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Subject: Civics

Grade & section: 12(A – D)

Unit: 1 - 4

Main Topic: CONSTITUTION

Sub topic/s: Types of constitution

Page range from:

MONDAY, MAY 11, 2020

Constitution

Definitions of Constitution and Constitutionalism

Constitution is the fundamental/basic law of a state, constituting of:

- (a) The organization of the government,
 - (b) The powers and functions of the principal government organs and agencies,
 - (c) The restraints on the extent of and methods of exercising these powers,
 - (d) The relationship between the government and the people, and
 - (e) The basic political principles that should be followed.
- ❖ It is a body of laws and rules, that determine the organization of government, the distribution of powers and functions to various organs of a government, regulate the relationship between these organs, the relationship between the state and the individuals (citizens), and the general principle on which these powers are to be exercised.
 - ❖ Constitutionalism is the doctrine that governments should be faithful to their constitutions. This is because; the rules and laws so provided all that can protect citizens' rights from arbitrary actions and decisions of the government. In other words
 - ❖ Constitutionalism is the belief that constitution of a state is the best arrangement of things and activities in a society. Again, it is a state of being subject to limitations and that operates in accordance with the general rules and laws rather than arbitrary.

Purposes and Functions of Constitution

- ❖ The main purpose of a constitution of state is limiting/restraining the powers and authorities of a government, determine the structures and functions of a government, outlines the rights and duties of citizens and their relations with their state, ensuring and safeguarding the rights of citizens, etc. Generally, the constitution of state has the following basic purposes and functions.

- ❖ **A Framework of a State:** A constitution of a state sets out the principles and values upon which the state is organized and governed. The ideals and aspirations provide the country with direction and a vision for the future, and prescribe the legitimate purposes or interest which state power is to be used.
- ❖ **Limiting the powers of a government:** A constitution provides a foundation for orderly government by defining and limiting the powers of government agencies. It establishes checks and balances within the main branches of government (the Executive, Legislature and Judiciary), through the doctrine of separation of powers. A constitution establishes government based on the rule of law and which is limited by law.
- ❖ **Gives Guarantee for the human and democratic rights of individuals:** It safeguards the basic rights and freedoms of the people by incorporating a Bill of Rights, and providing the machinery for their enforcement through an independent judiciary and other institutions. Apart from protecting the integrity of the human personality, the free exercise of human rights ensures that people can fully participate in their governance and hence control their destiny.
- ❖ **The Supreme Law of a Country:** Constitution of state is the source of all laws in a country. In other words, other specific laws with regard to different affairs and issues are emanated from the constitution of a state. No specific laws will be valid if it contradicts the supreme law of the land i.e. all laws in a country are made to fulfill the objectives and goals clearly specified in a constitution of state. Therefore, all laws are derived from the constitution, thus, constitution of a state is considered as the highest law of a country i.e. constitution of a state serves as the binding instrument of all other laws in a country.
- ❖ **As the Weapon for Legitimizing Regimes:** A constitution of states is also indispensable for building legitimacy for regimes. Legitimacy is the right to rule or the validity to govern. A legitimate system of government is one based on authority- those subject to its rule recognize its right to make collective decision or to rule or is the right to act, rather than the power to do so. However, authority creates its own power so long as people accept that the authority figure has right to make decision which is specified by a constitution of a state.

TUESDAY, MAY 26, 2020

Classification of Constitutions

- ❖ Constitutions of a state in different political systems differ from one another in terms of their principles on the distribution of political power, on the structural separation of authority among

the different branches of government, and on the limits they set on government authority as well as their amendment procedures and their forms.

Accordingly Constitution can be classified into the following categories:

I. Written (Codified) Vs Unwritten (Un-codified)

Based on their form/appearance constitutions can be classified as written and unwritten.

❖ **Written Constitution:** Key constitutional provisions are collected together in a single legal document. Being all the key provisions are available in a single document, it can have the following benefits:

- (a) It is full of clarity and definitions because key provisions are written,
- (b) It has the quality of stability- since people know the nature of constitutional provisions; the people can feel a sense of satisfaction,
- (c) The Rights and liberties of the people are secured- since all important points are reduced to writing,
- (d) It has educational Value in that it highlights the central values and over all goals (objectives) and principles of the political system,
- (e) Major principles and key constitutional provisions are entrenched, safeguarding them from interference by the government of the day,
- (f) The power of the legislative is constrained, cutting its sovereignty down to size, and
- (g) Non-political judges are able to police the constitution of state to ensure that its provisions up held by the public.

❖ **Unwritten (un-codified) Constitution:** It refers to a set of rules, regulations, declarations and laws passed by either a legislature/ other body (bodies) at different times.

In other words, it is not compiled in a single document- containing key constitutional provisions. Therefore, the legislative body will have the right to make/unmake any law on any issue what so ever. Because most of the time un-codified constitutions didn't show clear separation of power between the different organs of a government and the law making power resides in the hands of the legislative body.

❖ **Benefits of un-codified constitution:** (a) it has the quality of elasticity and adaptability to changing circumstances or situations, (b) it is resilient with the result that it can absorb and also recover from shocks that may destroy a written constitution, and (c) it is dynamic in that it prevents chances of popular uprisings.

II. Rigid vs. Flexible Constitutions

On the basis of amendment process constitutions can be classified as- rigid and flexible.

❖ **Rigid Constitution of State:** It is a constitution that does not adapt itself to changing circumstances immediately and quickly i.e. amendment procedures may be more or less

complex or difficult. For example, in Australia, Denmark, Ireland, and Spain, popular referendums are used to obtain the public approval for constitutional amendments or ratify once endorsed by the legislature. The FDRE constitution also stipulates the initiation and enactment of constitutional amendment in its article 104 and 105.

- ❖ **Flexible Constitution:** It is a constitution that adapts easily and immediately to changing circumstances. The legislature has the unchallenged and unconstrained power to make laws on any issues and affairs. Prominent examples are- UK and Israel.

III. Effective Vs Nominal Constitution

On the basis of the degree to which constitution of state observed in practice, constitutions can be classified as effective and Nominal Constitutions.

- ❖ **Effective Constitution:** Is the one that fulfills this two criteria:

- (a). at least, the practical affairs of government correspond to the provisions of the constitution;
- (b). the above occurs because the constitution has the capacity through whatever means, to limit government behavior and activities. Therefore, an effective constitution of state requires not merely the existence of constitutional rules and laws but also the capacity of those rules and laws to constrain government behavior and activities- there is Constitutionalism.

- ❖ **Nominal /Facade/ Constitution:**

That shows the texts, principles, rules and laws that may accurately describe the government behavior but fail to limit government behavior and activities in practice. Therefore, a nominal constitution of state is not observed in practice but in form. Hence, it can be said a paper value constitution- there is no constitutionalism. Constitutions can be further classified into federal and unitary (based on the nature of state structure), parliamentary and presidential (based on the systems of government), etc.

WEDNESDAY, MAY 27, 2020

The Constitutional Experiences of Ethiopia

Traditional Constitutional Documents

- A. Kibra Negast:** This literally means the glory of kings and gives the account of the legend of Queen Sheba which is not supported by evidences.
- B. Fetha Negast:** This literally means the law of kings. This is legal code which has a set of religious and secular provisions since 17thc. The Fetha Negest was basically a code of law providing for secular and religious legal provisions.

C. Seriate Mengist: - This has provided administrative and protocol directives since 19th c. It is the first document known to have been used for allocating power among the Crown, its dignitaries and the Church.

Written Constitutions

A. The 1931 First Written Constitution of Ethiopia

The 1931 constitution was the first written constitution in the Ethiopian history.

However, it doesn't mean that a new philosophy was introduced to the Ethiopian political system. Instead, it was simply an attempt to change the unwritten dynastic claim in to a written form, in other words; it didn't provide genuine freedom to the Ethiopian peoples. Its main aim was to give the country and the Imperial rule "an image of modernity". By large, the major aim of the 1931 constitution was guaranteeing continuity to the rule of the Emperor. This can be clearly seen in the constitution that the king was presented as the "representative of God", i.e. the king is presented as "Niguse Negest Seyume Egziabher," which literally means king of kings elect of God.

Those who were participating in the political leadership were only the noblemen. Even then, the power was absolutely in the hands of the Emperor.

❖ The 1931 constitution was not initiated by the demand of the people and it was not also initiated for the people. That is why there was no attention to guarantee popular sovereignty, political freedoms and fundamental human rights to the Ethiopian people. And the people were considered as subjects as they used to be, without granting any kind of political and civil rights. In general the constitution was formulated/ introduced mainly to attain two basic purposes that would advance the Emperor's authority and political control.

- (1) The constitution was intended to give Ethiopia the image of "modernity" in the Ethiopia's statehood and the Emperor's sovereign rule in the country. During that period, Ethiopia felt pressures from the European powers that controlled colonial territories in Africa. Ethiopia was accused of being "uncivilized" to be considered as a sovereign political entity in an international atmosphere by the colonial powers. The colonial powers did that to justify their presence in Africa with a "civilizing" and "modernizing" mission. Therefore, Haile Selassie issued the constitution to impress Europeans with Ethiopia's political modernity in search of external sovereignty for Ethiopia.
- (2) More significantly than the above purpose, the constitution was introduced to the regional rulers. In other words the constitution was meant to create a legal framework that enabled the Emperor to subordinate the traditional nobilities. The emperor had greater desire to centralize power, thus, he used the constitution as a legal basis to extend the power of the central government over regional rulers.

- ❖ As the result, the emperor became the only person that could give political titles and appointments. This helped him to end any tendency of provincial autonomy by the nobility. Thus, the constitution provided him with legal framework for political legitimacy to his personal rule.
- ❖ This constitution served the interests of the Emperor. Thus, the 1931 constitution can be referred as the Charter of the absolute power of the monarchy. The political and human rights, freedoms and liberties of peoples of Ethiopia were denied.
- ❖ However, the 1931 constitution laid some foundations for modern practices of government in Ethiopia.

These innovations can be summarized as follows:

1. Parliamentary System:

- ❖ One major contribution of the 1931 constitution was the creation of the parliament. The parliament was bi-cameral, namely the Chamber of the Senate and chamber of Deputies. These were the legislative body. The Emperor had the power to appoint members of the chambers of senate from the members of dignitaries who have for a long time served his empire as princes or ministers, judges or army leaders while the Chamber of Deputies were to be elected through an indirect voting system in which only the nobility participated until the people are capable of electing them themselves. Their term of office was not limited. The primary function of the deliberative chambers was advisory. It was not an institution that decides on laws because the chambers could neither refuse to deliberate on proposal sent to them nor initiate legislation themselves. The law making power was vested on the emperor and the parliament was merely meant to rubber stamp the legislation of the Emperor.

2. Annual Budget:

- ❖ The 1931 constitution introduced the idea of providing fixed annual budget for government. In principle, Annual budget was meant to be proposed by minister of finance during deliberations in the Chamber of Deputies and in the Senate, whose resolutions shall be submitted for the approval of the Emperor. In practice, however, the assignment of budget as indicated in the constitution had not been properly implemented.

3. Ministerial System:

- ❖ The constitution also provided the institutional framework for the ministerial system. While the Emperor remained with the most important executive power, the ministerial system of government was completely subordinate to the Emperor. The ministers both individually and collectively were responsible to the Emperor. There was no prime minister; the ministry

of pen acted as the first among equals. Thus, the executive branch of government was heavily dominated by the Emperor.

4. Judicial Branches:

- ❖ The traditional courts of law were formally institutionalized by the 1931 constitution. According to the constitution, there were two separate systems of courts, known as, Regular Courts; and Administrative tribunals. The former one deals with both civil and criminal cases. The Administrative Tribunals handle civil cases that affect the government. At the top of the court system was Emperor's Chilot, where the emperor in person reviewed cases, and if necessary, change judicial decisions. The highest judicial power was in the hands of the Emperor.

THURSDAY, MAY 28, 2020

B. The 1955 Revised Constitution

- ❖ After nearly 25-years experiment of written constitution, Ethiopia entered into the second phase of its constitutional development. The political principles and objectives of the 1955 constitution were much clearer in pronouncing the powers and functions of the Imperial government than its predecessor. It included some provisions bearing advanced democratic ideas compared to the previous written constitution. Like the constitution of 1931, however, the revised constitution did not involve popular process for ratification. Indeed it was "gift" from the Emperor to his subjects on the occasion of celebrating his 25 years in power, i.e. silver jubilee.
- ❖ There were major historical and political processes that forced the revised constitution to come into being. One of the essential prerequisites for constitutional revision was the act of federation of Eritrea with Ethiopia in 1952. Eritrea that had been under Italian colonial rule for decades, and latter under the British protectorate, was federated with Ethiopia following the decision made by United Nations (UN) General Assembly.
- ❖ Under the supervision of the United Nations, the Eritrean constitution of 1952 was drafted providing a separate system of government for Eritrea under the sovereignty of Ethiopian crown. The federation of Eritrea, therefore, created abnormal political situation. Firstly, the federal act was not strictly federal in its nature; Ethiopia remained a unitary state with absolute rule of an Emperor, while Eritrea obtained an entirely different government. In other words, there emerged two separate governments, based on entirely different principles i.e. elected government in Eritrea and an absolute monarch in Ethiopia. Thus, both were exercising different powers over the same territory. Secondly, in its nature, the

Eritrean constitution implied a more liberal government that incorporated some element of democratic society. Thus the Emperor saw it necessary to settle this political anomaly by granting the revised constitution of 1955. Moreover, it was also required to redress the inadequacies of the 1931 constitution to cope up with the social and political dynamics of the period.

- ❖ As far as the content and issues addressed are concerned, the revised constitution **maintained some of the basic** principles of the 1931 constitution. However, it incorporated some new concepts, and it was much more elaborated than its predecessor. The Revised Constitution more strongly established the Absolute power of the monarch. It declares the “inviolability of the emperor’s dignity”. He could appoint and dismiss the minister and other ministers, judges, diplomats, and other government officials in all branches of government as he wished. The emperor also had the power to dissolve the parliament. Any law could not come in to effect unless he approved it. He was also provided with co-legislative functions. Besides members of the parliament, only the emperor had the right to submit proposals; and proposals approved by both house of parliament were not law unless and until signed by him. Thus, the emperor has veto power on legislation and when parliament was not in session the government issued imperial decrees. The emperor was not only commander in chief of the army forces but was constitutionally empowered to meet threats to the defense or integrity of, the empire. The emperor exercised supreme direction in the foreign relations of the empire and alone conferred and withdrew titles of prince and other honors and instituted new orders. Moreover, his power also extended to the extent of determining the administrative affairs of the church itself. In short, the 1955 revised constitution made the powers and authority of the Emperor absolute and complete in the Ethiopian state and society. In contrast, little significance was attached to the need to guarantee political and human rights of the Ethiopian people through protecting individual rights in terms of property, life and private affairs. However, **in practice the mechanisms for implementing these limited rights were largely absent.** There were no effective means for representing and reflecting the needs and interests of the people in the government.
- ❖ In the practical sense, Ethiopian people were still considered as merely subjects of the Emperor. Although the revised constitution of 1955 was a step forward in the history of constitutional development in Ethiopia, in effect it failed to lay down a democratic tradition in the Ethiopian political process.
- ❖ In the end, it is possible to identify some progressive elements, which were included in the Revised Constitution of 1955. These were the following:

(1) It gave at least textual recognition to rights and liberties of citizens, which included rights such as freedom of speech, freedom of press, freedom of assembly, and people's participation in election of the members of chamber of Deputies. But, there was no observance (enforcement) of these provisions of rights and freedoms of individuals in practice at all. It was only paper value to ordinary Ethiopians.

(2) The Chamber of Deputies was made to have the power, at least in textual sense, to question the ministers with the view to hold the government accountable.

C. The Constitution of Peoples Democratic Republic of Ethiopia (PDRE) (1987-1991)

- ❖ In order to deepen its power, the Derg established its single party, the Workers' Party of Ethiopia (WPE) in 1987. This has marked the transition from no party system to the one party system in Ethiopia. Nevertheless, this did not give rise to democratic orders. Through eliminating or weakening internal opposition, the Derg moved on establishing the Peoples' Democratic Republic of Ethiopia (PDRE).
- ❖ The PDRE constitution differed from the previous constitutions in some ways.
 - (1) It was drafted by a constitutional commission through a program of public "consultation".
 - (2) It was later on ratified by the name of a popular referendum to provide it pretext of broad participation. However, the discussions were not effective as planned because the public was in the state of insecurity and intimidation. Discussions were carried out on matters of peripheral importance and nobody dared to express his/her opinion on issues of central importance such as political and ideological matters. The overall objective of the 1987 constitution was the establishment of a proletarian dictatorship under the WPE. Following that the constitution put all three branches of the government under the strict control of the party. Under the 1987 constitution there was no separation of powers but unity of power following one of the basic principles of socialist constitutionalism. Power was totally in the hands of Mengistu Hailemariam and/or the WPE but allowing separation of functions only. In other words, what is desirable in a socialist set up is the delineation of the competence and practical activities of the different state organs and not separation of powers used in the capitalist political system.
- ❖ The PDRE constitution has divided the unified state power among the National Shengo, the Council of State, and the President of the Republic and Shengos of the Administrative Autonomous regions. Theoretically, the National Shengo was the most important organ exercising the most significant functions of the state of the PDRE.
- ❖ Accordingly, the working people exercise their power through the National Shengo and Local Shengos they established through election. The authority of other organs of the state shall derive from these organs of state power. Thus, the National Shengo was the supreme organ of state power through which the sovereignty of the working people would be

manifested. The council of state was meant to be an organ of state power functioning as a standing body of the shengo. The council was given the power, inter alia to ensure the interpretation and implementation of the constitution including other laws; ratify and denounce international treaties; grant amnesty, citizenship, and political asylum; and to issue special decrees between sessions of the National Shengo. The President of the Republic was to be elected by the National Shengo, and vested with broad powers. He was the head of state representing the Republic at home and abroad as well as the commander in chief of the Armed forces. Matters pertaining to citizenship and fundamental freedom, rights and duties of citizens were given better coverage in the 1987 PDRE constitution compared to the way they were treated under the previous constitutions. To mention but few of the concerns, irrespective of their nationality, sex, religion, occupation, social or other status the constitution has provided that Ethiopians are equal before the law. This equality was to be manifested through equal participation in political, economic, social and cultural affairs. Moreover, the constitution came up with women's rights which until then had never been reflected in Ethiopian constitutions. It also set the duty to provide women with special support particularly in education, training, and employment so that they participate in political, economic, social, and cultural affairs on equal basis with men.

- ❖ In Contrary to the previous constitution, the 1987 PDRE constitution explicitly states the separation of state and religion. So it appeared to be a meaningful solution to problem related to inequalities among nationalities in Ethiopia. The establishment of the Institute of Nationalities was assumed by many as a prelude and by the Derg to ending the civil wars. However, the most the Derg could offer was regional autonomy, as is unable to implement genuine decentralization of governance.

FRIDAY, MAY 29, 2020

D. The 1995 Constitution of FDRE

- ❖ It affirms that the peoples of Ethiopia are the source of sovereignty. It also explicitly states the rights and duties the two levels of governments i.e. it clearly declares the areas that purely fall under the jurisdiction of the federal government and regional governments as well as their concurrent powers. It also states the political power shall be held through periodic, fair and free elections, which entitles the Ethiopian citizens to exercise their human, democratic, political, social and economic rights and freedoms. For this it recognizes and affirms fundamental human rights and freedoms in conformity with the United Nations Universal Declaration of Human Rights and other international human right instruments.

- ❖ The constitution dictates that any official or governmental body shall not exercise power arbitrarily. Officials and governments at all levels are to be held accountable to their people and responsible for their actions and decisions. If the people lose confidence on their elected representatives they have a constitutional right to recall them at any time.

Fundamental Principles of the FDRE Constitution

- ❖ The Constitution embodied five fundamental principles which relates to sovereignty of the peoples; supremacy of the constitution; human rights; secularism and transparency and accountability of government. These principles give a background to many of the rules that emerge in subsequent chapters thereby setting the framework for a better understanding and interpretation of the rules.

Sovereignty of the Peoples

- ❖ The FDRE Constitution unequivocally vests this sovereignty in “Nations, Nationalities and Peoples of Ethiopia.” By so doing it presumes the existence of nations, nationalities and peoples who seek sovereignty. This approach of vesting sovereignty in sub-national units has important implications for the federal structure. Furthermore, it is part of an expression of their sovereignty that Nations, Nationalities and Peoples are bestowed with the right to self-determination up to secession.

Supremacy of the Federal Constitution

- ❖ In line with the trend of federal systems the FDRE Constitution under Art.9 declares its supremacy and makes other laws, customary practices and decisions of an organ of a state or public official null and void if it contravenes the Federal Constitution.

Human Rights

- ❖ As mentioned earlier, one of the distinguishing characters of the FDRE Constitution from its predecessors is the emphasis given to internationally recognized human rights norms. This fundamental principle is stipulated in Art.10 of the FDRE Constitution which articulates “Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable”.

Secularism

- ❖ The FDRE Constitution under Art. (11) Explicitly declare the separation of religion from the state. In spite of the recognition given to religious law system in a restricted manner the Constitution envisages an entirely secular state in which the state does not interfere in matters belonging to religion and vice versa.

Transparency and Accountability

- ❖ It is inscribed in Art.12 of the Constitution as the fifth principle. “The conduct of affairs of government shall be transparent,” holds, Art12 (1). Moreover it stresses the fact that “any public official or an elected representative is accountable for any failure in official duties.”