

Chapter Five: Constitution, Democracy and Human Rights

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Constitutions and Constitutionalism

What is constitution?

- A constitution is a fundamental or **supreme law** of a given country.
- Constitution includes the **basic principles, values beliefs and traditions that direct the internal (domestic) and external (foreign) affairs of a country.**
- Constitution contains the basic principles on **the structure and distribution of governmental or state power.**
- It establishes the relationships between **citizens and the state.**
- Constitution is a **legal instrument** to form **government** by the **people.**
- The **powers** people give to **governments** are limited by **constitution.**

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- Constitutions **determine** a country's system of government to be **parliamentary or presidential, or monarchy.**
- Determine the **form (structure)** of the state to be **unitary or federal.**
- Constitutionalism- is also related with the prevalence of the **rule of law** where the **government and public officials** shall be held **accountable to people** and are **responsible for their actions.**

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- ❑ A modern constitution has the following **characteristics and contents**
 - It lays down the form of the state
 - It may be written or unwritten
 - It may be a deliberate creation or may have been gradually evolved
 - It may be embodied in one document or several
 - It prescribes the structure and organization of the government and also determines the relation of different organs of the government
 - It may also lay down the rights of the governed
 - It often also lays down the procedure of its own change

Forms of Constitution

1. Constitutions could be **written or unwritten.**
- Sometimes written constitutions are known as '**documentary**' constitution while the unwritten ones are known as '**non documentary**' constitution.

Israel and Great Britain are countries with unwritten constitutions

- **Advantages of written constitution**

- It is clear and definite
- It helps to secure rights and liberties of the people
- It is more stable

Disadvantage of written constitution

- Growth of country retarded. It is often rigid, and unable to keep pace with the times
- Transient contemporarily
- Not less controversial
- provides no better government

Constitution based on complexity of amending process

- A constitution may be regarded as flexible or rigid depending on the complexity of the requirements stated in the provision for amendment procedures.
- A. Flexible constitution** – is one which can be easily changed by ordinary process legislative action. Flexible constitutions have simpler requirements or procedures for amendment
- B. Rigid constitutions** -rigid constitutions provide a series of procedural requirements for amendment. In the case of rigid constitutions, special procedures should be followed to amend the constitution.

Constitution based on degree of practice

- **Effective Constitution:** Effective constitution denotes to a situation in which government/citizens practices correspond to the provisions of the constitution.
- **Nominal constitution:** the constitution accurately describes government'/citizens' limits yet in practice either or both fail to behave accordingly.
- In short when the **constitution only remains to have paper value** or when there is absence of constitutionalism

Based on the kind of state structure

- Constitutions either concentrate powers at the centre or distribute it among the different branches and levels of government. Such a constitution is called unitary and federal constitution respectively.
- ❖ **Federal Constitution**
- ❖ **Unitary Constitution**

Peculiar Features of Constitution

- A. Generality:** a constitution provides the general principle of a state and carry on foundation and sets out general framework of the law and the government.
- B. Permanency:** unlike laws constitution is made for undefined period of time.
- C. Supremacy:** Constitutions are laws about the political procedures to be followed in making laws.
- D. Codified document:** Constitutions are written down; often in a single document that presents the constitution in a systematic manner.
- E. Allocation of powers:** Constitutions outline the proper relations between institutions and offices

Major Purposes and Functions of Constitution

- **It serves as a framework for Government**
- **It Limits the Powers of Government**
- **It protects individual and collective rights of citizens**
- **It serves as the Supreme (Highest) Law of a Country**
- **It provides Government legitimacy/ stability**
- **Constitution Blue Prints for establishing Values and Goals**

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- **The followings are some amendment procedures**

- absolute majority (2/3 vote) in parliament
- absolute majority in parliament + 2/3 support of regional legislatures for Federal States
- National referendum – direct voting by citizens to support or reject a constitutional amendment or major national issues.

Constitutionalism

- **Constitutionalism** refers to a doctrine that **governments should be faithful to their constitutions** because **the rules and laws so provided are all that can protect citizens' rights from arbitrary actions and decisions of the government.**
- **Constitutionalism**, desires a political order in which the **powers of the government are limited.**
- It is another name for the concept of **a limited and civilised government.**

The making of constitutions

- In a democratic country the process of making constitution involves
 - drafting – discussion – improving – ratification (adoption)
 - in Autocrats, monarchs and dictatorial rulers unilaterally draft and introduce constitution without involving the republic.

The Constitutional Experience of Ethiopia: Pre and Post 1931

- **Traditional Constitution (Pre- 1931)**
- 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 Fetha Negest** (The Law of Kings) was a religious and secular legal provision than being a definite constitution.
- **Law of the Kings**, is a collection of laws which in use in Christian Ethiopia for many centuries. It was originally written in Arabic by the Coptic Egyptian writer Abu-l Fada'il Ibn al-Assal (commonly known as Ibn al-Assal) when Cyril III was the Patriarch of Alexandria (**1235-1243**).

Kibre Negest

- Kibre Negest was another traditional document that has constitutional relevance.
- Literally, Kibre Negest means **glory of king**.
- **The *Kebra Nagast*** (The Glory of Kings) was written to document for the first time the mythical origins of the royal house.
- This document takes the Ethiopian history back to the **Solomonic dynasty**, where the queen of Sheba made romantic tripe to King Solomon of Israel and gave birth to the first Ethiopia **king Menelik I**.

Ser'ate Mengist

- **Ser'ate Mengist** was another traditional document that had been used as constitution by the traditional rulers before 1931.
- The *ser'ate Mengist* was **one of the traditional documents of the nineteenth century that provided certain administrative protocol and directives in the 19th century.**
- The Ser'ate Mengist can hardly be considered to be a document of **Constitutional Law in its widest**

Constitutional Experience of Ethiopia

- **The pre 1931 and the 1931 Ethiopian 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'** but 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.

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- Internally, the 1931 constitution 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.
- It was designed to unify and centralize all state power in the hands of the monarch.

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.
- During this period both the Ethiopian Orthodox Church and the traditional aristocracy were severely weakened.

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- The federation of Eritrea with Ethiopia led to the addition of two new documents into the Ethiopia legal system. These were the federal act and the Eritrean constitution. The federal act was a document that specified the terms of agreements for the federation between Eritrea and Ethiopia.
- The Eritrean were established their own constitution with the support of

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 Provisional Military Administration was also in the process of reconstituting itself.
- To legitimize itself within and broad it had, at least, to take off the uniform and appear in a civil dress.
- This may lead us to the conclusion that the time from **1974-1987 was a period of**

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- ❖ 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 (issue of secularism was included in the constitution) for the first time;
 - 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. Thus, 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

The 1995 (FDRE) Constitution

- The FDRE constitution has a wider coverage of both human and democratic rights.
- Of the total 106 articles of the constitution just about **one third (approximately 33 articles)** is devoted to the discussion of rights.
- While the **democratic rights** enshrined in the constitution tend to be essentially **group-oriented** and political in nature the **human rights** on the other hand are **individualistic and natural**.

Democracy and Democratization

➤ Defining Democracy

- **Democracy** is a term derived from two Greek words “**Decos**’ which means **people** and ‘**Kratia**’ which refers to **authority or government**.
- Thus, the Greek word ‘democratia’ means **government of the people**.

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- According to Hearnshaw, 'Democracy as a form of state is merely a mode of **appointing, controlling and dismissing a government**'.
- Dicey defined democracy as a form of government "in which the governing body is comparatively a large fraction of the entire nation."
- For **Abraham Lincoln** democracy is "**a government of the people, by the people for the people, by all, for all.**"
- According to Bryce democracy denotes "that form of government in which the ruling power of a state is legally vested, not in any particular class or classes, but in the members of the community as a whole."

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- **Democracy** -is also defined as a system of government in which the supreme political power resides in the people and **power is exercised directly by the people** or by their elected representatives who are elected in **a free electoral system.**
- **Democracy**-is management of **conflict** as it is composed of **values of tolerance, cooperation, compromise, consensus, pragmatism** (treating things in a sensible and realistic way to produce results) **compassion** (polity for the sufferings of others) **civility** (polite behavior) etc.

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- ❖ **Democracy is a form of government organized according to principles of**
 - popular sovereignty (ultimate decision making power of the people)
 - the rule of law
 - separation of powers
 - rights and freedoms of the individual as well as the group
 - majority rule and minority rights
 - multi party system
 - free, fair and periodic elections.
 - Secularism

Actors of Democratization

- **Political Parties**
- **Media**
- **Civic Societies**

Aspects of Democracy

- Democracy has three aspects: **Social, economic and political.** Democracy remains incomplete unless all these three aspects are present in a society
- **Social aspect** – this refers to **removal of discrimination on the basis of class, caste, creed, color and sex.** All men and women, rich or poor, regardless of any class or caste prejudices are socially equal, and should be treated as such
- **Economic aspect-** this refers to the equitable distribution of wealth in society and abolition of glorying disparities on the basis of wealth. **Economic democracy recognizes the right to work, leisure, and fair wages and unrestricted right to the enjoyment**

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- **Political aspects** – this refers to the provision of political rights namely, **the right to vote, the right to contest elections and the right to hold public offices.**
- **Types of Democracy**
- Historically, democracies have been **Direct as well as Indirect** (representative)
- **Direct Democracy** – this type of democracy existed in the **Greek and Roman city states** in the ancient world. Now it has become a thing of the past. Direct democracy can exist only in petty states inhabited by a few thousand people who can easily meet at a place, deliberate and formulate policies on the spot. In the modern age direct democracy survives in the institutions of

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- **Indirect (Representative) Democracy** – Modern states are huge in size and population.
- Direct Democracy is therefore inconceivable. Instead, the people govern these states indirectly, through the popularly elected representatives.
- **Representative (Indirect) Democracy-** is associated with **two basic systems of government: parliamentary and presidential democracy.**

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- **Parliamentary democracy:** In this form of government the parliament has a central role: the executive is headed by a prime minister or a cabinet leader and is dependent on the confidence of the parliament; the head of state usually has little or no executive powers but only a representative function.
- **Presidential democracy** – the executive is headed by the head of state him/herself, who is directly elected by the people and does not depend on the parliament's confidence.
- Hobbes, Locke, Jefferson, Tocqueville are some scholars who helped to crystallize the concept of representative democracy or indirect democracy.

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- There are **two essential prerequisites** for maintaining that a system is liberal in nature.
- These are:
 - Government is based on the free consent of the people
 - Government is responsible to the people

Human Rights: Concepts and Theories

- Human rights are universal or general characters **equally possessed by all human beings.**
- Rights must be distinguished from powers.
- Nature has endowed every man with a certain amount of power to satisfy his needs.
- Power is simply the physical force at the disposal of a person.
- According to **Locke, natural rights** existed in **pre political stage of human existence.**
- In fact, according to him, the civil society was created partly to **safeguard and**

Classification of Human Rights

- **The following reflects the ways of attaining rights.**
- Legal rights – These are rights written down in codes of law. They are legally permitted right; exercised by all.
- Moral rights – These are rights that emanate from the consensus of two or more bodies. The basic principles of moral rights are justice and impartiality.
- Human rights – These are natural rights. They do not emanate from government will or from individual conventions.

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- Basic features of Human Rights
 - Human rights are based on equality because human rights are interconnected and based on human nature.
 - Human rights are unassailable. They can not be attacked during promotion and protection
 - Human rights are eternal that is without beginning or end
 - Human rights are irreducible
 - Human rights are indisputable that is can not be challenged
 - Human rights are not given by governments and are not also inherited.

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- Some other evidences of **change in the transition towards maintaining natural law rights were**
 - Teachings of Thomas Aquinas (1224 – 1274)
 - “ “ “ Hugo Groitius (1583 – 1645)
 - The signing of Magna Carta in 1215
 - The English petition of Rights of 1628
 - The English Bill of Rights of 1689
 - The writings of the 17th century English philosopher John Locke and the works of the 18th century philosophers like Montesquieu, Voltaire and Rousseau.

Scope and content of Human Rights

- Human rights are classified into **three generations:**
 - **First Generation** Rights include civil and political rights... liberty rights
 - **second Generation** rights – are economic, social and cultural rights ... equality rights
 - **third Generation** rights – Solidarity rights ... Fraternity Rights

The Rule of Law

- The rule of law is a situation in which people including the government authorities are bound by the law of a country.
- **No one** including rulers and top officials of government can be **above the law**.
- o The rule of law is important in many ways.
 - It provides security: when there is the rule of law, the rights of individuals and groups will be respected.
 - It provides governing conducts: Where there is the rule of law, individuals and groups of people would behave in accordance to the law.
 - it helps for the existence and protection of

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- On the other contrary, the **absence of the rule of law would result in some problems.**
 - The relation between the people and the government would be unhealthy. A government that ignores the rule of law would be unpopular
 - Where there is no the rule of law there is no justice. The absence of justice would in turn result in instability
 - The people would not feel secure. This would inhibit people's effort and commitment in doing their day – to – day work
 - There will be corruption

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- **The rule of law comprises political, constitutional, legal and human rights issues.**
- **Any democratic society which seeks to foster and promote human rights, has to recognized the rule of law as a fundamental principle.**

Sources of the Rule of Law

- ❑ There are certain sources of the rule of law
 - Constitution
 - Domestic laws – These are specific laws. These domestic laws have great value in maintaining the rule of law.
 - Domestic laws are of two types
 - civil law – these are laws related to administrative
 - Criminal law – this is a body of law that is related to criminal acts like theft, corruption, killing etc.
 - International laws – such laws regulate the relationship that exists between countries of the world.

End of chapter five!