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CRIMINAL PUNISHMENT

THE LAW AND PRACTICE

BY WOINSHET KEBEDE

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■ I HEREBY DECLEARE THAT THIS PAPER IS MY ORIGINAL WORK AND I TAKE FULL RESPONSIBILITY FOR ANY FAILURE TO OBSERVE THE CONVENTIONAL RULES OF CITATION.

NAME – WOINSHET KEBEDE

SIGNETURE ----------

CRIMINAL PUNISHMENT THE LAW AND PRACTICE

ADVISOR : TAFESSE YIRGA (LLB)

BY: WOINSHET KEBEDE

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE BACHELORS OF LAW (LLB) AT THE FACULTY OF LAW ST, MARRY'S UNIVERSITY COLLEGE

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INTRODUCTION

As the title of the research clearly indicated that CRIMINAL PUNISHMENT THE LAW AND PRACTICE is the research thesis is concerned on. Under article "1" of the criminal law of Ethiopia it is clearly indicated that the main purpose of punishment is to ensure order, peace and security to the state and the public good. And it aims at the prevention of offenses by giving due notice. Yes it is possible to understand clearly from the above article about the main purpose of punishment. Punishment is a measure that society imposes on the person who intentionally or negligently disrupts the established order by considerably departing from the accepted norms or behaviors of a given society. The punishment could be either corporeal bodily pain or spiritual, and, the pain of loss of economic gain. There are controversies over the purpose of criminal punishment. Some scholars say that criminal punishment is a matter of retribution rendering to teach the criminal, his due a matter of retaliation life, for life an eye, for an eye burning for burning. And other scholars hold that retribution is not the only reason for punishment. They stressed that there are other objectives to be achieved. These people view is that, punishment must be without destroying any organ, with out mutilation often without physical pain. The researcher stand from these controversial views of different scholar's opinions about the purpose of criminal punishment, and such views helped to the researcher as the standing point to choose the topic about "CRIMINAL PUNISHMENT THE LAW AND PRNCTICE'' As the background of the research thesis the researcher choose article 1 of the criminal law of Ethiopia and some other controversial views of different scholars about the purpose of criminal punishment. Finally, after the completion of this research thesis there could be avoided such kinds of dilemmas and controversies about Criminal punishment.

To give decision or to fulfill the intention of the legislator through punishment is very difficult and unsolved problem for judges. Because there is no standardized or uniform punishment decisions given by judges in different courts. There is discrepancy in the decisions of the courts. There are evidentiary problems, problems of prosecutors always desire the accused to be punished based on previous criminal record and so on. The other problems of punishments are the presenting general aggravating and extenuating circumstances of punishments without supporting evidence. The other problem is the law itself that is about rigorous imprisonment. The law put in a general and vague way that is like the punishment's 1-15 years imprisonment means judges have no clear minimum and maximum limit of imprisonment. The researcher has sorted out some problem questions to study the problems and to do good research .Finally there is proposed solutions to the problems.

Generally speaking the main purpose of punishment is the well being and protection of society, the maintenance of peace and public order. But, do all the interests of state and objectives of the legislator fulfill successfully or do the legislator achieve its goal? The researcher does not believe so. Because, different kinds of problems daily occur in different courts with regard to criminal punishments. The researcher, as a judge in the High Court Criminal bench has rich experience in this regard.

For example , when we see the law and the practice of punishment about general extenuating circumstances, most of the time accused people reasoned out and appealed to court for their health problem , their poverty and children protectors in order to extenuate the kinds of punishment that court could be decided on them. But, such kinds of claims are not acceptable at court there is no article to support the accused to extenuate his punishment based on health problem or family case. Either in the 1949 penal law or in the 2005 revised criminal law of Ethiopia there is no such kind of article.

Depending on different scholar's opinions and their controversial views and by referring primary and secondary sources of the law, including some practical cases, the researcher has planed to solve these dilemmas by further investigation. In general the main objective of the research thesis is to solve some controversial views which have been raised among different scholars about the purpose of criminal punishment. And to make clear indication of the law and the practice about criminal punishment, the research questions are well designed.

The main purpose of the research thesis is mainly designed to answer the following problem questions,

1. What are the kinds of punishments that have been exercised and is being exercising under Ethiopian justice system from ancient time till now?
2. What kind of crimes need aggravating and extenuating circumstances of punishment under Ethiopian justice system?
3. What is the main objective of punishment in the criminal justice system?
4. What are the main problems in the implementation of the law through practice in the criminal justice system. Specially to render justice through punishment?

The above problem questions got answer after deep research and investigation done by the researcher. The researcher hopes that all the above problem questions would get answer at the end of the research.

The research thesis could have great significance and be more advantageous to the readers, especially for those who read and refer this research thesis either male, female, young or aged people. The research thesis is more advantageous for law students, law instructors, lawyers, judges, prosecutors, and researchers. They could be primarily benefit from the research.

As it is clearly expressed above, the writer of this senior research thesis, as a judge in the High Court of criminal bench has reach experience and good knowledge about the criminal law and criminal cases. Therefore thesis a good opportunity and right time to contribute some achievable work to the society at large. As far as

possible the researcher can try to do best and problem solving thesis with regard to criminal law in general and law of punishment in particular. The writer of this research thesis is raised and discussed on important problems with regard, to criminal law, kinds of punishment, and rights of the accused in connection with the practice. Finally the researcher proposed his solutions to the problems and his achievements. Therefore, any one who read, refer and cross check this research thesis could be benefited. The research thesis is mainly focused on the sampling groups of peoples who are educated, and have knowledge of law in general, people who are judges prosecutors, lawyers, and instructors of law. The reason why the writer of this research thesis chose this topic is that however, many people has good knowledge of the theory of the law but they have no as such enough knowledge about the practice. Therefore, the researcher has great interest to do good research as far as possible by referring the theory and the practice of the law, especially criminal law and law of punishment. By conducting different methods the researcher has tried to fill the gap.

Having in mind in the above introductory part and to have in advanced knowledge about criminal punishment, the law and practice, this research is classified in to four broad chapters plus the conclusion and recommendation part. Under chapter one of the research, theoretical definition, historical back ground origin and objective of punishment in general and criminal punishment in particular is well discussed under this chapter criminal punishment in ancient time, and now at this time is broadly discussed what seems like? And what is the difference between international law and national law with regard to punishment are broadly discussed. One problem question of the research thesis is answered under this chapter. The researcher hopes, that the reader of this thesis could get enough knowledge about the theory, history, origin and so about punishment.

Chapter two of the research discusses about the various ways of punishment. Traditional punishment, in the ancient time, corporal punishment, capital punishment,

imprisonment, and scientific punishment in the modern era. Is broadly discussed what are the differences and similarities between these punishments? And what is the effectiveness of them are discussed Reader can easily compare and contrast about each kinds of punishments. One problem question of the research thesis will get answer under this chapter.

Chapter three of the research is about general aggravating and extenuating circumstances of criminal punishment. Further what are the circumstances to aggravating and extenuating punishments in light of Ethiopian Criminal law? And what are other special circumstances and their applications are discussed. This chapter is more concentrated on criminal code of the country specially the old penal law is mainly used as a main source. And one problem questions of the research will get answer under this chapter. The researcher hopes that reader could achieve good knowledge about punishment and grounds of aggravating and extenuating circumstances of punishments. Final chapter of the research thesis is chapter four, what the practical application of criminal punishment is discussed. The negative and positive impacts on the sentenced people or on the society at large. What are the main problems which creates difficulty to implement the law in to practice and to render justice? Here the research thesis emphasized on the practical application of the law of our country practical cases will be briefly discussed The research thesis has conclusion and Recommendation part, under this topic the researcher proposed the achieved result and the possible.

CHAPTER ONE

THEORITICAL AND HISTORICAL BACK GROUND OF ABOUT CRIMINAL PUNISHMENT

1.1. Definition of punishment

Punishment is the measure which is imposed on the wrong doer in order to teach the society. The punishment could be either corporeal, bodily pain death penalty or spiritual punishment.

Punishment means imposing penalty on some one for an offense.[1] The offenders who are responsible for their acts is alone liable to punishment under the provisions of criminal law. [2] Punishment is imposed on people who are legally responsible for their acts. But, punishment is not imposed on the offenders based on their age, illness, abnormal delay in his development or deterioration of his mental faculties. [3]

Punishment which consists in the infliction of pain is a measure society imposes on a deviant.[4] Punishment is imposed on the person so as to reinstate the previous order or to establish a new one that is as close as possible to the previous order and to protect the (status quo)[5] in the future.

Reinstatement of the status quo could be possible from the material point of view as in the case where a thief is ordered to return the stolen property to the owner.

1. Pocket Oxford English Dictionary page 728 by F.G and H.W Fowler 9th edition.
2. Article 48 of the (1957) old Penal Code of Ethiopia
3. Ibid
4. A deviant is a person who intentionally or negligently disrupts the established order by considerably departing from the accepted norms of behavior of a given society. (criminal law teaching material by Nigatu Tesfaye p. (61)
5. Status quo means (the established order) Ibid p. 61

But, from a non material point of view we have in our hands the fact of the incident which disturbed the established order and the future risk of similar incident by this deviant and by potential imitators. Men/women believe that to let the deviant go after material reinstatement would be to invite future disruption of the established order. [6]

Generally speaking the legitimate reason detre of punishment is the well-being and protection of society the maintenance of peace and public order.[7]

1.2. **Background and origin of punishment**

Ethiopia is one of the ancient civilized nations who have codified laws in the world history. For instance when we see the development of the criminal law of our country it is classified in to five eras. The first era was the time before Fetha Negest. However, there were no codified laws in our country, but there were punishments and penalties imposed based on the Old Testament law, custom and by king's order, but these punishments were not effective because they were not exercised in an equal and just manner.

The second era was the Fetha Negest era it has been exercised during 14th c up to 1923 E.C. the then Ethiopian king Zerayakob have been decided to have new and codified laws, because of unsatisfaction of his time law of punishments. [8] During his time all the subjects of the country weather who were Muslims or Christians if they commit crime they were punished according to the Old Testament law. So that, Zerayakob (the time of Ethiopian king) have been met with the Egyptian who can speak both Geez and Arabic. And During a discussion with Zerayakob, the Egyptian have been convinced and ordered by Zerayakob in order to bring the new codified law from Egypt. That law was the Fetha Negest (the law of kings).[9]

6. Ibid
7. Ibid reason detre means (The very legal purpose of punishment)
8. The Fetha Negest (the law of kings) preamble direct translated from Amharic Version
9. Ibid

Therefore, punishments have been exercised in Ethiopia based on the law of the Fetha Negest for almost 500 years.

The third era was the 1923 E.C. Penal law era before 1923 EC, Ethiopia was governed by Fetha Negest; the penal and civil matters were incorporated in to one law book that was the Fetha Negest. This law was mainly fulfilled the will of kings and it was not effective. Even if the 1923 penal law era had its own problems, but it helped to the country to have its own separate penal law. The 1923 penal law had its general and special rules in it so that, it shows the more developed and advanced state with regard to legal matters. And the law is more standardized & procedural and modern than the Fetha Negst. [10]

The 4th era in the criminal law development history of our country is the 1957 penal code era. This code had modern special and general rules. During the codification and enactment of the law there have been participated different countries law scholars and it had modern punishment, theories, Biological, Psychological and scientific matters are incorporated under this law. Therefore, it is more effective and advanced when compared with others. The fifth and modern era in the criminal law development of our country is the 2005 revised criminal law enactment era. This law has different kinds of rules improved and incorporated under it.[11]

The main purpose of revising the criminal law of the county is because of that, during this time radical, economic and social changes have taken place in Ethiopia. Among the major changes are the recognition by the constitution and international agreements ratified by Ethiopia, of the equality between religions, nations, nationalities and peoples, the democratic rights and freedoms, of the citizens and residents, human rights and most of all, the rights of social groups like women and children. [12]

10.The Fetha Negest (the law of kings) preamble of

11.Preamble of the2005 revised criminal law of Ethiopia

12. Ibid

Because of it is important to revise the former penal code that it doesn't properly address crimes born of advances in technology and the complexity of modern life, crimes that are hijacking of aircrafts, computer crimes and money laundering, corruption and drug, grave injuries, sufferings caused to women and children, constitutional guarantees and so on.

The other important purpose of revising the criminal law is for the determination of sentence. Since it is essential to facilitate the method by which courts can pass similar punishments on similar cases, some major changes have been made in the provisions of this code. [13]

According to the preamble of this law we can find the following under this revised criminal law there are incorporated different Fundamental Human Rights and Democratic principles, which was not touched by other previous laws different kind of punishments are improved as to be applied equally on the same kinds of punishments for the same kinds of wrongs. Therefore, it is possible to conclude that, our country has ancient history with regard to codification of the laws.

When we turn our face to the history of our law, king Zerayakob is mentioned as a famous. He traditionally called as the father of justice the reason that he punished his son because of murdered of slaves. Zeryakob decided to be crucified his son based on the law of Fetha Negest provisions of death penalty.

Some kinds of punishments during that time were biting with stones, fines, slavery, flogging, shaving heads, killing and so on.[14] Even in the beginning of 20th century during the time of emperor Menlik, the main kinds of punishments were flogging, cutting feets, hands and tongues.

13. Ibid

14. The penal law general explanation (translated from Amharic) Addis Ababa University Development of punishment in Ethiopia p.88

The king himself was one of decision makers for such kinds of punishments. Emperor himself have been passed death penalty on the lawyer who commented the wrong decisions with regard to other peoples punishments.[15]

1.3. JUSTICE AND OBJECTIVES OF PUNISHMENT

Justice would seem to be equitable with the protection and retention of broad outlines of the status quo within a given socio-political framework. And it is when this balance of necessary convince is tipped over the punishment is applied so as to reinstate the previous order, or to establish a new balance that is as close as possible to the previous one, and to protect the status quo in the future.[16] An example may clarify the statement. Where a thief steals a cow from a farmer, the status quo is upset; and to let things be as they are would be to sin against justice. Some kind of action has to be taken by society but what? The return of the cow that is reinstatement of the previous order, or the handing over to the victim by the offender of a comparable value, example, a similar cow or cash etc. That is the establishment of a new order, which is as close as possible to the previous one would satisfy the status quo form the material point of view. But from a non-material point of view, the fact of the incident that disturbed the status quo, which by now becomes a historical fact, and the future risk of similar incidents both by this offender and by others who may follow this example.

To let the offender go after material reinstatement would be to invite future disruption of the established order. [17]

In order to minimize the possibility of future disturbance, the status quo, the obligation the offender must be such that the resultant status quo.

15. Ibid
16. Journal of Ethiopian Law Volume 12 page 121 by Fasil Nahum 1972 GC
17. Ibid

After the incident, places the offender in a disadvantageous position vis-à-vis what he was in before the incident. As it is clearly indicated under art.1 of the Ethiopian penal code, The purpose of the Ethiopian penal law is to ensure order, peace and the security of the state and its inhabitants for the public good and aims at the prevention of the offenses by giving due notice. The purpose of the Ethiopian penal law is not primarily for punishment but ensuring peace, security order, and due notice to the people. Finally if the people unable to respect these notices punishment would be followed them. Art.1 of the Ethiopian penal law indicates that "the criminal law is not primarily concerned with the protection of the private rights but with the protection of the society at large. As such, it regulates the behavior of human beings in their capacity as members of a group. Because of this there are different kinds of punishment principles incorporated under the Ethiopian penal law. [18]

1.4. **Punishment and Human Dignity**

"Dignity" means honorable prestige, it is an intrinsic worth of the human person that deserves social respect. [19] The human person possesses this quality because we believe that he/she is created in the image of God, the creator of all things.

Human beings, unlike other creatures, have also unique faculties "intellect" and "will". No matter what a person's life experience or up bringing, he/she knows better, because, he/she is endowed with intelligence. And, no matter what a person's cultural conditioning of value system, he/she is totally free to change; he/she has a free will.[20]

18. Philip Graven an introduction of Ethiopian penal law article 1-84 1965
19. Nigatu Tesfaye an introduction to penal law teaching material prepared in Amharic Un publiched
20. Ibid

Thus even if there may be some persons who may not believe that the human person is created in the likeness of God, they cannot deny the fact that man/woman is endowed with reason, with intelligence which makes him/her different from other creatures and enables him/her to distinguish between good and bad, fair and unfair, just and unjust. Using his intellect the human person analysis things and other phenomena and usually arrives at a normal and logical conclusion that is agreeable to the conscience of man/women. Man's/woman's intelligence tells him/her not to do unto others that which he/she does not like to be done to him/her and to do unto others which he/she would like others to do unto him/her, There are a religious and philosophical bases of human dignity. It is common knowledge that every normal human being expects others to recognize his/her intrinsic worth and give him/her due respect.[21] Unless society recognizes the inherent worth of the human person and gives him due respect, there will not be peace and social harmony on this planet. This seems the reason why concern for human dignity is incorporated in to the charter of United Nations. The preamble of the UN charter reaffirms the faith of the peoples of the United Nations in the dignity and worth of the human person and proclaims their determination to promote social progress and better standards of life in larger freedom.[22]

From the above discussions one can observe that the importance of punishment in the above forms is condemned as abhorrent and is rejected. But does it mean that we should do away with punishment all together because it is inconsistent with human dignity? Can we say that because human beings are the children of God created in his own image with inherent dignity, it would be wrong for man to punish another man? Or are we appealing to society to devise a more humane form of punishment for deviants? [23]

21. Ibid
22. See the preamble of 1948 UDHR (Universal Declaration of Human Right)
23. Ibid

Basic to any human society, primitive or modern, is the necessity for compliance with authority, the necessity for disciplined behavior, and the necessity for community tranquility. Essential to any stable public order is some reliable and effective system of criminal justice.

Punishment or corrective measures for deviants who violate the norms on which society is founded are vital to the continued existence of society. The fear that, unless such corrective measures legally exist, the very publics of society would disintegrate and we would plung in to the abyss of savagery and the law of jungle is a real concern. Thus he sys "punishment should continue as a component of justices [24.]

But, the question is in what form should punishment continue as an important social institution for rendering criminal justice? The history of Punishment is to a large extent a history of human irrationality and cruelty. A rational being would not suggest a retributive punishment. And punishment should therefore be rehabilitative and deterring and must be consistent with human dignity. [25]

Article 5 of the Universal Declaration of Human Rights and Art 7 of the International covenant of civil and political Rights provide that "no one shall be Subjected to torture, or to cruel in human or degrading treatment" It is also provided under article 10(1) of the International covenant on civil and political rights that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" Cruel in human or degrading punishment can not be justified even if it could be conclusively demonstrated that law and order could not be maintained with out it [26].

24. Ibid
25. Fasil Nahoum (journal of Ethiopian law volume 12 page 122
26. See article 5 of the UDHR (Universal Declaration of Human Rights and article 7 and 10 of International Covenant of civil and political Rights respectively.

Dr. Fasil Nahoum suggests that for less serious offenses it could be better to replace short prison sentences by various measures known as secondary punishments, which includes fines, special labor temporary deprivation of particular rights probation and conditional release. The significance of replacement of the short prison sentence by such measures is both social and economic for more serious crimes, however, the prison system should be continued but" imprisonment should be looked at as a treatment in medical terms..." [27]

However, the main purpose of punishment is in order to teach the public and to protect peace order and security to the state, but the punishment whatever kind it must be, human rights and human dignity could be respected. The researcher strongly support the above discussions.

In the preceding discussion we clearly understand about the theory and history of punishment its meaning in different perspectives. The purpose and objectives of punishment are clearly explained, finally it is tried to compare the difference between human dignity and purpose of punishment however, it is very important to punish some one who commits crime against another or on state, but, it must be reconsider the human dignity and human rights of the accused. In human and degrading ill treatment, torture and the likes are not acceptable today in many states in the world.

27. Journal of Ethiopian Law Volume 12 page 123 by Fasil Nahoum (Dr)

CHAPTER TWO

VARIOUS WAYS OF CRIMINAL PUNISHMENT

2.1. ***General:*** The social cost of punishment is an important factor that cannot be over looked a system of punishment of fatal overdose that goes beyond deterrence and rehabilitation so as physically or psychologically to unable to work and disabled abnormal for life, so that he can no longer fully function as a healthy member of the society and contributes his utmost in life, is undesirable. In such case one is not punishing the deviant, but is over-punishing the deviant and punishing the society.[28] The social cost to the immediate group of family and friends that punishment of the deviant imposes as well. For instance, the incarceration of the bread winner without providing for dependants would be a measure taken not only against the offender but against the innocent dependants. And exploitative societies that take irrational measures sow seeds for far-reaching negative consequences.[29]

An examination of traditional type of punishment is quite revealing as to what objectives of punishment are given prominence. And, as already observed, this makes punishment an acid test of weather and to what extent a society is noble, creative and progressive.[30] The following are some typical criminal punishment theories and we will see them separately.

2.2. **Imprisonment**

When one thinks about the different kinds of punishment measures society traditionally imposes on deviants, the one type of punishment that immediately springs to mind is imprisonment. Indeed, in the vocabulary of everyday language imprisonment and punishment are synonymous.

28. Phillip Graven An introduction to Ethiopian penal law pp. 7
29. Ibid
30. Journal of Ethiopian Law volume 12 by Fasil Nahoum pp. 124

The prison system is such a common feature of governments the world over that one is tempted to think of the prison as a sine qua non-part and parcel of government-an axiomatic institution. There is no doubt that incarceration is a practice of very ancient traditions, although it is difficult to say when and where it was started. Would it be too daring to venture the theory that imprisonment started by default? Society, at a loss as to what to do with deviants, simply locked them up until it could decide what to do with them? In the absence of brighter ideas, this temporary measure in time became the most important type of punishment.

Today, in most countries of the world, imprisonment is categorized as simple or rigorous.[31] Simple imprisonment is a punishment imposed on persons considered not a serious danger to society, i.e. those who have not committed offences of a very serious nature. Simple imprisonment is also of relatively shorter duration. Rigorous imprisonment, on the other hand, is imposed upon what are considered dangerous offenders who have committed offences of a very grave nature. Prisoners undergoing rigorous imprisonment serve big thick solid of their life in maximum-security central prisons.[32]

Prisons are by no means pleasure houses, which is not surprising, as they are often used as society's instruments of retribution more than all. In feudal Ethiopia we have some descriptions of prison and prisoners, narrated by various travelers who chanced to pass through the country from the sixteenth century onward.

The Portuguese priest Alvarez tells us to prisoners kept chained in prison tents. They were required to provide not only their own food but also that of their guards. [33]

31. Article 105 of the old penal law of Ethiopia
32. Journal of Ethiopian law Volume 12 P (125) by Fasil Nahoum
33. Ibid

In the 1850s, the English traveler Richard Burton refers to the Ethiopian prison as dirty underground.[34] A century later another British traveler, Perham, refers to the Addis Ababa prison as known the prisoners being in a cause to be horror condition of health, neglect and disease which lead to the prisons being cleared at intervals by typhus. Whatever improvements prisons may have since under-gone, in many a society prisons could use a few improvements in order to elevate them to acceptable human institutions. [35]

Tempted as one is to look at the prison as an axiomatic institution whose abolition would bring down on society the extreme anger it is time to give the prison a closer look. All those whose concern is penal policy and administration, as well as those who have to work hard to maintain this very expensive system, have an interest in finding out the intended result of the prison system. In order to be allowed to continue, the prison system should have to pass the dual test of its efficacy in deterrence and rehabilitation and pass it scientifically. It does not suffice to assume that incarceration is deterrent and rehabilitative. The facts have to be researched in order to arrive at solidly supported conclusions as to the deterrent and rehabilitative characteristics of the prison system.

2.3. Corporal Punishment

Another type of traditional punishment, which is fortunately gradual withdraw out, although it is by no means no living members is corporal punishment. Corporal punishment, as a predominant type of punishment, appeared in very many forms in various societies. Criminals were forced to undergo all sorts of cause to Sevier injury under the crudest possible medical conditions which often cost the individuals their very lives. [36]

34. Ibid (and which means strong underground prison)
35. Ibid
36. Ibid

Thus, someone convicted of lying might be sentenced to the removal of his tongue, while another convicted of providing false evidence might be ordered to have his eyes plucked out. The cutting off of the nose or the ears, the doing away with the sexual organ for the male, and above all the axing off of a limb, were rather common traditional punishment in most societies.

As in most traditional societies, in Feudal Ethiopia for instance, corporal punishment was an instituted form of punishment. Travelers came across the execution of such punishments and have left us their evidence and impressions. In 1830 one visitor witnessed the king ordering "a hand and both feet of the thief to be cut off", and the execution of the order being carried out in the middle of the market; the thief was latter found devoured by the hyenas in the night. [37] A late 19th –century traveler creaticise the then emperor as "given in his application of the cruel punishments; (he) did not hesitate to order the not learned by punishment thief's hand to be cut off or the slanderer's tongue to be cut out. He once had the tongue of an advocate out because in defending his client too well he spoke ill of the government …[38] Explaining the carrying out of mutilation, someone else reports:

The penalty for the thief who had one previous conviction was the loss of a hand. Immediately after the formal decision, would severe the strong band of issue of the wrist and then cut the hand off with the chopper. In the meantime, women would be heating butter in a pot over a fire. As soon as the hand was severed, the stump would be dipped in the seething butter. In the way, the flow-of blood would be stemmed and the delinquent's life would be saved.[39]

37. Ibid
38. Ibid
39. Ibid

The doing away with mutilation in Ethiopia coincided with the introduction of the penal code in 1930, and, as the chapter dealing with punishment makes clear, the idea of corporal punishment was then limited to the sentence of flogging. Furthermore, the Penal Code of 1930 seemed to be uneasy about that sentence, and promised that flogging would soon be abolished.[40] Despite such a promise, however, when a new and advanced penal code was introduced in 1957, flogging was retained as a form of punishment.[41] The drafter of the 1957 code had not maintained it in his work, and it was only included after heated discussions in Parliament.[42] Nevertheless, he justifies its inclusion by saying, ".. it is no less possible to regard (flogging) as a useful institution among a proud and courageous people who are afraid not of suffering but of loss of respect, and who would approve of it, precisely because of its ethical implications."[43]

Initially the sentence of flogging was limited by the Code to aggravated theft and aggravated robbery.[44] The Penal Code of 1957, as a sign of progress and modernity, provides that flogging be carried out only on male offenders between eighteen and fifty years of age, and that a maximum of 40 lashes be executed only after a doctor has certified the offender fit to receive the flogging.

There is no question of the retributive value of flogging. What is at issue, however, is the reformative or deterrent value of flogging. In the absence of studies and statistics concerned with the, issue the author would, on the basis of its retributive foundation alone, question the usefulness of flogging from the deterrent and reformative points of view.

40. Article 3 of the 1930 penal code of Ethiopia as Dr. Fasil explained as it is under journal of Ethiopian law
41. Article 120 (A) of the 1957 Ethiopian penal code
42. S. Lowenstein The penal law of Ethiopia P. 340 Addis Ababa 1965
43. J. Graven, "The penal code of empire of Ethiopia in Journal of Ethiopian law Vol IP 289, 1964
44. Articles 635 & 637 respectively, Ethiopian penal code of 1957

Unless and until such usefulness is convincingly proven, one can only suggest that the corporal punishment of flogging should be allowed to follow the path of its sister institution, mutilation, into extinction and oblivion.[45]

2.4. Capital Punishment

The ultimate traditional punishment in all societies though the ages has been the death penalty. The death penalty has been the punishment generally reserved for crimes considered exceptionally grave. And, presumably having convinced itself that these criminals were beyond any help and use, society has employed its imagination liberally in coming up with horrible means of destroying them. One description of the practice of ancient European states that executions were made "by knife, axe, and swords, heads being knocked off with a plank or cut though with a plough, people being buried alive, left to starve in a dungeon, or having nails hammered through their heads, strangulation and throttling, drowning and bleeding to death, remove the intestine drawing and quartering, torture on the wheel, torture with red-hot tongs, strips being cut off the skin, the body being cut out to pieces or sawed through with iron or wooden instruments, burning at the stake, and many other elaborate forms of cruelty."[46]

Present-day penal codes and statues that have retained the death penalty have progressed to the extent of providing for executions that are free from other unnecessary cruelties. The 1957 Penal Code of Ethiopia is a good example.

Having retained capital punishment, it goes on to provide specific instructions. Punishment is to be executed by hanging or, on a member of the armed forces, by shooting. However, executions are to be carried out without any cruelties, mutilation or other physical sufferings.[47]

45. Ibid and which means completely destroyed
46. Ibid
47. Article 116 of the 1957 Ethiopian Penal Code

Having said that capital punishment was generally reserved for crimes considered exceptionally grave, it should also be stressed that the gravity of a crime and its corollary punishment are relative concepts, existing purely as factors of the values of the power elite of a particular society limited in time and space. To cite one example, at one time in England there were over two hundred specific crimes punishable by hanging. These included the shooting of a rabbit, the theft of a handkerchief, the cutting down of a cherry tree and fishing without permit.[48] The assumption behind it all was that the property right of the landlord was absolute and, in a rigidly stratified feudalistic society, this right and a very important value. The feudalistic society would therefore go all the way to safeguard this right, even to the extent of providing capital punishment for what today we may consider petty infringements. (The Great Britain of the latter part of the 20th century, on the other hand, has for all practical purposes abolished capital punishment.)

A 1962 United Nations study on the subject of capital punishment points out that, out of over one hundred jurisdictions examined; 35 jurisdictions have abolished capital punishment by express constitutional or legislative enactment, and 9 jurisdictions have abolished it in practice, while the majority of the jurisdictions examined have retained the death penalty. (Total abolition of capital punishment by statute in Europe dates from 1786, when king Leopold II of Tuscany under the direct inspiration of Beccaria promulgated his celebrated code. In 1787, Joseph II of Austria did the same in his penal code.[49]

One cannot help asking the difficult question as to what makes some societies abolish the death penalty already in the 18th century, while others go on retaining it even in the latter part of the 20th century.

48. Journal of Ethiopian Law Volume 12 page 129 by Fasil Nahoum

49. Ibid

Where this is too complicated a question to ask or answer here, one may at least examine the various points that can be raised in support of or against the retention of the death penalty in the present-day world.

Explaining the rationale for the retention of capital punishment for homicide in the Ethiopia penal code of 1957, Jean Graven, the drafter, writes:

> "In the Ethiopian context it would in particular have been an inconceivable mistake, and even an impossibility, to abolish the death penalty at the present time. It is not only necessary for social protection, but is based on the very deepest feelings of the Ethiopian people for justice and for amends for wrong. The destruction of life, the highest achievement of the Creator, can only be paid for by the sacrifice of the life of the guilty person. As in the Christian European system of the Middle Age, death is always a necessary condition for the pardon and salvation of the sinner, and also for expiation for the evil which he has committed, it is accepted and approved by all, and in the first place by the criminal who has deserved it, and is carried out in a dignified atmosphere quite different from that of our former executions with the axe or the guillotine.[50]

Again looking at capital punishment as a measure against homicide, one report states that "capital punishment is as harsh a punishment as murder is heinous a crime.

50. Philip Graven "The Penal Code of empire of Ethiopian law volume I page 280, 1964

The 20th century has been a limitation of the use of capital punishment; indeed, a number of jurisdictions have abolished it altogether by law. Others who have retained it selectively have found justification for it, only as punishment for what is in certain jurisdictions termed first-degree homicide. Unfortunately this century has also seen the accelerated use of the capital punishment for a wide range of political crimes. The employment of the death penalty for non-murder crimes, and particularly for wholesale political crimes, seems to have a very doubtful value, when considered form a detached intellectual viewpoint. [51]

2.5. Scientific Punishment

In the third section of this work, three traditional types of punishment have been taken up and evaluated and have been found wanting. This raises the next set of fundamental questions. Since we have minimized the importance of some traditional punishment, does it mean that society should then do away altogether with the idea of punishment? The answer is no; punishment or corrective measures for deviants who violate the norms no which society is founded are vital to the continued existence of society. The fear that, unless such corrective measures legally exist, the very fabrics of society would disintegrate and we would plunge into the abyss of savagery and the "law of the jungle" is a real concern. Thus punishment should continuous as a component of justice. But the important question is, in what forms should punishment then exist? It is in line with this question that the value of traditional punishment is raised. And one simple theory we suggest is that punishment should not be retributive. Retributive punishment is a destructive force that consumes both society and the deviant, and negates the basic raison deter for punishment.

51. Ibid

Punishment should be deterrent and reformative. In order for it to be made so, it is incumbent on society to employ its creative faculties, and aided by the ever-increasing level of scientific and behavioral knowledge, to come up with better and better corrective measures.[52]

Under the above discussion we clearly understood about the different kinds of punishments. Traditionally there are different kinds of punishment which are exercising in the world; the first one is imprisonment the one type of punishment. By putting the criminal in the prison house it is possible to protect crime and teach the public, and imprisonment is either simple or regrious. The other kind of punishment is corporal punishment it is a predominant type of punishment and it is cruelty like flogging, cutting, beating and so on.

Capital punishment is the other kinds of punishments which have been discussed under the preceding chapter, however, many countries in the world are avoided (totally abolished) capital punishment from their laws. But, our country is still applying it. The researcher strongly argue that capital punishment must not be abolished from our law for such kinds of poor and illiterate people we have, if capital punishment is abolished from our law crime could be expanded in a very wide range.

Finally, scientific punishment is the last and modern kinds of punishments reconsider that punishment must be for the purpose of corrective, Retributive, reformative meanses.

52. Ibid

Chapter Three

GENERAL EXTENUATING AND AGGRAVATING CIRCUMSTANCES OF CRIMINAL PUNISHMENT

3.1. Extenuating Circumstances.

When we see the law about estimating circumstances of criminal punishment we can find the following.

The court shall reduce the penalty, with in the limits allowed by law in the following cases. [53] It says, for example.

When the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind;

When the criminal was promoted by honorable and disinterested motive or by a high religious, moral or civil conviction;

When he acted in a state of great material or moral distress or under the apprehension of a grave threat or a justified fear, or under the influence of a person to him who owes obedience or up on whom he depends.

When he was led into grave temptation by the conduct of the victim or was carried away by wrath, pain or revolt caused by a serious provocation or an unjust insult or was at the time of the act in a justifiable state of violent emotion or mental distress;

When he manifested a sincere repentance for his acts after the offence, in particular by affording succor to his victim recognizing his fault or delivering himself up to the authorities, or by repairing, as far as possible, the injury caused by his offence.

When the law in a special provision of the special part, has taken one of these circumstances in to consideration as a constituent element or as a factor of extenuation of a privileged offense, the court may not at the same

53. Article 79 of the old penal law of Ethiopia or article 82 of the new revised criminal law.

time allow for the same circumstance to reduce the penalty applicable there to.[54] Special circumstances family relationship of affection; the court may without restriction, reduce the punishment.[55] When the offender acted in a manner contrary to the law and in particular failed in his duty to report to the authority or afford it assistance, made a false statement or deposition or supplied false information or assisted on offender in escaping prosecution or the enforcement of a penalty, for the purpose of net exposing himself, one of his near relatives by blood or marriage or a person with whom he is connected by specially close ties of affection to a criminal penalty, dishonor or grave injury.[56]

The court shall examine and determine the existence and adequate nature of the relationship invoked. If the act with which the accused person is charged was not very grave and if the ties in question were so close and the circumstances is impelling that they placed him in a moral dilemma of a particularly harrowing nature the court may exempt him from punishment other than reprimand or warning.[57]

Punishment is personal and public prosecutor to change some one in extenuating or aggravating circumstance of the person must be convicted or acquitted. To summarize the extenuating circumstances of criminal punishment about article 79 of the old penal law is.

54. Article 79 (2) of the old penal law of Ethiopia or article 82 (2) of the new revised criminal law of Ethiopia.

55. Article 80 and article 185 of the old penal code of Ethiopia or article 83 and art 180 of the new revised criminal law.

56. Article 80(1) of the old penal code of Ethiopia or article 83 (1) of the new revised criminal law.

57. See article 80 (2) and article 121 of the old penal law of Ethiopia or Article 83 (2) and art 122 of the new revised criminal law of Ethiopia.

- Even if the wrongs are not listed under article 79 of the old penal law the court shall accept the public prosecutors approach and shall consider the dangerousness of the act of the accused. To extenuate or aggravate the circumstance of punishment the following elements are very important.[58]
- Conduct: The previous character of the offender is taken in to consideration, mind, though, intention, ignorance, negligence, are taken in to consideration. Therefore, to extenuate his punishment, the person must not be in the position of dangerousness.[59] Some people may did crime because of fear of parents, religious leaders, bosses and so on and some people may do crime during doing their job mitigation of punishment, there could be a possibility that the victim could be responsible to the crime. The judge can mitigate but not loose the punishment.[60] Even if the victim is provocative it must be serious grave. For example ,if the taxi driver hit the child and if the driver he himself pick that child and take him to hospital finally if he covered his expenses, and if he go to police station and ask excuse, this taxi drivers action is not in dangerous circumstances and court might mitigate the case.[61]

When we see article 526 of the old penal code of Ethiopia, if one person did crime negligently, the punishment will be reduced but when we come to article 79(1) a, b, c, d, of the same code, based on this, if the person did crime and if he said that I did without knowing such kinds of reasons are not acceptable or no ground because, the mitigation is already mentioned under article 526.

58. Class lecture about Penal law at St Merry's University College UUC (2003) unpublished.

59. See Article 79(1) (a) of the old penal code of Ethiopia or article 1 (a) of revised criminal law.

60. Article 79 (1) (b) of the old penal code of Ethiopia or article 82 (1) (b) of the revised criminal law.

61. Ibid

Article 79 of the old penal law can't allowed you to do some crime by saying that some one is provoked me, such kinds of reasons are not acceptable, the victim or the wrong doer is responsible himself.

Both article 79 and article 80 of the old penal code are stated about extenuating circumstances and article 79 is applicable for any kind of people, but, if we go to article 80 special circumstances, family relationship affection, friend or so by these conditions of failed to report the crime the court without restriction reduce the punishment according to art 185 of the old penal code and if we see article 38 of the old penal code, there is different matter. But, in the case of article 80 there must be at least blood relationship, family link , love and so on, court could recognize it. But exception to these principles are found under article 267(4), 344 (3) and art 647(4) of the old penal law are not mitigated.[62] e.g. if some one did offense against state, and grave offense against the government and even if there is a blood relationship, among the other, that person should report to the authorized body.[63]

3.2. **Aggravating Circumstances**

The court shall increase the penalty as provided by law,[64] in the following cases.

- when the offender acted with treachery, with perfidy, with a base motive such as envy, hatred, greed, with a deliberate intent to injure or do wrong, or which special perversity or cruelty;
- When he abused his powers, or functions or the confidence or authority vested in him.

62. Class lecture at St Merry's University college 2003 (unpublished).

63. Ibid

64. See Article 188 of the old penal law of Ethiopia or article 183 of the new revised criminal law of Ethiopia.

- When he is particularly dangerous on account of his antecedents, the habitual or professional nature of his offense or the means, time, place and circumstances of its perpetration, in particular if he acted by night or under cover or disturbances or catastrophes or by using weapons, dangerous instruments or violence;
- When he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit offenses and, more particularly, as chief, organizer or ringleaders. [65]
- When he intentionally assaulted a victim deserving special protection by reason of his age, state of health, position or function, in particular a defenseless feebleminded or invalid person, a prisoner, a relative, a superior or inferior, a minister or religion, a representative of a duly constituted, or a public servant in the discharge of his duties.[66]
- When the law, in a special provision of the special part, has taken one of the same circumstances into consideration as a constituent element or as a factor of aggravation of an offense, the court may not take this aggravation in to account again.[67]

To conclude the above article about general aggravating circumstances of criminal punishment: is that, “The court can use besides the points which are enumerated under the law and it can use another reasons. According to article “81” of the old penal law of Ethiopia, peoples who are considered as dangerous are, who acted treachery, base of motive such as envy, hatred greed and article 37, conspiracy. Further article 81, elaborates about aggravation that is habitual or professional nature of using weapons and so on.

65. See article 37 of the old penal law and article 38 of revised criminal law of Ethiopia

66. Article 81 or the old criminal law of Ethiopia or Article 84 of the new revised criminal law.

67. Ibid

E.g. police officer, priest, and the likes are more responsible than other people and their fault is considered as more dangerous. This dangerous situations may come by his motive state of mind, intent, conditions of treachery with perfidy,[68] If the authorized person did crime by using his power and authority is more dangerous than the other people done e.g. former prime minister of Ethiopia Tamirat Layne's act was done by using power so it was very dangerous he abused his power.

Professional nature, e.g. if engineer doctors, polices, soldiers commit crime depending on their conditions, or if the crime is more dangerous than the other normal people meanness, places, times, and circumstances acted by night in catastrophe are dangerous. Acting crime in group with the members of gang is very dangerous and considered as aggravated. Crime against the family members special protection by his age, state of health, position or function of the prisoners relatives while doing crimes are dangerous. Courts can use another mechanisms for the crimes which done by people which are not found under the code to be said as dangerous.[69]

3.3. **Other Special Circumstances**

The penalty shall be aggravated under the relevant special provisions.[70]

In cases of material concurrence, when the offender successively committed several offenses, whatever their nature; it may also be increased, according to the degree of guilt, in cases of notional concurrence when the act simultaneously contravenes several criminal provisions.

68. Class lecture at St Merry's University College 2003 un published

69. Ibid

70. See Article 82 (1) and article 189-193 of the old penal law of Ethiopia art 85 and 184-188 of the revised criminal law of Ethiopia.

When a second or further intentional offense against the provisions of this code warranting extradition under Ethiopian law has been committed with in five years of a sentence being served in whole or in part or having been remitted by pardon or amnesty.

Where in a case of recidivism the offender has at the same time been convicted of concurrent offenses the court shall first assess sentence for the concurrent offenses and then increase it having regard to recidivism.[71]

The court shall give reasons for applying extenuating or aggravating circumstances not expressly provided for in this code and shall state clearly its reasons for taking this exceptional course.[72]

If there exists both extenuating and aggravating circumstances the court shall take both in to consideration in determining the sentence. In the event of concurrent aggravating and extenuating circumstances the court shall first fix the penalty having regard to the aggravating circumstances and then shall reduce the penalty in light of the extenuating circumstances.[73] There are different circumstances that the court see as special to punish the criminal. Some of them are concurrence and Recidivism, that means if the person came to commit theft and on the way if he did rape against the daughter, of the victim finally if he kill his son, the person will be sentenced by one offense by doing more than one crime because, of the concurrence nature of man, he did different crime. If for example the man did crime in 1992 but, punished for 1 month imprisonment and did the same crime in 1994 and if punishment 3 years imprisonment again, then after the complete the 3 years imprisonment and out from prison, finally if he did other crime again, court can see the case as seriously.[74]

71. Article 82 (2) of the old penal law of Ethiopia

72. See Article 83 of old penal law of Ethiopia and article 86 of the new revised criminal law of Ethiopia.

73. See Article 84 of the old penal law of Ethiopia.

74. Class lecture at Saint Merry's UC 2003 (unpublished)

If the person commit theft for 6the time, this is redicivism and finally he did rape and murder that act is said to be concurrence so that, the court consider this situation as an aggravation.

If the aggravating and extenuating circumstances are not found under article 79, 80, 81 & 82 of the old penal law court can decide or give judgment by using another mechanisms and punish the criminal but, the court shall give reason why he gives the reduction of punishment for example, Nelson Mandela's wife wini Mandela,. People who did good favor the state or who gives good service to the country, might get extenuate the case. E.g. Haile G/Selasie, if he commits crime, court can pass less punishment.[75]

It is better to the court that first use aggravating circumstances and it is possible to prove the accused to extenuate his case, first give or pass more penalties then after serious argument court shall decrease that penalty by convincing the circumstances of extenuating punishment. .

It is possible to use or ask extenuating circumstances of criminal punishment to court to decrease or change that aggravation. Ask every thing to the court at all of the property during the case presenting to court and the lawful, excusable, and justifiable acts shall be mentioned and shall be proved at court.

3.4. **Applications**

The penalties and other measures provided by this code must be applied in accordance with the spirit of this code and so as to achieve the purpose it has in view to achieve the purpose of the legislator.[76] That means to ensure order, peace and the security of the state and its inhabitants for the public good. It has deterrent, Retributive and reformative purpose.

75. Ibid

76.See article 85 and article 1 of the old penal law or see article 87 and article 1 of the revised criminal law

They shall always be in keeping with the respect due to human dignity.

The court shall determine the penalties and other measures in conformity with the provisions of the general part of this code and the special provisions defining offenses and their punishment.[77]

The penalty shall be determined according to the degree of individual guilt, taking in to account the dangerous disposition of the offender, his antecedents, motive and purpose, his personal circumstances and his standard of education, as well as the gravity of his offence and the circumstances of its commission.[78]

77. See article 86 of the old penal law of Ethiopia or Article 88 of the revised criminal penal law

78. Ibid

CHAPTER FOUR

SOME PROBLEMS AND SOLUTIONS IN THE PRACTICAL IMPLEMENTATION OF CRIMINAL PUNISHMENT

4.1. General: In principle no one is sentenced or punished unless evidence is proven against him beyond reasonable doubt because, every one is presumed, to be innocent. This principle saves the innocent people from punishment. The practical application of punishment in our country is different from court to court or bench to bench in one court. Therefore, this practice made the law in question. Even in the international level many states have no clear punishment policies because of that punishment is individualized and it is left to judges fair decision. The lack of shared certainties among courts create confusion on the purpose of punishment.[79]

Recently many states in the world like (Canada, Sweden, America, Australia, and England) are re-checking and investigating their punishment policies and orders because, there is strong comments and debates with regard to punishment in the international level. For example the following comments are some of them that different scholars argue differently with regard to punishment.[80]

1. Most of the time in the world, punishments are imposed without similarity, they are not standardized, they are not governed or ordered by known and governing rules. They are applying punishment decisions based on, individual response of judges.
2. The other kinds of comment which raised by scholars is that punishment decisions are various and complicated specially, the amount & degree of punishments imposed on the sentenced people are exaggerated and more than the limit.

79. Some Raising points based on punishment decisions (Translated from Amharic by researcher) Nikodimos Getahun (2003) Ministry of justice.

80. Ibid

3. And the last comment is that, there is always flexibility in the punishment decision and this is dangerous, for criminal case it must be strict in passing decision.

However, there is no studied and specific research done on the case of punishment policy but, we can understand and clearly know about its real problems. As clearly understood the problems raised from different meetings workshops and gatherings professionals comment that we should have clear and standardized punishment policies in our country. Decisions and laws of punishments in our country must be rechecked and studied again based on the practices and customs of other countries. And the following important points clearly show how the purpose of punishment policies must be in acted. [81] According to scholars comment.

4.2. **Purpose of punishment**: In every written materials about punishment, there must be clearly explained and stated about the purpose of punishment, because, the purpose of the enactment of each and every laws is to fulfill or to achieve the purpose of the legislator. [82]

All the improvements or changes of the law must be depending on the purpose of the legislator. And the main objectives of punishment and justice system must be in order to pass active, predictable, cost effective and believable decisions.[83] As clearly expressed in the criminal law of our country, the main purpose of punishment must be:-

- For Just Deserts to wrong doers
- To Deter the criminal (Deterrence)
- To incapacitate (Inca pacification)
- To Rehabilitate.

81. Ibid

82. Ibid

83. Ibid

Therefore, each and every kinds of punishment decision must be applied on the sentenced people in order to achieve the purpose of the legislator and the punishment policy must be centered the interest of the law maker.

4.3. **Some Kinds Of Problems which arise While Giving Punishment Decisions In Our Country**

The writer of this senior research thesis, as a judge to the high court criminal bench has great experience about the criminal punishment and problems in the implementation of the law. And the lack of punishment policy in our country increased the problems more. The following some points are chosen from the mainy problems which are arising in the daily practices of court.

- To extenuate the circumstances of punishment which imposed on the sentenced people are not always presented to court supporting with evidence. Such kinds of cases are familiar and every judge at different courts has experience of such kinds of questions.
- Most of the time, sentenced people reason out their health problems, family case, about their children their poverty and so on, to the court in order to extenuate the punishment imposed on them. But, either in the 1949 penal law or in the 2005 revised criminal law, there are no such kinds of article to support the sentenced people to extenuating circumstances of punishment, based on family case, health problems and as children protectors. But, courts some times accept such questions in the practical applications.[84]
- Courts are allowed to extenuate the punishment of sentenced people based on age, and living areas of them. The law accepted such kinds of situations.
- The other kinds of problems about the practice of punishment decisions is that, public prosecutors always proves to court, for the reasons of aggravating circumstances of punishment and presented to court without supporting evidences.

84. Ibid: And more elaborated by the researcher

Such kinds of proceedings are not acceptable in court because evidences are very important to impose punishment against the sentenced people.

The law doesn't allow or permit to pass decision on sentenced people to aggravated or extenuate punishment based on his criminal record. And public prosecutors reasons about this record are not always accepted at court.

Under the 1949 penal law or the 2005 revised criminal law of our country with regard to rigorous imprisonment, the law ordered that, judge can pass decision on sentenced people, minimum 1 year and maximum 15 years. That means "Such kinds of wrongs are punishable by (1-15) years rigorous imprisonment, such kinds of provisions are very difficult to apply therefore, judges at different courts doesn't give standardized or uniform decisions.

There are always seen different punishment decisions in different court by different judges on the same issue or wrongs.

4.4. **Proposed Solutions To The Problems Of Punishments**

Article 25 of the FDRE constitution clearly indicate that "All human beings are equal before the law" it said, and such equality principles which given to all people must be treated equally on the suspected people by criminal matters until proven guilty to sentence and punish him.[85]

In many courts punishment decisions imposed on criminals are different for the same kinds of wrongs. Such kinds of variations violate the constitutional principles of equality and the fundamental rights of the caused. Therefore, it creates untrustful, unbelievable, of the justice system.

Such kinds of court's problems are not only our country's but also, there are seen in different countries legal system in the world.[86] But, some countries are taking measures to avoid and restrict the problems.

85. See article 25 of the 1987 FDRE Constitution

86. Accepting Punishment through negotiation (plea bargaining) by Eshetu W/Semait Miniatry of Justice

The measures which are taken by them helped to minimize the gap and large differences among courts giving decisions of punishment. Different countries follow different manses to solve the problems.

The mechanisms which are using by different countries are very good and if our country take or copy from their policies and laws about punishment decisions, it might make predictable of our criminal law and could make narrow the gaps between maximum and minimum punishment decisions.[87] Specially counties who follows common law legal system has very good criminal law provisions and punishment policies. The following points are chosen by the researcher which can solve the problems and contradictions about criminal punishment. The future enacted policy of our country shall incorporate the following special points.

4.4.1. **Make Imprisonment as the sentence of Last Solution**

The kinds of punishment which are popular and coming to be acceptable in this days in the world is, making an imprisonment the last alternative and solution. But it must be applied with out forgetting or neglecting the public interest. Some scholars argue that punish the sentenced people though imprisonment might make the criminal more aggressive and more guilty rather than make him correct. And if the person who punished by imprisonment has more chance to do crime again and make him self imprisoned again and creates another burden on the government.

However, it is not possible to conclude that, the Ethiopian criminal law put punishment as the last solution to teach the public and the criminal, but at court level, the situation is strictly applying. Judges understood that imprisonment is the last alternative of punishing the sentenced people.[88] The writer of this senior thesis do not believe that imprisonment brings the necessary result and it is not advisable to use imprisonment punishment as a last solution.

87. Ibid

88. Ibid

4.4.2. **Broadly defined Offenses**

To narrow the gaps of giving punishment imprisonment and in order not to open the chance of discretionary powers to judges, one way or mechanism of restricting or narrowing the gap is making or separating the elements of punishment which put in a general way, They shall be restricted and make the judges use fairness to decide cases specially punishment decisions.

4.4.3. **Limiting the amount or degree of penalties for cases which could be seen by one judge**

However, the maximum limitation of punishment is very high in different countries but, if the case is seen by one judge, they have a policy orders and the imposing punishment must not more than its limit. The reason is cases seen by more than one judge could be coming to the truth but, for cases which could be seen by one judge, even if he is taking care before giving decisions, he might face some challenging.

Judge is a human being he might decide in a wrong way, he might give in equal and in balance decision as a human being he might feel sorrow and sensitive for the wrongs. Because of such reasons, to avoid such kinds of problems, and to decrease punishment gaps, they clearly put under their code. And if the case is seen by one judge, the maximum limit of punishment decision must not more than or not exceed from the limit they put under their policy.[89]

If such kinds of restrictions put under our policy of punishment, it could solve the problems more.

89. Ibid

4.4.4. **Making an equal Impact of Punishment**

In principle every one is equal before the law but, every one is not equal in economic, cultural, social and individual background so that, to pass an equal punishment decisions on sentenced people based on the above back grounds or status is wrong and might violates the law. In principle If it is given an equal punishment decisions based on the above status the impact could be different because if people who are living in a better economical, social and cultural background punished in pecuniary penalty, they might feels nothing. But, if people who are in a good position punished by imprisonment and if peoples who are not in a good position punished in pecuniary matters might decrease and even avoid crimes. Because they might sense the punishment really.

Many European states applying such kinds of punishments they incorporate such kinds of punishments under their policies. When we see our criminal law article 86 and article 4 of the old penal law they have very contradicting ideas in it. But, to establish a better criminal justice system of our country we shall have the above kinds of criminal punishment policies.

4.5. **Sentencing guideline**

Many states in the world have established and using sentencing gridline besides the regular justice system to solve the problems of punishment decision. For example when we see the United States of America there is an established punishment commission under the regular court. This commission issue is the punishment policy (sentencing guideline) therefore; courts are using this guideline to give punishment.

The commission established under the court and the justice power and freedom is not violated or not dominated by other power (body) can helps to courts to give decisions freely. If it is incorporated or included this policy in our country, it would be very important and useful to solve the problems raising always based on punishment.

In fact the principle is the common law legal system policy but there is no problem if we incorporate the policy in our country and apply them.[90]

4.6. **Other Important Directives**

4.6.1. **Reconsidering the impact of punishment expenses**

Including the above principles, punishment decisions shall reconsidering the expenses of the government. That means punishment decisions must be cost-effective methods and policies must be depend on these central points.

4.6.2. **Additional punishment alternatives and procedures**

Courts must use the principle of alternative punishment, as far as possible it shall stands from the lower to the higher in procedural way. This means similar principle in the punishment is the last solution to criminal punishment, if it is possible pecuniary punishment must be the last alternative of punishment. And if it is impossible use community based sentence. If impossible use imprisonment punishment alternative. In the 1949 old penal law there is not incorporated alternative punishment theories and we have no punishment policy because of that, courts are in problem to impose punishment on sentenced people.

4.6.3. **Make narrow the gap between maximum and minimum punishment decisions**.

To make narrow the gap between maximum and minimum limits of punishment, or to narrow the different kinds of punishment for the same kinds of wrongs, as a solution take legal measure to make narrow down the gap. In our previous penal law there are very wide ranges of punishment procedures founded like that of article 523, 636, 637 and so on. From the many problems which are occurring at court daily are the punishment decision ranges that are the differences of maximum and minimum punishment decisions or differences.

90. Ibid and as it is more elaborated by the researcher.

And when we see article 636 of the old penal code, the orders which are 1-15 years of regrious imprisonment might make very huge differences among judges in different courts with regard to criminal punishment. Therefore, to solve such kinds of serious problems, the punishment policy is very important. [91]

4.6.4. **The Role of Victims in sentencing**

In some countries legal system it is allowed to the victim in order to have his own role on punishment decisions for the following cases.

- Criminal punishment must center the mind and body of the criminal (the crimes done on him).
- If helps to judges to know or to understand the injury which done against the victim. Even if the problem and sentence is among the victim and the state, but, the victim must not be in a sense of it seemed that marginalized and make out of the internal mind problem.
- The wrong doer, because of he understands the wrong he has done against the victim, could no more do wrong another time, and it makes correct him.
- In other words, there is thought that criminal cases are the cases of or concerns of the public at large not the individuals case. Therefore, the victim of the crime has no share or not concerned on the crime which done against him. In our country's case there is no clear indication or policy which way shall we use, but, in many countries in the world, it is tested and they are convinced its usefulness and they are using it. If we include in our future punishment policy and use, it might be better to solve our problem.

In general depending on the objective of punishment it is important to prepare punishment policy by narrowing the gap between maximum and minimum limit to punishment, establish the alternative punishment methods, assist criminal justice administration system, assist to decrease the burden of its work and make easy and make short ended.

91. Ibid Translated from Amharic and more explained by writer.

Finally believing and accepting the principles of plea bargaining make decrease the punishment practices.

- Check up the objectives of punishment.
- Make narrow the gaps (ranges) of the maximum and minimum differences of punishment decisions.[92]
- Give continuous training to judges specially to have good knowledge about extenuating and aggravating circumstances of punishment.
- Law schools should incorporate under their curriculum and should teach their students about sentencing and punishment policies.
- Establish the punishment commission under the federal supreme court, and the commission when they prepare the punishment policies and when courts give punishment decision they must recognize the capacity of persons.
- Make courts to be guided by sentencing guidelines
- Decide the maximum limit of decisions of punishment which should be narrowly interpreted and must put clear indication about punishment and should clearly indicate.
- Follow the principle of equal impact of punishment.
- Put imprisonment the last alternative of punishment.

  These are the points which proposed by the writer as the solution to the problems about lack of uniform criminal punishment and the general problems which are occurring in different courts.

92. I bid

Conclusion and Recommendation

As it is clearly explained in the previous chapters about criminal punishment the law and practice, it is thoroughly discussed the meaning theory, history concept, and practical application about criminal punishment. There are controversies over the purpose of criminal punishment. Some scholars argue that criminal punishment is the matter of retribution rendered to teach the criminal his due a matter of retaliation life for life, an eye for an eye, burning for burning and the other scholars argue that retribution is not the only reason for punishment, must be with out destroying any organ of the sentenced.

Including the above controversial issues there are also another disagreements among law scholars with regard to criminal punishment specially on the application of capital punishment. According to the 1962 United Nations study some countries in the world especially European states have totally abolished capital punishment from their law. There are debates depending on such abolishment. Some Scholars support total abolishment of capital punishment and others argue that, capital punishment must not be totally abolished from the law. The other kind of argument is about the criminal punishment policy. Some lawyers comment that there is a problem to judges to give appropriate punishment decision on the sentenced people, because of lack of formal guide line or punishment policy. For that reason, different judges give different punishment decisions for the same cases. One judge might pass 5 years imprisonment for simple theft and another judge in another court might pass 1 year simple imprisonment for the same kind of simple theft. This big differences most of the time occurs in different courts because there is no punishment policy or guideline in our country. And the other scholars or some lawyers argue that, the policy or the guideline might restrict the freedom of judges in order not to use his mind, equity and fairness. They argue that such kinds of guidelines might create rigidity however the law says that such kinds of wrongs are punishable with 1-5 years of regroups imprisonment, but the judge can use his equity freedom and might impose simple imprisonment on

the sentenced people. In Such cases, the sentenced people could be benefit. The researcher has done great effort to make an agreement for such controversial views and tried to give her own possible solutions to the problems and final recommendation to al arguments.

Yes the researcher supports the following arguments.

- Punishment must be for the purpose of corrective retributive, reformative means. Cruel inhuman and degrading ill treatment and torture must be totally abolished from the law and the practice must be for the purpose to teach the public, and punishment must be with out destroying any organ.
- For the second controversial views, the researcher supports the view that, capital punishment must not be totally abolished from our law. Especially countries like Ethiopian must apply capital punishment until they are advanced, more educated and more civilized and developed. In the third world countries the capital punishment must not be abolished.

  On the third kind of controversial view the researcher strongly support that we should have punishment policy and guide line in our country. To pass fast and proper decision, it is very important to accept the principle of plea bargaining. It is the best alternative for punishment. Plea bargaining and extenuating the amounts of punishment which imposed on the accused are very limited and new in Ethiopia, and it is very important to check to understand the meaning of plea bargaining and to apply it.

  According to the Blacks law dictionary translation plea bargaining is the process by which the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to courts approval.

  In general plea bargaining is the vest way to make the criminal proceeding short and decrease the amount of punishment which could be imposed on the sentenced. When we see plea bargaining in detail the following points must be applied.

- There must have an agreement among public prosecutor and accused.
- The agreement must be approved in court
- The agreement must have benefit for both to public prosecutor and accused
- And the agreement must lead the sentence final

If the accused pleads guilty and make plea bargaining with the public prosecutor he could be saved from unsecured condition he could be safe from the crime registration list, he could be safe from unnecessary expense or payment to lawyer, he could be safe from unnecessary departure from the community. The public prosecutor also could be safe from unnecessary loose of time, labor, money and so on. Further, the public prosecutor or the state could not be suffered from lack of evidence if the public prosecutor do plea bargaining with the accused.

In the end of this research thesis there are annexed some 6 types of cases which can show clearly to the reader about their own problems or the problems of judges to give decision. Specially after the enactment of the new revised criminal law to pass decision is very difficult and create problem specially the provisions which put in the code as a general form means if the person who intentionally violates or do such kinds of wrongs he would be punishable by rigorous imprisonment not exceeding to 15 years. Such kinds of provisions are very difficult to judges to give decisions.

In general there are some chosen cases annexed, the reader can easily consider how the court repeatedly uses or mentions reasons to punish or, aggravating circumstances of punishment, and so on. The researcher has no interest to brief each case in detail but simply chosen cases and annexed at the end of the research.

1. Case No. Federal high court criminal Appeal No. 21/90
2. Case No. Federal high court criminal Appeal No. 93/90
3. Case No. Federal high court criminal Case No. 50931
4. Case No. Federal high court criminal Case No. 47168
5. Case No. Federal high court criminal Case No. 21212
6. Case No. Federal high court criminal Case No. 50908

When the researcher tried to see all six different kinds of cases all of them have the following problems except the two cases which are decided by high court through appeal. But the cases were decided before 2005 enactment of the revised criminal law has many problems.

For example: -

1. Courts repeatedly used the criminal previous record to aggravate the accused case.
2. Mostly courts use a general way to give a decision that is 1-15 years rigorous imprisonment there fore; always punishments which are given by courts are not uniform.

- Because of there is no punishment policy in our country judges are facing different problems.
- In all cases the public prosecutor and accused didn't effort to solve the dispute through plea bargaining.

In general, the researcher proposes that, for the problems of criminal punishment the law and practice the following main points should be studied and applied at every court level.

1. Accepting and applying the principle of plea bargaining because it is very useful for both public prosecutor and the accused.
2. Accept and apply the proposal which issued by the participants at the meeting which was prepared by the cooperation between "justice for all prisons fellow ship Ethiopia and the federal supreme court. This meeting was done in April 2000 EC in order to do standardized and uniform punishment policy. There is a handout and table which shows the uniformity of punishment decisions that each courts should use in the near future when the policy is changed in to practice.

The topic of the handout is "punishment policy guideline" under this prepared material there is well explained about the concepts of punishment policy guideline

of punishment. Under such guide line we can find proportionality of punishment, consistency of punishment, transparency, disparity, uniform punishment practice of sentencing ranges and soon. The material is prepared by comparing with the common law legal system practice and taken from their policy. There fore, the writer of this senior thesis is strongly recommend that every court shall accept and implement the guide line which prepared by the committee at the meeting which done at April 2000 EC with the cooperation of justice for all prison fellow ship Ethiopia and the Federal supreme court of Ethiopia.