

Defamation Law in Ethiopia: The Interplay between the Right to Reputation and Freedom of Expression

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Abstract

This article attempts to explore the unresolved debate on conflicting relationship between the right to free expression and defamation law that primarily intended to protect right to reputation. It also shows how far defamation law has been used to suppress expression and limit access to information in most countries in general and in Ethiopia in particular. To this end, the article examines the prevailing trend of manipulating strict defamation law as a method to make media deliberately inefficient and weak so that silence and intimidate journalists under the guise of protecting reputation. Above all, the central theme of this article is to assess whether or not the existing defamation law of Ethiopia comply with the international principle that urges decriminalization of defamation law. Toward this, provisions which govern acts of defamation under Ethiopian Constitution and other laws to the effect will be scrutinized. Furthermore, this article suggests how International human right principles should be contextually adopted to Ethiopia to limit abuse of defamation law. Finally, after a thorough examination of conflicting interest and the necessary balance between the right to reputation and freedom of expression under Ethiopian law context, the right way to deal with defamation law would be suggested.

Keywords

Defamation Law, Reputation, Freedom of Expression

1. Introduction

It is very essential to understand the literal essence of defamation itself first to have a clear picture about defamation law. Literary speaking, defamation is an

act of inflicting harms to reputation of another person (Plunkett, 1983). Defamation is often defined as a false statement about a man to his disgrace with intent to hurt, ridicule and humiliate. According to Black's Law dictionary definition defamation is a publication of statement which tends to lower a person in the estimation of right-thinking member of society (Dictionary, 2004 (8th Edition)). Historically, the notion of defamation law had been for long considered as intellectual wasteland that "perplexed with minute and barren distinctions" thus it should not deserve specific study. Even it was viewed as part of a law that makes no sense at all. However, latter on in 1964 law of defamation has turned to be vital in order to respond to challenging constitutional questions raised by landmark case of New York Times Co. vs Sullivan that inevitably called defamation law in to legal realm of United State of America. Right after this pivotal decision the subject of law of defamation has been dominated by constitutional perspective than ever before (Post, 1986). And once again, Canada is well known for its defamation law that solely intended to safeguard the right to reputation regardless to freedom of expression. Unlike the United States, which provides incredibly broad protection for the right to freedom of expression through its codification in the First Amendment, Canadian courts have traditionally affords robust protection to reputation. In this regard, it is worth noting the case of Hill Vs. Church of Scientology of Toronto whereby the Supreme Court of Canada decided that the mere act of publishing defamatory material is sufficient to favor liability in defamation without requiring any additional proof (Brouillet, 2005/2006) and (Reid, 2013). From this time on wards the application of defamation law in Canada has begun to consider the freedom of expression along with protecting reputation. Since the act of defamation is a potential threat to individuals' reputation hence it inherently necessitates the advent of defamation law. Defamation law historically safeguards individuals against invasion interest in reputation and good name under many jurisdictions. Simultaneously, globally defamation law has been increasingly blamed for being disproportionately suppressive and exerting chilling effect against freedom of expression (Agnes, 2009).

The task of ascertaining tests for defamatory statement and delineating standard defense available to defendant or the elements that a given defamation claim should constitute are common problems in realm of applying defamation law that usually demands jurisdiction specific solutions. Thus, Defamation law under Ethiopian law, like trends in other countries, is also a scene where free expression and reputational interest inevitably colliding each other. Of course, the tests for defamatory statement vary across jurisdiction since its meaning is wide-ranging and relative in nature. As a matter fact, there is no uniform standard to determine words as defamatory expression throughout the world. In principle, in case where words "sounds to the discredit" it will serve as prima-fascia evidence that proof the existence of defamatory act. But where it is not clear from the words themselves the plaintiff would have a burden of proof to show the extent of special damage he sustain as a result of defendant's wrong-

doing (Veeder, 1903) and (Lidsky, 1996).

In order to protect freedom of expression usually many jurisdictions imposes a duty to proof against plaintiff in case of defamation claim. Above all, the defendants of defamation case are also vested with alternative defenses such as truthiness, opinion and privilege to justify or rebut the allegation. Besides, in most of jurisdictions in order to make out defamation action at least requirements such as the presumption of falsity, damage and malice should be found met to restrict the standard freedom of expression. Based on the justification that support the freedom of expression and also critics posed against law of defamation, it is plausible to conclude that plaintiff of any defamation case must establish not only that offending words are defamatory and refer to him and were published to third party, but also that the allegations were false, actually hurt his reputation, and that the defendant acted at least negligently in publishing the defamatory falsehoods which ultimately injured the plaintiff's reputation (Bayer, 2000).

At any rate, despite the problematic nature of employing defamation law every man is entitled to have his reputation starting from the earliest period thus it usually needs due legal protection. Reputation is commonly regarded as a perfect natural right by most classical scholars since it belonged under same general category with the right to life and liberty (Bonica, 2013). In contrast, some other also argued that though reputation is perfect natural right it is undesirable to employ defamation law. Any ways, the rationale of ensuring individuals' reputation presupposes the development of effective and efficient defamation law. Perhaps, at times even reputation is more valuable than any other property that an individual may own thus its protection require rigorous law to the effect. Reputation is the status or position one holds in a society or public in response to his role and contribution (Brouillet, 2005/2006). In short, reputation is all about to win and enjoy good perception from the part of others in return.

Naturally, the notion of defamation is basically related with one's reputation from a defamed point of view. And once again, it has also a link with freedom of expression from a defamer perspective. Though, the right to reputation and freedom of expression are competent each other still they are not totally exclusive. Thus, the ultimate aim of defamation law is nothing else but moderating the interplay between the right to reputation and the right to freedom of expression (Stijn, 2010). To this end, many countries have enacted a separate law of defamation while still some others countries had opted to include it under other parts of laws. With this regard, Ethiopia is among countries that had managed to merge law of defamation with other part of laws like Civil (particularly Tort) Code and Criminal Code.

It is, however, important to note that law of defamation in the earliest period is entirely thought to govern disputes in relation to reputation. However, gradually but certainly, with the advent of the notion of freedom of media and right to information the law of defamation is also necessitated coping up with freedom of expression. The recent proliferation of private media had played a paramount

role to promote the agenda of the freedom of expression than ever before (Carver, 2015). As a result, currently at least defamation law of developed country is designed in such a way that it enable to effectively intermediate the interplay between reputation and freedom of expression.

2. The Need for Defamation Law

In order to realize the need for law of defamation in any countries legal system, it is very helpful first to look and appreciate how Canadian Courts had comprehensively illustrated the mutually reinforcing relationship between reputation, defamation law and democracy. According to Canadian Court democracy is ultimately intended to protect individual interest more than anything else. Since reputation is one of fundamental perfect natural rights of a person it need to be addressed by specific part of law particularly defamation law. This is because one could only enjoy sense of worth and value where there is effective legal framework that safeguards reputation. Otherwise, the absence defamation law may leads to the prevalence of rampant false allegation that eventually deteriorate individual's reputation at the end of the day. Inherently, if good reputation is lost once it is hardly possible to get it back to its original position hence it is irreversible. As a result, any democratic society is supposed to make possible attempt to safely ensure the enjoyment and protection of individuals' good reputation (Brouillet, 2005/2006).

Hence, the right to reputation is an integral and an inbuilt element of the right of mankind, which each democratic society must protect if it is really concerned about safeguarding the person and his or her inherent dignity as well (Sigdel, 2010).

It is apparent that defamation law is basically intended to safeguard and protect person's reputation. In fact, the concept of reputation itself has a wide range meaning that makes challenging to give it exact definition. As Robert C. Post had endeavored to delineates and sketch three various concepts of reputation that defamation law often tried to protect. These are reputation as a property, reputation as honor and reputation as dignity (Post, 1986) and (Mitnick, 2009). Accordingly, the purposes aimed to be met through law of defamation also vary based on the above mentioned actual difference on the essences of reputation. Given this distinction, let closely examine the need for law of defamation to protect each concept of defamation one after the other. The first conception is that solely regards reputation as property which is a fruit of personal exertion." (Post, 1986). Apparently, the assertion of this thought is construed as defamation law is ultimately intended to safeguard and secure ones reputation as a property that owes pecuniary interest for a respective holder. Indeed, protection of reputation as a mere property is not this much complicated but simply regulated conventionally as if it is ordinary tangible asset. Next, the second spectrum of reputation is that regards it as honor. Reputation as honor is something that goes beyond reputation as property. In case of reputation as honor, unlike a case

in reputation as property, compensation of pecuniary damage would not suffice to settle the dispute. Rather, it maybe even required restoration of honor itself that often exceeds far more from mere compensation. This is mainly due to the fact that the loss of honor is the loss of moral status which is hardly possible to regain and to calculate it in terms of monetary value (McCormick, 1934). Legal protection of reputation as property is exactly the same with protection of any private good; nothing more nothing less.

However, preservation of honor amounts to securing public goods; not mere protection of individual private interest rather it is something that goes beyond. This is because protection of honor involves the preservation of the consent of the society with regard to the order of preference. Finally, the third spectrum of reputation is that regards it as dignity. Within this line of argument Goffman is taking a lead in providing a theory that associate the law of defamation with the concept of dignity. In its nature, dignity is a ritual and ceremonial aspect of the self that often associated with the self's integrity, which is to mean with its wholeness. Nevertheless, Goffman is pessimist and doubtful about the stability of dignity rather perceive it as something vulnerable to risk, since in any social transaction the usual trend may be wrecked, and hence as a result a person may situated in a totally reversed circumstance whenever his reputation is endangered or discredited. Therefore, as a matter this fact loss of individuals' dignity need to be maintained and protected in advance at least through securing means of legal recourse.

Evidently, sense of inherent self-image built at the core of our private personality is totally reliant upon the ceremonial observance of surrounding community like rule of deference and demeanor. As a result, the law of defamation can be understood as a scheme by which society control any possible violation of its rules of deference and demeanor (Post, 1986). In so doing, the society could protect the dignity of its members through employing defamation law. When rules of deference and demeanor embodied in speech in particular and expression in general and hence are subject to the law of defamation. This is what Robert C. Post referred as rules of civility that ultimately enhance integrity and harmonious relationship among members of a given society.

Thus, it is more plausible to infer that Ethiopian law of defamation like most countries expressly guarantees a person right to the safeguard reputation as a property, dignity and honor through various national laws including the Constitution, as it will be rigorously seen in the forthcoming part (See Art. 24 of FDRE's Constitution, 1995). However, the freedom of expression in general and freedom of media and right to access information are often subject to unwarranted excessive limitation by the government under the guise of protecting reputation. Perhaps, journalists may usually violate the right of freedom of expression by insulting or defaming others, mostly politicians who assumed public office, while performing their duty (Mirkovski & Majhosev, 2017). Overall, the issue of defamation law inherently calls for a balancing between the freedom of expression and the right to safeguard one's reputation (Cheng, Cheng, & Jian

2015). Cognizant of this inverse relationship between the freedom of expression and the right to reputation, it is possible to draw safely the following conclusions; on one hand, the law of defamation is supposed to restrict the freedom of expression in order to protect the legitimate right to reputation. On the other hand, the law of defamation is also expected to limit a bit the right to reputation to extent possible to promote the right to freedom of expression thus make sure the free flow of information, opinion and idea.

3. The Interplay between the Right to Reputation, the Freedom of Expression and Defamation Law

It is needless to state about the significance of defamation law in protecting an individual's reputation or goodwill from unwarranted attacks. Owing to this fact, even International Human rights instruments do not explicitly prohibit defamation laws, despite its chilling effect on freedom of expression, rather endorse the right to reputation of individuals. Inherently, the essence of defamation has more to do with two often conflicting fundamental democratic rights, namely the right to good honor/reputation and the freedom of expression. Article 19 of Universal Declaration of Human Right states that everyone has the right to freedom of opinion and expression on one hand, While Article 12 of same instrument indicates that no one shall be subject to attacks upon his honor and reputation on the other hand (UDHR, 1948). Likewise, Article 19 of International Covenant for Civil and Political Rights defamation law is enunciated as a legitimate ground to restrict the freedom of expression and once again as pursuant to Article 17 of same instrument defamation law is a means to protect reputation of individuals (ICCPR, 1966).

Historically, there are two prevailing trends with respect to prioritizing between ensuring rights to reputation and securing freedom of expression in case where there is a conflict in between. Ostensibly, the law of defamation is intends either protecting reputation alone, or else occasionally in some jurisdiction it attempts to take in to an account and recognized freedom of expression as well in the discourse (Swatsler, 1980). For instance, Canada is one among countries whose defamation law is primarily aimed to safeguard the right to reputation though gradually it has been found that considering the freedom of expression is also essential. At this juncture, it is worthy to note the case of Hill Vs. Church of Scientology of Toronto in which the Supreme Court of Canada decided that the mere act of publishing defamatory material is enough to favor liability in defamation with no need of any further proof (Brouillet, 2005/2006) and (Reid, 2013).

In contrast, United States of America is remarkably known for law of defamation that mainly favors the freedom of expression. Toward this effect, the Federal Supreme Court of United States of America had passed historic groundbreaking precedent that resulted in far reaching significance. Good case in point, New York Times Co. Vs. Sullivan is the landmark decision in US America that had ascertained the domination of the freedom of expression over the right to repu-

tation (Plunkett, 1983). In principle, there is no doubt about the importance of defamation laws since the right to reputation deserves protection. However, it is worthy noted that defamation law should not just ensure the right to reputation even at the expense of the freedom of expression. The more defamation law excessively stick to the protection of reputation, the more the freedom of expression will be remain at stake.

Thus, defamation law should ensure the right to reputation without significantly compromising the freedom of expression. As a matter of facts, recent practical problem has necessitated that adequate defamation law should tend to strike a right balance between securing right to reputation and freedom of expression. As far as employing defamation law is concerned, countries take two divergent positions; one is that embarks decriminalization of defamation hence it should entail only civil liability and the other is that still persist in considering defamation as criminal offence (Carver, 2015).

Despite the existence of this competing dichotomy, now days there is a prevailing trend that lean toward the position that favor decriminalization of defamation under auspices of United Nation. The reason for this is highly attributed to the fact that a mere criminalization of defamation would more likely hamper the freedom of expression; hence it will have a chilling effect on legitimate expression (Heuderson, 2005). By the same taken, the way defamation is treated under Ethiopian laws exactly match with the scenario that regards defamation not only as an act that entails a civil liability but also consider it as criminal offence. That is why defamation is dealt in a relatively detail manner both under Ethiopia Civil Code and Ethiopian Criminal Code.

However, it is evident that currently the trends of decriminalization of defamation move overwhelms over the counterparts position mainly in order to protect freedom of expression globally. In this regard role of United Nation through international instruments like UDHR and ICCPR is very paramount in exerting pressure to avoid the practice of criminal defamation from the legal regime of member states. Despite the effort made by United Nation to decriminalize defamation law it still remain the most effective way of protecting the right to reputation and to the worst it undermine free expression in Ethiopia and in many other countries of the world. However, unless precautionary technique is employed, defamation laws can have a chilling effect on expression, hampering the free expression right of both those expressing themselves and those who entitled to receive information, opinions and ideas (Article 19 (XIX), Revised Defining Defamation Principles: Background Paper Report, 2016).

To put it in nutshell, the central purpose of defamation law is the protection of reputation. A good defamation law is one which continually endeavors for striking a proper balance between the protection of individual's reputation and freedom of expression. In other words, the legitimate objective of defamation law is to shield peoples against false statement of fact which may cause damage to their reputation (Bayer, 2000). Perhaps, that is why almost all countries in the world have some form of protection mechanism, though it termed under differ-

ent nomenclatures such as libel, calumny, slander, insult and so on across jurisdictions.

Though the shape and substance of defamation law differ widely across jurisdictions, the target intended to meet with is ensuring right to reputation. Some countries have specific defamation statutes and others have articles in more general laws. The proliferation of press, that followed by internet, has resulted in the emergence of separate laws and this in turn lead into differentiating gravity between spoken defamation (slander) and written defamation (libel). The latter includes radio and television in addition to press due to their wide and quick dissemination nature. Defamation should only be limited to the protection of reputation, as it may be quantified in terms of financial damages. Pragmatically in many countries across the world, defamation laws are also used to a wrongly interpreted and stifling protection of mere feeling which actually should not deserve legal protection after all. This prejudiced approach unfortunately would situate a plaintiff unfairly in advantageous position where they only required convincing a court that they feel offended. Indeed, such trend is undoubtedly too excessive and harsh probably that even hinders the freedom of expression. To make matter worst, in some countries rather confusing “honor” is employed along with “reputation” and insult laws thus it would even complicate the task of ensuring the right to reputation (Post, 1986). It is worthy to note that where the scope of reputation got broader there might be more possibility to suppress freedom of expression.

In general, defamation can be categorized as either a civil tort or a criminal offence. Criminal defamation laws are inherently harsh and have a disproportionate chilling effect on free expression. As a result, criminal defamation thought to be a potential threat against free flow of information and idea. Of course, journalists in particular and individuals in general are vulnerable for being arrested, held in pre-trial detention, subject to expensive trials, then saddled with criminal record, fines and imprisonment and social stigma associated with this. It is common in many countries for individuals critical of the government, public bodies or big business to be charged with multiple defamation cases or given suspended prison sentences so that they walk free but are silenced since any further conviction will lead to immediate imprisonment. This frightened the major actors in the media not to expose the actual facts which rather they are supposed to do. Having realized such an ever increasing threat against free expression in most of member states, United Nation had determined for advocating decriminalization of defamation across its member states (Agnes, 2009).

Indeed, civil defamation laws do not involve the state’s criminal justice machinery and therefore have the potential to exert less of a chilling effect on free expression. This is only true however if they are designed in a way that prevents abuse, allows proper defense, and sets maximum reasonable threshold on compensation. In many countries public bodies and officials are given greater protection against defamation and habitually sue journalists and activists reporting on corruption and matter of inefficiency. This is all about what mean by abuse of

defamation law under the guise of protecting right to reputation while simultaneously undermining freedom of expression (Usman, 2015).

Conventionally, it has been agreed that defamation claim should first meet cumulatively certain essential elements to be full-fledged and successful. First of all, there should be a false statement or accusation. Second, such allegation should be made based on somewhat reliable facts. Third, the act should cause certain damage or loss. Fourth, a victim's reputation should be undermined. Finally, the means through which the alleged information disseminated to the third party should be publication. Practically, defamation law should be found to violate free expression right where they seek to protect feelings rather than reputation or to protect public order rather than private reputation, where they fail to provide for adequate defenses, and where they are applied with disproportionate damage awards (Sigdel, 2010).

Historically, the tension between defamation law and free expression is traced back to the ancient period of Roman but gradually reach at its apex in the digital and internet age. Since freedom of expression includes the right to share "views and opinions that even might offend, shock or disturb," crafting defamation law and applying it in way that does not violate the principle of free expression are difficult but very essential. Though there is a detail law to regulate the act, the mere threat of defamation suit can be enough to quiet speech on controversial issues thus ban free flow of information and idea (*Right Vs. Reputation: Campaign Against the Abuse of Defamation and Insult Laws*, 2003). To wind up, it seems that defamation claims in Ethiopia or in other countries are often used by the powerful to protect political or economic interest and to silence dissenting voices. Surprisingly, whatever the media atmosphere is tight and stringent in Ethiopia to exercise freedom of expression still there is a wide range struggle internally to strive on the part of media coupled with international pressure exerted.

4. Defamation under Ethiopian Laws

The act of defamation has been raised as an issue and rigorously discussed under various Ethiopian laws, more importantly; the Constitution of Federal Democratic Republic of Ethiopia, the Civil Code of Ethiopia, the Criminal Code of Ethiopia and Freedom of Mass Media and Access to Information Proclamation No. 590/2008. Having this in mind, let closely examine defamation law under aforementioned legal documents one after the other.

4.1. Defamation under FDRE's Constitution

According to Article 24 (1) of Federal Democratic Republic of Ethiopia's constitution everyone one has a right to respect for his human dignity, reputation and honor. This specific sub-article implies that each individual can sue and claim damage against other where it is found that his dignity, reputation and honor have been violated unjustifiably (See *Art. 24 of FDRE's Constitution*, 1995). In fact, there is no other way than enacting and enforcing specific defa-

mation law to protect the right to reputation, dignity and honor of a person. To this end, Ethiopia has also incorporated specific provisions which govern defamation under its other subsidiary legislations.

And once again, sub-Article 2 of the same provision subscribes as everyone has a right to the free development of his personality in a manner compatible with the rights of others citizens. In turn, this envisages that every individual is supposed to consider others' interest while striving to develop his interest. At this juncture, one has to make sure first that he should not defame or ridicule others in any of its form. Other way round speaking, government has a duty to protect the right to dignity, reputation and honor of every citizen from any possible violation through employing the law to the effect. While sub-article 3 of article 24 stipulates that everyone has a right to recognition everywhere as a person (See Sub 2 and 3 of Article 24 of FDRE's Constitution, 1995). This means, every individual is entitled to enjoy the status of human being without any conditions thus deserve equal treatment without any discrimination.

Moreover, as pursuant to sub-article 6 of article 29 of Federal Democratic Republic of Ethiopian constitution enunciates that right of thought, opinion and expression can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. However, where the situation requires legal limitations can be laid down in order to protect the well being of youth, and the honor and reputation of individuals (See Sub-Article 6 of Article 29 of FDRE's Constitution, 1995). Hence, one can safely deduce that the right to reputation and honor at times can be a legitimate ground to restrict freedom of expression. Besides, it is worthy noted that legal limitations should applied in a very strict and objective manner but should not be done arbitrarily in any ways except when provided by law and believed necessary. Likewise, any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law. This also implies that anyone who inflicts harm to the right to reputation of others is liable to the law that governs subject matter under discussion, which is law of defamation. However, it is common in the different part of the world to observe when protection of reputation incidentally impedes the freedom of expression.

To conclude, the provisions intended to govern issue in question seems quite unrealistic because on one hand it promises the right to thought, opinion and expression to the extent they cannot be limited even based on content and effect they entail. Paradoxically, on the other hand it also imposes criminal liability upon public expression of opinion that allegedly intended to injure human dignity since this concept is vague and prone to misuse thus it usually threaten free expression (Human Rights Watch, *Journalism is Not a Crime, Violations of Media Freedom in Ethiopia*, 2015).

4.2. Defamation under Ethiopian Civil Code

According to article 2044 (1) of Ethiopian Civil Code the act of defamation

comes in to picture where a person commits an offence whereby his words, his writings or by any other means he acts in such a way as to make another living person detestable, contemptible or ridiculous and to jeopardize his credit, his reputation or his future. This implies that defamation law under Ethiopian Civil Code has already recognized defamation as an offence that committed against a person in words, in writings or in any of its form. Besides, it also underscores that defamation has an evil intent to disgrace and hurt a victim's reputation and pecuniary interest thereof.

Pursuant to article 2045 (1) of Ethiopian Civil Code, the intent to injure shall not be deemed to be an essential requirement for defamation. Yet, international standard of defamation law prescribes that the plaintiff of defamation charge should strongly require proving that the defendant has published either intentionally or negligently, more importantly; the plaintiff has with the specific intention of defendant to cause harm (*Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, 2000*). And, eventually the plaintiff must prove that the alleged statement harms his personal reputation though such stringent standard may not applied in all jurisdictions. With cognizant of these premises, Ethiopian Civil Code seems favoring the plaintiff against defendant thus in effect it more likely hinders the freedom of expression.

Moreover, the law of defamation has to also confer the defendant alternative defenses as way out from being liable like reasonableness and privilege. According to international standards, a defendant of defamation charge should be able to defend himself in a number of ways against claim of plaintiff. In fact, all these defenses may not available in every jurisdiction. The first one is "truth": if the defendant prove that the alleged statement is in fact true his defense is complete. Of course, pursuant to article 2047 of Ethiopian Civil Code "Truth of the alleged facts" has already been indicted as a way out from being liable under defamation law. The second defense is "reasonable publication". If the matter is something the public has a right to know about, he should have the right to publish if due diligence is taken—even if he cannot prove that the statement is true, and even if it has been proved to be false later. This is what is known as "reasonable publication". The third defense is "opinion": nobody should be liable under defamation law for the expression of opinion. Mind you, the second and third defense of international standard are merged together and enunciated under article 2046 of Ethiopian Civil Code as "Matter of public interest" to justify defamation where the interest of public demands to do so. The fourth defense is privilege. This is specifically designed to protect certain categories of statement made in the public interest. Broadly speaking, there are two types of privileges: absolute and qualified. Privilege refers to a special treatment given only to specific individual that protects from being sued under defamation law due to public position they assumed. Absolute privilege is come in to picture where a defamatory statement was reported from parliament or judicial proceeding. Qualified privilege is a special protection for media reporting other types of statement in case like pub-

lic meeting, documents and other materials which already fall under public domain.

Likewise, according to article 2048 of Ethiopian Civil Code immunity can also serve as a ground for defense against defamation charge. The plain reading of this provision dictates as no liability shall be incurred in the respect of utterances made in parliamentary debates or in the course of judicial proceedings. And once again, a person who repeated such utterances in their exact form shall be liable only where he has acted solely with the intent to injure. The fifth one is consent: if a plaintiff has permitted the statement to be published, he cannot then sue later for defamation. Of course, there is no specific pertinent provision which govern the period of limitation that should be applicable to sue and claim damage for defamation in Ethiopian jurisdiction. It is apparent that this may in turn lead in to unbridled discretion of the plaintiff that ultimately hampers confidence to hold and express dissenting opinion. The final defense is “prescription”. This means that there is a prescribed period after the publication, within which the plaintiff must sue. Similarly, this defense is not available anywhere in Ethiopian jurisdiction unlike international standard. In effect, the absence of prescription would leave excessive wide room for the plaintiff to change his mind and it allows him to claim even after giving consent once.

According to article 2109 of Ethiopian Civil Code where moral damage is sustained due to defamation fair compensation may be awarded by way of redress to the plaintiff or to charity named by him, in case of insult or defamation where: a defamatory charges are that the plaintiff has committed a crime or an offence punishable under the criminal law; or where they allege that the plaintiff is incompetent or dishonest in the exercise of his profession; or where they allege that the plaintiff, if a business man, is insolvent; or where they allege that the plaintiff is suffering from a contagious disease; or where they allege that the plaintiff is of low morals. According to article 2120 of Ethiopian Civil Code that deals with reputation and honor in case of offence directed against reputation or honor of an individual or individuals, the court may order such publicity to be made at the defendant’s expense as is likely to counter the effect of the dealing.

Pursuant to article 2121 of Ethiopian Civil Code the court may grant injunction restraining the defendant from committing, from continuing to commit or from resuming an act prejudicial to the plaintiff. An injunction shall be granted only where there are good reasons to believe that the act prejudicial to the plaintiff is likely to be carried out and where the injury with which he is threatened is such that it cannot be redressed by an award of damages. Hence, one can dare to conclude that in principle the act of defamation under Ethiopian Civil Code tends to rectify damage rather than simply punishing wrong. Besides, article 2135 of Ethiopian Civil Code envisages that the managing editor of the newspaper, the printer of pamphlets or the publisher of the book shall be liable under the law for defamation committed by the author of a printed text (*Ethiopian Civil Code, 1960*) and (*Defining Defamation; Principles on Freedom of Expression and Protection of Reputation, 2000*). In short, this is a good case in point

whereby the law of defamation is naturally supposed to reconcile the conflict between reputation and freedom of expression, more importantly in media sector in general.

4.3. Defamation under Ethiopian Criminal Code

Ethiopian Criminal Code devotes much to deal with the issue of defamation law specifically under its entire part of Title III that stipulates about crime against honor. Article 607 of Ethiopian Criminal Code clearly indicates that crimes against honor and reputation are punishable despite the status and rank of criminals and the injured party. The victims of such crimes may be either individual or juridical person. Mind you, here the essence of individual victim includes a living person, deceased and person whose absence is declared as the case may be. It more likely seems that the law of defamation in Ethiopia had excessively widened its ambit. Surprisingly, the same article sub article 2 single out that the court should consider factor such as gravity of crime, the position of injured and the extent of publication or circulation to determine punishment against the alleged crimes. However, it is very unfortunate that know days the distinction like the extent of publication or circulation is found to be irrelevant since from the advent of the era of digital and internet (Grafield, 2012).

According to article 609 of Ethiopian Criminal Code where a crime against honor is committed by juridical person the punishment to be imposed shall be in terms of fine; provided that this does not necessarily preclude the personal criminal liability of manager or director of the alleged juridical person. It is however worthy to note that imposing unreasonable excessive fine on media is evidently amounts to prejudicing media as a sector. Thus, to meet the international standard the maximum threshold of fine should be set at least to safeguard the interest of institutions whose duties are related with disclosing information to the public. And once again, Criminal Code of Ethiopia on article 611 and 612, like Civil Code of Ethiopia mentioned above, had also embarked a trend of listing out exceptions though not exhaustively whereby legitimate defense could be raised; cases like immunity and opinion. Besides, article 614 of Ethiopian Criminal Code has stipulated that a person charged with defamation can only raise defense which is very specific plea to the case in point like truthiness. The same article also reaffirms that truthfulness and public interest nature of the alleged offending statement as tenable grounds to defend against defamation claim. According to international standard there is no any precondition to be met further, once it has been found that the statement is true, it is suffice to take it as a defense (Criminal Code of Federal Democratic Republic of Ethiopia, 2005) and (Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, 2003). However, in Ethiopia the mere fact that the statement is being true alone does not guarantee the legitimacy of defense rather it has to be also proved that there is no intent to harm and has to invoke higher interest as well. In so doing, defamation law of Ethiopia has clearly overridden unanimously accepted principle thus shifted the burden of proof against the defendant in

favor of plaintiff.

From the plain reading of article 613 and the sub-articles thereof one can easily deduce that defamation is totally fall under criminal offence upon complaint in Ethiopian jurisdiction. Furthermore, to make matter worst article 47 of Ethiopian Criminal Code also states that crimes relating to mass media should employed with a view to ensure freedom of expression and to protect abuse at the same time. Rather, it is obvious that article 47 and the followings of Ethiopian Criminal Code emphasize on restricting freedom of expression even more. This is manifested by making editor-in-chief, publisher, printer or disseminator of press criminally liable as participants of mass media related crimes. It also alleges that the part that deals with crimes related to mass media has targeted to protect the possible abuse caused by media sector no matter how at the end of the day it exceed the limit (*Criminal Code of Federal Democratic Republic of Ethiopia, 2005*) and (*Human Rights Watch, Journalism is Not a Crime, Violations of Media Freedom in Ethiopia, 2015*). Of course, there is nothing wrong with employing objective legal framework to regulate mass media. Yet, regulation should not be abused to the extent that excessively restricting the sector that might ultimately silence expression otherwise. Despite the overwhelming international endeavor to decriminalize defamation, Ethiopian has still persists in criminalizing defamation. That is why typical penalties like fine or/and imprisonment are consistently attached to every single sub-article of article 613 in order to deter offenders. Above all, Article 615 of Ethiopian Criminal Code enunciates that anyone who directly offends victim in his honor by insult or injury or outrages him by gesture or in any other manner is punishable upon complaint. This fact implies that Ethiopian defamation law had widened its scope to the extent that governing the issue like petty offence which in fact it is not supposed to deal.

Surprisingly, Article 618 of same code dictates that some grounds for aggravating penalty in case of criminal defamation. To indicate few among many, what are stated under article 618 (1(b and d)) should be worthy noted that where the defamation or calumny, insult or outrage has been deliberately committed against a public servant in the discharge of his official duty, or in relation thereto, the criminal is punishable, upon complaint: b) with simple imprisonment from one month to one year, and fine in case of defamation; or d) with simple imprisonment for not less than six months, and fine in case of deliberate act to ruin the victim's reputation. In fact, at this juncture the defamation law of Ethiopia has been found deviated from the international standard. After all, according to international standard a defamation that committed against public servant should not entail criminal liability let alone being aggravating circumstance. This is basically due to the fact that the mere exemption of public servants from any critics would not only undermine individuals' freedom of expression but also endanger the principle of accountability.

Eventually, article 619 (1) of Ethiopian Criminal Code unlike the International standard had broadened the margin of the right to lodge in respect to injury

against the honor or reputation of absent or deceased person is vested to descendants, spouse, ascendants, or brothers and sisters. In effect, certainly this approach would adversely affect the freedom of expression thus discourage free flow of idea and opinion. As a result, comment and critics on works of deceased would unfortunately be kept away from the realm of positive contribution to public at large (*Criminal Code of Federal Democratic Republic of Ethiopia, 2005*) and (*Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, 2000*). That is why international standard a case in point strictly confirms that the right to lodge in case of defamation remains functional only as long as the original victim come up with his claim and should appear in person otherwise it would not be assigned in any way to anyone else.

4.4. Defamation under Freedom of Mass Media and Access to Information Proclamation No. 590/2008

Freedom of Mass Media and Access to Information Proclamation No. 590/2008 is also legislation in Ethiopia whereby the issue of defamation is raised and dealt as a subject. In the first glance reading of a title, one can presume that this proclamation is ultimately designed to promote the freedom of mass media and to ensure the right to access to information. Yet, the actual objectives intended and the end results attained through employing a proclamation under discussion are definitely otherwise. This assertion would be illustrated well here as follows; According to Article 43 (7) of Freedom of Mass Media and Access to Information Proclamation No. 590/2008 the alleged defamation and false accusations against constitutionally mandated legislators, executives and judiciaries will be subject to prosecution though the victim do not brought any complaint to the effect. To put in nutshell, under this proclamation journalists and other members of media can be criminally prosecuted and eventually fined or jailed for defamation in contrast to internationally accepted norm (*Human Rights Watch Submission on Ethiopia, 2012*).

This implies that the law of criminal defamation in Ethiopia, more importantly in case of violation against government, is typically retrogressive and draconian in its very nature. In essence, provisions that govern defamation under Ethiopian law are found to be too harsh and not proportional. That is why in 2000, the Special Reporter on Freedom of Expression reported to the United Nation Commission on Human Rights that criminal defamation laws are potentially serious threat to freedom of expression in Ethiopia. Subsequently, he reminds the UN Human Rights Committee to reconsider its position regarding criminal defamation and urge for the total abolition of criminal defamation of the state from its legal realm. He added, otherwise, that the freedom of expression would remain at stake despite any other effort made (*Ross, 2010*).

However, the Ethiopian government persistently claimed that this provision would basically intend rather to create more responsible and accountable media. Later on, it has been found that rather the motive is to suppress media atmosphere to the extent that impeding international standard. As a result, it has been

evident that establishing a neutral media sector in Ethiopia is found to be very challenging due to unwarranted interference. In turn, this leads to develop the trend of being suspicious not to offend the government through comment and critics that they could make. Obviously, fear of intimidation would absolutely hamper and compromise the quality of media sector at large. It is worthy to note that media will be less effective in a condition that deny the freedom journalists to comment and criticize any matter mainly because they bother much on the consequence it might entail instead of exposing the actual reality. Gradually but surely, this trend would erode media professional integrity thus ultimately it loses public trust and confidence. Above all, it is also hardly possible to ensure the public's right to receive information while freedom of expression is barred from the outset (Dibu & Agegnehu, 2016).

No matter how defamation law in Ethiopia has not explicitly prohibits the media's output in regard to type and scope of information, Article 43 (7) has tempted to protect government implicitly from defamation and false accusation. To this end, the government is entitled to prosecute any statement or article written about an official, even if no official feels the report has impacted his reputation. To the make matter worst, Ethiopian government proclaim defamation provisions are deliberately intended to encourage "developmental journalism" hence ensure responsible and professional media (Freedom of Media and Access to Information Proclamation No. 590/2008, 2008) and (Ross, 2010). Nevertheless, this provision has been found it adversely impacted the development of freedom of expression in general and freedom of media in particular. Thus, it requires prompt, urgent and comprehensive intervention of all stakeholders to save the Ethiopian media from being deteriorated.

As it was apparently stated on Article 19 of UDHR about defamation law, in order to assess the legitimacy of restrictions on the freedom of expression, there are three cumulative tests which often applied in most national and international jurisprudence. First and the most, the restriction must be prescribed by narrow and unambiguous law. Second, the restriction must have the genuine purpose or effect of protecting a legitimate reputation interest (UDHR, 1948). Unfortunately, Freedom of Media and Access to Information proclamation did not meet these requirements. This is mainly because it did not preclude the government from prosecuting the suspect even in the absence of victim who had suffered from alleged defamatory act.

Hence, at this juncture one can dare to deduce that this law has no genuine purpose of protecting a legitimate reputation interest. Ostensibly, it is not logical to allow the government to prosecute someone under guise of inflicting an injury even when there is no victim. In so doing, Ethiopian government tends to protect its own interest even to the worst at the expense of public interest; more importantly, the freedom of expression. At last but not least, the restriction must be necessary in a given modern democratic society. Besides, it has to be also ascertained that it will not be justified in case where the benefits of protecting reputations do not significantly outweigh the harm to freedom of expression. Like-

wise, the Freedom of Media and Access to Information proclamation also does not satisfy this parameter as well. To this end, the defamation provision that enunciated under Article 43 (7) of the proclamation is ultimately designed to safeguard individual government official, but not the public at large. Furthermore, the information that is suppressed owing to fear of prosecution would not be genuine and perhaps it may deviate from professional ethics thus ultimately it amounts to violation of public's freedom of information in one way or another.

On one hand, the Ethiopian government asserts that Article 43 (7) is legitimate and necessary to establish conducive platform that inherently call for responsible journalism, the defamation provision that allows government prosecution even in the absence of victim would definitely contradicts with international standards of freedom of expression and information on the other hand.

By and large, another technique in which Ethiopian government may be able to use the Freedom of Media and Access to Information proclamation to oppress the media is through excessive fines imposed on the media output for minor violations of the statute. According to the proclamation under discussion the fine for conviction of defamation can reach up to 100,000 birr. This much exaggerated fine can best be understood when compared to the fines for other criminal violations that entail relatively lesser fines. Surprisingly, good case in point the fine for offences such as rape and child labor abuse would not exceed 1000 birr in any ways (*Criminal Code of Federal Democratic Republic of Ethiopia, 2005*).

Unlike Ethiopia, in most countries jurisdictions the amount of fines for defamation on one hand and fines for rape or child labor abuse on the other hand is quite a reverse. In essence, offence of rape or child right abuse entail higher amount of fines under normal course of action in most countries jurisdiction. The amount of fine imposed by the Freedom of Media and Access to Information proclamation is pragmatically designed to enable the government could gradually but surely wither away a media out of business under the guise of being found guilty. Beyond and above, the excessive fine could lead to further punishment to the extent that ceasing media sector to function in the worst scenario. In this regard, the International Press Institute explained how excessive fines perpetuate the system of oppression: The journalists remain intact in a cycle whereby they detained in prison not for the offence they have allegedly committed, but for inability to pay a fine (*Human Rights Watch, Journalism is Not a Crime, Violations of Media Freedom in Ethiopia, 2015*). Thus, the existence of such imminent danger and threat to media sector necessitates urgent interventions that would empower media sector on one hand and restrict the power of government on the other hand.

Ethiopian proclamation on Freedom of Media and Access to Information has clearly violates international human rights standard in various aspects. In the first place, the proclamation allows the prosecution of media under defamation provisions consequently it impinges on the media's right to impart information and ideas. Accordingly, the government is manipulating such proclamation to threaten media and intimidate journalist hence bar free flow of idea and infor-

mation. Second, though there is no direct censorship under this proclamation but still there is censorship in some other way round. To sum up, the prevailing threat of legal actions and harsh consequences of violation in Ethiopia are in their actual sense technically amounts to censor (Ross, 2010) and (Timothewos, 2010). Finally, given all aforementioned premises one can dare to conclude that the proclamation under discussion would contradict with the principle of Article 19 of Universal Declaration of Human Right that enshrines everyone has a right to expression, receive and impart any information and idea in a way he thinks fit.

5. Conclusions

As this Article demonstrates, there is a prevailing high-tension between freedom of expression and protection of reputation nearly in all jurisdictions. As a matter of fact Ethiopia is also under the influence of such phenomenon. No doubt, both the freedom of expression and the protection of reputation are recognized fundamental rights which deserve adequate legal protection. In the discourse of defamation law the issue like freedom of expression and reputation will be at the heart of our discussion. Obviously, no right is absolute but subject to certain justifiable limitations. Indeed, every individual is entitled to enjoy and exercise the freedom of expression so long as it does not infringe others' guaranteed rights more importantly right to reputation.

Thus, among others protection of individuals' reputation is a common legitimate rationale to restrict freedom of expression. This is mainly because ones unbridled freedom of expression naturally entails the possibility of undermining reputation of others. Therefore, in order to curb the violation of individuals' reputation different countries resorted to enact law of defamation. However, by far defamation law has been used as method to suppress expression and limit access to information in most countries in general and in Ethiopia in particular. Furthermore, the prevailing trend of abusing and manipulating strict defamation law is common means to make media deliberately inefficient and weak so that silence and intimidate journalists under the guise of protecting reputation.

Over all, defamation laws of Ethiopia which are found under constitution and other various subsidiary legislations do not comply with the international principle that urges decriminalization of defamation law. As a result, defamation law in Ethiopia often conflicts with freedom of expression more rampantly. The interplay between the freedom of expression and the protection of reputation in Ethiopian jurisdiction predominantly threaten the freedom of media and access to information under the pretext of safeguarding reputation. Thus, the prevalence of apparent conflicting relationship between these two fundamental rights necessitates some legal and practical interventions in order to maintain appropriate balance.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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