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Legal research and methodology

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1.1 Background of the study

Unlike unitary form of government, a federal system is characterized by the existence of two tiers of government-the federal government and states-which are also independent within their respective jurisdictions and autonomous from another, with the constitutionally granted distribution of powers between them. This is one ground for the differentiation of unitary and federal forms of governments. Ethiopia introduced a Federal forms government with the adoption of 1995 Constitution named as the Constitution of the Federal Democratic Republic of Ethiopia.

The constitution comes up with the provisions dealing with the distribution of powers between the tiers of governments. i.e. the Federal and States governments. Judicial competence is among the powers that are distributed between those tiers. The preposition holds true for criminal laws as well. This distribution of powers among the two layers of government in the aspect of adjudicative provided in the constitution and other statutory legislations is not clear enough to identify the criminal jurisdiction of the two orders of governments.[1]

With this general overview in mind, the thesis discusses the scope of the power of judicial organs of states government in detail manner. Accordingly an attempt will be made to identify how states courts adjudicate criminal cases as per the constitution and other statutory legislations and how they apportion or assume among levels of courts at each hierarchies.

1.2 Problem Statement

[1]Assefa Fiseha Federalism, Teaching material, Legal Research Institute,2009, Addis Ababa,p.100,101.

The FDRE Constitution is one source to understand how powers is divided between the Federal and Regional governments. As enshrined under the provision of the Constitution exclusive power of the Federal government is provided under article 51 and residual power is given for respective Regions under article 52 of the Constitution. The provision is not specify the legislative, executive and judiciary aspect of those powers.[2] Judicial power is among the power that is divided between the Federal and Regional governments. The Constitution states that the Federal Supreme Court has a final and highest judicial power over Federal matters and State supreme courts has a final and highest judicial power over State matters.

However it is not clear what is federal matters and state matters. There is no list of matters under the FDRE Constitution to show what matters are federal and what matters are state matters. The constitution has provided for Federal government the enactment of criminal laws as articulated under article 55(5) of the Constitution. It is important to ask whether criminal adjudication power is given for the federal or not or whether Regional courts can adjudicate criminal matters without having power to enact criminal laws.[3]

On the other hand the Constitution empowers Regional courts to adjudicate criminal matters by way of delegation under article 80 of FDRE Constitution[4]. This provision also creates confusion hence the caption of provision states concurrency of judicial powers which has different effect. This Constitutional provision devoid of States High courts and Supreme courts to have inherent power to entertain criminal cases and States first instance courts to adjudicate criminal matters at all but practically speaking they adjudicate criminal cases.

[2]FDRE Constitution, Proclamation No.1/1995,Addis Ababa,21st august ,1995,Article 51,52
[3] Ibid at Article 55(5)
[4] Ibid at article 80(4)

Below the constitution, there are legislations which govern the criminal jurisdiction of Federal and Regional Courts. The Federal courts establishment proclamation No.25/1996 under article 4 enumerate the criminal jurisdiction of Federal courts[5]. The question is whether the matters which are not governed under this provision are within the jurisdiction of Regional states courts or not. And whether the federal proclamation has constitutional ground to determine the power Regional courts to adjudicate criminal matters. Besides, it is also vague whether the power of adjudication of crime is exclusive to Regional courts or shared power among courts of both tiers of governments not. Finally, it is necessary to investigate regional laws on the issue at hand. Thus, since the issue is blurred and researchable, under this research, the researchers have studied the above problem.

1.3 Objectives of the study

1.3.1 General objective

The overall objectives of this study is to investigate the judicial power of the Regional states courts to adjudicate criminal matters.

1.3.2 Specific objectives

In line with the above general objectives the specific objectives of this study is :

- To show the power of the Federal government on adjudicating criminal matters.
- To identify how judicial organ are structured at Federal level.

[5] Federal courts Establishment proclamation No 25/ 1996 Article 4,Exclusive power of Federal courts

- To show how Regional states courts are structured and share criminal adjudicative power among them selves.
- To show the legal basis of regional courts jurisdiction to adjudicate criminal matters.

1.4 Research Questions

The followings are some of the questions of researchers.

1. 1. Does Regional courts adjudicating criminal matters is dejure or defacto? .

2.Does Regional courts have inherent or delegated criminal adjudicative competence?

3.Are the Ethiopian constitution and other subsequent legislations are clear enough in distributing judicial power among tiers of government?

4.Does the regional legislations are sufficiently apportion the criminal adjudicative competence among levels of courts?

1.5 Methodology

The study, methodologically, designed to be carried out from the perspective of legal analysis and it is library-based or document analysis in which two sources of data will be analyzed.

- **primary sources**

  A) Interview

  For clear understanding of the power of regional courts in adjudicating criminal matters and the apportionment of cases among regional courts at each level we are going to conduct interview with some legal practitioners.

B) Laws and documents

In this respect, we are going to explore or analyze FDRE constitution, Federal as well as Regional proclamations which re related to our subject matter of study.

- **secondary sources**

For the better understanding of the subject matter of our study and find way out for the problems identified secondary sources like journals ,senior thesis papers, books which are significant for our study will be used.

1.6 Scope of the study

The study focuses on the criminal adjudicative power of states courts. as a matter of clarifying this power the general overview of judicial power and structure of courts in Ethiopia will be discussed in relation to constitution and other statute. The Federal courts establishment proclamation no.25/1996 will be analyzed in detail to locate the Regional courts competence to entertain criminal cases. Once Regional courts assume jurisdiction how the matter is apportioned or assumed among courts at each hierarchy will be discussed. The study also touches the Oromia regional courts re-establishment proclamation no 141/2000 as matter of convenience.

1.7 Significance of the study

- The study is used as a source of information directly or indirectly for different organs of government in general and the judiciary organ in particular.
- It contributes to further in –depth the research work on the same subject matter.
- It encourages the government to enact clear law which gives states courts power to adjudicate crime.

- It may be used as source of information for researchers, teachers and students.
- It encourages the government to formulate appropriate policy in relation to criminal adjudicative power of Regional courts.

1.8 Limitation of the study

This study is going to be undertaken within a limited time of not more than t months. The researchers will spend much time to establish a good understanding about the subject matter of study. Since the issue is sensitive and broad the participants/researchers are going to spend more time and efforts.

The other limitation is related to the financial capacity of researchers. Since there is no financial assistance granted for the undertaking of this study, we may unable to cover the costs and expenses so incurred in the duration of doing all these activities.

1.9 Organization of the study

The study is composed of four chapters. Chapter one, the introductory part presents the back grounds, objectives, significance, research questions, and statement of problem, limitation, methodology and scope of the study.

Chapter two is devoted to discuss the general over view of judicial powers and structure of courts in Ethiopia. Under this chapter we discuss the judicial power and structure of courts both at Federal and Regional levels. We also trace back to traditional court structure and modern court structure.

Chapter three of the study discusses the division of criminal adjudicative power between federal and regional governments. Under this chapter we discuss the constitutional as well as the statutory basis of division of criminal adjudicative power between federal and Regional courts. While

discussing this power the delegation and concurrency principle in judicial power will be seen in detail. The last but not the least the State first instance courts to entertain criminal matters will be seen in detail.

Chapter four of the study is about conclusion and recommendation with regard to what has been discussed in the above studies.