

Death Penalty in Theories and Ideologies of Criminal Justice: A Note on Ethiopian Criminal Law

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Abstract

Death penalty is one of the most contentious subject of ethical, ideological and policy debate in criminal jurisprudence. This debate is largely reflected in the varying positions taken by schools of thought and ideological camps over the causes of crimes and purpose of criminal punishment. Two theoretical schools of thought namely, the classical and the positivist schools, and three political ideologies predominate the scholarly debate thereby including criminal justice policies and laws of different countries over the ages. This paper aims to briefly examine the Ethiopian criminal law on death penalty in light of the dominant theories and ideologies of criminal justice. While the existence of death penalty in Ethiopia is against the classical as well as positivist school, the legal limitations on the imposition and execution of death penalty exhibit a mixture of classical and positivist schools. On the ideological dimension, the Ethiopian criminal law blends conservative and liberal ideology.

Keywords: Criminal Justice, Death Penalty, Ethiopia, Theories, Political Ideologies

1. Introduction

The causes of crimes and purpose of criminal punishment has been a debatable issue for so long that gave rise to different school of thoughts, also referred to as schools of criminology. The classical and the positivist schools are among the dominant school of thoughts having different outlooks on what causes crime and what the purposes of criminal punishment should be .¹

The classical school takes free will as the cause of crime and propone that the purpose of criminal punishment should be prevention of crimes.² On the other hand, the positivist school takes the view that crime is determined by biological, psychological and environmental factors that are outside of the control of the offender and recommend the purpose of punishment to be rehabilitating the offender.³

In addition three political ideologies with conservative, liberal and radical foundations underlie the criminal justice polices and laws.⁴ As such, death penalty is under a dialectic influence of the theoretical and ideological lines of thought. In this respect, both the classical and positivist school of thoughts are against death penalty. And when it comes to political ideologies, conservatives are in favor of death penalty

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¹ Anderson Cincinnati, Criminal Justice Theories and Ideologies, in Francis T. Cullen and Karen Gillbert (eds.), *Reaffirming Rehabilitation*, (1982), p. 29.

² *Id.* pp. 29 & 30.

³ *Id.* pp. 32 & 33.

⁴ Walter B. Miller, *Ideology and Criminal Justice Policy: Some Current Issues*, J. Crim. L. & Criminology, Vol.64 (1973), p.142; Cincinnati, *supra* 1.

for dangerous offenders.⁵ On the other hand, though the extent of their opposition differs, liberals and radicals are against the imposition of death penalty.

The presence of the theories and ideologies of criminal law can also be raised in relation to the Ethiopian criminal justice system. This paper therefore aims to briefly examine the Ethiopian criminal law on death penalty in light of theories and ideologies of criminal justice. As death penalty still exists under Ethiopian criminal law, this makes the Ethiopian criminal justice system against the classical as well as positivist schools of criminology. On the other hand, the restrictions on the imposition and execution of death penalty, together with its *de facto* abolishment, demonstrate a mix of classical and positivist schools of thoughts. On the ideological dimension, this paper argues that the Ethiopian criminal law is a mix of conservative and liberal ideology.

The rest of this paper is organized in to three main sections. Section two provides a general overview of theories and ideologies of criminal justice with special reference to death penalty. Section three, in its sub-sections; examines the Ethiopian Criminal Code in light of the theories and ideologies of criminal justice. Finally, Section four provides concluding remarks on the themes explored.

2. Death Penalty in Theories and Ideologies of Criminal Justice: An overview

Death penalty is the ultimate form of punishment that can be imposed for grave violation of criminal law and executed by denying the

⁵ Cincinnati, *supra* 1, p. 37; Miller, *supra* 4, p. 157.

offenders' life.⁶ Yet its application is complex and deeply contentious, fraught with moral, ethical, and legal considerations that have fueled debate for centuries. Beyond the immediate act of punishment, the subject touches upon fundamental questions of justice, fairness, and the role of the state in upholding societal values. This section of the paper explores how varying schools of thought and political ideology approach this contentious issue.

2.1 Death Penalty in Theories of Criminal Justice

2.1.1 Classical School

The classical school of thought, mainly represented by Beccaria and Jeremy Bentham, holds that law and punishment are necessary and justified to maintain the peace and security of the state and citizens.⁷ In this view, the primary purpose of criminal punishment shall be deterrence of crimes.⁸ The classical school aimed at adopting a general deterrence model (in contrast to a specific deterrence approach). The model rests on the assumption that the punishment would create fear on potential offenders to effect of refraining themselves from committing crimes. According to this school, punishment which contributes for the prevention of crimes can be achieved when it is swift, certain and severe.⁹

⁶ Tainá Corrêa Barbosa Ramos, Capital punishment: a Theoretical and Cooperative Analysis, Vol. 6 Adam Mickiewicz University Law Review, (2016), pp. 150 &152. See also, Fasil Nahom, Punishment and Society: A Developmental Approach, Vol.12(1) Journal of Ethiopian Law, (1982), p.127.

⁷ Cincinnati, *supra* 1, p. 29.

⁸ *Id.*, p. 30.

⁹ *Id.*, Ramos, *supra* 6, p. 153.

When it comes to death penalty (capital punishment), the classical school opposed death penalty and advocated for its abolishment. As this school, recommends for severity of punishment so as to deter crimes, its stand against death penalty might be perceived as self-contradictory. Despite this, according to Beccaria's thought based on social contract, the power that people give to the sovereign to administer law and impose punishment, does not include the power to punish offenders by death.¹⁰

Furthermore, for the classical school, punishment by death is retributive which is against the primary purpose of criminal punishment i.e. deterrence of crimes. Though punishment shall be severe, it shall be so only to the extent that it serves its purpose of deterring of crimes, punishment beyond what is necessary is unacceptable. In particular, Beccaria, opined that death penalty will adversely affect the deterrence of crimes because the brutality surrounding its administration will harden human souls.¹¹ Scholars advance this argument on the ground that the onlookers having the spectacle on the cruelty public execution would eventually get used to

¹⁰ Bernard E Harcourt, Beccaria's On Crimes and Punishments: A Mirror on the History of the Foundations of Modern Criminal Law, in Markus D Dubber (ed.), *Foundational Texts in Modern Criminal Law*, Oxford University Press 2014), p. 46; see also Cincinnati, *supra* 1, p. 29; Simeneh Kiros & Chernet Wordofa, "Over-criminalisation": A Review of Special Penal Legislation and Administrative Penal Provisions, Vol. XXIX *Journal Of Ethiopian Law*, (2017), p. 54.

¹¹ Harcourt, *supra* 10, pp. 48 & 50.

it and this, in turn, would go against the deterrent goal.¹² In deterring crimes, Beccaria argues that the imposition of life imprisonment or penal servitude for life is more effective than death penalty.¹³

Generally, in the classical school, as deterrence of crimes can be realized by punishments other than death penalty, death sentence is an irrelevant and unjustified restriction of the rights of individuals.¹⁴

2.1.2 Positivist School

In the positivist school, criminal behavior is caused by a multitude of biological, psychological and sociological factors beyond the control of the offender.¹⁵ Unlike the classical school that takes deterrence as the primary purpose of punishment, the positivist school holds that the primary purpose of criminal justice shall be rehabilitating the offender than punishing.¹⁶ In addition, the positivists recommend for probation, parole and focusing on juvenile justice system.¹⁷ Through rehabilitation, the positivist school shows its focus on the offender,

¹² This is somehow reminiscent of a story from an autobiography written by *Shibru Tedla*. As *Shibru* stated his childhood memory, he and his age-mates would regularly observe the public execution of the death penalty, from which they would have fun and laughter by noticing how the persons reacted while being strangled or how the dead body looks after the execution. *Shibru* further stated that he and his friends would not develop any fear of the punishment and a feeling of being deterred from committing a crime. This made *Shibru* doubt the purpose that the death penalty serves in deterring the commission of crimes. (See, *Sibru Tedla, Ke Gureza Mariam Eske* Addis Ababa: *Ye Hiwote Guzo ena Tezetaye*, (Eclipse Printing Press, 2008 Ethiopian Calendar) pp. 16-17 (Amharic language).

¹³ Harcourt, *supra* 10, p. 53.

¹⁴ Cincinnati, *supra* 1, p. 29. Ramos, *supra* 8, p. 153.

¹⁵ Cincinnati, *supra* 1, p. 33.

¹⁶ *Id.*, pp. 33&34.

¹⁷ *Id.*, p. 34.

while the classical school (through deterrence) is concerned with the offense (its harm).¹⁸

But when it comes to death penalty, rehabilitation is unimaginable in relation to death penalty because the imposition of such penalty means that the convicted person is impossible to reform.¹⁹ As one cannot think of rehabilitating the offender by killing, this makes the positivists to be against death penalty. In the case of incorrigible offenders, the positivists recommend their life time confinement than punishment by death.²⁰

2.2 Death Penalty in Political Ideologies

For the conservatives, excessive leniency towards lawbreakers is one of the crusading issues for the need to have reform in the criminal justice system in a way that criminal punishment shall serve the purpose of deterrence and incapacitation.²¹ Accordingly, the conservative ideology recommends punishing habitual and dangerous criminals severely including the use of death penalty.²²

On the other hand, the liberals consider discriminatory bias based on race, sex, age as one of the crusading issues in the criminal justice system. The driving force for crime is a misbalance in the conditions

¹⁸ Dullbonline, George B. Vold, Thomas J. Bernard, Jeffrey B. Snipes, "Classical and Positivist Criminology", Theoretical Criminology (5th ed., 2002), available at <https://dullbonline.wordpress.com/2020/08/24/george-b-vold-thomas-j-bernard-jeffrey-b-snipes-classical-and-positivist-criminology%E2%80%96theoretical-criminology-5th-ed-2002/> last accessed on 2nd February , 2025.

¹⁹ Fasil, *supra* 6, p.130.

²⁰ Cincinnati, *supra* 1, p. 33.

²¹ Cincinnati, *supra* 1, p.36. Miller, *supra* 4, p. 43.

²² Miller, *supra* 4, p. 157. See also Cincinnati, *supra* 1, p. 37.

of social orders and suggested for structural corrections of the misbalances as a long term remedy to prevent crimes.²³ But as short term measures, the liberals suggest for a piece-meal improvements on the justice system, including human treatment of offenders.

Furthermore, for the liberals, rehabilitation shall be the major concern of the criminal justice. To this effect, they specifically suggest a more realistic purpose of criminal punishment encompassing just desert and determinative punishment.²⁴

3. Theories and Ideologies Underlying Policy of Death Penalty under Ethiopian Criminal Justice

3.1. The Classical School

The Ethiopian Criminal Code (here after referred as the Criminal Code) is founded on the primacy of preventing crimes through the instrumentality of criminal punishments including death penalty.²⁵ This can be inferred from the preface of the FDRE Criminal Code (here after referred as the Criminal Code) which, in its preamble, reads:

The purpose of criminal law is to preserve the peace and security of society... by preventing the commission of

²³ Cincinnati, *supra* 1, p. 38 Miller, *supra* 4, p. 145.

²⁴ Cincinnati, *supra* 1, p. 38.

²⁵ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, Federal Negarit Gazette, (2005), Art 1 & Preface, para.8.

crimes, and a major means of preventing the commission of crime is punishment.²⁶

Here lies one of the points of departure between the classical school and the Ethiopian Criminal Code. As noted earlier, the classical school is against death penalty because deterrence of crimes can be realized by other punishments, like life imprisonment, which makes death sentence irrelevant and unjustified restriction of the rights of individuals.²⁷ The utilization of death penalty as a means to deter crimes makes the Ethiopian Criminal Code against classical school of criminology.

Nevertheless, there are also elements in the Criminal Code that are reflective of the classical school. The classical school is against death penalty, among others, because of the brutality during its execution.²⁸ The Ethiopian Criminal Code, while it includes criminal acts punishable by death²⁹, prohibits public hanging and imposes duties to administer death penalty in humane means.³⁰ One can infer from this that administering death penalty by shooting and public hanging is found to be brutal and inhumane that the drafters of the Criminal Code chose not

²⁶ *Id.*, Preface, para. 8

²⁷ Harcourt, *supra* 10, p. 53; Cincinnati, *supra* 1, p. 29.

²⁸ Cincinnati, *supra* 1, p. 28.

²⁹ There are crimes that are punishable by death in Ethiopia. In this respect, aggravated Homicide, High Treason, Espionage, Crimes against the Constitution or the State and military crimes are some of the crimes that may be punishable by death in Ethiopia.

³⁰ The Criminal Code, *supra* 25, Art 117(3). Unlike the Criminal Code, under the Penal Code of Ethiopia (1957) death penalty used to be, in principle, executed by hanging. And in case the offender is member of armed forces, the court may order his execution by shooting. The court may also specify in its judgment for the death sentence to be executed in public, if it finds it helpful to warn potential offenders. (see Penal Code of the Empire of Ethiopia, Proclamation No. 158, Negarit Gazeta, (1957) Art 116(1))

to incorporate the same under Art 117 of the Criminal Code.³¹ Such underlying assumptions can be taken as one area in the Criminal Code that shows ideals of the classical school of thought. Finally, it is important to note that identifying humane ways to execute death penalty is left to be determined by “the executive body having authority over prisons”.³²

As per the tenets of the classical school, the punishment of a crime shall be preemptively set by the legislature and the task of the judiciary shall be determination of guilt and passing the punishment as it is stated in the text of the law.³³ Art 117(1) of the Criminal Code states that “sentence of death shall be passed only in cases of grave crimes and on exceptionally dangerous criminals, in the cases specifically laid down by law.” This shows that crimes punishable by death are made known to the public by law enacted by the legislature. And because of the principle of legality³⁴, it is only in relation to the crimes that are prescribed under the Criminal Code as punishable by death that courts can pass death sentences.

Moreover, it is only in completed offences that death penalty can be imposed³⁵; that attempt and other inchoate conducts to commit crimes are not punishable by death. Death penalty shall not be imposed on an

³¹ Expose des Motif, Criminal Code of Ethiopia (2004), p. 69.

³² The Criminal Code, *supra* 25, Art 117(3). But here, when Art 117(3) refers as “the executive body having authority over prisons”, whether it is referring to the prison administration authorities (at federal and regional level) or the executive organ of the government to whom the prison authorities are answerable to is not clear. In addition, whether or not legal framework specifying the methods of administering death sentence determined by the “the executive body having authority over prisons” is not also clearly stated in the provision.

³³ Cincinnati, *supra* 1, p. 29.

³⁴ The Criminal Code, *supra* 25, Art 2.

³⁵ *Id.*, Art. 117(1).

offender who did not attain the age of eighteen at the time of commission of the crime.³⁶ These legal limits on death penalty by predetermined rules, enacted by the legislature, show the classical school of thought under Ethiopian Criminal Code.

The neo-classical school is also reflected in the Ethiopian Criminal law on the imposition of death penalty. In the neo-classical school individual circumstances of a given case are considered during sentencing of offenders.³⁷ When this is brought to the case of Ethiopian criminal law, punishments shall be imposed by considering the offender's "degree of individual guilt, dangerous disposition, antecedents, motive and purpose, personal circumstances and standard of education."³⁸ This serves to determine the extent to which the punishment shall be mitigated or aggravated,³⁹ which is about individualization of punishment based on "individual guilt, gravity of the offence and material circumstance of the case."⁴⁰ This is practically implemented through the general as well as special mitigating and aggravating circumstances which are ".....elements of material and personal nature....that may or must be taken into consideration at the time of passing the sentence.

Thus, the determination of penalty pertain "both to the position of the actor as well as to the conditions surrounding the commission of the

³⁶ *Id.*

³⁷ Cincinnati, *supra* 1, p. 31.

³⁸ The Criminal Code, *supra* 25, Art. 88(2).

³⁹ Elias Nour, Principles of Ethiopian Criminal Law, St. Mary's University Center for Law in Sustainable Development (2022), p.361

⁴⁰ The Criminal Code, *supra* 25, Art 88(2).

offense.”⁴¹ This individualized determination of punishment based on the circumstances of the accused and the commission of the crimes, which is also applicable for crimes punishable by death, is manifestation of neo classical school of thought under the Criminal Code.

In addition, in most of the crimes that are punishable by death, the punishment is not stipulated as a sole punishment. Rather, death penalty is prescribed together with the range of imprisonment sentences that shall be considered before imposing death penalty.⁴² In these types of crimes, different factors showing the degree of individual guilt of the convicted individual shall be considered before resorting to death sentence. These factors are stipulated as aggravating as well as mitigating circumstances under the general and special provisions of the Criminal Code.⁴³ When an individual is convicted for a crime that is punishable by death, the court shall pass the sentence by considering the limits set by the legislators and the personal circumstance of the defendant that are recognized as aggravating and mitigating circumstances. Especially, death penalty shall be imposed only when there is no mitigating circumstance in favor of the convicted individual.⁴⁴

To this end, the general mitigating circumstances listed under Art 82 of the Criminal Code may be used as grounds to extenuation of the penalty within the limits prescribed under Art 179 of the Code. Specific to death

⁴¹ Phillip Graven, *An Introduction to Ethiopian Penal Law*, Haile Selassie I University and Oxford University Press, (1965), p. 240.

⁴² For example, Aggravated homicide is punishable by life imprisonment or in aggravated cases by death. (see, Criminal Code, *supra* 27, Art 539) Hence, the court shall justify its decisions while choosing death penalty than life imprisonment.

⁴³ The Criminal Code, *supra* 25, Art 82, Art 84, Art 182, Art 184 and the following.

⁴⁴ *Id.*, Art. 117(1).

penalty, the fulfillment of one or more of the general mitigating grounds may lead to the extenuation of penalty form ‘from capital punishment to rigorous imprisonment of twenty years to life.’⁴⁵ In addition to the mitigating factors, the Federal Criminal Sentencing Manual further limited the possibility for the imposition of death sentence.⁴⁶ All these show the neo-classical elements in the Ethiopian criminal code that are related to death penalty.

Mitigated punishment due to limited criminal responsibility on grounds of age, insanity and feeble-mindedness is the other outcomes of the neo-classical school.⁴⁷ According to the Ethiopian Criminal Code, there shall be mitigated punishment due to partial responsibility in cases where the offender is partially incapable to understand the nature or consequences of his act or regulate his conduct.⁴⁸ The partial responsibility and mitigated punishment also covers those crimes that are otherwise punishable by death. And in case when the death penalty has already been passed, it shall not be executed on a partially or fully irresponsible person.⁴⁹

⁴⁵ *Id.*, Art. 179(a).

⁴⁶ The World Coalition Against the Death Penalty, Ethiopia’s Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Suggested List of Issues Relating to the Death Penalty, Report 75th Session of the Committee Against Torture, (June 2022); available at < <https://worldcoalition.org/wp-content/uploads/2022/07/Ethiopia-CAT-LOI-TAHR-WCADP.pdf> >, last accessed on 2nd Feb 2025.

⁴⁷ Cincinnati, *supra* 1, p. 33.

⁴⁸ Criminal Code, *supra* 25, Art 48 Art 49.

⁴⁹ *Id.*, Art. 119.

Moreover, death penalty is not always imposed in all cases of homicide. The legislator of the Ethiopian Criminal Code classify the crime of homicide as aggravated homicide⁵⁰, ordinary homicide⁵¹, extenuated homicide⁵², negligence homicide (which is further divided in to three different types)⁵³ and infanticide.⁵⁴ This classification is based on differences in circumstances surrounding the commission of the act of killing; including the mental state and dangerousness of the accused. And hence, because of the recognition given to individual circumstances of the commission of the criminal act (as opposed to the mere act), it is only aggravated homicide which is punishable by death.

Such differentiated treatment of criminal acts based on circumstances related to commission of the act is also reflected in other types of crimes which show the elements of neo-classical school under the Ethiopian criminal law.

3.2. The Positivist School

In the positivist school of thought, the primary purpose of criminal justice shall be rehabilitating the offender than punishing him.⁵⁵ Rehabilitation is incompatible with death penalty because the imposition of death penalty means the assumption taken on the unreformed nature of the offender.⁵⁶ As a result, the positivists are against the imposition of

⁵⁰ Criminal Code, *supra* 25, Art 539.

⁵¹ *Id.*, Art. 540.

⁵² *Id.*, Art. 541.

⁵³ *Id.*, Art. 543.

⁵⁴ *Id.*, Art. 544.

⁵⁵ Cincinnati, *supra* 1, p. 33&34.

⁵⁶ Fasil, *supra* 8, p.130.

death penalty. In the case of incorrigible offenders, they recommend life time confinement.⁵⁷

When it comes to the Ethiopian case, the existence of crimes punishable by death under Ethiopian law reflects the position of the legislator on the incorrigible offenders committing these types of crimes. This position makes the Ethiopian criminal code against the positivist school of thought. Nevertheless, even if death penalty is still maintained in the Ethiopian criminal law, the legal limitations on the imposition and execution of death penalty show the features of positivist school of thought. The following elements can be inferred in this respect.

According to the Ethiopian Criminal Code, death penalty cannot be imposed on those who haven't attained the age of eighteen at the time of commission of the crime.⁵⁸ Furthermore, if offender was above fifteen years and below eighteen years, the imposition of punishment (by imprisonment) shall be made by considering their age or dangerous disposition and the likelihood of his reform.⁵⁹ Accordingly, depending on the condition of the young offender, the punishment can be either a mitigated punishment or correctional measures stated under Art 166-168 of the Criminal Code.⁶⁰ The prohibition on death penalty on those under the age of eighteen at the time of commission of the crime and the preference to extenuated punishment or corrective measures shows the positivist feature of Ethiopian criminal law.

In the positivist school, criminal behavior is believed to be caused by a multitude of biological, psychological and sociological factors beyond

⁵⁷ Cincinnati, *supra* 1, p. 33.

⁵⁸ Criminal Code, *supra* 25, Art 117(1).

⁵⁹ *Id.*, Art. 56 (2).

⁶⁰ *Id.*

the control of the offender.⁶¹ Accordingly, the primary purpose of criminal justice shall be rehabilitating the offender than punishing.⁶² Looking into pertinent stipulation under the Ethiopian criminal code in this light, one could see some considerations of such policies. For example, as per the Criminal Code, infants and juveniles are spared from ordinary punishments even when they commit serious crimes, including those punishable by death.⁶³ If the offender is below the age of nine years, he shall be taken care by his family, school or guardian.⁶⁴ A crime of whatever gravity committed by an infant is attributable to his/her biological or physical condition.⁶⁵ And in cases where the offender is between the age of nine years and fifteen, s/he will be sentenced to the measures stipulated under Art 157-168 of the Criminal Code, which are curative and rehabilitative measures. In sum, the implicit attribution of delinquency to physical and biological conditions and the focus on rehabilitation even when infants and juveniles have committed crimes otherwise punishable by death shows the influence of positivist schools in Ethiopia criminal law.

In addition, when the offender is between the age of nine years and fifteen, the duration of the measures of treatment and supervised education specified under Art 158 and Art 159 of the Criminal Code shall be administered to the time it is believed to be necessary by medical or supervisory authority, so long as the offender doesn't attain eighteen years.⁶⁶ Positivists advocate for indeterminate sentencing

⁶¹ Cincinnati, *supra* 1, p. 33.

⁶² *Id.*, pp. 33&34.

⁶³ Criminal Code, *supra* 25, Art. 52.

⁶⁴ *Id.*, Art. 52.

⁶⁵ Graven, *supra* 41, p. 145.

⁶⁶ Criminal Code, *supra* 25, Art. 163.

according to the needs of the offender.⁶⁷ Indeterminate sentencing is a sentencing strategy in which judges are given wider discretion to choose the punishment from a range of sentencing options, so as to closely monitor the characteristics of the offender and serve the rehabilitative purpose of punishment.⁶⁸ Looking into the Criminal Code, one would argue that the wide discretion given to the medical or supervisory authority to determine the duration of the sentence (provided that it is within the eighteen years old limit of the offender) is an indeterminate sentencing that reflects the recommendation of the positivist school of thought.

There are also measures applicable to irresponsibility or partial responsibility because of “age, illness, abnormal delay in development in mental faculties, a derangement or an abnormal or deficient condition or any other similar biological causes” that make the offender partially or fully incapable of understanding the nature or consequences of his act or regulating his conduct according to such understanding.⁶⁹

Finally, in situations of partial or full irresponsibility, the Criminal Code requires the court to order for confinement and treatment of the offender.⁷⁰ Here the treatment and confinement of the offender may be for indefinite period of time.⁷¹ The court shall, however, review its decision every two years.⁷² Here, the treatment and confinement of the

⁶⁷ Cincinnati, *supra* 1, p. 34.

⁶⁸ Frank Schmalleger, *Criminal Justice: A Brief Introduction*, (2017, 12thed.), p. 276.

⁶⁹ Criminal Code, *supra* 25, Art 48 and 49.

⁷⁰ *Id.*, Art. 129, Art. 130, Art 131.

⁷¹ *Id.*, Art. 132.

⁷² *Id.*, Art. 132.

offender for indefinite period of time shows the indeterminate sentencing which is advocated by the positivist school.

3.3 Political Ideologies and Ethiopian Criminal Law on Death Penalty

The conservative ideology recommends punishing habitual and dangerous criminals severely including by death penalty.⁷³ Such strict positions are explicitly or implicitly evident in the Ethiopian Criminal Justice system. For instance, as per the stipulation under the FDRE criminal code, a person who commits an aggravated homicide for the second time, while serving life sentence, shall be punishable by death.⁷⁴

Moreover, “conservatives assume that the existing social arrangement is sound and reflective of the widespread consensus⁷⁵ as a result of which severe punishment is justified to minimize crimes against such arrangements. Looking into the Ethiopian legislative documents in this light, one would find varying contents with intents of social consensus. As a typical case in point, the constitutional order can be considered as the social arrangement which the criminal law seeks to protect and maintain by criminalizing acts against the constitution and constitutional orders punishable by severe penalty including death.⁷⁶

This shows one of the conservative stands of the Ethiopian criminal law. When it comes to the influence of liberal ideology, the liberals assume that the driving force for crimes is a misbalance in the conditions of social orders and suggested for the structural corrections of these

⁷³ Miller, *supra* 4, p. 157.

⁷⁴ Criminal Code, *supra* 25, Art 539 (2).

⁷⁵ Cincinnati, *supra* 1, p. 37.

⁷⁶ Criminal Code, *supra* 25, See for instance Arts 238(2), 240-241.

misbalances as a long term remedy to prevent crimes. But as short term measure, the liberals suggest for a piece-meal, or a step by step, improvements on the justice system, including human treatment of offenders.⁷⁷

In summary, though death penalty is still maintained in Ethiopian criminal law, there are a number of legal limitations on the imposition and execution of processes. As such, rather than abolishing death penalty, the Ethiopian criminal law prefers to regulate it through piecemeal measures that are intended to control or minimize the adverse impacts of death penalty. In this respect, this paper argues that the limitations stated under Art 117-120 of the Criminal Code can be taken as piece-meal measures that reflect liberal political ideology under Ethiopian criminal law on death penalty.⁷⁸

4. Conclusion

The causes of crimes and purpose of criminal punishment has been a debatable issue for so long that gave rise to different school of thoughts.

⁷⁷ *Id.*

⁷⁸ Death penalty can be imposed only in completed serious offences and individuals who attained the age of eighteen at the time of the commission of the crime. In addition, death penalty can be imposed only in the absence of one mitigating circumstance favoring the offender. (Art. 117(1)) Death sentence shall be administered humanly (Art. 117(2)). The sentence shall not be executed unless confirmed by the nations president and all avenues for its commutation or remission are exhausted (Art. 117(2)). Death penalty imposed in a pregnant mother shall not be executed until she gives birth to a child. And the same holds true for partially or fully irresponsible person or on a seriously ill person (Art. 119) and the death sentence shall be commuted to life sentence if a pregnant mother gives birth to a viable child and the mother has to nurse such child. (Art. 120).

The classical and the positivist schools are among the dominant school of thoughts having different outlooks on what causes crime and what the purposes of criminal punishment should be.

In addition to criminal justice school of thoughts, there are also political ideologies underlying criminal justice policies and laws. In this respect there are dominantly three ideological camps namely the conservatives, liberals and radicals having their own outlooks on criminal justice and punishment; including on death penalty.

The classical as well as the positivist school of thoughts are against the imposition of death penalty. And hence, the mere presence of the death penalty under Ethiopian Criminal Code makes it against classical as well as positivism school of thoughts. But still, elements of classical and positivist school of thoughts can be discerned from the limitations on the imposition of death penalty that are prescribed under the criminal code.

In this respect, the prohibition on public hanging and the duty to administer death penalty in humane way that is stipulated under the Criminal Code is one of the features of classical school in Ethiopian Criminal Code. Moreover, the preemptively determined crimes that are punishable by death and the compliance of the principle of legality are the other features of classical school of thought. In the neo-classical aspect, the consideration of circumstances of a given case as mitigating circumstances including in crimes punishable by death; mitigated punishment due to partial responsibility on grounds of age, insanity and feeble-mindedness shows the neoclassical school of thought.

On the other hand, the prohibition on the imposition of death sentence on young offenders below the age of eighteen at the time of commission of the crime and the preference given to the correction/rehabilitation of

the offender is in line with positivist school of thought. The semi-indeterminate mandate given to corrective authorities in determining the duration of correction time that the young and juvenile offenders have to pass through is also the other feature positivist school. In addition, the confinement and treatment order that the court shall pass in the case of partial or full irresponsibly may be for indefinite period of time (provided that it is reviewed every two years), which shows the indeterminate sentencing advocated by the positivist school.

When it comes to political ideologies, the conservative ideology is reflected under the provision of the Ethiopian Criminal Code that prescribes death penalty for a person who has committed an aggravated homicide for the second time while serving life sentence. The protection given to constitutional order by holding crimes against the constitutional order punishable by death is also conservative political outlook.

The Ethiopian Criminal Code prefers piece-meal reforms in the imposition and execution of death penalty, rather than abolishing it altogether. And the limitations and regulations stated under Art 117-120 of the Criminal Code show a liberal political ideology. As the radical ideology is against the criminal justice all together, there is no element of this ideology that is reflected under Ethiopian criminal law on death penalty.