CHA.1

1.1. Meaning and Nature of Federalism

Introduction

- The need for the existence of an institution called government has become a conventional wisdom since the existence of man in a social context.
- *A government, as defined by a many scholars, is an institution that holds the exclusive power to enforce certain rules of social conduct in a given geographical area.*
- The aim of establishing this institution is ensuring the peaceful co-existence of individuals in a social context. *Hence, the main purpose of government is to bar men's use of physical force against others for any reason- in part by protecting citizens from aggressions, internal or external*, and of course by settling disputes impartially that involve individual's rights.

Conti…

- Philosophically argued, government power is derived form the consent of the governed, i.e., individual citizens.
- It follows, then, that in a proper society, a government is the servant of citizens, not their ruler.
- In other words, a government is a collective agent of individual citizens' right, which means the right exercised by the government, is rooted in a right of individual members.
- In order to ensure that the governments do not infringe its subjects' right, a variety of governmental arrangements have been forwarded by politicians and legal scholars.

✓ *A federal form of government is one among many arrangements.*

✓ Today 40% of the world's population is governed by a federal form of government.

Well !

✓ *So, what does federalism mean?*

Conti…

- ♣ Like most broad political or legal concepts such as democracy or constitutionalism, federalism can mean different things to different people.
- ♣ The indeterminacy of its meaning is partly attributable to the fact that there are a number of governments that claim to be federal.
- ➢ Etymologically, the term federalism is derived from a Latin term '*foedus*' which literally means **covenant or treaty**.
- ➢ In relation to the difficulty in defining Federalism Daniel J. Elazar has already provided that no single definition of federalism has proved satisfactory to all students, primarily because of the difficulties in relating theoretical formulations to the evidence gathered from observing the actual operation of federal systems.

Conti…

- In other words, even though federal systems are guided almost by *same federal principles*, there is a *wide functional difference easily observed in each and every political country that call themselves "federal"*.
- since these countries that call themselves federal do not have the same kind of constitution and do not practice the principle of distribution of power in the same manner.
- According to Prodhoun federalism is the "doctrine of balance".
- ✓ It is all about compromise of interests and striking fair balance between integration and diversification, decentralization and centralization, centrifugal and centripetal forces.
- Daniel Elazar on the other hand, defines federalism as a "political remedy for political diseases".

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* It is designed to **prevent tyranny** by sharing political power between the government of the center and its constituent parts. Stated otherwise, federalism advocates the value of “unity in diversity” or “shared rule and self – rule”. It bestows regional units’ greater autonomy with out actually affecting the country’s unity.
* *For K.C Wheare, federalism is a system of government, which embodies predominantly a division of powers between the general and regional authorities, each of which is in its own sphere coordinate with the others and independent of them.*
* M.J Vile’s definition of federalism, unlike K.C Wheare’s doesn’t focus on its coordinate nature. He defined federalism as a system of government in which central and regional authorities are linked in a mutually inter-dependent political relationship, whereby a balance is maintained in such a way that neither level of government

Conti…

- Preston King, in his book entitled "*Federalism and Federations*" defined federal form of government as an institutional arrangement, taking the form of a sovereign state and distinguished from other such states solely on the fact that its central government incorporates regional units into its decision procedures on some constitutionally entrenched basis.



Moreover, even though federalism can mean different things to different people, scholars agree that a federal system of government has two essential attributes. These are:-

1. Federalism requires that political power be structurally dispersed among many centers of authority. The purpose and effect of such dispersion is to create a set of geographically based governmental institutions in which the central authority and each of the sub authorities exercise separate control over segments of the political environment.

By virtue of this principle, the sub units have the right to enjoy part of the autonomy they would have possessed as independent states while the central government has the right to retain a certain level of authority over the entire territory.

Conti…

2. Federalism's second attribute lies in the nature of a constitutional mandate guaranteeing the legitimacy of the authority of the various centers and their claims of right against the central government.

In a federal system subordinate units possess prescribed areas of jurisdiction that can not be invaded by the central authority, and leaders of the subordinate units draw their power from sources independent of that central authority.

1.2 Confederations, Federations and Decentralized forms of Governments

A confederation is a type of government made up of a league of independent nations or states.

Each state is independent and has its own authority and autonomy, but they come together for some sort of shared government. Usually, states form a confederation to help maintain peace between the states, provide mutual defence, or address a crisis.

Conti…

- It is created when independent states come together to form some sort of shared government. It maintains the maximum authority for the individual states and minimal authority for the shared government.
- It is a union of groups of states where the central government is weak but the state governments are strong.
- In a confederation, the state or local government enjoys supreme power or sovereignty, whereas the national government only wields power granted by the states. Even most of the confederations have allowed the local governments to nullify a federal law within their own territory.

  The Commonwealth of Independent States, Union State, and European Union are examples of the present confederation. Most of the confederations gradually turned into federations, Swiss Cantons turned into Switzerland; the Modern German Federation preceded the German confederation; and the Articles of Confederations (1781–89) gave birth to the constitution of United States.

Conti…

- The governmental system of a confederation usually includes representatives from each state who serve in a common or central legislature.
- The central government usually works together to address issues that affect all of the members of the confederation, such as maintaining peace treaties, organizing mutual defence, proposing laws, and implementing policies that impact the confederation. *But the central government is usually pretty weak and tries not to interfere with the states' governments.*
- Each state usually has its own independent government, which has much more power than the central government. For example, a nation in a confederation might have its own executive and legislative branch to create policies related to finances, social welfare, and infrastructure. But they come together with the other members of the confederation to address issues that impact all of them.

Conti…

- We can see some of the characteristics of a confederation in the European Union (EU). Each country runs its own separate government, but as members of the European Union, they also come together to make important decisions together.
- For example, France has its own president and parliament, but it also sends representatives to the European Union.
- The EU was formed in order to create more peace between the European countries following World War II. Today, the European Union provides a central authority for things like interstate commerce, the European economy, and political stability.
- *By definition, the difference between a confederation and a federation is that the membership of the member states in a **confederation** is voluntary, while the membership in a **federation** is not.*

Conti…

- It is flexible, allowing for the negotiation of agreements and the modification of the terms of the relationship between the central government and the constituent units.

What is a federation? a political system in which power is divided between a central authority and constituent political units, such as states or provinces, with each level of government possessing significant powers and responsibilities.

Characterized by a dual system of government, in which the central government and the constituent units each have their own spheres of authority, as outlined in a *constitution or similar foundational document*. One of the key features of federation is its balance between *centralization and decentralization.* While the central government retains authority over certain areas, such as defense, foreign policy, and currency, the constituent units also have their own spheres of authority, which may include areas like education,

Conti…

- Federations are often established to promote unity and integration among diverse regions or populations within a single political entity.
- By providing for both central governance and regional autonomy, federations seek to balance the interests of different constituent units while promoting cooperation and solidarity.
- Federations may also offer mechanisms for resolving disputes between the central government and the constituent units, such as judicial review or intergovernmental negotiations.

Differences between the Confederation and Federalism

A. Centralization vs. Decentralization of Power: **Confederation:** In a confederation, power is highly decentralized, with the constituent states or regions retaining significant sovereignty. The central government is relatively weak and typically only has authority over matters explicitly delegated to it by the constituent units. *The constituent units often have the ability to withdraw from the confederation.*

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Federalism: In a federal system, power is divided between the central government and constituent units, such as states or provinces.

While the central government retains authority over certain areas (such as defense, foreign policy, and currency), the constituent units also have their own spheres of authority, which may include areas like education, transportation, and healthcare.

B. **Supremacy of Central Authority**: **Confederation**: In a confederation, the constituent units are considered sovereign entities, and the central government's authority is limited to the powers explicitly granted to it by the constituent units. The central government typically lacks the power to compel compliance from the constituent units.

Federalism: In a federal system, the central government holds a supreme position within its sphere of authority. The Constitution or a similar legal document outlines the division of powers between the central government and the constituent units, and the central government has the authority to enforce its laws and decisions on matters within its jurisdiction.

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C. Flexibility vs. Rigidity: **Confederation:** Confederations tend to be more flexible, as the constituent units often retain the ability to modify the terms of their relationship with the central government or even withdraw from the confederation altogether. Changes to the confederation typically require the consent of all constituent units.

Federalism: Federal systems are often more rigid, with the division of powers between the central government and constituent units typically outlined in a constitution or similar foundational document.

Changing this division of powers usually requires a formal amendment process, which can be complex and may require the consent of multiple levels of government.

D. Integration vs. Autonomy: **Confederation**: In a confederation, the constituent units maintain a high degree of autonomy and may pursue their own policies in many areas. The central government's role is typically limited to coordinating common interests and providing collective defense or other shared services.

Conti…

Federalism: In a federal system, while the constituent units have a degree of autonomy, they are more integrated into the overall political system. The central government plays a significant role in setting national policy and ensuring uniformity across the country in certain areas.

- Overall, while both confederation and federalism involve the distribution of power between a central authority and constituent units, they represent different approaches to organizing political systems, with confederations being more decentralized and loosely connected, and federal systems being more integrated and centrally governed.

Conti…

- Confederation and federation are two government systems in which states or provinces come together for political, economic, social, or security reasons. Even though they are often confused, they are quite different. In a confederation there is no new central government and constituents maintain their autonomy, independence and sovereignty.
- *Conversely, members of a federation are subject to laws and regulations created by the federal government, although they maintain a certain degree of autonomy. Today, the number of existing confederations is limited, while the number of federations is quite high. The main difference between the two is the constitution (absent in the case of a confederation), which creates legal ties among member states and sets the balance of power between central and local authorities.*

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- **Decentralized forms of governments:** one of the common features of Federation and confederation is that governmental power is shared at different levels. Decentralized form of government also shares this feature. In a decentralized form of government, governmental power is distributed at two levels; at central and provincial level.

However, there is a basic difference between decentralized form of government on the one hand and Federation and confederations on the other hand.

The difference is the source from which the provincial authorities get the governmental power. In the case of Confederations and Federations the provincial or regional authorities derive their governmental power from supreme document or agreement entered between or among the entities (provinces). Accordingly, the central governmental authorities may not, at any time and for whatsoever reason, repeal or suspend the power of regional states or provinces, since the power (authority) of the provinces is not derived from the central government.

Conti…

- *On the other hand, in the case of decentralized form of government, the source of governmental authority of the provinces is the willingness or consent of the central government. Form this, it follows that the central government may at any time suspend or dissolve local administrative organs or regions unilaterally.*
- It is to be recalled that decentralized form of government is one type of unitary government. In other words, it is a state that is governed constitutionally as a single unit, with a single constitutionally created government.
- Essentially, there is only one tier of government. However, the political power of the government is transferred to lower levels, to regionally or locally elected assemblies or governors, but the central government retains the principal right to recall such delegated power. To sum up, in a decentralized form of government, any sub-governmental unit can be *created or abolished*, and have

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The Context of the Federal System in Ethiopia:

Historic Ethiopia as a De Facto Federation: there was decentralized government.

Until the 1st half of the 20th century Ethiopian history shows that it had been under a decentralized rather than centralized system of government.

Although a couple of attempts have been made to centralize the Ethiopian state during emperor Tewodros (1847-1868) and Menelik (1889-1913), it was only after the coming to power of emperor Haileselasie in 1930 that an effective central state began.

Thus, Ethiopian political system had been one of a duality of authority between the imperial throne representing the center and a number of provincial nobilities effectively exercising decentralized power.

But it was not de jure.

Conti…

One of the most contested issues in the public discourse of Ethiopian politics remains the difficulty one gets in interpreting state failure in the twentieth century.

While there is a general consensus about the fact that both the Imperial (1930-1974) and the military regimes (1974-1991) failed to address among other things central political and economic issues, there is less consensus on the causes of state failure and in interpreting the conflict.

While some illustrate the cause of the conflict as resulting from '*Biherawi chikona*' or 'national oppression' others contend that the conflict is merely political, not ethnic, as the bone of contention is state power.

- *So, what was the Challenges of Building a Multicultural State? Putting the Conflict in Perspective:*

Conti…

1.The Instrumentalists : Emperor Hileselassie I and his supporters understood the process as a re-union or expansion.

- *They argued that prior to 19th and 20th centuries Ethiopia lost territories as a result of wars and migrations.*
- They argue that in 19th and 20th centuries, Ethiopia successfully regained her lost territories.
- *These actors worked to bring about political centralization. They used western oriented codes.*
- Further, they used the methods of assimilation, integration, urbanization and industrialization to unify the country.
- *The 1931 and 1955 constitutions were designed to implement the state policy of political centralization as well as legal unification.*

Conti…

- ✓ The over centralization of power and economic resources by the ‘dominant’ group, principally from Showa which despite genealogical mixtures defined itself and the state along this narrow perspective, and
- ✓ the subsequent marginalization of others should be considered as the underlying factor in exacerbating the prolonged war in Ethiopia.

2. The second group of personalities understood the historical process of the 19th and the 20th century in Ethiopia as a problem of class exploitation. *The conquest approach has two models, namely the class exploitation and the national exploitation models.*

According to the first model, the issue was not ethnic exploitation. The economic elites, who were few in number, oppressed the mass.

Conti…

A few political elites even went further to state that it must be seen as a form of “internal colonialism. They said Ethiopia is the prison house of nationality's. ***So the solution is session***. OLF.

3.The National Oppression Thesis and the Question of Nationalities

Self determination up to session …. TPLF.

CHAPTER TWO

Common Features, Justifications and Taxonomy of Federal Systems:

2.1. Common Features

- owing to variation in the *functional arrangement of political systems* known to be federal, features of federations vary from one political system to another.
- Nonetheless, many scholars assert that federations share certain common characteristics.

Conti…

2.1.1 Division of power:-

- One of the distinguishing marks of a federal state is division of power between the center and the constituent parts.
- Federations are distinguished from other governmental systems primarily by the fact that political power, i.e., *legislative, executive and judicial functions, is constitutionally divided between the federal government and the states,* and both orders of government are autonomous with respect to the powers granted to them.
- Indeed, the objective for which a federal form of government is established involves a division of power between the federal government and the member states.
- When a pre-existing independent states come together to form a federation they delegate some of their powers to the federal government maintaining other powers of less

Conti…

- Similarly, when a unitary state devolves to a federal form of government, some powers are given to the emerging states while the federal government maintains some powers that are to be shared in common by the constituent units.
- *Division of power is indirectly based on the dual principle, implicit in every federation, of the* ***desire to be united and to be autonomous****.*
- A common feature among federations has been the existence of two antagonistic motives; a powerful motives to be united for certain purposes on the one hand and deep-rooted motives for autonomous states for other purposes, on the other.
- *This is the deriving force for each and every federation to divide governmental powers between and among the federal and regional governments.*

Conti…

- Federations are composed of geographical units having autonomous power.
- Each region is autonomous within its own respective territory. The federal government with international personality represents all the constituent parts of the nation.
- The power of the federal government usually covers nationwide matters excluding what are allotted to the states by the constitution while the powers of the regional governments are confined to matters within their respective regions leaving out what belongs to the federal government.
- The governments of the regional units have autonomous powers within their regional jurisdiction.

Conti…

- The two levels of governments are autonomous within their sphere of jurisdiction.
- One level of government should respect the authority of the other.
- That is, the principle of non interference, which is to be derogated in exceptional circumstances on constitutionally entrenched grounds.
- The powers of the federal government and that of the regional units are defined by the federal constitution.
- Accordingly, both levels of governments have the duty and responsibility to respect each other.
- There are different mechanisms of allocating powers between the federal government and regional units, which depends upon the needs of each particular society.
- The constitution cannot exhaustively enumerate the respective powers of the federal and regional governments.

Conti…

- Basically, there are there types of allocated powers which one would come across in investigating the currently existing federal forms of governments; *enumerated*, *residual* and *concurrent* powers.
- Powers that are specifically granted to either level of government are called enumerated powers.
- In some federal states, the powers of the federal government are enumerated, residual powers being left to the states.
- Currency making, military power, and declaration of war are enumerated powers of federal government in all federal states.
- Residual powers are powers retained by one level of government once the powers of the one enumerated.
- In other words, those powers that are not specifically granted to the federal government or concurrently with

Conti…

- *They are implied powers derived by way of interpretation.*
- Concurrent powers are matters over which both the federal government and the state government have control.
- They are powers jointly exercised by the two levels of governments.
- For instance, in most federal states there is *principle of concurrent taxation.*
- Both levels of government have the power to collect taxes and share the benefits deriving there from.
- It is important to emphasize that in federations, the units are not only entitled to regional self-rule or administration by right but also share in the process of common policy-making at the center.
- *As long as the decisions of the center affect the destiny of the regions, it is logical and important that regions have some say in acts which affect their interest.*

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- The most common way of addressing this issue is making regions have voice in the legislations passed by the center through their elected representatives.
- That is why most federal states have a bicameral parliament. *Representatives of regions constitute one house of the parliament and participate in the legislative process.*
- *Besides, federal constitutions also stipulate mechanisms whereby the regions would participate in the amendment of the federal constitution, allocation of budgets and other sensitive issues.*

2.1.2. Written and Supreme Federal Constitution

- Federations originate from particular bargains struck at a particular time designed to serve for generations.

Conti…

- *The terms of the agreement, which establish the federal government and the states and which distribute powers between them, must be enshrined in a supreme federal constitution, which is binding.*
- Supremacy of the constitution, therefore, means that the constitution should be binding on the federal and state governments; neither of the two governments should be in a position to override its provision.
- And both governments, the federal and state governments must be subordinate to the constitution.
- ► This is a logical necessity deriving from the nature of the federation itself. If the federal government and the states are to remain autonomous within their respective spheres of jurisdiction, the authority of one should not depend on the other but must derive from some thing supreme to both of them.

Conti…

- The federal constitution regulates their relations and so far as it regulates their relations with each other, it must remain supreme at least in all that concerns the division of authority between the two.
- *In short, the federal arrangement presupposes the existence of a supreme federal constitution from which the federal government and the states derive their authority.*
- In elaborating this fact, Dicey noted that a federal state derives its existence from the constitution just like a corporation derives its existence from the grant by which it is created.
- Accordingly, every power, executive, legislative or judicial, whether it belongs to the federal government or to the states is subordinate to and controlled by the constitution.

Conti…

 # But this should not be construed to mean that constitutions of those unitary governments are not supreme.

- In deed, supremacy of the constitution is one characteristic of democratic unity governments.
- Supremacy of the constitution in a federal system of government has been emphasized owing to the fact that the constitution is not only a contract between the government and citizens like in the case of *unitary systems*, but also a contract between the federal *government and constituent states* and between the states, and it is the basis of the system.
- *Many federal constitutions have incorporated the essential supremacy of the constitution.*

Eg. USA const. Para. 2 of Art.6., Art.20(3) of German Basic Law, Art.9(1) of FDRE. etc

Conti…

- Implicit in the principle of supremacy of the constitution is the condition that it must be a written document.
- In view of this fact, Dicey emphasized that the foundation of a federal state is a complicated contract, and this compact contains a variety of terms, which have been agreed to, and generally, after mature deliberation, the states which make up the federation.
- To base an arrangement of this kind upon understandings or conventions would be certain to generate misunderstanding or disagreements.
- *The constitution must, therefore, be a written document, and if possible its terms should be open to no misapprehension.*

2.1.3 Rigid Constitution :-

The third common feature of federation is one of the consequences of the principle of supremacy of the constitution.

Conti…

- If the federal constitution contains the basic principles governing the relationship between the federal government and the states and if the authority of both governments derives from the constitution, then *it follows that in order to ensure its supremacy, it should not be subject to unilateral alteration by either order of government alone.*
- The idea of federation as a compact demands that if introducing formal changes to the federal constitution is deemed necessary, then it should be in somewhat extra ordinary procedure of amendment.
- According to Carl Friedrich, the participation of the states in the amendment of the constitution is a key feature of federation.
- Furthermore, if the supremacy of the constitution is to be maintained it is should not be easily alterable.

Conti…

- A part from this general principle, however, federal constitutions differ significantly both as regards the specific procedures they prescribe and the degree of states participation of any amendment.
- On the one hand, we have federations that require the consent of every state for any amendment and, on the other we have federations where the ordinary vote of the federal parliament may some times suffice for amending the constitution.

The Indian constitution falls into the latter category.

- However, those provisions vital for the distribution of power between the federal government and the states can be amended only by special majority of parliament and ratification by at least fifty percent of the states.

Conti…

FDRE Constitution :- *it is very rigid compared to the other federations.*

Those governing fundamental rights and freedoms can only be amended if approved by the majority vote in all the states and by a two–thirds majority vote in each of the Federal Houses.

While the majority of the provisions, including those governing the relationship between the federal and state governments, can be amended only if approved by

- ✓ a two –thirds majority vote in joint session of both Federal Houses (i.e. the House of Peoples Representatives and the House of Federation)
- ✓ and a two-thirds majority vote of states.

2.1.4 The existence of independent organ as interpreter of the constitution :-Power distribution between the federal and state governments is essential for, and basis of a federal system.

Conti…

- As noted earlier distribution of powers between the two tiers of governments is embodied in a constitution, which is supreme and which must be a written document.
- We have also said that the terms of the constitution should not be open to any misapprehension as much as possible.
- However, since no man is perfect enough to avoid such misapprehension in drawing the words of the constitution, inevitably a dispute will arise on the meaning of the words of the constitution.
- Then it follows that there should exist an organ, independent of both the federal and regional governments which has a final say on matters involving constitutional interpretation and other constitutional disputes.
- *This organ is the judiciary, usually the Supreme Court or the constitutional court, in most federal systems.*

Conti…

- In U.S any court can interpret the constitution, i.e., can declare laws or decisions of either levels of government unconstitutional if they are found out to be inconsistent with the provisions of the constitution on constitutional issues.
- The German system, on the other hand, has set up a separate court known as constitutional court for constitutional interpretation. It is this court, which has the power to interpret the constitution and passes a final and binding decision on constitutional issues.
- The trend in Switzerland is somewhat different from that of U.S and Germany. On issues involving constitutional interpretation, no court has the power to pass any decision.
- Rather it is the people who decide on constitutional issues through referendum. The Supreme Court assumes

Conti…

- The Ethiopian system too is unique in this regard. Courts are denied the power to interpret the constitution.
- The power to interpret the constitution and to pass final decisions on constitutional disputes is vested on the House of Federation.

2.2 Justifications for Federations:-

2.2.1 Peace and Prosperity- *It affords opportunity to small and weak states to unit in to a powerful state without losing their independent existence*.

- ✓ To become jointly powerful enough to dissuade external aggressors, or prevent aggressive and preemptive wars among themselves. Eg. USA
- ✓ Accordingly, federations may foster peace in the sense of preventing wars and fear of war in several ways.
- ✓ To promote economic prosperity by removing internal barriers to trade, through economics of scale, by

Conti…

- ✓ It encourages development of the nation in a decentralized and regional manner and allows for unique and innovative methods for tackling social, economic and political problems.

2.2.2 Democracy and Liberty: *How it can be ?*

- ► Inherently, federations are designed to *prevent tyranny by sharing political powers,* since a federal arrangement is a constitutional split of powers between the two levels of governments.
- ► Thus, it provides a constitutional remedy for concentration of political powers and *avoids tyrannical rule*, thereby *ensuring democracy.*
- ► Moreover, a federal state arrangement provides dual venue whereby citizens could participate in their countries political life.
- ► *On the one hand, citizens may participate in the local government and, on the other hand, they participate at federal level.*

2.2.3 It is valuable to big states with vast population and with racial, cultural and linguistic diversities.

Conti…

- It also protect individual liberty against political authorities by constraining state sovereignty, i.e. *by placing some powers with the center.*
- Similarly, by entrusting the center with authority to intervene in sub-units, the federal arrangements can protect minorities' human rights against sub- unit authorities.

2.2.4 Efficiency, Innovation and Equity

A federation may promote justice or other values among and within their constituent units. *How ?*

- By monitoring, legislating, enforcing or funding agreements, human rights, immunity from interference, or developments.
- Starting with the family, each larger unit is responsible for facilitating the flourishing of sub-units and securing common goods beyond the reach of sub-units without a common authority.
- This will further lead to efficiency in administration.

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- **Inherent drawbacks of Federalism**

- It aggravate problems of tribalism(ነሰንት), particularly where the territorial jurisdiction of local governments tends to follow tribal population patterns.
- It is very expensive undertaking.
- It is very complex state structure.
- It presupposes huge expenditure and some scholars argue that it is unaffordable for poor states.
- It lead to in equality between the sub-units and lead to unhealthy competition and rivalry between them.
- It lead to over government. It is often argued that the existence of dual or sometimes triple levels of government may result in over government.

2.3 Taxonomy of Federations : There are various groups of classifying federal state structures.

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2.3.1 Symmetrical and Asymmetrical Federations:

We can classify them taking into account the division of powers among constituent parts.

In a symmetrical federal model, regions do have equal size of territory and population and more or less the same economic features, cultures, social groupings and political institutions.

- ✓ It is also characterized by member states of the federation with equal powers
- ✓ i.e. no member state of the federation has special privileges than others in relation to the federal government.

Asymmetrical federal structure, on the other hard, is a constitutional structure whereby some of the regions within a federal system have more extensive powers compared to other member states.

- ✓ Here it is to be emphasized that, in asymmetrical federations, some constituent states have more extensive power not relative to each other but *relative to the central government.*

Conti….

- ✓ *This is the scenario where by some regional states enjoy special rights than others.*
- ✓ Asymmetrical federal structure is usually proposed as a solution to the dissatisfactions that result when one or two states feel significantly different needs from the others, as the result of
- ✓ an ethnic,
- ✓ linguistic or cultural difference.
- ✓ One instance whereby Asymmetrical federalism has been adopted as a formula for stability is Canada, meeting the aspirations of French Speaking Quebec for control over its cultural and social life without removing it from the national federation, where it coexists with nine largely English-speaking provinces that have more in common culturally and socially.

Conti…

- When we resort to the currently existing Ethiopian federal structure, Article 47(4) of the FDRE constitution provides that all the regional states shall enjoy equal powers, which may lead us to conclude that it is symmetrical federalism.
- Nonetheless, a closer look at the socio-economic, demographic and geographic realities of the nine regional states may lead one to the conclusion that Ethiopian federalism is asymmetrical one. This is simply because there is a striking disparity in population, size and economy among the member states.

2.3.2 Dual Vs Cooperative Federalism :

- We can classify federal states on the basis of power sharing as *dual* and *cooperative*, i.e. it is based on the power relations between the federal government and that of the regions.

Conti…

- Some federal structures give equal status to the powers of the two levels of governments, whereas some others provide unequal status to the two, making the constituent parts somehow subordinate to that of the governments of the center called the federal government.
- *Dual federalism* holds that the federal government and the states are equal. Under this view of federalism, the federal government only has the powers expressly granted to it, while the states retain all other powers.
- In this respect, federal powers are constitutionally split between the two levels of governments and each is sovereign within its own jurisdiction.
- *Cooperative federal structure* is an arrangement whereby the federal government is definitively superior to the state government, and the federal government should stretch its powers as for as possible.
- In many federal states there is a growing tendency of shifting the balance of powers towards the federal government.

Conti…

- ✓ Most strategic powers like defense, external relations, currency, interstate trade, etc are held by the federal government.
- ✓ The Swiss federation is considered to be an example of cooperative federalism.
- ❖ The Ethiopian federation, it is claimed, exhibits some feature of dual federalism whereby federal powers have been expressly stated and the residual powers are reserved to the states.

2.3.3 Centripetal Vs Centrifugal Federalism :

This classification is based on the manner or condition under which federations are formed.

- ➢ Some scholars argue that federalism is chosen as a result of the desire to expound territorial control or the fear of external military threat. This is *centripetal federation*, a scenario whereby formerly independent states come

Conti…

- ✓ These formerly independent states want to form union while still maintaining their sovereign status.
- ✓ They exercise their sovereign status within the limits set by the constitution by retaining their law making, executive and judicial powers.
- ✓ The reason for establishing such kind of union may be common defense, history, etc. This is the most important factor that necessitated federal state structure in United States.
- ✓ The American federalism has clear military motivation which makes it one good example of *centripetal federation*. The same holds true of Switzerland.
- ➢ The other mechanism of establishing a federal state structure is federalism by devolution or *centrifugal federation*. This refers to a situation whereby a formerly unitary state converts itself into a federal state structure.

Conti…

Holding-together federalism refers to the process where a pre-existing unitary state is restructured into a federation to accommodate diverse populations or address internal regionalism. This contrasts with "coming-together" federalism, where independent states voluntarily unite to form a federation, and "putting-together" federalism, which is imposed, often coercively.

Restructuring a Unitary State: A unitary state, where power is primarily centralized, transitions into a federation, granting greater autonomy to constituent units (states, regions, etc.).

Accommodating Diversity: This approach is often adopted to manage ethnic, linguistic, or cultural diversity within a country. **Egs:** Belgium and India are often cited as examples of holding-together federations.

Motivation: The primary motivation is to prevent secession or maintain national unity by addressing regional demands for autonomy.

Distinguishing from Coming-Together: In "coming-together" federalism, independent entities voluntarily agree to form a federation, while in "holding-together," a pre-existing state undergoes a transformation.

Conti…

Simply put, it is a change in state structure.

People with different culture, ethnicity, and economic background but with similar ambitions and tied by bonds of single nationality may resort to a federal form of *government through distribution of political power among the nation's constituent units.*

This is usually taken as a solution to the centrifugal tendencies in heterogeneous societies.

Centrifugal federal structure is a systematic response to threats of disintegration.

It is the result of claims by the constituent parts of the formerly unitary state for more autonomy. Accordingly, by devolution of the unitary form of government, some of the governmental powers will be constitutionally conferred upon the newly formed regional states.

Conti…

- The newly established regimes may constitute people with the same historical, religion, economic background, ethnicity or other common denominators.
- For instance, the Indian, Pakistan and Nigerian federation grew out of formerly unified colonial structure.
- Belgium is also another example of federalism by devolution.
- The Ethiopian federal structure provides a recent example of federalism by devolution. Prior to the adoption of the 1995 FDRE constitution, Ethiopia used to have a unitary state arrangement. Hence, according to some scholars the Ethiopian federalism is a response to centrifugal forces. It is the result of claims by various ethnic groups for greater autonomy including getting cultural and linguistic expressions.

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2.3. 4 Ethnic Vs Territorial Federalism : This classification relates to the basis of creating the constituent units.

In some federal states ethnicity is considered to be the basis of delimiting the constituent states, while other states employ territorial considerations.

The factors that determine the basis of federalism are the heterogeneity or homogeneity of the ethno-linguistic structure, socio-economic and political systems of the subjects of a federation.

In territorial federations, the constituent parts of the federation are established on the basis of geographic considerations or settlement patterns or administrative conveniences. USA, Australia and Germany are among the good examples of territorial federations.

In USA, the states were formed taking into account the

Conti…

- This kind of federation is appropriate for territorially large and *homogenous societies*.
- This is precisely because federal structure gives room for better administration by creating administrative convenience.

The other mechanism of establishing the constituent parts is by taking ethno-linguistic considerations.

This is true in heterogeneous or multi ethnic societies.

In such cases, federalism is taken to be a means of accommodating ethnic, linguistic or cultural diversity. This is not to say, however, that multicultural (ethnic) federations are not territorial.

In deed, the principle of territoriality is at the core of any federation. The point is simply that in case of multicultural federations, the territories are designed on the basis of major diversities that define a certain society. Such federations presuppose the existence of a territorially grouped diversity.

Conti…

- Examples of ethnic federations are the Indian federation, the federation of the former Soviet Union and the Belgian federation. But this is not to say that the aforementioned federations are purely ethnic.
- It must be born in mind that it is quite hard to adopt a purely ethnic based federal model.
- Since cross cultural intermingling and intercourse is unavoidable instance of life, certain geographic considerations are also applied along with the ethnic, cultural and linguistic components.

Ethiopia is not an exception to the aforementioned fact. Though Ethiopia follows ethnic federalism, ethnicity is not the only basis of classifying the constituent states.

Conti…

As provided under Article 47 of the FDRE constitution, the basis for establishing the Ethiopian federation is ethnicity, settlement patterns or consent of the people concerned.

The fact that the Ethiopian federation is not purely ethnic can further be inferred from the observation of the composition of each regional state.

In almost all member states of the federation, there are minority ethnic groups. If we consider the Southern Nations, Nationalities and Peoples, for example, it comprises of nearly 56 ethnic groups.

Generally, the task of choosing the appropriate model hinges upon the socio-political, economic, and cultural realities of the nation at hand.

Conti…

Chapter Three

Federations and Second Chambers (upper house)

3.1.RATIONALE :-

- ✓ Although bicameral houses can be found in unitary systems, owing to the federal idea, second chambers are more common, if not inherent in federations.
- ❖ To limit majority rule in federations.
- ❖ Federations are principally organized on the concept of ‘self-rule’ for some purposes and ‘shared-rule’ for other purposes.
- ➢ Self-rule in a federal context means that an entity can decide certain matters autonomously over competencies within an overarching federal system.

Conti…

- ✓ All the federations considered that the case for second chambers with legislative functions.

The Ethiopian Upper House is the only exception in this regard.

- ➢ The United States Constitution clearly makes the Senate an integral part of the legislature. It states, 'All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
- ➢ The Swiss Constitution is even more explicit in guaranteeing the Cantons' participation not only in the law-making but also in other federal affairs. The cantons shall participate in the decision-making process on the federal level, in particular in federal legislation.

Conti…

Although the Constitution guarantees the various nationalities *'equitable representation' in the federal government.(arts.39(3) & 62.*

But, the HoF has not law making power.

- The only provisions where one may by stretch of imagination trace legislative functions are Articles 99, 62(7) and 105.

3.2.COMPOSITION, Selection of Members & powers :-

The composition of the upper chambers varies significantly, from the nearly majoritarian House of Federation in Ethiopia to that of :

Minority protection in the US and Switzerland, with the German and Indian Houses balancing the tension between territorial and citizen equality, in between.

Conti…

Composition : **Representation:** The HoF represents the Nations, Nationalities, and Peoples (NNPs) of Ethiopia, rather than the constituent states themselves.

Membership: Each NNP is entitled to at least one member.

Population-Based: Each NNP receives an additional representative for every one million people in its population. *Art.61*

Selection of Members : **State Councils:** Members are elected by the State Councils (regional parliaments).

Direct vs. Indirect Election: State Councils can either elect representatives themselves (indirect election) or organize direct popular elections for the people to choose their representatives. *art. 61(3).*

Powers : The HoF's primary function is to interpret the Constitution. **Rights of NNPs:** It has the power to make decisions on issues related to the rights of NNPs to self-determination and secession. **Promoting Unity:** The HoF is tasked with promoting the equality of all peoples and consolidating their unity based on mutual consent. **Non-Legislative Role:** Unlike the HPR, the HoF does not have legislative powers; it is not a law-making body. **Co-existing Powers:** The HoF exercises powers that are also entrusted to the House of Peoples' Representatives. *See art. 62.*

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Chapter Four : Forging Unity from Diversity: The Ethiopian Experience

Distinct Features of the Ethiopian Federal System

4.1 Unicameral Legislature

- ✓ Basically, the FDRE constitution, under Article 53, provides that there shall be two federal houses, the House of Peoples' Representatives and the House of Federation.
- ➢ But the House of Federation has no law making power (function). Hence the Ethiopian Federation is distinct since the law making function at federal level is solely entrusted to the lower house (HPR).
- ➢ *From this, it follows that the states and the ethno-linguistic groups that constitute the states have no say on those powers reserved to the federal government in general and laws enacted by the House of Peoples' Representatives in particular.*

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5. 2 Ethnic Communities as Building Blocks of the Federal System;

The importance given to the Ethno Linguistic components of the society by the constitution can also be clearly seen under Article 8 of the constitution. Dealing with the fundamental principles of the constitution, chapter two clearly stipulates that “all sovereign power resides in the nations, nationalities and peoples of Ethiopia.”

In deed the Constitution is considered as nothing more than “an expression of their sovereignty.”

See art.47 ….According to this provision there are four basis of delimiting the states of the federation. These are; *settlement patterns , language, identity & consent of the people concerned. See also art.39 w/ch refers nation nationalities.*

Conti…

4. 3 Self Determination up to Secession

- ✓ What does it mean ?