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REVIEW ARTICLE

GENESIS OF SIMILARITIES AND DISSIMILARITIES BETWEEN ETHIOPIAN AND
INDIAN FEDERALISM

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ABSTRACT

This article has explored and analyzed some of the key similarities and dissimilarities between Federal systems of Federal Democratic Republic of Ethiopia and India. In doing so, it found out that both Ethiopia and India are countries of diverse people with diverse culture, Religion, history way of life etc. Their respective constitutions are federal in character, which is compatible with societal nature of both countries- Indian as well as Ethiopian societies are essentially federal in character. By assuming that, countries like Ethiopia and India with vast diversities in terms of culture, language, religion, history, way of life etc cannot be administered and ruled from the single political centre. Keeping these factors in mind, the makers of the constitutions of India and Ethiopia rightly opted for Federal forms of governments. In spite of their out outstanding similarities, there are also differences between them. This article tried to compare and contrast some of the key principles of federalism under their respective constitutions. , it does not consider factual situations and only looks into or and describes the constitutional landscape. It covers, Inter alia; the principle of separation of power, supremacy of the constitution, the principle of check and balance, the principle of parliamentary system and parliamentary democracy, Judicial independency and judicial review adaption of federalism and accommodation of diversities, fundamental rights and freedoms, etc. In spite of substantial similarities, there are also dissimilarities or 'divergences' between the Indian and Ethiopian Federal systems. The key dissimilarities include: Unitary tendencies of Indian Federalism, Judicial review etc. Courts are not given the power of judicial review in Ethiopia; rather this power is given to house of Federation. This is one of an innovative and home grown approach introduced and adapted by constitution of Federal Democratic Republic of Ethiopia. Allocation of the powers to the presidents is another area of dissimilarities between Ethiopian and Indian Federalism. Unlike Ethiopian president of the state, Indian, president has three veto powers in the union legislative process which include that he/she can refuse to agree to a law, which would mean an absolute veto. He can also send the bill back to the parliament for changes, or he could take no action on the bill. In the case of Ethiopia, the president has no role in the law making process of the country. The writer of this article would argue that Ethiopia should draw lesson from India and amend its constitution so as give meaning for to the role of the president. Therefore, the country would have convincing reason to keep the Presidency.

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INTRODUCTION

Political thinkers and writers have divided the government into unitary and Federal on the bases of the nature of relations between the national government and the state governments. It is commonly understood that a unitary government is one in which all the powers are located in the national government and the regional governments drive their respective authority from the national government. In contrast, a Federal government is one in which powers are divided between the national and regional governments by the constitution itself and

both function in their respective areas independently. The leading examples of unitary systems are Britain, France, Japan, china, Italy, Belgium, Norway Sweden, Spain, etc. The most prominent Federal countries in the world are USA, Switzerland, Australia, Canada, Russia, Brazil, Argentina etc.¹ The present idea of Federation was a late 18-middle of 20 centuries phenomenon of the Democratic Politics, Switzerland was only Federal, rather con-federal before 1750. The Latin American states namely Argentina, Brazil Mexico and Venezuela emerged as federations evolved as federal systems

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¹https://www.google.co.in/search?newwindow=1&rlz=1C1SNJF_enIN628IN628&es_sm=93&q=history+of+federalism&spell=1&sa=X&ei=tDENVZnFloepuwTU9YLoBg&ved=0CBoQvwUoAA&biw=1034&bih=619

between 1909-1950s. Six states – Australia, Soviet union, Yugoslavia, in the Eastern Europe; India and Pakistan in south Asia and China in East Asia which is quasi federal- have emerged as federations. Between 1951-197 five states namely Nigeria, Cameroon, and Tanzania in Africa, Czechoslovakia in central Europe and Malaysia and south East Asia- emerged as federation.² Ethiopia became Federal state by 1995.³ Indian Federation dates back to Lord Mayo's Decentralization policy of 1970, but the government of India act of 1919 provided a federal character to India. Because, it provided for the division of powers between the centre and provinces. It had listed 47 subjects in central list and 50 subjects in provincial list, and all with the spirit of unitary government. Later the government act of 1935 becomes a land mark in the evolution and establishment of federation in India, because for the first time it divided the powers between the Federal and State governments. It gave three lists namely Union, State and concurrent lists. This act gave concrete design of the federation to the future constitution of India.⁴ Both Indian and Ethiopian societies are essentially Federal in character and unitary in approach. Different concepts of Federalism and inter governmental relations both in ancient India and Ethiopia could be referred from their respective governmental histories. Thought, India has long standing experiences in federalism being one of the largest democratic countries in the world. Ethiopia is the country with the oldest civilization and statehood in the world. Besides, the new Federal Democratic Republic of Ethiopia is being emerged as not only one of the fastest emerging Economy in the world but also an emerging constitutional Democracy in Africa.

Some of the major similarities of Ethiopian and Indian Federal systems

Both have Written and Supreme constitutions

Ethiopia and India have a written and supreme constitutions based on which the federal political structures have been set up and both federal and states. In spite of the higher degree of rigidity in case of the Ethiopian constitution, both constitutions have provisions for amending the constitution to meet the growing socio, political and economic needs and demands of their respective countries.⁵

Separation of Powers

Adhering to Montesquieu's theory of division of labour and separation of powers, both Ethiopia and Indian constitutions have three basic divisions with regard to division of power in their federal set up known as executive, legislature and

judiciary with clear cut 'Separation of Powers' Each division has been entrusted with a separate power under the constitution of Ethiopia and India.⁶ The executive governs the country, the legislature enacts laws and the judiciary administers justice. Prime minister is the chief of the executive of Ethiopia.⁷ Indian Constitution classified the subjects of legislation under the three lists namely, Union list, State list and concurrent list in part XI under articles 245-255. After subsequent amendments at present there are 99 subjects in Union list, 61 subjects in state list and 52 subjects in concurrent list. All those subjects which are not incorporated in these three lists are joined under the caption residuary matters and the parliament is entrusted with the job of making legislation on residuary matters. The Union cabinet headed by the Prime Minister is the real chief executive body in India.⁸ Both Ethiopia and India have a bicameral legislature at the centre.⁹ Ethiopian legislature has upper and lower houses known as the House of Federation and the House of Representatives respectively and the Indian Parliament has Lok Sabha and Rajya Sabha as its lower and Upper house respectively.¹⁰ Both Ethiopia and India have an organized judiciary, having the Federal Supreme Court at the apex of their respective judicial systems.¹¹

Fundamental Rights and freedoms

The Constitution of Federal Democratic Republic of Ethiopia has granted the fundamental rights of its citizens like right to equality, freedom, right against exploitation, freedom of religion, cultural and, right to property, and right to constitutional remedies etc through its 'The Bill of Rights'.¹² Similarly the Indian constitution has guaranteed the fundamental rights and freedoms.¹³

Ethiopia and India have the Parliamentary form of Governments

⁶ See articles 47, 50-5762, 69, 71-84 and articles, 52-53, 123, 223, 356, 103, 192, 105,194, and Part XI 256 – 263 etc of the FDRE constitution and the Constitution of India, respectively.

⁷ See articles 50(1) (2), 72(1) of the Constitution of Federal Democratic Republic of Ethiopia 1995.

⁸ The Constitution envisages a scheme of affairs in which the President of India is the head of the executive in terms of Article 53 with office of the prime minister as heading the Council of Ministers to assist and advise the president in the discharge of the executive power. See articles, 53 and 75 of the constitution of India.

⁹ The Parliament is the Union Legislature of India comprising two bodies namely Lok Sabha and the Rajya Sabha. It enacts laws, impose taxes, authorizes borrowing, and prepares and implements the budget, has sole power to declare war, can start investigations, especially against the executive branch, appoints the heads of the executive branch and sometimes appoints judges as well as it has the power to ratify treaties. See articles (Article 53 (1) and Article 154 (1), they are empowered with certain legislative powers (Articles 123, 213 and 356) and certain judicial powers (Articles 103 and 192). Similarly the legislature exercises certain judicial functions (Articles 105 and 194) and judiciary exercises few legislative and executive functions (Articles 145, 146, 227 and 229). However the judiciary is made separate from the executive in the public services of the State (Article 50).

¹⁰ See articles 352,356, 360, 246 and 50-5761-62, 69, 71 of the Constitution of India and FDRE constitution respectively.

¹¹ See articles 224- 247 of the constitution India and articles 78-85 of the FDRE constitution.

¹² See articles 13-44 of the constitution Federal Democratic Republic of Ethiopia.

¹³ See chapter articles 14-34 of the Constitution India, 1950.

² Duchacek, I. (1990), "perforated Sovereignties: Towards a Typology of New Actors in International Relations", in: H. Michelmann and P. Soldatos (eds), *Federalism and International Relations. The Role of Subnational Units*, Oxford: Clarendon Press, pp. 1-34.

³ The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), the supreme law of the country, was adopted in Addis Ababa by the Constitutional Assembly on December 8, 1994, and came into force on August 21, 1995.

⁴ Gopa Kumar, K. 2012, "Historical Evolution of Federal Finances in India", *Federal Governance*, vol. 9 no. 2, pp. 27-44.

⁵ See articles 9, 104-105 of the constitution of Federal Democratic Republic of Ethiopia and Part XX (Article 368) of the Constitution of India.

Both in India and Ethiopia Prime Ministers and their respective cabinets are the defacto powers in whom the real powers exist. In Ethiopia and India, the Presidents are elected members of the federal parliament- from the house of people's representative in case of Ethiopia and from the members of Lok Sabha of India. Forming the cabinet and electing the Prime Ministers followed similar procedures in Ethiopia and India. In both cases the party which enjoys a majority of elected members of the House of people's representatives and Lok Sabha form the take the position of prime minister and form the government respectively.¹⁴ While the U.S.A follows the bi-party system, but in case of Ethiopia and India their Prime Ministers hold powers for five years as long as their political party enjoys majority in the house of people's representative and Lok Sabha respectively. However, the US President irrespective of his affiliation with a political party, Republican or Democrat and irrespective of his party's success or failure in the elections for the House of Representatives or the House of Senate holds power for his full tenure. A person in the US can hold the post of President only for two terms, whereas, in Ethiopia and India there are no such restrictions to hold the post of a Prime Minister. For example, Nehru was the Prime Minister of India between 1947 and 1964 for a period of 17 years. Both in case of Ethiopia and India all cabinet and the Prime Minister are collectively and directly responsible and answerable to the parliament and indirectly to the people. For the dereliction of duty and blunder committed by a cabinet minister in India, and Ethiopia the Prime Minister and his entire cabinet colleagues are liable, responsible and answerable, because they have collective responsibilities. Both India and Ethiopia have prime ministers who are the members of parliaments and actual heads of the executive branches of their respective countries. While under the U.S. Constitution it has a president, who is the head of the government, and only works in the executive branch. Both Ethiopian and Indian Constitutions make clear that that ministers who are senior members of the executive, must also be members in the legislature houses, in this case Indian constitution is more rigid while the constitution of Federal Democratic Republic of Ethiopia gives some exceptional cases. While, the U.S. Constitution does not allow members of legislature to hold office in the executive. In the United States Constitution, that power is divided equally among the three branches. Both the Indian and Ethiopian Constitutions followed the same legal approach that there should be Uniform basic criminal and civil laws in their respective countries. While in the American Constitution there are different criminal and civil laws, differing in every state.

Powers of Checks and Balances

The mechanism of 'checks and balances' have been maintained in both countries. In other words, each division of power is somehow checked and controlled by other divisions of power. In case of Ethiopia, the prime minister as the chief executive with the power to nominate his Cabinet members but his nomination must get approval from the hose of people's representatives. And prime minister is the Supreme Commander-in-Chief of the National Army. He nominates the

president and vice president of the Federal Supreme court. But his nomination also to be approved by the house of peoples representatives. He enters into treaties with other countries; however, his treaties must be approved by the same house. Otherwise, the treaty will not come into force. Thus an important policy decisions must be necessarily approved by the House of the people's representatives, which definitely acts as a check on the powers of the prime minister. Similarly laws enacted by the house of people's representative may be subjected to the constitutional Review and can be declared null and void by the house of federation. The Prime minister or any minister or official of the Federal executive can be impeached and removed from power the by the House of peoples representatives. Similarly in India, the Prime Minister and his cabinet can be removed from power by a successful no confidence motion passed by both houses of parliament. The important policy decisions taken by the cabinet headed by the Prime Minister, if necessary has to be enacted into laws only with the requisite majority of the parliament. The laws enacted by the parliament are subject to the judicial review of the Supreme Court of India. The Chief Justice and other Judges of the Supreme Court are appointed by the President as recommended by the cabinet and the Prime Minister.

Some of the major dissimilarities of Ethiopian and Indian Federal systems

Both Ethiopia and India are federal countries in their political structures. Ethiopia became the Federal, Democratic Republic State by promulgating its constitution in the year 1995.¹⁵ Whereas India became a Socialist, Sovereign, Secular, Democratic Republic by formally launching its constitution in the year 1950. Thereby, since that both countries have federal governments – Union (central) and states governments. The second point which is vital to mention here would be , while framing the Constitution of Federal Democratic Republic of Ethiopia, it had borrowed many of its salient features from various modern constitutions in the world, including Indian constitution, and adopted them in the Ethiopian context. Hence, both Ethiopian and Indian constitutions, despite being federal in structure have many similarities and differences. Inter alia;

The FDRE Constitution is younger and shorter than the Constitution of India.

The FDRE Constitution was put into operation on May 1995, whereas, the Indian Constitution was officially entered into force on 26th January 1950. Originally India Constitution consisted 395 Articles in 22 parts with 8 schedules. Now it consists 448 Articles in 22 parts with 12 schedules. The constitution of Ethiopia is very brief and rigid running into only a few articles (106) and pages, whereas the constitution of India is very voluminous.

Federal and Union Governments

Both Ethiopia and India have dual polities with double sets of governments' I.e. central and state governments. The sphere of authority of each are clearly defined in their respective

¹⁴ Ibid

¹⁵ See article 1 of the constitution of Federal Democratic Republic of Ethiopia, 1995.

constitutions even though there are wide spectrum of differences in division of powers. Number of their respective regional states are also varies. Indian federation has twenty nine states and 8 Union territories, whereas only nine regional states have founded the Ethiopian Federation. In case of India states have no right of succession from the union government. Whereas as in Ethiopia states have constitutionally guaranteed right to self determination up to succession¹⁶. In the Indian Constitution, although all the branches all can check each other to make sure either is not abusing their power, the Supreme Court is the main branch that checks the power of the two other branches. FDRE constitution is federal in character. Whereas, India is more unitary than federal and we can even say that it is a quasi-federal.

The Constitution of Federal Democratic Republic of Ethiopia is more rigid than the Indian Constitution.

In Ethiopia, though there is a Federal Constitution, all the nine Regional states have their own constitutions to regulate their respective regional governance. But this is not true In India, states do not have their own constitution; however, each state is empowered to enact its own laws included in the state as well as in the concurrent list of the constitution. As regard to an amendment of Federal constitution, article 105 of the Constitution of federal Democratic Republic of Ethiopia reads as follows: Amendment of the Constitution

1. All rights and freedoms specified in Chapter Three of this Constitution, this very Article, and Article 104 can be amended only in the following manner:

- When all State Councils, by a majority vote, approve the proposed amendment;
- When the House of Peoples' Representatives, by a two-thirds majority vote, approves the proposed amendment; and
- When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment.

2. All provisions of this Constitution other than those specified in sub Article 1 of this Article can be amended only in the following manner:

- When the House of Peoples' Representatives and the House of the Federation, in a joint session, approve a proposed amendment by a two-thirds majority vote;
- When two-thirds of the Councils of the member States of the Federation approve the proposed amendment by majority votes.

It is therefore, Ethiopian constitution followed more rigorous amendment procedures than the Constitution of India. It is easy to amend the Indian constitution, since it involves four different types of procedures which are comparatively easy than the amending procedure of the Ethiopian constitution.

¹⁶ Ibid article 39.