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Chapter Five: Constitution, Democracy and Human Rights

5.1 Chapter Introduction

5.2 Chapter Objectives

5.3 Constitution and Constitutionalism

5.3.1 Conceptualizing Constitution

- The word 'constitution' is used mainly in many senses
 - ✓ In a **political sense**, it signifies **the constitution of the state**
 - ✓ the term has attained a **normative connotation** and has become **another term for a 'democratic political order'**
- Constitution is figuratively defined as
 - the **fundamental or basic law of a state** which sets out the structure of the state
 - **lists the rights of citizens alongside the limits on the power exercise of a government**
- It is a **blue print placed on top the hierarchy of laws** on constitutional governments
- It is **collection of principles** according to which the powers of the government, the rights of the governed, and the relation between the two are adjusted

- Constitution is the mothers of all laws; all other ordinary laws are derived from and subjected to this blue print
- constitution is supreme law of a land, any other law contradicted with the provisions of the constitution becomes void or invalid

5.3.2. Peculiar Features of Constitution

- constitutional documents and traditions take the general form of a contract or an agreement between the ruled and the rulers
 - ✓ Limitations on the rulers are exacted by the ruled in exchange for allowing the rulers to preserve some elements of their right to govern and for preserving the stability of the governing system itself

distinctive features of a constitution

➤ Generality

- provides the general principle of a state and carry on foundation and sets out general framework of the law and the government
- constitutional law announces principles while other laws apply or implement what the constitution announce their respective spheres of fields
- other laws provide the details BUT constitution is always the most general in the sense, short and brief
- The generality is very important because it give the constitution a feature of elasticity through interpretation thereby to accommodate various questions

➤ Permanency

- It is made for undefined period of time; serve for a long lap of ages
- purposely made to be stable and permanent
 - ✓ other laws are tentative, occasional and in the nature of temporary existence

➤ Supremacy

- taking precedence over all others, and defining how all the others should be made
- It is original because it is directly made by the people as the direct expression of the will of the people
 - ✓ other laws are secondary or derivate being commands of representatives of the sovereign

➤ Codified document

- written down; often in a single document that presents the constitution in a systematic manner
- constitutions are not intended to be perfect is evidenced by expressly stated processes for revising or amending them

➤ Allocation of powers

- It outline the proper relations between institutions and offices of the state, and between government and citizens
- most crucial part because it allocates powers and functions to government

5.3.3 Major Purposes and Functions of Constitution

✚ Serves as a framework for Government

- ✓ It is a plan for organizing the operation of government which in turn effectively guides the functions and powers of bodies of government

✚ Limits the Powers of Government

- ✓ In a constitutionally limited government, officials are always abided by the constitution
- ✓ there is no decision or action that will be undertaken arbitrarily and spontaneously rather
 - every decision, act, or behavior is entertained according to rules and laws that originate from the constitution
- ✓ A constitutional Government is neither too powerful nor too weak
 - constitutions shall grant Governments enough powers to effectively and consistently undertake their functions and responsibilities
 - But at the same time must put limits on their powers to make sure that they are not in a position to endanger the rights and freedoms of citizens

✚ Protects individual and collective rights of citizens

✚ Serves as the Supreme (Highest) Law of a Country

- ✓ Constitution is the source of and supreme over all laws in a country

- ✓ No specific law will be valid if it contradicts the constitution
- ✓ constitution of state is referred to as “the law behind other laws” or “the Mother of all laws” of a country

✚ Provides Government legitimacy/stability

- ✓ provide mechanisms through which any potential conflicts can be adjudicated and resolved
- ✓ It provide the vital function of introducing a measure of stability, order, and predictability of government
 - It gives governments a legitimate/legal right to rule or govern and by doing so it serves as the weapon for legitimizing regimes

✚ It is Blue Prints for establishing Values and Goals

- ✓ fundamental aims (objectives) and principles are described or accomplished explicitly in preambles to constitutional documents, which often function as statements of national ideals and values
 - Example: preamble of the FDRE Constitution

5.3.4. Classification of Constitutions

- Constitutions are classified into different categories using different criteria

A. Constitution based on form

- ✓ in view of the breadth of written provisions; based on form/appearance constitutions

➤ Written Constitution

- is one whose provisions are written in detail

- embodied in a single formal written instrument or instruments
- written constitution is a formal document in a codified form
 - Example, India, Kenya, Ethiopia, USA, Germany, Brazil

Merits of Written Constitution

- ✓ easily accessible to citizens that - enable them to monitor the behavior of their government
- ✓ Citizens can easily learn about their rights and duties
- ✓ full of clarity and definiteness because the provisions are written in detail
- ✓ has the quality of stability

Demerits of written constitution

- ✓ It creates a situation of rigidity - leads to the development of a conservative attitude
- ✓ It becomes difficult to change it easily quickly as per the requirements of time - possibilities of mass upheaval are increased
- ✓ becomes a play thing in the hands of the lawyers and the courts - Different interpretations come up from time to time that unsettle the judicial thought of the country
- ✓ not easily adapted to a new situation or changing circumstances. It needs be continuously amended to be adapted to a new situation

➤ Unwritten Constitution

- fundamental principles and powers of the government are not written down in any single document
- written provisions are very brief and most of the

rules of the constitution exist in the form of usages and customs

- Example: British constitution

Merits of Unwritten Constitution

- ✓ has the quality of elasticity and adaptability
- ✓ so dynamic that it prevents the chances of popular uprisings
- ✓ can absorb and also recover from shocks that may destroy a written constitution

Demerits of Unwritten Constitution

- ✓ not easily accessible to the public to determine which aspects of the constitution are violated and when it is violated
- ✓ difficult to create awareness through education
- ✓ It leads to situations of instability - always in a state of flux as per the emotions, passions and fancies of the people.
- ✓ It leads to the state of confusion
- ✓ It certainly does not suit a democracy where people are always conscious and suspicious of constitutional provisions - may be suitable to a monarchical or aristocratic system

B. Constitution based on complexity of amending process

➤ Rigid Constitution

- the process of amendment is difficult
- special procedure is followed to make a change in any rule of the constitution
 - A constitutional amendment bill must be passed by the parliament by special majority
- A more difficult procedure of constitutional amendment is the one which requires a national referendum

- **Referendum** - the process of **direct voting by citizens to support or rejects at constitutional amendment or other major national issues**
- does not adapt itself to changing circumstances immediately and quickly
 - **Example: USA, Australia, Denmark and Switzerland**

➤ **Flexible Constitution**

- **simple amendment procedure** and there is as such **no special required procedure** for amending a constitution
 - absolute majority (two thirds support) in the parliament
- **adapts easily and immediately** to changing circumstances
 - **Example: Constitutions of United Kingdom and New Zealand**

C. Constitution based on degree of practice

- ✓ On the basis of the **degree to which constitution of state observed in practice**

➤ **Effective Constitution**

- **government/citizens practices correspond to the provisions of the constitution**
- **requires not merely the existence of constitutional rules** and laws but also the **capacity of those rules and laws to constrain or limit government behavior and activities**, and establish Constitutionalism

➤ **Nominal constitution**

- constitution accurately describes government'/citizens' limits **yet in practice either or both fail to behave accordingly**
- constitution **only remains to have paper value** or

when there is **absence of constitutionalism**

- a nominal Constitution is **not observed in practice but in form**

D. Based on the kind of state structure

✓ based on the kind of state structure made by the constitution

➤ Federal Constitution

- **distributes power among the different units** of a state administration
- **Some** constitutions purely **classify and decentralize power between the central government and regional/local units**
- The powers divided between the federal government and states or provinces will be **clearly set down in the constituent document**

➤ Unitary Constitution

- state power is **concentrated in the hands of the central government**
- central government **can establish or abolish the lower levels of government; determine their composition, and their power and functions**
 - local government has **no guarantee for their existence**

5.4. Constitutionalism

- refers to a doctrine that **governments should be faithful to their constitutions**
- It is being **subject to limitations** and that **citizens and governments operate in accordance with the general rules and laws** rather than arbitrary
 - ✓ This is because the rules and laws so provided are all that can protect citizens' rights from arbitrary actions and decisions of the government

- constitutionalism is the belief that constitution is the best arrangement of affairs in a society
- essential elements for constitutionalism are constitution and its effective implementation
- It is another name for the concept of a limited and civilised government
- constitutionalism does not merely require the existence of constitution
 - ✓ constitutionalism checks whether the act of government is legitimate and whether officials conduct their public duties in accordance with laws pre-determined in advance

5.5. The Constitutional Experience of Ethiopia: Pre and Post 1931

5.5.1. Traditional Constitution (Pre- 1931)

- Ethiopia has a very little experience with a written constitution in spite of its long history of state formation.
 - ✓ first written form of constitution promulgated in Ethiopia in 1931
- Such lack of written constitution does not necessarily implicate the total absence of constitutional rules and principles
- Beginning in the 13th Century until the early 20th Century the Ethiopian Orthodox Church was the chief legitimator of monarchical rule
- documents like the Kebra Nagast, the Fatha Nagast and serate mengest from the 13th Century until the early 20th Century were the precursors to the formal written Ethiopian national constitutions of the modern era

Fetha Negest – (The Law of Kings)

- ✓ a religious and secular legal provision than being a definite constitution
- ✓ It was originally written in Arabic by the Coptic Egyptian writer Abu-l Fada'il Ibn al-Assal

- ✓ designed by monks in the Church the same time Kibre Negest penned
- ✓ It set out the laws and regulations that were used to govern all activities of the Ethiopia society in the late middle age
 - used as the sources of constitutional, civil, and criminal laws
- ✓ It was compiled from the Old Testament, the New Testament, and the Roman law
- ✓ It was fundamental laws upon which the government and the administration were based and the king vested with absolute power
 - It contains the idea of divine rights of kings with the assumption that rules have a God given power

Kibre Negest – (The Glory of Kings)

- ✓ written to document for the first time the mythical origins of the royal house
- ✓ written by six Tigrean clerics and completed in the early 14th Century
- ✓ important traditional document that even defined who should become king in Ethiopia
 - It was the principal sources of legitimacy for the kings
- ✓ Based on this the document determined that any king in Ethiopia must descend from the Solomonic dynasty or must have such blood relationship with the dynasty

Ser'ate Mengist

- ✓ provided certain administrative protocol and directives in the 19th century
- ✓ hardly be considered to be a document of Constitutional Law in its widest sense
- ✓ it is the first document known to have been used for allocating power among the Crown, its dignitaries and the

Church

- ✓ tried to lay out a pattern of succession to power, though the problem of primogeniture was more theoretical than practical

5.5.2. The 1931 First Written Constitution

- With promulgation of first written form of constitution on July 16, 1931 by Emperor Haile Selassie, the era of unwritten form of constitution came to an end
- The constitution reinforced the traditional position of the emperor as 'Siyume Egziabiher, Niguse Negast Za Ethiopia' which literally means: Elect of God, King of Kings of Ethiopia
 - ✓ However, on the other marked the end of the role of the nobility or at least the gradual reduction of their role in local leadership, the traditional check against the power of the king of kings, to insignificance
- The constitution unequivocally declared that the sole basis of legitimate authority was the emperor, and that all titles and appointments descended from him - Article 6
- both internal and external factors forced the development of the 1931 constitution

External Factors

- ✓ It was the result of the growing interaction between Ethiopia and the external world, particularly the western European countries
 - Emperor Haile Selassie developed strong aspiration to view Ethiopia as a modern state to the rest of the world
- ✓ The emperor had to convince the world that his country was modernizing and taking her place among the civilized states
- ✓ However, the 1931 constitution was failed to achieve external goals as intended by the emperor

Internal Factors

- ✓ It was intended to provide a legal framework for the suppression of the powerful traditional nobilities to the emperor
- ✓ The emperor has a deep interest of centralizing the state power in the internal politics of the country
 - This was effectively done by absolutist nature of the constitution

5.5.3. The Revised Constitution of 1955

- Ethiopian politics were profoundly affected by World War II and its aftermath. The emperor had been driven into exile when beginning in 1935 the Italian Fascists occupied the country for just over five years
 - ✓ the Ethiopian Orthodox Church and the traditional aristocracy were severely weakened
- the emperor was restored to the throne by the British in 1941
- the world had also been profoundly changed by the War. Ethiopia was surrounded by African colonies which were rapidly gaining their independence and left by the departing colonialists with varying forms of democratic institutions. This trend led to pressures for reform on the Imperial Crown from younger Ethiopians
- There were constellations of social and political events that urged the revision of the 1931 constitution
- The Revised Constitution continued to reinforce the process of centralization
- The Constitution spent one chapter settling the issue of succession on the rule of male primogeniture.
- Detailed provisions vested in the Emperor wide powers over the military, foreign affairs, local administration and so forth
 - ✓ He was both the head of state and of the government and he continued to oversee the judiciary through his Chilot (Crown Court)

- it also contained an elaborate regime of civil and political rights for the subjects. In theory, the Constitution was the supreme law of the land governing even the Emperor
- It was revised because of internal and external factors mainly to cope up with the social and political dynamics of the then period, global politics, and Ethio-Eritrean federation
- revised version comes with a slight modification in the structure of the system of governance, limiting the power of the emperor to a certain extent and a relatively better recognition of rights and freedoms
- The federation of Eritrea with Ethiopia led to the addition of two new documents in to the Ethiopia legal system
 - ✓ the federal act and the Eritrean constitution
 - ✓ Both documents were far modern and better than the existing traditional 1931 constitution of the imperial government. Thus, the emperor was forced to revise the 1931 Constitution

5.5.4. The 1987 Constitution of People's Democratic Republic Ethiopia (PDRE)

- Immediately after came to power, the Dergue setup the Provisional Military Administrative Council (PMAC) type of temporary government
- The PMAC presented itself for elections through a new party- the Workers' Party of Ethiopia. The party became the vanguard communist party
- After coming to power the Dergue issued a series of decrees and proclamations that was used as legal rules until the adoption of 1987 constitution
- However, these, decrees and proclamations cannot be given a constitutional status because it does not touch basic constitutional issues
 - ✓ the time from 1974-1987 was a period vacuum in Ethiopia

of constitutional

- The People's Democratic Republic Ethiopia constitution (1987) was different from the 1931 and the 1955 imperial constitutions in that constitution
 - ✓ State and religion were separated – secularism
 - ✓ State the political power and sovereignty were declared to be the preserve of the working people of Ethiopia
 - ✓ contains provisions on democratic and human rights
 - ✓ recognized the different cultural identities and the equality of Nation and Nationalities
 - ✓ Introduced a party system by giving recognition to the workers party of Ethiopia
 - leading to a transition from a none party system to a single party system
 - ✓ aimed at the principles of Marxist and Leninist ideology
 - ✓ Aimed at giving power to the peoples so that they exercise through referendum, local and national assembly
- Practically, however, the 1987 constitution was not different from the 1931 and 1955 constitutions

5.5.5. The 1995 (FDRE) Constitution

- The FDRE constitution has a wider coverage of both human and democratic rights. one third (approximately 33 articles) is devoted to the discussion of rights

Features

- ✓ introduction of a federal form of governance
- ✓ assignment of the competence of determining constitutionality to the second chamber of the parliament
- ✓ embody many of the core egalitarian principles including the principle of self- determination of collectivities, rule of law, democracy e.t.c
- In the second chapter, the Constitution gives recognition to five fundamental principles

- ✓ principles of popular sovereignty (art. 8)
- ✓ constitutionalism and constitutional supremacy (art. 9)
- ✓ sanctity of human rights (art. 10)
- ✓ secularism (art. 11)
- ✓ accountability and transparency of government (Art.12)

5.6. Democracy and Democratization

5.6.1. Defining Democracy