

COMPATIBILITY OF DEATH PENALTY WITH THE PURPOSE OF CRIMINAL PUNISHMENT IN ETHIOPIA

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Abstract: The main target of this paper will be to discuss the compatibility and the necessity of the death penalty in Ethiopia with respect to Human Rights. It will give particular focus on the Criminal Code of the Federal Democratic Republic of Ethiopia in addressing the issue. It discusses the arguments for and against the death penalty and whether or not the practice should or should not be abolished from the Criminal Code of the country. It is evident that the death penalty is one of the most confrontational issues since the dawn of the principles of Human Rights. There are two different arguments between those who support the implementation of the death penalty and those who are against the death penalty. This paper will analyze these two different ideas based on legislation and academic literature.

Keywords: Capital Punishment, Human Right, Crime, Law, Punishment, Ethiopia.

Summary: I. INTRODUCTION; II. GENERAL JUSTIFICATIONS OF PUNISHMENT; II.1. *Retribution*; II.2. Deterrence; II.3. Rehabilitation; II.4. Incapacitation; II.5. The practice of death penalty in Ethiopia; II.6. History of death penalty in Ethiopia; II.7. Abolition movement in Ethiopia; III. COMPATIBILITY AND NECESSITY OF DEATH PENALTY WITH THE PURPOSE OF CRIMINAL PUNISHMENT IN ETHIOPIA; III.1. Does death penalty deter a criminal?; III.2. Special deterrence; III.3. General deterrence; III.4. Problems of executing death penalty; III.5. Does the practical implementation of death penalty lead to arbitrariness and discrimination?; IV. CONCLUSION.

I. INTRODUCTION

Crime may be defined as an act or omission or a state of affairs which contravenes the law and which may be followed by prosecution in the criminal proceedings with the attendant consequence, following conviction, of punishment (Michael J. Allen 2013:1). Every known organized society has, and probably must have, some system by which it punishes those who violate its rules and regulations, especially those who violate the most prohibited rules. Therefore punishment means intentionally inflicting pain or other unpleasant consequence on another person as a result of his or her fault. Therefore, the rationale of punishment is justified upon the theory that it prevents future crime by punishing the potential offenders and by giving a lesson for the public.

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Throughout time there has been different mechanisms to punish the wrong, and death penalty became applicable, but recently there has been an emergence of an international movement towards the global abolitions of the death penalty. In Europe in the mid-18th century A.D, there was a movement against death penalty intending to abolish it, with theorists like Montesquieu, Bentham and Voltaire who argued that the death penalty is a cruel and inhuman treatment of criminals and is against the innate and inviolable core right of a person which is the right to life.

Coming to Ethiopia, it is an example of a country that retains the death penalty in the criminal law. And it has been practiced for a long period of time without facing any challenge and it has been an accepted form of punishment by the State.

But, what is punishment? Many scholars define punishment diversely. For instance, Hart defines punishment as (Thomas McPherson 1967:1): The 'standard or central case of "punishment" is defined in terms of the five elements:

- (i) *It must involve pain or other consequences normally considered unpleasant.*
- (ii) *It must be for an offence against legal rules.*
- (iii) *It must be of an actual or supposed offender for his offence.*
- (iv) *It must be intentionally administered by human beings other than the offender.*
- (v) *It must be imposed and administered by an authority constituted by a legal system against which the offence is committed* (Thomas McPherson 1967:21).

Hart also defines punishment as a measure that involves pain or other consequences normally considered unpleasant and that is intentionally imposed by authority on actual or supposed offender for an offence against legal rules (Robert S. Summers 1969:4).

Hobbes define punishment as *'an evil inflicted by public authority, on him that have done, or omitted that which is judged by the same authority to be a transgression of the law; to the end that the will of men may thereby the better be disposed to obedience'*... (Dejene Girma Janka 2012:36).

Both scholars seem to converge on the purpose of punishment; they both tell us that punishment is an unlikeable measure imposed on a person by an authority for the violation of law. The general goal of punishment is to prevent behavior determined undesirable by the society.

II. GENERAL JUSTIFICATIONS OF PUNISHMENT

With regard to the justifications for punishment, different scholars provide different reasons as to why we use punishment. Depending on its cultural, moral, and religious

attitudes different societies have different outlooks as to why criminals must be punished. Based on these differences, people have different purposes for punishing criminals.

II.1. Retribution

This theory relies on that punishment is justified when it is deserved. It looks through the crime and asks what justice requires to the past wrong. It looks towards the original offense and seeks to punish the offender proportionately. This theory, which is the most stringent and harsh of all the other theories, believes to end the crime itself. This type of justification for punishment is the oldest of all. When one commits a crime, it is important that he receives commensurate punishment in order to restore the peace of mind and repress the criminal tendencies of others. In addition, it is claimed that retributive punishment is needed to maintain respect for the law and to suppress acts of private vengeance (Wayne R. LaFave and Austin W. Scott, Jr 1994:26). Retribution is giving people what they deserve, hitting them back with equal force to a blow they have struck, and treating someone as they have treated others.

Retribution contends that punishment benefits not only the society, but also criminals. Just as a society feels satisfied by “paying back” criminals, giving criminals their “just deserts” offenders benefit by putting right their evil. Society pays back criminals by retaliation; and criminals pay back society by accepting responsibility through punishment. Both paybacks are at the heart of retribution (Joel Samaha 2010:23).

Retribution is right only if offenders chose between committing and not committing crimes. In other words, we can blame criminals only if they had these choices and made the wrong choice. So in popular “do the crime, do the time” what really means is “you chose to do the crime, so you have to do the time”, that is, their wrong choice makes them blameworthy. And their blameworthiness makes them responsible. So as culpable, responsible individuals, they have to suffer the consequence of their irresponsible behavior (Joel Samaha 2010b:23). According to the retributive theory, punishment is applied simply in proportion to the seriousness of the offence. So the more serious the crime the more serious the punishment should be.

II.2. Deterrence

Deterrence is one of the several rationales of punishment. It is based on the belief that criminals can be prevented because people are afraid of penalties. This theory aims to prevent crime through the example of offenders being punished. That is, it looks forward to the prevention of future crimes. It is to act as a measure of prevention of future crimes. It is to act as a measure of prevention to those who are contemplating criminal activity (Jay S. Albanese 2012:314). Under this theory, the suffering of the criminal for the crime he has committed is supposed to deter others from committing future crimes, lest they suffer the same unfortunate fate. Generally deterrence refers to the prevention of criminal acts in the

society at large by making examples of persons convicted of crimes. There are two types of deterrence; namely general deterrence and specific deterrence.

II.2.1. General deterrence

It aims, by the threat of punishment, to prevent the general population who have not committed the crimes from doing so. It relies entirely on the threat of punishment and not on actual punishment. From a general deterrence perspective actual punishment has the role of making the threat credible. It makes other people prudent by inducing the public to refrain from criminal acts. J. Bentham, the main proponent of this theory, argues that “rational human being will not commit crimes if they know that the pain of punishment outweighs the pleasure gained from committing the crimes” (Joel Samaha 2010:16). Prospective criminals weigh the pleasure they hope to get from committing a crime now against the threat of pain they believe conduct by using the defendant as an example of what will befall a person who violated the law. They will get from future punishment (Joel Samaha 2010b:25). It means that general deterrence is directed at preventing crime among general population and it assumes the general motoring public (at least ‘potential’ offenders) will learn from the experience of punished offenders and will refrain from following their example. In general, general deterrence means that you are sending a message to the society by saying: if you do such a thing, this is what awaits you, punishment.

II.2.2. Special deterrence

Special deterrence is based on the assumption that the imposition of sufficiently severe punishment will deter the particular offender from repeating the same kind of offence, or from committing any other offence whatsoever (Stanley A. Cohen 1982:73). Therefore, the objective of specific deterrence is to persuade the person who committed the crime from breaking the law in the future. The actual imposition of punishment creates fear in the offender that if he repeats his act, he will be punished again. In a nutshell, general deterrence is directed at preventing crime among general population, while special deterrence is aimed at preventing future crimes by particular offender.

II.3. Rehabilitation

It involves a sentence designed to provide treatment for conditions in the offender’s attitudes, personality, or general personal history that may have led to the criminal behavior (Jay S. Albanese 2012:288). It is seen as the most “humane” goal of punishment. This line of thinking reflects the view that crime is a “social phenomenon” caused not only by the inherent criminality of a person, but by factors in the person’s surroundings. By removing wrong doers from their environment and intervening to change their values and personalities, the rehabilitative model suggests, criminals can be “treated” and possibly

even “cured” of their proclivities towards crime (Roger LeRoy Miller Larry, K. Gaine 2005:259).

Rehabilitation borrows from the “medical model” of criminal law. In this model, crime is a “disease,” and criminals are “sick.” According to rehabilitationists, the purpose of punishment is to “cure” criminal patients by “treatment.” Two assumptions underline the rehabilitation theory. The first is determinism; that is, forces beyond offenders’ control cause them to commit crimes. Because offenders do not choose to commit crimes, we can not blame them for committing them. Secondly, therapy by experts can change offenders so that they will not want to commit any more crimes. After rehabilitation, former criminals will control their own destinies (Joel Samaha 2010:27). Therefore rehabilitation basically means the path to restore a criminal to a useful existence in society. The main purpose of rehabilitation, then, is to prevent the recurrence of a crime that has previously been committed. This prevention of habitual offending is the cure that is likely to allow the state in which the convict is situated to present the man or woman back to society with a confident outlook. Being able to once again contribute to him or her as well as the greater society is the achievement that is to be expected (or at least hoped for) after lengthy rehabilitation schedules. This theory is the most recent and most humane theory, of all theories raised above; “its foundation is based on the principle of reforming legal offenders through individual treatment. Therefore Rehabilitation seeks to bring about fundamental changes in offenders and their behavior” (Joel Samaha 2010:27). As in the case of deterrence, the ultimate goal of rehabilitation is a reduction in the number of criminal offenses. Whereas deterrence depends upon a fear of the law and the consequences of violating it, rehabilitation generally works through education and psychological treatment to reduce the likelihood of future criminality.

II.4. Incapacitation

Incapacitation basically means preventing an individual from committing further criminal act by restraining him or her. Sanctions imposed to incapacitate are not intended to reduce an offender’s inclinations to future criminal acts, which would involve treatment to change the person’s attitudes or personality, but to preclude opportunities for criminal behavior at least while the offender is under state control. The death penalty is obviously total denial of the life of individual. Long prison terms also illustrate the incapacitation goal, but so do lesser sanctions, including the rules and conditions of probation and the surveillance of persons serving sentence in community (Roger LeRoy Miller Larry, K. Gaine 2005:288). Incapacitation refers to the belief that dangerous criminal offenders should be locked away for a long period of time but special deterrence refers to the concept that the pains of their imprisonment should be so severe that on release convicted offenders will not dare to repeat their criminal act (Sanford H. Kadish, Stephen J. Schulhofer 1995:58). It makes the offender incapable of offending for a substantial period of time.

II.5. The practice of death penalty in Ethiopia

Ethiopia is among the countries where death penalty is included in its Criminal Code, and it has been practiced for quite a long period of time. It also has been accepted in the Ethiopian legal tradition without facing any challenges. Legal literatures in the Ethiopian situation are not abundantly available. As opposed to European and American states, one is not in a position to go much if he/she wants to explore the historical sources of capital punishment in Ethiopia. This is due to the known reason that judgments were not systematically recorded and even if we find scanty records they are not available in the modern libraries of higher education centers or in the internet. Generally speaking, it is very difficult to trace the historical genesis of capital punishment accurately in the Ethiopian context. But for the purpose of this paper I will try to see capital punishment history in Ethiopia as much as possible.

II.6. History of death penalty in Ethiopia

Before the adoption of Fetha Negest there is no written and organized laws in the country, the absence of any written materials make it difficult to study about capital punishment before that time. But, I do not believe that capital punishment originated after Fetha Negest.

Fetha Negest, the first integrated legal code, was translated from Arabic in the mid-fifteenth century. The Fetha Negest provides the death penalty for various criminal offenses and it was applied on different groups of peoples who violate the Law of Fetha Negest. Fetha Negest was very much influenced by the religious or nearer to the fact by the teaching of Christian ethics as propounded in the Old and New Testament. For these main reasons it seems that Fetha Negest provides death sentence for various violations of religious ethics. For example, Chapter XLVI section II of the Fetha Negest states that a prophet who preaches against the divine Lord must be slain. Again, in the same provision it provides death penalty for a person who gives sacrifice to what were termed as “strange gods”. One who blasphemes God was also punishable to death; even one who has honored “idols” was liable to capital punishment. Either man or woman who is found to be a magician or a wizard is subject to death sentence. They shall be stoned, since they are impious. Homicide is also a capital offense deserving death sentence on the offender. Chapter XLVII of Fetha Negest retained the nature of homicide as a capital crime deserving capital punishment. The mode of punishment suffered for committing homicide was carried out by killing the body and [thus] separating the soul [from the body] by the means of corporal punishment carried out by the temporal judge, so that the temporal law may be fulfilled. In the Fetha Negest, occasionally attempted murder was a capital offense punished by death. This is shown by the provision that “the servant who attempted to kill their master must be thrown into the fire”, and also servants who heard the cries of their master while he was being killed, or was certainly aware of what was happening to him, but didn’t render any help would be punished by death. In the Fetha Negest criminal age of majority for

homicide was set at the age of seven, which is lower than the present criminal age of majority (Abba Paulos Tzaudu 1968).

On the other hand, death sentence was introduced in 1930 penal code of Ethiopia in situations such as homicide, giving false evidence (if the taker of life is sentenced to death and put to death because of false evidence given against him, the man who caused his death by giving false evidence shall be sentenced to death. Crime committed against the Emperor and the Royal Family and the government. Criminals who start war in the country and cause it to be disturbed and ravages (The 1930 Penal Code of Ethiopia, articles 172,175,179,366,404,410,411).

Jean Graven, the drafter of 1957 penal code of Ethiopia, provides the reason why Ethiopia retained death penalty and its necessity for homicide and write as follows:

“In Ethiopian context it would be in particular have been an inconceivable mistake, and even an impossibility, to abolish the death penalty at the present time. It is not only necessary for social protection, but is based on the very deepest feeling of the Ethiopian people for justice and for atonement. The destruction of life, the highest achievement of the creator, can only be paid for by the sacrifice of the life of the guilty person. As in the Christian European system of the Middle Ages, death is always the necessary condition for the pardon and salvation of the sinner, and also for the expiation for the evil which he has committed, it is accepted and approved by all, and in the first place by the criminal who has deserved it, and is carried out in a dignified atmosphere quite different from that of our former executions with the ax or guillotine” (Fasil Nahom 1982:129).

Under the 1957 penal code of Ethiopia, many crimes were punished with death penalty like murder (Art.522), robbery (Art. 671), crimes against the emperor and others; even criminal attempts may cause the death sentence, for example, outrages against the Emperor of the Imperial Family (Art. 248), outrages against the dynasty (Art.249), outrages against the Constitution and constitutional authorities (Art.238) and uprising and civil war (Art. 240) (The 1957 Penal Code of Ethiopia). The 1957 penal code was amended by a special penal code in 1974 (proclamation no. 8/1974) by increasing the sanction of certain types of crime. A November 1974 decree introduced martial law, which set up a system of military tribunals empowered to impose the death penalty or long prison terms for a wide range of political offenses (Ethiopia Crime and Punishment). In July 1976, the government amended the penal code to institute the death penalty for "antirevolutionary activities" and economic crimes (Ethiopia Crime and Punishment).

II.7. Abolition movement in Ethiopia

As discussed earlier, the death penalty is not a recent practice in Ethiopia; rather it has been exercised for a very long period of time. However, nowadays there is an

international movement for the abolition of this punishment. However, in the country there is no organized public or private movement of abolishing capital punishment, but this does not mean that everyone in the country is accepting it. Ethiopia's record of execution level of death penalty, particularly since the coming into power in 1991 of the current regime, illustrates that capital punishment has been practically abolished (Kiya Tsegaye 2012). In the last 20 years more than a dozen death penalties have been ruled by the court throughout the country, but only three were implemented (Kiya Tsegaye 2012b). The new Criminal Code also tries to improve the method of execution of the death penalty which can also be viewed as one movement (Cornell Law School).

III. COMPATIBILITY AND NECESSITY OF DEATH PENALTY WITH THE PURPOSE OF CRIMINAL PUNISHMENT IN ETHIOPIA

Finally, I discuss the compatibility and the necessity of the death penalty with the purpose of criminal law in Ethiopia. The paper winds up with a conclusion as to whether or not the principle of capital punishment contradicts with the purpose of criminal justice.

III.1. Does death penalty deter a criminal?

Under this topic the researcher will assess whether the death penalty is more deterrent than others. If the death penalty is needed to deter future murderers that would be a strong reason in favor of using the death penalty, since otherwise we could be sacrificing the future victims of potential murderers whom we could have deterred. Abolitionists believe that the death penalty does not deter more than other penalties and different states have abolished capital punishment for different reasons, but they share common grounds of the inhuman, unnecessary and irreversible character of capital punishment, no matter how cruel the crime committed by the offender. As discussed earlier in this paper deterrence can be categorized into specific and general. Here, I will try to discuss whether capital punishment deters the crimes more than other penalties.

III.2. Special deterrence

The Federal Democratic Republic of Ethiopia (hereafter FDRE) criminal law aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime (FDRE Criminal Code, article 1). The FDRE Criminal Code incorporates capital punishment to prevent the wrong doers from committing further crime in the future. So this is the special deterrence nature of the Criminal Code because as we have discussed previously, special deterrence refers to the use of punishment for criminal activity intended to discourage a specific individual from re-offending. The objective of specific deterrence is to persuade the person who committed the crime from breaking the law in the future. The actual imposition of punishment creates fear in the offender that if he repeats his act, he will be punished again. However, if we punish

the offender by death, we are going to punish him for his act, because most people who commit murders either do not expect to be caught or do not carefully weigh the differences between a possible execution and life in prison before they act. Frequently, murders are committed in moments of passion or anger, or by criminals who are substance abusers and acted impulsively. So, we are going to kill the offender, but frightening, unpleasant, or fear are nothing for the offender who is going to die. Since once a person died has no chance to live again, frightening, unpleasant, or fear of the offender have nothing in order not to commit further crime. This contradicts with the objective of Ethiopian criminal law.

Modern criminal laws do not take retribution as their objective because capital punishment is the most severe and ineluctable punishment that is considered as a fitting to the crime committed. It indicates killing of a person who has killed another person. In our previous history the governments have used death penalty as a revenge for those who oppose the regime. For example, during the Emperor era, many people had been punished by death because they did not support the era and attempted to overthrow the throne. It was evident that the government used this opening and took revenge in the name of deterrence. Nowadays, this is an act of undemocratic and dictatorial government, that only wants to satisfy their interest, not the interest of the whole society (Sable Teweldebirhan 2012).

Execution of criminals completely eradicates one of the main purposes of FDRE criminal law i.e. rehabilitation; it means the purpose of imposing penalty on criminals is to provide the treatment for conditions in the offender's attitudes, personality, that may have led to the criminal behavior, so punishing a person by death is against the purpose of the criminal law because the purpose of the criminal law is ensuring public peace and order and its people and inhabitants for the public good (FDRE Criminal Code, article 1). The criminals are part of the society and they are human beings like others and most of the time crimes were committed in exceptional few moments in the offender's life under highly stressful circumstances. Therefore if we punish this criminal by death, we are directly contradicting with the purpose of the FDRE criminal law since the criminal law ends up creating happiness to one part of the society and pain to the other, rather it is generally for the whole societal happiness and protection. However, when we punish a criminal by death, we are imposing pain on the victim relatives and leaving the family of the offender without any assistance, so these all make capital punishment non-deterrent and I believe killing of someone never solves any problem and never profits the society as a whole but the society may be benefited from the rehabilitation of the offender.

III.3. General deterrence

The FDRE Criminal Code also has a general deterrence nature. This can be understood from article 1 which states "to make the offenders a lesson for others" (FDRE Criminal Code, article 1). As we have seen before in the previous chapter, general deterrence aims, by the threat of punishment, to prevent the general population who have not committed the crimes from doing so. This is based on the assumption that criminal

behavior can be prevented if people are afraid of penalties. Therefore, general deterrence is designed to send a message to members of the general public that if they engage in criminal conduct their actions will be met with punishment. In this way, others are deterred from committing crimes for fear of the consequences established by the criminal justice system. However, there are different cases that make capital punishment ineffective as a general deterrence because as previously stated, crimes punished with death are usually committed under conditions whereby rational calculations about the consequences for the victims and the criminals themselves are not considered:

“On the other hand, when a crime is planned, the criminal ordinarily concentrates on escaping detection, arrest and conviction, rather than on the severity of the punishment. The threat of even the severest punishment will not discourage those who expect to escape detection and arrest. The rationale behind the deterrence doctrine is not adding more severe punishments, but increasing the likelihood that perpetrators will be caught, arrested and convicted. This means that the focus of efforts aimed at preventing crime should be on improving the effectiveness of law enforcement agencies. Public confidence that crime will be promptly and professionally investigated and criminals brought to justice is fundamental to deterring crime. This means building up the trust between the community and the law enforcement agencies and developing confidence in the judicial system” (The Council of Europe and The Death Penalty Directorate General of Human Rights and Legal Affairs, Council of Europe 2010:19).

As we can understand from the above discussion persons contemplating the commission of grave crimes do not think in the possibility of detection. They, most times, are sure that they will escape from punishment when they commit the crimes. In other words, they get involved in such type of crime not because the punishment does not deter them but because they hold a high degree of prospect that they will remain undetected. Therefore, the more effective the way to deter persons from committing crimes is not putting severe punishment, but increasing the likelihood that the offenders will be caught arrested and convicted.

Generally, the main purpose of punishment is for the protection of the society, and the reformation of the wrongdoer. It purports to protect society by preventing the same criminals from repeating their crimes, and by acting as a deterrent to other prospective criminals. Capital punishment is a notorious failure in these respects. It does indeed remove the particular culprit from the possibility of repeating his crime; but this is of very small account in view of the fact that crime is seldom a career of repeated acts, but consists of single acts perpetrated by different individuals. The man whom we remove from the scene, therefore, is not the man who, if suffered to live, would have been likely to endanger our safety. Capital punishment sins most by depriving the culprit of his chances of reformation. The only way to destroy a criminal is by reforming the man who is a criminal. To destroy his bodily life is nothing but a stupid blunder. When the physical life of a criminal is cut

short by this summary and unnatural means, we do not bring to an end thereby the evil passions which prompted the crime.

There is a plausible argument that capital punishment is short handed in deterring prospective offenders or that its deterring effect is not of much relevance. Humanistic values, ethical points of view and human rights reasons weighed in favor death penalty. For our criminal justice the writer personally opts for more humane, but also more effective, criminal justice system, paved the way for considering appropriate alternative criminal sanctions to the death penalty.

III.4. Problems of executing death penalty

Innocent people may have been wrongfully convicted because of poor legal representation, mistaken identifications, the unreliable testimony of people who swap their testimony for lenient treatment, police and prosecutorial misconduct and other reasons. Poor representation may lead to death sentence because at the time of trial the offender may have been represented by an incapable attorney in that specific area. Usually, the quality of legal representation is important to win or lose a case, and those who are economically poor cannot afford to pay for a qualified attorney and will not get good legal advice. Even if the state assigned one for them, the assignee cannot fully protect them, because the payment is not satisfactory. Furthermore, police failures can also lead to catastrophic results, if they fail to investigate properly or if they use their power unlawfully. Most of the police officers in Ethiopia are not capable of investigating crimes because of their lack of professional training and lack of good income. Most of them are selfish and corrupt. This leads to the conviction of an innocent person. Sometimes the prosecutors, whether from negligence or corruption, are responsible for the error. But the cause of a wrongful conviction is not always corruption or negligence on the part of the authorities, or the good-faith error of eyewitnesses. Confusing circumstantial evidence often misleads the prosecution and the court. Whatever the reason could be, if an innocent person is executed, it is impossible to restore the life of that person. Therefore, if we are to allow the death penalty, innocent people inevitably will continue to be executed. Capital punishment by its nature is irrevocable. The possibility of wrong execution in itself is sufficient for the abolishment of the death penalty as it has an irreversible effect unlike other types of punishment which can be made good by commensurate compensation.

The purpose of FDRE Criminal Code is to serve the ensuring of a fair judicial system in the country. The existence of capital punishment potentially obstructs the promotion of a fair justice system when we see it in view of the standard of proof applicable in criminal justice system. The degree of proof required in the criminal justice system is beyond reasonable doubt. This standard is not equal with “certainty.” Hence, there is a possibility for an innocent person to be convicted wrongly, even though the doubt is insignificant. It does not warrant an absolute guarantee on the truth of the conviction. This has also become worse in countries having an undeveloped criminal justice system

and fact finding mechanisms. Professor Scheck provided statistics indicating that since the introduction of DNA testing in 1989, there were 250 post-conviction exonerations of factually innocent persons through DNA evidence, seventeen of those facing capital punishment (supra note 55:19). As we can understand from the above discussion, if there is such a high rate of conviction of innocents in the most developed country like USA, imagine how many innocent people could be convicted by death or any other long term rigorous imprisonment in Ethiopia. Based on the above premises the writer thinks that proof beyond reasonable doubt is not enough for proving the guilt of offence punishable by death. Proceeding towards the death penalty in the absence of conviction based upon “certainty” (beyond all possible doubt) is contrary to fair criminal justice system.

On the other hand, the FDRE Criminal Code provides that the death penalty cannot be executed unless it is confirmed by the head of the State. However neither the Constitution nor the Criminal Code provides the condition under which the president can confirm or refuse the judicial conviction. In other words, this gives unconditional discretion to the president. The president is also empowered to commute or give clemency. However, the grounds for giving or refusing such relieves by the president are not clear. Again the time limit under which the president can confirm or commute the sentence of death is not clearly determined in both the Criminal Code and the Constitution. Therefore, the confirmation or commutation of the president may take a long period of time. This long period lapsed before the execution or commutation can cause great embracement and mental torture on the part of the offender, so this contradicts with the requirement of humane and dignified treatment.

Under article 117(3) of the FDRE Criminal Code “The sentence of death shall not be carried out in public by hanging or by any other inhuman means. The penalty shall be executed by humane means within the precincts of the prison. The means of execution shall be determined by the executive body having authority over the Federal or Regional prison administration concerned” (FDRE Criminal Code article 117(3)). For me this provision is not clear and it is a very problematic one, because it talks about prohibition of hanging in public and any other inhuman means. But, it did not clearly express the mode of executing the death sentence. It gives huge discretion for the executive body, so only the executive body knows the means of execution. Therefore, it is difficult to deter prospective offenders and educate the people without observing and knowing the means of execution. This is because the death of the offender and place of execution may impose on the prospective offenders the threat of fear. Therefore, non-disclosing the means of executing capital punishment by itself put in question the deterring effect of death penalty and this is against article one of the FDER Criminal Code because the main purpose of the criminal law is ensuring public peace and order by punishing the potential offenders and give a lesson for other prospective offenders. Generally this all are the reason why I oppose capital punishment in Ethiopia criminal justice.

III.5. Does the practical implementation of death penalty lead to arbitrariness and discrimination?

Capital punishment is envisaged as one of the methods of punishment to be imposed on criminals. The Ethiopian Constitution saves room for application of the death penalty: “No person may be deprived of his life except as a punishment for a serious criminal offence determined by law” (FDRE Constitution article 15). Following this constitutional provision, the Criminal Code envisages death penalty as a punishment (articles 117-120) but “only in cases of grave crimes and on exceptionally dangerous criminals.” For example crimes against international law such as genocide and war crimes or crimes against an individual such as aggravated homicide might entail death penalty (article 539 of the code) under the Code. And also Criminal Code mandates the death penalty for aggravated robbery (article 671/2/), treason (article 238/2/, 240/2/, 241,246, 247,248, 251, 258), espionage (article 252/2/), and military offenses (article 270) (FDRE Criminal Code).

Ethiopia is one of the countries that use the death penalty as one form of punishment to deter a criminal from committing further crime as provided under article 117-120 and article 1 of the FDRE Criminal Code. But when we come to the implementation of this article, it is subject to question because there is almost no execution of a criminal by death since the coming into power of the current regime, which impliedly illustrates that capital punishment is practically abolished in the country. As was evidently seen in the past two decades, having a death penalty embedded in the Constitution was not a substitute to its implementation, fortunately. So as I have said earlier the practical implementation of the death penalty is abolished, therefore what is the purpose of putting death penalty in our Criminal Code? This is still a very unwise decision of the government of the country because it still opens the door for confusion of many people. It raises the question, why has the Ethiopian government decided to retain the death penalty in its 2004 revised Criminal Code? The provisions that talk about death penalty should be substituted by other forms of punishments like life imprisonment and other rigorous sentence which are totally compatible with the purpose of our Criminal Code because as has been already discussed many times, the main purpose of our criminal law is prevention of crime by punishing the criminal in order to deter them from committing further crime in the future and to make them a lesson from others. So for the purpose of fulfilling this elements life imprisonment and other rigorous imprisonment is more effective than death penalty because, unlike death penalty, they are not inhuman and they never violate the personal rights of the prisoners. Furthermore, other than the fact that there is lack of practical implementation of death penalty, the writer supports abolishing death penalty because it is an absolute human right violation as it unfairly take the soul of a person and also it is against the morality of all human beings around the world.

Here, there is no clear evidence in this area, “but according to Reuters and Amnesty international, the last executions in Ethiopia were carried out in 2007 and 1998 respectively. Both executed prisoners had been convicted of assassinating the high ranking

government officials and of military officials. It is entirely possible that the political ramification of these offenses were decisive in the authorities decision to enforce the death sentence, meanwhile, however, Ethiopian courts continue to hand down death sentences for offences which fall short of exceptional circumstances. However, based on the countries recent record, it is likely that the majority of these death sentences will not be carried out, for countries growing number of death row inmates, this may mean a *de facto* sentence indefinite imprisonment year after year, under life threatening conditions of detention” (Ethiopia Carries Out Rare Execution 2007). One can understand from this the practical implementation of the death penalty is selective or discriminatory. As a result, if there is no equality in the implementation, it leads to arbitrariness and discrimination. A person who kills an ordinary citizen of the country is mostly not convicted by death. Even if he or she is convicted by death it is not implemented or executed according to the current practice of the county implementation of the death penalty. Whereas, if one person kills a high ranking government official, he or she will most probably be lawfully executed immediately, as has been witnessed before. Therefore this allows the government to use death penalty as it wishes, and it is not clear that whether the killing had a political or personal motive, one subject of discourse in the sincerity of the Ethiopian criminal justice system should therefore be whether or not the government is using the provision as an effigy to suppress presumed political dissent. Therefore, this is against the very purpose of the Constitution which states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, race, sex, language, religion, political or other opinion, property, birth or other status” (FDRE Constitution article 25). If we continue our implementation of death penalty like the previous times, it will be totally against the constitutional right of the individuals, because we are clearly violating the principle of equality of the Constitution. As we all know, the principle of equality is the equal treatment of all the citizens of the country before the law, whether they are a government official or not. So in our case, when an ordinary citizen is convicted for death because of the killing of a government official it is against the equality principle and against article one of the FDRE Criminal Code because the purpose of punishment is to ensure order, peace, and security of the state, and its people and inhabitants for the public good (FDRE Constitution article 25). Without favoring for the government officials and other selected individual, the law must be equally applicable to all. Therefore, the practical implementation of death penalty in our country leads to arbitrariness and discrimination and it leads the government to use death penalty to revenge only the enemies of the regime. Therefore, to avoid this discrimination and arbitrariness we should use other means of punishment to create equal treatment of prisoners, by avoiding death penalty and by substituting it with life imprisonment and other serious rigorous imprisonment. Because, as we have said in the previous part, life imprisonment is more deterrent than the death penalty and it does not contradict with our criminal law purpose.

IV. CONCLUSION

Punishment is an act which is taken by an authority as an imposition of undesirable or unpleasant outcome on the group or individual, in response and deterrent to a particular action that is deemed to be unacceptable, threatening some norm and breaking the rule of law by which the social group is governed. Or it is the reaction of the society against the person who breaches the social rule or order. Different scholars have tried to justify punishment differently, but almost all of them argued that the purpose of imposition of punishment is to protect the interest of the society or to ensure public peace and order by punishing the wrong doer and deterring him from committing future crime and giving a lesson for others by punishing the criminal.

Ethiopia is an example of a country that has retained death penalty in the world. Its Constitution and Criminal Code allow the death penalty for serious offenses. There are various provisions under the Ethiopian Criminal Code, which entail the death penalty as their punishment.

However, death penalty directly contradicts with the purpose of the criminal law because capital punishment favors revenge rather than deterrence, prevents the chance of offender to rehabilitate, ignores the fact that miscarriage of justice may occur, violates the rights of the offenders and creates terrifying pain on the family of the offender and the community.

The death penalty may be a cause for the execution of innocent people. People may have been wrongfully convicted because of poor legal representation, mistaken identifications, the unreliable testimony of people who swap their testimony for lenient treatment, police and prosecutorial misconduct and other reasons. Capital punishment by its nature is irrevocable.

Even though the death penalty is still retained in Ethiopia, when we come to the practical implementation it is questionable because there is almost no actual implementation of the death penalty after the coming in to power of the current regime. Therefore, if there is no actual implementation of the death penalty, there is no clear reason of including it in the Code. Even the only two executed prisoners had been convicted of assassinating the high ranking government officials and of military officials; this leads to arbitrariness and discrimination and opens the door for government to use the death penalty for revenging the enemies of the government.

Generally death penalty is not compatible with the purpose of criminal law and it is not necessary for the creation of a prudent citizen within the state. Rather, it has a brutal effect within some group of the society or between the societies.

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