MIZAN TEPI UNIVERSITY

SCHOOL OF LAW

CRITICAL ANALYSIS OF THE ETHIOPIAN CRIMINAL LAW IN LIGHT OF PRIVATE VENGEANCE

A THESIS SUBMITTED TO THE DEPARTMENT OF SCHOOL OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE DEGREE OF BACHELOR OF LAWS (LLB)

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THESIS APPROVAL SHEET

This thesis titled "CRITICAL ANALYSIS OF THE ETHIOPIAN CRIMINAL LAW IN LIGHT OF PRIVATE VENGEANCE" prepared by Chibehaw Belie is approved for the Degree of Bachelor of Laws (LLB)

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DECLARATION PAGE

I, Chibehaw Belie, declare with full confidence that this thesis comprises my own original work which has been done in compliance with widely accepted research practices. I have duly acknowledged and referenced all relevant materials used in this work to avoid any form of plagiarism.

CHIBEHAW BELIE

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JUNE, 2022

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ACRONYMS

AAU	Addis Ababa University
ADRMs	Alternative Dispute Resolution Mechanisms
CPC	Criminal Procedure Code
DSECJS	Diagnostic Study of Ethiopian Criminal Justice System
DRMs	Dispute Resolution Mechanisms
FDRE	Federal Democratic Republic of Ethiopia
FSC	Federal Supreme Court
ERCFAA	Educational Research Competencies For Analysis and Application
HPR	House of Peoples' Representatives
ICC	International Criminal Court
IJEAT	International Journal of Engineering and Advanced Technology
MTU	Mizan Tepi University
UDHR	Universal Declaration of Human Rights

ABSTRACT

The general objective of the study has been to critically analyze the Ethiopian criminal law in light of private vengeance. To this end, the study has employed critical analysis research method and qualitative research approach.

Data were collected through qualitative approach utilizing document analysis as an exclusive means. They were also analyzed through qualitative data analysis techniques and interpreted based on positive interpretation of law principle in line with the spirit of the law.

The findings of the study have depicted that the Ethiopian criminal law lacks proper attention towards private vengeance which has thus caused for alarming violations of human rights and freedoms. Cases involving private vengeance are not treated separately from the way in which ordinary cases are handled. There is a general silence as to whether private vengeance can be taken as an aggravating ground. Few penal provisions tend to providing for clear legal protection for human rights and freedoms while the rest ones remain mute.

Key Words: private vengeance, in light, critical, analysis.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

When we speak of justification, we do not speak of justified vengeance.[1] Although all human beings are born free and equal in inherent dignity, inalienable rights and fundamental freedoms which should be protected by the rule of law in which such persons should act towards one another in a spirit of brotherhood since they are endowed with reason and conscience[2], they may unfortunately take the law into their own hands, inter alia, to avenge the slaying or injury of their respective family members, relatives, clans or tribes and thereby pave the way for a perpetual cycle of blood feud or private vengeance[3].

The term vengeance refers to the act of hurting or punishing a person in retaliation for an injury or offense especially murder committed by such person and it equates to such synonyms as retribution, revenge, retaliation, reprisal, requital, and payback [4]. It is also similar to the terms blood feud and vendetta in the sense that a blood feud is a cycle of personal retaliatory violence committed for seeking vengeance by killing or injuring the culprits or their relatives[5] while vendetta is similarly a private blood feud in which family members seek revenge on a person of another family to avenge the slaying of the family member or of a nearest kin.[6]

An act of revenge is any deliberate injurious act against another person which is motivated by resentment of an injurious act or acts performed by that other person against the revenger, or against some other person or persons whose injury the

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[1] James Q. Whitman, 'Between Self-Defense and Vengeance/Between Social Contract and Monopoly of Violence' Tulsa L. Rev., 2004, Vol. 39:901, p. 907

[2] Universal Declaration of Human Rights,1948, Preamble, para 1, 3 & 6 cum Art 1

[3] en.m. wikipedia.org

[4] Merriam Webster Dictionary (1972), s.v. "vengeance"

[5] en.m. wikipedia.org

[6] Black's Law Dictionary, 8th ed., s.v. "vendetta

revenger represents.[7] The term 'private' in the phrase 'private revenge' means 'without legal authority' thereby private revenge differs from legal punishment, the lawful affliction of convicted wrongdoers by the criminal justice system[8] based on the retributive theory of punishment.[9]

Thus, such personal or private vengeance differs from a public or social vengeance/monopoly of violence which is taken by states, on behalf of their citizens, to exact vengeance against offenders[10] as a harsh punishment based on the theory of retribution (lex talionis) enshrined in the Code of Hammurabi of 1700 B.C.[11]

Blood feud was commonly practiced in societies with a weak rule of law where family and kinship ties were the main source of authority and thus an entire family was responsible for the actions of any of its members, and Ethiopia is unluckily one of the countries of the world where private vengeance is committed[12] against human rights and freedoms contrary to the criminal law, and against legal principles; , inter alia, of: justice and morality, human rights and freedoms, the Rule of Law, criminal law, punishment, and sentencing.

1.2 STATEMENT OF THE PROBLEM

It is hardly possible to say there are countries free from blood feud. As different researches have revealed, private vengeance has been practiced in most parts of Ethiopia and thereby human rights and freedoms have been violated contrary to the criminal law and legal principles. Standard lethal altercations, status or adventure killings, and sorcery killings are committed by the Gumuz People as practices of revenge usually against non-Gumuz persons.[13] In Somali Region, traditional sentencing

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[7] Brian Rosebury, 'Private Revenge and Its Relation to Punishment,' Cambridge University Press Utilitas, 2009, Vol. 21, No. 1, p. 4
[8] Id., p. 1
[9] Sagar Shelke et al, 'Theories of Punishment: Changing Trends in Penology,' IJEAT, 2009, Vol. 8, No 6S3, p.1300
[10] Whitman p. 903
[11] George H. Gilbert, 'The Code of Hammurabi', American Journal of Theology, _ , p. 6o6-607
[12] en.m. wikipedia.org
[13] Dolores A. Donovan et al.,'Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism', Am. J. Comp. L., 2003, Vol. 51, p 523

practices de-value the lives of women and girls whose murder is compensated by fifty camels while that of a man is by hundred camels through reconciliation of feuding parties in which they are also caused to be given as wife to the family of the victim or deceased to halt a continual revenge [14].

Avengers and their relatives lose their lives due to revenge killings in Amhara Region where the family of the killer pays blood money to the victim's family and the killer walks free and even he is honored for the murder he has committed.[15]

Among the Sheko People, anyone who committed homicide is required to compensate the family of the victim with a girl or a boy who, as believed by this people, will give birth to a child that will help the victim's family overcome their mourning.[16]

Similarly, women and/or girls become objects of compensation to avoid blood feuds when they are given away, during reconciliation process between the feuding clans of the Gumuz Community, to be used by the victim families in a away they wish[17]. Physical injuries and homicide crimes are commonly committed in North Gondar.[18] Such crimes are also committed in South Wollo.[19]

These exemplary researches and other similar studies have shown the prevalence of private vengeance in most parts of the country where human rights and freedoms are infringed while the Ethiopian Criminal Law is there to be enforced to protect such rights and freedoms from being violated in any manner though such violation via blood feud is

[14] id., p. 527

[15] id., p.520

[16] Mengistu Fiseha, Traditional Conflict Management and Resolution Mechanisms: The Case of Sheko People in Ethiopia, PHD Dissertation, Addis Ababa University, 2018, [Unpublished, available at etd.aau.edu.et], p.80

[17] Gebreyesus Teklu Bahta, 'Popular Dispute Resolution Mechanisms in Ethiopia: Trends Opportunities, Challenges and Prospects', 2014, [Unpublished, available at www.ajol.info], p. 108

[18] Jejaw Amble, The Myth of Ideal Masculinity: Traits, Blood Revenge Practices and Their on Women in Sebentera Kebele, Dabat Woreda, North Gondar Administrative Zone, Addis Ababa University, 2011, [Unpublished, available at etd.aau.edu.et], p.54

[19] Mekides Wonduante, Exploring Blood Revenge Practices and Communities' Perception: The Case of Tedbabemariam Community in Saint Woreda of South Wollo Zone, Addis Ababa University, 2019, [Unpublished, available at etd.aau.edu.et]

in question under this study.

Generally, violation of human rights and freedoms through private vengeance is an ongoing main problem needed to be properly handled by the Ethiopian Criminal Law. To rephrase each specific problems concerned under this study:

Firstly, the constitutional rights to: life, the security of person, and liberty[20] are most frequently violated through private vengeance and thus, this violation caused for the breach of other human rights and freedoms due to their indivisible (interdependent and interrelated) nature.[21]

Secondly, private individuals take the law into their own hands to avenge or punish their enemies without any legal means contrary, inter alia, to the Rule of Law and Due Process of Law Principles.

Thirdly, blood avengers till continue to commit acts of vengeance without having faced proper and special deterrence effects.

1.3 OBJECTIVES OF THE STUDY

1.3.1General Objective

The general objective of the study is to critically analyze the Ethiopian Criminal Law in light of private vengeance.

1.3.2 Specific Objectives

Bearing the general objective in mind, this study has the following specific objectives:

- To examine how the Ethiopian Criminal Law governs private vengeance or the way it handles cases involving perpetual cycle of blood feuds in order to ensure rule of law;
- To investigate penal provisions governing private vengeance so as to overcome the continuity of such retaliatory violence against human rights and freedoms; and

[20] FDRE Constitution 1995, Federal Negarit Gazette, 1st Year No. 1, Arts. 14-17, [hereafter, FDREC]

[21] UDHR, Art 30

- To identity penal provisions that determine sentences to be imposed upon convicted avengers and take private vengeance as an aggravating ground in order to deter them from committing further acts of revenge and thereby make them a lesson to others.

1.4 RESEARCH QUESTIONS

Research problems raise questions need to be answered to achieve objectives sought and thus the coherence among these three concerns/elements leads to a rational conclusion. Accordingly, this study has the foregoing questions:

- Does the Ethiopian Criminal Law give special attention to private vengeance in general?
- How the Ethiopian Criminal Law governs private vengeance or handles cases involving prolonged cycle of such personal revenge?
- Which penal provisions determine sentences imposed upon convicted avengers and take private vengeance as an aggravating ground to deter them from committing further acts of retaliation thereby make them a lesson to others?

1.5 SCOPE OF THE STUDY

This study has mainly focused on critical analysis of the Ethiopian Criminal Law in light of private vengeance from the perspectives of human rights and freedoms concerns.

It has paid attention to the examination of the manner how private vengeance is governed and cases involving such vengeance are handled under the Ethiopian Criminal Law.

The delimitation of the study has extended to analyzing the Ethiopian Criminal Law as

to whether it provides for appropriate legal guarantees for the protection of human rights and freedoms. The ambit of the study has also addressed the investigation of penal provisions of relevant laws governing private vengeance.

It further stretched to the identification of penal provisions which determine sentences imposed on convicted avengers against whom such provisions take private vengeance as an aggravating ground to deter them from committing further acts of vengeance.

1.6 SIGNIFICANCE OF THE STUDY

To the best endeavor paid for searches to find close related or similar researches to this study, there has not been found any such researches conducted concerning the Critical Analysis of the Ethiopian Criminal Law in Light of Private Vengeance other than those far related studies focussing only on the practice of blood revenge viewed mostly from the sociological and psychological perspectives, and with respect to alternative dispute resolution mechanisms (hereafter, ADRMs) instead of giving attention to the legal aspects of the matter under study.

As a result, this study, being the original one on this area, becomes significant to create legal insight for both the societies affected by revenge practices and the government in giving due attention to the condonation of private vengeance violating human rights and freedoms.

It may also be vital for revealing legal gaps to regulate private vengeance and thus insisting the concerned bodies to take appropriate legal reforms in order to fill such lacunae for the protection of human rights and freedoms from being violated through private vengeance. The study may also serve as an input for those who might conduct similar or related (but not same) studies concerning private vengeance with which perspectives the Ethiopian Criminal Law will further be analyzed for more objectives.

1.7 LIMITATION OF THE STUDY

Since the study has been conducted within short period of time in an ill at ease situation, such inconveniences have shaped positive efforts, intended to analyze the Ethiopian Criminal Law deep into beneath to address each body of specific penal legislations and materials, to certain relevant laws and documents. However, this does not affect the

quality of the study because important laws and documents have been deeply analyzed.

1.8 METHODOLOGY

1.8.1 RESEARCH METHOD, APPROACH, AND PROCEDURES

This study has employed critical analysis research method because the research type or nature is specifically theoretical and text based doctrinal research aimed to critically analyze the Ethiopian Criminal Law in light of private vengeance.

It also employed qualitative approach since its doctrinal nature tends to analyze, explain, and interpret source materials already available using descriptions.

This study utilized document analysis as its exclusive data collection tool because of its tendency to relying on analysis of relevant documents that constitute the Ethiopian Criminal Law.

The study has mainly used primary sources due to its doctrinal nature which caused it to have more inclination towards such sources. It also used secondary sources to some extent as far as being relevant to this study.

Primary sources subsume relevant Human Rights Documents, Codes, Proclamations, Regulations, and Directives listed below as subjects of the study whereas secondary sources include Articles, Researches, and Cases cited in different parts of the thesis.

Both primary and secondary data were gathered from various internet sources via Google, Telegram, and Wikipedia in particular.

1.8.2 SUBJECTS OF THE STUDY

Subjects of the study are available relevant legal documents or materials relevant to analyze the subject matter of the study. These documents or materials include FDRE Constitution, pertinent International Human Rights Declarations, Covenants, or Instruments ratified by Ethiopia, the 2011 Ethiopian Criminal Justice Policy, the 2004 Criminal Code, the 2021 Diagnostic Study of the Ethiopian Criminal Justice System (DSECJS), FSC Cassation Decisions, FSC Sentencing Directive or Manual No 2/2013, and other relevant Proclamations like the Labour Proc No 1156/2019 and Protection of Witnesses and Whistleblowers of Criminal Offenses Proc No 699/2010, Regulations,

and Directives that provide for private vengeance.

1.8.3 SAMPLING TECHNIQUE

The study has employed purposive sampling technique to select subjects of the study because the critical/analytical nature of the research requires more important or relevant and specific subjects that are related to the matter under study instead of taking all legal documents among which certain documents are not relevant for this study.

1.8.4 SAMPLE SIZE

This study has taken an estimated size of sample instead of exactly determined sample size for the following two reasons:

Firstly, there is no any fixed rule governing sample size in qualitative research like this study whose sample size by nature depends on what data is need to be obtained.[22]

Secondly, since the population size of the study does not exceed from one hundred, there is little point in sampling for such smaller population size and thus, just survey the entire population was thought better in this regard[23].

1.9 ORGANIZATION OF THE THESIS

This paper comprises four chapters which have their own respective sections and sub-sections. Chapter one dealt with the introduction of the paper as a whole. In this respect, statement of the problem; research questions; the background, objectives, scope, significance, and limitation of the study; the methodology and organization of the thesis have been discussed in particular.

Under chapter two, the thesis focused on the literature review in general. In this regard, the theoretical framework of private vengeance, the principles justifying the cessation of private vengeance, and review of others' researches were addressed in detail.

Chapter three has presented and explained data analysis and interpretation in a way enabling to answer the research questions to achieve the objectives sought. The findings

[22] Addis Ababa University, 'Introduction to Research Methods', 2009, p. 65)

[23] Lorraine R. Gay et al, 'Educational Research: Competencies for Analysis and Applications,' Pearson, 2014

of the study have been formulated based on such analysis and interpretation of the data.

Chapter four dealt with the conclusion drawn based on the findings of the study and recommendation suggested based on such conclusion to resolve the problems.

CHAPTER TWO

2. LITERATURE REVIEW

2.1 THEORETICAL FRAMEWORK OF PRIVATE VENGEANCE

Having discussed about the conceptualization of private vengeance so much far under the background of the study, here dealing with its theoretical framework is necessary for creating clear understanding thereof and thereby opening the door for criticism against the condonation of such vengeance and thus, insisting for its cessation for the the sake of protection of human rights and freedoms.

The idea of lex talionis - an eye for an eye, a tooth for a tooth - traced back to the murky origins of legal history; to the raw, primitive, and violent impulses of not-yet- fully criticized humanity.[24] The idea evokes the specter of villages filled with one-eyed men consumed by the violent demands of honor cultures and tribal feuds.[25]

Thus, ancient states had taken the administration of justice into their hands to suppress private vengeance based on the retributive theory of punishment which,[26] was formally introduced in 1700 B.C. in the Code of Hammurabi contained 282 harsh laws such as an eye for an eye, a limb for a limb, a tooth for a tooth, life for life, and blood for blood.[27]

The point to be underlined here is that lex talionis has been used as a basis for both private vengeance by individuals and retributive punishment by the state. Thus, the latter had been misconceived and used, particularly by the Nazi Germans after the Treaty of Versailles, as social/collective vengeance based on the classic monopoly of violence theory which holds that human beings have natural right to do vengeance and of self-defense which citizens surrendered to their state thorough social contract and thereby the role of the state was to exercise vengeance under the guise of collective self-defense.[28] However, human beings have no natural right to do vengeance but have the duty not to commit such vengeance because states had denied citizens to take laws

[24] David Van Drunen, 'Natural Law, the Lex Talionis, and the Power of the Sword,' Library University Law Review, 2008, Vol. 2, No. 3, p. 945
[25] Ibid
[26] Sagar Shelke et al p.1300
[27] Gilbert, p. 907
[28] Whitman, p.903

into their own hands, and even the right to self-defense is tied with conditions to legitimize the extent and necessity of the defense.

2.2 LEGAL DOCTRINES JUSTIFYING THE CESSATION OF PRIVATE VENGEANCE

There are many legal doctrines that justify the cessation of private vengeance and/or prohibit its continuity. These doctrines include particularly the principles of: human rights and freedoms; the Rule of Law; morality; justice; criminal law; punishment; and sentencing.

2.2.1 PRINCIPLES OF HUMAN RIGHTS AND FREEDOMS

Human rights and freedoms are universal, inalienable, indivisible, interdependent and interrelated.[29] Thus, such rights and freedoms are inherent to everyone born everywhere thereby can never be taken away arbitrarily[30] and they have equal status since their realization depends on or relates to the fulfillment of each of them.[31] These principles also declare that all individuals are equal as human beings by virtue of the inherent dignity of each human person without discrimination of any kind as established by human rights standards.[32]

Hence, human rights and freedoms shall be respected, protected, and fulfilled or promoted [33] instead of being violated in any manners including infringement thereof through private vengeance which must thus cease or no longer such vengeance has to be practiced/committed.

2.2.2 PRINCIPLES OF THE RULE OF LAW

The principles of the Rule of Law particularly those stating that "no person is above the law, and no one shall take the law into his own hands" require everyone must obey such law and/or respect human rights and freedoms because the Rule of Law empowers all human beings fulfill, inter alia, just expectations and seek redress of grievances without

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[29] United Nations Population Fund, 'Human Rights Principles', www.unfpra.org /rights/principles. htm, p. 15

[30] UDHR, Art 1

[31] Id, Art 30

[32] UNPF, p.16

[33] Id, p.18

fear and penalty of retaliation.[34]

The principle of the Rule of Law is also known as the Supremacy of the Law which provides, inter alia, that all citizens have the duty to ensure observance of the supreme law of the land (Constitution) and to obey it.[35] Thus, any law, or customary practice, inter alia, that contravenes this supreme law shall be of no effect.[36] Therefore, traditional sentencing practices of giving women, girls, or boys as blood compensation during the process of reconciliation of feuding parties is of no effect in the eyes of such principle of supremacy of the law.

Therefore, the Rule of Law guarantees protection of human rights and freedoms against such retaliation or private vengeance and obliges everyone to maintain due process of law which provides that people can only be punished in accordance with the law[37] as opposed to vengeful punishment by private individuals who are not allowed to take the law into their own hands. In other words, due process of law requires that investigation of a person for an alleged wrongdoing must be carried out in accordance with the law and by persons duly authorized for this purpose.[38]

Citizens criticize violations and who seek redress must be protected from retaliation by officials and others[39] because violations of the principles of the Rule of Law disserve, inter alia, freedom of free and dignified citizen self-direction under the law.[40]

2.2.3 PRINCIPLES OF MORALITY AND JUSTICE

The principles of morality and justice provide, among other things, that doing injury in retaliation is wrong which never be justified since return a wrong or defend oneself

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[34] Justice Anthony M. Kennedy as cited by Robert Stein, Rule of Law Symposium', Minn. J. Int'l L., 2009, Vol.18, No.2, p.300

[35] FDRE Constitution, 1995, Federal Negarit Gazette, Proc No. 1, No. 5, Art 9 (2)

[36] Ibid., Art 9 (1)

[37] Video Outline, 'The Rule of Law', available at www. ruleoflaw.org.au

[38] Legal Assistance Center (in Namibia), The Rule of Law and the Perils of taking the Law into One's Own Hands

[39] Robert S. Summers, 'Principles of the Rule of Law', Notre Dame L. Rev., 1999, Vol. 74, No. 5, p.1711

[40] Id., p.1712

against injury by retaliation (harm for harm) is bad or unjust for unjust is immoral.[41] The moral principle that "no person shall profit from his own wrong" also shows that every wrongdoer shall be punishable in accord with the law.[42]

As mentioned before in discussing the definitional scope of private vengeance, family members and relatives of the direct feuding parties thereto are subjected to such vengeance and innocently victimized because they may not have a notice as to an initial offensive act which gives rise to a 'revenge' against them without having themselves done any wrong. Thus, avenging such stranger third parties is, for stronger reason, both unjust for just and immoral too.

2.2.4 PRINCIPLES OF CRIMINAL LAW

Among many principles of criminal law, the principles of: the Rule of Law; due process of law; individual autonomy; and public good are relevant to justify for the cessation of private vengeance. Since the first two have already been discussed above (under 2.2.2.), the focus here is on the remaining two principles.

Accordingly, the principle of individual autonomy provides that no one can be punished for a crime for which he has not been found guilty under the law.[43] Such doctrine of individual criminal responsibility or liability states, in other words, that a person who commits a crime shall be individually responsible or liable in accordance with the law.[44]

Thus, this principle prohibits not only vengeful acts perpetrated against direct avengers because revenge is not in accord with the law, but also those retributive acts targeting the family members and relatives of such revengers since these innocent third parties are not personally liable for the wrong committed by others because there is no vicarious criminal liability under the criminal law.

The principle of public good is a doctrine of common good that prohibits any violence against

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[41] The Crito, p.5-7

[42] S. Summers, p.1692

[43] FDRE Criminal Code, 2004, Federal Negarit Gazeta, 414, Art 57 (1)

[44] Statute of International Criminal Court, Art 25

public order, peace, and security.[45] Therefore, since private vengeance is one of the violence affecting the tranquility and general well-being of the public at large, such non-negotiable instrument (public interest) justifies that such vengeance should no longer be tolerated.

2.2.5 MODERN THEORIES OF PUNISHMENT

Modern theories of punishment subsume deterrent, preventive (incapacitating), and reformative (rehabilitative), compensatory (expiatory) and multiple approach doctrines of punishment with the exclusion of retributive theory of punishment for its same effects as that of private vengeance.[46]

The retributive theory of punishment never served any of the purposes of punishment and thus it was not advocated that much by criminologists.[47] In addition, since this theory focused on sanctions grounded in vengeance or retaliation, it has been found to be archaic, barbaric, inhumane, or cruel mode of punishment condemned by modern human rights philosophy.[48] "The idea of an eye for an eye would turn the whole world blind".[49] Hence, this theory can be even confusedly invoked as a basis for private vengeance which of course is different therefrom.

The general theme of the aforementioned modern theories of punishment provides that offenders deserve punishment in accordance with the law to deter and prevent them from committing further crimes by aiming at their rehabilitation to enable them be law abiding citizens[50] which justifies that private vengeance must cease to violate human rights and freedoms.

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[45] Criminal Code, Art 1

[46] Sagar Shelke et al

[47] Id, p.1300

[48] Ravulapati Madhvi, 'Theories of Punishment', available at pdfcoffee.com

[49] Mahatma Gandhi as cited by Kashish Singhal, 'Alternative Methods of Punishment', available at www.probono-india.in

[50] R. Madhvi

2.2.6 PRINCIPLES OF SENTENCING

The main principles of sentencing are the following:

reasonableness, proportionality, consistency, uniformity[51]; proportionality, consistency, predictability, fairness[52]; correctness and uniformity[53] and fairness, transparency, predictability[54] as well as consistency, proportionality, predictability, correctness (fairness), parity, transparency, accountability.[55]

Thus, to avoid unnecessary repetition, these principles of sentencing are reasonableness, predictability, consistency, parity, uniformity, fairness, correctness, transparency, and accountability. Many of these principles of sentencing are consistent with human rights law standards and also to elementary goals or rationales of sentences.[56]

Thus, since only the punishment given by a court of law is sentence[57] or only courts have the power to determine and pass sentence[58], traditional sentencing practices of giving women and girls, or boys as blood compensation to the victim's family during reconciliation of feuding parties must no longer violate human rights and freedoms.

2.3 REVIEW OF CLOSE RELATED RESEARCHES

Different researches had been conducted concerning the practice of blood feud mostly in light of sociological and psychological perspectives as well as with respect to ADRMs instead of giving attention to legal aspects of private vengeance. And to the best searches for finding close related researches to this study for the purpose to review

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[51] Burnt W. Griffin et al, 'Sentencing Consistency: Basic Principles Instead of Numberical Grids: The Ohio Plan,Case W. Res. L. Rev., 2002, Vol.53, No.1

[52] Sefiew Ayenew Demle, 'Sentencing Guidelines and Their Applications in Ethiopian Federal Courts,' Int'l J. L. and Society, 2022, Vol. 5, No. 1, p.11

[53] Criminal Code, Art 88 (4)

[54] FDRE Criminal Justice Policy, 2011, 5.2

[55] FSC Revised Sentencing Manual No. 2/2013

[56] Rabindra Bhattarai, 'Principles of Sentencing in Criminal Justice System,' Kathmandu L. Rev., Vol.1, No.1, p.197

[57] Id., p.194

[58] Criminal Procedure Code of Ethiopia, 1961, Negarit Gazeta, Extraordinary Issue, Proc. No. 185, Art 149 (5)

relevant literatures, no former study has analyzed the Ethiopian Criminal Law in light of private vengeance other than just having relied on the practical aspects of such vengeance like its causes, multidimensional consequences, and solutions through ADRMs.

However, these studies focusing on the practical perspectives are helpful for this study since their results emphasize the extent of the problems (here, violations of human rights and freedoms) caused by private vengeance committed in the most parts of the country as such studies cited in discussing about the problems of this study have significantly revealed too. Thus, since the concern of this study remained untouched or its theme was not addressed by any of these far related studies at least regarding revealing problems, such facts make this study unique than others' works in this respect and therefore, it is save to treat it as an original study. Hence, this original study is crucial one that pioneered critical analysis on the Ethiopian Criminal Law in light of private vengeance with emphasis on legal perspectives for the respect and protection of human rights and freedoms by examining how these research questions can be answered and problems to be resolved to achieve the objectives of the study sought.

CHAPTER THREE

This chapter presented and explained the analysis and interpretation of the data in a way enabling to answer the research questions to achieve the objectives sought as well as formulated the findings of the study.

3. DATA ANALYSIS AND INTERPRETATION, AND FINDINGS OF THE STUDY

3.1. DATA ANALYSIS AND INTERPRETATION

The data obtained through deep document analysis have, as much as possible, been critically analyzed using qualitative data analysis techniques involving investigation, determination and examination of relevant penal provisions in a fashion enabling to respond research questions so as to achieve the objectives of the study and interpreted based on positive interpretation of law principle in line with the spirit of the law[59].

After having deeply investigated the Criminal Code for determining penal provisions governing private vengeance, only Art 616 thereof found to use the term retaliation (private vengeance) in case of insulting behavior or outrage. Surprisingly, Art 616 (2) gives the court a discretion to exempt from punishment both or one of criminals where the injured party has replied to an insult or outrage in kind (insult for insult) depending on circumstances[60]. And this code does not have any express provision that treats private vengeance separately from the manner in which homicide or bodily injury crimes committed by non-revengers are treated.

Another law which mentioned retaliation is Protection of Witnesses and Whistleblowers of Criminal Offenses Proc No 699/2010, under its Art 4[61]. But this provision does not provide for how avengers are punished by the law for such retaliatory acts they perpetrated against witnesses and whistleblowers in return for what the latter have testified and reported respectively.

The Labour Proc No 1156/2019 prohibits, under its Art 14 (1a), an employer not to take any retaliatory action against his employee, otherwise he shall be punished under Art 185 (1c) thereof. These provisions seem to have provided particular legal guarantees for employees though they fail to provide as to how such employer as an avenger is

[59] Criminal Code, Art 1

[60] Id, Art 616.

[61] Protection of Witnesses and Whistleblowers of Criminal Offenses, 2010, Federal Negarit Gazeta Proc No 699/2010, Art 4

sentenced.[62]

Concerning the manner how the Ethiopian Criminal Law governs private vengeance and regarding the special attention need to be given to such vengeance, it seems a nightmare under such law which lacks to provide express provisions in this respect.

The Criminal Justice Policy provides, under 5.1 para 1 cum 5.2, that circumstances extenuating or aggravating sentence shall be expressly provided under a sentencing manual to be issued by the Federal Supreme Court (FSC) on the basis of principles of fairness, transparency, and predictability[63] while Art 88 (4) of the Criminal Code gives the FSC the power to issue a sentencing manual to ensure the principles of correctness and uniformity.[64]

The Sentencing Manual No 2/2013 issued does not have any clear mention as to whether such retaliation can be taken as an aggravating ground[65]. The same is true for other documents which have been carefully examined as relevant subjects of the study.

However, it is possible to resort to implied provisions that may tacitly include private vengeance as one of the grounds aggravating sentences. In this regard, Art 86 of the Criminal Code is helpful though it needs interpretation since it does not provide expressly that retaliation or private vengeance serves as an aggravated circumstance to determine and pass sentences.[66]

This provision provides as follows:

"The Court shall give reasons for applying general extenuating (Art.179) or aggravating (Art.182) circumstances not expressly provided for in this Code and shall state clearly its reasons for such application." Before interpreting this provision, let its mistaken cross-reference "(Art.182)" be corrected as (Art. 183) because Art. 182 is about exemption from and waiving of penalty instead of rules governing aggravation which ought to be referred thereunder correctly[67].

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[62] Labour, 2019, ,Federal Negarit Gazeta Proc No 1156, Art 185 (1c)

[63] The Criminal Justice Policy,2011, 5.1 para 1 cum 5.2

[64] Criminal Code 88 (4)

[65] The Sentencing Manual,2013,Directive No.2

[66] Criminaal Code, Art 86

[67] Id,Arts 179,182 &183

This provision (Art. 86) allows the court to apply other general extenuating and aggravating circumstances under Art 179 and Art 183 to mitigate and increase punishment respectively. The only two criteria required to be fulfilled by the court to use its implied discretion in this respect are:

the existence of additional grounds of ordinary mitigation or aggravation which have not been expressly provided under any provision of the Criminal Code but the court finds this ground must be taken as such; and

the court is duty bound to indicate the reasons justifying for the application of such extra grounds other than those listed under Arts. 179 and 183 and even those not mentioned clearly under any provision of the Code governing such matter such as under Arts. 82 and 84 thereof.

This means that the court is not allowed to apply such other grounds in special cases as, for instance, under Arts. 83, 85, 180, and 184-188.

Therefore, the court can, at least, apply retaliation (private vengeance) as a general aggravating circumstance under Arts. 84 and 183 by justifying the need to take such vengeance as a ground to do so. Such instance of taking private vengeance as a general aggravating ground has been applied in certain Cassation Decisions rendered in accordance with Arts. 84, 86, 539 (1a), and 540 of the Code. These precedents include Vol. 10, F. No. 45927; Vol. 12, F. No. 45595; Vol. 14, F. No. 82572; and Vol. 17, F. No. 97203[68].

3.2 FINDIGS OF THE STUDY

3.2.1 SPECIAL ATTENTION OF THE ETHIOPIAN CRIMINAL LAW TO PRIVATE VENGEANCE

As deep analysis was made on the documents listed as subjects of study, they have been found full of lack of express provisions giving special attention to private vengeance. This lacuna can be particularly reflected in the Criminal Justice Policy which ought to, at least, have mention private vengeance and give it some sort of attention to protect human rights and freedoms from being violated through such vengeance, but it failed to consider this matter.

The Criminal Code enacted based on such criminal policy did not pay special attention for private vengeance rather it treats acts of retaliation in similar way to other crimes are treated because its provisions governing crimes of bodily injuries and homicides (i.e. Arts. 539-540 and 555-556 thereof) do not mention such vengeful issues. Moreover, Art.

[68] Ethiopian Legal Brief

616 (2) of this Code gives the court discretionary power to exempt from punishment either both or one of criminals in case of retaliatory insults. This shows the failure of the Code to consider such outrageous acts as serious matters that lead to more grave crimes of bodily injuries and homicides in particular. The Labor Proc No 1156/2019 gives, under its Arts. 14 (1a) and 185 (1c), some attention to the protection of rights of employees from retaliatory measure taken by their employers.

However, since employees cannot represent all human beings who need such legal attention, these provisions of the Labour Law found to be insufficient or not inclusive in this respect though they provide for particular legal guarantees to such persons as a group in the whole community.

Art. 4 of Proc No 699/2010 also failed to state how avengers shall be punished for retaliatory acts they perpetrated against witnesses and whistleblowers testified or reported about criminal acts committed by such revengers. This provision is non-inclusive too because it concerns only these persons who have made protection agreement under Arts. 8 and 9 thereof. Other documents analyzed with this regard have been found mute and thereby lack to give special attention to private vengeance.

3.2.2 AGGRAVATION OF PUNISHMENT BY TAKING PRIVATE VENGEANCE AS A GROUND

As the analysis made concerning this matter shows, the Ethiopian Criminal Law was found with silence as it does not provide express provisions as to taking private vengeance as a ground for aggravating sentences imposed upon convicted avengers to deter them from committing further revenge.

Although the Criminal Justice Policy provides that grounds for extenuating or aggravating sentence shall be expressly provided under a sentencing manual to be issued, the Sentencing Manual issued based on Art 88 (4) of the Criminal Code found to have no clear mention of private vengeance to be taken as an aggravating circumstance to increase sentences. Such silence is also found under the Criminal Code.

However, through interpretation of Art 86 of this Code and considering certain Cassation Decisions cited, it has been found that private vengeance is taken as a general aggravating ground only; but not applied in special cases like under Arts. 83, 85, 180, 184-188 of the Code. This limitation to be used only as a general circumstance itself implies that the Ethiopian Criminal Law does not consider such vengeance as serious issue in all cases in which human rights and freedoms can be violated.

CHAPTER FOUR

4. CONCLUSION AND RECOMMENDATION

4.1. CONCLUSION

The main objective of the study sought to be achieved was to critically analyze the Ethiopian Criminal Law in light of private vengeance as a whole and intended to attain the specific objectives in particular. To this end, data have been collected through qualitative approach using document analysis; analyzed utilizing qualitative data analysis techniques; and interpreted based on the principle of positive interpretation of law in accord with the spirit of the law.

A few penal provisions that expressly provide for retaliation (private vengeance) were determined out of a deep investigation made into each of the subjects clearly specified. Few of them provide for particular legal guarantees in certain areas of laws like labour and employment law while the remaining ones lack to provide clear legal protection for human rights and freedoms other than the tacit and limited safeguards or compensatory protection given to witnesses and whistleblowers in particular.

However, the Ethiopian Criminal Law does not give special attention to private vengeance and cases involving such vengeance are not separately treated from the ordinary cases. With regard to determination of sentence in cases involving private vengeance, acts of revenge may be taken as aggravating grounds like in case of ordinary and aggravated homicides even though no provision expressly provides for to that effect.

4.2. RECOMMENDATION

The following recommendations are suggested to be taken into consideration to fill the legal lacunae in the Ethiopian Criminal Law in light of private vengeance.

- Giving proper and special attention to private vengeance: The criminal law has powerful potential in shaping the acts and conduct of people where legal emphasis is given to the avoidance of such implied legal condonation for private vengeance. Thus, the Ethiopian Criminal Law ought to take private vengeance into account particularly under the criminal justice policy, the substantive and procedural criminal laws, and in the sentencing manual in which human rights and freedoms can be realized through such legal machinery.

- Making legal reforms through amendment of penal legislations: Since the existing legal lacunae cannot be filled only through interpretation of tacit penal provisions concerning private vengeance violating human rights and freedoms, legal amendments should be made to protect human rights and freedoms from being infringed through perpetual acts of vengeance.

- Checking the application of laws for ensuring the protection of human rights and freedoms: The enforcement of what rights and freedoms prescribed assures the actual realization of such rights and freedoms. Therefore, the Ethiopian Criminal Law ought to be designed in a fashion enabling to bring tangible changes on the ground other than mere improvement on paper only.

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