided under Article 551.¹⁰⁶ The only conditions are here provided under Article 551:

- (1) *Termination of pregnancy by a recognized medical institution within the Period permitted by the profession is not punishable where:*
- a) *the pregnancy is the result of rape or incest; or*
 - b) *the continuance of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother; or*
 - c) *where the child has an incurable and serious deformity; or*
 - d) *where the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child.*
- (2) *In the case of grave and imminent danger which can be averted only by an immediate intervention, an act of terminating pregnancy is not punishable.*

Art 552. - Procedure of Terminating Pregnancy and the Penalty of Violating the Procedure:

- (1) *The Ministry of Health shall shortly issue a directive whereby pregnancy may be terminated under the conditions specified in Article 551 above, in a manner which does not affect the interest of pregnant women.*
- (2) *In the case of terminating pregnancy in accordance with sub-article (1) (a) of Article 551 the mere statement by the woman is adequate to prove that her pregnancy is the result of rape or incest.*

Restricting abortion is very difficult. The first reason is that it may be difficult to prove when the fertilization begins. Even if the time is known it will be difficult to demark the time when the fetus will get protection. Let accept that life begins at the moment of fertilization and that life be protected. In this time the life of the mother should be compared with the life of the guest fetus. If that is so, we can argue that the mother can decide on her own guest and her life. The second reason is that a woman may say the pregnancy is the result of rape or incest benefiting from Art-551(1). Because in the case of terminating pregnancy in accordance with sub-article (1) (a) of Article 551, the mere statement by the woman is adequate to prove that her pregnancy is the result of rape or incest. It seems only either for paper value or to satisfy religious adherents that this provision got space in the criminal code.

¹⁰⁶ Ibid, Art 545(1)

Although abortion should have been left to the free choice of the mother, the state had put restricting law. But the stipulation is inevitably viewed in the eyes of religious organizations. Most religious leaders believe that had the law permitted the free choice of the mother regarding abortion, the religious entities might have been disappointed.¹⁰⁷ I think the most fright of the legislature was the potential aggressive response of religious entities that made the state to restrict abortion.

Bigamy is again prohibited in Ethiopian law. Whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment; or, in grave cases, and especially where the criminal has knowingly misled his partner in the second union as to his true state, with rigorous imprisonment not exceeding five years.¹⁰⁸ Any unmarried person, who marries another he knows to be tied by the bond of an existing marriage, is punishable with simple imprisonment.¹⁰⁹

Art 651 exceptionally leaves a loop hole and exposed itself to religious creeds. It says *the preceding Article shall not apply where bigamy is committed in conformity with religious or traditional practices recognized by law.*¹¹⁰ The state of being a religious adherent who accepts bigamy may relieve some one from criminal liability. This is again religious interference in state laws.

The other case is religious interference on the legal framework of religious public holidays. Most holydays are religious in Ethiopia.¹¹¹ Most holy days are traditionally accepted Orthodoxy or Islamic ones. The problem is not only the case that public holidays are based on religious grounds. But there are so many associated problems. The basic one may be the question of treating religions non-discriminatorily. Every religion may not have respective holly days which can be nearly impossible. If each has a public holiday, it will be difficult to carry out any public work in the country. Its consequences are more considerable for developing countries.

¹⁰⁷ Interviews with religious leaders like Pastor Ayitegeb, Pastor Abiy Agena and Priest (*Kessis*) Belay Tegegne have responded that the state took a curious caution before doing that. But if the state permitted free choice, it would be very difficult to accept that. Thus, religions would have fought for the sacred life of impetus.

¹⁰⁸ See FDRE Criminal Code, Supra Note 30, Art 650(1)

¹⁰⁹ Ibid Art 650(2)

¹¹⁰ Ibid, Art 651

¹¹¹ Public Holly Day Proclamation No. 16/74

In the Seventh Day Adventist Church, workers don't work on Saturday. And students don't attend classes on this day. Worst of all the students don't take a national examination. For Seventh Day Adventist Church, the situation has very grave consequence. In each year, the followers of this religion could be neglected from the National Examinations of the country where that was to be conducted on Saturday; about 10,000 followers have been reported missing the exam, while the Examinations were on Saturday.¹¹² Let alone interferences on daily account of the state, they do not claim even one day in a year. This has massive and voluminous effects on the adherents of this religion.

In addition to the above problems, most religious students in higher education claim to build worship places and even made the premises of the campus as a worshiping place. For example, the Addis Ababa University Muslim students' claim for that effect was a perplexing question.¹¹³ If the government accepts their claim, it will inevitably accept the question of others. If that is so, the public center will potentially be the source of fundamentalism and education centers will be centers of religious propaganda rather than being center of scholars. The ceremony of Ethiopian Orthodox Church believes of Easter in Cafeterias and singing/ praying in the Cafeterias of Higher Institution every year¹¹⁴ is again a fact which undermines the principle of secularism. These facts have myriad of far-reaching consequences.

In the first place, these practices contradict Art 90(2) of the constitution which prohibits religious influence on education. Two, it may be very clear that other religions claim so and at last, the institution would inevitably be a religious institution. Moreover, tension prevails. It is undeniable fact that Ethiopian constitution guarantees the right to establish worshiping institutions.¹¹⁵ Using this right, every religion can establish and propagate its belief in the permitted worshiping places. Actually the problems are being observed even in the religious private schools. Most religious private schools are counting themselves as if they were the inherent parts of the religion so that are doing in accordance with creeds of their religion.

¹¹² Interview with Pastor Ayitegeb Birhanu, Supra Note 70

¹¹³ Addis Zemen Newspaper, Tahsas 12, 2002, E, C No. 102

¹¹⁴ Eye Observation When I was in Dire Dawa having accomplished my LLB, this fact has been repeated yearly

¹¹⁵ See FDRE Constitution, Supra note 2, Art 27(2)

Religious symbols in public institutions are not again far from criticism. Religious symbols in the governmental institutions are being blamed that they made the government premises a religious entity. Secularism relies on the material and spiritual aspects. Thus the premises themselves have to be free from being a church. Many blame that the crosses around the compound of the palace of the Ethiopian Prime Minister and other public places should be '*changed in to ruins*'. The presidents saying 'God bless Ethiopia' at the end of inaugural ceremony of the parliament and his being a president is blamed as religious interference on state matters.

Death penalty is to be signed by the president. However there has not been any death penalty since the presidency of Girma Wolde-georgis. Death penalty has been persisted unexecuted for about eight years. The rumors are that the final decision maker to execute death penalty, the president, is adherent of religion. As to one confidential interview the president's decision is mostly influenced by religious creeds.

But as it is dealt in the main part of this paper, the justifications to decide state matters should have been established on objective, rational and secular grounds. The main justifications to punish criminalists¹¹⁶ are to save the public as a whole in the public interest. Thus, a person with non-rational if not irrational, ground should not dismiss the court decision which passed many procedural guarantees to the accused at the cost of the public interest. I don't know why that power is given to the president to be led by his lonely conscience. In fact, this needs other independent research.

But the crucial and the critical issue to this writer is once the power to decide on some matters is given by legal and practical arrangement, the decision is expected to be executed in rational ground. The basis should not prone to non-rational ground like "*because I believe like that*". This kind of argument is not rational, if not an irrational at all. But it may be difficult to demark which value influences someone in decision making.

Again, as to the religious interference on the state matters may be observed in courts. One, they have being observed to make oath in Bible and Kura'an. Secondly, religious courts, even without

¹¹⁶ የህግ ፍርድ ደንብ (basic principles of criminal law) (translation mine) (1994) p 15-20

legal recognition have been entertaining secular matters like family cases.¹¹⁷ Some practices indicate that marriage related issues where the marriage is concluded in accordance with the religion of both or one of them are to be settled by religious courts. The “defacto religious court” in EOTC is deciding cases related to marriage according to the Orthodox dogmas and traditions (*kurban*).¹¹⁸ Amazingly the above *religious ‘court’* has been deciding cases in relation to religious marriages without legal prescription.

In aggregate, religion shall not interfere in state matters doesn’t only imply the action of religion on state matters but, the state shouldn’t let religion interfered. Because the sovereign is not religious community; rather the state is the only sovereign representing the people. The state unilaterally may permit religions to interfere in the formers domain. But that does not relieve one from the blame of violation of the non interference clause.

4.4 Overlapping Matters

Although state and religion are from different philosophies and arrangements, both have a task to do on the public so that it will be inevitable to intersect somewhere.¹¹⁹ Ato Kefialew Azeze in the invited speech in the Meskel Ceremony at 16th Sep 2003 (E.C) on the stage said that the non interference clause doesn’t preclude both the state and religions in working together. He clearly admits that keeping their boundary, they can participate and be united in a shared agenda.¹²⁰ Non-interference under Art 11(3) is that both parties have to make their deed differ their respective role.¹²¹ One, not to influence the other or not to be obstacle to the other, should exercise its power or discharge its duty in the boundary respective to it.¹²²

The expression saying “*the hope of... religious communities of Ethiopia to live together in equality and unity*” under Ethiopian Constitution is a constitutional philosophy that got the historical pluralistic tolerance of Ethiopian religions. Fasil Nahoum strengthens this assertion that the above saying doesn’t concern only the histories of religious institutions’ tolerance but it highly concerns the religious institutions ‘should’ unit for common purpose and shared missions

¹¹⁷ Ethiopian Orthodox Church Religious or Spiritual ‘Court’ has been doing so.

¹¹⁸ Interview with Priest Belay Tegegne, the Presiding ‘Judge’ of the EOTC Religious Court (Oct 23, 2010)

¹¹⁹ See Fasil Nahoum, in Supra Note 4, p- 6

¹²⁰ Kefialew Azeze, Vice Mayor of AA Administrating , Addresses in Meskel Ceremony (Sep.16, 2003 E.C)

¹²¹ See Fasil Nahoum, in Supra Note 4, p- 7

¹²² Ibid, p-7

to serve the public and enhance cohesion in the people. In such case, this non-minimal constitutional philosophy invites and offers the way that religious communities could be partners with each other.¹²³

Pastor Ayitegeb said that everything in the globe is not beyond the perspective of religion and every practice is not beyond Ten Commandments of the Holy Bible. Therefore, it can't be said that religions should be idle in issues which are not religious. The government is also in that track. For truth, love, justice and peace, both the government and religious institutions can do or stand together. This has a special emphasis particularly to the Seventh Day Adventist Church. The church focuses even on the temporal life like health and education in equal level of deeds for the soul.¹²⁴

Many people in most religions believe that religions should only do preach in their worshipping places.¹²⁵ But to the seventh Day Adventist as well as to other religions, the idea of separation should be understood in well – crafted manner and reasonably. Imagine, Pastor Aytegeb said, the religious participation only in the theological aspect of holy books; but unless the believer could translate that to practice, there would be no revelation; to get transcendental life in heaven, the religious institutions and believers should do good thing in earth.¹²⁶ For instance not to kill, not to thief, not to commit adultery, to respect elders.... The state has due concern to all of these issues. Thus overlaps could be inevitable.

Can religious leaders /pastors criticize the state in the process of teaching religion? Or can they do in organized manner? Shaleka Admase in the debate of the Constituent Assembly insisted that non-interference doesn't and shouldn't preclude the religious communities to oppose secular law even the constitution, if the later is contrary to religious laws; thus, the religious entities should not remain silent when the state enacts or proclaims *satanic* law contrary to the religious laws.¹²⁷ The government in committing injustice, killing and other cases which discourage love and aggravate violence, the religious institutions have to fight the government or other parties at least in words in persuading them.

¹²³ Ibid, p-13

¹²⁴ Interview with Pastor Ayitegeb Birhanu, Supra Note 70

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ H. E Shaleka Admase Speech in Ethiopian Constitutional Assembly, Supra Note 11, p- 13

This can be observed from the pre-election advice to the political parties to accept the “result” of the election whatever it be. In the appeal of religious leaders made peaceful respect of the electoral procedure, the EOTC didn’t participate, indicating her hesitancy to involve in political matters.¹²⁸ Its hesitancy is well-rationalized as to me. Because, the appeal to implement political documents may reach to the support of political views.¹²⁹ The procedure as many opposition parties understand was a road to the realization of only EPRDF’s mission.¹³⁰ If religions participate in such issues which are purely political, the government or other opposition party may use them to materialize their mission. In doing together, the state and the government may face collision. For instance, for the state justice may be to give for whom the things are owned. But for religions, justice may be to give equal share to everybody.

4.5 Institutional Problems

By institutional problems, I am saying problems related to alleviating/umpiring the disputes between state and religion, inter-religious and intra-religious. In this time, disputes between the government and religions, either in higher or local level, disputes between religions and disputes in religions themselves is being extended.

As to the disputes between states and religions, it could be easy to say there is no institution well-crafted to solve these problems. These disputes can be legal as well as pragmatic. As to the problems of laws (interpretation aspect), HOF is under the ultimate power and duty. Art 23(1) of the CCI proclamation No. 250/2001 declared that *any person whose fundamental right and freedom has been infringed by any level of the government may bring his case to the CCI for constitutional interpretation.*¹³¹ But there is no case brought to the HOF on the disputes between state matter and religious matters. The only case in relation to this issue brought to CCI was by Kadija Bashir. The case was brought by EWLA (Ethiopian Women’s Lawyer Association). The

¹²⁸ Weeks before the 2010 Election, Religious Entities and Figures were Begging Political Parties and the Public at Meskel Square to accept the result of the election in piece. But as one of the figures of the EOTC confidentially told me, the EOTC remained silent and didn’t participate in that March since it thinks that a political participation.

¹²⁹ See anrea sajo,

¹³⁰ For instance, Some Political Parties didn’t sign!

¹³¹ Proclamation No.250/2001,Council of Constitutional Inquiry Proclamation, Federal Negarite Gazeta(2001) art23(1)

case was decided by this organ as the disputes should only go to the Sharia court if and only if the parties consented.¹³²

The other issue is as to the case of change of venue of files in the Sharea Courts to the regular court or vice versa. Can for instance plaintiff in federal religious courts change the venue to the Federal regular Court of Ethiopia? As to the Federal Sharea Courts Consolidation Proclamation No. 188/99, *under no circumstance shall a case brought before a court of Sharia, the jurisdiction of which has been consented to, be transferred to a regular court; nor shall a case before a regular court be transferred to a court of sheria.*¹³³ The reason may be that both respecting courts are trained in different laws. Thus, the decisions, ether preliminary or final, may contain legal Jargons or religious dogmas which can be difficult to interpret. Thus if one (e.g. Sharia) decides on something on the basis of religious law, the regular courts may be in difficulty to see such decision. The vice versa is true.

Disputes between two or more religions are the contemporary perplexing issues in the current Ethiopia. As I mentioned above, religions in Ethiopia are under tension. Ato Woynato Abera in the Debate of the Constituent Assembly strongly insisted that additional sub provision in Art 11 should have been included; the sub provision was recommended to be that the state will entertain a dispute between two or more religions. .¹³⁴ That could enhance manifestation of state neutrality. The chair person of the Constituent Assembly Dr. Negasu Gidada requested a legal advice from the members on the above issue for that matter. Ato Ahmedin Ibrahim gave his legal opinion on the matter. He concluded that:

when it is said the state can't interfere in religious matters, it is to mean that the state can't regulate day to day activities of the religion—how to appoint, how to pray. *But if there is a dispute between two or more religions, the state is not expected to be idle.* Rather it will secure the public peace recalling police power or defence. To secure peace and to protect the country are powers given to the state by the constitution.¹³⁵

¹³² File No. 394/92 and then the Cassation File No.12400/1995

¹³³ See Sharea Court Proclamation, supra note 97, Art 5(4)

¹³⁴ H.E. Ato Woynato Abera, Speech to the Constitutional Assembly, Supra Note 11, p-16

¹³⁵ H.E. Ahmedin Ibrahim, Speech to the Constitutional Assembly, Supra Note 11, p-17

Finally the provision passed in - 487 Votes in favor, 2 claim amendment and without abstinence. The above assertion and the failure to accept at Woynato's claim to enact independent institution or governmental body seems the case did not get due concern. It may be argued that there was no as such religious dispute in that time. But in this time, the case is different.

For this mater, the power to settle disputes between religions is left to Ministry of Federal Affairs. Proclamation No 471/2005 as amended by Proclamation No. 641/2009 added one sub article after art 21(8) on the power of Ministry of Federal Affairs.¹³⁶ It says the MoFedA shall work in collaboration with pertinent government organs, institution of religion as well as other any organs so that peace and mutual respect will prevail *among followers of different religions and followers of different religions and beliefs and to be able to prevent conflict.*¹³⁷

But the main difficulty is the perception of the people on the non interference clause. As Ato Tizazu Desalegn told me, the people have a perception that the government should remain idle in external and internal religious disputes; they allege that the government is not the proper organ to settle religious disputes.¹³⁸ Moreover, regular courts are not in the right track to see the disputes. Because, courts mostly follow positivist approach of interpretation so that see only the clear law. But religious disputes are not to be solved in such a way because they need amicable form of arbitration, negotiation or other similar measure by neutral body.

As to disputes in religious organizations (i.e. intra-disputes) the problem is not different from the above case. In the non- interferences clause, secularism highly sticks religious issues have to be regulated by religious organizations. The cassation decisions of the Supreme Court on employment relation of the religious entities and their '*workers*' also show that.¹³⁹ For that matter, they are entertaining "employment relations" between the church and the priests, deacons, Poe-teachers and others whose issues are strictly affiliated with the spiritual matters of the church. All the Supreme Court cassation decisions indicate that the regular courts cannot

¹³⁶ A Proclamation to Amend the Proclamation Providing the Definition of Powers and Duties of the Executive Organs of FDRE, Proclamation No. 441/2009, Art 2

¹³⁷ Ibid, Art 2

¹³⁸ Interview with Ato Tizazu Desalegn, a Legal Advisor for the Director of Directorate of Religion and Belief in the Ministry of Federal Affairs (Sep. 6, 2010)

¹³⁹ See Annexes 4, 5, 6, Decision of Cassation Division of the FDRE Federal Supreme Court

decide on the disputes strictly related to the spiritual aspects. The only cases decided by the cassation division of the Federal Supreme Court in 1998, 2001 and 2002 respectively are:

-Deacon Mihret Birhanu etal V HamerWorq St. Marry Church, Cassation File.No.18419

-Megabemistr Mezgebu Blayneh V Patriarch Supreme Council, Cassation File No.34440

-Deacon Ayalew Adisu V Hohetesemay St. Marry Church, Cassation File No.47806

As to the cases related to employment in the religious entities, the trial and appellate levels of the regular courts decided that they could entertain disputes on employment relation in accordance with Labor proclamation No. 377/2003, Art 3(3) (b).¹⁴⁰ As to the Scope of Application of this proclamation, Art 3 put the following sub provisions:

Art-3(1) Without prejudice to Sub-Article (2) of this Article, this Proclamation shall be applicable to employment relations based on a contract of employment that exist between a worker and an employer.

Art-3(2)(b) Notwithstanding the provisions of Sub-Article (1) of this Article: the Council of Ministers may, by regulations, determine the inapplicability of this Proclamation on employment relations established by religious or charitable organizations:

In the above mentioned cases the lower courts stuck that all employment disputes in the religious institutions have to be entertained by the regular courts; the labor proclamation is to apply to such relations until the Council of Ministers, by regulations, determine the inapplicability of this Proclamation.¹⁴¹ Thus, in all cases, the lower courts decided the disputes in accordance with the Labor Proclamation since the Council of Ministers did not issue any regulation. However, the Supreme Court Cassation Division reversed all decisions of lower courts. In the first decision, the federal supreme court aptly says that the employment relation which is strictly connected with the spiritual aspects of the religious entities. So that the plaintiffs in the case could not bring their case to the regular courts and regular courts could not entertain such disputes.¹⁴²

Its decision was justified by the constitutional provision of secularism. Because to entertain employment disputes in religious institutions which have sense of spirituality necessarily will

¹⁴⁰ Ibid, all pages

¹⁴¹ Ibid, Summary of the Decision of the Supreme Court

¹⁴² See Annex 4, decision of Federal Supreme Court

invite one to intrude in religious matters.¹⁴³ Moreover, the Labor Proclamation No. 377/2003, Art-3(3) (b) is not relevant to religious employees who have employment relations to discharge spiritual tasks; that sub provision apply only for those who have no strict relation with the spiritual deeds of the religious institutions.¹⁴⁴

The first case (*Cassation Decision File.No.18419*) has been serving as if it were a precedent on the disputes related to employment relation in similar cases. Fortunately, the subsequent decisions were decided on the basis of the first landmark case. In *Cassation File No.34440*, the Supreme Court decided against *Megabemistr Mezgebu Blayneh* alleging that teaching spiritual Poe needs strict spiritual commitment and religious requirement.¹⁴⁵ Similarly, in the third case, the cassation division decided in the same manner it decided earlier alleging that serving as a deacon in religious entities is a religious matter so that the dispute should be entertained by religious institutions themselves; this decision passed over *Deacon Ayalew Adisu* (*Cassation decision File No.47806*).¹⁴⁶

The disputes as to who should serve in the priesthood of the local church in Waghimra have been perplexing problems. The dispute has not been solved till this moment. As to the cassation decisions, such case is to be determined by the religious entities themselves. The one who should decide on spiritual leaders and servants is the believer. But there is a great deal of negative effects on the discriminated community. For instance, disputants in Waghimra made a 'contract' which inflicts one group (Crafts men, 'budas' in the language of the community).¹⁴⁷ But, let alone the above discrimination in religious entities, in Ethiopia there are a great deal of problems in relation to individual discrimination. The main problem of Ethiopian constitution is to regulate individual discriminations unlike South African.¹⁴⁸ So we may not be surprised of the above discrimination in the religious services.

Not only locally, but in the federal level, there are a great deal of disputes in religious organizations. The dispute in Lideta Local Church and the General Arch of EOTC in 2005 was

¹⁴³ Ibid, , p-4

¹⁴⁴ Ibid, p 3-5

¹⁴⁵ See Annex 5 , p. 3-4

¹⁴⁶ See Annex 6, p-2

¹⁴⁷ See Annex 11, Agreement Between the Contesting Groups

¹⁴⁸ The 1996 South African Constitution, Art 9

one of the principal examples. The last year tension in EOTC was the primary. Actually the government officials were participating in the dispute resolution arrangements and proceedings in the Synods. But it was necessary evil, as the government representatives said, since there was no other choice to solve the problem. For the reason that institutional mechanism is absent, the government participated in the proceeding of the Synod, Tizazu Desalegn said on behalf of the Ministry of federal Affairs Religion and Faith Affairs Directorate.¹⁴⁹

Worst of all religious entity's decisions are not executable by the executive branch of the government. It is fact that religious internal decisions have not executed by the government organs. For instance, the decision of the EOTC Arch at Waghimra was not executed by the local government being the decision was not accepted by the community.¹⁵⁰ Even, the decisions by the EOTC Supreme Arch on the employment disputes have been left unexecuted. It can be seen from the back logs in the EHRC begging for execution.

As necessary evil, the EHRC is trying its best to execute the decisions of the religious institution's decision. When I asked Ato Muluye Wolelaw, the Director of the Correction of Human Rights Violation Directorate, as to this issue he replied that:

*Yes most religions decide religious matters. The main problem, however, is to execute such decisions. Especially from the EOTC, many decisions remain unexecuted. For that matter, many decisions have come to the EHRC since its establishment. Thus the EHRC as an institution to promote and enhance justice could make an exertion (pressure) to the execution of decisions.*¹⁵¹

The Commission has the power to ensure whether Human Rights are protected and respected by the government bodies, political organizations (parties) and other associations as well as by their officials.¹⁵² Thus, human rights guaranteed by the constitution have to be observed by religious organizations; and the EHRC has the duty and power to ensure that.¹⁵³

¹⁴⁹ Interview with Tizazu Desalegn, Supra Note 138

¹⁵⁰ See Annex 9 Letter of Archbishop and Annex 10 & 11

¹⁵¹ Interview with Ato Muluye Wolelaw, the Director of the Directorate of the Correction of Human Rights Violation in Ethiopian Human Right Commission(Sep. 2, 2010)

¹⁵² Proclamation No. 210/2000, Ethiopian Human Right Commission Establishment Proclamation, Federal Negarit Gazeta (2000), Art 6(1)

¹⁵³ The Decision EHRC on Mezemir Abebe's case; see Annex 7... P. 2

But this may have a great danger in view of the constitutional provision of non-interference clause. Actually, let alone the EHRC whose purpose is primarily to ensure observance of the constitution, the legislature, executive and the judiciary are duty bound to enforce the constitution especially the Human Right aspect-Chapter Three.¹⁵⁴ But we have to take caution as to the follow up and the observance of the human right provisions; it is to be interpreted in view of the fundamental principles of the constitution, of which secularism is the principal one. As to this issue, Ato Muluye said that:

*Art 11(3) seems to serve for the demarcation of the government and religious deeds; it doesn't preclude the EHRC from entertaining religious cases or claiming execution of them for the sake of ensuring justice as an independent and neutral institution. The injustice wherever it comes should be averted; everyone has the right to access to justice under Ethiopian constitution. Thus, whosoever in the country should get justice at least here in EHRC. But the main difficulty is that the institution itself is "tooth less dog".*¹⁵⁵

But by pressurizing or by amicable means, its decisions and recommendations have been implemented. By amicable means and special meeting with the Patriarch, for instance, the EHRC made about 20 persons to come back to their former works.¹⁵⁶ But after the **BPR**, the EHRC planned to have its own power of execution. Thus, the police power will execute its decisions like governmental or public decision makings by courts and other institutions which exercise judicial power. But I fear in the guise of execution, the EHRC may interfere in pure religious matters. As feared, the Commission has claimed the execution of religious courts on religious matters.

In the case between Mezemir Abebe Lema and Addis Ababa Hagere Sibket, decided in Ginbot (May) 24, 1999 E.C., in the name of execution, the Commission has interpreted the labor proclamation so that can apply for the employment relation between the Church and plaintiff even if the task is related to spiritual duty.¹⁵⁷ The commission decided that the employment

¹⁵⁴ See FDRE Constitution, Supra Note 2, Art 13(1)

¹⁵⁵ Interview with Ato Muluye Wolelaw, Supra Note 151

¹⁵⁶ Ibid

¹⁵⁷ See Annex 7

relation should not and could not be terminated where the ‘employee’ had justified cause like sick leave. The Commission in its concluding remarks passed the following decisions:¹⁵⁸

1. *The respondent should make the appellant urgently come back to his career*
2. *The unpaid salary should be paid to the appellant from the time of termination*
3. *In the future the church is duty bound to respect rights and it has to restrain from its infringement of rights in similar cases*

The commission again in similar case sent an obligatory letter to the EOTC Supreme Arch that the later should execute the decision of the Appellate Religious Court in 15 days.¹⁵⁹ I am not here criticizing the diligence of the EHRC to execute the decisions of court either regular or spiritual. But in the guise of that this institution will inevitably intrude in the internal affairs of the religious entities. As to Ato Terefe Wondmu, one of the investigators in the Directorate of the Correction of Human Rights Violation, the claim of the execution and deciding on internal matters of the religious entities is necessary evil; there is no institution better than EHRC to implement the right of access to justice in everywhere in the country.¹⁶⁰ This implies that the EHRC knew there are no institutions which execute the decisions of religious institutions so that a number of injustices have been committed in most religious institutions.

¹⁵⁸ Ibid, p-2

¹⁵⁹ See Annex 8,

¹⁶⁰ Ato Terefe Wondmu, Investigator in the Directorate of the Correction of Human Rights Violation

Conclusion and Recommendations

I. Conclusion

In the preceding chapters, an attempt has been made to assess the scope and implication of the interference clause in the well-recognized legal systems and the case in Ethiopia. From the analysis, I have observed that numerous problems are being observed in Ethiopia. By weighing these problems with the recognized principles of secularism in critical manner, the writer concludes the following.

In Ethiopian history, the first two constitutions (the 1931 and 1955) did not recognize the concept of secularism. From the time of 1974 revolution of Ethiopian people, the Dergue regime came with new approach. Separation of state and religion has got recognition under the 1987 Dergue Constitution for the first time. But the constitution did not stipulate the ingredients of secularism in clear manner. Worst of all, this regime took measures to neglect religions but to propagate socialist ideology. It was against religion at all. The principle put under the constitution served only for paper value.

The 1995 Ethiopian Constitution under Art-11 declared that Ethiopia is a secularist state. It recognizes all elements of secular state; these are the non-establishment, the non-interference and common citizen ship. It stipulates all ingredients of secular state in clear and unequivocal manner unlike most secularist states in our globe. But, these '*generalized*' principles have been remained insufficient to regulate the relation between the state and religions. In Ethiopia, there are no as such proficient subsidiary laws to regulate and guide the relation of state and religions.

Consequently, it is becoming very difficult to define the scope and implications of the non-interference clause. For this reason, myriad of problems are being observed. For instance, the state is observed intruding in pure matters of the religious institutions and fail in pure matters of the state fearing the infringement of the non-interference clause. The state interference is manifested in legislative, executive and judicial spheres. Similarly, religious entities have been observed intruding in pure state matters; and sometimes they fail to decide on their own affairs fearing the infringement of the non-interference clause.

Ethiopia well-recognizes the equality of religious entities under Art-3(2) of the constitution and in other laws. In formal sense, the criminal law, the CSO proclamation and other subsidiary laws supports so. However, it is very complicated issue whether the state is treating religious communities equally. The chief subsidiary laws which substantially apply for religious entities are the 1960 Civil Code and the 1966 Association Registration Regulation No. 221/66 alongside with the FDRE constitution. Both laws eroded the constitutional approach of equality of religious entities which is a basis to secularist states. These laws have been applying for religious entities till this time even contrary to the FDRE constitution which clearly recognizes religious equality.

Although the above mentioned laws recognize equality of religions, they seldom give significant hints as to the scope and implication of that equality. The application of the above laws in clear sense infringed the constitution. They privileged the EOTC at least in formality of registration and annual reporting obligation. I can conclude here that the laws which are against the secular clause of the constitution which is a guiding principle of same are unconstitutional as to the supremacy clause.

The main problem to Ethiopian laws seems that there is no objective legal framework or practice which can make one be persuaded to give a typology to Ethiopian secularism. The approach in Ethiopia seems neither positive nor negative non-discrimination; i.e. it is neither cooperative nor exclusion. Because there are signs to advance some religious communities in some case, and there are discouraging treatments to some other religious communities. Worst of all, the newly emerging religions have not been treated equally at least to acquire legal personality, let alone other treatments. In aggregate, Ethiopia is a *de jure* secularist state in light of the constitution. However, other outdated laws erode the secularist nature of the state. At the extreme case, it can be said that there is *de facto* state religion in Ethiopia, if not a *de jure* one.

Laws in Ethiopia have been observed permitting the executive or the judiciary to interfere in religious matters. The Civ.C., the 1966 Association Registration Regulation, the Flag Proclamation, the Press Proclamation are the chief infringing laws. The executive is again intruding in the territory of religious matters in the guise of execution of laws. The judiciary is also tending to trespass this boundary in the name of interpreting the laws. The state institutions have been interfering in pure matters of religions under the guise of discharging their duty.

It is not uncommon to witness Religious entities in Ethiopia act like the sovereign state. Religious entities have been observed influencing the laws and practices of Ethiopia. They again were witnessed deciding public decisions that should have been decided by secular authorities. For instance existing Religions fought to prohibit the establishment of new religions and so that the government accepted the former. Spiritual courts are deciding secular disputes with no legal ground to do so. Since the State is sovereign on half of the people, it would have been the most relevant organ to regulate everything in the territory. Religious entities are autonomous on pure religious matters but are not sovereign in secular matters.

The other concluding remark is that in Ethiopia, there is no as such efficient institutional mechanism to alleviate the problems in relation to non-interference aspect of secularism. There is no institution to solve the problems between the state and religions, between religions and disputes intra-religiously. Therefore, great deals of disputes have remained unresolved. This will inevitably have far-reaching consequences in the country.

The FDRE constitution left religious matters to be entertained by the religious entities themselves. For instance: to decide on the interpretation of dogmas, managerial arrangement, employment relations and others are left to them. This is appreciable development. But the main obstacle is that religious 'courts' do not have the power to execute their decisions. Many decisions in the religious organizations have been unexecuted so that tensions arise. Especially the problem is becoming grave in the EOTC.

In the guise of executing religious internal decisions, the Human Rights Commission has been extending its hand in the internal affairs of religious organization. To observe all decisions executed makes everybody happy let alone this Commission which is with the ultimate duty to pressurize the government to execute decisions. But the red light is to try to execute the decisions of the religious entities by itself. The Worst thing is that the Commission is accepting all disputes brought to it and pass decision on them.

II. Recommendations

Having the above concluding remarks, this writer recommends the following suggestions to mitigate, if not to alleviate at all, the problem in Ethiopia in relation to the non-interference aspect of principle of secularism.

1. ***There should be coherent subsidiary law to regulate the case.*** The constitution is not expected to regulate each and every thing. Thus, to curb the interference of state on religious matters and the religion on state matters, there should be guiding subsidiary law. That law should demarcate the domains of both the state and the religious institutions in well crafted manner. This law will minimize, if not alleviate, the existing problems in Ethiopia being the state and religious entities could act in accordance with that specific law respecting their domain.
2. ***The state organs and religious entities should base their decisions and deeds in the bounds of the constitutional framework.*** If subsidiary law is not enacted or interpreted, they have to consider the spirit of the constitutional declaration so that both could act in their true domain. Actually, in Ethiopian constitutional philosophy, there is no strong and efficient arrangement to umpire conflicts of the provisions of the constitution save the role of HOF. To that matter, the constitutional interpreter (HoF) should discharge its constitutional duty to interpret same. However, this political organ is criticized as to its efficiency, neutrality so that the stake holders remained helpless. But, the stake holders should give due insight to the preamble of the constitution, Constitutional principles (Art 86–92), and fundamental principles of the constitution (Art 8-12).
3. ***Out dated laws which regulate the relation of the state and religious entities should be either discarded or amended in view of the constitutional provisions.*** The Civ. C. and Associations Registration Regulation No. 321/1966 should be either discarded or amended in view of the constitutional provisions and the spirit of same. It is very regretting where every action and conducts of religious organizations, which got honorable bench in the constitution, are regulated by outdated laws and mere executive directives.

4. ***The state should act in principled and justified manner which could promote equality of religions.*** In legislating, executing and interpreting of laws, due attention should be given for the equality of religions. The legislature in making a law should not be influenced by religious creeds and values without secular justification. Because in doing so, the legislature may always take creeds and values of the majority religion so that equality will be undermined. The legislature should take a measure in dismissing outdated laws by replacing them in updated laws. The practitioners in Ethiopia should treat religions equally starting from acquiring or after they acquire legal personality. The judiciary if it participated in deciding cases related to religious entities, it has to interpret the laws in conformity of the constitutional provisions to enhance religious equality.
5. ***Religions have to limit themselves from interference on state matters.*** The state should curve an approach capable of challenging religious interference since the former is the sovereign organ which is to take that responsibility. The secular laws are expected not simply based on religious creeds. If they base their decision merely on religious creeds or value, the legitimacy of such decision is questionable. Religions should only participate on a shared and common mission of the country which benefit the whole population and that does not amplify sectarianism.
6. ***Religious courts again have to take caution before entertaining secular disputes without a legally prescribed power.*** The state should either prohibit the entertainment of secular matters by religious institutions or give acquiescence to do so. The spiritual courts specifically in the EOTC should limit themselves from entertaining family issues without legally prescribed power as has been for share'a courts. Actually, to give a status of court has much cost: man power, buildings, salary and related ones. But rather than observing religious courts acting on secular matters without justified substantive or procedural law, it could be better, at any cost, to give them a status of religious court and impose a duty to act in accordance with legally prescribed law. This will benefit at least the customers who will go to such tribunals ignorantly alleging that they have a power to entertain secular matters like family disputes.

7. *There should be institutional arrangement to settle legal and practical disputes in relation to non-interference aspect of secularism.* These institutions should umpire the disputes between the state and religions, between religious entities and intra religious disputes. Unless this problem gets timely solution, the disputes are too sensitive to avert in simple measure like other types of disputes. For the legal disputes, it could be better to strengthen the internal and external configuration of HOF in a situation capable to discharge its constitutional power and duty of interpreting. For disputes between religions, there should be an institution to take the duty of conciliation or arbitration of such disputes in an amicable means. Intra religious disputes should be curtailed by similar measure with inter religious disputes.
8. *Federal countries like Ethiopia have to take a caution as to religious conflicts.* In federations, conflicts arise if there are different identities and if they are grouped in their respective territories. The identities can be ethnicity, language, religion and other identifying characters. The novel approach of Ethiopian federalism on the basis of ethnicity has great deals of negative effects unless there is efficient legal, political and institutional means of arrangement. It is inevitable that conflicts arise. Unregulated and unprincipled Secularism may have contributions to that dispute. Conflict enhances if the identities of a group *overlaps*. We knew that most of the regional states in Ethiopia have comprised a population majority of which comprises adherents of one religion. So the government should take great care on the issue and should think curiously on the matter.
9. Once the constitution leave the power to deal all religious matters to religious entities, *the state should stretch legal or institutional mechanism to execute the decisions of religious entities.* Since everyone has the right to access to justice, the state should comply with this constitutional provision. Employees in religious entities for instance should not be left helpless.
10. *The EHRC should take care in participating directly in ordering the religious entities to execute their decisions.* EHRC, rather than deciding and interfering on religious issues, it could be better to it to recommend the state to plane a solution and take measure.

Bibliography

Books

1. Aba Samuel, *የሀይማኖት መቻቻል በኢትዮጵያ አለ?* (Is there religious tolerance in Ethiopia?) Addis Ababa, Mega printing (2000)
2. Assad, Talal, *Formation of the Secular; Christianity, Islam, Modernity* (Stanford University Press, 2003)
3. Clement Leslie S., *the Rift in Israel: Religious Authority and Secular Democracy* (Routledge Kegan Paul Ltd, London, 1971)
4. Craig R. Ducat, *Constitutional Interpretation* (16th ed. 1998)
5. Doerr, Edd, *the Importance of Church-State Separation*; in Barry F. Seidman and Neil J. Murphy (eds.) *Toward a New Political Humanism* (New York, 2004),
6. Evans, Carolyn, *Freedom of Religion under the European Convention on Human Right* ;(Oxford University Press, 2002)
7. Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Red Sea Press Inc.1997)
8. Fenn, Richard K., *Time Exposure: the Personal Experience of Time in Secular Societies* (Oxford University Press, 2001)
9. Hanshaw, Evelyn, *Our Federal Constitution, a Programmed Approach to the Constitution of the USA* (Prentice Han Inc. 1965)
10. Paul, James C. N. and Clapham, C., *Constitutional Development of Ethiopia* (Haile Sellassie I University in Association with Oxford University Press, 1967) Vol. 1
11. Redden, Kenneth R., *the Legal System of Ethiopia*, (The Machine Company, Virginia, 1968)
12. Shelat, J. M., *Secularism: Principles and Application*, (N. M. Trippathi Private Ltd, Bombay, 1972), P-27
13. Thiemann, R.F., *Religion in Public Life: A Dilemma for Democracy*, (George Town University Press, Washington D.C, 1996)
14. Watt, R., *Comparing Federal System*, (McGill Queen's University Press, 3rd Ed. 2008.)

Journals and Articles

1. Arneson, Richard J., *Marxism and Secular Faith*; in *The American Political Science Review*, Vol.79, No.3 (1985)
2. Assefa Fiseha, *Constitutional Adjudication in Ethiopia: Exploring the experience of HoF*; in *Mizan Law Review* Vol.1; No.1 (June 2007)
3. Berman, Harold J., *The Spiritualization of Secular Law: the impact of the Lutheran Reformation*; in *J.L. and Religion*, Vol. 14 (2000)
4. Bing Bang Wu, *Secularism and Secularization in the Arab world*; in the *Journal of Middle eastern and Islamic Studies (in Asia)* Vol.1, No.1
5. Carter, Stephen L., *the Culture of Disbelief* (1993)
6. Demir, Esra, *Secularism and the Distinction between Freedom of Religion and the Right to Manifest Religion* (2000)
7. Doerr Edd, *The Importance of Church -State Separation*; in Barry F. Seidman and Neil J. Murphy (eds.) *Toward a New Political Humanism* (New York, 2004)
8. Fasil Nahoum (Dr.), *Higemengist Ena Mengist Behaimanot Zuria* (Constitution and Government about Religion) (a Paper Presented in Country-Wise Conference on Religious Issues in Collaboration with Ministry of Federal Affairs, 2008)
9. Garet, Ronald R. (Prof), *Three Concepts of Church Autonomy*; in *Brigham Young University Law Review* (2004) (here in after *BYU L. Rev.*)
10. Getachew Assefa, *Yehigmengist Tirgum Be Ethiopia: Atekalay Eyita (Constitutional Interpretation in Ethiopia: general perspective)*; in *Womber* (2nd half yr, 2007)
11. Giannela, *the Strict Neutrality Principle*; in *Harvard L. Rev.* Vol. 81, No. 3, (1968) P-154
12. Gillespie, Maurice Barbier, *Towards a Definition of French Secularism* (2005)
13. Gillespie, Michael, *Beyond Secularism: The Inevitable Entanglement of Religion and Political Life* (Duke University, 2008), p-5
14. Gingerich, Elizabeth, *Unraveling the Establishment Clause: Legal and Other Practical Concerns for the Church 'Business'* ; in *Rutgers Journal of Law and Religion* Vol. 10, No. 39 (2009), P-3
15. Gozydin, Istar B., *a Religious Administration to Secure Secularism: The Presidency of Religious Affairs of the Republic of Turkey*; in 2006 *Marburg Journal of Religion*, Vol. 11, No. 1
16. Gray David (Prof.), *Constitutional Faith and Dynamic Stability: Thoughts on Religion , Constitutions, and Transition to Democracy*; in *MARYLAND L. Rev.*, Vol. 69:26, (2009)

17. Greenawalt, Kent (Prof.), *Religiously Based Premises and Laws Restrictive of Liberty*; in *BYU. L. Rev.* (1986)
18. Hamilton, Marci A. (Prof.), *Religious institutions, the No-harm Doctrine, and the Public Good*; in *BYU L. Rev.*, (2004)
19. Holcomb, J. David, *Religion in Public Life: the 'Pfefferian Inversion' Reconsidered*, in *25 J.L. and Religion* 57 (2000)
20. Ibrahim Idris, *Constitutional Adjudication under the 1994 FDRE Constitution*; in *Ethiopian Law Review* Vol.1 No.1
21. Jeremiah, Shola Omotola, , *Secularism and the Politics of Religious Balancing in Nigeria* (2009)
22. Jha, Shefali, *Secularism in the Constituent Assembly Debates, 1946-50*; in *Economic and Political Weekly* Vol. 37, No. 30 (2002)
23. Keddies, Nikki R., *Secularism and its Discontents*; in *Daedalus*, Vol.132, No.3 (2003) P-16
24. King Andrew J. (Prof), *Accommodating Religion and Law in the Twenty-First Century*; in *U. MD. L. J. Race, Religion, Gender, and Class* Vol. 6:7 (2006)
25. Lupu, Ira C. (Prof.) and Robert W. Tuttle (Prof.), *Sexual Misconduct and Ecclesiastical Immunity*; in *BYU. L. Rev.*(2004)
26. Nuaria, Anil, *Relationship Between State and Religion; Antimonies of Passive Secularism*; in *Economic and Political Weekly*, Vol. 24 No.8 (1989)
27. Perry, Michel J., *Religion in Politics: Constitutional and Moral Perspectives* (1997), P-36-38
28. Rao, Badrinath , *The Variant Meanings of Secularism in India; Notes towards Conceptual Clarifications*; in *Journal of Church and State* (2006)
29. Rawls, John, *the Idea of Public Reason Revisited*; in *U. CHI. L. Rev.*, Vol. 64, (1997)
30. Reeder, John P. Jr., *What is a Religious Ethic?* in *Journal of Religious Ethics* Vol. 25, No. 3 (199)
31. Rosenfield, Michel, *Can Constitutionalism, Secularism Religion be Reconciled in an Era of Globalization and Religious Revival?* In *Cardozo Law Review* (2008-2009) Vol. 30:6
32. Sajo Andra, *Constitutionalism and Secularism: The need for Public Reason*; in *Cardozo Law Review* Vol.30, No.6 (2009)
33. Sarna Jonathan, *the Rise, Fall, and Rebirth of Secular Judaism*, (2003)

34. Suberu, R. T., *Religion and Institutions: Federalism and the Management of Conflicts Over Sharia in Nigeria*; Journal of International Development, Vol. 21 No. 4
35. Topper, Michel, *French Secularism or Laicite*; in Cardozo Law Review (2000) Vol. 21: 1267
36. Vincent M. Di Lorenzo (Prof.), *Legislative and Public Policy Debate: Should the Social Viewpoint of Religious Group Play No Role?* In MARGINS Vol.1:48 (2001)
37. Wing, Adrienne Katherine (Prof.) and Varol, Ozan O. (Prof.), *Is Secularism Possible in a Majority Muslim Country? The Turkish Example*; in Texas International Law Journal, Vol. 42, No. 1 (2006-07)
38. Yamagishi, Keiko (Prof.), *Freedom of Religion, Religious Political Participation and Separation of Religion and State: Legal Considerations from Japan*; in BYU L. Rev. (2008)

Constitutions and Laws

I. Foreign constitutions and laws

1. French Constitution (1946 As amended 1958)
2. German Basic Law (1949)
3. Greece Constitution (1975 as amended 1986)
4. South African Constitution (1996)
5. Turkish Constitution (1982 as amended 87)
6. US Constitution First Amendment (1789)

II. National constitutions and laws

1. A Proclamation to Provide for the Registration and Regulation of Charities and Societies, Proclamation No. 621/2009; Negarit Gazeta (2009)
2. Association Registration Regulation, Legal Notice No 321/1966; Negarit Gazeta (1966)
3. Federal Courts of Sharia Consolidation Proclamation No.188/99
4. The 1955 Revised Constitution of the Empire of Ethiopia
5. PDRE Dergue Constitution, (1987)
6. Proclamatin.No.250/2001,Council of Constitutional Inquiry Proclamation, Federal Negarite Gazeta(2001).
7. Proclamation No. 210/2000, Ethiopian Human Right Commission Establishment Proclamation, Federal Negarit Gazeta(2000).

8. Proclamation No. 377/2003, Labour Proclamation No. 377/2003, Negarit Gazeta (2003)
9. Proclamation No. 590/2008, Freedom of the Mass Media and Access to Information Proclamation, Federal Negarit Gazeta (2008).
10. Proclamation No.1/1995, the Constitution of Federal Democratic Republic Ethiopia, Federal Negarit Gazeta (1995).
11. Proclamation No.471/2005, A proclamation to define the Powers and Duties of Executive Organ Federal Negarit Gazeta (2005). As amended by A Proclamation to Amend the Proclamation Providing the Definition of Powers and Duties of the Executive Organs of FDRE, Proclamation No. 441/2009
12. Proclamation No.652/2009, a Proclamation on Anti-Terrorism, Federal Negarit Gazeta (2009).
13. Public Holly Day Proclamation No. 16/74 Negarit Gazeta (1974)
14. The Civil Code of the Empire of Ethiopia, Proclamation No.165/1960,Negarit Gazeta Extraordinary (1960).
15. The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 Federal Negarit Gazeta (2004)
16. The FDRE Flag Proclamation, Proclamation No. 654/2009, Negarit Gazeta (2009), Art 3(1)

Interviews

1. Interview with Priest Belay Tegegne, the Presiding ‘Judge’ of the EOTC Religious Court (Oct. 23, 2010)
2. Interview with Ato Abiy Agena, A Jehovah Witness Church Pastor in Piazza Atbia, (Oct. 4, 2010)
3. Interview with Ato Bzouyene GebreEgziabher, A Legal Advisor of the Commissioner and Officer of Monitoring and Evaluation in the Charities and Societies Agency, (Sep. 15, 2010)
4. Interview with Ato Misgane Tegegne, the Representative of Secessionist Group of Serer Bale-Egziabher in Waghimra Zone Local Church (Aug. 15, 2010)
5. Interview with Ato Muluye Wolelaw, the Director of the Directorate of the Correction of Human Rights Violation in Ethiopian Human Right Commission (Sep. 2, 2010)

6. Interview with Ato Tizazu Desalegn, a Legal Advisor for the Director of Directorate of Religion and Belief in the Ministry of Federal Affairs (Sep. 6, 2010)
7. Interview with Hajji Said Asmare, Head of Monument Protection and Public Relations in EIASC, (Oct. 8, 2010)
8. Interview with Pastor Aytegeb Birhanu, the Seventh Day Adventist Church Pastor in the Main Center (Stadium), (Sep. 16, 2010)
9. Interview with Priest Gebeyaw Belete, the Representative of Rampant Group of Serer Bale-egziabher in Waghimra Zone Orthodox Local Church (Aug. 15, 2010)

Cases

I. Foreign cases

1. *Everson v. Board of Education*, 330 US 15.16
2. *Amnesty International and others V Sudan* (2000) AHRLR 297 (ACHPR, 1999); *Q Bowers v. Hardwick*, 478 U.S 186, 211 (1986)
3. *Branch Ministries Inc. v. Richardson*, 970 F. Supp. 11 (D.D.C-1997)
4. *Edwards v Aguillard*, 482 U.S 578, 585 (1987) See Foot Note 26 of Vincent M. Di Lorenzo, in *Supra* Note 135
5. *Employment Division v. Smith* 494 U.S. 872 (1990)
6. *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) v. Bulgaria*, App. No. 35677/04, 2009 Eur. Ct. H.R., <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>
7. *Jones v. Wolf* 443 U.S 595 (1979)
8. *Kakunaga V Sekiguchi*, 31 MINSHO 533 (Sup. Ct. July 13, 1977)
9. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)
10. *Roe v. Wade* 410 U.S.113 (1973)
11. *Wisconsin v. Yoder*, 406 U.S. 207 (1972)
12. *Leyla Sahin V Turkey before EHRC*

II. Domestic cases

1. Kadija Basher *etal*, case, File No. 394/92 and then the Cassation File No.12400/1995
2. The Decision of EHRC on Mezemir Abebe v EOTC, Annex 7

3. *Deacon Mihret Birhanu etal V HamerWorq St. Marry Church, Cassation File.No.18419*
4. *Megabemistr Mezgebu Blayneh V Patriarch Supreme Council, Cassation File No.34440*
5. *Deacon Ayalew Adisu V Hohetesemay St. Marry Church, Cassation File No.47806*

Others

I. Newspapers

1. Google Amharic Newspaper reprinted on Oct. 20, 2010
2. Addis Zemen Newspaper, Tahsas 12, 2002, E, C No. 102
3. Reporter Aharic Newspaper, 2010

II. Speeches and Panel desiccation

1. A Speech in The Constitutional Assembly of Ethiopia; in the Minutes of the Constitutional Assembly, (1994), Vol. 2,
2. Kefialew Azeze , Speech to the Meskel Ceremony in the Meskel Square (sep. 16, 2003 E.C)
3. *Panel Discussion on "Pro-Choice V. Pro-life: Abortion a Choice or Not"* On Oct. 29, 2010 in AAU

III. Unpublished paper

- Tekalign Fanta, *Managing Religious Conflicts: a Study of the Legal Framework with Particular Reference to the 2006 Muslim-Christian Conflict in Oromiya*, (Unpublished LLM Thesis, 2008)

ANNEXES



አመልካች የሀይማኖት ተቋሙ የምዝገባ ፊታድ የምስክር ወረቀት ከማግኘቱ በፊት ስሙን በመገንጠት ጋዜጣ በማላወጅ ጋዜጣውን ስለገደብሎ ማሳረብ ይኖርበታል።

የሰጎ አድራጎት ድርጅቶችና ማህበራት ኢጅንሲ

የሀይማኖት ተቋማት የምዝገባ ማመልከቻ ቅጽ

1. አመልካች የሀይማኖት ተቋሙ ስም _____
2. የአመልካች ሀይማኖት ተቋሙ ዓላማዎች (ዓላማዎቹ ሃይማኖታዊ ይዘት ብቻ ይላቸው፤ አጭርና ግልጽ መሆን ይኖርባቸዋል) _____

3. የሀይማኖት ተቋሙ ከሚከተሉት በየትኛቹ ክልሎች ወይም ከተማ መስተዳድሮች ይገኙታል።
 ትግራይ አፋር አማራ ኦሮሚያ ሶማሌ ድራጃዎ ቤንሻንጉል አዲስ አበባ ጉምዝ
 ጋምቤላ ሐረሪ ደቡብ/ባህሪ/ህዝቦች

4. የአመልካች የሀይማኖት ተቋሙ ዋና መ/ክ/ት አድራሻ
 ክልል _____ ሆንታ/ከተማ _____ ወረዳ _____
 ቀበሌ _____ ልዩ ቦታ _____ የቤት ቁጥር _____
 ስልክ ቁጥር _____ ፋክስ _____ ፖ.ሣ.ቁ _____
 ኢ-ሜይል _____

በጉዳዩ በዚህ ችሎት መረጃ ላይ ለሰጠው የሥነ ምግባር ስልጠና ቁ.42/85 አንቀጽ 3(3) (ለ) መሠረት የሚከተሉት ምክር ቤት ሊያወጡ የሚችሉው ደንብ የኃይማኖት ተቋማት መንፈሳዊ አገልግሎት ከሚሰጡ ሰራተኞቻቸው ጋር ያላቸውን የስራ ግንኙነቶችም ሊጨምር ይችላል? ወይስ አይችልም? የሚለው በመሆኑ ችሎቱም ነጥቡን መርምሯል።

አዋጅ ቁ.42/85 በአዋጅ ቁጥር 377/96 የተሻሻረ ቢሆንም ነጥቡን በሚመለከት ሁለቱ አዋጆች አንድ ዓይነት ድንጋጌዎች የያዙ በመሆኑ ችሎቱ የአዋጅ ቁ. 42/85 ድንጋጌዎች መሠረት አድርጎ በተጠቀሰው ነጥብ ላይ የሚሰጠው የሥነ ምግባር ትርጉም ለአዋጅ ቁ. 377/96 ድንጋጌዎችም አግባብነት ያለው ነው።

ይህ ችሎት በዚህ ጉዳይ የሥነ ምግባር ትርጉም ለሚሰጥበት ከላይ ለተመለከተው ነጥብ ተጠቃሚነት ያለው የአዋጅ ቁ. 42/85 አንቀጽ 3 ነው። ይህም አንቀጽ አጠቃላይ በንዑስ አንቀጽ 2 ከተመለከቱት በኋላ ላይ ከተመሠረቱት የስራ ግንኙነቶች ጋር ማሳካትና በአስረ መካከል የሚደረግ በትጥር ላይ በተመሠረተ የስራ ግንኙነት ላይ ተፈጻሚ እንደሚሆን ይደነግጋል። የኃይማኖት ተቋማት መንፈሳዊ ተግባር ከሚከናወኑ ሰራተኞች ጋር ያላቸው የስራ ግንኙነት አዋጅ ተፈጻሚ እንደሚሆንባቸው በአንቀጽ 3(2) ከተዘረዘሩት የስራ ግንኙነቶች ውስጥ ያልተካተተ ሲሆን ይልቁንም የአዋጅ አንቀጽ 3(3)(ለ) የኃይማኖት ወይም የሌሎች አድራጎች የሚመሰርቱት የስራ ግንኙነቶች ላይ አዋጅ ተፈጻሚ እንዳይሆን የሚከተሉት ምክር ቤት በደንብ ሊወስን ይችላል በሚል ይደነግጋል። የስር ፍ/ቤት ጉዳዩን በአዋጅ ቁ. 42/85 መሠረት ለማየት ውጤት የሰጠው በአንቀጽ 3(3)(ለ) መሠረት የተጠቀሱት ድርጅቶች በሚመሠረቱት የስራ ግንኙነት አዋጅ ተፈጻሚ እንዳይሆን የሚከተሉት ምክር ቤት ደንብ አስከፊወጣ ድረስ ድርጅቶቹ በሚመሰረቱት የስራ ግንኙነቶች ላይም አዋጅ ተፈጻሚ ይሆናል በሚል ነው። ይህም በስር ፍ/ቤት ለአንቀጽ 3(3)(ለ) የተሰጠው ትርጓሜ የሚከተሉት ምክር ቤት የኃይማኖት ድርጅቶች መንፈሳዊ አገልግሎት ከሚሰጡ ሰራተኞቻቸው ጋር ባላቸው የስራ ግንኙነቶች

ላይ የአዋጅ ቁ. 42/85 ተፈጻሚ እንዳይሆን በደንብ ሊወስን ይችላል የሚል ድምዳሜን መሠረት ያደረገ መሆኑን መገንዘብ ይቻላል። ይህ አተረጓጎም የአንቀጽ መንፈስ ተከትሎ የተሰጠ መሆን አለመሆኑን ለመመርመር የአስረና ሰራተኛ አዋጅ የሚሸፍኖቸውን የስራ ግንኙነት ጉዳዮች መመልከት የግድ ይላል።

የአስረና ሰራተኛ አዋጅ የስራ ውል ስለሚመሰረትበት ሁኔታ የስራ ውል ስለሚቆይበት ጊዜ የሰራተኛውና የአስረው መብትና ግዴታ የስራ ግንኙነት ስለሚደረግባቸው ውስጥ ሁኔታዎች የስራ ውል ሕጋዊ ወይም ሕገወጥ በሆነ መንገድ በሚደረግበት ጊዜ ስለሚከተሉ ውጤቶች የሚደነግጡ ድንጋጌዎች የያዘ ሆኖ ይታያል። በአጠቃላይ ሕጉ ከአስረና ሰራተኛ ግንኙነት ጋር ተያያዥነት ያላቸው ጉዳዮችን በአንዳንድ ሁኔታዎች ከሚያጋጥሙ ልዩ ጉዳዮች በቀር አላቸው የያዘ መሆኑን መረዳት ይችላል።

ከላይ የተመለከቱት ከአስረና ሰራተኛ ግንኙነት ጋር ተያያዥነት ያላቸው ነጥቦች መንፈሳዊ አገልግሎትን በሚመለከት የኃይማኖት ተቋማት በሚመሰርቱት የሥራ ግንኙነቶች ውስጥም የሚሉት ቢሆንም በሌሎች የስራ ግንኙነቶች ከሚያጋጥሙበት አኳኑን ለየት ባለ መንገድ የሚያጋጥሙ ሁኔታዎችም አሉ። ምሳሌዎቹም በአንድ የኃይማኖት ተቋም ውስጥ ሊመሠረት የሚችል የተለያዩ የሥራ ግንኙነት በመኖሩ ነው። በአንድ በኩል የሚሰጡት አገልግሎት ድርጅቱ ከሚከተለው እምነት ጋር ተጠቃሚነት ያለውና ከእምነቱ ጋር ተጠቃሚ ሊታይ የማይችል ሰራተኛን፤ እንደ ቁጥጥር ይህንን ወዘተ ያሉ ሲሆን በሌላ በኩል ደግሞ የሚሰጡት አገልግሎት ከእምነቱ ጋር ያልተቆራኘ ለአንድ ዘገባ ሰራተኛ የንብረት ክፍል ሰራተኛ የሰውነት ስነ ስርዓት ወዘተ አሉ። በመሆኑም የሃይማኖት ሥራውን ከሚሰጡት ሰራተኞች ጋር የሚሰጠው የአሰሪና ሰራተኛ ሁኔታ ከሌሎቹ ሰራተኞች ጋር ከሚሰጠው የተለየ ነው። ተጠቃሚ የሃይማኖትን ወይም መንፈሳዊ ስራ የሚሰጡትን ሰራተኞች ስንመለከት የስራቸው ፀባይ የኃይማኖት ተቋሙ ከሚከተለው እምነት የሚመነጭና ከእምነቱ ጋር ተባብሮ የሰጠው መንፈሳዊ አገልግሎትን ለመስጠት ብቁ ሆኖ ለመገኘት መሟላት የሚገባቸው ነገሮች ለምን ያህል ጊዜ አገልግሎቱ

ላይ መቆየት እንደሚችል የኃይማኖት እና የመንፈሳዊ አገልግሎት ሠጪው መብትና ግዴታ አገልጋዩ መንፈሳዊ አገልግሎቱን እየሠጠ እንዲቀጥል የሚያደርጉ ሁኔታዎች አገልጋዩ አገባብ ባልሆነ መንገድ አገልግሎቱን እንዳይሰጥ በተደረገ ገዢ የሚከተሉት ሁኔታዎች እና ሌሎች በስራ ግንኙነቱ ሊክሉ የሚችሉ ጉዳዮች እያንዳንዱ የኃይማኖት ተቋም ከሚከተለው እምነት ጋር የተያያዙ ናቸው። የመንፈሳዊ ስራ ግንኙነቱ የሚያስከፍተው የአሠሪና ሠራተኛ ጉዳዮች ከእምነቱ ተነጥለው የሚታዩ ባለመሆናቸው በስራ ግንኙነቱ ውስጥ ጣልቃ መግባቱ በእምነት ውስጥ ጣልቃ መግባትን ያስከትላል።

በሌላ በኩል ግን ከእምነቱ ጋር ተያያዥነት ያለውን ሥራ የሚሠሩ ሠራተኞች ክድርጅቱ ጋር የሚኖራቸው ግንኙነት ሊያስነሳ የሚችለው ጉዳዩ ከእምነቱ ጋር የማይያያዝና ይልቁንም በማንኛውም የአሠሪና ሠራተኛ ጉዳይ ከሚከተሉት ሁኔታዎች የተለየ አይደለም።

ከላይ እንደተመለከተው የመንፈሳዊ የስራ ግንኙነቱ የሚያስከፍተው ሁኔታዎች ከኃይማኖቱ ተነጥለው ሊታዩ የማይችሉ በመሆናቸው የሥር ፍ/ቤት ለተጠቀሰው አንቀጽ በሰጠው ትርጉም የሚከተሉት ምክር ቤት የመንፈሳዊ ስራ ግንኙነትን በሚመለከት ሕግ የሚያወጣ ከሆነ በኃይማኖት ጉዳዮችም ጣልቃ መግባቱ ይሆናል ይህ ደግሞ የኢ.ፌ.ዲ.ሪ ሕገ መንግሥት አንቀጽ 11 "መንግሥትና ኃይማኖት የተለያዩ ናቸው፤ መንግሥት በኃይማኖት ጉዳዮች ጣልቃ አይገባም" በማለት ከተደነገገው ጋር የሚጋጭ ይሆናል። ነገር ግን የሃይማኖቱን ሥራ ከሚሠሩት ሠራተኞች ጠብቆ ያሉና በሃይማኖት ተቋም ከሚሰሩ ሰራተኞች ጋር ያለው የሥራ ግንኙነት የሚያስነሳው ጉዳይ ሌላው የአሠሪና ሠራተኛ ግንኙነት ከሚያስነሳው ጋር ተመሳሳይ በመሆኑ የሚከተሉት ምክር ቤት በአ.ቁ.42/85 አንቀጽ 3(3)(ለ) መሠረት ሊያወጣ የሚችለው ደንብ እነዚህን ሠራተኛን በተመለከተ እንጂ መንፈሳዊ አገልግሎት ለመስጠት ከኃይማኖት ተቋማት ጋር የሚያደርጉትን ግንኙነቶች የሚጨምር ሊሆን አይችልም።

በመሆኑም ደንቡ እስካልወጣ ድረስ የአዋጅ ቁጥር 42/85 የመንፈሳዊ የሥራ ግንኙነቶች ላይም ተፈጻሚ ይሆናል የሚለው ትርጉም የሕግ መሠረት የሌለው ይሆናል።

ከፍ ሲል በተዘርዘሩት ምክንያቶችም ማንኛውም የሥራ ክርክር ሰሚ አካላት መንፈሳዊ የሥራ ግንኙነቶች ተመስርቶ የሚሰሩ ክርክሮች በአ/ቁ. 42/85 መሠረት አይቶ ለመመሰን ሥልጣን የሌላቸው ሲሆን ክርክሮቹ የኃይማኖት ተቋማቱ በሚኖራቸው አለመግባባቶች በሚፈቱበት መንገድ የሚታዩ ናቸው። ይህ ችሎትም የስር ፍ/ቤት በዚህ ጉዳይ በታየው የሕግ ነጥብ የሰጠው የሕግ ትርጉም መሠረታዊ የሕግ ስህተት ያልበት ሆኖ አግኝቶታል።

ው ሣ ኒ

1/ የኢ/መ/ደ.ረ.ጃ ፍ/ቤት በመ/ቁ. 13549 ህዳር 24 ቀን 1997 የሰጠው ውሳኔና የኢ/ከፍተኛ ፍ/ቤት በመ/ቁ. 35562 ጥር 17 ቀን 1997 ዓ.ም የሰጠው ትእዛዝ ተሸጋጊ።

2/ ግራ ተኝ ጠጫና ኪሳራቸውን የየራሳቸውን ይቻሉ።

መዝገቡ ተዘግቷል። ይመለስ።

የሚይነብበ ባለሙያዎች ፈርማ አለበት

ተ.ጠ

የሚያሳይ ነው። የአመልካች ነገረፈኛ በስራ ላይ የተጠራን መልስ በመገባትና የሠበር አቤቱታ ይዘቱን ተገቢነት በማጠናከር መጋቢት 30 ቀን 2000 ዓ.ም በተጻፈ ማመልከቻ የመልስ መልሳቸውን አቅርበዋል።

የጉዳዩ አመጣጥ አጠር አጠር ባለመልኩ ከላይ የተገለጸው ሲሆን ይህ ችሎትም ከሕጉ ጋር በማገናኘብ በሚከተለው መልኩ መርምሮታል። እንደመረመረውም ጉዳዩ በመደበኛ ፍ/ቤት መታየቱን በአግባቡ መሆን ያለመሆኑ በጭብጥነት ሊመረመር የሚገባው ሆኖ አግኝቶታል።

ከክርክሩ ሂደት መገንባብ የተቻለው ተጠሪ የተቋረጠው የደመገብ ክፍያ ጥያቄን ሊያቀርቡ የቻሉት በአመልካች መ/ቤት ከ1957 ዓ.ም ጀምሮ በትኔ መምህርነት ተተግብረው ሲያገኙት የነበረው ደመገብ ከ11/11/86 ዓ.ም ጀምሮ ተቋርጧል በሚል ነው። አመልካች ተጠሪ የትኔ መምህር በመሆናቸውና አገልግሎቱም መንፈሳዊ በመሆኑ በስራ ክርክር ሰጪ ሊቃይ እንደሚገባው በመገለጹ ተከራክሯል። የስር ፍ/ቤት ይህንኑ የአመልካች መከራክሪያ ነጥብ ያለፈውም የተጠሪ አገልግሎት ከኃይማኖት ተቋሙ ጋር የተያያዘ ተጥቶች መንፈሳዊ ስራ አይባልም በሚል ነው። አመልካች በስራው የተጠሪ ስራ ለተማሪዎች አገልግሎት የሚሰጥ የትኔ መምህርነት ነው በማለት ተከራክሯል። ተጠሪ ለዚህ ለሰበር ችሎቱ በሰጠው መልኩም የትኔ መምህርነት ከኃይማኖት ተቋሙ ጋር የተያያዘ ተጥቶች መንፈሳዊ ስራ አይደለም በማለት ያነሱት ክርክር የለም። በመሆኑም የተጠሪ የትኔ መምህርነት ስራ ተጥቶች የሆነ መንፈሳዊ ስራ መሆኑ የሚያከራክር ሆኖ አልተገኘም። በዚህ ረገድ የስር ፍ/ቤት የደረሰበት ድምዳሜ የግራ ተገኝ ክርክር ያላገናዘበ ነው።

ይህ ችሎት በመገንባብ ቁጥር 18419 ግንቦት 04 ቀን 1998 ዓ.ም በሰጠው ውሳኔ የኃይማኖት ድርጅት ሠራተኞችን በሁለት ክፍሎች በማየት የአሠሪና ሠራተኛ

አዋጅ ተፈጻሚነትን ወስኗል። በዚህም መሠረት ከኃይማኖት ድርጅቱ ጋር ተጥቶች ግንኙነት ያለውና ከአምነት ተነጥሎ ሊታይ የማይችል ስራ የሚሠሩ ሠራተኞች እንደ ቁስ፣ ካህን፣ ዲያቆን --- ወዘተ ከኃይማኖት ድርጅታቸው ጋር የሚያሳዩት ክርክር በአሠሪና ሠራተኛ ሕግ መሠረት ሊያገኝ የማይገባው መሆኑ ተወስኗል። ሠበር ችሎቱ ወደዚህ ድምዳሜ የደረሰውም መንፈሳዊ ስራ የሚሠሩት ግለሰቦች ተጥቶች ከአምነቱ ወይም የኃይማኖት ድርጅቱ ከሚከተለው አምነት የሚመነጭና ከአምነቱ ጋር ጥባቅ ትስስር ያለው በመሆኑ፣ መንፈሳዊ አገልግሎቱን ለመስጠት ብቁ ሆኖ ለመገኘትም በአምነቱ መሠረት መሟላት የሚገባቸው ልዩ ነጥቦች መኖራቸው ይታወቃል በሚል ምክንያት ነው። ከዚህም የምንገነዘበው ተጠሪ የትኔ መምህር ሆነው ሊተጠሩ የቻሉት የአመልካች አምነት የሚጠይቀውን ልዩ መመዘኛ አሟልተው በመገኘታቸውና ይህንኑ መንፈሳዊ አገልግሎት ለተማሪዎች ለመስጠት ነው። ተጠሪ የሚሠጡት አገልግሎት በባህርይው ተጥቶች የሆነ መንፈሳዊ ትስስር ያለው መሆኑ እየታወቀ በኃይማኖት ተቋሙ እንደሚሠሩ ሌሎች እንደ ሂሳብ ሠራተኛ፣ ንብረት ክፍል ሠራተኛ የስታትስቲክስ ሠራተኛ --- ወዘተ ተቆጥሮ የትኔ መምህርነት ተጥቶች መንፈሳዊ አገልግሎት ሊባል አይገባም መባሉ ተቀባይነት ያለው ሆኖ አልተገኘም። የተጠሪ ስራ ተጥቶች የሆነ መንፈሳዊ አገልግሎት ነው ከተባለ ደግሞ ከአመልካች ጋር የሚኖሩት አለመገባባት በስራ ክርክር ሠሚ ተርቦ ሊታይ የማይገባ፣ ይልቁንም በኃይማኖት ተቋሙ አለመገባባቶች በሚፈታበት መንገድ ሊታይ የሚገባው መሆኑን ከላይ የተጠቀሰው የሰበር ችሎት ውሳኔ ያስረዳል። በመሆኑም የስር ፍ/ቤት ውሳኔ መሠረታዊ የሆነ የሕግ ስህተት ያለበት ሆኖ ተገኝቷል። በዚህም ምክንያት የሚከተለው ተወስኗል።

ው ሣ ኔ

1/ በፌ/መ/ደ/ፍ/ቤት በመ/ቁ. 20228 ግንቦት 08 ቀን 1999 ዓ.ም ተሰጥቶ በፌ/ክፍተኛ ፍ/ቤት በመ/ቁ. 55548 ህዳር 25 ቀን 2000 ዓ.ም የፀናው ውሣኔ በፍ/ብ/ሥ/ሥ/ሕ/ቁ 348 /1/ መሠረት ተሸሯል።

* 2/ የተጠሪ ጥያቄ በኃይማኖት ተቋሙ አለመግባባቶች በሚፈቱበት መንገድ ከሚታይ በስተቀር በስራ ክርክር ሠሚ አካል ቀርቦ የሚዳኝበት የሕግ መሠረት የለም ብለናል።

3/ ወጪና ኪሣራ የየራሳቸውን ይቻሉ ብለናል።

4/ መገዘቡ ወደ መ/ቤት ይመለስ።

የማይነበብ የአምስት ዳኞች ፊርማ አለበት

ተ.ወ

ጻፏችኛ:- መንበረወሳይ ታደሰ

ሐገጉን ወልዱ

ሐረፍት መለስ

ታራሰ ይርጋ

አልማው ወሊ

አመልካች:- የሆሀተሰማይ ቅድስት ማርያም ቤተክርስቲያን ሰበካ ገብሌ ጽ/ቤት-ሻምበል

አሰፋ ወልደ ተረቡ

ተጠሪ:- ዲያቆን አያሌው አዲሱ-ቅረብ::

መዝገቡን መርምረን የሚከተለውን ፍርድ ሰጥተናል::

ፍ. ር. ድ

ለሰበር አቤቱታው መነሻ የሆነው ጉዳይ የሥራ ውሊ ከሕግ አግባብ ውጪ ተቋርጦቻል በማለት ተጠሪ የመሰረተውን ክስ የሚመለከት ነው:: ተጠሪ በአመልካች ላይ ክስ የመሰረተው ከሥራዬ ያለገገብን አግደኛል በማለት ሲሆን፤ ሲያገለግል የነበረውም በዲቲና እንደሆነ በክሱ ላይ ገልጸዋል:: አመልካችም ለክሱ በሰጠው መልስ ተጠሪ ከሥራው ሊሰናበት የቻለው የቤተክርስቲያን ስምንቱ ተቀርቶ ስለሆነ ሆኖ በሰራብት እስከ ከቤተመጻፊት ሙዳዩ ምጽዋቶች ተሰብረው ተዘርፈዋል:: ከዚህ የተነሳም ተጠሪ በወጫ ተከሰሰ:: የሚሉትን ምክንያቶች በመስጠት ክስ ውድቅ እንዲደረግለት ጠይቆታል:: ክስ የቀረበለት የፌዴራል መጀመሪያ ደረጃ ፍ/ቤት ክርክሩን ክሰማ በጎላ፤ አመልካች ተጠሪን ወደ ሥራው እንዲመልስ በማለት ወስኖአል:: በዚህ ውላይ ላይ ይግባኝ የቀረበለት የፌዴራል ክፍተኛ ፍ/ቤትም ውላኔው ጉድለት የለበትም የሚል ምክንያት በመስጠት ይግባኝን ሰርዘናል:: የሰበር አቤቱታው የቀረበው በዚህ ላይ ነው::

እኛም አመልካች ሐምሌ 27 ቀን 2001 ዓ.ም በዛሬው ማመልከቻ ያቀረበውን አቤቱታ መሰረት በማድረግ ተጠሪን አስቀርቦን ክርክሩን ለምተናል:: በመቀጠልም ግራ ቀኛ ወገኖች ያሰሙትን ክርክር አቤቱታ ከተረጋገጠው ውላኔ እና ከሕጉ ጋር አገናገበን ተመልክተናል::

እንደምናየው በአመልካች እና በተጠሪ መካከል ያለው ግንኙነት ላይ ማኖሪያው ማኖሪያ ነው:: አመልካች በኦርቶዶክስ ተቃራኒ ላይ ማኖሪያ መሰረት የተቋቋመ ላይ ማኖሪያ ተቋም ሲሆን፤ ተጠሪ ደግሞ በዚህ ተቋም ውስጥ የላይ ማኖሪያ አገልግሎት እንዲሰጥ አባል ወይም ሰራተኛ የሆነ ነው:: ለክርክሩ መነሻ የሆኑት ሙዳዩ ምጽዋቶች ተዘረፉ በተባለበት እሳት ተጠሪ ቤተመጻፊትን መክፈቱንና በመቀጠልም ቅዳሴ እንደገባ በክርክሩ ገልጸዋል:: ይህ ሲሆን የቻለውም ቤሐይማኖቱ ሥርአት መሰረት የሐይማኖቱ አገልጋይ በመሆኑ ነው::

ይህ የሰበር ችሎት በተመሳሳይ ጉዳይ ክርክር ቀርቦለት በሰበር መ/ቁ. 18419 ግንቦት 4 ቀን 98 ዓ.ም በሰጠው ውላኔ የሐይማኖት ወይም መንፈሳዊ አገልግሎት የሚሰጥ ሰራተኛ ከተቋሙ ጋር ያለው የሥራ ግንኙነት በአሰሪና ሰራተኛ ጉዳይ አዋጅ የሚሸፈን አስመሆኑን በመግለጽ የሕግ ትርጉም ሰጥቶአል:: ከዚህ በጎላም በተመሳሳይ ጉዳዮች ቀርቦው ቀደም ሲል በተሰጠው የሕግ ትርጉም እንደተሸፈኑ እየተገለጸ ሲወሰን ቆይቶአል:: በመሆኑም የሥር ፍ/ቤቶች በጉዳዩ ላይ ሥልጣን ላይኖራቸው ክርክሩን ተቀብለው ማስተናገዳቸው አግባብ አልነበረም:: የሰጡት ውላኔም መሰረታዊ የሕግ ስህተት ያለበት ሆኖ ተገኝቶአል::

ው. ላ. ኔ

1. የፌዴራል መጀመሪያ ደረጃ ፍ/ቤት በመ/ቁ. 27517 ሰኔ 10 ቀን 2001 ዓ.ም የሰጠው ውላኔ እና የፌዴራል ክፍተኛ ፍ/ቤት በመ/ቁ. 04821 ሐምሌ 13

ቀን 2001 ዓ.ም የሰጠው ትእዛዝ በፍ/ባ/ሥ/ሥ/ሕግ ቁጥር 348/1/ መሰረት ተሽረዋል።

2. ተጠሪ በአመልካች ላይ የመሰረተው ክስ በአስሪና ሰራተኞች ጉዳይ አዋጅ መሰረት የጣታይ ባለመሆኑ የሥር ፍ/ቤቶች ክርክሩን የሰሙት ስልጣን ላይኖራቸው ነው ብለናል።

3. ገራ ተኝ ወገኖች ወጪና ኪነ/ራቸውን ይቻቻሉ ብለናል።

መገዘቡ ይመለስ።

የጣይ/ባብ የአምስት ዳኞች ፊርማ አሰጠ

ቤ/ኃ

የኢትዮጵያ ሰብዓዊ መብት ኮሚሽን የኮሚሽኖች ጉባዔ

በመዘምር አበበ ሰማ አቤቱታ ላይ የቀረበ
ውሳኔ

ግንቦት 24 ቀን 1999 ዓ/ም
ኢ. ስ. መ. ኮ

3. የሠራተኛ አዋጅ እንደ 27 /ሰ/ን መሰረት ባደረገና ያለበት ምክንያት ከሥራ መቅረት ያለማስጠንቀቅ የሥራ ውልን ማቋረጥ በቂ መሆኑን ስለሚገልጽ አቤቱታ አቅራቢው ከላይ የተጠቀሱትን ድንጋጌዎች በመተላለፋቸውና ሥራውንም በገዛ ፈቃዳቸው አቋርጠው የተወጡት ስለሆነ ወደ ሥራ የማይመለሱ መሆኑን ገልጸው እንደ ማስረጃ እንዲያስገልግል ከኮልሬ ደብረ ብርሃን ቅ/ሥላሴ በተ/ክርስቲያን የተጻፈ ደብዳቤ አባሪ በማድረግ ገልጸዋል።

ወደ ዝርዝር ጉዳይ ከመገባቱ በፊት ኮሚሽኑ ይህንን ጉዳይ የማየት ስልጣን አለው ወይስ የሰውም የሚለው መወሰን ስለሚያስፈልግ የማቋቋሚያ አዋጅ ቁጥር 210/1992 ለማየት ተገደላለሁ። በመሆኑም በማቋቋሚያ አዋጅ አንቀጽ 6 ንዑስ አንቀጽ 1 ላይ እንደተደነገገው በማንኛውም ዜጋ በመንግስት አካላት በፖለቲካ ድርጅቶች፣ በሌሎች ማህበራት እንዲሁም በባለስልጣኖቻቸው ሰበአዊ መብቶች መከበራቸውን ማረጋገጥ የኮሚሽኑ አንዱ ሥራ መሆኑ ተደንግጓል። እንዲሁም በአንቀጽ 7 ላይ የተደነገገውን አንዳይጣሱ በመርማሪው ጥንቃቄ ተደርገዋል። በተጨማሪም አቤቱታው ከሌሎች አጋር ኮሚሽኖች ሥራ ጋር እንዳይጣረዝ የያንዳንዱን ኮሚሽን መቋቋሚያ አዋጆችን መፈተሽ አስፈላጊ በመሆኑ በዚህም በኩል ተሳይቦታል። በመሆኑም በኮሚሽኑ ማቋቋሚያ አዋጅ 24 መሠረት ምርመራውን ለማከናወን አቤት ባይ ባቀረባቸው አቤቱታ ውስጥ የሰብአዊ መብት ጥሰት ምልክቶች መኖር አለመኖራቸውን ማረጋገጥ አስፈላጊ ሆኗል። ስለዚህ አቤቱታው በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ህገ መንግስት አንቀጽ 57/1/ እና 41/1/ ላይ ማረፊን አረጋግጠናል።

በሁለቱም ወገኖች ከቀረቡት የሰውና የሰነድ ማስረጃዎች የቀረቡ አክራካሪ ነጥቦች 1 አቤቱታ አቅራቢ

ሀ) አቤቱታ አቅራቢው ከታህሣሥ 2/4/ን 1999 ዓ.ም ቅ/አውሎስ ሆስፒታል ቀርቦ መለስተኛ ቀዶ ህክምና ማድረጋቸውና በዚህም ምክንያት ለሁለት ሳምንት የሐኪም እረፍት የተሰጣቸው ለመሆኑ የሚያስረዳ የሰነድ ማስረጃ ከነአማርኛው ትርጉሙ አቅርቦዋል።

ለ) በተመሳሳይ ታህሣሥ 18 ቀን 1999 ከላይ በተጠቀሰው ሆስፒታል ቀርቦ በተመሳሳሽ መታከማቸውን የሚያስረዳ የሐኪም የምስክር ወረቀት ከዋናው ጋር የተመሳሳሪ አቅርቦዋል።

ለኢትዮጵያ ሰብአዊ መብት ኮሚሽን የኮሚሽነሮች ጉባኤ የቀረበ ውሳኔ

መርማሪ- አቶ ተረፈ ወንድሙ አቤቱታ አቅራቢ መዘምር አበበ ለማ አቤትታ የቀረበበት አካል አዲስ አበባ ሐገረ ስብከት

አቤት ባይ በ10/07/99 ዓ.ም ባቀረቡት አቤቱታ ምንም እይነት ሆነን የሚፃረር ድርጊት ላልፈጸም የአዲስ አበባ ሀገረ ስብከት ሥራ አስኪያጅና አቤቱታ አቅራቢው ደ.ሰራበት የነበረው የጠሩ ሥላሴ በ/ክርስቲያን ደብረ አስተዳዳሪ በጣምራ በመመለጠር ከምስራቅ ስራዬ በግፍ አባረውኛል። በዚህም የተነሳ መተዳደሪያዬ የሆነውን ደምወዜንና የዐመት በአል መጥፍ ድጋማዬን ጭምር በሥራ ላይ እያለሁ የሰውም በማለት እንዳላገኝ ክልክለውኛል በማለት አቤቱታቸውን አቅርበዋል። ለዚህም መነሻውን ሲያቀርቡ ቀደም ሲል ከታህሣሥ 2 ቀን 1999 ጀምሮ በቅዱስ ጳውሎስ ሆስፒታል መለስተኛ ቀዶ ጥገና ተደርጎልኝ ስታክም ቆይቼ የ15 ቀን የሐኪም ፅረፈት ተሰጥቶኝ በህክምና ላይ እያለሁና የሐኪም እረፍት ከማለቱ በፊት ከጓደኛዬ ጋር መጥቼ ለደብሩ ጽ/ቤት የሐኪም ማስረጃውን ማስገባቱ አያታወቀ በግፍ ልባረር ችያለሁ በማለት ያስረዳልኛል ያሉትን የሰነድም ሆነ የሰው ምስክርችን አቅርበዋል።

ተጠሪው መ/ቤት በጉዳዩ ላይ መልስ እንዲሰጠው በቁጥር ስመኮ/ሀ/አ/ድ/ወ/99 በ13/07/99 ቀን ከኮሚሽኑ ደብዳቤ ቢጻፍላቸውም እስከ 25/08/99 ዓ.ም ድረስ መልስ ሳይሰጡ በመዘገፃቸውና የአቤት ባዩን ችግር ግንዛቤ ውስጥ በማስገባት ሚያዝያ 19 ቀን 1999 በግንባር ጽ/ቤት ድረስ በመገኘት ከዋና ስ/አስኪያጅ ጋር ተገናኝተን በጉዳዩ ላይ ስፋ ያለ ውይይት ናደረግን በኋላ መልሳችን ነው ያሉትን ደብዳቤ በቁጥር 1699/839/99 በ26/08/99 ቀን አቅርበዋል።

የደብዳቤው ጭብጥ በአጭሩ ሲያብራሩ 1. አቤቱታ አቅራቢ የ15 ቀን የሐኪም እረፍት ማቅረባቸውን ተቀብለው ሆኖም በወቅቱ ምንም እይነት የጽሑፍም ሆነ የቃል ማመልከቻ አለማቅረባቸውን 2. የሠራተኛዎች አዋጅ ቁጥር 377/96 አንቀጽ 54ን መሰረት ያደረገ

ሐ) አቤቱታ አቅራቢው ለቅራንታዎችን መንስኤ ነው ያሉትን በአሰሪና ሠራተኛ ጉዳይ ወላጅ ቦርድ ክላቸውን አቅርበው ያስወሰኑበትን የቦርድ ውሳኔ ሁለት ገጽ አቅርበዋል።

መ) ጥር 15 ቀን 1999 ዓ.ም. ለምዕራብ ወረዳ ቤተ ክህነት ሥራ አስኪያጅ ጽ/ቤት አቅርቦ ደምወጠና የዓመት በአል መዋያቸው መክሰሉንና መፍትሄ እንዲሰጡላቸው የማያስረዳ ማመልከቻ ያቀረቡበትን ቀሪ (በግል ማህደራቸው ዋናው ተገኝቷል) አቅርበዋል።

ሠ) በ16/5/99 ዓ.ም ለአዲስ አበባ ሀገረ ስብከት ጽ/ቤት ልክ በተራ ፈደል (መ) የቀረበውን አይነት አቤቱታ የተጻፈበትን ቀሪ አቅርበዋል። (በግል ማህደራቸው ዋናው ተገኝቷል)

ረ ከሆነ፣ ማስረጃ በተጨማሪ አቤቱታ አቅራቢ ሦስት የሰው ምስክርነትን በማቅረብ በገንዳ ያውቅልኛል ባሉት ጉዳይ ላይ አስመስክረዋል። እንደ መስከረምን አቀራረብ እንደ መስከረ መምህር ልብስወርቅ አሰባቸውና ሁለተኛ ምስክር ቄስ አፈወርቅ ማማሩ በሰሎሞን ቃል አቤቱታ አቅራቢው በህመም እየተረዳ መቆየቱን እንደሚያውቁ ገልጸው በተለይ እንደኛ ምስክር በሱ ላይ ማስታወቅያ መውጣቱን በስልክ ደውሰው ስለነገሩት ቅዳሜ ታህሣሥ 14 1999 ቀን የሐኪም አረፍቱን ሳይጨርስ መጥቶ ሲሆሩ መቆየቱን በአይኛችን አይተናል ከማሰታቸው በተጨማሪ ሁለተኛው ምስክር አሰባቸውም ተረኛ ስለነበሩ አብረው ሲሰሩ እንደቆዩ ገልጸዋል። የአቤቱታ አቅራቢ ሦስተኛ ምስክር ቀድሞ ይሰራባት በነበረው በ/ክ ባልደረባው እንደነበረና በወቅቱ በመኖሪያ ቤት ጎረቤት ስለነበሩ ታህሣሥ 9 ቀን 1999 በአቤቱታ አቅራቢው ጠያቂነት ስለሚያመው አብርት እንዲሄዱ ስለጠየቁት ሄደው ለደብሩ ጸሐፊ የህክምና ማስረጃውን ከማመልከቻ ጋር ሲሰጥ ማየቱንና ጸሐፊውም ፎቶ ኮፒውን ከዋናው ጋር አመላክሮ ሂዱ ብሎቸው ወጥተው መሄዳቸውን መስክሯል።

2. የመልስ ሰጪ

ሀ) አቤቱታ አቅራቢው መታመማቸውን አምነው ሆኖም በወቅቱ በጽሑፍም ሆነ በቃል ባለማመልከታቸው የተከሰተ ችግር መሆኑን ጠቅሰዋል

ለ) ሁለተኛው ክርክራቸው የሆነ ሲሆን የሠራተኛ አዋጅ ቁጥር 377/96 አንቀጽ 54ን የሚቃረን ስለሚሆን ደምወጠ እንከፍልም ማለታችን አግባብ ነው የሚል ነው።

ሐ) በሦስተኛ ደረጃ ያቀረቡት ክርክር አሁንም የሆነ ሲሆን የሠራተኛ አዋጅ አንቀጽ 27 (ለ) ን በመጥቀስ ስለሆነ አቤት ባይ ሰተከታታይ ከአምስት ቀን በላይ ለማንም አካል ሳያሳውቁ ከሥራ ገበታቸው በመቅረታቸው ያለማስጠቀቅና ውለትን ማቋረጣችን ህገ ደደግፈናል የሚል ነው።

መ) መልስ ሰጭዎች ክርክራቸውን እንዲያጠናክሩላቸው አቤት ባይ ከሚሰሩበት ደብር የተጻፈ ሁለት ገጽ ኮፒ አያይዘው አቅርበዋል። በጽሑፍ ላይም፡-

1. አቤት ባይ በሚሰሩበት የሥራ መደብ መብት እንደሌላቸውና ለመብትም ብቃት የሌላቸው መሆኑን
2. የሥራ ፍቅር የሌላቸውና ከአሰሪዎቻቸው ጋር የማይገባቡ መሆኑን
3. ከታህሳስ 3 ቀን 1999 እስከ ታህሣሥ 26 ቀን 1999 ከስራ ገበታቸው ላይ አሰማኝታቸውን ለኮማንድ ያቀረቡት የህክምና ማስረጃ በወቅቱ ለነሱ ያልተረገጠ መሆኑን ጠቅሰው የአዲስ አበባ ሀገረ ስብከት በዛ በኩል መልስ እንደሰጣቸው አሳስበዋል
4. በተጨማሪ አቤት ባይ የመዘምርነት ጥያቄቸውን ካላነሳ ወደሥራው እንደሚመለስ ለአቤት ባይ ተነግሮት እስከ የካቲት 9 ቀን 1999 ዓ/ም ድረስ እሾታውን ያልገለጸ መሆኑን
5. ያልሰሩበትን ወራቶች ደምወጠ የማይጠይቁ ከሆነ በተራ ቁጥር 4 ከተጠቀሰው ቀን በኋላ በመጣ እንደሆነ ወደ ስራ እንደሚመልሱት ቢሰሩትም መልስ ማጣታቸውንም ጨምረው አሳውቀዋል።

በመሆኑም አቤት ባይና መልስ ሰጭ ያቀረቡትን የሰውና የሰነድ ማስረጃ ምርመራ በማድረግ ለክርክሩ መፍትሄ ይሆን ዘንድ የሚከተሉት ጥያቄዎች መልስ ማግኘት እንደሚገባቸው ያምናል።

1. በአቤቱታ አቅራቢውና በመልስ ሰጭ መሐል ለተፈጠረው አለመግባባት መንስኤው አቤት ባይ ከ02/04/99 ዓ/ም ጀምሮ እስከ 18/04/99 ዓ/ም

ክልተወሰነ ደመወዝ የሚከፈለው ለተሰራ ሥራ ብቻ ይሆናል ይላል። ከዚህ አንቀጽ መረዳት የሚቻለው በጥቅሉ ለው ላልሰራበት ጊዜ ደመወዝ የሚከለክል ሳይሆን በህግ የተቀመጡ ሰራተኛው በስራ ገበታው ባይገኝም አንደተገኘ ተቆጥረው ክፍያ ሊፈፀም የሚገባቸው ሁኔታዎች እንደሚኖሩ የሚያሳይ ነው። ከነዚህም ሁኔታዎች አንዱ ደግሞ ህጋዊ ከሆኑ በታዎች የሚመጡ የሐኪም የህመም ፈቃድ ሰነድ ነው። በዚህ ጉዳይ ይዘው አዋጅ አንቀጽ 85/1/ ላይ አንድ ሰራተኛ የሙከራ ጊዜውን ከጨረሰ በኋላ በሥራ ላይ በሚደርስ ጉዳት ሳይሆን በሌላ ሕመም ምክንያት ሥራ ለመስራት ካልቻለ በዚህ አንቀጽ መሠረት የሕመም ፈቃድ ያገኛል ይላል። ስለአካላዊ ስራም በተከታታይ አንቀጽ ላይ በግልጽ ተቀምጧል። በተጨማሪም በአንቀጽ 85/3/ ላይ ማንኛውም ሰራተኛ በህመም ምክንያት ከሰራው ሊቀር ለአሰሪው ማሳወቅ እንዳለበት አሰቀምጦ ሆኖም ህመምተኛው ለአሰሪው ለማሳወቅ የማይችልበት በቂ ምክንያት ካለው ግን የተቆረጠ ቀን ህጉ ባያስተምጥም/ ለተወሰኑ ቀናቶች አለማሳወቅ ችግር እንደሚኖረው ህጉ አስተምጦታል።

ተጠሪው መ/ቤት ያነሱት ሌላው የህግ ክርክር አንቀጽ 27/ለ/ን ሲሆን ይህ አንቀጽ የሰማሰጠንቀቂያ የሥራ ውልን ማቋረጥ ከማቻልበት ምክንያቶች ውስጥ አንዱን ያሳያል። ሆኖም በንዑስ አንቀጽ 2 ላይ ግን አስገዳጅ የሆኑ ነገሮችን አስተምጧል። ይኸውም አንድ አሰሪ በዚህ አንቀጽ መሠረት የሥራ ውል በሚያቋርጥበት ጊዜ የሥራ ውል የሚቋረጥበትን ምክንያትና ቀን በመጥቀስ ለሰራተኛ በጽሁፍ መግለጽ አለበት የሚል ነው።

ከላይ ከተነሱ የህግ ክርክሮች በመነሣት ምን መሆን እንደሚከተለውና እንዳልነበረበት ሰማየት ይቻላል። አቤቱታ አቅራቢው በማመልከቻቸው ላይ እንዳቀረቡት ይከፈላል። ያሉቸውን የሰነድና የሰው ማስረጃዎችን አቅርበው ከታህሣሥ 2 ቀን 1999 ዓ.ም. እስከ ታህሣሥ 18 ቀን 1999 ዓ.ም. ድረስ በህመም ላይ መቆየታቸውንና ለዚህም ይረዳሉ። በተጨማሪ ሰባት የሰነድና የሰው ማስረጃ አቅርበው አንደ ጭብጡ አስረድተዋል። በተጨማሪ ይሁንግ የህክመና ማስረጃ ታህሣሥ 9 ቀን 1999 ዓ.ም. ከሰባተኛ ምስክር ጋር ቀርበው ሰጽ/ቤት ማስገባታቸውን ሰባተኛው ምስክር ከማስረጃታቸው በተጨማሪ ቀረጾቹ ሁለት ምስክሮች በወቅቱ አቤቱታ አቅራቢውን ጠይቀውት ሰጽ/ቤት ማስገባቱን እንደገራቸው ቀርበው አስረድተዋል። አንዲሁም በአንደኛና ሁለተኛ ምስክር ምንም እንኳን የሐኪም የሁለት ሳምንት ፈቃድ እንዳላቸው ቢያውቁም ከማለቱ በፊት ቅዳሜ ታህሣሥ 14 ቀን 1999 ዓ/ም ስራ ገብተው መደበኛ ስራቸውን ሲያከናውኑ እንደነበረ በተለይ አንደኛው ምስክር በወቅቱ እሱም ተረኛ ስለነበር አብርሞቸው ሲሰራ መቆየቱን አስረድቷል።

- ድረስ በሕዝብምና ሊረዱ መቆየታቸውና በዚህ ወቅት ውስጥ ማስረጃቸውን በወቅቱ ማቅረብ አለማቅረባቸው ነው።
- 2. በዚህ ጉዳይ ላይ የሰራተኛ አዋጅ ቁጥር 377/96 በርግጥ መልስ ሰጭዎች በሚሉት ስሜት ነው መተርጎም ያለበት?
- 3. አቤቱታ አቅራቢው ይሰራበት ከነበረው መ/ ቤት የመጣው ደብዳቤ እንደ አቤቱታው የመከሰከል አቅም አለው?

መርማሪው በሁለቱም ወገን የተረበውን መከራከሪያ ነጥቦች በገርገር ተመልክቶታል። በመሆኑም አቤቱታ አቅራቢውም ሆነ መልስ ሰጭ መ/ቤት በሰጡት ነጥቦች ላይ አስተያየት ከመሰጠቱ በፊት በጉዳይ ላይ ሁለቱም ወገኖች ባቀረቡት ጉዳይ ላይ ህግ ምን እንደሚል ማየቱ አስፈላጊ ነው። በመሆኑም ለማሳራት ያመች ዘንድ ከአቶዶክያ ፌደራላዊ ዲሞክራሲያዊ ህገ-መንግስት መጀመሩ አስፈላጊ ነው። በህገ መንግስቱ አንቀጽ 77/1/ በህግ ከተደነገገው ሥርዓት ውጭ ማንኛውም ሰው ነፃነቱን እንደማይጣ በግልጽ ተቀምጧል። ከዚህ መረዳት የሚቻለው ተጽፎው ከተቀመጠ ህገ-ጥቅ ውጭ ማንኛውም አካል ቢሆን በህገ መንግስቱ ውስጥ የተሰጠ ነፃነቶችንና መብቶችን ባሻጠ ጊዜ ሊጥቅና ባሻጠ ጊዜ ሊሰጥ የሚቻለው አለመሆኑን ነው። በመሆኑም በህገ መንግስት ውስጥ ከተሰጡ ብዙ መብቶችና ነፃነቶች መካከል አንዱ ደግሞ አንቀጽ 41 ላይ የተቀመጠው የኢትዮጵያ ሚኒስቴሮችና የባህል መብቶች ናቸው። በዚህ አንቀጽ 70-ስ አንቀጽ 1 ማንኛ ውም ኢትዮጵያዊ በሃሪቱ ውስጥ በማንኛውም የኢትዮጵያ እንቅስቃሴ የመሠማራትና ለመተዳደሪያ የመረጠውን ሥራ የመስራት መብት አለው ይላል። እነኚህ ከላይ የተጠቀሱት መብቶች በህግ ካልሆኑ በቀር በምንም መልኩ መጣስ እንደማይኖርባቸው ማመልከቱ አይቻልም። ሆኖም ተጠሪ መ/ቤቱ በአንድ በኩል የወሰደኩት አርምጃ በህግ ሆነ በሁኔታ ህጋዊ ነው በማለት እየተከራከረ በሌላ በኩል አቤት ባይን ቅድመ ሁኔታዎችን በማስቀመጥ ወደ ስራቸው እንደሚመልሷቸው ቃል ሲገቡ ቆየተው በኋላ ወደ ስራቸው እንደማይመልሷቸው ወስነው መልስ ሰጥቷል። ከሰጣቸው መልሶች በህግ በኩል ያደረጋቸው መከራከሪያዎች የሠራተኛ አዋጅ ቁጥር 377/96ን መሰረት ያደረገ ነው። በመሆኑም አዋጁ ምን እንደሚል ለማየት ተሞክሯል።

ተጠሪ መስሪያ ቤቱ በትዳሚ መሰረት ያደረገው የአዋጁን አንቀጽ 54ን ነው። አዋጅ ንዑስ አንቀጽ 1. የሚለው በዚህ አዋጅ ወይም አግባብ ባለው ህግ በተለየ አኳን

ውሳኔ የማያሳኝ ውገፍ ደግሞ ይሰጠኝ ብሎ የማይጠይቅ ከሆነ ለመመለስ ፍላጎት እንዳለቸው በጽሁፉ ላይ ማሳየታቸው በራሱ የችሎትን ወሳኔ ላለመቀበል የተደረገ እንቅስቃሴ መሆኑንና በተለይ በችሎቱ ውሳኔ የተከፋ መሆኑንና በሆግ ለማስከበር የተደረገው ጥረት በመሆኑም እንደ ዜጋ ከሀይል ይልቅ መብቱን በሆግ ለማስከበር የተደረገው ጥረት የሚሰረታታ ሆኖ ላለ ተጠሪው መ/ቤት የሄንን ወደጎን በመተው ህገ ወጥ የሆነ እርምጃ መውሰዳቸው አግባብ ሆኖ አላገኘውም።

በመሆኑም ከዚህ የሚከተሉትን የውሳኔ ሐሳቦች ለኮሚሽኖች ጉባኤ አቀርባለሁ።

1. አቤቱታ አቅራቢው በአስቸኳይ ያለምንም ቅድመ ሁኔታ ወደ ስራቸው እንዲመለሱ።
2. እስከአሁን ድረስ በመልስ ሰጭ ስህተት ያልተከፈለው ውገፍ ደመወዛቸው እንዲከፈላቸው።
3. በተከታይ መ/ቤቱ ይህንን ኮሚሽን ለመቀበል የመታዘዙትን እንዲቆጠብ ጠበቅ ያለ ማስጠንቀቂያ እንዲሰጠው እንዲደረግ እያልኩ የውሳኔ ሀላቢን አቀርባለሁ።

ቤቱታ አቅራቢው ማረጋገጫ። ከላይ ምድቅን አንቀጽ 54 ስተሰራ ስራ ብቻ ወይም አግባብነት ክፍያ በጭራሽ ዱ የሆነው ደግሞ ው መከራከራቸው ተኖ አዋጅ አንቀጽ ስተኛ መስካሪዎች በስራ ገበታቸው የሰመደ ስራቸውን አንቀጽ የመከላከል ታ ላይ አልተገኙም ዲያደርግ የሰጠውን ለ ማቆራረጥ ህግን

በሌላ በኩል መልስ ሰጭ ያቀረባቸው መከራከሪያ ነጥቦች ለማሳየት እንደተሞከረው መልስ ሰጭ ያቀረቡት የሆነ ክርክር ሊሆን እነሱ እንዳሉት በደረሰው ደመወዝ ወይም አበል የሚከፈሉ ነው ሳይሆን ሌሎች ህገ-ገዥ አዋጅትን ያገናዘበ ሆኖ በሰራተኛ አባላት ለሌሎች ህገ-ገዥ ላልተሰራበት ቀን እንዲከፈል ከታዘዙ እንደማይከፈል የሚያሳይ ነው። በመሆኑም ከህገ-ገዥ መብቶች የህዝብና እረፍት በመሆኑ መልስ ሰጭዎች ይህን አንቀጽ ሰ አገባብ አለመሆኑን ለመረዳት ተችሏል።

በሌላ በኩልም መልስ ሰጭው እንደ መከራከሪያ ነጥብ ያነሱት 27/ሴ/ጎ ነው። ከተረቡት የሰጡ ማስከሪያዎች ውስጥ እንደኛው በግልጽ እንዳስተመጡት አቤት ባይ የህዝብና እረፍቱ ከማለቅ ላይ መገኘታቸውን ገልፀው በተለይ አንዱ ምስክር አብረው ሲያከናውኑ እንደቆዩ መስከሪያዎች መልስ ሰጭ በ አቅሙን ያቆዩ መሆኑን ለመረዳት ተችሏል። በወቅቱ ስራ ገበባ ባለ እንኳን በዚሁ አንቀጽ 30-ሰ አንቀጽ ሁለት ላይ አሰራው ህጋዊ አስገዳጅ ድንጋጌ በወቅቱ ላይፈጽም የአንድን ስራተኛ የተከተለ አለመሆኑን ያሳያል።

የመርማሪው አስተያየትና የውሳኔ ሐሳብ

መልስ ሰጪው ላቀረቡት መልስና ከሱ ጋር ተያይዘው ከተረቡት እንደሚቻለው የአቤቱታ አቅራቢው ከስራ መታገድ ከህጋዊ መሆኑን ለመረዳት ይቻላል። ምክንያቱም ተያይዞ ከተረ እንደሚቻለው አቤቱታ አቅራቢው ቅድመ ሁኔታዎችን የሚያ የካቲት 9 ቀን 1999 ዓ.ም. ድረስ ወደ ስራው ሊመልሏቸ ተቀምጧል። ቅድመ ሁኔታው ደግሞ ቀድሞውኑ የስራ ያሳረፈባቸው ጉዳዮች ናቸው። በመሆኑም የሰሰረው መ/ቤት መረዳት እንደሚቻለው የአቤት ባዩ ከስራ መቅረት ሳይሆን በቅ በሆነ ተከራክሮ መብቱን ማስጠበቅ ነው። ምክንያቱም የስራ ነ

በአሳሪ ብሔራዊ ክልላዊ መንግሥት
የዋና ዋና አስተዳደር ቤት
ፍትህ ቅርንጫፍ ጽ/ቤት

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Annex 10

ቁጥር ፬፻፲፭፻፲፯/፳፭/፳፻፲፯
ቀን ፳/፲፯/፱፻፳፰

ሰብአዊ መብት ጉዳይ ጽ/ቤት
ሰብአዊ

ጉዳይ:- የሰረር እየሱስ ካህናት እና እደ ጥበብ ባለሞያዎች ካህናት ክርክርና ጭቅጭቅ ይመለከታል

በርእሱ እንደተጠቀሰው ለ11 ዓመታት እንደወረረሽን እያገረሽና የደብዳቤ ሕዝብ ፤ የዞን ሃገረ ስብከት ጽ/ቤት እና የመንግስት መ/ቤቶችን የሰራ ጊዜ በመሻማት እና የሕሊና እረፍት ከመንሣቱም አልፎ የሕሊና ቁስል ሆኖ የኖረው ይህ ጉዳይ ለአንድ ጊዜና ለመጨረሻ ጊዜ በ27/11/98 ዓ.ም በሃገረ ስብከት ጽ/ቤት አዳራሽ የሰረር እየሱስ ማ/ሃ/ኛን የሚመለከታቸውን የመንግስት አካላት በተገኙበት የቅዱስ ሲኖዶስ አባል የሆኑት ብፁ አባታችን አቡነ ማቴዎስ ሰብሳቢነት ፤ የእደ ጥበብ ባለሞያ የሆኑት ካህናት ቤተመቅደስ ገብቶ ለመቀደስ የሚከለክል መጽሐፍም ሆነ የቤተክርስቲያን ስርዓት እንደሌለ መጽሐፍ ቅዱስን መሠረት በማድረግና በመጥቀስ ትምህርት ሰጥተው አይቀድሱም የተከለከሉ ናቸው የሚሉትን ካህናት ለማሳመን ሰፊ ጥረት ያደረጉ ቢሆንም ካባታችን አልነበረም በማለት አሻፈረኝ በማለታቸው ።

እቤተኞቹ ካህናት

- 1ኛ. ቤተክርስቲያኑ ለሁሉም አገልግሎት ካልሰጠ እንዲዘጋ ካህናቱም አገልግሎት እንዳይሰጡ ክህነታቸው ተይዞ መስቀልም እንዳያሳልሙ።
- 2ኛ የንስሃ አባት ነኝ ብለው የንስሃ ልጅ እንዳይዙ የያዙትንም የንስሃ ልጅ በጉባኤ እንዲያሰናብቱ እንዲያስረክቡ ።
- 3ኛ በገለልተኛ ይቀድሳሉ የተባሉት ካህናት ከነሱ ጋር ተባብረው አገልግሎት እንዳይሰጡ ሲሰጡ ቢገኙ ግን ስልጣን ክህነታቸው የሚያዝ መሆኑን እስካሁን ድረስ እንደነበረው በህገወጥ መንገድ በማሰብና በሰራ ሁ የሚሉ ምእመናን ካህናት ቢገኙ ከሰልጣን ክህነቱ የሚሻር መሆኑን በመወሰን ውሳኔውን እንድታስፈጽሙ በቁጥር 464/98 በቀን 3/11/98 ዓ.ም በተጻፈ ደብዳቤ ሲያሳውቃችሁ እኛም ለውሳኔው ተፈጻሚነት ያበከላችን መንግስትና ሕዝብ የጣሉበትን አደራ እንድንወጣ ተጠቅሶ የውሳኔው ግልባጭ ተመዝግቦ ደርሶናል።

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8/12/98

መ/ሠ/ጻ
የፍርድ ቤት
ፍ/ሠ
20/12/98

በመሆኑም ውሳኔውን ለማስፈጸም ግንባር ቀደም ኃፊነት የተሰጠው ለወረዳው ቤተክህነት ቢሆንም ከነገሩ ውስብስብነት አስቸጋሪ/አንደዚሁም ከአማጽያኑ ግትር አቋም የተነሣ በቀላሉ ሲፈጸም ስለማይችል በማስፈጸም ሂደት ውስጥ የሚገጥሙን ሕገወጥ ተግባሮች በየጊዜው ፖሊስ አያስመዘገቡ ለሕገወጥ ተግባር ማስረጃ እየቆጠሩ የወንጀል ምርመራ እየተጣራ ለዐ/ሕግ እንዲቀርብ ፖሊስም ከንዑስ ጣቢያ እስከ ዞን ያለ መዋቅር ሁሉ ለጉዳዩ ትኩረት በመስጠት እለት ተለእት ክትትል እንዲያደርግ በየደረጃው ያሉ የአስተዳደር አካላትም የበኩላቸውን አሰትዳደራዊ እርምጃ ውሳኔውን እንዳይፈጸም እንደቆረቆረ በሚፈጥሩ ሰዎች ላይ እንዲወሰድ እና በየተሰጠን ስልጣንና ሃላፊነት ስራችንን በመለየት ጉዳዩን ለማስፈጸም ከእኔ ምን ይጠበቃል የሚለውን ጥያቄ በማንገብ ተቀናጅተን መስራት እንዳለብን እያስገነዘብኩ ይህ ሳይሆን ቀርቶ በሰውም ሆነ በንብረት ላይ ጉዳት ቢደርስና ያንዱ መብት ተከብሮ የሊላው ቢጣስ ግንባርቀደም ተጠያቂው የወረዳው ቤተክህነት ቢሆንም ውሳኔውን ለማስፈጸም እቤተኛ የሆነ አልተባበርም ያለ የመንግስት አካልም ሆነ ግለሰብ በሕግ የሚጠየቅ መሆኑን ጭምር እናሳስባለን።

ግልባጭ

- > ለዋግ ክምራ ሃገረ ስብስት ጽ/ቤት
- > » » ዞን መስተዳድር ጽ/ቤት
- > » » አስተዳደር ፀጥታ ዘርፍ
- > » » ሚ.ሊ.ሻ ጽ/ቤት
- > » » አስ/ሆን ፖሊስ ጽ/ቤት
- > ለሰቆጣ ወረዳ አስተዳደር ጽ/ቤት
- > » » ፖሊስ ጽ/ቤት
- > » » ፍት/ጸ/ቤት
- > » » ሚ.ሊ.ሻ ጽ/ቤት

ሰቆጣ



Handwritten notes and signatures:
 በሕግ ተቀባይነት ላይ የተመሰረተ
 ለግንባር ቀደም ላይ የሚውል
 ግንባር ቀደም ላይ የሚውል
 11-12-98

Handwritten signature and date:
 12/12/98



Annex 11

JB

ቁጥር 420/98
ቀን 24/12/98 ግጾ

በዋና ፕሮግራም ስርዓት የሰፊው ወረዳ
ቤተ ክህጻናት ጽ/ቤት

ለ ዋና ፕሮግራም አስተዳደር ዘን ፍትሕ ቅ/ጽ/ቤት
ሰ ፋ ጣ ፕ
=====

በሰረር ኢየሱስ ቤተ ክርስቲያን ዐደ ጥበብ ባለጠያ የሆኑ ከሀናትና ዐደ ጥበብ ባለጠያ ባልሆኑ ከሀናት አብረን እንቀደሳለን አብረን እንቀደስዎ በጭል ለ 11 ዓመታት ሲያወዘገብ የነበረ ፕግር ስዎሌ 27 ቀን 1998 በብጭዕ አባታችን አቡነ ጭቲያስ ሰብሳቢነት የወንጌላትና የቤተ ክህነት ሠራተኞች በተገኙበት ውሳኔ የተሰጠ ወሆኑን በመጥቀስ ገንባር ቀደም ኃላፊነት የተሰጠው የወረዳ ቤተ ክህነት ወሆኑን እያስገነዘብኩ ይህ ሃይሆን ቀርቶ በሰጭ ሆነ በንብረት ላይ ጉዳት ቢደርስ በገንባር ቀደም ተጠያቂው የሰፊው ወረዳ ቤተ ክህነት ወሆኑን በቀጥር ዋገ/ፍት/ቅ/246/ክ1/12 በ8/12/98 ከዋና ፕሮግራም አስ/ዘን ፍት/ቅ/ጽ/ቤት የተፈረ በአድራሻ ሲደርስን በገልገሎ በ9 ወ/ቤት የተወዘገቡ ወሆኑን ያስረዳል ::

ስለዚህ በሰረርዎ ሆነ በሌላ ወንጀል ቢሄድ የወረዳ ቤተ ክህነት ጽ/ቤት ተጠያቂ አይሆንም በንብረትዎ ሆነ በሰጭ ላይ ጉዳት ቢደርስ ወንጀል ረዳሎው ዋነኛ ተጠያቂ ሰዎን የወከላከል ሥራ የወጃል ሥራ ደገፍ የፖሊስ እንጂ የወረዳ ቤተ ክህነት ስለ ወንጀል ገንባር ቀደም ተጠያቂ አለመሆኑን እና በራሱ መወሪያ ሀገረ ሰብክተ በጭሰጭ በያለ ዓዋዲ ደንብ መሠረት የጭሰራ ወ/ቤት ወሆኑን እንገልጻለን ::

ገልገሎ ፕ
=====

- ለ ዋና ፕሮግራም ሀገረ ሰብክተ ጽ/ቤት
- ለ ዋና ፕሮግራም ዘን ወስተዳደር ጽ/ቤት
- ለ ዋና ፕሮግራም ፀጥታ ዘርፍ
- ለ ዋና ፕሮግራም ጫሊ ጽ/ቤት
- ለ ዋና ፕሮግራም አስ/ዘን ፖሊስ ጽ/ቤት

- 13 → ለሰፊው ወረዳ አስተዳደር ጽ/ቤት
- 50.78 ፖሊስ ጽ/ቤት
 - 12.98 ፍት/ጽ/ቤት
 - ጫሊ ጽ/ቤት

ሰ ፋ ጣ



Handwritten signatures and dates: 25-12-98

በህግ ቀርቦ የሚሰና ውል

በሰቆጣ ወረዳ 04 ቀበሌ በሰረር እየሱስ ደብር በተከሠተው አለመግባባት ጉዳይ የአዳ ጥበብ ባለሙያዎች ከደብሩ ካህናት ጋር አብረን መቀደስ አሉብን በማለት ጠይቀዋል በዚህ ጉዳይ ህዝቡም ያለመነበት በመሆኑና ቁሶቹም አብረን እንቀድስም በማለት በዚህ ግጭት ምክንያት ቤተክርስቲያኑ ለ13 አመት ተዘግቷል ስለዚህ የእደጥበብ ባለሙያዎችና ሌላውም ህዝብ በግራ ቀኙ ተዋደው ወደ አስታራቂ ሽማግሌ ገብተዋል በተመረጡት በሐገር ባህል አስታራቂ ሽማግሌዎች የእርቅ ውላችን በእኛ በእደ ጥበብ በሰሙያዎች በኩል እስከ አሁን ድረስ ቁሶቻችን አብረው መቀደስ አለባቸው በማለት በህግም እየከሰሰን በግልም ሆነ በጋራ ለቤተክርስቲያኑ ግብርም አንከፍል በማለት ተቀያይመን ኑረናል። አሁን ግን ጉዳዩን በውል አስበንና አስተውለን ሥናየው በመጣላትና በጠብ የሚጠቅም ነገር የለም በዚህ ጉዳይ በእርቃችን የተስማማንበት ቀደም ሲል እንደነበረው እንቅደም አባቶቻችን ሁነን ልንተዳደርና የእደጥበብ ቁሶችም አብረን መቀደስ አሉብን ብለን ላንጠይቅ አብረን እንቀድስ ላንል እና እንደቀድሞው ልንኖር ወደን ታርቀናል።

እኛም ነባርቹ የደብሩ ቁሶች ከላይ በተዘረዘረው ውል ስምምነት መሠረት ፍርቅ ከከፈሉ ልናጠምቅ ልንፈታ በሰለም እንደቅድሙ አባቶቻችን ሁነን ልንኖር ተዋደን በሽማግሌው ታርቀናል የእደ ጥበብ ባለሙያዎች መንግስት ቢፈቅድልን እራሳችንን ችለን ልንተክል እኛም የደብሩ ካህናት እራሳችን እንችላለን ካሉ ላንከለከላቸው በአጠቃላይ ከላይ በተዘረዘረው ስምምነት መሠረት የእርቃቸው ውል በህግ ቀርቦ እንዲሰናላቸው አስታርቀናል የአስታራቂው ሽማግሌዎች ስም ዝርዝር :-

1. ቄስ ደባሽ በሪሁን ቋህን ሩባቸን በገረገረኝ
2. ቄስ ደርበው ማከያው ሆስ ለርባ ለው ማህገዎ
3. ቄስ ላዕክ ማሪያም ውብነህ ለቅርብ ላይ ለቅርብ ላይ
4. አቶ ሰፊው ካሴ ሰራው ክሴ
5. አቶ አለልኝ ደረሶ ማህገዎ ለርባ
6. አቶ አዳነ ገ/መስቀል ከደ ለርባ መ ለርባ
7. አቶ መኮንን አጠና መ ክ ለርባ ለርባ
8. አቶ አበበ ሰጠኝ ከሰ ለርባ ለርባ
9. አቶ አስጫነቀ ደሴ ከሰ ለርባ ለርባ

10. ካላሁን ገ/መስተል ከሐህፋፋ ለሐቅፊ

11...አቶ ጌትዮ ታደሠ የዘመድ ዳኛ ናቸው ጌተሪያን

የህ/ተ/ የእደጥበብ ባለሙያዎች ኃላፊ

1. አቶ ምስጋኔ ተገኘ ምስጋኔ

2. አቶ ፈንታው ገ/መድህን ፈንታው

የቁሳችኛ/የህ/ተ/ 1. ቁስ ገበያው በለጠ

2. ቁስ ግርማይ አምቀ ናቸው::

ፊት ለፊት ለሐቅፊ ጌተሪያን

ከሰላምታ ጋር

ግልግጭ፣

- ለዋግኸምራ ዞን ሀገረ ስብከት
- ለሰቆጣ ወረዳ ቤተክህነት
- ለዋግኸምራ ዞን አስተዳደር ጽ/ቤት
- ለዋግኸምራ ዞን ፍትህ መምሪያ
- ለዋግኸምራ ዞን ፖሊስ ጽ/ቤት
- ለሠቆጣ ወረዳ አስተዳደር
- ለሠቆጣ ወረዳ ፍትህ መምሪያ
- ለሠቆጣ ወረዳ ፖሊስ ጽ/ቤት
- ለዋግኸምራ ፀጥታ ጉዳይ ጽ/ቤት
- ለሠቆጣ ወረዳ ፀጥታ ጉዳይ ጽ/ቤት

ሠቆጣ፣

- ለሀሙሲት ንዑስ ወረዳ ፖሊስ ጣቢያ ጽ/ቤት
- ለ04 ቀበሌ ለዋል ማሪያም ጽ/ቤት

ሀሙሲት

- ከዋሪ ንግሥት ጸ/ቤት
- ከዋሪ ንግሥት ማሪያም ጽ/ቤት
- ከሠቆጣ ጽ/ቤት ጸ/ቤት
- ከሠቆጣ ጽ/ቤት ማሪያም ጽ/ቤት

*ጌተሪያን
ጌተሪያን
ጌተሪያን*