

THE EMERGENCE OF PRECEDENT OVER PRECEDENT AND ITS POTENTIAL CONFLICT WITH THE PRINCIPLE OF SELF-RULE IN ETHIOPIAN JUDICIAL FEDERALISM: THE CASE OF OROMIA COURTS

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ABSTRACT

This article is constructed based on a theoretical-deductive attempt to define the unconstitutionality of FDRE Supreme Court Cassation practices on the principle of separation of power, particularly its challenge to the autonomous power of state courts on their own exclusive matters. Especially, as it is well known, the interpretations of law by the Federal Supreme Court Cassation Division have binding effects on decisions of lower courts, including state courts. This was, for a long time, theoretically debated and contested for its unconstitutionality without fruitful change. However, whatever its constitutionality debates, the Federal Courts Establishment Proclamation Nos.25/1995 and 454/2013 are in action by making the Cassation Division decisions to have binding effect on state courts, whether the issues are state matters or not. Now, the most climax debatable issue is that the Oromia Regional State Courts Proclamation No.216/2019 has come up with a new version that makes decisions of the State Supreme Court Cassation Division to have legal binding effect on lower courts of the region solely on state matters.

Accordingly, when we see the two proclamations (Proc.No.454/2013 and Proc. No. 2016/2019), the concept of precedent over precedent is now emerged in addition to the most widely used term of cassation over cassation. Unless one can conclude that there is a federal law supremacy clause in our legal system, the two versions of the proclamations overlap each other and one makes the other nonsense. But, apart from the Federal Constitutional Supremacy clause,¹ the FDRE Constitution has established the two tiers of government with their respective autonomous government institutions to decide on their own matters, which are constitutionally guaranteed so far. However, save aside international treaties, as far

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¹FDRE Constitution, Art.9.

as another ordinary federal law is concerned, the Federal Courts Establishment Proclamation No.25/1996 Art.6 (2) has clearly established federal supremacy clause.

Concerning this area, there are different articles written in favor of or against the existence of cassation over cassation. The former approach claims that it is important to keep the uniformity of legal application all over the country and maintain constitutionality of decisions of courts of any level by checking its conformity with the FDRE Constitution. Accordingly, they argue for the existence of federal supremacy clause². But, others argued that there is only constitutional supremacy, not federal law supremacy. They confirmed that so far as there is constitutionally empowered another body, House of Federation, to save constitutional order and settle constitutionality issues, the Ethiopian courts are not entrusted to solve constitutionality issues at all. Concerning uniform application of laws, our current legal system is operating under the guise of the typology of dual court structure in which by its very nature hardly possible to think of uniformity of laws and their applications.

There are also other writers, like Mehari Redea who argued against the existence of cassation over cassation in Ethiopia.³ Accordingly, this article is constructed based on those arguments against the existence of cassation over cassation and constitutionality of the precedent effect of decisions of State Supreme Court Cassation Divisions, particularly the binding effect of Oromia State Cassation Division decisions. In addition, this article has seen not only the unconstitutionality of precedent over precedent, but also its challenging effect on the principle of federalism, and independence of state courts. Therefore, hopefully, this article will convince the reader(s) by forwarding sound arguments with critical analysis against theoretical and practical existence of precedent over precedent based on constitutions of the country.

²Baye Yimam and *etal* , Law and Politics Panel (Proceedings of XIVth International Conference for Ethiopian Studies, Addis Ababa University, Vol.3, 6-11 Nov.2000).

³Redea, Mehari , *Cassation over Cassation and Its Challenges in Ethiopia*, Mizan Law Review (2015), Vol. 9, No.1.

DEFINITION OF KEY TERMS

In this article, the key terms repeatedly used are cassation over cassation and precedence over precedence. Cassation over cassation implies that the decisions of state Supreme Court Cassation Division on state matters are subjected to review again by the Federal Supreme Court Cassation Division. While the term precedence over precedence implies that the decision of State Supreme Court Cassation Division may have binding effect on lower courts within their respective regional states and at the same time decision of the Federal Supreme Court Cassation division may reverse or vary this decision making it as binding over all corner of the country.

For the sake of this article, precedent over precedent concept is a new idea which comes into existence in recent times where the regional states tried to exercise their autonomy on their own matters without any interference of federal body by making decisions of their regional Supreme Court Cassation Division to have legally binding precedent effect on the lower courts of their own and judges of the region have the obligation to follow the decisions. For instance, a Proclamation to Re-define the Structure, Powers and Functions of the Oromia Regional State Courts empowers the Supreme Court Cassation Division to give decisions containing legally binding effect on the lower courts.⁴ By the same token, the Federal Courts Proclamation and Re amendment Proclamation clearly empowered

⁴A Proclamation to Re-define the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation No. 216/2018, (Magalata Oromia, 27th Year No.7, Finfine), October 8, 2018 Art. 29.

the Federal Supreme Court Cassation Division to review decisions of the state Supreme Court Cassation Division rendered on the state matters and made its legal binding effect on the state courts as well. Accordingly, the precedence of decisions of State Supreme Court Cassation Division is going to be challenged by the decision of the Federal Supreme Court Cassation Division, which the writer used and wrapped up it with a phrase “*precedent over precedent*.”

INTRODUCTION

This article intends to scrutinize the problems associated with the existence of precedent over precedent in Ethiopia and its binding effect on the State Supreme Court Cassation Division decisions. It is obvious that the FDRE Constitution established a federal form of government with autonomous state units. The regional states, like the federal government, have their own legislative, executive, and judicial body so as to ensure the full-fledged self-government that includes the right to establish institutions of government in their respective territories⁵. In addition, the constitution has established independent and autonomous state courts, particularly stating that “the State Supreme Court has the highest and final judicial power over state matters”.⁶ Interestingly, the constitution has freed courts of any level from any interference of governmental body, including the Federal Cassation Division, by providing that judicial powers are not only vested in federal courts but also in state courts.⁷ However, the Federal Courts Proclamation and the Federal Courts Re-amendment Proclamation have made the Federal Supreme Court to have the highest and final judicial power over state matters by neglecting the constitutional provisions. Particularly, Proclamation No.25/1996 has established the ordinary federal law supremacy clause which is not constitutionally guaranteed so far. Accordingly, the issues of cassation over cassation has been emerged which in turn created the concept of precedent over precedent when the binding effects of decisions of State Courts Cassation Division are coming into picture.

Apart from these constitutional provisions, the Federal Courts Re-amendment Proclamation No.454/2005 has empowered the Federal Supreme Court Cassation Division to review the decisions of the State Supreme Court Cassation Division on state matters. By doing so, since the state Supreme Court has cassation power over

⁵FDRE Constitution, Art.39 (2) and 50(2).

⁶FDRE Constitution, Art.80 (2).

⁷FDRE Constitution, Art.79 (1 & 2)

state matters constitutionally, the two federal proclamations have established the principle of cassation over cassation. But, this practice is not in line with the experiences of federal dual court arrangements which directly misnomers the principle of self-rule in federal system.

Furthermore, the most dismaying problem is that in the presence of Oromia Courts Establishment Proclamation No.216/2018, the Federal Courts Proclamation has established precedence over precedence. This implies, in existence of the binding effect of decisions of State Supreme Court Cassation, the Federal Supreme Court Cassation Division is reviewing the binding decisions of the State Supreme Court Cassation Division.⁸ This directly distorts the principle of federalism by intervening into state matters through reviewing the legally binding interpretation given by State Supreme Court Cassation Division; on one hand, and ascends conflicts of binding decisions on the same issue between the two layers of court structure, on the other hand. Therefore, the following questions need to be critically analyzed:

- Does precedence over precedence have constitutional base?
- If decisions of the Federal Supreme Court Cassation Division and State Supreme Court Cassation Division may conflict on the same issue involving exclusive state matters, what will be the possible solution? Is there federal ordinary law supremacy clause in Ethiopia?

Especially, this article will analyze some theoretical and practical issues concerning the binding effect of interpretations of law rendered by the Federal Supreme Court Cassation Division on the decisions of Oromia State Supreme Court Cassation Division. For this, the article is organized into five sections. The first section presents the overall summary of the title by providing the general overview of structure of courts in federal form of governments, including Ethiopia. The second section presents the legal analysis of constitutionality of cassation over cassation in Ethiopian federalism. The third section presents the cassation power of State Supreme Courts and its legal effect. The fourth section provides the historical introduction of the concept of precedent into Ethiopian legal system. And the last,

⁸For instance, the Oromia Regional State Courts Proclamation, Arts. 26 and 29 stated that 'a decision of a Cassation Division, with at least five judges sitting, including the President and the Vice President, rendered by unanimity on a state matter, shall be binding on the courts of the region as regards to its legal interpretation'.

but not the least section focuses on the constitutionality of the precedent over precedent in Ethiopian legal system. Particularly, the binding decision of State Supreme Court Cassation Division along with the power of Federal Supreme Court Cassation Division are critically analyzed in light of the doctrine of ‘separation of powers, judicial overruling, and the encroachments on the independence of state courts will be analyzed to draw conclusions and to generate recommendations.

1. GENERAL OVERVIEW OF JUDICIAL FEDERALISM AND FEDERAL ARRANGEMENTS

In a federal form of government, the principle of division of powers between the central and regional states is a common phenomenon contemporarily practised in this 21st century. However, there are different approaches concerning the establishment of court structure in a federal form of government. Therefore, the high light of federal system, and approaches related to court structure in general and in Ethiopia is provided briefly as follows:

1.1. THE FEDERAL SYSTEM IN GENERAL

The term federalism is likely difficult to define precisely with unique terms. Nevertheless, many scholars have tried to define it differently based on division of powers between the two levels of government, namely: central (herein after called federal) government and regional states (sometimes referred to provinces). For example, William Riker defined it in such a way that federalism is “an association of states so organized that powers are divided between a general government, which in certain matters– for example, the making of treaties and the coining of money– is independent of the government of the associated states, and, on the other hand, state governments which in certain matters are, in their turn, independent of the general government. This involves, as a necessary consequence, that general and regional governments both operate directly upon the people; each citizen is subject to two governments”⁹. Accordingly, Riker has defined federalism based on its essential features of like in making some decisions, the central and constituents act independently of each other, the two sets of governments to rule over the same territory and people. While in contrast to Riker, other scholars like

⁹Asnake Kefale, *Federalism, Federations and Ethnic Conflict: Concepts and Theories, Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions*, 2009, P2.

Daniel Elazar extrapolate federalism as a covenant of partnership between the central government and its federated units.¹⁰ Elazar insisted that the word federalism was originally derived from the Latin word *foedus* which means alliances or leagues of states and compared it with the Jewish political tradition.¹¹

The most interesting is that many scholars have common agreement upon the basic feature of federalism-division of powers between the two or more orders of government. However, some may miscarry to define the difference between the ideological aspect of federalism and its institutional building blocks. Federalism is an ideological aspect of centralist, decentralist, and balance of unity and diversity¹², while federation is an institutional arrangement with sovereign power.¹³ It can be conceived that the Ethiopian federalism has a corresponding ideological aspiration of curbing the unjust ethnic relationships and theoretical ambition to live together. And also, the constitution made one national government at the center and the corresponding nine mostly ethnic based autonomous regions as building blocks of Ethiopian federal system with some possible numerical additions of federating units in the coming uncertain future,¹⁴ like the 2019 newly emerged Sidama Region which probably elevates the number of regions.

In addition, for rhetoric purpose, based on its basic features and functions, the two broad approaches of federalism are normative and empirical approaches. At normative level, the advocates of federalism associate federalism with peace, security, citizenship and democracy.¹⁵ While the belligerent groups claim that federalism creates the room for regional imbalances and boosts local majorities' supremacy over local minorities.¹⁶ In empirical approach studies all about division of powers between the central government and federating states is related to the federal systems functioning, causes and effect of original making of federation and its dissolution as well.¹⁷

¹⁰*Ibid.*

¹¹Abebe, Daniel, Ethiopian Ethnic Federalism: A means to an End (The University of Chicago Law School), October 13-14, 2017, Pp.1-21.

¹²Baye Yimam and *et al*, *supra* note 2, P.26.

¹³ *Ibid.*

¹⁴FDRE Constitution, Art. 46 (2) & 47 (2).

¹⁵Asnake, *supra* note 9, p. 25.

¹⁶Atnafu Taye, Bekalu, "Ethnic Federalism and Conflict in Ethiopia (Kotebe Metropolitan University, Addis Ababa), Pp.41-66.

¹⁷*Ibid.*

Furthermore, at legal and constitutional approach, a legal scholar *WHEARE* defined the federal principles as the scheme of allotting powers between the national and regional governments so that within their sphere they ought to coordinate even though they act independently of each other.¹⁸ But this approach is criticized by being rigid, legalistic and inflexible. Despite its pitfalls, the legal and constitutional approach has some contributions to the conceptual understanding of federalism. For instance, division of powers and establishment of distinctive features from unitary government, and also many of federal constitutions require rigid procedures for amendment. In addition, this approach has stressed for the establishment of an independent court responsible for constitutional dispute settlement.¹⁹ At the end of the day, this approach has come up with bicameralism as the basic feature of federalism.

1.2. THE ETHIOPIAN FEDERAL SYSTEM IN BRIEF

Even though the history of written constitution in Ethiopia traces back to the 1931 of monarchical constitution, concerning the federal system; the 1995 Federal Democratic Republic of Ethiopian Constitution is the first to introduce federal features explicitly. As mentioned before, the Constitution has established two tiers of government and divided authority between them.²⁰ In addition, even though each state has its own constitution, the federal constitution has a supremacy clause in which both levels of government sought to comply with it.²¹ And also all states have their own governing institutions. These governing institutions include the legislature, executive and judiciary body. The central (the so called federal) government and regional states have corresponding authority in some areas without a formal mechanism to resolve competing claims in the event of conflict.²² Actually, this conflict is a common phenomenon in a federal system, but absence of clear IGR (Inter-governmental Relationship) exacerbates the problem, which is not the concern of this article.

Furthermore, the Ethiopian Constitution has established predominantly a model of ethnic federalism with nine autonomous regional states each of which exercise

¹⁸Baye Yimam and *etal*, *supra* note 2, p.26.

¹⁹Asnake, *supra* note 9.

²⁰FDRE Constitution, Art. 50.

²¹FDRE Constitution, Art. 9 (4)

²²Afesha, Nigussie, *The Federal-state Intergovernmental Relationship in Ethiopia: Institutional Framework and its Implication on State Autonomy*, Mizan Law Review (2015), Vol. 9, No.2.

substantial authority within their respective territories.²³ Accordingly, there are two kinds of division of powers namely: horizontal and vertical division of powers. Concerning the horizontal model, division of power is among the three branches of government, i.e., among the executive, the legislative and the judiciary branches, and each of them have separate and independent power and areas of responsibility (check and balance).²⁴ In federal principles, a clear separation of power between the tripartite systems is almost associated with presidential form of government whereas fusion of power is the integral feature of parliamentary system. The underlying difference is cultivated based on the formation of the three branches of government. In case where the three institutions are formed independently of each other, there is a clear separation of power and hardly possible to think about fusion of powers between them. The classical example is that of USA.²⁵ However, where the three branches get birth from the same womb; parliament, there is a fusion of power and three of them operate through integration of powers. The classical example is the UK parliamentary system.²⁶

Concerning the Ethiopian case, the FDRE Constitution has made provision to this effect stating that “the Federal Government and the States shall have legislative, executive and judicial powers”²⁷ and the details of their respective powers and formation of each institution are clearly provided under the Constitution. However, the Constitution has established a parliamentary form of government and members of the parliament (or state legislatures) are directly elected by the people, while the remaining two bodies (the executive and the judiciary) are established by and from members of the parliament directly or indirectly.²⁸ Accordingly, the constitution has established fusion of powers by adopting the parliamentary form of government and there is no clear separation of powers²⁹. For instance, the president and vice president of the Federal Supreme Court is recruited by Prime

²³FDRE Constitution, Arts.46 (2) & 47 (2).

²⁴FDRE Constitution, Art.50 (2)

²⁵CEPA/Committee of Experts on Public Administration, (Conference Prepared by Hao Bin, Deputy Director General, Department of International Cooperation, Ministry of Human Resources and Social Security, Unpublished, Eleventh Session Distribution of Powers Between Central Governments and Sub-National Governments, New York), 16-20 April 2011, Pp. 1-9

²⁶CEPA, Ibid.

²⁷FDRE Constitution, Art.50(2).

²⁸FDRE Constitution, Arts. 54(1), 73 & 81.

²⁹FDRE Constitution, Art. 81(1).

Minister and appointed by the parliament in which one can't deny some loyalty to the executive and the parliament.

On the other hand, vertical division of power is the main norm of the federal arrangements and deals with the distribution of powers of legislative, executive and judiciary between the two or more tiers of government.³⁰ However, countries of federal system follow different schemes of vertical division of powers. For instance, the Indian constitution has provided the enumeration of powers between the states and federal government. Accordingly, the constitution provided three entitled lists; namely: the union power lists, the federal exclusive powers and concurrent power lists and the residual powers left in the hands of the union.³¹ While the USA Constitution provided the center-state distribution of powers in which exclusive powers conveyed to the federal government and the residual powers are kept for the federating units. Probably, powers are also reserved to the union if supposed necessary. In contrast, the Canadian Constitution allocated exclusive powers to the federating units and conversely kept the residual powers to the central government.³² Furthermore, the German Basic Law is more or less similar to that of Indian Constitution with slight differences. In German, most of the federal laws are kept for the execution to the states.³³ The federating units make enforcing legislations in line with the laws of central government.³⁴

Coming to the Ethiopian case, it seems to be confusing with the schemes which the Constitution allowed to operate. On one hand, the Constitution seems to follow the scheme of enumerating exclusive powers of federal government and reserving residual powers to the states. On the other hand, it also provided a limited list of exclusive powers of the states.³⁵ In addition, the Constitution has also provided the concurrent jurisdiction of courts and concurrent powers of taxation.³⁶ Hence, by listing the powers of federal government and allocating residual powers to the states, it seems to follow the USA Constitution model, but it has also incorporated some features of Indian constitutional model by listing some powers of the states. In one way or another, the Ethiopian Constitution has established the federal

³⁰Asnake, *Supra* note 9, Pp.25-26.

³¹ *Ibid*

³²Asnake, *supra* note 9 P.26.

³³Asnake, *supra* note 9, P.25.

³⁴FDRE Constitution, Arts. 80 & 98.

³⁵FDRE Constitution, Art. 52(2).

³⁶FDRE Constitution, Arts. 80 & 98.

arrangements comprising of the central government with nine autonomous states having their own respective governing institutions: the legislative, executive and judicial organs both at regional and national levels.

Accordingly, the Constitution has tried to enumerate the powers of the two tiers of government, predominantly listing the powers of the federal government and keeping the reserved powers to the states. By doing so, the two tiers of government are expected to respect the powers of each other and duty not to intervene into the affairs of one another.³⁷ Notably, the same connotation should also work for judicial federalism and the Ethiopian Federal Supreme Court Cassation Division should not interfere into state affairs to review decisions of state courts rendered solely on state matters. In other words, courts of any level should be independent of any governmental body or official or any other sources. This indicates that the federal courts, including the Federal Supreme Court Cassation Division or the other federal officials, are not constitutionally allowed to intervene into the exclusive powers of the state courts and the vice versa is true.³⁸

1.3. JUDICIAL FEDERALISM IN GENERAL

Judicial federalism is usually based on the kind of federation adopted by a country. To this effect, the typology of federation has a paramount implication to establish strong and independent courts. But, to the common understanding of a federal system, there are three approaches in judicial federalism.³⁹ These are:-dual, integrated court and single court hierarchy system.

1.3.1. Dual Court System: in this system; the two tiers of government have their own hierarchy of courts, and judicial power is clearly defined and divided vertically. Accordingly, each level of government prefers to deal with issues arising from its own legislation or its own respective officials. However, cases involving parties from different federating units are likely to be the power of the central government.⁴⁰ Comparatively, the United States and Australia are classical examples. In USA, the central government court deals with the federal matters

³⁷FDRE Constitution, Art. 50 (8).

³⁸FDRE Constitution, Art. 79 (2).

³⁹Cheryl Saunders, Courts in Federal Countries, International IDE A Constitution Brief, March 2019, Pp.1-4,

⁴⁰Asnake, *supra* note 9, P. 3.

which are constitutionally enlisted as federal jurisdiction, while state courts primarily deal with state jurisdictional matters. Each level of government has the power to appoint its respective judges, as well as regulating and financing its own courts subject to its own constitution. In such case, the Federal Supreme Court can't hear appeals involving issues of facts or errors of law decided by state courts on state matters.⁴¹

1.3.2. Integrated Court System: this model is sometimes called shared court system. In this case, the types of legal issues are shared between the two tiers of government and leaves control of lower court to the states and the upper courts to the central government.⁴² Accordingly, all courts deal with relevant cases without distinction between the federal and state jurisdictional matters. We can take Germany, Canada and India as classical examples in using this approach with some slight differences.⁴³

1.3.3. Single Court Hierarchy System:- there is no division of courts power at all and the courts are single in structure from top to down. Both levels of governments have strong confidence on the single court structure and the court has the power to resolve all legal disputes irrespective of the sources of the laws and whoever the parties may be.⁴⁴ Hence, the entire courts fall within the central government competence subject to the constitutional mandates. For instance, in South Africa; there is one hierarchal court structure.⁴⁵

Concerning the Ethiopian legal system, theoretically, the FDRE Constitution has established a dual court structure with three-tiers of courts both at federal and state levels.⁴⁶ Accordingly, the Constitution has adopted the dual court approach in which each levels of government prefers to deal with issues arising from its own matters or its own respective officials. To this effect, the Federal Supreme Court is entrusted with the highest and final judicial power over federal matters and at the same time the state supreme courts have the highest and final judicial power over

⁴¹ Saunders, as cited in Asnake, supra note 9, Pp-3-4

⁴²*Id.*, p.4

⁴³*Id.*, p.5.

⁴⁴*Ibid.*

⁴⁵Husein Ahamd, *Uniform Application of Law in Ethiopia: Effects of Cassation Decisions of the Federal Supreme Court*, African Journal of Legal Studies(2014), Vol.7, No. 7, P. 204.

⁴⁶ FDRE Constitution, Arts.80-81.

state matters.⁴⁷ However, the existent practice on factual basis shows the reverse scenario which will be discussed in the next section.

2. THE CONSTITUTIONALITY OF CASSATION OVER CASSATION IN ETHIOPIAN LEGAL SYSTEM

As the concept of cassation over cassation is a common phenomenon in contemporary Ethiopian legal system, theoretically for academic debate; one may join one of the two extreme contrasting positions either in favor of or against interpretation of laws and review of judgments of any courts in the corner of the country by Cassation Division of the Federal Supreme Court. Different journalists argue based on different scenarios. Some may argue that the existence of cassation over cassation maintains uniform application of laws in the country and enhances constitutional balance as well. They extensively boost their argument by quoting Art.80 (3a) of the FDRE Constitution which states “... *over any final court decision...*” claiming that it includes decisions of state courts over exclusive matters. However, others like Mehari Redea argue that the Constitution never allowed the Federal Supreme Court to intervene into state courts through review of judgments. In addition, they argue that it is not only unconstitutional practice, but also allowing all minor cases to be reviewed by the Federal Supreme Court Cassation Division which may increase burdensome to the bench thereby decreasing quality of decisions and it is not advisable resource wise.⁴⁸

The author also takes the position against the existence of cassation over cassation as there is no constitutional, legal and factual basis for it. Defending in favor of the existence of cassation over cassation is clearly manifested from the inability to understand the concept of dual nature federal system and the spirit of the Constitution as a whole. The Constitution obviously established autonomous regional states with full-fledged government institutions and the central government ought to respect the powers of the states entrusted to them by the Constitution. But, I ask one question for those who argue for the existence of cassation over cassation, from the very beginning, does federal system by its nature wonder for uniform application of laws on all issues revolving in every corner of a country? No, if so, it is not a federal form of government rather than a

⁴⁷FDRE Constitution, Art. 80(1 & 2).

⁴⁸Muradu Abdo, *Review of Decisions of State Courts over State Matters by the Federal Supreme Court*, Mizan Law Review (2007), Vol. 1, No.1, P. 65 & 73.

unitary form of government. But, by implication, the nature of judicial federalism that a country adopts may vary by the degree of uniformity of application of laws within one legal system under the same polity. For instance, the uniform application of laws is somewhat stronger in single hierarchal court judicial system than in integrated court system and hardly possible in a dual form of court structure. As discussed before, the Ethiopian legal system is operating under dual form of judicial federalism in which one may not deny different applications of different laws under the same polity. Notably, the FDRE Constitution has established the Federal Supreme Court which serves as the highest court of appeal in the federal judiciary and its cassation division to have power of cassation review on any final decision of federal courts or decisions of state courts on federal matters through delegation containing basic errors of law.⁴⁹

However, the Constitution doesn't list the powers of the two tiers of judicial systems based on federal or state matters. As a result, the Federal Courts Establishment Proclamation and its subsequent amending proclamation have tried to list the federal matters and further empowered the Federal Supreme Court Cassation Division to review any final decisions of state courts even the decisions containing the exclusive state matters.⁵⁰ But, there are many constitutionally problematic issues relating to these proclamations from the perspective of federalism. As per the Constitution, the Federal Supreme Court Cassation Division has the power to review over any final decisions of federal courts or over any final decisions of state courts on federal matters decided through the power of delegation. And also, Oromia Regional State Revised Constitution has established Supreme Court to have the highest and final judicial power over state matters having Cassation Division to review decisions of lower courts of the region involving basic errors of laws.⁵¹

At the end of the day, from the provisions of the Constitutions, it is vibrant that the Federal Supreme Court Cassation Division has solely the power to review cases decided by lower courts containing only federal matters, and not cases containing exclusive state matters. However, from the angle of the Federal Courts Proclamations, there is no doubt that the Federal Supreme Court Cassation

⁴⁹The FDRE Constitution, Art 78 (2 & 3).

⁵⁰Federal Courts Re-amendment Proclamation, No. 454/2005, Art. 2(1).

⁵¹The 2001 Oromia Regional State Revised Constitution, Art.64 (2a & b).

Division has the power of cassation over cassation and its decisions are legally binding on decisions of every lower courts of horizontal nature outside of one state to the rest of all other states and vertically binding on the lower courts within the limits of one regional state. This in turn directly counterfeits with the federal arrangements recognized in the Constitution. Therefore, Art.10 (3) of the Federal Courts Establishment Proclamation No.25/1996 and Art.2 (1) of the Federal Courts Re-establishment Proclamation No.454/2013 are unconstitutional since they authorize Federal Supreme Court Cassation Division to intervene into state matters.

Furthermore, the power of the Federal Supreme Court Cassation Division provided under Article 80(3a) of the FDRE Constitution should be interpreted in line with Article 80 (1) of the same. By the same token, concerning the power of the State Supreme Court Cassation Division, Article 80(3b) of the Constitution ought to be interpreted in line with Article 80 (2) of the same so that the spirit of the Constitution can be maintained. Another reason is the precedent effect of the decisions of Cassation Division of the State Supreme Courts could be another challenging. For instance, the Oromia Courts Establishment Proclamation No.216/2018 has empowered Cassation Division of the regional Supreme Court to give legally binding decisions on the courts of the region as regards to its legal interpretation.⁵²I strongly defend that this proclamation has a constitutional basis at least with regard to state matters. Because, the Constitution has already made the Regional Supreme Court to have the highest and final power over state matters under its Art.80 (2).

Nevertheless, practically, the Federal Supreme Court Cassation Division is also reviewing those regionally binding decisions which in turn will have precedent effect on lower courts of any level as per Proclamation No.454/2013. So, the question is how the Federal Cassation Division can make the regional proclamation ineffective through reviewing of single decision needs to be answered. It destructs the principles of constitutionally established federalism in the country. There is no doubt that the Caffee Oromia has the power to legislate on its own jurisdictional matters independently of the federal institutions. This is a constitutionally guaranteed power which the Federal Supreme Court Cassation Division is destructing by *defacto* power.

⁵²The Oromia Regional State Courts Proclamation, No.216/201, Art.29 (1)

3. THE CASSATION POWER OF REGIONAL STATE SUPREME COURT AND ITS EFFECT

When Articles 50 (1, 2) and 78 (1, 2, 3) of the FDRE Constitution are closely scrutinized, regional judiciaries are not only independent from other branches of regional government but also structurally independent from the federal courts arrangement. Accordingly, the Constitution has provided the three tiers of federal and state judicial system on their respective matters within their jurisdictions save aside the state delegation powers. Hence, as mentioned before, the State Supreme Court is vested with the final judicial authority over matters of state laws, including a cassation bench to review fundamental errors of laws made by lower courts on state matters.

In some regional states, like the Federal Supreme Court Cassation Division decisions, the decisions of State Supreme Court by the power of cassation have legal binding effect over lower courts within the limits of the state matters. For instance, the Oromia Regional State Courts Proclamation has provided that a decision of the regional Supreme Court Cassation Division shall be binding on lower courts of the region on that respective state matters provided that a case is decided by at least five judges including the President and Vice-president of the Supreme Court.⁵³ From this connotation, there is no doubt that decisions of the two supreme courts (the Federal and the State) cassation division may coincide over the same case having legal binding precedent effects on the same matter as there is cassation over cassation in practice. And then which decision of the two courts repeals or invalidates the other is another problematic issue (this will be discussed in the next section). The issue still persistently exists on the part of the regional states claiming that they have constitutional support not to be interfered by the Federal Supreme Court while the Federal Supreme Court defends itself as it is being empowered by the law (proclamation).

As the writer mentioned before, there is no constitutionally guaranteed federal laws' supremacy clause and the Federal Courts Establishment Proclamations are unconstitutional as per reviewing decisions of state courts on exclusive state matters are concerned. Therefore, the State Supreme Court has a constitutional and factual basis of power of cassation not to be reviewed by the Federal Supreme Court Cassation Division as far as state exclusive matter is concerned.

4. THE CONCEPT OF PRECEDENT AND ITS HISTORICAL DEVELOPMENT IN ETHIOPIA

The term precedent can be understood and defined in various forms as per the type of a legal system a country adopted. It is often named as “judge-made law, ‘case law’, ‘judicial law’, or in Latin ‘*stare decisis*’” which is used interchangeably by different scholars⁵⁴. Black’s Law Dictionary also defines precedent as “a decided case that furnishes a basis for determining later cases involving similar facts or issues”.⁵⁵ In addition, it defined that a precedent ... is a judicial decision which

⁵³The Oromia Regional State Courts Proclamation, No.216/2018, Art. 26 & 29.

⁵⁴Ahamd Tura, Husein, *supra* note 45, P227.

⁵⁵Bryan A.Garner (Editor in Chief), Black’s Law Dictionary, 7th edition, (ST.PAUL, MINN, 1999).

contains in itself a principle. The essential principle is its authoritative element which is often called *ratio decidendi*. Accordingly, the decision is not only binding between the parties but also may have force of law as regards to succeeding cases at large.⁵⁶

However, save aside its legal principle, a given decision may be binding precedent or persuasive precedent or a declaratory or original precedent as the case provided. Declaratory precedent is simply applying an already established legal rule, while in original precedent, a court is about to invent and apply a new legal rule. However, as regard to binding precedent (mandatory precedent), the lower courts ought to follow the decision whatever its nature may be while persuasive precedent is likely free to follow or reject it with careful consideration.⁵⁷ A court is bound to follow a precedent provided that the jurisdiction or decision is directly related to a given case particularly where the precedent is similar to the case to be decided, it is said to be necessary to resolution of the case, the significance of the facts of the precedent case for the pending case, and no new fact is established in the pending case.⁵⁸

As regard to the binding force of precedent, Maurice Adams (in Belgian Reports) argues that the term “*precedential force*” is mostly used as a kind of catch-all phrase covering two – in his opinion – conceptually separate notions, i.e. court decisions as ‘precedents as such’ on the one hand, and what he proposes to call the ‘gravitational force’ of court decisions on the other.⁵⁹ More or less, the discrepancy is established between binding and persuasive precedent or as the civil law variant is described, the ‘light variant’. One may distinguish between the sociological and political aspect (where a precedent is binding) and the normative aspect (where a precedent is only persuasive). Furthermore, one may distinguish between formal and informal (or factual) precedents (from the institutional point of view), and constitutive and regulative precedents, from the substantive point of view. Another distinction is between vertical precedent – denoting that there exists a hierarchy between courts and horizontal courts, where courts of the same level influence one another”.⁶⁰ Notably, in English Law, the notion of ‘precedent’ in the common law

⁵⁶*Ibid.*

⁵⁷*Ibid.*

⁵⁸Husein, *supra* note 45.

⁵⁹Ewoud Hondius, *Precedent and the Law*, European Journal of Comparative Law (1997), Netherlands Comparative Law Association, Vol. I, No.1. P18.

⁶⁰*Ibid.*

stands for two different meanings:- in the broad sense, “precedent involves treating previous judicial decisions as authoritative statements of the law which can serve as good legal reasons for subsequent decisions. In the narrow sense, precedent (often described as *stare decisis*) requires judges in specific courts to treat certain previous decisions, especially of superior courts, as a binding reason”.⁶¹

Nonetheless, as some writers pointed out, the reference of precedent tendencies seem to be conflicting in civil and common law legal systems. Before 19th century, in continental countries, there was a system of precedents, but in 19th century at the time of codification, the primacy importance of precedent lost its reference. Nevertheless, because of the lethargy of legislation to govern the contemporary development of private law, the courts of civil law gradually regained some of their former positions with the help of legal literature.⁶²It is obvious that most scholars agreed on the importance of precedents to establish justification for equality and predictability. But, because of its rigidity and ability to enforce judges to follow even though they know that it is unjust, the introduction of a strict system of precedent (mandatory binding precedent) may be a paradox to the system of codification.⁶³Therefore, it is advisable for civil law legal system to adopt persuasive precedents as contextualized by legal doctrine.⁶⁴ Otherwise, the binding precedent distorts the discretion enjoyed by the lower courts which in turn affects the decisional power and independence of judges.⁶⁵In other words, the judges can't freely decide a certain case as they have the duty to make sure that all their decisions fit into the previously decided binding precedents or legal framework.⁶⁶ Therefore, to keep its advantageous issues and maintain judicial independence of lower courts, persuasive precedent is advisable and a balancing scheme in a codified legal system.

Coming to the Ethiopian case, even though it is hardly possible to illustrate the development of legal concepts in the country, some writers denote the existence of the concept of precedent until 1942 when the Emperor was considered as the fountain of justice and a ruling made by him could be cited in future cases as a law

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Husein, *supra* note 45., see also Ewoud Hindius, *supra* note 59

⁶⁴ Ewoud, *supra* note 59.

⁶⁵ Husein, *supra* note 45.

⁶⁶ *Ibid.*

in deciding cases of similar nature.⁶⁷ However, after 1942, due to codification of substantive and procedural laws, lower courts were not bound to follow the decisions of higher courts. Though there is no provision of the law which explicitly prohibits lower courts from following decisions rendered by the higher courts in deciding similar cases, an attempt to incorporate precedent in the legal system was rejected.⁶⁸

Nevertheless, afterwards, gradually some proclamations seem to re-incorporate the concept of precedent. For instance, Proclamation No. 195/1962 made the decisions of superior courts binding on all subordinate courts on matters of law, but not fully enjoyed as precedent in common law legal systems.⁶⁹ Similarly, the proclamation enacted during the Transitional Government of Ethiopia (i.e., Proc. No. 40/1993) under Article 24(4) stated, “. . . an interpretation of law made by a division of the Central Supreme Court constructed by no less than five judges shall be binding. Furthermore, currently the Federal Courts Re-establishment Proclamation No. 454/2005, under its Article 2(1) provides that “an interpretation of law by the Federal Supreme Court rendered by the Cassation Division with no less than five judges shall be binding on the federal as well as regional courts at all levels.” In addition, the Oromia Regional State Courts Establishment Proclamation No.216/2018, under its Article 29 (1), which is the core analysis of this article, also made the decision of a Cassation Division, with at least five judges sitting including the President and the Vice President of Supreme Court, rendered by unanimity on a state matter, shall be binding on the courts of the region. From this point, we can understand that all the aforementioned proclamations have introduced the common law concept of precedent into the Ethiopian legal system with some slight differences.

But, none of them binds lower courts as to the facts of the case rather than as regards to its legal interpretation. In addition, the binding effect of the precedent seem to be applied to all levels of courts including the Cassation Division itself setting aside the power to amend or vary the binding decision whenever necessary.⁷⁰

⁶⁷Ewoud, *supra* note 59.

⁶⁸*Ibid.*

⁶⁹*Ibid.*

⁷⁰ Federal Courts Re-amendment Proclamation No. 454/2005, Art. 29.

Currently, what makes hullabaloo is the existence of autonomous regional states and the binding force of the Federal Supreme Court Cassation Division decisions on lower courts of any region on any matter, whether it is state matter or not. Surprisingly, as it is understood from the above mentioned concepts and the Ethiopian proclamations, including the Oromia State Courts Proclamation, the concept of precedent is introduced in Ethiopian legal system not with its persuasion prognosis, but as binding (mandatory) precedent. Had it been introduced with the nature of persuading precedent, the regional lower courts judges would have been free to use or reject the Federal Supreme Court Cassation Division binding decisions concerning state exclusive matters. But, now every judge of every level is not at liberty either to follow or not follow the *stare decisis*. Otherwise, judges rendering judgment away from the binding decision will be responsible on the ground of breaking explicit provision of laws.⁷¹ This, in turn, demolishes the independence of the judges and deteriorates the principle of self-rule of states on their own matters. This will be analyzed critically in the following section.

5. THE CONSTITUTIONALITY OF PRECEDENT OVER PRECEDENT IN ETHIOPIAN LEGAL SYSTEM

As provided before, the FDRE Constitution has established a dual form of court structure at the two tiers of government in which their respective courts decide over their exclusive matters without any intervention. Accordingly, both levels of courts are competent enough to act within their jurisdictions without interfering into one another's judicial powers. However, the Federal Courts Re-amendment Proclamation empowers the Federal Supreme Court (herein after called Cassation Division) to review final decisions of a state supreme court⁷² which is binding on the state courts. This is not a legitimate practice in light of the doctrine of division of powers and it is a kind of interfering into state matters. And also, as mentioned before, the constitution is interpreted in the way that the Federal Supreme Court has a power of cassation over any final court decision containing basic errors of law including application from the decisions of cassations of state Supreme courts which gives rise to the emergence of cassation over cassation.⁷³ But, in my

⁷¹Federal Courts Re-amendment Proclamation No. 454/2005, Art.34.

⁷²Federal Courts Re-amendment Proclamation No. 454/2005, Art. 2 (1).

⁷³John Kincaid, Courts in Federal Countries Federalists (Kincaid, University, Toronto Buffalo London, 1946), P2017.

opinion, in any federal system of the world, one may not find the experience of cassation over cassation and the Ethiopian practice seems to be odd and confusing to be assigned into one of the approaches of federal system (as pointed before).

The most dismaying issue is that there is no wrong to the articulation of the constitution and the provision is clear enough to establish dual court structures at the two-tiers of the government by empowering them on their respective matters without interfering into one another's jurisdictional matters. However, the laws (the proclamations)⁷⁴ and the practice⁷⁵ are not operating in the spirit of the Constitution which affects the doctrine of separation of powers and encroaches on the regional states' autonomous power as well. On the ground, it is not clear why the constitution is interpreted in such a way that the decisions of the Federal Supreme Court Cassation Division have a supremacy clause over the exclusive state matters. Had the Federal Supreme Court Cassation Division decision has supremacy clause; the Constitution would not have established a dual court structure by making the State Supreme Court to have the highest and final judicial power over state matters. Therefore, the proclamation⁷⁶ is established in a contradiction with the spirit of the constitution.

Furthermore, the proclamation is unconstitutional because of the fact that it empowers the Federal Supreme Court Cassation Division decisions decided by not less than five judges to have a binding precedent effect on state matters. This violates the doctrine of separation of powers established by the Constitution.⁷⁷ The most serious bottlenecks are the exclusive state powers, especially on family matters; where the states proclaimed according to their cultural and social lives of

⁷⁴Federal Courts Re-amendment Proclamation No. 454/2005, Art2 (1): stated that 'interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding on federal as well as regional council at all levels'. The underlined words contravene the spirit of constitution. Because the constitution has put the supreme courts of the two levels of government on the same position concerning their respective matters, FDRE Constitution Art.80 (3 a & b).

⁷⁵The FDRE Supreme Court Cassation Division decisions: W/ro Zenebech Bekele Vs. Ato Yonas Tsegaye (File No.54258), Vol. 11, Nov.2/2003 E C, P33; W/ro Kalkidan Yohane Vs. Ato Abissa Yadeta (File No.127714), Vol.21, March 26/2009 EC, P275; Calume Mul'ata Vs. Chalashi Kalbessa (File No.138286), Vol.22, September 23/2010 EC, P314; W/ro Yeshe Teshome Vs. Ato Mesfin Hayilu (File No.95680), Vol.17, September 26/2007, P281 are cases in point. All these and many others are solely state matters, particularly decided on the family law of Oromia National Regional State.

⁷⁶Federal Courts Re-amendment Proclamation No. 454/2005, Art. 2(1).

⁷⁷FDRE Constitution, Art. 50 (1 & 7).

the territorial regions are subjected to review by the Federal Supreme Court Cassation Division.

For instance, Oromia Regional State has its own family law⁷⁸ which is established according to the Oromo culture and tradition, while the Federal Government has its own Revised Family Law⁷⁹ which is established according to the life standards of residents of Addis Ababa and Dire Dawa Cities. But, the Federal Supreme Court Cassation Division is reviewing the cassation decision of Oromia Regional State Supreme Court Cassation Division on family matters. For example, the case between W/roYeshi Teshoma and Ato Mesfin Hayilu⁸⁰, the case between Chalume Mulata and Chalashi Kalbessa,⁸¹the case between Ato Balaxe Negash and W/ro Ijigayo Lakew and others⁸² are all family matters of the region finally decided by the Oromia Supreme Court Cassation Division and again reviewed by the Federal Supreme Court Cassation Division. Unfortunately, these cases are actually confirmed by the Federal Cassation Division, even though there is a high probability of reversing other cases of similar nature.

Accordingly, those decisions of the Federal Supreme Court Cassation Division have binding effect on the lower courts of any level of federating states. However, on one hand, this is absolutely against the principles of division of powers in the federal system. On the other hand, it amounts to making the matter of one state to be the matter of all the other federating states. As per Art.6 (2) of Proclamation No.25/1996, where the Oromia Family Law is inconsistent with the Federal Revised Family Code, the Federal Cassation Division ought to apply the Federal Revised Family Code on state matters. But, there is no doubt that the Federal Revised Family Code is applicable only in Finfinne City and Dirre Dawwa town. In the presence of state family law, applying the Federal Revised Family Code as the supreme law over state law through single interpretation of laws by the Federal Supreme Court Cassation Division will have no constitutional and factual basis.

⁷⁸Oromia Family Code, Proclamation No.83/2004.

⁷⁹The Federal Revised Family Code, Proclamation No. 213/2000.

⁸⁰Yeshi Teshoma Vs. Ato Mesfin Hayilu, FDRE Supreme Court Cassation Division Decision, File No.95680 , Vol.17, P280

⁸¹Chalume Mulata Vs. Chalashi Kalbessa, FDRE Supreme Court Cassation Division Decision, File No.138286, Vol.22, P314

⁸²Balaxe Negash Vs. W/ro Ijigayo Lakew, FDRE Supreme Court Cassation Division Decision, File No.137853, Vol.22, P341

Surprisingly, in recent phenomenon, the decisions of Oromia Supreme Court Cassation Division have binding effect on the region's lower courts concerning state matters, including the above mentioned real cases. By doing so, the Oromia Supreme Court Cassation Division can render judgment of legal nature just like legislations made by *Caffee*⁸³ and ought to be followed by judges of the region. Hence, by implication, the Federal Supreme Court Cassation Division is invalidating laws of the region, which is unequivocally contradicting the provision of the FDRE Constitution establishing division of powers between the two levels of government. This directly indicates that the Federal Supreme Court Cassation Division is still not adapted itself to the current Ethiopian federal system. It seems to be triggered and influenced by the unitary system of the country lapsed before two decades which seeks to exercise hegemonic and centralized power over all cases in the country.

Therefore, the author argued that the emergence of precedent over precedent is the result of cassation over cassation which is not construed on basis of the Constitution. For that reason, the Federal Courts Proclamation No.25/1996 and 454/2005 as well as the practices of the Supreme Court Cassation Division decisions are unconstitutional, and all these are the mere trigger to govern the affairs of regional states without constitutional basis. However, by making decisions of regional Cassation Division to have binding effect of interpretation on lower courts of the region, the Oromia Regional State Courts Proclamation No.216/2018 has a constitutional basis. Otherwise, in the presence of precedent over precedent, judges of the lower courts of Oromia Regional State are going to be confused with the precedence of the two powerful decisions given at the two tiers of government having independent and autonomous judicial powers on the same issues.

To make it more clear, the Federal Courts Re-amendment Proclamation provided that "interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding on federal as well as regional levels".⁸⁴ By the same spirit; for example, a Proclamation to Re-define the Structure, Powers and Functions of Oromia Regional State Courts has

⁸³*Caffee* is a word of Afaan Oromoo, which means legislating body of the Oromia Regional State like the federal government Parliament.

⁸⁴Federal Courts Proclamation, No. 25/1996, Art. 2 (1).

provided that ‘a decision of a Cassation Division, with at least five judges sitting including the President and the Vice-president, rendered by unanimity on a state matter, shall be binding on the courts of the region as regards to its legal interpretation’.⁸⁵ From the two proclamations, one can understand that there is *precedence over precedence* not only cassation over cassation.

Accordingly, the decisions of the two Supreme Courts may ram each other on the same case. To this effect, where the Oromia Regional State Supreme Court has decided on certain cases containing exclusive state matters with precedence effect on the lower courts of the region, the lower courts deem to follow it while still it is not final decision as going to be reviewed by Federal Supreme Court Cassation Division. And then, the Federal Supreme Court Cassation Division may overrule the case and reverse or annul the case decided by the region having legal binding effect. By so doing, the two legislations (Proclamations No.25/1996 and 216/2019) are contradicting to each other by empowering the two levels of Supreme Courts to render legally binding decisions on the same issue. On such occasion, probably, the Federal Supreme Court is in a position to reverse or annul the Oromia Regional State Supreme Court Cassation Division decision having precedent effect since application is made from the Regional Supreme Court Cassation Division decision presuming that the Federal Supreme Court Cassation Division is the highest court of the whole country.

However, the Constitution never made the Federal Supreme Court to have the highest judicial power over the whole parts of the country rather than it established the court to have the highest judicial power solely over federal matters. In addition, the Constitution has clearly established the state supreme court to have the highest and final judicial power over state matters.⁸⁶ Hereafter, by making the Supreme Court as the highest court in the region as well as making the decisions of cassation division to have precedent effect on lower courts of the region exclusively on state matters, the Oromia Regional State Courts Proclamation No. 216/2018 has a constitutional basis. Nonetheless, the Federal Courts Establishment Proclamation No. 25/1996 and the Re-amendment Proclamation No 454/ 2005 are not constitutional laws as far as the legal binding effect of Federal Cassation Division on state matter is concerned. This is because of the fact that the former

⁸⁵Oromia Court Proclamation No No.216/2018, Art.29(1)

⁸⁶FDRE Constitution, Art. 80 (1).

federal proclamation has established cassation over cassation while the latter subsequent amending proclamation has established precedent over precedent. As a result, both are not provided within the spirit of the constitution so far as state exclusive matters are concerned. Likewise, precedent over precedent distorts the principle of separation of powers in the federal system of the country. I swear, in any form of federal systems of the world experiences, that one may not find such kind of dual court structure where the Federal Supreme Court interferes into the exclusive state matters. Therefore, such kind of interference is not only unconstitutional but also it amounts to violation of independence of state courts not to rule freely over their own exclusive matters.

Outstandingly, one should not be confused that the state courts may not apply and interpret the federal laws. In such case, it is true and not dubious that the state courts decisions are subjected to the federal Supreme Court judicial review. Some may wonder that revision of State Supreme Cassation Division decisions by Federal Supreme Court may be a solution to state cases in conflict with constitutional provisions and also it is the best way to bring uniformity of laws in the country. But, for the writer, this is not a sound argument because of the fact that constitutional reviewing in Ethiopia is not entrusted to ordinary courts, but to a third body; the so called House of Federation.⁸⁷ In addition, the uniform application of law pre-supposes the unitary form of government or the federal system that follows the single court structure approach or integrated court structure, as mentioned before. However, the Ethiopian Constitution has not established the unitary form of government nor the single or integrated court structure; rather a dual form of court structure. So, by implication, the Constitution itself demanded to have different forms of laws within the same legal system and under the same polity by dividing powers between the federal and regional states and also enables the two tiers of government to have their own court structure deciding on their exclusive matters.⁸⁸

⁸⁷FDRE Constitution, Art. 62.

⁸⁸FDRE Constitution, Arts. 47, 50 (2) and 80 (1 & 2). From these provisions, any body can understand that the two levels of government have the duty to cooperate by respecting the power of one another without interference and at the same time regional government institutions should be placed at liberty to act independently of intervention from federal government institutions.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. CONCLUSIONS

In general, in federal form of governments, there are three approaches concerning the structural establishment of courts. These are: dual, single and integrated form of court structure. Among the three approaches, the FDRE Constitution has clearly established a dual form of court structure in which courts of the two tiers of government act independently of each other without interfering into one another's jurisdictional power. They have full autonomous power on their respective matters. Accordingly, at regional level, the State Supreme Court is the highest and final court on state matters. By the same token, the Federal Supreme Court is the highest court on federal matters, not on all cases of the whole country. However, apart from these constitutional provisions, the Federal Courts Proclamations No.25/1996 and 454/2005 have empowered the Federal Supreme Court Cassation Division to review the decisions of the State Supreme Court Cassation Division. By doing so, since the State Supreme Court has cassation power over state matters constitutionally, the two federal proclamations have established the principle of cassation over cassation.

But, this practice is not in line with the experiences of federal dual court arrangements as it directly affects the principle of self-rule. Furthermore, the most dismaying problem is associated with the federal courts proclamation which established another debatable issue of precedent over precedent. This is because of the fact that the Oromia state courts establishment proclamation has made the decisions of state Supreme Court Cassation Division to have legal binding effect on the lower courts of its territorial jurisdiction. To make it clear, a Proclamation to Re-define the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation No.216/2018 has empowered Supreme Court Cassation Division of the region to render decision which is binding on the lower courts involving state exclusive matters. Similarly, the Federal Courts Re-Establishment Proclamation No.454/2005 has empowered the Federal Supreme Court Cassation Division to give binding decisions on all cases irrespective of the federal or state matter that have precedent effect on lower courts of the whole country.

Accordingly, by logical analysis a new version "precedent over precedent" is emerged. However, this directly distorts the principle of federalism, and it is also

an act of violation of the independence of regional courts to freely overrule the state exclusive matters within their jurisdiction. It also ascends different conflicts between the two layers of court structures based on the autonomous power given to the states by the Constitution to decide on their own matters freely. As a result, the Oromia Regional State Courts Proclamation No.216/2018 is a constitutional law while the Federal Courts Proclamations No.25/1996 and 454/2005 are unconstitutional ones as far as reviewing of decisions rendered by the regional Courts Cassation Division having legally binding effect on lower courts of the region on state exclusive matters is concerned.

6.2. RECOMMENDATIONS

Based on the analysis and findings concerning the federal system and the need to regulate picture of court structure in the eyes of the FDRE Constitution, the author has made the following recommendations:

- In federal form of government, there is no doubt that the legislating body has the primary *duty to check the constitutionality of every law before legislating it by using different* techniques and systems. Consequently, any law to be enacted should be primarily checked content wise whether it boosts or encroaches on the principles of the Constitution, particularly whether the law to be enacted is in accordance with the principles of self-rule established by the Constitution. By so doing, a spirit of the law should be in line with the federal arrangements of self-ruling and care for the autonomous power of federating states to overrule their own exclusive matters without interference of the federal body. The FDRE Constitution under Article 80 (1 and 2) made the Federal Supreme Court the highest court over federal matters, not on state matters and at the same time it established the State Supreme Court has the highest court over state matters. Furthermore, courts of any level shall be free from any interference of influence of any governmental body, government official or from any other source under Article 79 (2) of same. However, as clearly analyzed in this article, the Federal Courts Proclamation No.25/1996 under its Article 10 and the Federal Courts Re-amendment Proclamation No.454/2005 under its Article 2(1) have been articulated by empowering the Federal Supreme Court Cassation Division to have the highest judicial power over all corner of the country, including exclusive state matters. However, this traditional practice distracts the federal principle of division of power.

Therefore, the concerned body should amend the provision of the two proclamations in the way not to intervene into state matters. Otherwise, if the two proclamations are left without amendment, it will amount to agreeing with the unconstitutional proclamations.

- As per Article 9 of the FDRE Constitution, the Constitution is supreme law of the land. In that sense, a decision of any organ of a state or a public official which contravenes the Constitution shall be of no effect. This Constitution has established autonomous states with their own legislative, executive and judicial powers so as to ensure the principle of self-determination on their own matters within their respective territory. In addition, the Constitution has established dual forms of court structures by making the Regional Supreme Court the highest and final judicial power over state matters to overrule without interference from federal government under its Articles 78, 79 and 80. However, based on the above mentioned existing proclamations, the Federal Supreme Court is reviewing decisions of Regional Supreme Court Cassation Division by intervening into the state exclusive matters which is unconstitutional.

Therefore, even though the legislating body fails to amend the above mentioned proclamations, I strongly recommend the Federal Supreme Court Cassation Division not to intervene into state exclusive matters and limit its power to federal matters. The Court has a constitutional positive defense not to review decisions rendered by State Supreme Court Cassation Division. Unless the Cassation Division of the Federal Supreme Court stops reviewing the state exclusive matters, it does not only violate federal principles but also amount to repealing the laws proclaimed by state legislative body. For instance, the Oromia Regional State Courts Proclamation No.216/2018 empowers the State Supreme Court Cassation Division to render decisions on the state exclusive matters that have legal binding effect on the lower courts of the region. Accordingly, when the Federal Supreme Court continuous to review such binding decisions, it is nothing but an act of repealing not only the precedent decision but also the proclamation proclaimed by *Caffee* of the region thereby distracting the federal principle of self-ruling.