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DEBREMARK

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CHAPTER ONE

1. INTRODUCTION

1.1 BACKGROUND OF THE STUDY

One of right for all human beings is that, they have given the right to enjoy respect for their liberty and security. Therefore, without protection given to these rights, it is unbelievable to safeguard other individual rights since they are vulnerable and often damaged.[1]

Taking that human beings are respected one, from all other existing creatures, any person has to be treated as a human regardless of the reason that a given person is a criminal. Due to the reason that criminality cannot deny humanity, except some of his rights after the decisions of courts.[2]

Even for the arrest of human being following his offence, strict procedures are taken on legal basis in order to avoid jeopardy or arbitrary arrest of person. Therefore in order to arrest person in lawful manner, the first requirement is that, public prosecutor representing state interest in one hand and protecting suspects right on the other hand, to make the balance of interests must bring the suspect before a judge promptly in order to safeguard rights in the laws. Moreover, the judge must actively review the arrest and the time in which the defendant is brought before a court, since he has the power to make free of the suspect if his arrest is disproved and becomes arbitrary.[3]

Having adopted human rights like new constitutional and statutory protections for persons, the human rights condition in our country is changed more since a decade ago. Therefore, federal governments, legal frame work declarations firmly support that rights and bodily conditions of suspects to be brought to court within a reasonable time in order to provide fair and quick public trial. But the success cannot be achieved without much effort.[4]

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[1]Professional training series no 9, Human Rights In The Administration of Justice: A manual on Human Rights for Judges, Prosecutors and Lawyers, UNITED NATIONS, New York and Geneva, 2003, Available online at http://www.ohchr.org/training9chapter5en accessed on 18 November 2017,p.161

[2] What Are the Rights of An Arrested Person, Available online at http://www.blog.impleaders.in/General accessed on 18 November 2017.

[3]Mr. Andrew Hass, International Human Rights Law and Fair Criminal Trial, Alaska state, U.S.A, Available online at http://www.chilotfiles.wordpress.com accessed on 18 November 2017.

[4] Pretrial Rights International in Ethiopia, Available online at http://www.pretrialrights.org/ethiopia/ accessed on 18 November 2017.

Since, suspects have constitutional rights police brings them before a court as soon as possible within 48 hours, after arrest. If there is violation and suspect does not brought to court within 48 hours, it is regarded as constitutional right violation, which should be challenged by detainees.[5]

Some international instruments and national laws are gave rights to all human beings in general and to the arrestees in particular. Article 9(2) of the ICCPR anyone who is arrested shall be informed, at the time of arrest, of the reason of his arrest and shall be promptly informed of any charges against him. Article 9(3) of this instrument provides anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subjected to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.[6] Article 9(4) the ICCPR provides anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Article 10(1) of this instrument stipulates all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity and with respect for the inherent dignity of the human person. Articles 5(2) to 5(4) of the European convention of human rights provide everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be promptly brought before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take

[5] What Are My Rights, Available online at http://www.ucl.ac.uk/unit-publication accessed on 18 November 2017

[6] Article 9 of International Covenant on Civil and Political Rights (ICCPR)

proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Article 19(3) of the FDRE constitution provides right for the arrested person to be brought promptly to the court. The rational for this is to ensure that no one should be arbitrary deprived of his liberty that any arrest or detention will be kept as short as possible.[7] Unlike ICCPR which does not specify any duration or promptness, the FDRE constitution provides 48 hours under article 19(3). The duration is set in the criminal procedure code of Ethiopia. In this code after arrest, the accused shall be brought before the court within 48 hours of his arrest or as soon as there after as a local circumstance and communication permit. The time taken to the journey to the court shall not be included.[8]Admitting the substantial resemblance in the procedure between the criminal procedure and FDRE constitution, the questions deserve notice.

The questions whether the second choice to 48 hours in the criminal procedure code is computable with the constitution, apart from the time taken for the journey which recognize in the constitution, other circumstances might per long the time before appearance before the court and may defeat the promptness requirement of the constitution. It reads as any arrested or detained on the criminal charge the judge or other official authorized by the law to exercise judicial power and shall be entitled to trial within responsible time or release.[9] Any deprivation of liberty is only permissible if it is carried out in accordance with a procedure established by domestic laws and if it is in conformity with the minimum guarantees laid down in respective provisions: a person held in custody shall be brought promptly, that is within a few days, before the judge who must either release them or authorize pretrial detention. They are entitled to trial within a reasonable time and release in exchange for bail or some other hand pretrial detention shall not be as possible depending on the complexity of the case.[10]

However, the above international instruments and national laws are adopted to promote the dignity of all human beings. Including persons arrested and detained. So, the authorized organizations, police and any

[7] Ibid
[8] Federal Negarit Gazeta of Federal Democratic Republic of Ethiopia Constitution Proclamation number 1/1995
[9] Article 29(3) of the criminal procedure code of the Empire of Ethiopia 1961, proclamation number 1/1961.
[10] Ibid

individuals should protect and respect the arrestee from the arbitrary detention. Those persons have a right to liberty, security, to get information about the reason of their arrest and brought before a court within a specified time or to be release from the arrest the arrest is unlawful. The arrestees have a right to challenge the arbitrary deprivation of their liberty and the lawfulness of the arrest. Therefore, the right to be brought before the court within 48 hours is one of the fundamental human rights recognized in many international human right instruments, in the FDRE constitution, the criminal procedure code of Ethiopia and the Amhara national regional state of revised constitution.

1.2 Statement of the problem

Arrested person are entitled to enjoy the right provided under the FDRE constitution and criminal procedure code. They can make complaints to court about the violation of their right and ant unlawful arrest of them. The United Nations Human Right committee made that any arrested shall enjoy the right that have been provided under the UDHR, ICCPR and other International convention one of these rights is arrestee's right to be brought before the court within the reasonable time of the arrest, as it set out under articles of the UDHR convention,[11]and under article 9(3) of ICCPR for protection of the arrestee.[12] This right of arrestee to be brought before the court within 48 hours from the time of arrest is also set out under article 19(3) of FDRE constitution,[13] under article 29(1) of Ethiopian criminal procedure code,[14] as per article 19(3) of the state of Amhara regional constitution.[15]

Even though this right of arrestee is provided under the domestic laws of Ethiopia like FDRE constitution, Ethiopian criminal procedure code, Amhara regional state constitution, and under international covenants, then it is not properly enjoyed by arrestee of Debre Markos town particularly. Even if the court supposed to decide without delay or speedily on the lawfulness of the detention, in most of the cases it takes a long procedure and they are not speedy as supposed to be so that the individuals are refraining from applying for habeas corpus. Also in addition to the fear of not getting speedy decisions there is a knowledge gap as to the right to habeas corpus from the individuals. Most of the peoples do not know about their right to

[11]United Nations Declaration on Human Rights (UDHR) of 1948
[12] International Covenant on Civil and Political Rights (ICCPR)
[13] The Federal Negarit Gazeta of Federal Democratic Republic of Ethiopia constitution proclamation number 1/1995
[14] The criminal Procedure Code of Empire of Ethiopia of 1961, proclamation number 1/1961
[15] Amhara National Regional State of Revised Constitution, proclamation number 59/2001

habeas corpus so that they do not challenge the lawfulness of their detention before court. Thus, this is the problem that initiates the writer to do the study over the selected title. The violation of the right arrestee has to be brought to court according to domestic laws of Ethiopia and International laws that are adopted by Ethiopia state, will promote injustice and unfair within the society of the specified area of Debre Markos town. Injustice may result grievance among the people and the government of the specified area. The grievance may turn out to instability of peace and insecurity of the people of Debre Markos town. Thus, to avoid this grievance and to promote stability and peace of the people of specified area, the researcher is initiated to study the rights of arrestee of the selected area to give my contribution by finding the solution for the problems that they do not challenge the lawfulness of their detention before court. Thus, this is the problem that initiates the writer to do the study over the selected title. The violation of the right arrestee has to be brought to court according to domestic laws of Ethiopia and International laws that are adopted by Ethiopia state, will promote injustice and unfair within the society of the specified area of Debre Markos town. Injustice may result grievance among the people and the government of the specified area. The grievance may turn out to instability of peace and insecurity of the people of Debre Markos town. Thus, to avoid this grievance and to promote stability and peace of the people of specified area, the researcher is initiated to study the rights of arrestee of the selected area to give my contribution by finding the solution for the problems that will studied.

1.3 The Research questions

A. What is the actual practice on the right of arrested persons of the Debre Markos town?
B. What is the root cause for the violation of the right of arrested persons in the Debre Markos town?
C. Whose to present the arrestee before the court at the specified time?

1.4 Objective of the study

1.4.1 General Objectives

The general objective of the study will be to examine the enforcement of the right of arrested persons of Debre Markos town to be brought before the court within 48 hours from the time the arrest by assessing the actual practice of the enforcement of the right.

1.4.2 Specific Objectives

The paper has the following specific objectives

A. It will enable to know and understand the significance of the protection of the arrested person.
B. It will assess the problems facing arrested persons.
C. It also assuming to help for evaluation analyzing and implementation of a right of arrestee that have been providing by law.
D. It will help to identify the problem which challenges the protection of the arrestee.

1.5 Significance of the study

It will hope that output of the study will help to show the overall condition of right of arrested person to the concerned organs in Debre Markos town. It also helps the authorized organs whose functions are linked with the affairs to protect the right of arrested persons by providing relevant practical information. It will also help or serve as a guide for national and regional administrative bodies which engage in the activities of conducting research in the affairs arrested person.

1.6 Scope of the research

Debre Markos town is selected as the study area in the case that enough studies have been done on the issue concerning the problem facing the arrested person. Therefore, the researcher will limit the finding on the protection right of arrested persons to be brought before the court within 48 hour from the time of arrest the law and practice in Debre Markos town.

1.7 Limitation of the researcher

Regard to the limitation in preparing paper of the study, the problem that will be related to the time, budget and materials that support me, as well as there is low access internet information may face me. The researcher may lack well organized, adequate and relevant information sources.

1.8 Methodology of the study

The database for the study will be both primary and secondary. The primary data will be collected from arrested persons themselves, the administrative official through interview and the secondary data will be collected from book and literatures.

1.8.1 Tools of data collection

In order to collect data the researcher will assume to undertake separate interview both for the arrestee and concerned officials who have relation the selected title for the study.

1.8.2 Sample size

My target is all arrested individuals in Debre Markos town custody administration, since it is impossible to make general investigation in all arrestee, the researcher will adopt survey and selective sampling methods. Due to this the researcher will, randomly select twenty arrestees and two officials for interview.

1.8.3 Methods of data analysis

After collecting data from the specified filed the interview will deeply investigated for removal of errors or omission. They reflect and theoretical analysis will be used to supplement and analyze the data which will get from the interview and document.

1.9 Organization of the study

The paper of study will have four chapters. The first chapter will deal about the background of the study. The second chapter will deal with review related literature. The third chapter will also state on issue of data analysis implementation and presentation. Finally, the fourth chapter will give explanation about over all research finding through conclusion and recommendation.

CHAPTER TWO

2. Review of Related Literature

2.1 Introduction

This chapter assess about the concept of arrest as well as their right in relation with different international human right instruments and national lows. The analysis of persons arrested rights in the constitution of FDRE is also assessed. Persons arrested here their own right starting the time arrest under the police station in which they are kept to live their inherent rights should be protected and respected by the police and other concerned administrative bodies. This right of arrestee is inherent that endowed to the individual by international, regional human right instruments and national instruments. There are a number of grounds for the detention of arrestee, for example being suspected for commission crime. Those individual who form the crimes will be except to be accused and arrested.[16]

2.2 The Police, Its Powers and Functions

2.2.1 Historical Development

Historically the first police were created in Athens by Peisistratus to maintain order, after a successful coup in 546 B.C.E. these police forces consisted of unpaid slaves that served as guards in the city and on the area roads, they arrest offenders and brought them before magistrates. In Sparta, also a different type of police system was created, whose members consisted of young men mandated to coercively control the slave population.[17]

English word police drives from the Greek words polls (the city) and politeria (a comprehensive term describing the safety and welfare of the inhabitants. From the term police Anglo-American law developed the concept of police power, defined as the power to promote the health, safety, moral, and general welfare of the population.[18]

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[16] Wondossen Demmissie Kassa. (2o12) Ethiopian Criminal Procedure, Addis Ababa university school of law, p.63

[17] History of Police. (2005) Encyclopedia of Law Enforcement, International, Vol.3, p. 1090.

[18] Daniel D and Ntanda Nsereko. (1993) the police, Human Rights and the Constitution: An African Perspective, Human Rights Quarterly, Vol.15, P. 466

In contrast, when the Romans adopted the term polls and Latinized it to politia they shifted the emphasis from the community-centered safety to impartial authority. The police came to represent state authority. It is said that the police in the days of Emperor Augustus rather than protect the citizens, oppressed them. There primary role was to ensure that the citizens obeyed imperial commands, paid their tax, and kept their place in society. The Roman politia continues to have considerable influence over police practices in many countries today.[19]

There was also the practice in some traditional African societies. For example, among the Baganda of Uganda when there was trouble in village the affected people or their neighbors raised an alarm and the chief sounded the ggwangarnujje drum. All able-bodied males were expected to respond to the emergency.[20]

Even though it is difficult to say a lot about how does the Ethiopian traditional peace keeping system functions and the mode of its operation due to absence of documented evidence and the existence of different societal cultures which needs further research, it was deemed to exist a coercive authority which functions as police in a mode which differs from the present concept of police in different societies since time memorial. In the near past Indigenous police force has existed in Ethiopia. The “Netch Lebash” (thief catchers in white) is non-uniformed rural police irregulars whose service obligations are tied to the feudal land tenure.[21] After it had been functioning under different names, structures and functions starting from the reign of Menilik II, it is in 1942 E.C that the police was established as a distinct national institution with its powers and duties stipulated under proclamation No. 6/42. According to this proclamation the functions of the police are provided as the force shall be employed for the prevention of crime, the maintenance of peace and order, and the apprehension of offenders, the safety of persons and property and the control of traffic.[22]

Subsequently it was in the second half of the 1940s that the country saw the elements of modern policing in Ethiopia police history. This development is manifested by the fact that the police underwent different training inside and outside of Ethiopia. Considerable efforts were also made

[19] Ibid
[20] Ibid
[21] Staneley Z. Fisher. (1971) Traditional Criminal Procedure In Ethiopia, The American Journal of Comparative Law, Vol. 19 No.4, p. 716
[22] Ethiopia Police Proclamation No. 6/42

to equip the institution with the necessary materials and members of the police were also encouraged their level of education.[23]

Therefore, police officer is a police man or police women, one who works for the police force. They have the responsibility of keeping the public peace. This is done by patrolling their beat and investigating possible crimes. Public officer are the one who often respond to calls for help when you deal 911 by coming out to the location. Most police are very helpful and friendly, unless of course you lead them on a high speed car chase or something to that effect. Police officer often put their life on the line to protect people but do not often get the than they deserve.[24] Keep in mind; cops are the ones who take those drank drivers of the streets, so your happy little self can make it home safely tonight. In which a cop would be needed then they will be thankful. Until that time, they will continue to be ignorant.[25] Most are corrupt and perverted not good at catching real criminals but instead go after petty weed-smokers. When a police officer drugs in the car you do even if you don't …… no matter how much you tell him don't they will never believe you.[26] A person whose job is to enforce laws, investigate crimes and make arrests: a member of police.[27] So when we hear the word police I simply understand that it is a governmental organ that is in debated in the activities of ensuring the peace and security of the society, prevention of crime and investigation of committed crimes.[28]

2.3 Functions (powers) of Police

2.3.1 Introduction

The police, as the main actor of the criminal justice system of every country have vested with many powers for the better accomplishment of its responsibilities. There is a difference view of the police function and powers from time to time. In the previous decades the police are presumed to be a mere law enforcer agent only to execute the decision given by the courts or

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[23] Moges, B. (1970) " Gizena Police" Ethiopia (Amharic Version) Artistic Printing Press, Addis Ababa, p.217
[24] Urban Dictionary. Police Officer, Available at https://www.urbandictionary.com/define.php/term/policeofficer, last accessed date on November 18, 2017
[25] Ibid
[26] Ibid
[27] Definition of police officer by marriam Webster, Available at https://www.marriem_webster.com/dictionary/policeofficers, last accessed date on November 18, 2017
[28] Abiyou Girma Tamrat, the Police and Human Rights In Ethiopia, Available at www.abyssinialaw.com/blog_posts/item/1475_thepolice_andhumanrightsinethiopia last accessed date November 18, 2017

any other authoritative body. But already when the police organizations with which we are now familiar came into being in the nineteenth century, the emphasis was on crime prevention rather than mere law enforcement: crime represented a failure in policing rather than just the occasion for it.[29] The power given to the police in different countries also differ due to different reasons, such as the difference in legal system the country follows, historical, cultural and sociological difference etc. for the sake of clarity and to deeply analyze its inherent function and power the writers tries to put some of the noted powers of the police in the following way;

2.3.2 Maintain Law and Order

The police are one of the main institutions who are in charge of maintaining law and order in the society as a whole. This is the broad function that puts the authority in a position to respond in favor of, or either to many situations which may affect the law and order in given society either positively or the reverse. The black's law dictionary defined police as the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime.[30] This definition highly gives emphasis as to the police function before the commission of crime and for the achievement of this purpose they can take different measures starting from creating societal awareness to use of force. In doing this the police may take proportional measures including use of force to the extent that a given situation requires. This position has been championed by scholar who suggests that the role of police is to address all sorts of human problems when and insofar as the problems' solutions may require the use of force at the time of their occurrence.[31]

Maintaining law and order may be also effectively achieved by the police when they are acting as social peacekeepers by doing things that shows their sympathy to the people rather than frequent use of coercive power and to get things done. Enhancing the involvement of the people in the criminal justice system is another way the police can use for a better accomplishment of securing law and order in a given society. According to the Federal Police Commission is to maintain peace and security of the

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[29] John Kleinig. (2008) Ethics and Criminal Justice: An Introduction, Cambridge University Press, p.51

[30] Ed. Bryan A. Garner. (1999) Black's Law Dictionary, Seventh Edition

[31] Egon Bittner. (1985) "The Capacity to Use Force as the core of the Police Role," in Moral Issues in Police Work, ed. Fredrick A. Elliston and Michael Feldberg (Totowa, NJ: Row man and Allan held, p.21 As cited in supra note 10, p.56

public by complying with and enforcing the constitution and other laws of the country and preventing crime through participation of the people.[32]

2.3.3 Investigation

Criminal investigation is, a police activity directed toward the identification and apprehension of alleged criminals and the accumulation, preservation and presentation of evidence regarding their alleged crimes. It is a systematic search for the truth with the primary purpose of finding a positive solution to the crime with the help of objective and subjective clues.

The operation of criminal procedures begins with the reception of information about the commission of a crime by the police through different channels. These are complaint, accusation and the occurrence of flagrant offences. They serve as condition precedents to set criminal justice in motion. Once the criminal justice is triggered, it is often followed by investigation to substantiate the case with evidence to prove guilt. Investigation is the main power of the police saving the participation of other organs of the government esp. the public prosecutor. Essentially criminal investigation involves gathering information assigning it some value, sorting it and finally utilizing it to develop facts. Investigation may be made before or after arresting the suspect and the police is the power to hear witnesses and gather other real evidences like exhibit, finger print, blood test, etc. The gathering of evidence sometimes requires search and seizure. The information source could be either from the suspect or out of the suspect.

The federal police establishment proclamation of Ethiopia expressly mention the power of investigation of crimes as the main powers and functions of the commission, though its jurisdiction is limited to matters that full under the federal jurisdiction. The FDRE draft criminal procedure code expressly authorizes the police in addition to others…to investigate crime and to organize evidence…by organizing and leading a crime investigation team.

2.3.4 Arrest and Interrogation

An arrest is using legal authority to deprive a person of his/her freedom of movement. An arrest is a seizure of forcible restraints; an exercise power to deprive a person from his\her liberty; the talking or keeping of a person in the custody by legal authority especially in response to a criminal charge an arrest may occur touching or putting hands on arrested by an act that

[32] Article 6 of Federal Police Commission Establishment Proclamation No. 313/2003

indicates an intention to take the arrestee in to custody and that subjects the arrestee to the actual control and will of the person making the arrest; or by the consent of the person to be arrested.

The definition of arrest under Ethiopian law is a restriction over the liberty of a person who is alleged to have committed a crime by a person who has the power to effect such restrictions (often by the police) for the purpose of investigation, ensuring his presence before the court or to prevent further crime either by the person himself or his pursuers. In the Ethiopian case, there are three institutions in which the police can make arrests. These are when there is authorization by law, authorization by a court of law and when there is authorization by the council of representatives.

Interrogation is the more formal questioning by the police of a suspect or of a reluctant or hostile witness, or of any one who is unwilling to discuss freely any information he or she possesses. The interrogator is to probe and draw out reluctantly disclosed information by asking precise, incisive questions by investigators, in order to find the truth by using eight golden questions viz. when, why, where, which, who, whom and how the case happened. Thus, interrogation is a means to obtain information from suspects through conversation with investigators about the alleged crime they are suspected of.

2.3.4 Search and Seizure

Search and seizure is also the main power of the investigative police during the investigation process. It is conducting searches for items that are considered to be used as evidence during the trial. Searches can be conducted on the arrested person or on the premises of the suspects. The premises can be a residence or business premises. The police can conduct search with or without a warrant. Though the police are expected to have search warrant issued by the court, search without a warrant is allowed as an exception to avoid any delay that may result in obstruction of justice, when there is flagrant offence, when there is reasonable cause for suspecting that items which could be used as material evidence in respect of an offence may be destroyed and when the offence of which the person is expected of is punishable with more than three years imprisonment. When we see these and other reasons we can say that the police have a wide range of discretionary power to search with or without warrant.

Seizure is another power of the police to arrest of a suspect in order to conduct an investigation to bring him before court or to prevent further offences being committed by him and the seizing of items that may be considered as evidence during the trial. Seizure can be conducted on the suspects and some objects which have a relationship to the alleged crime. Like the case of arrest seizure can be made by the police with or without warrant. In flagrant offences where the offender is followed in hot pursuit and he or she enters premises or disposes of articles which may be relevant as evidence in respect of an offence is concealed or lodged in any place in the premises, the police can seize the suspect, together with the object that he stole, without court warrant.

2.3 International fundamental human rights instruments

The united nation declaration of human rights stipulates the rights of arrested person, as per article nine as no one shall be subjected to arbitrary arrest, detention or exile. In the same sense of expression the African charter on human and people's right under article six states that every individual shall have the right to liberty and security of his freedom except for reasonable and previously laid down by law. In the particular, no one may be arrested and detained. Every individual shall have the right to be trained within time by an impartial court or tribunal. The international covenant on civil and political right is also specifics salary to the instruments mentioned above. It says about the rights of arrest anyone arrested or detained on criminal charge shall be both properly before judge or other officer authority by the law to exercise judiciary power and shall be entitled to trail within responsible time or release.

2.4 NATONAL INSTRUMENTS

The fundamental rights and freedoms and provided under article 13(2) of FEDE constitution as the whole and rights of arrestee are also incorporated expressly national laws of our country Ethiopia. The FDRE constitution states the right of arrested person has"…. Persons arrested have the right to be brought before the court within 48 hours of their arrested him. In addition the Ethiopian criminal procedure code stated that "where the suspected has been arrested by the police or other private person and handed over to the police, the police shall bring him before the nearest court within 48 hours from the time of his/her arrest or soon then after as a local circumstance and communications permit". The Amhara National Regional state of revised constitution also states the right of arrestee in the same as to the FDRE constitution. It states this right as "Any person put under arrest has the right to be brought before a court within 48 hours of his arrest."

2.5 Purposes of Arrest

Arresting the suspect in the time which the crime committed has few functions. First, to protect the society from effect of their interest; to stability peace and security among the families of the victim with that of the families of suspected person and himself as a whole in the areas of society at which the crimes has been committed. Arresting the suspected person has the benefit for the suspect himself by protecting him from attack by victim and his/her family. Arresting the suspected person prevented from escaping in order to relieve himself from liability that is going to impose over him by the low due to the wrong he/she might have done after insured through the admissible evidence.

Where an individual is reasonably suspected to have been involved in the commission of crime, his/her arrest has often best because to bring the arrestee before court or otherwise secure the administration of the low. An arrest service the function of notifying the community that an individual has been accused of crime and may also admonish and dieter arrested individual for committing the crime. The united declaration of human right, the international convention of culture and political right, African character of human and people's right and the FDRE constitutional laid the substantive and procedural requirements on the restriction of suspected person liberty.

A jurisdictions require certain degree of suspects or believe on the part of arresting officers which a person to be arrested who commit a crimes in order to restrict his liberty for investigation. This is intended to balance the two competing needs safeguarding citizens from rash and reasonable interference within their liberty and giving fair leeway for enforcing the low in community's protection. It shall not be the general rule that person waiting trial shall be detained in custody, release may be suspected to guarantee and to appear at trial in any other state of the judicial proceeding and should occasion arise for execution of the judgment.

2.6 Problems associated with the rights of arrestee

As the police is an institution that is responsible to seize crime suspects it will face challenges including bodily injury or loss of life of officers. Even though the crime that is committed by the suspect is in very cruel and serious, the suspect uses abusive words that often the police officer in charge, police officers are not around to use excusive power or take un necessary measures in the response. The officers in this respect should follow the criterion that are listed under Article 56 of the Ethiopian criminal

procedure code on now to arrest the suspect from identifying up to using proportional forces. There are the rights that police should respect in the process of arresting suspect and after arrest. This include conducting on necessary legal procedure to size and search suspects and their private property and right of privacy, the right to brought before the court within 48 hours of arrest, the right to protected from any human treatment, the right to remain silent, presumption of innocent and other related right that are guaranteed under article 18, 19, 20 and 21 of FDRE constitution. Unfortunately, as the history experience of police as well as the understanding of our society in respecting human rights as a general and respecting right of arrestee in particular is not good.

CHAPTER THREE

3. INTRODUCTION

3.1 QUESTIONS OF INTERVIEW FOR THE ARRESTEES OF DEBREMARKOSTOWN

- Do you tell me your name, age, education status and your career?
- When you are arrested?
- Are you brought before the court?
- If your answer is yes at what time?

3.2. Responses of the interviewee (arrestees)

1. AtoZewduAlemayehu, He responded that by saying “he told his age continued, I learned up to grade nine only, and I am labor worker, I was arrested here before three days of this day, but I have not brought before the court until this day.
2. MekonnenAderu, he responded that by saying “he told his age continued, I learned up to grade five only, and I am shoe shine, I was arrested here before five days of this day, but I have not brought before the court until this day.
3. BelaynehShiferaw, he responded that by saying “he told his age and continued, I learned up to grade ten only, and I am taxi driver, I was arrested here before four days of this day, but I have not brought before the court still this day.
4. AtoAssefaDeboch, he responded that “he told his age and continued, I am not learned at all, and I am a farmer, I was arrested before four days of this day, but I have not brought before the court still this day.
5. AtoBereketGetchew, he said that “he told his age continued, I learned only up to grade eight and I am working personally work of labor, I was arrested here before three day of this day and then I brought before the court yesterday.
6. FikrZelalem, Fikr responded that “he told his age and continued, I learned up to grade six, and I am student, I was arrested here before seven days, but I have not brought before the court until this day.
7. YasabAschenaki, she told me that, her age and continued, and I learned up to grade nine, and I am labor worker, I was arrested here before four days of this day, but I have not brought before the court until this day.
8. WerknehAndualem, Werkneh told me that, he told his age and continued, I am learned up to grade five and I have not occupation, I was arrested here before four days of this day, but I have not brought before the court until this day.
9. SileshiMulusew, he responded that, he told his age and continued, I learned up to grade four only, and I am a farmer. I was arrested before five days of this day, but I have not brought before the court until this day.
10. DestaMinywaz, he responded that by saying “he told his age and continued, I learned up to grade ten, I am taxi driver. I was arrested here before four days, but I have not brought before the court still today.
11. AsirAlekaSemenehSewareg, he said that “I learned up to grade eight and I have not work now, I was arrested here before five days of this day but I have not brought before the courts still today.

12. Solomon Abe, responded that “he told his age and continued, I learned up to grade seven only, and I am labour worker, I was arrested here before four days of this day, but I have not brought before the court until this day.
13. ZelalemAsenake, he said that “he told his age and continued, I learned up to grade three only, I am labour worker, I was arrested here before two days of this day, and then I brought before the court yesterday.
14. YonasMelkamu, Yonas responded that “he told his age and continued, I learned up to grade ten, and I have no occupation, I was arrested here before four days of this day, but I have not brought before the court until this day.
15. AbejeSimachew, he told me his age and continued, I learned up to grade nine, I have no occupation I was arrested here before five days of this day, but I have not brought before the court until this day.
16. FirewBelete, he responded that “he told his age and continued, I learned up to grade eight only and I am labour worker. I was arrested here before five days of this day, but I have not brought before the courts until this day.
17. FelekeBalemewal, he told me his age and continued, I learned up to grade ten only, and I am labour worker. I was arrested here before seven days but I have not brought before the court until this day.
18. YelekalTensae, he told his age and continued, I learned up to grade eight and I am taxi driver, I was arrested here before four days, but I have not brought before the court until this day.
19. HabteTadele, he responded that “he told his age and continued, I learned up to grade seven only, and I am labour worker. I was arrested here before six days of this day, but I have not brought before the court until this day.
20. YenehodAzene, he responded that “he told me his age and continued, I learned up to grade ten only, and I have no occupation. I was arrested here before two days of this day, but I am not brought before the court until today.

3.3. Questions Provided For Police Officers of Debre Markos Town

Police Station

- Do you bring the arrestees before the court within 48 hours from their time of arrest?

3.4. Response of the police officers

The officers are WanaSajenTeshomeDebalke and SajenMelkamuMengstu. Both of them gave me the same response for my question. They said that we take the arrestees before the court within 48 hours from their time of arrest according to article 19(3) of the FDRE constitution. We perform this act by being cooperated together with the public prosecutor of the DebreMarkos town woreda court, thus, until today no problems which affect the right of arrestee in our police station.

3.5. Analysis and Interpretation

The central aim of this study is to assess the manner of enforcement of constitutional right of arrestees of Debre Markos town to be brought before the court within 48 hours from the time of their arrest. The data were collected from the arrestees of Debre Markos town and from the investigating police officers thereof in the form of interview method. To provide relevant information the data was gathered from twenty arrestees and from two of investigating police officers. In this chapter, the responses of twenty personal interviewee of arrestee and two police officers of responses has been analyzed and presented through the descriptive or statically percentage and statement forms as follows.

3.5.1. Personal Information

Table 3.1Socio-demographic characteristics by age and sex status of interviewee

Basic profile of the Interviewee	Interviewee	Frequency	Percentage from the total no of persons under police custody
Sex	Male	19	95%
	Female	1	5%
Total		20	100%
Age	18-20	1	5%
	21-30	13	65%
	31-40	3	15%
	41-51	3	15%
Total		20	100%

From the total twenty interviewee or respondents who were selected for the study all of them were included in yielding the response rate 100%. As table 3.1 clearly shows that 19 or (95%) were males and 1 or (5%) of was female. some of the interviewees were at age between 21 up to 30 are 13 or (65%), and at age between 31 up to 40 are 3 or (15%) while one of those interviewee has age 20 is 5%. This shows me that those persons who are at age 21-30 relative to suspect highly arrest. Besides this, in this age there is a high probability of those persons to commit crimes which affect the interest of the public at all. Even though the reasons why commit the crime are not stated expressly, this data shows me clearly that those arrestee who have this ages are relative high probability to the suspect of crimes at the specified area of the study.

Table 3.2 Socio-demographic characteristics of interviewee.

Basic principle of interviewee	Interviewee	Frequency	Percentage
Education	No formal education	1	5%
	1-8	11	55%
	9-10	8	40%
Total		20	100%

The majority of the respondents have been educated of lower grade which are 11 or (55%), and 8 or (40%) were learned 9-10 grade while 1 or (5%) is not learned at all. Thus, it is possible to say that almost of the arrestee had little understanding about their right and obligations, which are guaranteed and imposed over them by the constitution, because they have been at the primary stage of education, that is not enough to give skills and understanding about the crimes plus about their rights and obligation. This give me some clue about these people who are educated and those who are learned only up to the lower grades had little awareness about the crimes even about their fundamental right which are guaranteed by the constitution, that imposed over them. Since they have little awareness about the crimes, there is the high probability they may be suspected to commit the crimes which may results them to be arrested even enough this is not ensured by leas-inferring the mentioned data under table 3.2 above. Therefore, I can say that those who learned to lower grade which is cause to commit the crime and may cause them to suspecting the arrested.

Table 3.3 Graphic characteristics of arrestees to be brought before the court.

Basic question to interviewee	Interviewee's response	Frequency	percentage
Whether he has been brought to court within 48 hours.	Not brought to court	18	90%
	Have been brought to court	2	10%
Total		20	100%

This statistical data of the table 3.3 shows from 20 or (100%) of those arrestees at Debre Markos town police custody, only two arrestees has brought before the court 10% of the arrestees brought before the court within specified time by the constitution from their time of arrest. But most of all the arrestees that counted to 18 or which is 90% of the arrestees of the specified area of the study which is Debre Markos town are not brought before the court of specified area within the time of stated under article 19(3) of FDRE constitution and article 19(3) of the Amhara national regional state revised constitution. This time in which the accused persons should be brought before the court is also stipulated in international conventions that were ratified the Ethiopia state. The reasons for this non application of the constitutional provisions of the country and state which guarantee the fundamental human rights of the citizens in general and of arrested persons in particular by the respective organs of the government may be the arrestee's lack awareness about their rights and duties or its due to the lack of the transparency and accountability of the respective officials of the government of the specified region in general and of Debre Markos town in particular, it is also lack of personal commitment of crime investigating police officers of Debre Markos town to the provisions of respective regional constitution and FDRE constitution. In general, the reasons are that the lack of democracy and good governance within the selected area of the study, I.e. Debre Markos town. Even if the democracy and good governance are preached and propagated daily through media center of the regional state of Amhara and that of the whole country, the fundamental rights of the given area of the study is violated directly as my data insured me. However, the reasons of non-practical application and un interpretation of provisions of the regional and FDRE constitution are not known by the others, but the

data I gathered provided me that is due to the lack of democracy and good governance of which are the features non democratic states i.e.monarchical and military ruled states. These features of states denote create by me rather as I know many academic disciplines inform me and the live practical observance of the real world express it, those states which do not respect and protect the fundamental human rights that incorporated in their own constitutional provisions, are non-democratic states whether monarchical or dictatorial state. Thus, when I look via in the light of different international conventions such features of states failed to interpret and apply constitutional rights, the convention ensure there non democratic states. Therefore, if the reasons could not be more than thus mention above, then under what categories of government of Ethiopia categorized? I, the writer of this study, left the answer of this question for the people who will get the chance to read or refer my research paper. Despite the readers of my paper may answer their own personal understanding regarding such question, I could not be limited from displaying the facts or truth by basic on the data I got from the respondents of specified area of the study. I, the researcher, cannot call the current administrative governance of Debre Markos town by saying that it is democratic because my data does not manifest that rather it manifests about its non-democratic, the reason is I cannot deny the voice of the truth. Not calling the truth by its own name is not less than denying it, therefore, the current government of Ethiopia regarding the protection of fundamental human rights is showed undemocratic features then it could be democratic government.

Let I stop here to saying about the suspected person reasons of non-applicability of constitutional provision and then I proceed to another point of analyze and interpretation of the data. When I look that 90% of the arrestees of Debre Markos town, who did not bring before the court of the area within specified time under the FDRE constitution and Amhara regional state of revised constitution in aspect of respecting and protecting the fundamental human rights through the light of international conventions that were adopted and ratified by Ethiopian state, is the violation of human right guaranteed by this conventions. Since, this right of being brought before the court the accused persons within the specified time is one of the fundamental human rights, then this rights of the arrestees of Debre Markos town is violated by respective administrative police officers of the town as I understand from the data stated under table 3.3.

However, the reasons of why police officers of Debre Markos town violated this fundamental rights of their legal arrestee are not stated clearly, but I know that the main objective or purpose for which such police station and police officers are formed in area is to protect that fundamental rights of individual or citizens as it manifested FDRE constitution and the Amhara national regional state of revised constitution, plus to protect the public interests the respective region in general and of Debre Markos town in particular.

The other point that analyze and interpret is the data I obtain from Debre Markos town police officers the data was gathered through the interview method of data collection like that of the data obtained from the arrestees of the specified area. The two police officers of the town gave me the similar response regarding the question I provided for them which says, do the arrestees this town are brought before the court within 48 hours from the time of arrest as it stated under FDRE constitution and Amhara national regional state of revised constitution? Then the two police officers responded that “all things which we have done until now or which should be done by us, are performed accordingly the constitutions ordered us”, that means they responded as “we always bring the arrestees before the court within the time that specified under the FDRE constitution plus under that of Amhara national regional state of revised constitution. They continued their ideas by saying that “we perform our obligation that imposed over us by FDRE constitution and our regional state constitution as well as the Ethiopian people too. Thus now and for the next time, we are doing or will do according to the laws of the country as whole and that our ordered us”.

Even though the officers responded as such, the response that they gave me was completely different from the information that was obtained from responses of arrestees. When I evaluate the response of police officers by comparing with the response which was gathered from the arrestees of the selected area, it seem that, the police officers opted to hide the fact or they did not want to express their fault that they did regarding taking arrestee before the court within 48 hours from their time the arrestee.

CHAPTER FOUR

4. Conclusions and Recommendation

4.1 conclusion

The finding of the study indicates that the practical application of the right of the arrestee to brought the court within the specified period from the time of his or her arrestee. The right to be brought for the court within 48 hours is one of the fundamental human rights recognized in many international human right instruments, in the FDRE constitution and Amhara national regional state of reversed constitution.

One of the basic and fundamental right of the arrestee is getting justice and fairness without any partial proceeding before the impartial judges, but enjoyment of right to get fair justice is impossible without fulfillment of right to be brought before the court within the reasonable time, because coming before the court within the limited time is the basic elements of the fairs justice. In Debre Markos town the right of arrested persons coming before the court within the stated time by FDRE constitution under its article 19/3/ is not practically applied according to analyzed data provide under chapter three of the study. This means there is a great problem of not practical application and interpretation of the provision of FDRE constitution that guarantee the right of arrestee.

As the finding this study shows, there are serious problems on the fulfillment the arrestees in Debre Markos of town the other problems is the police officers forget their responsibility that imposed over them by the state and people of Ethiopia, and the police missed the objectives goal of their establishment and the need of their existence. There is also a problem that the arrestee had the lack of awareness about their fundamental right due to having lower level education or had ultimately no education of almost all of the arrested persons of DeberMarkos town, due to the existence of such problem. The arrestee did not capable to request the court for their brought before it or for their release.

4.2 Recommendations

The writer recommended and suggests the following depending on the problems I assessed according to the data gathered. The human rights and fundamental freedoms are naturally gifted to human beings without making any distinction among human beings. And right cannot exist alone. If there are right holders, there must also be someone who is responsible and duty bearer for the respect, protection or fulfillment of those rights since rights and duty are the tow face of action.

The federal state of Ethiopia and the Amhara national regional state are the principal duty bearers of human rights of arrestee of Debre Markos town obligations. As it is known that the obligations that are related to human right generally of three kinds: to respect, to protect, and to fulfill human rights.

1. The first obligation of the federal and regional governments of Ethiopia in relation to human rights is the obligation to respect human rights of their subjects as whole in the country and the Amhara region at Debre Markos town. The right to be brought before the court of the arrestee within 48 hours from the time their arrest should be respected as whole in Ethiopia, in Amhara region particularly of Debre Markos town to respect human rights means simply not to interfere with their enjoyment. It is an obligation to restrain or to take hands off from violation of rights of human beings. And it is not also a difficult obligation rather it is a very simple obligation of Ethiopia government. That is any organ or official of the federal and regional government should region from any kind of acts or emissions that by any means violates the rights of human beings as whole of the citizens and legislative, judiciary and executive branches of the federal and regional government are expected to carefully discharge their duties in a way that cannot violate the rights of individuals and right of. For instance, the Amhara regional state should refrain from unlawful arrest individuals violating the right to freedom of movement. Under article 13(1) of the FDRE constitution that all federal and state legislative, executive and judicial organs of all levels have obligation of respect human rights which involve the right of arrested persons, and that are enshrined under chapter three of constitution.
2. According to the provision of the constitution the legislative organ is expected to enact laws and pass decisions in a way that will not violate human rights as whole and the right of arrested persons in particular in the selected area of this study that is Debre Markos town in Amhara region either in terms the content of the law or in terms of its implementation; the executive especially the police officers are expected to abstain from violation of human rights in the process of execution and discharging of its duty; and the judiciary should refrain from violating rights in deciding cases.
3. Human rights and fundamental freedoms cannot only be protected just because of the reason that the Ethiopian federal and regional governments and their officials are restricted from violating human rights as whole rights of arrested persons particularly. Taking the

respect of human rights as one thing in the direct relationship of Ethiopian government and its citizens, it should have also the responsibility to protect those weakest citizens from the strongest in the horizontal relationship of them. To protects human rights as whole and right of arrestee especially in Ethiopia at Debre Markos town means taking step to ensure that third party or government itself does not interfere with the enjoyment human rights. And like that of the obligation to respect article 13(1) of the FDRE constitution obligate the three organs of the federal as well as organs of the Amhara region especially of that Debre Markos town to protect the right of arrested person to be brought before the court within 48 hours that is guaranteed under article 19/l3/ of the constitution, since the federal regional governments Ethiopia do not only have the obligation to respect human rights and the right of arrestee but, also obligation to protect human rights and arrested person.

4. Administrative and legal measures should be taken over police officer and administrative organs of Debre Markos town those violate the right of arrested persons.
5. The Amhara regional government should create awareness among the society of Debre Markos town about their rights and obligation through which is accesses that properly the peoples.

The federal government and Amhara regional government shall provide training to the police officers to raise their knowledge about human right and to change their attitudes.