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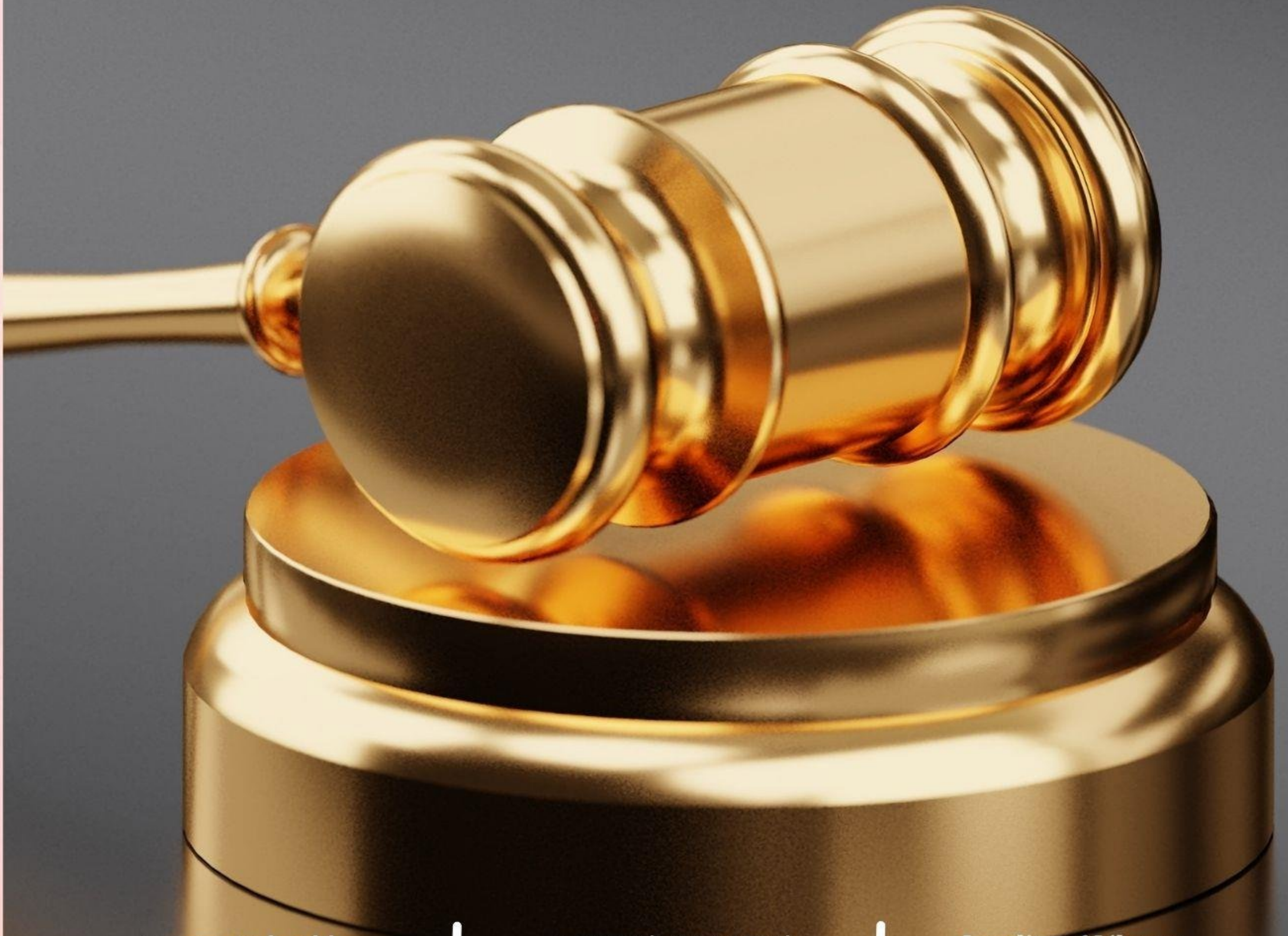

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በኮምፒውተር ሳይንስ የመጀመሪያ ዲግሪ

በእንግሊዘኛ ቋንቋ እና ስነ-ጽሁፍ የሁለተኛ ዲግሪ

ኢሜይል- kalkidanzewde4@gmail.com

የህትመት ዲዛይነር

ቤርሳቤህ ሰለሞን

ከድሬዳዋ ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ ከአዲስ አበባ ዩኒቨርሲቲ በሰብአዊ መብቶች ህግ የሁለተኛ ዲግሪ

ኢሜይል- solomonbersabeh19@gmail.com

አርታኢ

ኖህ የሱፍ

ከወሎ ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ

ከአዲስ አበባ ዩኒቨርሲቲ በሰብአዊ መብቶች ህግ የሁለተኛ ዲግሪ ተማሪ

ኢሜይል- noahyesufyimer@gmail.com

የህትመት አስተባባሪ

ማህሌት ንጉሴ

ከባህር ዳር ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ

ኢሜይል- mahletnegussie12@gmail.com

በዚህ መጽሄት ውስጥ የተካተቱት ጽሁፎች የጸሀፊዎቹ ሃሳብና አስትያየቶች ሲሆኑ ድርጅታዊ አቋምን አያመላክቱም።

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ለሴቶች ምቹ የሆነች ሀገር እንፍጠር

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Access to health services and the right to health of persons with disabilities in Ethiopia

Michael Mengistu*

United Nations International Children's Emergency Fund's (UNICEF) latest data on persons with disabilities in Ethiopia shows that nearly 9.3 percent of Ethiopia's total population has some form of disability.[1] Ranging from inaccessible sidewalks and street crossings to inadequate health services, persons with disabilities in Ethiopia face several challenges in order to go about their daily business and lead a quality life.[2] For example, children with disabilities in Ethiopia find it hard to access education when compared to their able-bodied peers.[3] Persons with disabilities are also less likely to get jobs because of their condition.[4] In addition, mainly because of infrastructural and medical equipment barriers, persons with disabilities, including children, lack access to health services.[5] However, human rights instruments, including the Convention on the Rights of Persons with Disabilities (hereafter CRPD), to which Ethiopia is a party dictate that persons with disabilities are entitled to equal opportunities and quality of life as others. More specifically, persons with disabilities have the right to health which allows them to access health facilities, goods, and services within safe physical reach.[6] This article analyzes Ethiopia's obligation under the right to health to address the challenges

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*The author has an LLM in human rights law from the University of Groningen, the Netherlands and an LLB degree from Addis Ababa University.

[1] UNICEF, Situation and access to services of persons with disabilities in Addis Ababa: Briefing note, <https://www.unicef.org/ethiopia/media/3016/file/3.Situation%20and%20access%20to%20services%20of%20persons%20with%20disabilities%20in%20Addis%20Ababa%20Briefing%20Note.pdf> accessed on January 09, 2021

[2] Kiya Ali, The Invisibles, Ethiopian Business Review <https://ethiopianbusinessreview.net/the-invisibles/> accessed on January 09, 2022

[3] Sirak Akalu Iyassu & Fiona McKinnon, Disability Rights are Human Rights: Pushing Ethiopia Towards a Rights-based Movement (Northwestern Journal of Human Rights, Vol. 29, Issue 1, January 2021) 59

[4] UNICEF (n 1) 6

[5] Tagel Tesfaye, Endrias Markos Woldesemayat, Nana Chea, Demelash Wachamo, Accessing Healthcare Services for People with Physical Disabilities in Hawassa City Administration, Ethiopia: A Cross Sectional Study, Risk Management & Healthcare Policy (Vol. 14, 2021) 3996; UN Committee on the Rights of Persons with Disabilities, Concluding observation on the initial report of Ethiopia, (November 2016), CRPD/C/ETH/CO/1, para. 53 "which states "access to health care and the capacity of health and social services to provide care for children with disabilities [in Ethiopia] is not sufficient, in particular in rural zones"

[6] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), (11 August 2000), E/C.12/2000/4, para. 12 (b)

faced by persons with disabilities in the health sector. It does so by describing the difficulties faced by persons with disabilities in accessing health services in Ethiopia.

Access to health services in Ethiopia and persons with disabilities

A study which assessed access of health services by persons with disabilities in Hawassa discovered that out of the 326 study participants, 244 faced a minimum of one barrier (physical, medical equipment and/or communication related) to access health services.[7] According to the study, visually impaired people and people who use crutches faced difficulty in accessing health centers because of poor road network and absence of disability friendly transport.[8] On the other hand, persons with hearing impairment faced communication problems while others reported inconvenient patient admission beds, stretchers, and chairs.[9] Another study which was conducted on 15 persons with disabilities revealed that the visually impaired and persons with other physical disabilities struggled to access public owned pharmacies because of the pharmacies' inconvenient layout and design for persons with disabilities. For example, the participants could not access stairs that lead to the pharmacies. Individuals with hearing impairment were also unable to communicate with pharmacists.[10]

In addition to encountering problems when accessing health centers and medicines, persons with disabilities usually do not receive quality health information – which forms part of a health service[11] – and are vulnerable to diseases as a result.[12] For example, a study conducted in Addis Ababa on 426 young persons with disabilities shows that even though most of the study participants had knowledge about sexually transmitted diseases, they lack comprehensive knowledge "regarding sexual

[7] Tagel (n 5)

[8] Ibid, 3997; Mewded Chanyalew, Accessibility of health services for people with disability in Saint Peter General Hospital, Addis Ababa, Ethiopia, Master's Thesis, unpublished, (Addis Ababa University, November 2020) 46

[9] Tagel (n 5) 3997

[10] Nebiyou Dagnachew, Solomon Getnet Meshesha, and Zelalem Tilahun Mekonnen, A qualitative exploration of barriers in accessing community pharmacy services for persons with disabilities in Addis Ababa, Ethiopia: A cross sectional phenomenological study (BMC Health Service Research, Vol. 21, May 2021) 4

[11] World Health Organization, Delivering quality health services: A global imperative for universal health coverage, 2018, 18

[12] Alemayehu Gonie Mekonnen, Alebachew Demelash Bayleyegn, Yared Asmare Aynalem, Tigist Demssew Adane, Mikyas Arega Muluneh, Abayneh Birlie Zeru, Determinants of Knowledge, attitudes, and practices in relation to HIV/AIDS and other STIs among people with disabilities in North-Shewa zone (PLoS ONE, Vol. 15, No. 10, 2020) 7 - 8

and reproductive health related issues such as awareness of the full range of family planning methods, types of sexually transmitted infections and means of HIV prevention".[13] The study also discovered that because of lack of adequate information, the study participants were reluctant to utilize services on sexual and reproductive health.[14]

As described in this article, persons with disabilities in Ethiopia including children face a number of problems in accessing health services. However, Ethiopia is a party to international human rights treaties such as the International Covenant on Economic and Social Rights (hereafter ICESCR) and CRPD which protect the right to health of persons with disabilities. The obligation of Ethiopia to realize the right to health of persons with disabilities is discussed below.

The right to health and access to health services for persons with disabilities

The right to health of persons with disabilities is protected under articles 12 (1) of the ICECSR and 25 of the CRPD which state that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. And States, by virtue of article 25 (a) of the CRPD, have to "provide persons with disabilities with the same range, quality and standard of free or affordable health care and programs as provided to other persons". In other words, based on the explanation given by the UN Committee on Economic, Social and Cultural Rights (hereafter CESCR) under its fifth general comment on the rights of persons with disabilities, "the right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services - including orthopedic devices - which enable persons with disabilities to become independent, prevent further disabilities and support their social integration".[15] In addition, the CESCR has stated that accessibility of health services is one of the four essential elements of right to health which are availability, accessibility, acceptability, and quality.[16] Accordingly,

[13] Tigist Alemeu Kassa, Tobias Luck, Asegedech Bekele, and Steffi G. Riedel-Heller, Sexual and reproductive health of young people with disability in Ethiopia: A study on knowledge, attitude and practice: A cross-sectional study (Global Health, Vol. 2, No. 5, 2016) 10

[14] Ibid

[15] Committee on Economic, Social, and Cultural Rights, General Comment No. 5: Persons with Disabilities, (adopted on 9 December 1994), E/1995/22, para. 34

[16] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), (11 August 2000), E/C.12/2000/4, para. 12

accessibility entails that health facilities, goods, and services have to be accessible to everyone without discrimination for all sections of the population including persons with disabilities.[17] Accessibility also includes the "right to seek, receive and impart information and ideas concerning health issues".[18] Therefore, it can clearly be seen from these two articles that persons with disabilities have the right to enjoy health services, including the right to receive health information, equally with others and States have the obligation to implement this right. But what constitute the obligation of States to implement the right to health of persons with disabilities?

The CESCR has provided an authoritative explanation on the obligation of states to implement the right to health of individuals under its fourteenth general comment on health. Accordingly, "the right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil".[19] The obligation to respect requires states to refrain from denying equal access to health services for everyone including persons with disabilities.[20] Under the obligation to protect, States are obliged to prevent third parties from interfering in the right to health of persons with disabilities.[21] Finally, the obligation to fulfill obliges states to take positive measures such as adopting appropriate legislative, administrative, budgetary, judicial, and promotional measures that enable and assist persons with disabilities to enjoy the right to health.[22] However, it should be noted that since the right to health is a social and economic right, these obligations are going to be achieved progressively based on the level of development of States and available resources.[23] Nevertheless, even though the right to health of persons with disabilities is going to be achieved progressively, States have obligations which are of immediate effect.[24] One of these obligations of immediate effect is the obligation of States to

[17] UN Committee on Economic, Social and Cultural Rights (n 6)
[18] Ibid.
[19] Ibid, para. 33; UN Committee on Economic, Social, and Cultural Rights, The Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, (27 November 2000), E/C.12/2000/13, guideline 6
[20] UN Committee on Economic, Social and Cultural Rights 6, para. 34
[21] Ibid, para. 33
[22] Ibid, para. 33 and 37
[23] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3, article 2 (1)
[24] UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2 Para. 1, of the Covenant (14 December 1990), E/1991/23, para. 1

take steps towards fulfilling the right to health of persons with disabilities.[25]

Concluding remarks

As explained in this article, persons with disabilities face several challenges in accessing health services in Ethiopia. But as a State party to the ICECSR and CRPD, Ethiopia is required to implement its obligation to respect, protect, and fulfill the right to health and make health services accessible for persons with disabilities. However, given the level of development of the country, it is not possible to improve the health sector for everyone at once. As a result, Ethiopia should take steps towards addressing the challenges in delivering health services – including disseminating health information – to progressively realize the right to health of persons with disabilities. For example, Ethiopia could implement strategies to utilize its health budget sufficiently in order to make hospitals, health centers, and pharmacies friendly to persons with disabilities. Ethiopia could also collaborate with national and international organizations to gain resources and increase the budget it allocates to persons with disabilities. Moreover, the State and other stakeholders have to create awareness among the relevant government authorities such as the Ministry of Health and health bureaus of Regional States on how to incorporate the interests of persons with disabilities when constructing health centers. Civil societies should also help the Government to better the health services that are provided to persons with disabilities by providing material resources and relevant skills.

[25] Ibid; UN Committee on Economic, Social and Cultural Rights (n 6) para. 30

የመንግስት ባለስልጣናት ከማኅበራዊ ትስስር ገጾቻቸው ተከታዮቻቸውን ማገድ/Block/ ይችላሉን?

ሰሎሞን ሹመቱ የሱፍ*

አህጽሮት

ማህበራዊ ሚዲያ (ፌስቡክ፡ ቲዊተር እና ሌሎችም) እጅግ ጠቃሚ የሆኑ የመገናኛ፣ ሀሳብ የመለዋወጫ ሥርአቶች ሆነዋል። ይህ የሀሳብ መለዋወጫ ሥርአት የመሆናቸው ጉዳይ ከእያንዳንዱ ግለሰብ አልፎ የመንግስት ከፍተኛ ባለስልጣናት ጭምር ከሚያገለግሉት ማህበረሰብ ጋር እንዲገናኙ ያስቻለ ሆኗል። በሀገራችንም በተለይም ባለፉት ሁለትና ሶስት አመታት ከፍተኛ የመንግስት ባለስልጣናት ከጠቅላይ ሚኒስቴሩ ጀምሮ እስከታችኛው የአመራር እርከን ያሉ ባለሥልጣናት የፌስቡክና የትዊተር ተጠቃሚዎች ናቸው። ከማህበረሰቡም ጋር የማህበራዊ ትስስር ሚዲያዎችን በመጠቀም ሀሳባቸውን እና የዕለት ከዕለት ተግባራቶቻቸውን የሚያስተዋውቁ መረጃዎችን ለመለዋወጥ እና ከማህበረሰቡም መረጃ ለማግኘት እና ለመገናኘት ሰፊ እድል ፈጥሮላቸዋል። ይህ አይነቱ እንቅስቃሴ በባለስልጣናትና በተገለጋዩ ማህበረሰብ መካከል ጥሩ የመረጃና የሀሳብ ልዉዉጥ መኖር ያስችላልና ተጠናክሮ መቀጠል ያለበት እንደሆነ እሙን ነው።

ይሁንና ባለስልጣናቱ አንዳንድ ጊዜ እነሱን የሚከተሉ የማህበረሰቡ አባላት በማህበራዊ ሚዲያ ገጾቻቸው ላይ የሚወጡ መረጃዎችን ማየት ፣መልዕክት መላክ፣ እንዲሁም አስተያየት መስጠት እንዳይችሉ በሚያደርግ መልኩ ያግዷቸዋል (Block) ያደርጓቸዋል። ይህም የሚሆነው በብዛት ባለስልጣናቱ በሚያሰራጯቸው አስተያየቶች ወይም በሚያጋሯቸው ሃሳቦች ላይ ጠንከር ያለ ትችት አዘል አስተያየቶችን የሚጽፉ ግለሰቦች ላይ ነው። ታድያ በዚህ ጉዳይ ላይ ግለሰቦቹ ከባለስልጣናቱ ገጾች ላይ ሲታገዱ የመናገር ነጻነታቸውን እንዲሁም መረጃ የማግኘትና ሀሳብን በነፃነት የመግለፅ መብታቸውን እየተነፈጉ አይደለምን? የሚለዉን፡ጉዳይ መመልከት ያስፈልጋል። ይህ ፅሁፍ እነዚህ የመንግስት ባለስልጣናት ያሏቸው የማህበራዊ ትስስር ገጾች ከማንኛውም ግለሰብ የትስስር ገጽ የሚለያቸው ነገር ምንድነው? የሚለውን ጉዳይም በመመልከት ሁለቱ ሀሳቦች የሚዳሰሱበት ጽሁፍ ነው፡፡

ቁልፍ ቃላት፡- ሀሳብን የመግለፅ መብት፣ ማህበራዊ ሚዲያ፣ የመንግስት ባለስልጣን፣ ማገድ፣

ማህበራዊ ሚዲያና የመንግስት ባለስልጣናት

ማህበራዊ ሚዲያ በባለስልጣናትና በማህበረሰቡ መካከል አይነተኛ የሆነ የመረጃ መለዋወጫ መንገድ ሆኗል። አሁን ላይ ሁሉም የመንግስት ባለስልጣናት በሚባል ደረጃ የማህበራዊ ሚዲያ ገጾች አሏቸው። እነዚህ ባለስልጣናት የማህበራዊ ሚዲያ ሲከፍቱ በግል ስማቸው የሚከፍቱት ቢሆንም የሚሰሩበት ተቋም የሚሰሯቸውን ስራዎችና መረጃዎች የሚያጋሩበት አይነተኛ መድረክ እየሆነ ይገኛል፡፡ ይህም መሆኑ ታዲያ የባለስልጣናትን የማህበራዊ ሚዲያ ገፆች "ማህበረሰብ የተጠራበት የስብሰባ ቦታ እና ዘመናዊ የህዝብ አደባባይ (Public Forum and

Modern Public Square)” ለመባል አብቅቷቸዋል።

[1]የባለስልጣናቱ የማህበራዊ ሚዲያ ገፆች እንደ ስብሰባ ቦታ እና ዘመናዊ አደባባይ-(Public Forum and Modern Public Square) የሚቆጠሩት ባለስልጣናቱ በተቀበሉት የመንግስት ሀላፊነት ላይ የሚያከናዉኗቸውን ተግባራት የሚገልፁባቸዉ ከሆነ ነው።[2] ይህ ሁኔታ በባለስልጣናትና በማህበረሰቡ መካከል የሚደረጉ የመረጃ ልዉዉጦችን ቀላልና ቀልጣፋ እንዲሆን ያስቻለ ነው። በተጨማሪም ከእዚህ በፊት በነበሩት የመረጃ መለዋወጫ መንገዶች ማለትም ጋዜጣ፣ ሬድዮ፣ ቴሌቪዥን፣ መጽሀፍት ወዘተ በመሳሰሉት የማይገለጹ በማህበራዊ ሚዲያው ግን የሚገኙ በርካታ መልዕክቶች ይኖራሉ።[3]

<u>**የመንግስት ባለስልጣናት ማህበራዊ ሚዲያ ገፅና ሀሳብን በነጻነት የመግለጽ መብት**</u>

በማኅበራዊ ሚዲያ ባለስልጣናቱ *በሚያሰራጯቸው አስተያየቶች ወይም በሚያጋሯቸው ሃሳቦች* ላይ ማህበረሰቡ የሚሰማዉን ስሜት እና ያሉትን አስተያየቶች ያስቀምጣል። በዚህ ሁኔታ ላይ ደግሞ አሉታዊ የሆኑና ለባለስልጣናቱ የማይመቹ ከፍተኛ ትችት የያዙ አስተያየቶች ሊሰጡ ይችላሉ። በዚህ ምክንያት አንዳንድ ባለስልጣናት ሰዎች በተደጋጋሚ ጠንከር ያሉ ትችት አዘል አስተያየቶችን በመስጠታቸው ምክንያት ገጻቸው ላይ የሚያሰራጯቸዉን ሀሳቦች እና መልእክቶች እንዳይደርሷቸውና እንዳይመለከቱ እንዲሁም ሀሳብ አስተያየታቸውን በነጻነት መግለጽ እንዳይችሉ ያግዷቸዋል ። ታዲያ ይህ ሁኔታ የዜጎችን ሀሳብን በነጻነት የመግለጽ መብትና መረጃ የማግኘት መብትን ይገድባል ወይስ አይገድብም? ባለስልጣናቱ በገጾቻቸው ላይ አሉታዊ፣ ደስ የማያሰኙ፣ መጥፎ አስተያየቶች ምክንያት ዜጎችን ከገጾቻቸው ማገድ ይችላሉን?

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*ጸሐፊው ከባሕር ዳር ዩኒቨርሲቲ በሕግ የመጀመሪያ ዲግሪ አለው፣ ረዳት ሌክቸረር (ባሕር ዳር ዩኒቨርሲቲ) ኢሜይል solshumetu@gmail.com ፀሐፊው ስብስብ ለሰብአዊ መብቶች በኢትዮጵያ ይህን አይነት መፅሔት በማስጀመሩ ታላቅ አክብሮት አለው። በመቅጠልም ረቂቅ ፅሁፉን ጊዜ ሰጥተው ገንቢ ሀሳብና አስተያየትን ለሰጡት ሁሉ ላቅ ያለ ምስጋናዉን ያቀርባል።

[1] Blevins & Wesner, Access to Government Officials in the Age of Social Media, Journal of Civic Info, Vol. 1, No. 1, 2019, P.30

[2] Ibid

[3] አሁን ባለዉ የእኛ ሀገር ሁኔታ እንኳን የመንግስትም ይሁኑ የግል ሚዲያዎች የጠቅላይ ሚንስትሩን ሀሳቦችና የእለት ዉሎዎች መረጃ የሚያገኙት ከፌስቡክና ከትዊተር ገፆቻቸው ከሆነ ሰነባብቷል። ይህ ሁኔታ የማህበራዊ ሚዲያ ተጠቃሚ ለሆነው ማህበረሰብ በቀላሉ መረጃ የሚያገኝበትን መንገድ የፈጠረ መሆኑ ቢታመንም ከዜናቸው ዉጭ ሌላ ይሄ ነው የሚባል ሰዉ የሚከታተለው መርሀ ግብር የሌላቸዉን የመንግስት ሚዲያዎችን እየጎዳ ነው የሚል ትችትም ይሰነዘራል።

በሚሉት ጥያቄዎች ዙሪያ ካሉት የሀገራት ልምዶች አንጻርና የፀሀፍትን ሀሳብ መሰረት አድርገን እንደሚከተለዉ እንመልከት።

ሀሳብን በነጻነት የመግለጽ መብት በአለም አቀፉ የሰብአዊ መብቶች ድንጋጌ (UDHR) አንቀጽ 19 [4] ላይ እንዲሁም በአለም አቀፉ የሲቪልና ፖለቲካ መብቶች ቃልኪዳን አንቀጽ 19 ላይ ተደንግጎ ይገኛል።[5] በአገራችን ህገ-መንግስትም አንቀጽ 29[6] ላይ በግልጽ ተደንግጎ እናገኘዋለን። ሀሳብን በነጻነት የመግለጽ መብት ሰፊ ወሰንና ይዘት ያለው መብት ነው። ይህ መብት ለዜጎች ሀሳባቸውን የመያዝ፣ መረጃ የመጠየቅ ፣ መረጃ የማግኘት፣ በመረጡት ማንኛውም ዘዴ ያገኙትን መረጃ የማሰራጨት መብቶችን የሚያካትት ነው፡ ፡[7]የዚህ መብት ወሰን በዚህ ብቻ አያበቃም፤ ይልቁንም የሚሰነዘረው ሀሳብና አስተያየት ሌሎችን የሚያስከፋ ቢሆንም ጭምር በዚህ የመብት ወሰን ዉስጥ ከለላ ተሰጥቶት እናገኘዋለን። [8]ይህም ሀሳብን በነጻነት የመግለጽ መብት ቃላትን ከአንደበት አዉጥቶ ከመናገር የተሻገረ ፅንሰ ሀሳብ መሆኑን ያሰረዳናል። በማንኛውም አይነት መንገድ ሀሳብን የማጋራት መብትን ያጠቃልላል ሲባል በቴሌቪዥን፣ በሬድዮ፣ በመጽሐፍትና በሌሎችም የጥበብ ስራዎች መሰል ሀሳብ መለዋወጫ መንገዶች በተጨማሪ የዘመን ሂደት ያመጣቸውን አዳዲሶቹን መረጃ የመለዋወጫ መንገዶች ማለትም ማህበራዊ ሚዲያውንም ጭምር እንደሆነ መረዳት ይቻላል።[9]

በእርግጥ ሀሳብን በነጻነት የመግለጽ መብት ፍጹማዊ/ ገደብ የማይጣልበት/ መብት አይደለም። ከላይ የጠቀስናቸው ህግጋት በራሳቸው ይህ መብት ለምንና በምን ምክንያቶች ገደብ ሊጥልበት እንደሚችል በግልጽ አመላክተዋል። በተለይም በአለም አቀፉ የሲቪልና ፖለቲካ መብቶች ቃልኪዳን ላይ በአንቀጽ 19(3) እንደተቀመጠው የዜጎችን ሀሳብን በነጻነት የመግለጽ መብት ለመገደብ በግልጽ በህግ የተደነገገ ፣ሕጉ ባስቀመጣቸው ቅቡል ለሆኑ ምክንያቶች፣ለዴሞክራሲያዊ ማህበረሰብ ግንባታ አስፈላጊ መሆን አለበት።[10] በጥቅሉ የገደብ እርምጃው ቅቡል ለሆኑ ምክንያቶች ግልጽ በሆነ

[4] Universal Declaration of Human Rights, (UDHR), 1948, Art 19
[5] International Covenant on Civil and Political Rights (ICCPR), 1966, Art 19
[6] The Constitution of the Federal Democratic Republic of Ethiopia (Federal Negarit Gazeta, 1 st Year, Proclamation No, 1/1995) Art 29
[7] See Human Right Committee, General Comment No 34 on Art 19: Freedom of Opinion and expression, CCPR/C/ GC/34, 12 Sep 2011, Para. 49.
[8] Ibid
[9] Ibid
[10] ICCPR, Art 19 (3)

ህግ ሲደነገግ ይህ የህግ ድንጋጌ ተመጣጣኝና አስፈላጊ መሆን አለበት። [11]

ባለስልጣናቱ ሰዎችን ከማህበራዊ ሚዲያ ገፃቸው ማገድ ይችላሉን

ለዚህ ጥያቄ የምንሰጠው ምላሽ በሁለት መሰረታዊ ሁኔታዎች ላይ መሰረት ያደረገ ነው። የመጀመሪያው ሁኔታ የመንግስት ባለስልጣናቱ በገፃቸው ላይ የሚያጋሩት ሀሳብ ይዘት ገፁን ካሉበት የመንግስት ኃላፊነት ጋር የሚገናኙ መረጃዎችን የሚያጋሩበትና መንግስታዊ አገልግሎት ሰጠ የሚያስብል ሁኔታ ሲኖር ነው። ባለስልጣኑ የሚያገለግሉበት ተቋም በስማቸው ማህበራዊ ሚዲያ ገፅ ከፍቶ ከሆነ ከዚህ ገፅ ላይ ሰዎችን በሀሳባቸው ምክንያት ማገድ አይችልም፤ ግልፅ ጉዳይ ነው። ብዙ ጊዜ ግን ባለስልጣናቱ ራሳቸው በስማቸው ገፁን ይከፍታሉ። የመንግስት ባለስልጣናቱ የማህበራዊ ሚዲያ ገጽ ስላላቸው ብቻ ብሎክ ማደረግ አይችሉም ማለት አያስችልም። ማህበራዊ ሚዲያዎች የተፈጠሩት ግለሰቦች ወይም ድርጅቶች የፈቀዱትን መረጃ ለማስተላለፍ እና የሚፈልጉትን ሰው ብቻ ጓደኛ አድርገው መረጃ የሚቀበሉበትና የሚያቀብሉበት መድረክ እንዲሆኑ ነው። ስለዚህም አንድ ሰው ባለሥልጣን ቢሆኑም እንኳን እንደ ግለሰብ በራሳቸው የግል ገጽ ላይ የሚያዙት እራሳቸው ናቸው። ገጹን ከመንግስታዊ ሀላፊነታቸው ዉጭ ላሉ ግላዊ የህይወት ክዋኔዎች የሚጠቀሙት ከሆነ የፈለጉትን የማድረግ መብት ይኖራቸዋል። የባለስልጣናት ማህበራዊ ሚዲያ ገጾች የግል ብቻ መሆናቸው ቀርቶ ለኦፊሴላዊ መንግስታዊ መረጃዎች ምንጭ የሚሆኑበት ጊዜ ይኖራል። የባለስልጣናቱ ግላዊ ገፆች ምናልባትም ስልጣን ከመቀበላቸው በፊት የሚጠቀሟቸው ገፆችም ጭምር መቼ እና በምን ሁኔታ ነው ለመንግስታዊ አገልግሎት ዋሉ የሚባለው የሚለውን በተመለከተም ግልጽ ሆኖ የሚገኝ ጉዳይ አይደለም። ይህንንም በሚገልፅ መልኩ አንድ ጽሁፍ እንዲህ በማለት ያስቀምጠዋል።

> *በባለስልጣናቱ በግል ገጾቻቸው ላይ ስለስራቸው መግለጻቸው ብቻ ገጹን ለመንግስታዊ አገልግሎት ዉለዋል አያስብላቸውም። በተመሳሳይ መልኩም የባለስልጣናቱ አንዳንድ ግላዊ ጉዳዮቻቸውንና ሁነቶችን መለጠፋቸውም ደግሞ ብቻዉን ገጹን ግላዊ ነዉም ሊያስብለው አይችልም።*[12]

የመንግስት ባለስልጣናት ማህበራዊ ሚዲያ ገደብ ጉዳይ በዋናነት በሀገረ አሜሪካ በተለያዩ ፍርድ

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[11] Ibid

[12] Know Your Rights: Social Media Blocking by Public officials, ACLU Massachusetts, https://www.aclum.org/en **last accessed on December 10, 2021** @ 10:40pm

ቤቶች ቀርበዉ ታይተዋል፡፡ በዚህም መሰረት የባለስልጣን ገፅ ለመንግስታዊ አገልግሎት ዉሏል ወይስ አልዋለም የሚለውን ጥያቄ ለመመለስ ፍርድ ቤቶች የሚከተሉትን ጉዳዮች ይመለከታሉ፡፡ [13]

1. ገጹን እንዴት ነው የሚጠቀሙት ማለትም ከያዙት የመንግስት ሀላፊነት ጋር የተገናኙ መረጃዎችን በገፁ ላይ ያጋራል ወይ? የገፁ ስያሜ በመንግስታዊ ሀላፊነቱ ያገኘዉን ስያሜ /ማእረግ/ ይጠቀማልን?
2. የማህበራዊ ሚዲያ ገፆቻቸዉን በሚያስተዳድሩበት ሁኔታዎች ከመንግስት በጀት ነው ወይስ? ምሳሌ የአንድ ባለስልጣን ገጽ ቢጠለፍ የሚስተካከለው በመንግስት ወጪ ወይስ በግለሰቡ ወጪ ነው?

በተጨማሪም አንድ ሰው ፌስቡክ ሲከፍት ማንነቱን በተመለከተ የመንግስት ባለስልጣን/Government Official/፣ ፖለቲከኛ/Politician/፣ ህዝብና መንግስት አገልግሎት/Public and Government Service/፣ እጩ የፖለቲካ ተመራጭ/Political Candidate/ ከሚሉ አማራጮች አንዱን ከመረጠ ገፁ ለመንግስትና ህዝብ አገልግሎት እንደሚዉል መረዳት ይቻላል፡፡ በማለት የሚጠቅሱ ፀሐፍትም አሉ፡፡[14] በአጠቃላይ ሲታይ የማህበራዊ ሚዲያ ገፁ የሀገርን/ የመንግስት ሃላፊነታቸዉን/ በተመለከተ ወይስ የግል ህይወታቸዉን የተመለከቱ ጉዳዮችን ነው የሚያጋሩበት የሚለው መሰረታዊ ጥያቄ ነው፡፡[15] የቢሮ ወይም የሀላፊነታቸውን መረጃዎች ከሚያጋሩበት ገጽ አሉታዊ ትችት ወይም የሚያስከፉ ነቃፊ ሀሳቦችን በማጋራቱ ምክንያት ካገዱት አንድን ግለሰብ መንግስት ከጠራው ስብሰባ አዳራሽ ወይም ዘመናዊ ህዝባዊ አደባባይ (Public Forum or Modern Public Square) ዉጣ ብሎ እንደማባረር ይቆጠራል፡፡

ሁለተኛው ደግሞ ሰዎች በተጋራዉ ሀሳብ ላይ የሰጡት ሀሳብ እና አስተያየት ይዘት ሀሳብን በነፃነት የመግለፅ መብት ማእቀፍ ዉስጥ የሚወድቅ ሲሆን ነው፡፡ ምክንያቱም ግለሰቡ በሚሰጠው ሃሳብና አስተያየት ምክንያት ሊታገድ አይገባም ነው እንጂ በሌሎች ምክንያቶች ከስብሰባው ሊባረር እንደሚችለው ሁሉ ከማህበራዊ ሚዲያዉም ሊታገድ ይችላል፡፡

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[13] Knights First Amendment Institute, Fact Sheet; Social Media for Public Officials: A First Amendment guide for public officials using social media, January 15, 2020, knightcolumbia.org , accessed on December 5, 2021

[14] Matthew Anderson, Court Rules Elected Officials May Not Delete Comments, Block Users, direct development, July 8th, 2020, https://www.directdevelopmentpr.com last accessed on December 10, 2021 @ **10:40pm**

[15] Kendra Kumor, Evelin Li, Nicole Rubin, Improving Communication with Public Officials on Social Media: Proposals for Protecting Social Media Users First Amendment right, Democracy and the constitution Clinic, Fordham University, School of Law, Jan, 2021, p.7

ለምሳሌ የጥላቻ ንግግሮችን፣ የሌሎችን መብት አደጋ ላይ የሚጥሉ ሀሳቦች ሲሆኑ ባለስልጣናት ይህንን ግለሰብ ሊያግዱት ይችላሉ። ለማሳያ ይሆኑን ዘንድ እንዲሁም ሀሳባችንን ለማጠናከር ይረዱን ዘንድ የተለያዩ የፍርድ ቤት ዉሳኔዎችን እንመለከት

- ✓ የቀድሞው የአሜሪካን ፕሬዝደንት ዶናልድ ትራምፕ ላይ በግንቦት 2018 በአሜሪካ በደቡባዊ ኒውዮርክ ዲስትሪክት ፍርድ ቤት የቀረበውን ክስ ማስታወስ ይቻላል። ክሱ ፕሬዝደንቱ ዜጎችን በሀሳባቸው ምክንያት ከገጻቸው ላይ ማገድ ዜጎች ሀሳባቸዉን እንዳይገለፁ በማገድ አንደኛዉን ህገ መንግስት ማሻሻያ ጥሰዋል የሚል ነበር።[16] ፍርድ ቤቱም ምንም እንኳን የትዊተር ገፃቸው የተከፈተው ስልጣን ከመያዛቸው በፊት ቢሆንም ስልጣን ላይ ባሉበት ወቅት የነጩ ቤተ መንግስት መረጃዎች ከሚገኙባቸው ቀላል መንገዶች ዉስጥ ዋነኛዉ መንገድ ሆኗል በማለት ፍርድ ቤቱ ፕሬዝዳንት ትራምፕ ዜጎችን ከገፃቸው ላይ ማገድ አይችሉም በማለት ውሳኔ አሳልፏል፤ የይግባኝ ፍርድ ቤቱም ፕሬዝደንቱ አንደኛውን የአሜሪካ ሕገ-መንግስት ማሻሻያ ድንጋጌ ጥሰዋል በማለት የታችኛዉን ፍርድ ቤት ዉሳኔ አፅንቷል።[17]
- ✓ ሌላኛው ጉዳይ በሚሲዎሪ ግዛት ተወካይ /Missouri state representative/ የሆነችው ቸሪ ሪስች /Cheri Reisch/ ካምፐቤል የተባለዉን የግዛቷን ነዋሪ ትችት አዘል አስተያየት ከሰጣት በኋላ ከቲዊተሯ በማገዷ ምክንያት የቀረበባትን ክስ ነው። በዚህም ክስ ቲዊተሩን የከፈትኩት ስልጣን ከመያዜ በፊት ለምርጫ ቅስቀሳየ ስለሆነና ከመንግስት አገልግሎቴ ጋር የሚያገናኘው ምንም ተግባር ስላልፈፀምኩበት የግል ገፄ ነው በዚያም የፈልኩትን የማገድ መብት የኔ ነው በማለት ተከራክራ የቸሪ ክርክር በፍርድ ቤቱ ተቀባይነት አግኝቷል።[18] በተቃራኒው ኬሊ የተባሉት ዳኛ ቸሪ ከተመረጠች በኋላ በገፁ ላይ አዲስ ሰለሚወጡ ህጎች፣ በህግ አዉጭ አባልነቷ የምታከናዉናቸዉን ተግባራት ለመራጮቿ ስለምታጋራበት እንዲሁም ግፁ ላይ ያለዉ ዝርዝር መረጃዋ በሚሲዎሪ ግዛት ተወካይነቷን ስለሚገልፅ የግሏ ነዉ ሊባል አይችልም ሰዎችንም ማገድ አትችልም በማለት የልዩነት ሀሳብ አስቀምጠዋል።[19]

[16] *Memorandum and Order*, Knight First Amendment Inst. at Columbia Univ. v. Trump, 1:17-cv-05205-NRB
(S.D.N.Y. May 23, 2018), https://knightcolumbia.org/sites/default/files/content/Cases/Twitter/2018.05.23%20Order%20on%20motions%20for%20summary%20judgment.pdf **last accessed on December 10, 2021** @ 10:40pm

[17] Knight First Amendment Inst. v. Trump, 928 F.3d 226 (2d Cir. 2019). በፍርድ ቤቱ ጉዳዩን የተመለከቱት ዳኛ Barrington D. Parker, "አንድኛዉ የህገመንግስት ማሻሻያ የመንግስት ተሿሚዎች ከተሾሙበት የመንግስት ሀላፊነት ጋር ግንኙነት ያለው ማህበራዊ ሚዲያቸው ላይ ዜጎችን በሚሰጡት አስያየት ማገድ እንዳይችሉ ክልከላ የያዘ ነው፤" በማለት ጉዳዩን ጠቅለዉታል።

[18] Houston Davidson, Can Government Officials Block You on Social Media? A New Decision Makes the Law Murkier, But Users Still Have Substantial Rights, February 2, 2021, https://www.eff.org/issues/free-speech last accessed on December 10, 2021 @ 10:40pm

[19] Ibid

- ✓ ሌላኛዉ ጉዳይ በቨርጂኒያ ግዛት ፊሊስ ራንዳል/Phyllis Randall/ የተባለችው የሱፐር ቫይዘሮች ቦርድ ኃላፊ በፌስቡክ ገፁ ላይ ስለእርዳታ ገንዘብ አስተዳደራቸው በፃፈዉ ትችት ምክንያት ብሪያን ዳቪሰን የተባለን ግለሰብ በማገዷ ምክንያት የቀረበ ሲሆን ፊሊስ የገፄን ይዘት የሚሰጡ አስተያየቶችንም ጭምር የመቆጣጠር መብት አለኝ በማለት ብትከራከርም ፍርድ ቤቱ ግን ፌስቡክ ገፁን በምትጠቀምበት ጊዜ ለአስተዳደራዊ አገልግሎት እየተጠቀመችው ነው በተለይም በመንግስታዊ ኃላፊነቷ የምታክናዉናቸዉን ተግባራት በማጋራት፣ በፖሊሲዎቸና በሰራዎቿ ዙሪያ አስተያየት ለመቀበል ስለምትጠቀምበት ለመንግስታዊ አገልግሎት ዉሏል በማለት ወስኗል። ከዚህም በተጨማሪ የአሰተያየት መስጫዉን ለሁሉም ክፍት እንዲሆን ካደረገችና የመንግስታዊ ስልጣን ተግባራቷን ካጋራች በተፃፈዉ ጉዳይ ላይ አስተያየት መቅበል እንደምተፍለግ እየገለፀች በመሆኑ ገፁን በግሌ ነው የከፈትኩት በሚል ትችት አዘል የሆኑ አስተያየቶችን ማጥፋትና ማገድ እንደማትችል ያስገነዝባል።

በአጠቃላይ ባለስልጣናቱ ሰዎችን ከማገድ የሚከለከሉት በመጀመሪያ የማህበራዊ ሚዲያ ገጹን መንግስታዊ ሀላፊነታቸውን ለተመለከቱ መረጃዎች ማጋሪያነት ሲያዉሉት ሲሆን ፣ በሁለተኛ ደረጃ ደግሞ ዜጎችን በያዙት ሀሳብና አቋም ወይም በሰጡት አስተያየት ምክንያት ከሆነ ነው። በተጨማሪም ሰዎች ጥላቻና ብጥብጥ ቀስቃሽ ንግግሮች፣ የሀገርንና የዜጎችን ሰላምና ደህንነት አደጋ ላይ የሚጥሉ ንግግሮች የመሳሰሉት ከሆኑም ባለስልጣናቱ መሰል ግደታ አይኖርባቸውም።

<u>ባለስልጣናትና የማህበራዊ ሚዲያ እገዳ በኢትዮጵያ</u>

ባለስልጣናት ሰዎችን ከማህበራዊ ሚዲያ ገፆች የማገድ ተግባር በእኛም ሀገር እየተከሰተ ይገኛል፣ በተለይም ክቡር ጠቅላይ ሚንስትሩ ሰዎችን ከቲዊተር ገፃቸው ሰዎችን እያገዱ መሆኑን የሚያሳዩ አንዳንድ መረጃዎች አሉ። በሀገረ አሜሪካ እንደታዩት መሰል ክስ በእኛ ሀገር ፍርድ ቤቶች ለማቅረብ ልክ እንደ አሜሪካ ግልፅ ክልከላ የሚያስቀምጥ የህግ ስርአት ባይኖረንም ከህግ መንግስቱ አንቀፅ 29 ጋር ተያይዞ ሊታይ ይችላል። በዚህ መሰረት በሀገራችን ባሉ ፍርድ ቤቶች ክስ ቢቀርብ የቅንጦት ከመምስል አልፎ የፍርድ ቤቱን ጊዜ አላግባብ ለማባከን የሚደረግ እንቅስቃሴ ተብሎ ሊፈረጅም ይችላል። ነገር ግን ጠቅላይ ሚንስትሩ ካገዷቸው ሰዎች አንዱ በሰብአዊ ተቋማት እገዛ ክስ ቢያቀርብ በመጀመሪያ ደረጃ የጠቅላይ ሚንስትሩ ገፅ የግላቸው ነው ወይስ መንግሰታዊ ገፅ ነው የሚለዉ ጥያቄ ይነሳል። እርግጠኛ መሆን ባይቻልም እስካሁን ካሉት ጉዳዮች በመነሳት ፍርድ ቤቱ ገፁን መንግስታዊ ገፅ ነው እንደሚለው መረዳት ይቻላል። ምክንያቶቹ ደግሞ ገፁን የከፈቱት ጠቅላይ

ሚንስትር ከሆኑ በኋላ በመሆኑ /ገፃቸውን ሲመርጡ ባለስልጣን የሚለውን ስለመረጡ/፣ መንግስታዊ መርጃዎችን የሚያጋሩበት በመሆኑ፣ ግላዊ ህይወታቸውን የተመለከቱ መረጃዎችን ሰለማያጋሩበት፣ እንዲሁም ከየትኛዉም ሚዲያ ሊገኙ የማይችሉ በእርሳቸው ገፅ ብቻ የሚገኙበት ዋነኛ የመረጃ ምንጭ መሆኑና የመሳሰሉት ሊጠቀሱ ይችላሉ፡፡ እስካሁን ባለው ሂደት ጠቅላይ ሚንስትሩ ፅሁፎችን ሲፅፉ የአስተያየት መስጫዉን ለሁሉም ክፍት የሚያደርጉ መሆኑም የሰዎችን አስተያየት እንደሚፈልጉ ማሳያ ተደርጎ ሊወሰድ ይችላል፡፡ ታዲያ በዚህ ሂደት ሀሳባቸውንና ስራቸውን የሚተቹትን እየመረጡ ማገድ ሀሳብን በነፃነት የመግለፅ መብትን የሚቃረን ተግባር ነው ስለዚህም ያገዷቸዉን ሰዎች እገዳ እንዲያነሱ ከዚህ በኋላም ሰዎችን በሀሳባቸው ምክንያት እንዳያግዱ ሊወሰን ይችላል፡፡ ከዚሁ ጋር ተያይዞ መዘንጋት የሌለብን ጉዳይ ሰዎች የሚሰጡት አስተያየት ይዘት ነው፡፡ ሰዎች የሚሰጡት አስተያየት ግጭት የሚፈጥር፣ የሌሎችን መብት የሚነካ፣ ለሰላም ፀር የሚሆን ከሆነ ባለስልጣናቱ አስተያየቶችን የማጥፋት ሰዎችንም የማገድ መብት ይኖራቸዋል፡፡ ታዲያ ባለስልጣናቱ ከገጻቸው አግደዉን ብናገኝ ማድረግ ያለብን ነገር፡

- የሰጠነውን አስተያየት አጥፍተዉብን ከሆነ ያጠፉብንን አስተያየት በፎቶ/ Screen Shoot/ መያዝ
- ከገፃቸው እገዳ ጥለዉብን ከሆነም እገዳ የተጣለብን መሆኑን የሚያሳይ ፎቶ /Screen Shoot/ መያዝ
- ሀሳብን በነፃነት የመግለጥ መብት ዙሪያ ወይም በሰብአዊ መብቶች ዙሪያ ለሚሰሩ ተቋማት በማቅረብ ምን ማድረግ እንደሚቻል መጠየቅ
- እገዳዉን የጣሉት ባለስልጣን የሚመሩት/ የሚሰሩበትን የሕዝብ ግንኙነት ክፍል ስለጉዳዩ ማሳወቅ በመጨረሻም መፍትሔ ከጠፋ
- በሀገሪቱ በሚገኙ ፍርድ ቤቶች ጉዳዩን ይዞ መቅረብ ይቻላል፡፡

ማጠቃለያ

በአጠቃላይ ሀሳብን በነጻነት የመግለጽ መብት ሰፊ አዉድና ማዕቀፍ ያለው መብት ነው፡፡ ይህ ማለት ግን ገደብ ሊደረግበት አይችልም ማለት አይደለም፡ ፡ አስፈላጊ በሆነ ጊዜና ህጋዊ ስርአትን በተከተለ መንገድ ገደብ ሊጣልበት ይችላል፡፡ ነገር ግን ይሄ ገደብ ሰዎች በሚሰጡት ሀሳብ ምክንያት መሆን የለበትም፡፡ የመንግስት ባለስልጣናትም የማህበራዊ ትስስር ገጾቻቸውን ከስራቸው ጋር የተገናኙ ተግባራትን ለማሳወቅ በሚጠቀሙበት ጊዜ ዜጎችን በሚሰጡት አስተያየት ምክንያት ብቻ ገጹን እንዳያዩና አስተያየት እንዳይሰጡ ሊያግዷቸው አይገባም፡፡ ይህ ማለት ግን ምንም አይነት አስተያየት ቢሰጡ መታገድ የለባቸውም

ማለት አይደለም። በህጉ መሰረት የተቀመጡትን መስፈርቶች የሚያሟሉ ከሆነ ማገድ ይችላሉ፤ ለአብነትም ያክል ጥላቻና ብጥበጥ ቀስቃሽ ንግግሮች፣ የአገርንና የዜጎችን ሰላምና ደህንነት አደጋ ላይ የሚጥሉ ንግግሮች የመሳሰሉት ከሆኑ እገዳ ሊጣል ይችላል። ስለዚህም ዜጎች ባለስልጣናት ሀሳቤን በነጻነት የመግለጽ መብቴን ገደቡብኝ ከማለታቸው በፊት ከእነርሱ የሚጠበቀዉን ህግና ስርአትን የተከተለ አጠቃቀም የነበራቸው መሆኑን ማስተዋልም ያስፈልጋል። የመንግስት ባለስልጣናትም ዜጎች በስራዎቻቸው ላይ የሚሰጡትን አሉታዊና አስከፊ አስተያየቶችን መታገስና እንደ ሂስ ቆጥሮ ማለፍ ተገቢ ጉዳይ ነው።

Legality of Liberty Deprivation under Ethiopian Laws: the Case of Arrest without Warrant

Yohannes Shimelis*

The right to liberty is recognized under the Ethiopian constitution and international human rights instruments. However, the right is not absolute; there are instances that may subject it to limitation. When deprivation of liberty is conducted by the government, in all cases it must be carried out in accordance with the law and must not be arbitrary. Therefore, to be in compliance with international standards *specifically the standard of "lawfulness" the conditions for deprivation of liberty under domestic law must be clearly defined and the law must be foreseeable in its application. One way of depriving liberty is arrest. It could be with or without warrant as the case maybe. Depriving liberty through an arrest warrant is the exception to the inviolability of liberty. Further depriving liberty without warrant is an exception to this exception. As a result, in principle arrest can only be done by the issuance of a warrant as indicated in international human right instruments. Liberty deprivation without warrant is illicitly restricted. This is because they are not only exceptions to the rule of liberty; rather, they are also exceptions to the exception. So it is only in a few circumstances that arrest can be effected without warrant of arrest. However, the Ethiopian criminal procedure law is wayward and drawn bizarrely with regard to safeguarding the above principle. This article tries to address this baffling issue.*

Deprivation of the Right to Liberty

The right to liberty is recognized in numerous human rights treaties[1] and is backed by the constitutional provisions of the vast majority of states in the world.[2] Ethiopia has also recognized it under various legislations including the Federal Democratic Republic of Ethiopia constitution[3]. Art.17 (1) of the FDRE constitution states that "no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law". Besides, it also provides exceptional grounds of limitation of this right. Any deprivation of liberty must conform to the general principles of legality, legitimacy, necessity and

*The author is a 5th year law student at Addis Ababa University.

[1] Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), Article 6 of the African Charter on Human and Peoples' Rights, Article 7 of the American Convention on Human Rights and Article 5 of European Convention on Human Rights recognizes the right to liberty.

[2] Marcello DI FILIPPO, The human right to liberty in the context of migration governance: Some critical remarks on the recent practice in the light of the applicable legal framework,8 September 2018, pp, 3

[3] Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, proclamation 1/1995 herein after FDRE Constitution

proportionality.[4] Deprivation must be construed narrowly in order to control illegal penetration in to personal freedom of individuals. To affirm this position, article 5 of the European Convention on Human Rights is a good and iconic example. Per this convention one may be held in detention for only reasons specified under the said provision. Therefore, the government does not have any ground to detain someone unless it can justify the detention in one of those situations. This shows that the right to liberty could only be restrained on certain grounds. This is somewhat interfacing counterpart with provision in the Ethiopian Criminal Procedure Code (CPC, here in after). Article 51 of the CPC provides reasons[5] under which arresting someone is guaranteed. However, there are issues that are worthy of further discussion due to being unclear. Among other things, the term "breach of peace" as incorporated under art 51 of the CPC can be mentioned here which requires further scrutiny. This kind of phraseology is very vague, general, and ambiguous which may lead to subjective interpretation. Furthermore, Art.17 sub-article 2 of the FDRE constitution stipulates that deprivations of liberty must not be *arbitrary.* It provides that *No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.* Arbitrariness is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[6]

Legality of Deprivation of Liberty under Domestic Laws of Ethiopia

The principle of legality stipulates that the grounds for arrest and detention must be established by law.[7] In the case of *Clifford mcalawrence v Jamaica*[8], Human Rights Committee states that the legality principle will be violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation. Legality principle has two aspects.[9] These are the formal aspect and the material aspect. The material aspect indicates that the police can arrest individuals only for reasoned circumstances for the cases mentioned in the

[4] Article 5, European Convention on Human Rights (ECHR)

[5] Criminal Procedure Code of Ethiopia, proclamation No.185 OF 1961, Article 51 (1, A) provides reasons like the act of committing a breach of the peace

[6] Communication No. 458/1991, *A. W. Mukong v. Cameroon,* UN doc. *GAOR*, A/49/40 (vol. II), p. 181, para.8, emphasis added

[7] Communication No. 702/1996, *C. McLawrence v. Jamaica* (Views adopted on 18 July 1997), in UN doc. *GAOR*, A/52/40(vol. II), pp. 230-231, para. 5.5.

[8] Ibid note 7, pp 231

[9] Isaiah Berlin , Two Concepts of Liberty, page.161

law. On the other hand, formal aspect shows that arrest could only be done in accordance with the laws or procedure established.[10]Article 17 of the FDRE Constitution recognized these two aspects of the principle of legality. It provides that there must be the justification or reasons explicitly defined by law[11] as grounds of deprivation of liberty. It also shows that arrest shall strictly adhere to or complies with the procedures objectively set forth in the law.[12]Therefore, arrest is said to be compatible with the Constitution if it complies with both material and formal aspects of deprivation of liberty.

Arrest without warrant

The law obliges issuance of warrant of arrest to detain individuals. This is because arrest in principle can only be carried out with an arrest warrant. It is in few circumstances that arrest can be effected without a warrant. Under CPC arrest without warrant may take place as provided under Articles 50 in flagrant offences[13] and where the circumstances of article 51 of the CPC materialized.[14] Article 6(1) of the Vagrancy Control Proclamation[15] also allows a police officer to arrest without warrant any person who may reasonably be suspected of being a vagrant. The newly issued Prevention and Suppression of Terrorism Crimes Proclamation 1176/2020[16] follows the Criminal Procedure Code investigation technique which ultimately authorized police officers to arrest without warrant.

However, these scenarios must be construed narrowly. This is what the formal aspect of legality means. This shows that warrant is an essential tool to construct a ground of preserving individuals' right to liberty from illegal and unlawful deprivation.

Looking at the awry of CPC Article 49 makes arrest with warrant the principle. The notion of this principle is that individuals will not be subject to arrest or detention without prior authorization from the court which can be effected through warrant. Article 17 of the FDRE Constitution also has the same

[10] Annual Report of the Inter-American Court of Human Rights 1994, p. 32 I-A Court HR, Gangaram Panday Case v. Suriname, judgment of January 21, 1994, in OAS doc. OAS/Ser.L/V/III.31, doc. 9,

[11] Ibid 3, Article 17 (1)

[12] Ibid 3, Article 17 (1)

[13] Ibid 5, Cumulative reading of Article 50,19 and 20 of CPC

[14] Per Art 51 of the CPC a member of the police may arrest without warrant any person whom he reasonably suspects of having committed or being about to commit an offence punishable with imprisonment for not less than one year, who is in the act of committing a breach of the peace, who has in his possession without lawful excuse housebreaking implements or weapons and the like

[15] Vagrancy Control Proclamation No. 384/2004

[16] Prevention and Suppression of Terrorism Crimes Proclamation 1176/2020, Article 42

implication.[17] Article 49 of the CPC provides that *no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court*. As can be derived from this provision principally arrest must be conducted with warrant. However, this principle is deconstructed in the other parcel of the code and in other special legislations.[18][19] Exceptionally a police officer or private person is authorized to arrest without a warrant. Though, the exceptional circumstance of arrest without a warrant is entertained in a very broad manner as opposed to the very notion of liberty. The CPC paves the way for the police officer to arrest individuals without warrant in many circumstances. The heaps of these exceptional circumstances which likely predominates this principle leads some scholars[20] to argue that, arrest without warrant seems to have an overriding status over arrest with warrant.

Wondwossen Demissie Argues that the notion of articles 25, 26, 50, 51, 52 and 54 of the CPC and Article 6 of the Vagrancy Control Proclamation shows that arrest without a warrant is the rule. [21] However this kind of solid conclusion is dangerous. The author of this article believes that still arrest with warrant is the principle even if the exceptions of this principle are considerably a lot. The CPC has room for limiting the discretion of the police officer. The second sentence of Art.49 of the CPC states that arrest without warrant may *only* be made on the conditions laid down in Section 1, chapter 1, title II of the CPC. This sentence narrowed the scope of arrest without warrant by circumscribing other laws to be executed pursuant to Article 51 of the CPC. Therefore, the broad interpretation of arrest without warrant shall be mitigated by cumulative reading of the Article 51 of CPC and other laws. If the case does not fall under the circumstances of Article 51 police officers shall not be authorized to arrest any person without warrant. Further there is enhancement in the application of anti-terrorism law regime. The repealed Anti-terrorism proclamation[22] under Article 19(1) allows the police officer to arrest without court warrant, anyone whom he reasonably suspects of having committed or is

[17] Article 17 of the Constitution makes it clear that beyond the lawfulness of the deprivation of liberty, the law itself must not be arbitrary.

[18] Articles 25, 26, 50, 51, 52 and 54 of the CPC, Proclamation 1176/2020, Article 42 and Proclamation No.

[19] /2004 Article 6 (1) and

[20] Wondwossen Demissie Kassa , Ethiopian criminal procedure law, page 87

[21] Ibid 19

[22] Antiterrorism proclamation 652/2009

committing a terrorist act. However the new proclamation[23] refers to the regular criminal procedure code investigation technique. Therefore, the cases of terrorism shall be entertained in line with the procedure of CPC which are better than the stance of the former arbitrary Anti-terrorism proclamation.

Despite this line of argument, Ethiopian procedural laws, especially the CPC is vulnerable to the tendency of interpreting the exception broadly even if it does not suffice to conclude that arrest without warrant is principle, as opposed to what some scholars argued. The right to liberty is specified in chapter 3 of the constitution which ultimately lay a duty up on Ethiopia to interpret it in line with international human right standards.[24] However, as discussed above the criminal procedure code as well as the vagrancy proclamation is interpreting the deprivation of liberty widely as opposed to Art.9 of ICCPR. Therefore, it shall be construed very narrowly. In addition, we shall not use our domestic laws as a pretext to justify the wide interpretation of arrest without warrant. Beyond that as the human rights committee decides[25] the detention has to be reasonable and necessary.

Conclusion

Generally, the right to liberty could only be restrained in certain exceptional grounds. The deprivation shall not be construed broadly. As indicated under Article 17 of the constitution deprivation shall be complied with the procedures set forth in the law and there must be the reasons explicitly defined by law as a ground to deprivation of liberty. Since one ground to limit liberty is arrest, it must be complied with the procedures established by law. Arrest principally shall be carried out with warrant. This is because, since arrest with warrant is first exceptional circumstance to limit liberty, other worst exception (arrest without warrant) shall be very strictly interpreted. As a result, it is only in exceptional circumstances that arrest without warrant shall be allowed. Article 49 of CPC tries to affirm this notion. However, a large amount of exceptions in the CPC and vagrancy control proclamation makes this principle questionable. Irrespective of this fact, the author argues that the code shall not be interpreted widely and the rule is arrest with warrant. Therefore, arrest without warrant is an exception to the principle of arrest with warrant.

[23] Ibid 16

[24] Ibid 3 Article 13 (2)

[25] ibid note 6,p. 181

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Women rights are human rights and human rights are women rights!