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**POLICE INVESTIGATION LAW
AND PRACTICE IN ADDIS ABABA**

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**POLICE INVESTIGATION LAW AND
PRACTICE, IN ADDIS ABABA**

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INTRODUCTION

This paper attempted to show some of the relevant remedies as far as the major problems of criminal investigation concerned.

The aim of this paper is to give a picture as to what FDRE constitution as well as other substantive and procedural law provided fundamental rights of suspected prisoners to be respected.

To materialize successful investigation there must be well qualified or skilled person in order to screen out the real suspected person from innocent person. The main issue of criminal administration of criminal justice is to ensure fair and adequate criminal proceeding. Because society is always interested in leading, peaceful life. So as to maintain peace and security of society. There are a number of institutions established and development with the view to maintain peace and security of the society.

This paper tries to disclose the practical application of the law and the practice in relation to police investigation in Addis Ababa. Generally this thesis is organized into four chapters. The first chapter focuses on the definition and development of criminal investigation in Ethiopia, the second chapter deals with the general features of investigation, the third chapter discusses about investigation related to legal and practical problems in relation to police investigation and chapter four conclusion and recommendation in selected areas of Addis Ababa, such as, in Addis Ababa city Administration police commission crime investigator department, in Ledeta sub-city crime investigator department, Arada Ketema sub-city crime investigator department, Addis Ketema Sub-city crime investigator department and Kolfe

Keranio Sub-city crime investigator department. Finally conclusion and Recommendation will be forwarded.

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I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name: BELAYNESH NEGASH

Signed: _____

CHAPTER ONE

THE DEFINITION AND DEVELOPMENT OF CRIMINAL INVESTIGATION IN ETHIOPIA

1.1 Definition

Criminal investigation is the search by various scientific methods to find proof of guilt or to establish innocence.¹ In addition to this another definition of criminal investigation is that, it is the process of inquiring into or taking down through inquiry.² To materialize a task and in order to have a successful attempt the investigating organ has to be well qualified for the task they are interested in. This is because to screen out a real suspected person from that innocent person. Hence, the police officer while investigating a crime, he or she must always bear in mind the principle of presumption of innocence. The word investigation is not defined in the Ethiopia criminal procedure code. It can generally be defined as the process of gathering evidence to find out the offender.³

1.2 Development of Investigation

In Ethiopia there were different methods of criminal investigation techniques. These different techniques have been developed from time to time.

These techniques of criminal investigation are traditional and modern criminal investigation approaches.⁴

1.2.1 Traditional Criminal Investigation Techniques

Among those traditional criminal investigations, various techniques serve as until modern investigation techniques. However, the traditional criminal investigation techniques have been abusive, the society abided by them because of the absence of any other better techniques and law levels of awareness.⁵ Hence, in Ethiopia the development of the rules pertaining to police interrogation and confessions does not assume the status that such a rule assumes in other countries.⁶ There were not any codified or complied laws and regulations pertaining to this aspect of the criminal investigation prior to the coming out of the criminal procedure code.

Through this reason the search for the offender begin criminal investigation Affersata and Lebashia. It has a history of long time. How ever, I try to discuss briefly the two commonly and widely practiced techniques.

A. Affersata

The tern affersata is said to have been taken from Oromo ward “affersa”

*The word (affersata) may be related to the verb affersa (to fan). This is applied to the process by which bits of husks are separated from kennels of corn. The institution is also known as auchachin in Shoa and Wollo and as with in Gojjam.*⁷

It has a history of long time. Since, its whole purpose has been discovering the identity of the offender, the investigation technique through affersata inferred in two ways. That is, searching for traces of the offender and gatherings information. In cases where the inquiry is immediately after the commission of the offence, all the neighbors in the village of the victim participate in the detection process. When the incident is not heard immediately, the search is carried out through gathering information. ⁸

Whenever a crime is committed, the one who is affected by the crime is used to cry out towards neighbors, seeking help with out leaving his compound. The neighbors also extend the cry to the next village without leaving their compound. Rather than running to the scene of the crime, every body inquires what happened to the victim standing in his compound. This was said to avoid destruction of traces left by the criminal at the scene of the crime. If all who heard the cry had run to the scene of the crime, they would have destroyed traces left by the offenders. The inhabitants block all the outlets of the village. If they find the offender, in case he has not run from the scene of the crime, they will arrest him by trapping in narrow passage. But if the villagers fail to succeed in catching the offenders, then they all lead to the scene of the crime err all directions at the scene of the crimes,

they would search for traces of the left by the offender during commission of the crime, if they find traces, and they will elect elders to investigate into the case.

In case, the trace found is a foot impression the elders inquire for a person who is suspected from among the neighbors. They inquire the grounds for the suspect and when they find the grounds to be reasonable, the elders will require the suspected person to step beside the foot impression. If the two foot impressions are found to be similar, then the elders will request the suspected person to call two reliable witnesses from among his relatives who will testify has innocence by taking an oath.⁹ If the witnesses testify by taking an oath, then the suspected person will be discharged of any charge. But if the witnesses become reluctant to testify then the suspected person will be held liable. ¹⁰

In case, no trace is found at the scene of crime, the neighbors engage in the inquiry through *affersata*. All the villagers get summoned to gather in a particular area by a local official. The gathered people elect by judges to administer the *affersata* form among the villagers. All persons at the *affersata* give a testimony under oath to the elected elders. The parsons would use anonymous denunciation and testify what they saw and heard by referring to their informers as birds. An Ethiopian observer has suggested that the bird's expression originated in an indigenous saying; even in a very lonely forest there is either a devil or a bird to see you. The *affersata* does not disperse until the identity of the offender is discovered.¹¹ It is not allowed even to milk cows or to suckle children. Desire to go to farms and house hold would force the people to detect the offender. Since, they stayed for a long time at the gathering, suffering from hunger and boredom. Nevertheless, such a desire could force to make false accusation and the offenders could take advantage of the anonymous reporting by accusing innocent persons or their enemies.

B. Lebashaia [Thief Seeker]

In old times the most often committed crime, probably has been theft. The society has implemented various mechanisms to detect out thieves, one of those mechanisms was lebashaia (thief seeker).The lebashia was an institution to investigate in to crimes of theft functioned to discover the wrong doer or any fruit of the crime through the administration of the chief thief seeker. The functioning of the institution has been as follows. A man who is affected by crime of theft would go to the chief thief seeker and complain the theft. The chief thief seeker would send a boy of ten to fifteen years, who never had sexual intercourse with a woman, accompanying the victim to the scene of the crime. At the scene of the crime the parish head man (Chika Shum) would set up a tent at the door of the victim's house. The boy would be guarded in that tent so as not to eat and drink that night. At down to the next day servant of the chief thief seeker would give a medicine mixed with milk in the presence of a witness. The boy would drink that medicine and smoke tobacco filled in a pipe containing another medicine and smoking the tobacco with another medicine the boy would collapsed and lie on the ground extended.

The Chicashum passes around the boy three times intoning the word Diars (arrive). The boy reels where and there with fixed eye like a drunken man and at another time flying like a winged bird. All follow the boy with the Chicashum holding a sash tied to the waist of the boy. When they arrive to water the Chicashum would carry the boy across so as to prevent contamination to result from touching the water. Following the thief, if the boy reaches to the hut where the thief lived, he enters the hut and makes as if he were carrying out the stolen property. ¹² If there is a bed or a mud dais on which the thief slept the boy may get up on it and stretch him. Where the thief had pushed the stolen money in to a hole or under a stone, some times the boy may go and pull it out by blowing hard with his breath.

It there is gathering of people and the thief is there. ¹³ the boy goes around the thief are three times and fall up on the neck of the thief and seize him. Which offer men identity the thief and take him to the chief thief seeker.

1.2.2 Modern Criminal Investigation Techniques

From earlier discussion the modern sense of investigation is to be defined as the process of finding proof of guilt or establish innocence through inquiry. Before going to the discussion of the modern criminal investigation in Ethiopia, it is better to something about the general concept of modern criminal investigation.

Criminal investigation is thinking and rezoning process. The modern investigators primary objective is to gather facts about a criminal situation. This objective is accomplished by collecting all the accurate information pertaining to specific act or crime. The initial steps are descriptive in nature. In this stage the investigator describes things and person present with out making any inferences among them or even to the crime. The investigator assembly's documents and evidence and reviews the facts evaluating every detail of the crime scene carefully and systematically. ¹⁴

The investigator must observe the crime scene very carefully observing both what is present and what is missing. The investigator must put the puzzle together establish the facts that link all the information and evidence to an individual responsible for the crime. ¹⁵ In addition, to this the objective of the preliminary investigation are to determine whether a crime actually careered or not, discover who committed the crime and apprehend the offender. The investigator must collect data about the crime with the anticipation of court action when an arrest is made. After determining a crime has occurred the preliminary investigator must define the crime and identify the leads or solvability factors.¹⁶

Moreover, any investigators before receiving case assignments, he must have a full knowledge on his part in the total investigative process and to accomplish their tasks should be establish the working schedule or an investigative procedure. ¹⁷

Whenever a police officer obtains information about the commission of a crime, he shall proceed to investigate the crime not with standing that he is the opinion that the information he has received is open to doubt, Article 23 of the criminal procedure code. ¹⁸

After obtain information the investigation police officer has to record the accusation or complaint made to him either by the victim of the crime or any person who happens to know about the commission of the crime. After the information is herd, the investigator shall elect from the person making the accusation or compliant all relevant facts and data, the name and description of the offenders, the name and address of the principal wetness and all other relevant evidence which may be available shall be record.

1.3 The General aim of Criminal Procedure related to Investigation

We want the criminal process to solve and prosecute crime but we also want controls that protect our privacy and autonomy. Criminal justice begins where the commission of offence is recognized by law enforcement authorities. It aims at the prevention of affiances by giving due notice of the offences and penalties prescribed by law and should this be ineffective by providing for the punishment and reform of offenders and measures to prevent the commission of further offences. ¹⁹

Legal rules have the function of regulating relations, defining rights and duties determining public authorities, and also availing remedies and procedures of settling disputes towards the purpose of attaining individual freedom within the frame work of public order and social harmony.

1.4 The Origin of the Ethiopian Police Force

The origin of the Ethiopian police force has its own legendary beginnings. According to Aimerio Negussie (1956 E.C) , Ethiopia had its own form of a police force for centuries, but there no historical facts to support his claim. The kings and the local Balabats may have had security people to protect them and their properties. But one cannot claim the existence of a police force even in its rudimentary form, as we understand the term today. Aiemro Negussie also claimed that the Afersata, the typical Ethiopian method of crime investigation originated before the coming of Christianity to Ethiopia (1964). Though the Afersata was practiced for a long time, we cannot accept his claim because of lack of historical facts to back up the claim. ²⁰

Mean while, Ras Mekonnen, the governor of Hararge had established a police force known as dewaria before his death in 1906. The term dewaria means patrol or watchman in Arabic. He had seen the London police in one of his visits and wanted to model his force after what he saw. It was claimed that he sent some members of his force to Turkey for training. Emperor Menelik Reguested Ras Mekonnen to send him some members of the dewaria to serve in Addis Ababa. The dewaria were armed and wore uniforms with turbans or tarbush and served under the municipality. They received regular salaries. Around 1916, the dewaria was expanded in to 300 men. The additional men were recruited from shoa from “good families” and those who could produce responsible guarantors. Around 1916 the Arada Zebegna replaced the dewaria.

²¹

A more modern police force stated serving in Addis Ababa, Harar, Jimma, Debre Markos and Bale. ²² The reagent had invited foreign instructors to train the Arada zebegna in to a modern police force. In 1917 fifty physically competent individuals were required to replace the Somali members of the dewara, who were transferred to the Arada Zebegna.

Following the Reagent's visit to Europe in 1924, a Belgian Mission consisting of four officers came to Addis Ababa. Ethiopians with knowledge of French were made to assist the Belgians. Recently modern Police forces have been organized under the proclamation No. 313/2003 as federal Police commission

Chapter one

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CHAPTER TWO

2. THE GENERAL FEATURES OF INVESTIGATION

2.1 Investigation in General

We traditionally used to have various ways of investigating alleged crimes and punishing the identified offender. The *Fetha Negast*, the law that was in force until very recently has rules governing various forms of legal translations one of which is investigation and proof of offences no matter how inadequate and backward it was. In relation to investigation, we used to have procedures called “Lebashai” “Afferssata”. However, it is only after the liberation from Italian occupation that Ethiopia established an official gazette in which laws are published and well organized courts established by which those laws are to be interpreted.

The Criminal Procedure Code is the second last code promulgated in the heydays of codification of laws in this country. It is meant to govern the criminal process. In our study of criminal procedure as a law, we may apply either of the two approaches that we either consider it as a process, which is the preferred one and take a model case; in that model case, we may regularly modify certain relevant facts and we can have a look at those procedures at each stage of the proceeding from the time information is communicated to the police until judgment is rendered be it a judgment of conviction or acquittal; or alternatively. ¹

Criminal procedure is therefore the proper and efficient enforcement of penal law. The model view is that it is not the sole function of the law of criminal procedure. It is also meant for the enforcement of rights of individuals in the criminal justice system such as the right of arrested and accused persons. Hence, it is meant for the balancing of rights of individuals and the public.

Police power, to keep peace and order of the community within the constitutional limits, is an aspect of sovereignty of a state.

Thus, in all nations prevention and investigation of crimes is the power of the police though not exclusive. Investigation in many jurisdictions may be conducted also by the prosecution office or the court or both.

We can divide the process in to three stages based on the institution or the major actors involved in the criminal process i.e. investigation, prosecution and adjudication. The police will act as the investigative institution whereas the prosecution office will act as prosecution institution and court as adjudicative institution; each of which seems to be different phases but integrated in one process. The discussion on the powers and responsibilities of these three institutions may not be helpful in understanding the purpose and function of criminal procedure law. Therefore, the modern and second approach to the study of criminal procedure law is to regard it as a process. Hence, we look at it from the time information is communicated to the police to the time the case is settled by cassation.

Criminal procedure, as part and means of substantive public law such as the constitution and the penal law, has certain ideologies to pursue some authorities set models for the discussion of such ideologies in criminal procedure. A certain authority Herbert packer: ² “Two models of criminal process” for instance, established two models of criminal procedure law: “The crime control model” and “the due process model”. In the crime control model, the basic proposition is that “the repression of criminal conduct is by far the most important function to be performed by the criminal process.³ Crime should be controlled for the good of the public as security of the public comes first and this is one of the things that the government is supposed to do. It is a utilitarian model that if a crime is committed the investigation, prosecution and trial of the offence must be speeded up so that the offender gets the penalty he deserves. This model pursues that the police and the prosecution offices need to be less restricted in their activity.

The due process model, on the other hand, has it as a fundamental process that individuals' rights need to be respected throughout the whole proceeding and as power is always subject to abuse, even more so with the police and prosecutors power there has to be certain limitation.⁴ That limitation is the rights of the suspect and the accused person. Thus, there are certain rules and requirements which need to be complied with during the investigation, prosecution and adjudication of offences. This may include the suspect's right to liberty, the right to privacy, the right to bail, privilege against self-incrimination, the right to be informed the reasons for the arrest, presumption of innocence and the right to counsel.

These are not, however, actually models or different ideologies operating separately. As rightly criticized by Griffiths, ⁵ these are the two polarities between the criminal against crime so that criminals may not reign. But, it is equally the interest of the public as enshrined in our constitution in particular, that citizens' rights shall be protected and respected. A person should not be arrested, nor his home searched or he be convicted arbitrarily or without due process of the law. Thus, there has to be a balance between these two conflicting interests of the public. Thus, criminal procedure law makes such balance in the process of investigation, prosecution and adjudication of offences. Procedure as viewed in the context of adjudication is considered as a means, a means for rectitude or accuracy of decision and correct application of the law. This is just an aspect of it to aid the attainment of substantive fairness. There is also what we call procedural fairness-the procedure having its own end which derives from values independent from outcome respect for the human person. The efficacy of criminal procedure is measured against the achievement of balanced result between protection of community against crime and the right of the suspect and the accused person. i.e. the extent to which the system facilitates the enforcement of the penal law, by bringing offenders to speedy justice by lawful means, and the extent to which innocent citizens are left undisturbed.⁶

Preliminary Investigations

A preliminary investigation is initiated when a police officer answers a citizen's complaint of a reported crime. The preliminary investigation provides the foundation for the criminal case. It is aimed at identifying the offender, determining what has occurred, locating witnesses if available, and obtaining physical evidence. During the preliminary investigation, the investigator accumulates specific information pertaining to the crime. He or she searches for evidence; questions suspects, victims and witnesses; records all statements; identifies, examines, relates and processes physical evidence and takes picture of, measures and sketches the scene. It is during this phase of the investigative process that solvability factors are identified. The quality of this initial investigative effort and report usually determines whether the crime will be solved.⁷

Purpose of the preliminary investigation is to determine that a crime has actually occurred, discover who committed the crime, and apprehend the offender. The investigator, usually a patrol officer, must relate data about the crime with the anticipation of court action when an arrest is made. The importance of the preliminary investigator's role cannot be overemphasized. He or she is far more than a note taker. The contents of the investigative report must be accurate and factual.

After determining that a crime has occurred, the preliminary investigator must define the crime and identify the leads or solvability factors. Based upon solvability factors, the preliminary investigator determines whether the case can be closed early. Solvability factor information such as witnesses' information, vehicle description, property details and suspect data are important in determining the solvability of the case. The solvability factor search determines who the offender is and where he or she can be found. The initial investigation must be competently conducted and reported and follow-up investigations should be continued only when success is possible.

The preliminary investigator should communicate the case status to victims and to important witnesses when possible. The preliminary investigation is the most important part of the criminal investigation process. In smaller police departments, it may be the entire investigation. In larger police departments, it eliminates duplication of effort.⁸

If the suspect was not caught in the act of committing the crime, as is often the case, the first officer to the scene must assume duties of the preliminary investigation. As mentioned above these duties include the following:-

- To administer first aid or call medical help for injured parties.
- To broadcast information that might be of immediate importance to field officers such as the description of the suspect (s) or vehicles driven.
- To protect the crime scene from unauthorized entry until the investigation team arrives.
- To arrest or detain any persons suspected of committing the crime.
- In addition to the duties described above, it is also essential for the first officer to make notes regarding the general condition of the crime scene.⁹

Follow-up Investigation

The follow-up investigation indicates the existence of sufficient solvability factors or leads for a detective to continue the case.

The detective usually has freedom of movement and special skills to continue the investigation. The follow-up investigation extends beyond the crime scene and into the community. During this process, the detective thoroughly reviews the preliminary investigation to make sure valuable leads were not overlooked. The detective may have to duplicate some of the preliminary investigation if he or she finds weaknesses.

The investigator has specific tasks to perform, including collecting evidence, recording the information interviewing witnesses and the like. The purpose is to identify leads and follow them as far as possible towards apprehending the criminal. When a lead has been followed as far as possible without solving the case, the detective must determine whether the case status should be changed to inactive. ¹⁰

Investigators answer the questions who, what, when, how and why as they pertain to each specific case. They also compare the case under investigation with similar cases in hopes of linking similar crimes together. Detectives determine how much time and effort shall be devoted to the various phases of the investigative process.

The objectives of solving each case depend upon the case and the individual investigator. The investigator may use crime analysis to determine any crime patterns and trend analysis helpful in proving linkages. The detective has the final responsibility of preparing the case for prosecution. The investigator's effort will directly affect the success record of the detective unit in obtaining convictions.¹¹

Crime Analysis

Crime analysis uses information collected from reported crimes and criminal offenders to prevent crimes and apprehend and suppress criminal offenders. Police operations are supported by crime analysis through strategic planning, manpower development and investigative assistance.

Crime analysis has always been conducted informally by policy officers and investigators, but in the last decade, some bigger departments have established formal crime analysis units to assist investigators in crime solving.

The crime analysis unit receives information from the patrol detective, records communications, administration and special units. It also collects information from outside agencies such as corrections, probation state records, private organizations and other law enforcement agencies.

The information collected internally within the police department consists of preliminary investigative reports, supplementary reports, arrest reports, field contact reports, offense reports, statistical data and various other department reports. Information collected from external agencies includes status and records of known offenders and crime problems in other law enforcement agencies.

Crime analysis units are the most appropriate for crimes with a high probability of apprehension or suppression. They review all information obtained to determine its reliability and validity. The storage system may be either computerized or mechanical. Records are usually divided into criminal history files, property files, suspect vehicle files, crime description files and known offender files. The crime analysis unit develops universal information factors such as suspect, vehicle, property, loss and victim descriptors as well as geographic.¹²

Goals of Criminal Investigation

There is more to the criminal investigation than simply identifying and arresting a suspect in a particular crime. In fact, a thorough investigation can accomplish many objectives:

- Ascertaining if a crime has been committed
- Determining the jurisdiction of the crime
- Procuring evidence in a legal fashion
- Identifying the suspect in the crime
- Arresting the suspect
- Recovering stolen property
- Identifying associates in the large criminal organizations
- Identifying clients (customers) of large criminal organizations
- Presenting evidence to prosecutors in an orderly manner
- To testify in court proceedings.¹³

The basic premise behind criminal investigation is that people are not perfect and they make mistakes. After committing a crime, investigators believe that all suspects will leave something behind to identify them as the perpetrators. ¹⁴

Pre –Trial Detention

The definition of pre-trial detention differs from country to country. Thus it is difficult to have a single precise definition. A Swiss author called Piquerez defined pre-trial detention as follows:

Pre-trial detention is the incarceration of a person which is ordered when he or she is seriously suspected of having committed an offence, in order he or she remains at the disposal of justice where necessary for the reason of investigation or security, for all any amount of the time period beginning with the start of criminal investigation. ¹⁵

What we can infer from this definition is that pre-trial detention is a form of detention used for the purpose of undertaking investigation and prosecution, i.e. to bring the alleged criminals to the bar of justice through the procedure of arrest and remand. Therefore, some writers' pre-trial detention refers to detainees starting from the date of arrest pending completion of police investigation and to those detainees accused of certain offenses and awaiting for a trial.¹⁶

The term preventive detention is usually used to describe the pretrial detention of a defendant to protect the society from the risk of criminal conduct by him pending disposition of the outstanding charges.

For many years, this was accomplished sub-rosa the magistrate would set money bail purportedly for the purpose of ensuring defendant's appearance at trial, but the amount would be high enough to prevent defendant's release. But, because of reform in bill laws contemporaneous with more direct attention to the question of whether such pretrial detention is justified, the process of preventive detention is today a much more open one. This is especially true in the federal criminal justice system.¹⁷

The persons apprehended by the police in the expectation that they will be prosecuted are usually provided an opportunity for pretrial release by one of a variety of means, depending upon the circumstances. If the offense is a very minor one, then release will occur in the field or at the stationhouse upon acceptance of a citation from the officer. In the case of more serious misdemeanors, the arrestee can obtain his release once at the police station by posting cash as a security payment in an amount set in a bail schedule, which simply lists bail amounts for various offenses. ¹⁸

2.2.1 Causes of Pre-trial Detention

Pre-trial detention may be ordered only if there are reasonable grounds to believe that the person concerned has been involved in the commission of the alleged offenses and there is a danger of absconding or committing for these serious offenses, or a problem that the course of justice will be seriously interfered with if they are left free.¹⁹

Occurrence of pre-trial detention:

- For the purpose of proper investigation
- By the operation of the law in cases involving non-bail right offenses because of their grave nature.
- To prevent the accused from obstructing justice
- To protect the community from the offender's further criminal conduct. ²⁰

To conclude, pre-trial detention may be caused either by investigative remand or post investigation custody due to denial of bail on the grounds specified by the law.

2.3 Auguries Rights and Limitations of the Accused Person in Investigation

The right to bear liberty as well as freedom of movements is those fundamental rights for all human beings and has been recognized under international instrument such as declaration of human right “freedom of movement” was recognized by law unless otherwise, in certain circumstances. The right to bear liberty is not being restricted for whatever situation. ²¹ Only the individual right to liberty may be restricted for the benefit of it needs very careful consideration when it is restricted. The limitation imposed up on one’s right may emanate from different circumstances.

Among those restriction on liberty may come from criminal act of a person. During such criminal acts the question, which may restrict one’s liberty, may be the question of bail of the ground of remand. According, art 11(1) of UNDHR reads as “every one charged with a penal offence has the right to be presumed innocent until proved guilty.”²² Further more UNDHR proclaimed body of principles for the protection of all persons under any form of arbitrary detention of imprisonment. The FDRE Constitution has provision regarding the fundamental rights and liberties of a person. Regarding the right to liberty Article 17(1), of FDRE Constitution provides no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure established by the law. ²³

2.3.1 Acquired Rights of Accused

2.3.1.1 The Right to Appear Before Court

Whether the arrest is made with warrant or without warrant, the right of the detainee to be brought promptly before the court is granted by the law.²⁴ The detainee’s right in pretrial detention is protected through paced Ural mechanism of judicial supervision, before any further violation is occurred.

Article 9(3) of the ICCPR principle 11 and 37 of the body of principle shows while the international instruments left with no line limit by providing the phrase “shall be brought promptly” through the meaning of promptly is subjective, the administration of criminal justice has to take care not to go beyond its objectives.

Article 19(3), of the FDRE Constitution and article 29(1), of the criminal procedure code provides a specific time limit of forty eight hours. In Indian, like ours when a person is arrested and not released on bail, he shall be brought to the nearest magistrate court or lower court. The maximum limit that the police can detain the suspect is not more than twenty – four hours. If the police fail to present the accused person before magistrate within twenty four hours, he is guilty of wrongful detention of the person whom he has arrested.

Furthermore, if the accused applies, he will be automatically released even though there might be sufficient evidence to detain him.²⁵ Similarity in France in case of minor offenses, if the accused does not appear before the court within twenty four hours time limit the accused will be automatically released on bail.²⁶

2.3.1.2 The Right to Counsel and Communicate with Other

The right to counsel as a general principle is recognized under the international instruments and FDRE Constitution Article 21(1), additionally criminal procedure code of Ethiopia Article 61, provides that a detained person has the right to consult an advocate. Any person detained on arrest or on remand shall be permitted for the first time to consult an advocate and to be interviewed. His legal adviser and shall, if he requests, be provided with the means to write, however the question of legal representation arises from the very beginning of his detention and during the trial only.

In general, different international instruments and also constitutional and procedural law respect the rights of the detainees. In addition to the above mentioned rights there are rules for the treatment of prisoners and united nation body of principles, detained rules governing the treatment of prisoners including those held in custody of pretrial detention and separation of categories of prisoners. And also there is a remedy for unlawful detention by procedural actions like habeas corpus, the right to appeal, penal and civil liability for violators.

2.3.2 Limitation of Right of Accused Person

International instruments and most of the constitution permit individual right limitation for the benefit of the society. And those limitations can be imposed only by legal instruments. So, the Ethiopian criminal procedure code limited individual right by the full discretion of the police and courts starting from Article 26(1), 50, 51 and 52 abetter 53.

2.4 Interrogation of The Accused

It is an examination of the suspect by the police with a view to eliciting relevant information pertaining to the offence for which the person is suspected. For interrogation to be conducted, there are certain conditions that need to be fulfilled without which no statements may be taken by the court as evidence against the person making the statement. Article 27 of the Criminal Procedure Code is a mandatory provision. But, there are certain precautions or pre-requisites; it is relevant to take about the turning of interrogation.

It is vital because the purpose of summoning or arresting would be immaterial because it is to bring so that such person will be re-interrogated. But, the time is not fixed as that of forty-eight hours to trial and is not available, but it is presumed to be as soon as the police carryout its obligation, because the police may find it inconvenient to interrogate due to lack of manpower, or workload.

2.4.1 Rights of The Accused Person

While re-conducting an interrogation, the police officer should follow the pre-requisitions specified in Article 27 of the Criminal Procedure Code and Article 19 of the FDRE constitution:

- The police have to inform the suspected person that he has the right to remain silent.
- Explain the accusation, complaint
- The right not to incriminate oneself or the right to be informed of the consequences of a statement.
- The right not to be professional (lawyers refer answering question its controversial) article 61 criminal procedure code but this right is available, if only

2.4.2 Confession and Third Degree Method

Confession is a procedure by which a suspected person gives statement as to the commission of the alleged crime voluntarily either to the magistrate or to the police. Such confession is acceptable as the suspected person gives such confession out of any external influence i.e. involuntary confession. Thus, a contrary reading of Article 19(5) of the FDRE constitution reveals that there could be two types of confessions out of which voluntary confession is sustainable at law.

Involuntary confession is improper method of obtaining statement by the police officer (Magistrate), in order to get confession incriminating the suspected person as stated in Article 27 and 31 of Criminal Procedure Code. If the suspected person gives statement that would incriminate him/her as a result of the use of improper method, it would be inadmissible. Article 19(5) of FDRE constitution provides that arrested persons shall not be compelled to make confessions or admission which could be used as evidence against them. Any evidence obtained under coercion shall not be admissible. ²⁷

Any evidence is sufficient to near that the court doesn't admit the fruit of the confession which is obtained through coercion. There is one saying "The fruit of the poisonous tree is poisonous." And this explains perfectly as to the inadmissibility of confession obtained through coercion. Coercion could be of physical or psychological. Physical coercion could be torture which is prohibited by Article 18 of the FDRE constitution. On the other hand, psychological coercion constitutes tricking the suspected person inducement and any other psychological coercion.

It is worth noting that since it is the public prosecutor who has to prove whether the statement given by the suspected person is the result of third degree method or is an honest statement given out of his own free will. Furthermore, the public prosecutor has to be careful that after the suspected person has given an honest confession before or after the use of improper method. This is because most of suspected persons in practice after giving an honest confession deny their statement, when they appear before the court as to their confession by stating that such statement is given through coercion.³⁸

2.4.3 Remedies for Third Degree Method

Different countries follow different theories with regard to remedies against third degree method.

1. Civil remedies, when an official who has been given the power to obtain confession used third degree method, such act will entail civil liability. Article 2035 of the Civil Code could be mentioned as a remedy for such violation, as article 314 of the Criminal Procedure Code prohibits such use. Article of the Civil Code stipulates that a person is deemed to have committed an offence where he infringes any specific and explicit provision of a law, degree or administrative regulation. Ignorance of the law is no excuse.
2. To exclude the involuntary confession as indicated earlier, Article 19(5) of the constitution, states that if a confession is gained as a result of violence,

such statement will not be used against the suspected person before the court of law. Thus, such statement will be inadmissible.

3. Empowering the court to register confession rather than the police Some countries such as USA, in order to avoid the possibility of third degree method, tend that confession can only be valid if it is only given before the magistrate (i.e. the court of law). Because it is believed that since courts are open to the public, the suspected person will not be forced to give his statement involuntarily, as compared to confession given before the police officer. In our case, a suspected person can give confession either to court or the police officer, as provided in Article 27 and 3 of the Criminal Procedural Code.

2.4.4 Other Remedies

Countries like the USA for example, set time to interrogate a suspected person, of which such time as passed, it will not be admitted as evidence to be used against the suspected person. Furthermore, disciplinary measure could possibility be the other remedy for improper way of obtaining confession either by the court or by the police officer. Disciplinary measures may be demission, suspension or to the extent of firing the person who obtained statement out of the suspected person using third degree method.

Chapter Two

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CHAPTER THREE

3. THE APPLICABILITY OF THE LAW RELATING TO POLICE INVESTIGATION: IN THE AREAS OF SELECTED POLICE STATION IN ADDIS ABABA

3.1 The Purpose and Fundamental issues of criminal procedure

Whatever the mode of initiation of investigation may be (accusation, complaint or personal observation of the commission of the offence by the police), the investigation is said to begin when the information is communicated to the police.¹ The investigation proceeding is a proceeding for the purpose of gathering evidence to reach a decision whether the suspect (or the arrested person) is a probable offender or not. This part of the proceeding is basically constituted of four things. ² These are:

- a) Arrest of the suspect
 - b) Interrogation of him
 - c) Search of the person and premises of the suspect and
 - d) Examination of witnesses and view of places and other things.
- (It does not mean however, all of them have to be done completely in a single proceeding)³

In the normal course of things, a typical criminal case begins with an accusation by any person or a complaint made by the victim or a person claiming under him. There are certain formal requirements, to be complied with when such complaint or accusation is made, which are more stringent in cases of offences that are punishable only upon complaint. The police officer at the public prosecutor, to whom the accusation or complaint has been made, shall reduce such accusation or complaint into writing and read over to the complainant who shall then date and sign it.

There are also cases where the police officer himself observes the commission of an offence, which are said to be flagrant cases wherein the investigation of an offence begins with the arrest of the suspect.⁴

In non flagrant offence, if the police officer has sufficient evidence making him believe that the suspect i.e. the person against whom the accusation (Complaint) has been lodged, has probably committed the offence, he may call the suspect by summons. It is up to the person summoned whether to appear.⁵ Where the summoned person appears, he shall be interrogated by virtue of Article 27(2),⁶ but should he fail to appear before the police, the latter shall take such steps that are necessary to effect the arrest of the suspect, the only alternative is to apply to a court of law for an arrest warrant.⁷ Upon receipt of the application for an arrest warrant by the police, the court shall consider whether the arrest of the person is necessary and cannot otherwise be obtained. Such decision shall be based on the evidences that are produced by the police officer and the law i.e. whether the police officer has sent summons and if the summoned person, after receiving the summons, failed to appear and the offence is non bailable, which will be tried in the absence of the accused⁸. In flagrant offences, however, the police effects arrest without warrant. Once the person appears before the police, whether it is by summons or arrest with or without warrant, the consequence is the same with arrest.⁹

Once the person is arrested, the police conduct interrogation over the arrested person. The police, before conducting the interrogation, must first inform the arrested person that he has the right to remain silent and should he make any statement such statement shall be recorded and used as evidence in his trial.

As part of the investigation process, the police may conduct search with or without warrant. The court shall issue such warrant of search only if it is satisfied that the purpose of justice of any other inquiry, trial or other proceedings in the criminal procedure code will be served by such warrant.

In cases where the court grants the warrant, it shall specify the place where the search is to be conducted and the items to be searched and seized.¹⁰ There are however, circumstances where search may be conducted without warrant. This is where the offender is followed in hot pursuit and enters premises or disposes of articles where the subject matter of an offence in premises and information is given to the police that an item which may be relevant as evidence in respect of an offence is concealed or lodged in any place in the premises provided. These are:

- a) The offence is punishable with more than three years of imprisonment, and
- b) The police have good grounds, to believe by reason of the delay in obtaining a search warrant that such articles are likely to be moved.¹¹

The police may also examine witnesses that are said to have observed the commission of the offence or who have some other relevant information about the offence, the offender or the person against whom or the thing in respect of which the offence has been committed. The police may go to the place where the offence is said to have been committed or where immovable evidence is present and view matters depending on nature of the case.¹²

If the offence complained of is not punishable with rigorous imprisonment as a sole or alternative punishment or it is doubtful that the offence has been committed or that the arrested person has committed the offence (this does not worry for flagrant offences), the investigating police officer may release the arrested person on his discretion with or without sureties that he will appear at such place on such day and at such time as may be fixed by the police.¹³ If the person is not released by the police for whatever reason, however, he has the right to appear before the court within 48 hours.¹⁴ The court, before which the arrested person appears, either releases him on bail or remands him into custody.¹⁵ The arrested person has the right to be released on bail. The court may then consider granting bail depending on the nature of the offence and the character of the offender either upon the application of the accused person or on its own motion.

Normally, offences are subject to bail, exceptionally however. Offences are not subject to bail by the provisions of the law. In such cases, it is not a matter of the decision of the court rather it is a matter of law. The judicial involvement is, however, required only in offences subject to bail. In offences subject to bail, if the person is not likely to appear on such date and hour as may be fixed by the court, or is likely to tamper with evidence or to commit further offences, the court may deny bail. Thus, bail is denied basically to ensure the continued presence of the arrested person before the court and in some case to enable the police officer complete his investigation and incapacitate the arrested person from committing further offences. If any of the above conditions are not in existence, bail may be granted upon the production of certain security.¹⁶

As bail is not punishment however, once the court grants bail, it should demand a reasonable security which the arrested person can afford and which can compel the person to be released on bail and appear before the court.¹⁷ Thus, when the court determines the nature and amount of security, it is with a view to enabling the arrested person exercise his right as well as to secure the continued attendance of the person through out the whole proceeding. If the type of guarantee that is required is personal guarantee, the guarantor has the obligation to ensure the continued presence of the person released on bail at the pain of losing any thing that has been promised or deposited by the guarantor.¹⁸

The police officer has an obligation to complete the investigation without unnecessary delay. He shall enter all relevant information which are accessible to him in the investigation diary and in the investigation report day by day as are provided for in the Law. After completing the investigation, he shall forward the investigation diary accompanied by the investigation report to the public prosecutor.¹⁹ Upon receipt of the police report, the public prosecutor may decide that further investigation be conducted or preliminary inquiry be held or close the investigation file or refuse to institute a charge against the suspect. ²⁰

3.2 Investigation Related Practical Problems In Some Areas of Addis Ababa

There are different kinds of offences and the penalty is different from one case to the other. But, with regard to its consequences, the investigation is similar in all areas. Generally, there are two kinds of offences, which are known as petty offences and serious offences. In order to go through the investigation process, while such kinds of offences are committed, the police, after receiving the complaint or accusation immediately, have the duty to collect information to conclude if the commission of the crime is doubtful or non in accordance with Article 11 cumulative with Article 13 of the Criminal Procedural Code.

I have observed the practice of police investigation that is investigation process followed by police investigator in some areas of Addis Ababa. In Addis Ababa city Administration police Crime Investigation Department. I have observed Ato Burke Kebede and Ato Mangistu kebede who are charged with homicide.²¹ Tesfamihael Alemayehu charged with drawing of cheque without cover.²² I have also observed the interrogation process conducted in Addis ketema sub-city Police Crime Investigation Department, Ato Neguse Mengesha charged with homicide.²³ Kolfe Keranio sub-city Police crime investigation department, Ato Yarade Mesefine charged with Robbery.²⁴ In addition, I observed police investigation process conducted at Lideta sub-city police crime investigation department while Ato Tadese Negash who is charged with rape.²⁵ Arada sub-city Crime Police crime Investigation Department, Ato Hileselase Ameha charged with Arson.²⁶ In my observation of these Police Investigation Stations, the rights of the accused guaranteed by the criminal procedure as well as constitution have not been observed by the police investigator of the mentioned police stations. That is, the police investigator did not read or tell the accused persons right to remain silent, that any thing they say will be used against than in the say law. Further more, some of the police investigators in the Police Investigation Station some form of interrogation prepared.

Mentioned above such as, Kofle Keranio sub-city Police Crime Investigation Department, Ledeta sub-city Police Crime Investigation Department and Addis Ketema sub-city police Crime Investigation Department do not use a formal form in taking the confession of the accused person. The police investigator simply uses hand written form prepared by the police investigator himself.

3.3 Factors Affecting the Police Investigator not to Follow the Rule

3.3.1 Lack of Sufficient Knowledge of the Law

Since most of the workers in the police department have no adequate knowledge of the law, there is incapacity of administration of justice, both at institutional and individual level. Hence, the government has to be responsible and work over the organizational structure and build their capacity to make them competent. In addition, sufficient number of manpower should be involved for the process of administration of justice. There is also an imbalance between the number of cases which is brought for the police investigator and the number of manpower to go through the investigation process which makes the police investigator unable to perform his/her duty. Therefore, the constitutional principles as well as the rules of the relevant law are not implemented correctly. Due to lack of education, they do not do their task independently and confidently rather they are dependent on one another. Therefore, it is better to give them training by educated law experts in order to increase their awareness while performing their duties. The government and the public should contribute a lot to minimize such problem.

3.3.2 Lack of Interrogation Room and Materials Thereto

For the reason that there are inadequate offices for the purpose of investigation process and materials like for example, tables, chairs, phone etc, the police investigation could not perform their to this, as I could observed, there is no computer which nowadays decreases the workload in different fields of offices. Moreover, there are no adequate numbers of cars which can be used to catch suspected persons. Therefore, in such conditions, it becomes difficult for the police investigator to fulfill his or her duty in a smooth manner.

3.3.3 Incapacity of Authorities to Perform their Duty

As I tried to mention earlier, there is lack of confidence and education while the police investigator performs his/her duty. In this regard, things like budget, rules and overload of work on the police investigator become part of the problems hindering the accomplishment of their responsibility and these are discussed separately as follows: -

3.3.3.1 Budget

With regard to the budget, which is given to their administrative office, it is not properly used with necessary work in the given time. That is, due to the reason that there is no good knowledge and management while distributing the budget, it becomes an obstacle for the work to be done. Rather, the budget will be returned back to Ministry of Finance without being used properly. Therefore, we can not see any changes as regards the investigation process from time to time. For this reason, it will be better to give guidance and training to those authorities who work in the filed of management.

3.3.3.2 Rule

Here, when we talk about the rule, we are referring to the rules which are used by the department of police officers. That is, the department of police officer works based on such rules rather than the law. ²⁷Hence, as I can see from the practice, they give more attention to these rules i.e. for example, if the superior says that one plus one is three, then all the others will accept it as a rule. And here even if they know that is wrong, due to lack of education and confidence, they do not try to say that it is wrong. Therefore, this by itself become one problem hindering the proper execution of the work.

3.3.3.3 Workload on the Police Investigator (“Unnecessary Plan”)

When we say unnecessary plan, we are referring to the complaints lodged to the police investigator and an access of complaints which the offender unknown presented by opening new file to the police officer.

When this happens, administrator of the police officer orders the police investigator to accomplish his duty through investigation and to come up with 75% performance rate in a month. And this is done on them without creating a good atmosphere of work. That is, as I tried to mention earlier, there is unavailability of phone in the office which forces them they use their own mobile phone at their own cost and there are no enough cars as well. Therefore, in such conditions, the police investigator obeys the instruction to perform his duty, which makes him/her uninterested. As a result, this should be seen carefully in order to promote justice in a good and accelerated manner.

CHAPTER FOUR

4. CONCLUSION AND RECOMMENDATION

4.1 Conclusion

Investigation is the method by which a police officer tries to screen out the suspected person as to the commission of a crime through questioning. The power to investigate a crime is vested on the hands of the police officer. But, such power is not unlimited. In order for the police investigator start investigation, in accusation or complaint must be lodged by a person as to the commission of a crime. While questioning the suspect, the police officer has to make sure that the constitutional as well as procedural rights of the accused are observed. That is, the police officer has to notify to the suspect of his right to remain silent in that any thing he said will be used against him in the court of law. Furthermore, the police must refrain from using improper method of getting the truth out of the suspect such as, inducement, torture, asking leading questions, tricking the suspect so as to gain involuntary confession.

If the suspect wants to say something, he has to say it out of his own free will. Therefore, the police have to observe the above in questioning a suspect. However, these mandatory provisions of the law seem to be almost non-practical in the areas of police administrations in Addis Ababa. There are factors that contributed for the non observance of the law by police investigator. These factors include: For one thing, most of the police investigators are not well educated due to which they do not exactly know what procedure they should follow take while investigating a suspect because they only care about rules of the administration rather than the law.

The police investigators in the areas where this paper was observed, have a bundle of work (i.e. they investigate, take a confession of many suspects) that makes them tiresome and thus, reluctant to follow the law.

No one in the police office has taken a disciplinary measure against someone who violates the rule and this encourages them to do the same mistake repeatedly. Furthermore, the atmosphere of the police administration while taking investigation is not welcoming, due to which suspects are reluctant to give confession of their own free will.

4.2 Recommendation

The police investigators are not well educated and constant training should be given so that the capacity of police officer will be increase as to the knowledge of the law.

More police officers need to be recruited because one police investigator handles so many investigations that make him/her not to do their task properly.

The police administration should take disciplinary measures against those who violate the rule so that other fellow police officers can conduct their work knowing disciplinary measure will be taken if they do not do discharge their duty specially when questioning a suspected person.

The atmosphere of questioning a suspect must be some what welcoming so that, the suspected persons feel free in giving his confession and this includes the arrangement of separate room solely for this purpose.

Chapter Three

End Notes

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