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SCHOOL OF LAW

INTRODUSING GENERAL LIMITATION CLAUSE UNDER THE FDRE CONSTITUTION

Submitted in Partial Fulfillment of the Requirements for the Degree of Bachelor of Laws (LLB) at School of Law, Wolkite University

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CHAPTER ONE – GENERAL INTRODUCTION

1.1 Background of the study

Fundamental human rights contained in international treaties, regional treaties and national constitutions are generally not absolute but are often qualified and subject to reasonable restriction. They have boundaries set by the rights of others and by important social concerns such as public order, safety, health, and democracy values. The limitation of rights are considered legitimate determines the actual application and effectiveness of these rights. A limitation clause is a constitutional provision which enables constitutionally protected rights to be partially limited to a specific extent and for a certain democratically justifiable purpose.[1]

The limitation of rights is crucial because the extent to which limitations of rights are considered legitimate determines the actual application and effectiveness of these rights. The limitation of rights imposed through general limitation clause that provide general application of limitation for all rights and specific limitation clause for specific rights. International treaties and almost all national constitution instruments contains limitation clause that provide at least some guidance on when rights can be limited for instance art 29(2) of the UDHR limitation clause recognize that In the exercise of this rights and freedoms, everyone shall be subject only to such limitation as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirement morality, public order and the general welfare in democratic society.[2]

The condition requires that the limitation must have a clear legal basis. The law authorizing the limit of the right must be publicly accessible, sufficiently, precise to enable people to regulate behavior and it must not confer unfettered discretion on the state to prevent risk of abuse and arbitrary exercise of discretion. The ECHR permits limitation of the right to freedom of expression if it is limited by law that is necessary in a democratic society to serve certain circumscribed interests such as the protection of health or morals and the reputation or rights of others according to art 10(2). The European court and European commission shows that human rights can be limited by a law of general application serving a legitimate aim take in to account

[1]. Dawood Ahmed and Elliot Bamer ,limitation clause international IDEA constitution building primer 112017, page 4

[2].Ibid

the proportionality principle and the margin of appreciation given to states.[3]The limitation clause is a mechanism which prohibits excessive restrictions on rights that may because of their purpose, nature or extent that could be harmful for the democracy. The African charter of human and people's rights system, human rights may legitimately limited by the states in in terms of the African charter on human and people's right such as right can be limited by claw back clause as for reasons previously laid down by law within the law and provided the abides by the law, limited using right specific norm based limitations that requires the limiting law to serve some stipulated objectives like national security, law and order, public health or morality ethics and rights and freedom of others and

Minority language rights in the ACHPR can be limited using the general limitation clause in art 27(2) of the ACHPR.[4]The ACHPR requires states parties to recognize the rights, duties and freedoms enshrined in the charter and undertake to adopt legislatives and other measures to give effect of them which is in the history of Africa states are the most frequent dictators of human rights. They have the power to create and change laws by providing claw back clauses that permit rights to be limited by the law they passed limitation.

The limitation have been used by states as a means to prevent or discourage citizens from joining undesirable groups and to restrict criticism and dissent. The South Africa constitution has a general limitation clause art 36 that says the right may limited by a law of general application that is reasonable and justifiable in an open and democratic society based on dignity, freedom, and equality.

The provision set out the relevant factors including the nature of the rights, the importance of the purpose of the limitation, the nature and the extent of the limitation, the relationship between the limitation and its purpose that must be taken in to account when deciding if a limitation on right is constitutional.

The criteria that the law must be general in its application entails as it must be clear, accessible, and precise in its form in which those affected by it can ascertain the extent of their rights and duties weighing their proportionality based on the stated factors and it must apply equally to all,

[3] . limitation of human rights in international law and the Zimbabwean constitution https;// zimlii.org /zw/journal /2016-zeij-101 accessed on (august 19 2018)

[4] , Odhiambo Brian Patrick, The limitation of rights under the Kenyan constitution in faculty of law university of Pretoria , September 2015 p,34

should not be arbitrarily and the one targets specific individuals or groups. It applies in the same way to all the rights on the bills of rights.[5] And also the court will determine the legitimacy of the limitation in line with the stated general limitation clause. Hence, the South Africa constitution has adopted a reasonably restrained fundamental human rights which could be the best lesson for Ethiopia in this regard.

This is to mean that the South Africa adopted well equipped general application of limitation which is set out a general standard and requirement on the limitation of rights. It provides a guideline and a manner to take in to account while the limitation imposed that can be considered by the legislator and courts. While The Ethiopian constitution provides specific limitation clause that imposes specific limitation applies on a certain rights that no guideline and standards to inculcate on the limitation clause. With regard on this, the South African constitutional limitation clause can be a lesson to Ethiopia.

The general imitation would be balance competing or conflicting rights or to harmonize rights with other public objectives. The general application of rights may legitimately limit the rights entrenched in the bill of rights. If a piece of legislation, common law, rule, or executive action does not qualify as a law of general application, then a government violation of a fundamental rights cannot be saved under the limitation clause.[6]

Unlike ,the south African constitution ,The Ethiopia constitution only contains claw back clauses which is most of the rights themselves provide specific limitations provisions with in the text and the extent of the right.

Some of the internal limitations simply refer to those limitation determined or established by law while others are more detailed and require competing circumstances and specific laws necessary to safeguard public, security, peace, the prevention of crimes , public morality and the protection of the rights and freedom of others. There are therefore different standards depending on which rights the constitution seeks to limit[7].

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[5] , south African constitution litigation last edited https;//en.m.wikipidia .org /wiki/ visited on September 20 2018
[6]. Stuart wool man, 12 limitation revision service 5,1999 page, 28
[7]. See for instance, the UDHR Art. 29(2), and the Constitution of the Republic of South African, section 36(1).

The problem is increase when the general limitation clause sweeping in the constitution that would have ensured uniformity of standards it scrutinizing the conformity of limitation of rights with the basic tenets of the constitution. Any limitation should be prescribed law. The government cannot legitimately impose restriction without law passed and the necessary requirement or considerations.

In order to analysis more about the concept of general limitation clause under Ethiopian constitution, it is preferable to figure out basic lesson that the Ethiopia constitutional limitation clause can learn so as it implementation of general limitation clause under the Ethiopia constitution by observing the experience of the Canadian charter and the South African constitution. This is because they have well organized general limitation clause that apply generally to the constitutionally enshrined rights such infer from the reading of literature on the subject matter. Their experience can be important for the improvement of further protection fundamental human rights.

Overall, the paper will analysis the limitation clause under the Ethiopian constitution with the experience of some other states like South Africa, and The Canadian.

1.2 Statement of the problem

The protection of fundamental human rights against arbitrary or excessive arbitrary or excessive infringements is an essential feature of constitutional government which recognized both international human rights law and in many national constitutions.

Fundamental human rights are not absolute, they are subject to limitation so as to balance competing or conflicting rights, to uniform rights with others public goods and objectives. International treaties and states enact their own limitation clause to protect fundamental human rights on their constitutions.

The Ethiopia constitution provides specific limitation which applies for specific rights, there is no separated provision on constitution dealing with limitations that can be imposed on the exercise of fundamental human rights. This may empowers the government and the courts to determine the extent of the limited rights. This allows the government to simply enact laws to limit these and other rights without actually violating the Constitution. The government has the absolute discretion to determine the circumstances under which constitutional rights may be

limited. The grounds of limitation such as national security, public peace, and public interest are subject to abuse, unless they are backed by other limitations such as proportionality, necessity, considering democratic values, rationality and other factors which helps to assess the legitimacy of the limitative act and these all are absent in the FDRE constitution. The limitation has to have a legitimate aim and there must be a reasonable and proportional relationship between this aim and the means used to limit the right. , proportionality has to lie between the harm done by the limitation and the beneficiary purpose that the said law is meant to achieve if the said law fails to serve the desired purpose, it may not be termed as a reasonable limitation of right[8]. However, there is no substantive requirement that determine this rather than the government or the court.

The conditions of limitation clause is determined by the legislator, there is no a general guidance or a manner to take in to account while the limitation imposed that could be considered by the legislator or courts. There is no requirement in some cases, such as the right to life and liberty right to thought, opinion, and expression that the limitation be rationally connected to the purpose it aspires to achieve and necessary and proportional so long as the limitation is based on the law.

The provision only adopt the legality requirement implying the accessibility of limitations so long as such limitation are established by law[9] or determined by law without any justifiable requirement in to the fairness and propriety of the law, hence the provision established by law or any law by itself are vague and unclear since it does not infer what law is going to apply and a condition to what extent it is implement, thus, which can be easily subject to abuse moreover, these may lead to potential abuse of rights and also where rights have no such general limitations that applies to all rights contained in fundamental human right and freedoms, the court will have to determine whether or not a limitation is constitutional by having regard to interpreting the right itself and it with other rights however, since there is no a guidance or requirement which can be basis for interpreting the rights, courts may infringe rights as per their intension to enforce the rights and also the courts may biased by the political sphere of the country that can be make them to limit the right or interpret the right against the extent of the right itself. For instance, The Ethiopian Federal High Court has passed rulings reinforcing an ad-hoc and arbitrary

[8] . see the 2002 inter-American court decision of cantos v Argentina series c. no.97(2002) IACHR {54}
[9] The rights to life, liberty, freedom of association, and other rights

implementation of the CSO law and the Anti-Terrorism Proclamation.[10] Anti-terrorism legislation and terrorism-related offenses in the criminal code are being used to restrict the rights to freedom of opinion and expression and the work of human rights defenders because of its overly broad definition of "terrorist acts," which include acts of peaceful protest that result in the disruption of any public services..[11] These laws have since been regularly used to imprison hundreds of journalists and political opponents. It is nearly impossible or safe to work as a human rights defender in Ethiopia because one risks being jailed under the accusation of being a terrorist or enemy of the state.[12] This implies the courts in Ethiopia lacks independence and has in fact been used to restrict law and interpreting without the legitimate objective and aims of the rights.

The law also includes vague provisions that proscribe support for, or encouragement of, terrorism, which can include public reporting on banned terrorist groups.[13] And also there is also other provisions which contains vague and unclear provisions that is without any substantive requirement as to the kind and quality of the law that may be used to limit them.

Though those countries with stable democracies such as U.S could use their long standing culture of democracy as a guarantee of controlling abuses, a detailed general limitation clause is very important in newly emerged constitutional state like that of the Ethiopia that do not well develop the culture of democracy to make a rational weighting and balancing of the conflicting values of security and freedom[14]. General limitation clause with a necessary factors to limit on limitation measures for further protection in a well-balanced manner is absent in the FDRE constitution.

At hand, the absence of general limitation clause may have advantages as it leaves some rights which do not have internal limitations, beyond limitations for instance the protection against torture and inhuman treatment or punishment, freedom of religion in the Ethiopia constitution may not in any circumstance be limited. So there is no need to provide general limitation clause on this rights since, the rights by their nature cannot be limited in any matter.

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[10] .Human rights watch submission on Ethiopia the General assembly; questioner on the use of legislation ,including criminal legislation, to regulate the activities and work of human rights defenders, 2012 p.1
[11]. Ibid p.2
[12].Ibid p.3
[13].Ibid.
[14] .supra note 3 p.19

But, the right provided in the provisions dealing with fundamental human rights and freedoms set out in chapter three of the constitution of Ethiopia , would be strengthen if the rights were subject to a single generally applicable limitation clause rather than each having their own limitations clause for further protection of fundamental human rights and freedoms in Ethiopia. The paper will critically focused on this concept.

1.3 Research question

The research will revolve around finding a critical answer to the following research questions

What are the implication of the limitation clause and the necessities of inculcate general limitation under the FDRE constitution?

What is the importance of general limitation clause for further protection of fundamental human rights?

What are the relevant legal devices that the Ethiopian constitutional limitation clause can take as a lesson from the Canadian charter and South African concept of limitation clause?

1.4 Objective of the study

1.4.1 General objective

The general objective of the research is to determining the proper and legitimate application of limitation clause in the Ethiopia constitution and assessing general limitation clause so as to a better solution to protect fundamental human rights.

1.4.2 Specific objective

The paper will have the following specific objectives to achieve the above general objective;

- To assess the constitutional frame work of limitation clause under the FDRE constitution
- To analysis to what extent fundamental human rights can be limited by providing General limitation clause
- To show the importance of the general limitation for legitimate protection of Fundamental human rights

To analysis the concept of general limitation clause by taking the experience of

Canadian charter and South African constitution

- To analysis to what extent fundamental human rights can be limited

1.5. Research methodology

The research method would be conducted by a doctrinal research. This is due to concerned with assessing the implication of limitation clause in the Ethiopian constitution as it enshrined from the Ethiopian constitution and inculcating general limitation clause in to the FDRE constitution with respect to the experience of some countries conducted from foreign legal jurisprudence. The research conducted based on the primary resource such as the FDRE constitution and others countries constitution and international instruments and secondary source such as relevant literatures, journal articles, research working papers, reliable internet sources hence, the collected data will be analyzed based qualitative method of data analysis.

1.6. Significant of the study

The research has a paramount importance to design a constitutional provision that makes rights to be prudently limited to the extent necessary to protect the public good and the rights of other without undermining essential human rights or civil liberties that provide the fundamental for free society and a better protection of human rights in the country. It helps the legislator to build a well drafted limitation clause which protect these limits, qualifications or restrictions from being takes too far or from being misapplied. It will come up with suggestion which help for further protection of human rights in our constitutional order and our democracy to be stable and it may allow the government to pass laws limiting rights generally and it makes the ambit of rights and the grounds for limitation which understandable for the public. It will serves as a bench mark for further research up on the area. The research will shows the need of general limitation clause for the better protection of fundamental human rights under the FDRE constitution while trying to assess how the Ethiopia constitution provides limitation clause to protect its people rights. Overall, the research has significance in creating a better protection of fundamental human rights and enforcement of limitation clause.

1.7. Scope and limitation of the study

The research will cover the framework and applicability of the general limitation clause and the limitation of the measures on the grounds of human rights protection. The research is limited in studying the limitation clause under Ethiopia constitution and some others countries like the South African, the Canadian constitutional and Germany constitution limitation clause

experience and international instruments in general. The research will analysis the necessity of general limitation clause in particular system of in the Ethiopia constitution. Regarding the limitation, there are several challenges among that there is no available source due to lack of access of reliable internet connection and lack of prior research on this topic and time constraint since the study is conducted while the researcher is attending regular academic activities.

1.8 organization of the study

The research has four chapters and the first chapter consists of the introductory concepts like that of the background of the study, statement of the problem, research question, objective of the study. The second chapter discuss about the concept of limitation clause and the framework of limitation clause in some countries. The third chapter analysis introducing general limitation clause under the FDRE constitution and; some instructive lesson from South African and the Canadian limitation clause. The fourth chapter will come up with conclusion of the study and recommendation.

CHAPTER TWO

The Concept and framework of limitation clause in some countries

2.1 The concept of limitation clause

2.1.1 Definition and nature of limitation clause

Most human rights are not absolute. Many obligations to respect human rights are subject to so-called limitation clauses. There may be a certain limits on the exercise of rights as society would not be able to function. . For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth. Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution. Limitations refer to infringements or encroachments on guaranteed rights under narrowly contoured permissible circumstances.[15]

Many obligations to respect human rights are subject to so-called limitation clauses. For instance, the exercise of political freedoms, such as freedom of expression, assembly and association, carries with it duties and responsibilities and may, therefore, be subject to certain formalities, conditions, restrictions and penalties in the interests of national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of public health or morals, or the protection of the reputation or rights and freedoms of others. If people used their freedom of speech and freedom to participate in a demonstration, to incite racial or religious hatred, to promote war propaganda or to encourage others to commit crimes, governments have an obligation to interfere with the exercise of these freedoms in order to protect the human rights of others. Any interference, restriction or penalty must, however, be carried out in accordance with domestic law and must be necessary for achieving the respective aims and national interests

[15]. They generally require legality, necessity, rational connection between the limitation and its stated purpose, and proportionality

in a democratic society[16]. States must in any case demonstrate the necessity of applying such limitations, and take only those measures which are proportionate to the pursuance of the legitimate aims.[17]

There are different approaches to limitation of rights in constitutions: some constitutions and international instruments include internal individualized limitation clauses within each particular right in different details;[18] others have adopted general limitation clauses whose application cuts across all provisions.[19] Still others adopt a combined approach because in addition to a general limitation clause they may include their own internal limitations but our concern will be on general limitation clause. On this regard ,When we see the Canadian experience, The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as 'can be demonstrably justified in a free and democratic society' as per section 1 of the charter.[20] The Canadian limitation clause jurisprudence begins with R V Oakes that applies generally to the constitutionally enshrined rights. In Oakes, the Supreme Court laid out a fairly stringent test for determining when a governments prima facies infringement of a fundamental right in constitutional. The test has two prongs, the first one is the objective of the impugned government action must be of sufficient importance to warrant overriding a constitutionally protected right or freedom. The second test is assuming that a sufficiently important objective or interest has been established the means chosen to achieve the objective must pass a proportionality test. The test that is laid out by the Supreme Court may applies generally to all fundamental rights.[21]

In Ethiopia, there is no such kind of test rather the constitution only provide that internal limitations simply refer to those limitations determined or established by law;[22] while others are more detailed and require compelling circumstances and specific laws necessary to safeguard public security, peace, the prevention of crimes, public morality, and the protection of the rights

[16]. Inter – parliamentary union and the united nations(office of the high commissioner for human rights) handbook of parliamentarian 2016 no, 26
[17]. Ibid
[18]. For instance, the ICCPR, the Ethiopian constitution, and the constitution of USA, the African charter
[19] . see for instance, the UDHR art 29(2), the constitution of the republic of south Africa, art 36(1)
[20]. Stuart wool man, 12 limitation revision service 5,1999 p. 12-6
[21] . Ibid
[22]. For instance, the right to life, liberty, bail (FDRE constitution art, 17,18,and 19 respectively)

and freedoms of others.[23] The constitution only provide the legality requirement that concerned on the acceptability of limitations so long as such limitations are established or determined by law without any substantive requirement into the fairness and propriety of the law.

The limitation of rights imposed through general limitation clause that provide general appl1ication of limitation for all rights. General limitation clause which sets a set of criteria to be applied for all bills of rights to assess the legitimacy of the limitation in the constitution is one way of adopting limitation for a limitation measure. It provide a guideline and criteria that must be taken into account when deciding if a limitation on a right is constitutional. The general limitation clause provides some set of rights in the bills of rights that may be limited in the same criteria and it's a key provision in interpreting the bill of rights through the laws of general application and the requirement that has the limitation clause ought to be reasonable and justifiable with in an open and democratic society founded on the principles of human dignity, freedom and equality.[24] The general application contains the concept of rule of law in that it takes in to consideration what powers the state organ drives from the law limitation and whether the actions of the side organ was lawfully authorized or not and also meant to prevent the justification of bill of attenders through requiring that laws which seek the benefit of the Limitation clause be general in application. This threshold test ensures the law making bodies themselves do not craft laws which infringe the fundamental rights named or easily as certain able individual.[25]

Like the Canadian Supreme Court, the constitutional supreme court of South Africa has a general limitation clause section 36 that engages in a two stage analysis. First, it must determine whether the impugned provision limits a constitutional right. If it does, the second enquiry determines whether the limitation of the right is justifiable in terms of the limitation clause.[26]

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[23]. The right to privacy, freedom of religious, beliefs and opinion, freedom of expression and assembly and association(FDRE art 26,27,29,30,31)

[24]. Odhiambo Brian Patrick ,The limitation of rights under the Kenya constitution in faculty university of Pretoria September 2015 page, 15

[25]. Stuart Wool man ,12 limitation revision service 5,1999 page, 28,29

[26] . Dawood Ahmed and Elliot Bulmer ,limitation clause international IDEA constitution building – primer 11 2017 page, 21

Even though, the general limitation clause provides general application of infringement, there shall be an inquiry whom interpret, evaluate and test the limitation clause that rendered based on the requirement that is stated in the general limitation clause.

2.1.3 Criteria's of limitation clause

The criteria of limitation consist of a number of factors which are helpful to assess the legitimacy of a limitation; they are considered as limitations for the limitation act. States may have other requirements as per their system but the basic that could agree all states the given requirement.

Principle of legality; - The principle of Legality requires for every limitation to be prescribed by law in order for it to be valid and any limitation should be prescribed by law. Government can't legitimately impose any restriction without law passed following the normal legislative procedures.[27]

principle of necessity; - Necessity is to be assessed in the context of a democratic society, which is based up on human dignity, equality, and freedom, in the interest of national security or public safety, public order, the protection of public health or morale or the protection of the rights and freedoms of others as they are embodied in the special limitation clauses of the ICCPR provisions.[28] In Canadian charter on Oakes case the requirement of an open and democratic society is related to that of reasonable and necessity. Necessity of the limitation measure is to be assessed in the interest of the recognized legitimate purpose based on the context in a democratic society. The state that imposes limitation is with a burden to demonstrate the limitations do not impair the democratic functioning of the society. Recognizing as there is no single model of a democratic society, a society which recognizes, respects, and protect the human right set forth in the charter of the United Nations and the universal declaration of human rights may be viewed as a democratic society.[29]

Principle of reasonable and justifiable; - The reasonable test is enumerated in a way that linked in to the identification of limitations that are justifiable in a free and democratic society. The objective which measures the responsible for a limit on a fundamental right or freedom are

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[27]. proportionality and the limitation clause of the south Africa bill of rights www.scielo.org.za/scielo.php?script October 5 2018
[28]. Ibid
[29]. Ibid

designed to serve must bee of sufficient importance to warrant overriding a constitutionality right on freedom. Justification for limits on rights and freedoms refers to the court to the very purpose for which the charter was originally entrenched in the constitution connotation society is to be free and democratic society. The values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the limitation clause and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect to a reasonable and demonstrably justified.[30]

Principle of proportionality;- the concept of proportionality; that is to say, that the limitation on the right must be proportional to the effect to be produced by limiting the right and the impact or extent of the restriction must the importance of the aim served by the limitation of the rights. The proportionality provide that the limitation of rights must be designed to achieve the objective in question that must not be arbitrary, unfair, or based on irrational considerations and the means, even if rationally connected to the objective in this first sense, should impair as little as possible the right or freedom in question. There must be a proportionality between the effect of the measures which are responsible for limiting the fundamental right or freedom and the objective which has been identified as of sufficient important.[31]

2.1.2 Purpose of limitation clause

The bill of rights takes in to account the protection of public interest and the right of individuals and thus strikes a balance by making it possible for the authorities to limit rights under specified circumstance therefore; it is safe to say that the purpose of limiting rights is to enable the self-preservation of mankind in peace and order.[32] Every imposition of a limitation shall intended to serve a specific purpose that will appear reasonable, justifiable and proportionate to the citizens of the state due to compelling.

The necessity of limitation clause is to functions a reminder that the rights enshrined in the constitution are not absolute rather the rights may be limited where the restrictions can satisfy the

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[30]. Odhiamo Patrick September, The limitation clause under the Kenya constitution in faculty university of Pretoria 2015 page, 18

[31]. Oakes case para 60-70

[32]. Odhiamo Patrick ,The limitation of rights under the Kenya constitution in faculty university of Pretoria September 2015 page,9

test laid out in the limitation clause.[33] The limitation clause tells us that rights may only be limited where and when the stated objective behind the restriction is designed to reinforce the values including openness, democracy, freedom, and equality as well as the more specific values reflected individual rights themselves. The set out in the limitation clause with a bit of judicial implications will allow for open and candid considerations of competing government, public, private and constitutional interests that is the limitation clause should provide us with mechanism for weighting or balancing competing fundamental values against another. The limitation clause represent an attempt to solve the problem of judicial review by establishing a test which determines the extent to which the democratically elected branches of government may limit our constitutionally protected rights and the extent which unelected judiciary may override the general will and write the law of the land by making the guidance for judicial nullification of majoritarian decisions reasonably precise the drafters hoped to provide at least a partial solution to problem of judicial review.[34] Limitation would be for the courts subject the purposes to the rule of judicial notice.it is through judicial notice that the purpose serving as important object of the government may be authoritatively attested and hence cannot be reasonably doubted.

The court instead defines the boundaries or scope of a right that cannot in principle be limited. A limitation clause asks courts to consider not only whether a right has been infringed, but also whether that infringement is justifiable for the reasons allowed in the limitation clause that enables rights to be prudently limited to the extent necessary to protect the public good and the rights of others without undermining essential human rights or the civil liberties that provide the foundation for a free society.[35] Even if the limitation clause is vague, courts typically attempt to define rights in ways that, while protecting the right, recognize the need to balance other competing public and private rights and interests. The limitation of rights; rather than defining the acceptable limitations of the right, the court instead defines the boundaries or scope of a right that cannot in principle be limited. A general limitation clause asks courts to consider not only whether a right has been infringed, but also whether that infringement is justifiable as per the

[33] . Stuart Wool man,12 limitation revision service 5,1999 page, 2
[34] . Ibid.
[35]. limitation clause international IDEA constitutional –building primer 11 2017 page, 5

grounds that provided on the general limitation clause; limitation clause may make courts more responsive to the public policy implications of their decision.[36]

The general limitation would be balance competing or conflicting rights or to harmonize rights with other public objectives. The general application of rights may legitimately limit the rights entrenched in the bill of rights that would have ensured uniformity of standards it scrutinizing the conformity of limitation of rights with the basic tenets of the constitution.

The general limitation clause helps to control the state not to abuse its power. As per sec 36(1) of the south Africa constitution, the right in the bill of rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in a democratic society based on human dignity, equality, and freedom taking in to account the relevant factors including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose. The criteria that the law must be general in is application entails as it must be sufficiently clear, accessible, and precise in its form in which those affected by it can ascertain the extent of their rights and duties weighing their proportionality based on the stated factors; and it must apply equality to all, should not be arbitrary and the one that targets specific individuals or groups. And the court will determine the legitimacy of the limitation in line with the stated general limitation clause.[37]

2.2 The Notion of limitation clause in selected countries

States may enact different approaches to limitation of rights in constitutions: some constitutions and international instruments include internal individualized limitation clauses within each particular right in different details; others have adopted general limitation clauses whose application cuts across all provisions. Still others adopt a combined approach because in addition to a general limitation clause they may include their own internal limitations. Many modern bill of rights adopt general limitation clause by explicitly providing for limitations trough a general limitation clause applying to certain rights.

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[36]. Ibid page, 4

[37]. Constitution the bill right sets out the fundamental rights of all South Africa's including the right to dignity and the right to equality. The bill of rights also states when right may be limited Www. Mediaclubsouthafrica. Com/sport/developmentbg/99-2016 visited on January 12 2019

2.2.1 Limitation clause in Canadian charter

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as 'can be demonstrably justified in a free and democratic society as section 1 of the charter'. The limitation imposed based on this general application provision. Additionally, the courts can grant appropriate remedies if a law that limits a right does not pass this test, which can include the nullification of legislation. The Canadian Supreme Court adopted the so-called Oakes test to assess whether the limitation of a right or freedom guaranteed by the Charter is justified.[38] In answering this question, the Court first ascertains whether a protected right or freedom has been infringed, and then asks: Whether the law infringing the right does so for a legitimate purpose
which is sufficiently important in a 'free and democratic society'. Such purposes include: respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society ,whether the limitations imposed are rationally connected to the objective in question. They must not be arbitrary, unfair or based on irrational considerations, whether the limitations impair the right or freedom in question as little as possible and whether there is proportionality between the effects of the measures which limit the Charter right or freedom, and the objective which has been identified as being of sufficient importance.[39]

The Canadian charter Set out the *Oakes* reasonable limit test that is the objective of limitation clause sufficiently importance; Means rationally connected to the objective; impair rights as little as possible; effects on the limitation of rights proportional to the objective.

The Court suggests that the government might be subject to a less exacting standard of proof and government act or legislation rarely fails the rationality test. Hence, the test that applies on the limitation clause may able to the government or legislation to initiate limitation on rights as per the objectivity of protected right in a way of rationally and reasonably.[40]

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[38]. Limitation international IDEA constitutional –building primer 11 2017 page, 21
[39] . Ibid page, 22
[40]. Stuart Wool man 12 limitation revision service 5,1999 page,48

Canada's judiciary has been given an explicit constitutional mandate interpret rights and to grant appropriate remedies, which can include the nullification of legislation and the purpose of a limitation clause is limit to restrictions of the government and to limitation clause does this by indicating the limited ends that the restriction must serve as well as the limited means that it may employ.[41] The effect of restriction on the essence of the right is a primary factor in determining constitutionality. The evolving comparative jurisprudence emphasizes the principles of necessity, reasonableness and proportionality least restriction means, as bench marks that reviewing court must apply in evaluating the constitutionality of particular statutory restriction. The importance of the proportionality test by incorporating an additional safeguard against excessive limitation.[42]

The Oakes test implies that there has to be a criterion to followed to weigh the impact and costs of restriction to surpass the test, first it must be an objective related to concerns which are pressing and substantial in a free and democratic society and second the means chosen should be reasonable and justified that is the restriction has to be proportional to achieve the objective in. the Meany adopted should also impair as little as possible the right or freedom in question. This will limit the restrictions of the government and the limitation clause does this by indicating the limited ends that restriction must serve as well as the limited means that it may employ.[43]

The charter protects individuals from acts by their government's that are in violation of the rights and freedoms listed and its purpose is to guarantee and to protect, within the limits of reason, the enjoyment of the rights and freedoms ;it is not in itself an authorization for government action.[44]

. 2.2.2 Limitation clause in South Africa

The South Africa constitution provides a general limitation clause that applies generally to the constitutional enshrined rights. The limitation of rights shall be accorded to article 36 of the constitution that provide the grounds to limit fundamental rights. The limitation clause holds that the fundamental rights may be limited by law of general application provided that such limitation shall be permissible to the extent that is reasonable, justifiable in an open and democratic society based up on freedom and equality.

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[41] . Ibid
[42] .Ibid
[43] .Ibid
[44]. Canadian charter of rights and freedoms, https;//www.lawnow.org/significance-charter-canadian-legal-history/ November 16 2018

The provision then sets out the factors that must be taken into account when deciding if a limitation on a right is constitutional. The Constitutional Court of South Africa adopted a test which determine whether the impugned provision limits a constitutional right and the enquiry determines whether the limitation of the right is justifiable in terms of the limitation clause.[45] The general limitation clause is a limitation for the limitative act and set out specific criteria for the restriction of the fundamental rights that helps to control the state not to abuse its power. the right in the bill of rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in a democratic society based on human dignity, equality, and freedom taking in to account the relevant factors including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose. The requirement that the law must be general in its application entails as it must be sufficiently clear, accessible, and precise in its form in which those affected by it can ascertain the extent of their rights and duties weighing their proportionality based on the stated factors; and it must apply equality to all, should not be arbitrary and the one that targets specific individuals or groups. And the court will determine the legitimacy of the limitation in line with the stated general limitation clause.[46]

The purpose of the south African limitation clause provides a solution for the problem of judicial review by set out a test which determines the extent to which the democratically elected branches of government may limit the constitutionality protected rights and the extent to which an unelected judiciary may override the general will and write the law of the land since, the government to simply enact laws to limit these and other rights without actually violating the Constitution. The government has the absolute discretion to determine the circumstances under which constitutional rights may be limited.[47]

It provides the objective or purpose of the limitation serves the values of openness, democracy, human dignity, freedom, equality and the other values which underline the bill of rights and the constitution as a whole. And also it's appropriate for national constitution to guarantee a certain

[45]. Charles manga fombad,camerron's emergency powers :a Recipe for(un)constitutional dictatorship, Journal of African law,vol48.no-1, 2004,p76
[46]. Ibid
[47]. Stuart Wool man 12 limitation revision service5, 1999 page. 47

rights and attaché reasonable limitation to them subject to creating a balance between the interests of individual with that of state when conflict crop up.[48]

The limitation clause clearly intends that those rights covered by the limitation clause will receive greater judicial protection and concomitantly, that the government will have far less room to manoeuver when placing restriction on these rights.[49] The legitimate purposes are the protection of national security, the preservation of public order and the protection of the rights of others.

Other objectives, such as the prevention of embarrassment to public authorities, may not be legitimate in a democratic society this creates a test that legislators must consider in enacting laws and that the courts must consider in determining the constitutionality of laws. The limitation clause relieves the constitutional court of at least some of the responsibility for deciding which rights require greater judicial protection and which sort of legislative enactments will receive greater judicial deference.[50]

2.2.3 LIMITATION CLAUSE IN NIGERIA

The entrenchment of human rights provisions in the Nigerian constitutions was aimed at creating a society which protects political freedom as well as the social and economic wellbeing of Nigerians. The Nigerian constitution stipulates fundamental human rights on chapter two and four. The fundamental human rights which provides on chapter two is economic, social and cultural rights that non justiciable matters while, chapter four set out civil and political rights which is justiciable matters in the Nigerian constitution.[51] As discussed, fundamental human rights are not absolute as such they are backed by limitations so the Nigerian constitution employed several limitation clause as per the particular specific rights which is specific limitation clause. For instance, section 45 of the 1999 Nigerian constitution provides a veritable foundational upon which any law invalidating fundamental human rights way be justified Nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is

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[48]. Odiambo Patrick, The limitation clause under the Kenya constitution in faculty of university of Pretoria september2015 page. 8
[49]. Ibid
[50]. Limitation clause international- building constitutional primer 11 2017 page. 14
[51]Dada Jacob Abiodun, Human Rights under the Nigerian Constitution: Issues and Problems Vol. 2 No. 12 [Special Issue - June 2012] p.36

reasonably justifiable in a democratic society (a) in the interest of defense, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons. as provided the right to private and family, freedom of thought, conscience and religion, freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement may circumscribed or limited[52] but they are somewhat imprecise, not clear such as what law is reasonably justifiable in democratic society and to what extent this law is implemented is no well-defined and neither is it capable of any precise articulation. And also the other provision which contains specific limitation clause is section 33(1) of the 1999 Nigerian constitution which guarantees the rights to life in widely qualified manner when it provides in sub section (2) four grounds up on which a person may lawfully be deprived of his life.[53] The provision justifies deprivation of life in defence of property, in order to effect lawfully, or to prevent the escape of a person from lawful custody. This limitation presented broadly thus, no matter the nature may be extra judicially, a person who accused may law fully killed in attempt either to arrest him or prevent his escape from lawfully custody so rather than take another measure or mechanism to prevent those things taking a man life as to prevent the above actions is unfair and it constitutes without considering the limited rights. And also a person may be killed in defence of property. The constitution fails to define the quantum of property which will justify such killing.[54] In any case, ascribing or placing the value of property over and above that of human life is preposterous[55] and it may raise a question that what kind of property is worth human life? Just like human life is considered easy and nothing. Effective respect for human rights must place two kinds of restrictions on the forces of limitation. It must limit the circumstances and specify the procedures under which limitation may be legitimately invoked and it must also identify and reserve certain core human rights such as the right to life or the right to personal liberty or freedom Therefore, the sections of the constitution which provide limitation clauses be severely limited to promote progressive guarantee of human rights and try to give the necessary protection of human rights. But providing specific limitation for each rights not as much as help full for the realization of the protection of human rights better than general limitation clause. As mentioned, there is a gap on

[52]Dada, Jacob Abiodun "Impediments to Human Rights Protection in Nigeria,"Annual Survey of International & Comparative Law: Vol. 18: Iss. 1, Article 6. (2012) p.10
[53] Supra note 51 p.42
[54] Ibid
[55] Ibid

a given limitation clause of Nigerian constitution which provides specific limitation clause so that not favorable for our continent as such democracy not developed.

2.2.4 Limitation clause in Germany

The Basic Law of the Federal Republic of Germany, determines the relationship between the State and the individual in addition to shaping the organization and the institutions of the Republic. The Basic Law puts individual rights and the protection of human dignity front and center, at the very beginning of the document.[56]

The Basic Law prescribes rights, the rights which claimed by the majority of the people or by everyone, the rights will referred to as human rights. There is also a set of rights linked to citizenship that are applicable to German citizens only, including freedom of assembly, Article 8(1); freedom of association, Article 9(1); and freedom of profession and business, Article 12(1). These rights are granted to "all Germans," though there are other German laws that extend these rights to aliens as well.[57]The Basic Law guarantees the rule of law and ensuring the liberty of individuals through its articles.

The idea of limited government adopted by the Basic Law, as well as its guaranteed respect for liberty and fundamental rights, is obvious in the institutional precautions it takes to avoid potential abuse of powers. As such, according to article 1(3) All State authority is obliged by the basic rights which states that the "following basic rights are binding on legislature, executive, and judiciary as directly enforceable law."[58] hence, states authorities is governed by the basic rights which can be limits their discretion so its provide a duty to refrains from violating the fundamental rights by state authorities, as well as the duty to ensure that the individual has realistic opportunities to realize his freedoms.

The Basic Law has to secure the liberty and freedom of all. Thus, it’s obvious that limitation is not only imposes on the state rather the enjoyment of rights by the individuals also can be limited so as to the benefit of other individuals, the community, or society. The Basic Law ensures that restrictions are set up and required in certain situations to maintain and advance social life and so

[56]Roza Pati, Rights and Their Limits: The Constitution for Europe in International and Comparative Legal Perspective, 23 Berkeley. Int'l Law. 223 (2005).PP.234
[57] Supra note 51
[58] The Germany basic law, GRUNDGESETZ [GG] art. 1(3) (F.R.G.). art 1(3)

as to avoid unlimited exercise of basic individual rights that can conflict with the public interest or the interests and rights of other individuals.

Most of the rights under the Basic Law contain a statutory reservation. These reservations can be general or specific. Statutory reservations are general when the rights at issue are limited by or pursuant to law without any mention of specific requirements for the law restricting the right. For instance, Article 5(2), freedom of expression; Article 8(2), freedom of assembly; and Article 10(2), privacy of letters, posts, and telecommunications.[59] Statutory reservations are specific when a right is restricted to protect the interests specified in the article concerned. For example, specific reservations are embodied in Article 11(2) 74 regarding the freedom of movement; Aricle 6(3) demonstrating that the right of parents to raise their children.[60] In this stance, the Germany basic law contains both the general and specific limitation clause.

As mentioned above, the Basic Law contains reasonable restrictions and abridgments of those constitutional rights. The greatest thing that additionally to the above limitation the Germany jurisprudence provides requirements that apply generally to limitation on rights. Like the Canadian and South African courts, the German Constitutional Court provides requirements that found in Article 19 that apply generally to limitations on rights. (1) The statute must guarantee the basic right's untouchable core as Article 19(2),[61] The statute restricting the right must apply generally and not solely to an individual case; This requirement serves a dual purpose by preventing the legislature from getting involved in individual cases and also protecting the individual from arbitrariness; The statute must provide an express restriction by naming the basic right and the relevant article so that the restriction is intentional and not incidental or accidental, Article 19(1) requires the statute to articulate the restriction of a constitutional right, meaning that such limitations can only be placed by legislation and not by administrative ordinances or decrees; The statute must provide legal certainty by being clear and unequivocal; The statute must satisfy the three tests of the principle of proportionality: suitability, necessity, and appropriateness. [62]These requirements by establishing not only procedural safeguards and

[59]Roza Pati, Rights and Their Limits: The Constitution for Europe in International and Comparative Legal Perspective, 23 Berkeley. Int'l Law. 223 (2005) pp.237
[60] Ibid
[61]Roza Pati, Rights and Their Limits: The Constitution for Europe in International and Comparative Legal Perspective, 23 Berkeley. Int'l Law. 223 (2005) pp.238
[62] Ibid

limitations, but also limits on unnecessary restrictions of rights. The limitation clause intended not only to limit possible limitations by the legislature and the executive but also to guide and control the level of judicial intervention in enforcing the Constitution.so that the courts also comply with those requirements. The Germany basic law stipulates different mechanisms for the improvement of the protection of fundamental human rights.

2.2.5 Limitation clause in Ethiopia

The FDRE Constitution classifies human rights as one of its five fundamental principles and declares that human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable and that the human rights of citizens and peoples are respected. The Constitution further charges all Federal and State legislative, executive and judicial organs at all levels with the responsibility and duty to respect and enforce the Constitutional provisions of human rights.

About one-third of the Constitution is devoted to enshrining fundamental rights and freedoms. Accordingly, most civil and political rights and economic, social and cultural rights as well as environmental rights and the right to development are stipulated in detail.[63]

There are however several internal limitation clauses in relation to most of the rights therein. Some of the rights may be limited by any 'law' without any substantive requirement. Instead, many of the rights themselves contain specific limitations provisions within the text of the right. In case the government have discretional power to initiate laws and the courts will have to determine whether or not a limitation is constitutional by having regard to interpreting the right itself and by balancing it against other rights. Hence, the Ethiopian constitution does not constitute general limitation clause which provides general standards for enshrined rights.

[63]National Human Rights Action Plan The Federal Democratic Republic of Ethiopia 2013-2015 http://www.abyssinialaw.com accessed on January 12 2019

CHAPTER THREE

3. Introducing General Limitation clause under the FDRE constitution

3.1 General overview of limitation clause under Ethiopian constitution

The fundamental human rights are not absolute rather they are subject to restriction or limitation. International, regional human rights instruments and national constitutions are provides their own limitation based on their interest and policies so as to protect human rights. The limitations may in the form of specific limitation which set out a particular specific limitation for each rights in detail or a general limitation which provide a separate provision that can be applies to all rights generally or some international, regional, and national laws may provide specific limitation clauses with a general limitation clause or it may contain specific limitation clauses alone.

The Ethiopian Constitution incorporates several human rights. The recognition ranges from traditional civil and political rights to socio-economic and group or solidarity rights. This is further reinforced by the National Policy Principles and Objectives. The rights are generally guaranteed for everyone with some exceptions.[64]

The FDRE Constitution devotes more than one third of its content to provisions on fundamental human and people's rights. It deals with national policy principles and objectives that have relevance to interpretation of fundamental rights. The FDRE Constitution only provides specific limitation clause within most of the protected rights.[65]

The Constitution of Ethiopia does not have a general limitations clause that applies to all rights contained in Chapter Three, Fundamental Rights and Freedoms. Based on their scope of definition and limitation, fundamental rights and freedoms in the FDRE Constitution Based can be categorized in to three. The first category contains rights does not contain specific limitation clause like right to be protected against cruel, inhuman or degrading treatment or punishment,

[64] Adem Kassie Abebe, *HUMAN RIGHTS UNDER THE ETHIOPIAN CONSTITUTION: A DESCRIPTIVE OVERVIEW*, MIZAN LAW REVIEW Vol. 5 No.1, 42-70, Spring 2011 Ibid,p49
[65].Ibid, p48

and prohibition of slavery.[66] These rights are regarded as absolute rights as it mentioned per the international or national human right instruments that can't be limits with any circumstance. The other category of rights is restrictively defined. Such as the prohibition of arbitrary arrest under article 17(2). It does not prohibit an arrest but arbitrary arrest. If a detention is arbitrary, it is contrary with the principles of justice or with the dignity of the human person.[67] Thus it violates the right to liberty[68]. The third category contains specific limitation clause which empowers the legislature to promulgate laws limiting rights guaranteed in the Constitution. In many of the rights themselves contain specific limitations provisions within the text of the right.[69]

In this regard Some of the internal limitations simply refer to those limitations determined or established by law without any substantive requirements as to the kind and quality of the law that may be used to limit a right; while others are more detailed and require compelling circumstances and specific laws necessary to safeguard public security, peace, the prevention of crimes, public morality, and the protection of the rights and freedoms of others. Therefore various standards depending on which right the Constitution seeks to limit.[70]For instance, Article 15 of the FDRE constitution set out, every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law.[71] In here also the constitution provides the limitation is determine by that is to be complete by the law maker or the court. The constitution does not defined what serious crime mean and to what extent is going to apply so it's also left to be defined by the law maker and the court. Moreover, the constitution does not stipulate requirement to whether a given law is proportional or justifiable.

Article 29 of the FDRE constitution headed Right of thought, opinion and expression. Specifies that everyone has the right to freedom of expression without any interference, thereby signaling a constitutional disapproval of interference as a general rule. As discussed, fundamental human rights are not absolute and the rights contained in article 29(1)-(5) can be limited in terms of

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[66]. Abdi Jibril Ali, DISTINGUISHING LIMITATION ON CONSTITUTIONAL RIGHTS FROM THEIR SUSPENSION: A COMMENT ON THE CUD CASE Haramaya Law Review, Vol. 1:2, 2012 pp 8
[67].Ibid p.8
[68] Ibid
[69] Ibid
[70]. See for instance, the UDHR Art. 29(2), and the Constitution of the Republic of South African, section 36(1).
[71]. Derogation of the right to life and its suspension during state of emergency; art 93of FDRE constitution https;//www.abyssinialaw.com/index.php/option=com- visited on march 29 2019

article 29(6) of the Ethiopian Constitution.[72] The limitation provisions are vague and contradictory. For example, the first part of article 29(6) prohibits the limitation of a particular point of view or 'effect' of such point of view, but then goes on to state a number of grounds of limitation that would clearly include 'effects' of expressing a point of view, namely, youth protection and individual reputation protection. It is important to note that article 29(6) requires the legal prohibition of propaganda for war as well as opinion intended to injure human dignity. Very often legal systems characterize the injury to human dignity as defamation, which constitutes an injury to a person's reputation.[73]Article 29(6) appears to require the blanket prohibition of injury to human dignity, which is far broader and more draconian than international good practice requires in respect of defamation laws, in addition there is no determinant provision which articulates which defines the means of propaganda of war that able to injure human dignity. It is extremely odd that article 29(7) refers to 'citizens', as the right to freedom of expression set out in article 29(2) applies to everyone and not only to citizens. This may be a translation error as the effect appears to be that only citizens may be held liable under the law for violating the legal limitations set out in article 29(6), which makes little sense.[74]

In article 26 of the Constitution of Ethiopia, 'Right to privacy' the right to privacy in article 26 is subject to an internal limitation in article 26(3). Article 26(3) provides that 'public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purpose shall be safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others'. The effect of the limitations clause is to set out grounds for interfering with privacy rights. Most of these are in line with international requirements, namely: national security, public peace, crime prevention, public health protection and public morality. The reference to 'rights and freedoms of others' are more problematic as this is extremely broad.[75] Therefore, it's widely provided to implement it; those conditions are subject to abuse by themselves since it does not provide to what extent these conditions implemented.

[72]. Media law handbook for eastern Africa –vol.1(2016)pp.218-221
[73] .Ibid.pp.220
[74] .Ibid.pp,220
[75] .Ibid.pp,221

Article 31 of the Ethiopian Constitution is headed 'Freedom of association' and provides that 'every person has the right to freedom of association for any cause or purpose' Article 31 contains its own internal limitation, which provides that 'organizations formed, in violation of appropriate laws, or to legally subvert the constitutional order, or which promote such activities are prohibited'.[76] This internal limitation is that organizations can be regulated by 'appropriate laws'. This is obviously extremely vague, which is problematic as no guidance is given as to what is meant by 'appropriate'. The outright prohibition of organizations formed to legally subvert the constitutional order or to promote such activities.[77] It leaves discretion to the law maker to initiate law that may limit the freedom of associations. The provisions only focus on the legality requisite for the law of such limitations so long as these limitations are recognized or determined by law without any investigation into the justifiability and appropriateness of the law.

Additionally, the Ethiopian constitution also have constitutional limitation clause that provides Article 93 of the Ethiopian Constitution deals with a declaration of a state of emergency. Article 93(1)(a) entitles the Council of Ministers of the Federal Government to decree a state of emergency should any of the following occur: external invasion; a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel; and natural disaster or an epidemic.[78] This is the constitutional limitation that is provide on the constitution which stipulates the grounds of limitation on the limiting rights.

But on the above provisions, the constitution stated that it would be determined by law and there is internal limitation which is vague. In this respect the question raise, what type of law can determine it and to what extent. To add the same difficulties in understanding of the scope and content of limitation clause.

As such, where rights have no requirements and guidelines on their limitations provisions, it allows the government to simply enact laws to limit these and other rights without actually violating the Constitution.[79] The government has the absolute discretion to determine the circumstances under which constitutional rights may be limited and also the courts will have to

[76] .Ibid.pp,222
[77] .Ibid,
[78]. Media law hand book for eastern Africa – vol.1 (2016)pp.217
[79] . Leonard f.m besselink instuut voot staats, bestuursachter International conference institute for Ethiopia studies Addis Ababa University, November 2000 law and politics panel p.6-11

determine whether or not a limitation is constitutional by having regard to interpreting the right itself and by balancing it against other rights. So the said established by law is open for the discretion of the government and the court which may affect the protection of fundamental human rights. Therefore, accordingly "there is no requirement in some cases, that the limitation be rationally connected to the purpose it aspires to achieve, and be necessary and proportional so long as the limitation is based on law."[80]

3.2 The concept of general limitation clause in relation to the experience of Canadian charter, South Africa and Germany constitution

As it discussed above in detail there are several experience which the Ethiopian limitation clause can learn from the other countries jurisprudence, particularly from the Canadian charter and the South Africa constitution of limitation clause so as to give further protection of fundamental human rights. These countries have a good and well equipped that can be exemplary lesson on general application of limitation on fundamental rights.

As I for mention, the jurisprudence of the Canadian charter, South Africa and Germany constitution human right provides general limitation which contains general application with a certain principles and standards. Such as the principles of necessity and proportionality, such limitation shall be permissible only to the extent that is reasonable and justifiable in open and democratic society based up on freedom and equality.[81] Thus, to protect the legitimate interest of the state, the state can limit human rights only as it prescribed general law, only when it is necessary in a democratic society like national security, public safety, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others in proportional manner and proportional such as the means used by the government or court to limit a right must be proportional to the aim sought and also reasonableness and justifiability usually demands that the limitation of a right must serve some worthwhile and important purpose in a constitutional democracy.

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[80]see the Siracusa, For the principles that should guide limitation and derogation of rights, "Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights", UN Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Annex, , (1985)UN Doc E/CN.4/1985/4.

[81].see section 1 of the Canadian charter and section 36 of south Africa constitution

As I mentioned such kind of principles and general application is not provided in the Ethiopia constitution that can be apply on the fundamental rights. Since there is no general applicable provision that can be applies and vagueness of the specific limitation provision that applies on single particular rights which stated the word established by law, it will make the government and the court to determine the extent of the limited right.[82]

The grounds of limitation such as national security, public peace and public interest are subject to abuse so it needs proportionality, necessity, considering democratic values, rationality and other factors which helps access the legitimacy of limitative act and these all are absent in the FDRE constitution hence, this grounds provide in the Canadian charter, the south Africa constitution and Germany which can be a lesson for the Ethiopian constitution as such providing general limitation clause is helpful for the realization of further protection of fundamental rights and to ensure that the rights implemented as per their intended purpose and objectives. Therefore, the Ethiopia constitution may able to adopt this kinds of general limitation clause which contains general application standards so as to protect the abuse of constitutional rights and to clarify the vagueness of the specific limitation clause and to give more protection or emphasize the fundamental human rights that provides on the constitution. And also the Nigerian constitution is more or less similar with the Ethiopian constitution which contains specific limitation clause which is not exemplary since they are the same footage but it shows that the concept of specific limitation clause that is specific limitation clause by itself not enough to improve further protection of fundamental human rights unless its backed by general limitation clause.

Move over, The Canadian charter, south African constitution and also the Germany basic law have a test based on the requirement of the general limitation clause that used by the courts to determines the extent of the limited rights and it objective or aim of the limitation of rights and also to determines the constitutionality of the grounds of limitation that is provided to limit the fundamental rights i.e. First, it must determine whether the impugned provision limits a

[82]. Gebreabzgi W/slale, the extent of reason of state in the Ethiopia on constitutional order ;the quest for restraining a legitimate November 2011 p.71

constitutional right. If it does, the second enquiry determines whether the limitation of the right is justifiable in terms of the limitation clause.[83]

The objective of the impugned governmental action must be of sufficient importance to warrant overriding a constitutionality protected right or freedom and assuming that a sufficiently important objective or interest has been established the means chosen to achieve the objective must pass a proportionality test.[84]And also the Germany constitutional court stated article 19[85] requirements that establishing not only procedural safeguards and limitations, but also limits on unnecessary restrictions of rights. There is no such constitutional test that can be take in to account by the Ethiopian courts to determine the constitutionality of the grounds of limitation clause. Thus it can be a lesson for the Ethiopia jurisprudence of limitation clause which is advantageous so as to further protection of the fundamental rights, improvement of a better protection of human rights in Ethiopian. Since we don't have a good culture of protection of fundamental human rights. Therefore, this is one of the fundamental experience or lesson from which the Ethiopian jurisprudence of limitation clause can learn.

3.3 The effective contribution of general limitation clause for further protection of fundamental human

General limitation clause function within a wider reality that result interest to striking a balance between competing individual interest visa vis general societal interest with a purpose of justifying the exercise of fundamental rights in a limited state.[86] It emphasize more the general purpose and protection of the fundamental human rights by provide to what extent rights can be limited and how the limitation will be rendered. The general limitation will help to implement and enforce the rights as per as the purpose and the intention aspires. As a right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced.[87]So the effectiveness of fundamental rights determines when they are enforced based on their intended purpose thus, the general limitation is more help full to give effective

[83]. Dawood Ahmed and Elliot Bulmer ,limitation clause international IDEA constitution –building primer 11 2017 p.21
[84]. Stuart Wool men 12 limitation revised service 1999 p.6-7
[85] The Germany basic law, GRUNDGESETZ [GG] art.19(1),(2),(3)
[86]. Odhiamo Brian Patrick, the limitation of rights under the Kenya constitution by VOL-1 2015 P.14
[87].Ibid

enforcement to fundamental rights. It will preserve the fundamental rights from potential abuse by the government and the courts by providing essential guideline and manner that is considered during limitation of the rights so it will ensure the protection fundamental human rights and will give a guarantee .It uphold human rights standards in the long term, their values will permeate all levels of the society.

The general limitation clause may serve the dual purpose of protecting individuals from arbitrary limitations on the one hand and of tolerating acceptable constraints on rights that serve the general public interest and wellbeing of the society on the other hand by creating uniformity in the interpretation of the rights and their limitation and it reduces a risk of relegating the Constitution into a subordinate instrument to the law makers despite the clear supremacy provision.[88]

Requiring the limitative measure to be of a law of general application entails the restrictive law should not be made arbitrarily without following the normal law making process targeting specific individual or groups. Such general limitation clause frame work would contribute much in the task of controlling abuse of reason of state so that the government will not suppress its opposition or perpetrate a repressive practice against its people using law as an instrument.[89]

The law of general application embodies the concept of rule of law in that it takes in to consideration what powers a state organs derives from the law of limitation and whether the actions of the said state organ was lawfully authorized or not.[90] It will ensures further realization of the fundamental human rights.

The general limitation clause is a very helpful for proper application of limitation clause that protects of the fundamental rights rather than specific limitation clause. The general limitations criteria that the law must be general in its application entails as it must be sufficiently clear, accessible, and precise in its form in which those affected by it can ascertain the extent of their rights and duties weighing their proportionality based on the stated factors; and it must apply

[88] Adem Kassie Abebe ,Limiting Limitations of Human Rights under the FDRE and Regional Constitutions 2016 p.83

[89]. Gebeabzdi W/Slale the extent of reason of state in the Ethiopia the constitution order ;the quest for restraining a legitimacy by November 2011 pp.74

[90].Ibid.pp.16

equality to all, should not be arbitrary and the one that targets specific individuals or groups.[91] And deprive the legislator and the courts to determine the extent of the limited rights.

The general limitation clause able to make the rights to limit uniformly with the other rights which assure the rights won't be contradict with the other rights. The fundamental human rights are subject to abuse unless the states provide a good mechanism to preserve and ensure the rights so the better way to protect for the state which do not have a well modern democracy is general limitation that suffices to give further protection to fundamental rights.

Inculcating general limitation clause will provide substantive requirement as to kind and quality of the law that may be used to limit a right. The government has a discretion to determine the circumstance under which limits constitutional right may be limited since the general limitation provide a general application of requirement on the limited right.

3.4 The need to introduce the general limitation clause under the FDRE constitution

The general limitation clause says that rights may be limited by a law of general application that is 'reasonable and justifiable, proportional and necessity in an open and democratic society based on dignity, freedom, and equality'.[92] The provision then sets out the factors that must be taken into account when deciding if a limitation on a right is constitutional.[93]

Every measure of a limitation ought to serve a specific purpose that will appear reasonable to the citizens of a state due to compiling circumstance. [94]The general limitation clause which sets a set of criteria to be applied for all bills of rights to analyze the legitimacy of the limitation for a limitation measure. [95]It is a general guideline standard and requirement which shall take in to account when limitation imposed and consists a number of factors which are helpful to assess the legitimacy of a limitation. [96]

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[91]. Gebreabzgi W/slale, the extent of reason of state in the Ethiopia on constitutional order ;the quest for restraining a legitimate November 2011 p.79
[92] See section 1 of the Canadian charter and section 36 south Africa constitution
[93] Stuart wool men 12 limitation revised service 5,(1999) pp.4
[94] . Odhiamo Brian Patrick September The limitation of rights under the Kenya constitution in faculty of law university of Pretoria 2015 p.11
[95] Ibid.
[96] Ibid.

The Constitution of Ethiopia, as has been set out above, makes provision for certain rights to be subject to 'internal' limitations that is, the provision dealing with rights contains its own limitations clause, setting out ways in which a government can legitimately limit the ambit of the right.[97]There is no a guideline that take in to account by the government hence, the government may initiate the limitation based on his interest without aspire the purpose and the intention of the right.so the general limitation clause intended to protect the rights not to be used or abuse beyond their intention and purpose because there is a general application, standard and requirement that forbids unnecessary restrictions on the rights and also it controls the government to not render unnecessary actions. As I mentioned on the above sections, in our practice the court also biased by the sphere of our political interest and did not appropriately limit the rights, this affects the peoples who subject to this limitations so the general limitations also needs to controls this trend of practice in our country.

The internal limitations occur within a number of articles on rights in Chapter Three of the Constitution of Ethiopia. They deal specifically and only with the limitation or qualification of the particular right that is dealt with in that article. As has been discussed more on the above, the rights of freedom of expression, privacy and association contains such an internal limitation. In other words, the article that contains the right also sets out the parameters or limitations allowable in respect of that right.[98]the internal limitation is vague and unclear that is not understandable for the people subject to and its open as the government and the court can limit the rights and its more open to abuse by the government and the court through initiating and interpreting it as they want and interest but, if we initiate the general limitation the vagueness and unclearness will be clear out, won't be difficult to understand and to initiate and interpret the limitation since, it provides general guideline and requirement as per the right aspires.

Let alone the vague, and general purpose such as national security, the specific factors abuse of reason of state with regard to limitation measures. It opens a door for the government to undertake a systematic violation of human rights. The absence of culture of tolerance and compromise in the history of the country highly triggers the need to incorporate a general limitation clause in the constitution. Supposed to be included in the general limitation clause are subject to interpretation which need an adequate institutional safeguard and effective remedy

[97].Media law handbook for eastern Africa –vol 1(2016)pp.234
[98] .Ibid.

against abuse.[99] The FDRE constitution has neither substantive nor procedural or institutional safeguard against abuse of reason of state with regard to limitation measures. It opens a door for the government to undertake a systematic violation of human rights. The absence of culture of protecting and respecting fundamental human rights in the history of the country highly needed to incorporate a general limitation clause in the constitution.[100] It seems that States should enact laws of general limitation clause to impose limitations on the enjoyment of rights that the limitation be rationally connected to the purpose it aspires to achieve, and be necessary and proportional so long as the limitation is based on law.[101]These laws shall be none discriminatory and confirm with equal treatment before the law. Since, they must resort to ordinary process of law-making States cannot make limitations within a very short period, arbitrarily and limitless limitation based on their interest.[102]

Therefore, the rights contained in the provisions dealing with fundamental human rights and freedoms, set out in Chapter Three of the Constitution of Ethiopia, would be strengthened if the rights were subject to a single generally applicable limitations clause rather than each having their own limitations clause.[103]

If general limitations clause apply to all of the provisions of Chapter Three of the Constitution of Ethiopia that is, to the fundamental rights and freedoms, it would allow government to pass laws limiting rights generally, provided this is done in accordance with the provisions of a limitations clause that applies equally to all rights. It makes the ambit of the rights and the grounds for limitation much clearer for the public because there are no specific limitations provisions that apply to each right separately.[104]

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[99].Ibid.
[100].Idib.pp.75
[101] Adem Kassie Abebe, *HUMAN RIGHTS UNDER THE ETHIOPIAN CONSTITUTION: A DESCRIPTIVE OVERVIEW*, MIZAN LAW REVIEW Vol. 5 No.1, 42-70, Spring 2011 Ibid, pp 60
[102] Supra note 6, pp 93,
[103] .Ibid
[104].Ibid

CHAPTER FOUR

4. Conclusion and Recommendation

4.1 Conclusion

Fundamental human rights are the basic rights and freedoms to which all humans are considered entitled and they are not absolute rather they are subject to limitation so as to protect public order and securing peace. There is a limitation clause which limits the guaranteed rights, it may be specific limitation on the particular right and general one which stipulates general application standard. General limitation clause provides a manner and requirement that is the limitation should be proportional, nessacery and reasonable and justifiable with in an open and democratic society based on the principle of human dignity, freedom and equality. The general limitation provide the guide line and standard that take in to account by the government and the court when they imposed limitation on the rights. Hence, it will control the government and the court action on the rights. The government and the court must comply with the general limitation in exercising its discretion to limit rights.

The FDRE constitution in its most of the human rights provisions contains specific limitation clauses. The specific limitation clauses under the constitution, as they are general and vague, are subject to abuse. The constitution doesn’t provide a limitation for the limitation act which is a safeguard to control the government not to abuse the general and vague grounds of limitations. Therefore, general limitation needs to adopt to solve these difficulties and to provide a clear cut standards for the vagueness and unclearness of the fundamental human rights. With regard to this, the Ethiopia constitution can take a good examplenary experiences from the Canada and the South Africa constitution. Both the charter and the constitution provides general limitation clause that has to be considers on the limitation acts by the government and the court. As they asserts the limitation act shall comply with the general application and standard of the general limitation clause that is fair, proportional, reasonable, necessary, and justifiable in an open and democratic society that is based on openness, justice, human dignity, equality and freedom. This will essential to give further protection for fundamental human rights. And it shows a better way to protect the fundamental human rights for our country which is not develop the culture of democracy.

Generally, in order to further protection of the fundamental rights and freedoms, the limitation clause that is imposed on the rights shall aspires and fulfill its objective and purpose. And also the government may balance the rights and interests of persons with the legitimate state interest and concerns and that of the individual by providing general limitation.

4.2 Recommendation

As I discussed on the above, fundamental human rights are not absolute, they are leaves to limitation through specific and general limitation hence, the Ethiopia constitution provides specific limitation clause that imposes a specific limitation clause for each rights in detail which is not clear and vague so these gives more discretion for the government and the court to limit the rights without any guideline and requirement and also standard that should be considered when they limits the rights. And it will deprive potential abuse of rights by the government and the court in this case, the specific provision by themselves are subject to abuse as a result of they only say established by law so the general limitation will provides standards that the government and the court action to comply with the standards that is provides on the general limitation clause

Therefore, so as to avert the above problems I recommend, The Ethiopia constitution to adopt a general limitation clause that is provide a general application of standards, requirements and guideline which considers during the limitation acts. Since there is a guideline and a manner to what extent the rights can be limits, standards which take in to account, it will avoid the vagueness and un clearness of the rights and also it will be help full so as to give further protection for fundamental human rights. And also it will controls the government and the courts action to not exercising beyond their boundaries by the mechanism of general application standards of the rights.at hand, the rule of law will be respected when rights enforced and applies as per their intended purpose. As human fundamental rights are inherent rights to everyone, the general limitation clause is favorable to give further protection of this rights for our country. We can take a lesson from the experience of the Canadian charter and the South African constitution in order to adopt the general limitation that controls excessive limitations and provide a clear general standards which can be apply on the rights uniformly.

In the jurisprudence of the Canadian and south African limitation clause, there is a test that rendered by the supreme courts which is first the objective of the government action must be of sufficiently importance to assure a constitutionally protected right and freedom and second, the means chosen to achieve the objective must pass a proportionality test human rights. But in Ethiopian there is no such kind of test that give further protection for fundamental human rights and controls abuse of powers. Therefore I recommend we may adopt such kind of test in our limitation jurisprudence so as to give further protection for fundamental human rights.

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