

*Pardon, Amnesty and the prospect for National  
Reconciliation in Ethiopia law and practice*

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*Is it a legal <sup>or political</sup> topic*

*Non sequitur*

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## **Dedication**

However, the founding contribution of my darling father who is not alive now, to the establishment of my current personality is, unforgettable. The bouns pater familias act of my father creates decease-heir relationship between him & me respectively for the Bachelor degree certificate.

## Limitation of the study

Generally there was limitation of access to information because of lack of documentation of the prevailing practice and legal awareness of officials at some institutions.

Strange enough, your limitation <sup>in itself</sup> appears to be without any limitation.



# INTRODUCTION

In this piece of work, the researcher has four chapters for dealing the title of the study, as much as possible detail. The researcher will give a brief and short explanation about the contents of each chapter and the objectives wanted to be attained per chapter.

Chapter one is more emphasis on the historical back ground of pardon and amnesty. Besides this, the chapter gives emphasis to the definition of both pardon and amnesty in different books and legal system. The chapter tries to identify the elements of each definition of the two terms as well as tries to pick up the common elements of the two definitions. By doing like this lastly the researcher comparer and contrast the two terms i.e. pardon and amnesty to each other & pardon with relative terms. At the end of the chapter there will be discussion as concept of pardon and amnesty in relation to their types and conditions they are practicable.

The second chapter of the work is to deal about the power granting authority of pardon and amnesty as well as the condition of exercising these powers by the authority. There are pages of this chapter that give emphasis to the discussion of purpose of power of pardoning and amnesty. This chapter is devoted also to deal about those limitations of pardoning power and the effect they are delivered by pardon and amnesty. It is also under this chapter that the status of pardon and amnesty determined whether they are privilege or right as well as whether they are constitutional or not.

Under chapter three, the discussion is going to deal all about the pardon and amnesty concept under Ethiopia legal system. This chapter follows the strategy of segregation the whole laws of Ethiopia under the 1931, 1955 constitutions, the 1957 penal code comparing with criminal code, 1987 constitution and the 1995 constitution of Ethiopia. The chapter tries to deal exhaustively the conditions and procedures, the power granting authority, the effect of pardon and amnesty, limitation imposed on the power of pardon and amnesty granting authority under each separate document of law.

what do you mean?

Lastly but not least, under chapter four, there is an attempt to deal about dispute resolution mechanism in general and specifically in Ethiopia. This chapter is also committed more about the concept of reconciliation in dispute resolution of collective criminal act and the effect it resulted to the disputed parties. The chapter also has a place to say something about the criminal application of reconciliation in Ethiopia and its prospect based on the prevailing practice of the country.

## **CHAPTER-ONE**

### **HISTORICAL DEVELOPMENT AND DEFINITION OF PARDON AND AMNESTY**

#### **1.1 HISTORICAL DEVELOPMENT OF PARDON & AMNESTY**

Pardon is deemed to exist from the time of Mosaic Law and it was introduced in many legal systems from the time immemorial.<sup>1</sup> Generally it may be possible to say that the practice of pardon and amnesty came in to existence indifferent legal system of different times. The reason seems to be that the necessity of pardon & amnesty depends on particular historical conditions of a particular legal system. The necessity may also depend on certain purposes desired to achieve. Because of this, legal writers are uncertain about the exact time that these institutions became practicable. However, there seems to exist a general agreement on the point that these concepts are as ancient as the records of ancient organized society. The roots of pardon and amnesty are found in ancient law. Reference to institutions some what resembling the modern pardon appear in ancient Babylonian and Hebrew law.<sup>2</sup>

Some writers even argue that the institution of pardon and amnesty and the practice of pardoning came before the prison system. The institution of pardon & the practice of pardoning long ant-dates the prison system. Evidences of it appears in mosaic law, and verdict law of India and elsewhere.<sup>3</sup> Besides it was said, although the mosaic law makes mention of the subjects, king David use the forgiving power, and cities of refugee were provided where fugitives who had innocently shed blood might obtain security from the fury of the avenger.<sup>4</sup>

Moreover, the code of Hammurabi contains no reference to clemently, but it is known that samiu-ilna, Hamurabison, pardoned slave who had forfeited his life.<sup>5</sup>



As to amnesty some scholars have the opinion that the first amnesty that indicates its clear concept & application was seen in 403BC in Greek. And its effect was said:

The first historical instance of an amnesty that shows a clear concept of its nature was that the act which Thrasybulus in 403 BC, after the expulsion of the thirty tyrants from Athens, forbade the further persecution of citizens for their past political acts and exacted on oath of amnesty in an effort to erase civil strife from memory by the imposition of legal oblivion. <sup>6</sup>

Generally speaking, as far as the historical background of pardon & amnesty is concerned there seems to exist one truth. This truth is the fact that pardon & amnesty are old practices. Therefore, one may assert as ancient institutions, they have existed from early period & have been exercised from the time immemorial.

## 1.2 DEFINITION OF PARDON

The term pardon seem to be found its appearance in French law and derives from the Latin word “perdonte” (“to grant freely”), suggesting a gift bestowed by the sovereign.<sup>7</sup> It has thus become to be associated with some what personal concession by leader of state to the perpetrator of an offence, in mitigation or remission of the full punishment that he has merited.<sup>8</sup> Black’s law dictionary defines pardon as follows: -

*An act of grace, for proceeding from the power entrusted with the execution of the law, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. An act of grace from governing power which mitigate the punishment the law demands for the offence & restore the right & privileges forfeited on account of the offence.*<sup>9</sup>

On the other hand pardon is defined as... a work of mercy where by the king, either before attainder, sentence, or conviction, or after, forgives any crime, offence, punishment, execution, right, title, debt, or duty temporal or accelesstial. <sup>10</sup> In addition to this, it was held a pardon is forgiveness, release, remission, forgiveness



for an offence, whether the person committing is liable in law or otherwise.<sup>11</sup> According to some scholars a pardon might also be release from pecuniary obligation or remission of a penalty to which one may also have subjected himself by the non-performance of a contractual or statutory obligation. According to this definition pardon might also take place between or among individuals. But for the purpose of this paper such kind of pardon has no necessity or relevancy as it deals about state pardon through out the chapters.

Black's law dictionary of another edition has defined the term pardon as stated below:

*An executive action that mitigates or set aside of punishment for a crime. An act of grace from governor /governing power which mitigates the punishment that the law demands for an offense and restores the rights and privileges forfeited on the account of the offence. Pardon release a person from entire punishment prescribed for offenses and disabilities consequent on his conviction; it reinstates in civil liabilities.<sup>12</sup>*

The common law courts have designates a definition in such away"... a pardon is a declaration on the record by which the chief magistrate of a state or country that a person named is relieved from the legal consequence of a specific crime.<sup>13</sup> This definition is very comprehensive and deal at the final avoidance of the consequences of a given crime whether civil or penal. And this might be the best & accurate definition of pardon.

The term pardon, among many books, is also defined by the New Encyclopedia of Britannica as follow; -

*"Pardon, in law, is a release from guilty or remission of punishment. In criminal law the power of pardon is generally exercised by chief executive office of the state. Pardon may also be granted by legislative body often through an act of indemnity anticipatory or retrospective, for things done in the public interest that are illegal"<sup>14</sup>*

A pardon is also defined by the American jurisprudence as follows: -

**“ A pardon is said by lardcok to be the work of general, when by the king ending before offenders sentence or conviction or after forgiveness and crime offense punishment, execute right, title, debt of duty temporal or ecclesiastical: <sup>15</sup>In world book of encyclopedia pardon is “The act or releasing of a person from the legal penalties for a crime a person has committed or been convicted of” <sup>16</sup>**

Generally speaking one may say that the definition of pardon that is given by different books of legal or non-legal has little or almost no difference since most of them have common elements such as the pardoning power which are consider as an attribution of prerogative and the remission of the legal sentence of a crime. But the writer of this research opts to choice one of the definition that he feels best of all. The researcher prefers the definition given by the common law courts for the following reasons. Firstly the definition because of its comprehensive, exhaustive statement of the possible consequence of a given crime that is whether civil or penal. Those separate narration of consequence of a given crime in other definitions are betterly included in this definition by single wording effectively. The second reason is that the definition specified to whom pardon is given. The definition specified the person whom is relevant to receive the pardon i.e. named person in the charge; no benefit of pardon is expected unless otherwise named. Thirdly the definition specifies crime, there is no merit of pardon to a crime that is not mentioned or named.

### 1.3 CONCEPT OF PARDON

Pardon may be granted on condition or with out condition.<sup>17</sup> The condition may be of any nature that is, subsequent or precedent. These conditions are presented by the authorities of pardoning.<sup>18</sup> Some times the conditions may be ill motivated and its performance could not be attainable; “when a pardon is granting on condition precedent, which is void or impossible to be performed, a pardon can never became operative.<sup>19</sup> In order for pardon to be operative the condition attached to it should be essential and practicable. If this is not done the value of the demand of pardon may not be certain any way, sometime, be unconstitutional. The condition of pardon may be that the pardoned



person pay money to the states, or deportation may constitute the condition of pardon.<sup>20</sup> The pardon might promise not be commit another offense and alive a law abiding citizen until the condition attached expires.<sup>21</sup> A pardon may also be made conditional subject to continuous confinements in a state hospital of insane or it may be in some private institutions.<sup>22</sup> The duration of the time of the condition must also be stated in the instrument, if not, it is held that the time of the performance may be extended to the life span of the pardon convicted.<sup>23</sup>

Acceptance of the pardoned convict is also necessary in order to a pardon to be came effective; otherwise a pardon could not be valid.<sup>23</sup> Where the pardoned prisoner rejects the condition of pardon, then it will not be operative.<sup>24</sup> In other words, if he accepted the condition, he remains to be bound by the condition of the pardon. However, incapacity operates in favor of the convict.<sup>25</sup> It is usually interpreted strictly against the authorities while at the same time governing the convict. The granting of pardon may in this way be instrument in sanctioning the condition. Expression & clear instruments of pardon are not subject to any interpretation, though.<sup>26</sup>

“A conditional pardon delivered and accepted has been said to constitute a contract between the sovereign power or the executive and the criminal that the former will release the latter on compliance to that condition”<sup>27</sup> Under the agreement entered by the contracting parties, they are under obligation to carry or perform, their duties as much as possible. The pardoned person and the authorities of pardoning power are required to carryout their function and observe the condition attached to the instrument of pardon.<sup>28</sup>

The effect of conditional pardon is the same as that of absolute parson.<sup>29</sup> But the condition entered should be fulfilled up on which the prisoner is entitled to his liberity.<sup>30</sup> Nevertheless, a conditional pardon does not entail the obliteration of the conviction as a full pardon does.<sup>31</sup>

Performance of condition precedent; when a condition annexed to a pardon is precedent, the pardon may not be valid until the condition is performed and until that time the sentence that has been rendered would be in full force.<sup>32</sup> If no time is fixed, the



condition precedent must be performed within a reasonable time after the delivery of pardon, if it is not performed within a reasonable time, the pardon lapses by its own terms.<sup>33</sup>

Pardon could also be unconditional; which is meant "pardon that free a criminal without any condition whatsoever; that reaches both the punishment prescribed for an offense and the guilty of the offender."<sup>34</sup> It obliterates the offense itself in legal contemplation, it goes no further than to restore the accused to his civil rights and remits the penalty imposed for the particular offenses of which he was convicted in so far as it remains unpaid.<sup>35</sup>

Pardon could also be said to be called as executive or partial pardon. Executive pardon or full pardon has similarity or identical elements of definition or legal effect wise with unconditional pardon. "It freely and unconditionally absolves party from all legal consequences, directly or indirectly, collaterally, of crime and its consequences. Where as partial pardon is: -"that which remits only portion of punishment or absolves from any portion of legal consequence of a crime."<sup>37</sup> Here there is a distinction with those called conditional pardon because of that conditional pardon could be partial or full.

There are many sorts of doubts by many people that pardon might be abused, particularly if pardon is unrestricted. There is a threat that pardoning authorities may use it as a political instrument to please the people. This is true specially in those states where the one man has fine say in the state. Any way the researcher wants here below to deal about the reasons why pardoning power is given to the executive body of the government and possibility of abuse control.

The tendency of time seems to favor towards the establishment of parlor and other institutional correction. The convicted person may be considered as an innocent by the executive after judgment. This leads to the release of person serving sentence. On the other hand, it is said, juridical review, successive appeals and other judicial remedies may liberalize justice system than allowing the executive to extend its hands on the person



convicted on crimes committed. On the basis of this, Charles Newman recommended that the possible use of pardon should be restricted, criminal procedure should be liberalize so as to permit reversal of conviction, where new evidence is found indicating that the defendant is innocent. All releases on condition of good behavior and under supervision should be under the parole law and not by the law of pardon. As to the Newman's proposal; the advantage of parole has got priority over pardon. However, his proposal does not overlook factors that necessitate the grant of pardon all in all. There fore, a plenty situations where pardon might be an avoidable were presented. The out standing example could be political upheaval in such punishment would do more harm than good. And consequently the question of pardon is inevitable.

As regard to procedure of pardon, there are different discretion given to the police or prosecutors .The juries and the judges have also discretion as regard to the case trial.<sup>39</sup> The parole board has also discretion as to when treatment of the punishment will end, and the pardoning authorities has also the discretion as to whom the pardon is granted.<sup>40</sup>

After judgment the whole power of the judges end there. There fore, the issue of pardon would become important i.e. whether the person sentenced is innocent seems to be immaterial sometimes. The only way out the convicted saves from punishment after judgment is pardoning. Thus, it is believed that the pardoning authorities have the right to finalize the last hope of the accused person. In U.S.A it is held that there are many procedure safeguards, which might prevent the person from obtaining full pardon. It is also agreed that there is a rare case where an innocent could be sentenced. For instance there are many institutions where an innocent could be convicted, because there is a right jury trial, right to council, to be informed of the charge, to call witnesses and the privilege against self incrimination.<sup>41</sup> Therefore, an innocent could not be convicted, passing all of these procedural safeguards. Never the less, it is argued that innocents could be convicted as Observed in 19405.

Professor M Borchard in his book (convicting the innocent) wrote that he came across a lot of people that are victims of crimes when they are an innocent people.<sup>42</sup> Therefore, he presented the opposite of the safeguard, which allegedly save the

conviction of the innocents. Finally the writer stressed that innocent people mistakenly identified with the criminals would be the subject of conviction.

#### 1.4 DEFINITION OF AMNESTY

The term amnesty derives from the Greek word “amnesia” which means forgetting, and has come to be used to describe a measure of a more general nature, directed to offences whose criminality is considered better forgotten.<sup>43</sup>

Amnesty is defined by Black’s law dictionary as follows; -

**A sovereign act of forgiveness for past act granting by government to all persons (or to certain class of persons) who have been guilty of crime or delict, generally offenses treason, sedition, rebellion draft evasion and often conditioned up on their return to obedience and duty within prescribed time.<sup>44</sup>**

In addition to the above definition given, the American jurisprudence gives the definition of amnesty like below;

*Amnesty is defined by the Lexicographers to be an act of the sovereign Power granting oblivion or a general pardon for past offence and is rarely if ever, exercised in favor of single individuals, but is usually exerted in behalf of certain classes of person who are subjected to trial but have not yet been convicted.<sup>45</sup>*

From the above definitions given, one may conclude that amnesty is granted to a group of persons, mostly before conviction and most of the time for crime against the state i.e. political offences. Here political crimes are those crimes related to the interest of the government and those who are affecting the state interest are termed to be political criminal.<sup>46</sup> Under these conditions amnesty might be express, as when general declaration is made that all offenders of a certain class shall be pardoned or implied in case of the repeal of a penal code. For the purpose of this paper the above definition seems to be fit.

It is also held that amnesty might be classified as general, particular. Absolute and conditional. That is it may cover all classes of political offenders or may be limited to special groups, with specific exceptions; or they may impose no conditions or they may demand the performance of certain conditions before their provisions enter in to legal effect.

Some scholars consider “amnesty” as a word that properly belongs to international law. According to them it is applied to treaties of peace following a state and signifies there the burial in oblivion of the particular causes for war between the parties.<sup>47</sup> For this purpose amnesty could be implied or express. Express amnesty is one granted in direct terms. Implied amnesty is one, which results in when a treaty of peace is made between contending parties. Therefore, in this sense amnesty is also applied to conflicts that are brought with in the rules of international law. However, for the purpose of this paper amnesty is not used in this sense. Because only state amnesty i.e. amnesty with in a given legal system or amnesty at national level is treated in this paper.

### **1.5 DISTINCTION BETWEEN PARDON AND AMNESTY**

Pardon and amnesty are two different concepts that are applied in order to achieve different purpose. They are also applicable in different conditions and have also different character. It is not deniable that they are confusing some times. But basically they have their own nature and application that are important. The following discussion will show the difference they have.

When amnesty emphasis on the type of offence; pardon emphasis on the remission of punishment. Amnesty is usually addressed to crimes against sovereign state, that is to political offence, with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punisument.<sup>48</sup> the second is that pardon, condones interaction of the place of the state.

Amnesty is usually general, addressed to classes’ even communities; it is the act of the supreme magistrate, and it may be constitutional or statutory. There may or may not



be constitutional or statutory. There may or may not be distinct act of an acceptance. If other rights are dependent up on amnesty and are asserted, there is affirmative evidence of acceptance.<sup>49</sup> Where as pardon is given to specific person most of the time.

Amnesty is exemption from prosecution for crime committed while pardon is exemption from punishment granted by the grace of the executive organs of the government. This is to mean that the act of amnesty is not following to the act of conviction and guilty.<sup>50</sup> Where as the act of pardon is following to the act of conviction and guilt.

In case of pardon, acceptance of the pardon is necessary. Where as acceptance is not mandatory in amnesty for because that amnesty could be given in the interest of specific person in the group.<sup>51</sup>

The act of amnesty is proper after there is political, economic or civil disturbance. The granting of amnesty is nearly always a sign that the government feels its position secure from violent over thrown, and that having disarmed its enemies in the field, it may proceed with the attempt at disarming hatred and resentment by an act of grace.<sup>52</sup> while pardon is proper when there is error of conviction or when unforeseen situation arise.<sup>53</sup> From this we can understand that pardon is an instrument of adjustment when there is mistake, harsh or disproportionate sentence in relation to a particular crime.

Generally, as far as pardoning power is concerned, it was held that amnesty might be enacted by the legislator rather than by the executive act. This is done for the reason that the crime is generally against to the public welfare and it is the peoples representative who has best interest to give the amnesty based on the condition of the interest at stake. While pardon usually is an executive act. Besides this difference pardon is given on individual basis and is usually given after conviction. Amnesty is the oblition and forgetfulness of the offence where as pardon is forgetfulness for the punishment imposed. Here there is one-step difference that the pardon goes until conviction unlike amnesty. There is also the difference of initiation; in pardon the pardoning power will not give pardon unless pleaded where as the amnesty is not in



need of pleading to be given. The executive could not give amnesty. This is because that the purpose of executive act of pardon is to merit an offender when there is mistaken of judgment, where as the purpose of a amnesty is not a such adjustment, is rather general public welfare. But lastly the two wards have the same destination, that they enable the person /persons to be free from punishment & potential punishment.

### **1.6 PARDON -VS-REPRIEVE**

A reprieve is derived from the French word “Reprendre” which means withdrawing of a sentence for an interval of time, where by the execution is suspended.<sup>54</sup> Reprieve post ponds the day of execution and it has nothing to do with the court decision; it simply set the execution day for a definite period.

In common law countries reprieve is there kind.<sup>55</sup> These categories of reprieve are based on the authority that gives the reprieve; reprieve type given by the crown is an exmandatorege, Exarbitio judicis reprieve is delivered by those tribunals which are vest with the authority to a ward execution and third one is the Excessipate legis which is required by law to be granted under certain circumstance, as for example a woman convicted between time of sentence and the time for execution.<sup>56</sup> Thus execution does not affect judgment passed by the court on the convicted person, but merely stays the execution. Reprieve is one of the parts of pardon though it differs in some way from the latter; Reprieve has different legal effect from pardon. Pardon affects the judgment what ever its nature, but reprieve has not such effect unlike its temporary stoppage of execution. However, the two words are similar because they are the act of executive body.

## 1.7 Pardon-vs- parole

The term parole is defined in Black's law dictionary as follows: -

**Release from jail, prison or other confinements after actually serving parts of sentence. Conditional release from imprisonment which entitles parole to serve remainders of this term out side confinement of an institution, if he satisfactory complies with all terms and conditions provided in parole order.<sup>57</sup>**

In granting, denying, revocation and supervision of parole for federal prisoners rests in the U.S.A. in the parole commission.<sup>58</sup> most states have similar board of commission.<sup>59</sup>

As defined above the parole could be conditional. This makes the term to have the same nature with conditional pardon. However, pardon could be exercised before the execution of the judgment. Where as parole is release from jail implies there is some sort of execution of judgment. And this makes parole to be different from the full pardon.

The other thing as the definition displays is that parole is one part of the activity of an executive body i.e. the board commission of parole is executive body. The executive body gives the same to this pardon. There fore, to this extent the two terms have similarity.

When the procedure of parole is dealt, there are some common and usual procedures of parole. Some of them are discussed below;

Paying a fine as condition of liberty.<sup>60</sup> This fine is not the same as that of fine added to penal sentence.<sup>61</sup> In the latter instance, the fine added to penal sentence is part of the adjudication and must be paid or additional time served.<sup>62</sup> Here as to the above condition, two category of arguments are existed. One of the category says "The fine condition has play no practical purpose" where as the second hold it impresses an offender who might other wise feel he is "getting away with something" if granted parole with out financial strings attached"<sup>63</sup>

The offender or the prisoner is also required to fulfilled the condition of “making restitution; monetary restitution to the person or persons victimized.<sup>64</sup> In common sense this dictates that such repayment, when ordered, be made when the individual is earning enough to comply and the installment payments are the general rule.<sup>65</sup> The restitution is directly related to the offense and the attitude of the offender.<sup>66</sup>Restitution may have a positive treatment cannotation.66. It offers that the individual some thing with in the reason that he can do here and now, with in the limits of his ability, to demonstrate to him self that he is changing. A fine is punitive A ail sentence is retributive. But restitution makes sense. It is every man’s obligation to meet responsibilities of this sort in civil life.<sup>67</sup> As to the determination for the restitution amount, it is not based on how much money has been collected by the parolee rather is determined based on how effectively it is used as a tool in treatment toward the end that the individual shall not offend again.<sup>68</sup>

The parolee is also required as to stay in the specific jurisdiction required. The person concerned is required not to leave the jurisdiction in with out permission and the state parole system line the boundaries. The reason for this rule is the organization is authorized to maintain authority over its charges only with in its precincts.<sup>69</sup>

Abstaining use of or over use of intoxication is one of the conditions of parole. This provision is found in almost all jurisdictions. With the same token abstention from use of narcotics is one of the condition of parol.<sup>70</sup> Keeping reasonable hour is a special condition taken to those juveniles. This is because more over, there is probably a demonstrable relationship between hours and recidivism among many adults.<sup>71</sup>

## 1.8 PARDON- VS-COMMUTATION

Commutation is defined by the Black’s law dictionary: -

**Alternative, change or substitution of the act of substitution of one thing for another. In criminal law the act of change one punishment to one which is lesser; as from execution to life to imprisonment.<sup>72</sup>**



Commutation is an act of grace and it is not a right of the accused person. The purpose of commutation is the rehabilitation of the prisoners. The power of granting commutation is usually included in the pardoning authorities. Like parole commutation has nothing to do with the nature of the sentence but merely commutes a sever penalty to a lesser one. An executive having the power to commute is strictly prohibited from increasing the penalty under any circum stance.<sup>73</sup>

Usually death sentences are commuted to life imprisonment. In strict sense, courts are prohibited from commutation as it is clearly granted to executive bodies. The power to commute cannot be taken away be the legislative organ or judicial organ. There is a limitation which restricts the power of the executive on commutation “ A governor not vested with the power of commutation is prohibited with out lawful right in all cases to nullify or set aside the law inflicting the death penalty, for crimes on the ground that he is opposed to capital punishment.<sup>74</sup> Thus the authorities who have the right to commute sentence may not however, go against the law.

To concluded commutation is the change from a sever to a lenient punishment. It is different from pardon although both of them are the act of executive clemency. Pardon is broader than commutation. The power of pardoning includes the power of commutation. What makes them similar is that both are the act of executive body of government.

## END NOTES

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## **CHAPTER- TWO**

### **PURPOSE AND AUTHORITIES GRANTIG PARDON AND AMNESTY**

#### **2.1 PURPOSE OF GRANTIG PARDON AND AMNESTY**

It is rational for one to ask the motive behind giving pardon and amnesty. In normal course of the legal process, it is expected that the laws enacted are to be implemented following due judgment. However, the state as exceptional circumstance interfere in the way of implementation of legislation, proclamation which are expected to be practical as they are stated in the code and proclamation and as interpreted by judicial bodies. But pardon and amnesty are applicable contradictory to the above general principle. Pardon and amnesty are used to remit those judgments made by courts from execution. From this one could concluded that there is a motive wanted to attained by the legal system which establish the law of pardon and amnesty.

In Anglo- American legal system these mechanisms are used mainly to achieve certain purposes. This is to say that pardoning power is mainly exercised under two conditions. One of the condition pardon could be given is on the ground of innocence. Here one may argue that if one is innocence how could he be convicted in the first place. But it seems impossible to assert with certainty that the innocent men are never convicted. Because as the human work, the administration of justices and the law could not be perfect. The pardoning power is derogation of the law that is to say, if laws could always be enacted and administered so as to be just in ever circumstance to which they are applied, there would be no need of the pardoning power.<sup>1</sup> But, criminal code can only define anti social conduct in general term. It can never take in to account all special circumstances, which may be involved, in a given case.<sup>2</sup> so a wrong might be convicted because of some errors that the judicial could not prevent like mistaken identification,

circumstantial evidence, from which wrong references are drawn or perjured testimony and etc... latter his innocence could be established in various ways, some of these ways are said to be the warning up alive of the allege "Murdered" the subsequent conviction of the real offender, the discovery of the new evidence may indicates that conviction was on perjured testimony. Therefore, it may also be used to the end that justice done by correcting in justices; as soon as the discovery of the facts convince the officials or board endowed with the power that was no guilty or that other mistaken were made as long as the conviction can not be reversed after defendant's innocence, we need the power to pardon for innocence.<sup>3</sup>

However, It may be argued that if the subsequent evidence is convincing or conclusive to reverse the conviction the court should merely reverse the decision. However, under the Anglo American legal system this is impossible for two reasons: - one of the justifications is the problem of lapse of time. If conviction is the result of error the proper procedure is to attempt to have the verdict modified or set aside. After the laps of certain time, however, the court no longer has the power of such action.<sup>4</sup> under the above condition because of the lapse of the period fixed by law, it is not the power of the court to change or reverses the decision. The second justification is said to be it would render the law uncertain if e.g. there were a time after which a case was closed and the judgment final.<sup>5</sup> According to the latter ground if laws are changed now and then because of the new fact the law would be consider as non reliable an society will loss confidence at the whole legal system.

Therefore, as to the common law theory if a convicted person is found not guilty by subsequent facts given, the chance to be granted pardon is preferred as a better mechanism of adjusting injustice. However, it could be argued still that it is meaningless to pardon one for a crime he never committed. However, in this situation it was held that pardon has a special meaning attached to it. People often ask why a "pardon" should be granted when no offence has been committed. The justification for this is that the word pardon is here served in a special sense; it does not mean forgiveness of the offence which innocent person does not need, but the removal (or pardoning) of the conviction



and all its consequents.<sup>6</sup>

To generalize under the common law theory pardon has the effect of relieving the person from unforeseen injustice. The injustice might be the result of errors mentioned above. Lately because of extraordinary facts or circumstantial foundation the convict may be found innocent and this entitled him to be pardoned.

Under common law the second theory by which the person is given pardon is public policy. Public policy is that principle of the law, which holds that no subject can lawfully do, that which has a tendency to be injurious to the public or against the public good.<sup>7</sup> Here the pardoning power is exercised for the benefit of the public at large. Generally speaking the pardoning power is exercised on the pretext of the sentence.<sup>8</sup> Here what is material and important is public interest and if punishment will result on more harm, pardoning the convicted individual will have preference. And it was further argued that on the ground of public interest policy, it has been held that the state may enter contract with a criminal for his exemption from prosecution and punishment if he fairly makes a full disclosure of the crime, whether the party testifies against is convicted or not.<sup>9</sup>

The purpose of criminal law is to protect the good of the public. Then, public good is the main basis for the punishment. The pardoning power is founded on consideration of the public good, and is to be exercised on the found of the public welfare, which is the legitimate objective of all punishment, will be as well promoted by suspension as by execution of the sentence.<sup>10</sup> Hence pardon maybe granted in the interest of both society and the convict. Acts of leniency by pardon are administered by the executive branch of government in the interest of the society and the discipline, education, and reformation of the person convicted.<sup>11</sup> This does not amount to mean that the judiciary organ has no contribution. However, because of the nature of the pardoning act it is more convenient to vest the power to the executive organ than arm that convict the person.

As to the common law theory since the basic objective of punishment is to protect the interest of the society, pardon can be granted if society is more beneficiary by granting pardon than by the execution of judgment. In addition to the above Justification

pardon can be given on the ground that the convicted has seen the mistake of his ways, that society will gain nothing by his further confinement and that he will conduct himself in the future as up right law-abiding citizen.

Where as in the civil law legal system there is a different approach from the common law legal system. In civil law legal system pardon is not granted on the ground of innocence. This is because it was held continental law has gone much more in permitting judicial re-consideration of such cases.<sup>12</sup> As to amnesty, civil law countries used it after civil conflicts. Legislative amnesties were frequent in certain civil law countries, such as France, where they were used as a means of pacification after periods of civil strife.<sup>13</sup>

Lastly but not least Newman has pointed out some of the situations in which pardon and amnesty be appropriate and proper. According to him these conditions are continuing to rise in any society as an output of which pardon and amnesty might be needed. These situations are political upheavals and emergencies, where pardon or a amnesty may be necessary to pacify or unite a country for war or after a war hysteria during which persons were given every severe sentence for the political offenses later realized to have been very minor. The other situation was that the judgment for sedition and conspiracy punishment was proved to be innocence but also Judicial review is impossible, will pardon granted.<sup>14</sup>

## 2.2 AUTHORITIES GRANTING PARDON AND AMNESTY

From the historical point of view giving pardon was not exclusive power of the sovereign. Later, however, granting pardon or the pardoning power became the exclusive power of the sovereign. During the earlier period the various bodies, including the Roman Catholic Church and certain local rules, held the power but by the sixteenth century it is usually concentrated in the hands of the monarch.<sup>15</sup> By the time of Henry VII reign in England, common law had developed the principle that monarch was vested absolutely and exclusively, with the power to pardon those accused or convicted of crime.<sup>16</sup>

For the purpose of constitutional analysis power sharing of the existed government is divided in to three arms of the government.<sup>17</sup> And generally in most legal



systems pardoning power is endowed to the executive branch of the government.<sup>18</sup> In the Anglo- America legal system pardoning power is vested in the executive branch of government. As matter of practice the people found to vest the pardoning power to the executive branch. Thus under the American constitution the pardoning power in federal cases has been delegated to the president; and the constitution have delegate this power in state criminal cases to the governor either alone or in conjunction with advisers.<sup>19</sup> In England the pardoning power was consider as part of the royal prerogatives, and at the time of U.S.A separation from England, the pardoning power was consider as part of the royal prerogatives, and at the time of U.S.A separation from England, the power had been exercised by the king, as the chief executive.

But even with in the Anglo- American legal system with regard to the issue as to who should exercise the power to grant pardon and amnesty there seems to exist theoretical difference. There is however, a difference in the theory up on which the power is exercised in the two countries. One says the English theory of government was that all power of government emanated from the king, that all power of government emanated from the king, that it was the king realm, which was offended by crime. Hence, the king could bestow his mercy by pardon. On other hand, our government power is inherent in the people. There fore, crime is an offence against the people prosecuted and the people alone can bestowed mercy be pardon. As subsequently noted the people may confer the pardoning power upon any officers or broad that they see fit.<sup>20</sup>

In Relation to civil law countries like that of France the president the one who is vested with the pardoning power, as head of the state the president has the privileges of pardon.<sup>21</sup>

American courts decision implies that the power to grant pardon also includes has the power to grant amnesty consequently the president has amnesty power. To this effect it was argued that the president of America has numerous occasion used the pardoning power to grant amnesty to an entire group.<sup>22</sup> In addition to the above states constitution may provide the pardoning power to more than one organ. For example in U.S.A in addition to president, the congress has also the power to grant amnesty. It has done so in remitting penalties incurred under national statutes, and by providing



immunity from prosecution for persons testifying before courts or congressional investigating committee.<sup>23</sup>

To finalize, the pardoning power is vested in certain organs depending up on the distribution of power of the government that exist in a country. In parliamentary form of government the power is mostly vested in the executive, where as in the presidential form of government the power is vested to the president.<sup>24</sup> In latter, as the president is the representative of the people, the president acts on the behalf of the people. This is because crimes affect the people and it is the people who could forgive the offender.

However, when there is power as right or privilege given to the given person, organ of government, institution and committed, then, there is no absolute freedom of exercising this right or privilege. This is because absolute right or freedom is exposed to abuse because of human nature. This will be against the very objective of the power granting such as by going out of the scope of the condition prescribed. There fore, there is limitation for any power to be exercised and the researcher would like to deal some sort of limitation that are accompanied with power of pardoning and amnesty. These limitations lastly served as protection of individuals. As any legal device the pardoning power is subjected to legal restriction and conditions that lay down by constitution of the state. The power to grant pardon depends on the conditions and limitations imposed by state constitution, and all powers not specifically granted there by the governor may be exercised by the legislator.<sup>25</sup>

In common law legal system the legal limitations might be made in various ways. There might be provisions that expressly exclude certain types of offences or time in which the acts of pardon or amnesty would be proper might be fixed. And common law courts have developed certain traditional rules in which pardon or amnesty would or would not extend. In Anglo American legal system the first limitation is civil wrong doer of the civil consequent thereof.<sup>26</sup> Also in England it was confirmed again that, the royal power of pardon does not extend to civil proceeding, if A owes B debt, the queen has no power to forgive the debt. So if A assaults or libels B, the queen cannot for give A, or

stop B from suing A. This is so even when the wrong is a crime as well as a tort (civil injury) Thus in case of imprisonment, which is both crime and civil wrong, the queen can pardon the crime but not the tort.<sup>27</sup> Therefore, one condition at which pardon could be given under the common law legal system especially that of England is the act should be criminal. This is because pardon for crime is given on behalf of the people who are central & interesting party for the consequence of pardoning where as in civil matter, it is the victim who is interesting to the case and the people is not interesting. Therefore, for the civil consequence of the act, it is the victim that could give pardon.

The other limitation of pardoning is the restriction made by express statement of the law as to the exclusion of some sort of crime for being pardoned. Among criminal offences, which are expressly excluded from the realm of pardoning power, is impeachment. An impeachment in the widest sense of the term is a criminal accusation brought by legislative body.<sup>28</sup> To be specific, impeachment is defined as a criminal proceeding against a public officer, before a quasi -political court, instituted by a written accusation called “ articles of impeachment”.<sup>29</sup>

Contempt of court is the other offence, which is excluded from the pardoning power by the ruling of most courts in the common law tradition. Generally speaking contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law in to disrespect or disregard, or to interfere with or prejudice parties litigants or their witness during the litigation period.<sup>30</sup> From this one could analysis that as condition of exercising the power of the pardon, the legitimate organ of the government or the representative person, should identify the excluded offence for the pardoning purpose. This is simply the scope or jurisdiction of the power vested.

At the end Newman has given opinion on how the pardoning power should be exercised and mechanism of restriction is to be effective. As to Newman, there are various ways of condition that serve as restriction. The first way of limitation of



pardoning power in through adoption of article (provision) in criminal procedure that permit reversal of conviction where evidence found is indicating that the defendant is innocent.<sup>31</sup> Secondly all releases be under the parole law, and not by conditional pardon.<sup>32</sup> This is meaning when there is a law that declares when should be given pardon such as foundation of convincing fact, then the pardoning power will only be exercised with full filling the requirement of the law.

### **2.3 EFFECT OF PARDON AND AMNESTY**

When one is interesting to deal with the effect of pardon, and amnesty, it is necessary to explain and narrate all the requirement of pardon and amnesty to deliver certain effects. However, There is no universally applicable conditions or requirements as prerequisite of pardon or a amnesty. But some of the conditions of pardon are related to form of the application made by the interested person. The form should be in writing and signed. In general principle pardon should be evidenced by written document. Additionally the documents are needed to be attested and authenticated by the seal of the state.<sup>33</sup>

The other condition or requirement to the enjoying of pardon is the recital of the pardoned offence. The reason for this is said to be that as pardons are derogation from the law i.e. they repeal a sentence, the offence intended to be forgiven should be described accurately.<sup>34</sup> The other conditions of pardon are acceptance and delivery. A deed, to be valid, must be accepted by the grantee and marshal held that the same is true of pardon, which must be accepted to valid<sup>35</sup> As he put it “ It may than be rejected to force it on him, and the court has no give us the power to do so”<sup>36</sup> But, However, there are courts which objects the necessity of acceptance and delivery. According to these courts in order to the existence of valid pardon, there should not be requirement of acceptance by the offender. A pardon, in our day is not a private act of grace from an individual happening to posses’ power. It is a determination of the ultimate authority that gives emphasis to the public Welfare than private interest.<sup>37</sup> The supporters of this view went on saying that... the conception of pardon as analogous to a deed which must be accepted to be valid, may un wisely restrict the president’s hand in the implementation of his power of grace. The constitutional power of highest officials should not be subjected to the interest of



individual bent on matrdom or the more frustration of executive bodies.<sup>38</sup> So according to this argument, so long as the pardoning power is exercised for the wafer of the people at large, there shall not be any need of acceptance. The private person should accept the pardon against his consent.

The other groups who support the necessity of acceptance are taking self-incrimination as their ground of argument. They assert that acceptance of pardon will take away civil rights of the offender i.e. the privilege against self. Incrimination. Here the researcher prefers the first argument for the reason that one of the main reasons for the establishment of punishment is for peace and order of the society. And after all pardon should be applied if this social desired objective would be obtained. In addition to this reason, the interest of the society has an upper hand over individual interest.

Once pardon or amnesty provided, what are its consequence? The effect of pardon or amnesty deliver depends on the type of pardon or amnesty provided or it may depend on the terms of pardon or amnesty. The natures for the effect of pardon or amnesty are ascertained by the terms in which it is expressed the condition annexed to it. And not by the time when the pardon or amnesty starts to operate. The proclamation that regulates the effect of pardon or amnesty has paramount importance.<sup>39</sup> In general when a full and absolute pardon is given, it exempts the individual from the punishment which the law inflict for the crime which he has committed the crime being forgiven and remitted, and the individual relieved from all of its legal consequence in the form of disqualification or disabilities based on his conviction.<sup>40</sup> This is to say that an absolute pardon frees an accused from custody of the law, it prevents further punishment and court action as far as the particular offence pardoned is concerned.

Where as when the granted pardon is conditional, it has its effects depending on the attached conditions... the payments of cost by the offender may be imposed as a valid condition of pardon.<sup>41</sup> Besides, it was held that Pardon may be granted on condition that a fine imposed as part of the sentence first be paid, that a prescribed oath be taken, that the grantee should not claim certain property.<sup>42</sup> Partial pardon releases from punishment with out remission of guilty ...<sup>43</sup> In case of partial pardon the conviction is not obliterated. The

following statement explained the general effect of pardon clearly.

The effect of pardon is to grant exemption from the punishment the law inflicts for a crime. Since imprisonment and fine are the normal punishments, a pardon frees a convicted criminal from serving any incomplete term of imprisonment and from paying any unpaid fine. Loss of certain political and civil rights are additional penalty for conviction of a crime. Since pardon will restore these rights, one may still be sought on behalf of persons who have completed their sentence and paid their fines have completely their sentence and paid their fines.<sup>44</sup>

The most generally prevailing method of restoring civil rights that have been denied as a consequence of conviction is through pardon by the state.<sup>45</sup> Civil rights are rights that are granted by the constitution of a state to its citizens. A pardon is also said to remit the guilty of the offender. To this effect it was stated: -

*A pardon reaches both the punishment prescribed for the offence and the guilty of the offence and the guilty of the offender; and when the pardon is full, it release the punishment and blots out the existence of the guilty, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it Prevents any of the penalties and disabilities; consequent up on conviction, Form attaching; if granted offer conviction, it removes the penalties and disability and restore him to all his civil rights; it makes him as it were, a new man, and given him anew-credit and capacity.<sup>46</sup>*

Some courts are not supporting what the above conclusion says “The effect of a full pardon is to make the offender a new man and that a full pardon blots out the existence of guilty, so that in the eve the law the offender is as innocent as if he had never the offence “This is because these courts referred the statement as generalization and consequently could not be universally accepted, recognized or approved. These courts fatherly argued that: -

To say, however, that the offender is “a new man” and as innocent as if he had



never committed the offence is to ignore the difference between the crime and the criminal. A person adjudged guilty of an offence is a convicted criminal, though pardoned; may be deserving of punishment, though left unpunished and the law may regard him more dangerous to the society than one never found guilty of crime though it place no restraints up on him following his conviction the criminal character or habits of the individual the chief postulated of habitual criminal statutes, is often as clearly as disclosed by pardon convicted as one never condoned<sup>47</sup>

According to the proponents of the above position a pardon does not obliterate the fact that the commission of crime and it does not change the past and annihilates the established fact that an offence has been committed. They also assert that a pardon does not substitute a good reputation for one that is bad, it does not washout the moral strains, it involves forgiveness but not forget fullness.

As far as the above argument is concerned one may consider it to be reasonable and realistic. Because the more realistic view of the effect of pardon is to the extent of restoring civil rights that were lost up on conviction. But the fact that a crime was committed could not be forgotten at all. And this has the effect of recidivist where the offender is guilty of other crime after pardoned. This implies the criminal record of the pardoned offender has an effect though made free of punishment.

**Is pardon or amnesty has retrospective effect? Does it compensate for what has been done in past?**

Pardon or amnesty has no retrospective effect or operation on the judgment of conviction, which remain unreserved. It affords no relief to what has been suffered by the offender in prison by imprisonment, forced labor, or other wise.<sup>48</sup>

As to related the effect of pardon to third party, the common law has a stand that could be stated as follows; pardon does not affect the rights of third party which has been endowed in others directly by execution of the judgment for an offence, or which have been gained by other while that judgment was in force.<sup>49</sup> Generally those called public office profession, or license could not be restored by a pardon. A pardon does not restore a convicted criminal to public office forfeited by conviction; nor does it restore a



right to a license or to practice a profession, which has been revoked because of the conviction.<sup>50</sup> There is also argument as to the public office; It was argued that pardon of the executive will not remove disqualification for public office resulting from conviction of crime. The reason for this is said to be that the right to hold public officer is a political privilege. Rather than civil right, Moreover, since pardon did not wipeout the fact of conviction, because of the act committed the convict may be still regarded as unfit in ordered to practice the profession or the license.<sup>51</sup>

As to concerned with fine and costs, the effect of pardon or amnesty depends on the terms or on the type of pardon or amnesty. Where it is clear from the terms of the pardon that it was not intended to release the defendant from payment of the fine imposed, but only from imprisonment, the pardon will not have the effect of remitting the fine. A full pardon granted before any proceeding are taken to confiscate property On account of the offence, pardon is a bar to such proceeding, and relieves the convict from the liability of having his property confiscated by pending Proceeding, so far as the penalty accrues to the government.<sup>52</sup> To concluded as far pardon or amnesty is an act that took place between the state and the convict, costs and other fine that have been resulted because of the conviction will be left by an act of pardon or amnesty Only, if they will be accrued to state's treasury<sup>53</sup>

### 2.3.1 The status of pardon and amnesty: - constitutional, right or privilege

The Other issue that should be deal here in relation to pardon is the status of pardon. Is pardon a right or privilege? To determine the status of pardon as to whether it is right or privilege, it is important to know the two terms first this will begin by giving them their own definitions;

*Right is a claim or advantage passed by a person or persons, which is conferred or protected by law and which implies a corresponding duty on the part of Another.<sup>54</sup> Right is also defined as a power, privilege, faculty, or demand inherent in one person and incident upon another.<sup>55</sup> It is a capacity residing in one man of controlling, with the assent and assistance of the state, the action of others.<sup>56</sup>*

The above definitions seem general. However, the constitutional definition of right is a right guaranteed as to prevent legislative interference with that right<sup>57</sup>. On the other hand, privilege is defined as a particular and peculiar benefit or advantage enjoyed by a person. It is an exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of law.<sup>58</sup> The privileges of citizens of a state are those that are granted by the constitution or by the statute of a state. For example, the privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government and are granted or secured by the constitution or by the laws and treaties made in pursuance thereof.<sup>59</sup>

Generally, from the above concepts, one may understand that a right or privilege to be constitutional should be given by the constitution of a state to citizens and it should also be protected and enforced if it is violated. Then, can one claim pardon or amnesty as a constitutional right or privilege with the context of the above definition? Under different legal systems, the status of pardon and amnesty has different status. To mean has the right or privilege in different countries but could not be both privilege and right.

Under common law country theory, generally, the grantee or the defendant cannot ask pardon as a matter of right.<sup>60</sup> But there are exceptions where a defendant could demand pardon as a right. This is where the defendant wants to prove that the convicted person is innocent.<sup>61</sup> The other situation where a pardon can be demanded as a right is;

*Where a statute creating an offense or enacting penalties for its future punishment holds out a promise of immunity to accomplices to aid in the conviction of their associates under such a statute, when accomplices do so voluntarily; they have a right absolutely or pardon this is also true. When by the executive's proclamation they are promised immunity upon discovery of their associates and are the means of convicting them.<sup>62</sup>*

So exception in the above situation discussed a pardon or amnesty could not be asked as of right or privilege. No one has the right of pardon.<sup>63</sup> So long as the pardon or amnesty is not given in constitution or statute is not a right. Therefore, one could conclude that when pardon is given in the constitution as any right is a right but when given in other Statute with Special conditions, is deemed to be privilege. However, where there is no pardon in constitution or any other statute, then it is neither right nor privilege rather is an act of grace.

What about the status of pardon and amnesty in relation to pardoning authority?

As far as the pardoning power is concerned although there is a discretionary power, the pardoning power is not a privilege or a right rather it is a duty, which should be exercised for the benefit of the public welfares at large. To this effect it was stated that---the power to pardon conferred on the governor by the various constitution is practically unrestricted, and the exercise of executive clement is a matter of discretion.<sup>64</sup> It is vested in the governor not for the benefit of the convict only, but for the welfare of the people, who may properly insist upon the performance of that duty by himself if pardon or amnesty is to be granted. This discretion should be exercised on public consideration.<sup>65</sup> Hence for the pardoning a authority it is public duty which should be exercised for public purpose it is not personal favor or private act of grace from the individual happening to posses power, it is granted in the exercise of public consideration.<sup>66</sup> It seems that the pardoning power should be not exercised arbitrarily but in accordance of reasonable principles and guidelines and upon real facts that existed in particular situation. There fore, one can concluded that pardoning power is neither privilege nor right to the pardoning authorities rather is a duty.



## CHAPTER -TWO

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48. Id, p.578
49. Ibid
50. Ibid
51. American jurisprudence, cited at note41, p.40
52. Ibid
53. Id, p.42
54. Hennery Campbell Black M.A Black's law dictionary, west publishing st. panl  
minn, 1986, P .1186
55. Ibid
56. Ibid
57. American jurisprudence, conflicts of law to constitutional law, (2<sup>nd</sup> ed) vol. 16  
1964, p. 832
58. Henry cited at note 54,
59. American jurisprudence, cited at note 51
60. Dr.V.U shukla, cited at note 46, p.269
61. American jurisprudence, cited at note 59
62. Id, p.13
63. Ibid
64. Corpus jurissecundum, cited at note 47, p.571
65. Ibid
66. American jurisprudence, cited at note 41, p.13



## **CHAPTER THREE**

### **PARDON AND AMESTY UNDER ETHIOPIAN LEGAL SYSTEM**

#### **HISTORICAL BACKGROUND**

As any part of the world legal system, it is possible to say that, the practice of pardon and amnesty are as old as in Ethiopian legal system. Though it is not with in the modern conception of pardon and amnesty, these institutions are at least as old as Fetha Negest. This might be understood from a written of Fetha Negest below;

“If he has not killed voluntarily, he shall be exiled. If the striking was accidental, with out any enmity or if out of malice one threw a stone or some other thing which brings about one’s death, unaware that he would die, but he does die, with out having any feeling of enmity or evil judgment shall take place between the slayer and he who claims the blood; due consideration shall be given to the case and the slayer must be rescued from the power of the avenger of the blood and sent to a piece (of refuge) and make his some there”.<sup>1</sup>

Although there is no mention of the subject expressly the last part of the above written implies the possibility of one form of pardon i.e. conditional pardon. That is when one kills some body else with out voluntarily and has not sense of enmity, then he will be pardoned conditionally, the condition was the exile of the killer to somewhere else to live permanently there. There fore, it is possible to deduct that the practice of pardon and amnesty in Ethiopia legal system has existed in oldest form and early period.

#### **3.1 UNDER THE 1931 CONSTITUTION**

Before going to deal about the specific issue of pardon under this constitution, it is wisdom to give some historical background of the constitution and the purpose wanted to be attained.

The foreign educated ministers of finance, Bajerond Takale- Hawariya, drafted the constitution of 1931. His version of the affairs is that on urging the Emperor to grant a constitution, he was ordered to write to himself, and did so with the help of copies of other constitutions provided by foreign legation in Addis Ababa. This explains

the considerable borrowing from imperial Japanese constitution of 1889. The draft was then submitted to the major nobleman of the country, and was promulgated after they had discussed and proved it. It is note worthy that the nobility was brought into the process of constitution making, to give further weight to the document, though it was unable to change those parts of it which limited its power. The emperor, for his part, had difficulties in enforcing it on the nobility in the province.<sup>2</sup>

What was the purpose and need of this constitution? First and for most, the constitution was an instrument of centralization under, the emperor, reflecting the traditional principles of absolute imperial power with out the practical limitations which modified it. The emperor received the entire executive power over both central and provincial government and the nobility and provincial governors were granted no independent authority. The newly instituted parliament provided no check to the emperor, and human right provisions of the constitution could be disregarded by him in emergencies.<sup>3</sup> Here, the constitution reflected the centralizing police of the time, and provided the formal basis for a process of centralization which was necessary both for national unity and for executive modernization.

The second purpose of the constitution was an instrument of modernization, and here it followed the tendencies of the period by adopting a continuous and gradualist approach. A parliament was founded, but given powers only discussion; the emperor, and the other by local notables appointed one chamber. A number of rights were recognized, subjected to limitation by law and the emperor's emergency power, though the provisions on freedom of speech, religion and association, contained Japanese model, were left out.<sup>4</sup> This implies though the constitution was not implement as liberal or democratic document, was serving as starting point for modernization of Ethiopian laws and introduce the tradition of separation of government structure to different branches of government.

To conclude, in both its centralizing and its ,modernization aspects, nevertheless, the constitution of 1931 enchoed;



“The development of the time without doing anything to cause them. Its sole direct result was the foundation of parliament, and in no other field was there legal or administrative machinery available to implement it. It was subjected to no judicial interpretation, and the provision on rights could have had little relevance to a people to whose tradition they were largely alien; the power of the emperor over the provinces was expanded by gradual process out lived.... (Elsewhere), rather than by any constitutional provision and relation between the emperor and the executive branch of government were left so vague in the constitution that none of the developments in that field can be described to it. The rest of the document for the most part simply confirmed in the emperor’s power that he would in any case have exercised, and while it was often cited in the preambles to laws, it made little difference to the actual business of the government. The Ethiopian Herald could therefore say, in July 1944, that “ It is doubtful whether It is generally known that Ethiopian’s written constitution has serve as the primary basis for the government of the Empire sine 1931. 6”

The above written displays that, the constitutional motive and its actual purpose to be attained was that of the preservation of the traditional powers of the emperor over the state politics of that time. However, incidentally the constitution gives a merit to the country, by introducing new ways of structure of the government and able to the establishment of new agencies to the Ethiopia

When we came to the issue of pardon and amnesty under the 1931 constitution, the pertinent Art of this constitution is Art 16. This Art is read as follows “The emperor order amnesty, pardon, commutation of punishment and rehabilitation”. Therefore, the 1931 constitution concentrates all concepts of both pardon and amnesty under the prerogatives of the Emperor.<sup>7</sup> This is to mean that the legitimate authority that could give pardon an amnesty is the emperor. However, this Art of the constitution was also supported by other proclamation of pardon and amnesty that are promulgated by the emperor after his return to his country after the expulsion of Italian invaders. There proclamation clearly indicates political purpose of amnesty as one used in other legal system. The purpose of this proclamation was to abolish completely old scores and in order to reestablish peace with the country and also to avoid divisions caused by war.



The proclamation issued by his imperial majesty during that time was two in number. The first was termed as “Golden proclamation” and was dated Hamel 16, 1942 E.C. This proclamation gives a general amnesty to such offences committed during the period of 1933-34 E.C.<sup>8</sup> The second was dated Tir 12, 1933 E.C and gives a general amnesty to offences committed during the Italian occupation if such offences are against “The Emperor and the state”<sup>9</sup> Besides these many amnesty proclamation had been proclaimed by the king, following periods. The amnesties were granted mostly on the occasion like, the king’s birthday celebration, the Emperors coronation holidays and on many other religious holidays.<sup>10</sup> Here the different occasions served as ground of exercising pardoning power. And the above condition displays some body else that the pardoning and amnesty concepts were the privilege of the Emperor and are more have political merit than legal merit. The Emperor as any of his right is also is not responsible to observe some quid lines or procedures to exercise his pardoning and amnesty power.

Generally under the 1931 constitution and the subsequent proclamation of amnesty, the Emperor was exercising the pardoning power with out taking the merit of individual convicts. The power of pardoning was more exercised for political purpose as on could infer the occasion by which pardon or amnesty given ere more political or have connotation with the political surrounding of the emperor. The legal aspects of pardon and amnesty are so minor.

### **3.2. Under Revised constitution of 1955**

Under revised constitution, granting pardon and amnesty was the prerogative of the emperor. In this respect Art 35 of the constitution reads as:

**The emperor has the right and duty to maintain justice through the courts; and the right to grant pardon, amnesties and to commute penalties .<sup>11</sup>**

According to the above-mentioned provision, it is clear that the Emperor is the pardoning authority. In addition, this pardoning authority was not the duty of the emperor

rather is the prerogative of him. Pursuant to this, the emperor had give pardon or commute death sentence to a number of prisoners from 1956-1965.<sup>12</sup>

However, what makes to be different for pardon of this period from the 1931 constitution subsequent proclamation pardon is the existence of certain procedural requirement e for the delivery of pardon or amnesty by the Emperor, under this time, the minister of justice was assigned to processes and submitting proposals to emperor. It held that the minister of justice used to plead pardon on behalf of the convict. However, in homicide cases, the emperor is said to have usually taken the position of consultative by bringing the kins of the deceased and culprit to come to an agreement. Out of this kindness and mercifulness, the king would plead for forgiveness so what accused be set free.<sup>13</sup>

Generally, the concept of pardon and amnesty under this constitution is better than that of the 1931 constitution. This is because that, the concept of pardon and amnesty was purely political and absolutely power of the Emperor in 1931, but here under this constitution there is somewhat minimization of political that the minister of justices has been responsible to plead pardon on behalf of the convict implies legal purpose.

### 3.3 Under the penal Code of 1957

Ethiopian history of penal is associated with the advent of Fetha Negest (law of king). However, the Fetha Negest was replaced by the 1930 penal code. The latter is thought to be better than the former in its individualization of Crimes and systematic arrangement. Although it is claimed that the 1930 penal code is better than Fetha Negest is some crude methods of execution were still visible, these are flogging, Mutilation and shooting. Pursuant to the 1930 penal code it is said that a triggered gun was given to the victims family to shoot at the person sentenced as a result of the alleged crime, if they made mercy to him, would be up to them consequently there were some instances where the victim family have decided to cease from taking revenge and have to mercy on the assailant.<sup>14</sup> Later on, the 1930 penal code was replaced by 1957 penal code. Because the former was of old fashion reflecting the old mode of execution. The replacement of this



code was a matter of necessity to adjust Ethiopian penal system with the requirement of the day. The 1957 penal code was and still is a piece of modern penal legislation significantly taking principles developed in the civilized world, particularly in the continental system. In line with advanced approach purpose of punishment has been adopted rehabilitation and deterrence, and as a result the 1957 penal code has establish many provisions related to rehabilitation of the offender and the betterment of the society in any other ways other than Execution of punishment.<sup>15</sup>

According to 1955 Revised constitution among other protections for criminal defendants provide that punishment is personnel and that no one shall be subjected to inhuman punishment (Art 54 and 57).<sup>16</sup> The penal code also introduce rehabilitation in Ethiopia while at the same time retaining deterrence as a basic principle.

How ever, when we came to the concept of pardon and amnesty under the penal code it is under Art 239 and 240 respectively that the whole aspect about pardon and amnesty stated. For the convenience and simplicity of discussion about pardon and amnesty under penal code, separate discussion is opted by the researches.

The pardon concept and the effect it could resulted is stated under Art 239 as follow;

239 (1) sentence may be remitted in whole or in part or Commutated into penalty of lesser nature or gravity by an act of pardon of the sovereign power.<sup>17</sup>

The above sub article is stating the effect of pardon over the particular pardoned crime or convicted. Here the type of pardon is also briefly elaborated. As to the above article, pardon could be of particular or full. Moreover, pardon could be of changing the sever penalty to that of lesser penalty by which pardon is called the Commutation. With the same article, the pardoning power is that of sovereign power. This pardoning authority is the reflection of the time political system of the country when the penal code is promulgated. However, now a day the pardoning authority is not rested necessarily to



the sovereign authority as to Art 229 (1) of the criminal code. The Art of the code reads as follows;

*Genocide*  
229 (1) unless otherwise provided by law, a sentence may be remitted in whole or part or Commuted in to penalty of lesser nature or gravity by an act of pardon of the competent authority. <sup>18</sup>

*States, Nationalities & Peoples* → *Who is it?*

This displays that the pardoning power is not necessarily the sovereign power, rather this code has make the pardoning power open to any organ other than sovereign power but Competent in the eyes of the law. This has an advantage of large opportunity and facilitation of pardon by any organ assigned to be competent. Under the Art 239(1) of the penal code second paragraph, the law makes the condition of pardon to be adjusted by the relevant public law. This is to mean that the public law which are consider relevant are served as guidelines for the implement of the pardon given and there is no pre-determined penal conditions that are imposed as condition of pardon under Ethiopian penal code.

Under Art 239(2) of the penal code the type of the offense subjected to pardoning disused. This article is stated as follows,

*Pardon may apply to all penalties and measures, whether principal or secondary and whatever their gravity, which are enforceable. The order granting pardon may determine the conditions to which the subjected and its scope.* <sup>19</sup>

Here though there is no express permission or prohibition of law as to which criminal offences are subjected to pardon it is possible to infer from the above article that all types of criminal offences are subjected to pardon. The same article of the penal code under its second aliena has deal about the effect of pardon under penal code. Art 239(2) second aliena says, "Pardon shall not cancel the sentence the entry of which shall remain in the police recorder of the offender and continued to produce its other efforts <sup>20</sup>. This implies that the pardon could not produce any effect on the record of the offender. That is the offender is subjected to the effect of the offence such as recidivism when the pardoned offender is found to be guilty in any time .

*Com. on Genocide bans pardon, Eth as signatory of this conv.*

Generally, pardon in penal code is the remission of penalty or change of severe penalty to lesser penalty. Moreover, the pardoning power is exercised only upon the fulfillment of certain requirements. Therefore, it is not an ordinary right that is exercised upon the interest of a certain person, organ or institution.

When one takes his attention to the amnesty concept of penal code, amnesty could be either conditional or absolute depending on the discretion of the authorities. This is reflected under penal code Article 240, "which state that an amnesty may be granted in respect of certain offences or certain classes of offenders either absolutely or subjected to certain condition or obligations by the appropriate constitutional authority when circumstances seem to indicate that such a measure is expedient".<sup>21</sup> This provision makes it clear and smart that absolute and conditional amnesty is serving as remedies. Moreover, amnesty is applicable to certain offences or class of offenders. That amnesty is not emphasis to persona where as overemphasis to type of offences or group or class of offenders but as pardon give emphasis to person.

As far as the power of pardon and amnesty, it is fundamental to deal with those Articles that limit the exercising of pardon. Art 241(1) of the penal code civil consequence of pardon and amnesty is not affected by the pardon or amnesty given.<sup>22</sup> However, under Art 240(2) second paragraph, there is one effect of amnesty which absolutely opposite to the effect of pardon. Amnesty has no effect on the criminal record of the offender after the offenders enjoy the amnesty. That is the offence given amnesty has not recidivist effect on the offender.

Under Art 240(1) there is also one limitation as to amnesty. The authority that gives amnesty is not free of exercising this power at any time. This is because of the term "when circumstance seem to indicate that such a measure is expedient"<sup>23</sup> implies that to exercise the power of amnesty by the authority, there should be conditions that led a reasonable man to take the amnesty power in to practice. Most of the time these condition of amnesty are the existence of political offences and when the interest of



peace, order and security of the state or society is easily preserved by giving amnesty to those offenders.

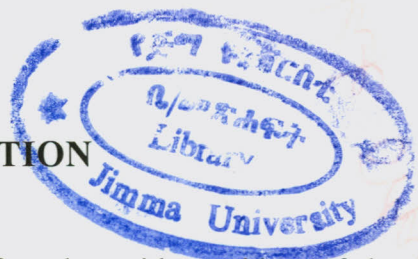
### **3.4. UNDER THE P.D.R.E CONSTITUTION**

After strengthening its power for ten years, the Derg came up with the constitution known as the P.D.R.E constitution. It was proclaimed in 1987, concealing socialist constitutional doctrine, among other things give unrestricted power to the president of the republic. With regard to pardoning power, the president had the authority over this matter as per Art 86(3) (d) of the constitution. However, the president was not the sole organ to exercise pardon. Based on Art 82(1)(e), amnesty can also be granted by the council of state, to which the president was a member. As far as the procedure of power concerned there was no procedural laws establishing different standards for previous practices. There was an instance where by two individuals found their case rejected by minister of justice, later on they were pardoned however.<sup>24</sup>

Art 16 of proc No 30/1980 states that the minister of justice is required to cooperate with the organ granting amnesty, but the manner of implementation of this power still remain unclear under that past constitution.<sup>25</sup> The organs of pardon and amnesty in the P.D.R.E constitution rest therefore, on the office of the presidency and in that of the council of state, where in the president enjoy the same position, but as an individual member, not mere individual.

Pardons and amnesty were quite granted on occasions particularly on revolution day. Members of the imperial families were reported, to have been granted amnesty in 1980s. Granting pardon must have been persistently used, as an attribute of sovereignty. Though the 1957 penal code prescribed that public law is to be issued in the future relating to the application of pardon, the formality required to effect pardon as in other countries has never been seen that day. Therefore, One may, conclude that proper procedural laws have been lacking in Ethiopia legal system for institutionalization of the norm of vital importance during the 1987 constitution.





### 3.5. UNDER THE 1995 F.D.R.E CONSTITUTION

This constitution obviously vests the power of pardon with president of the federal government. Art 71(7) makes it clearly that the president power in granting pardon. This provision also make that the granting power of the president is limited by those procedures and conditions established by law.

Art 71(7) is read, "As the president shall grant pardon in accordance with the procedures established by law."<sup>26</sup> The mandatory nature of the word shall implies that pardon is one of the functions of the president of federation. The problem is that what kinds of offences are subjected to this organ. I think procedural law subsequently promulgated should answer this question.

An important issue which is worth raising here in that whether the presidents power of pardoning is extended to the regional government which have equal sovereignty status with the federal government? Based on the F.D.R.E constitution regional states are entitled to issue laws with regard to their state jurisdiction. Specifically enumerated powers are giving to the federal government, particularly to H.P.R, which has the power to issue laws like commercial code and penal code, which have nation wide application.

Art 55(5) of the F.D.R.E constitution reads the council of people's representative shall issue penal code; states may however enact penal laws in maters that are not covered by federal legislation.<sup>27</sup> When we analysis this article closely, the issue of pardoning power relating to capital offences seems to be the function of the federal organ. However, Art71 (7) of the constitution which Confers pardoning power over the president do not make speciation of offences subjected to pardon of the president of the federal government.

*can't state counsels provide for cap. punishment w.r.t. offenses*

In other words paragraph 2 of Art 28 (1) of the F.D. R.E Constitution states that pardon and amnesty may not be granted by legislator or any organs of the state. These

*falling outside the scope of the Code Penal Code? So how can you rule out the possibility of pardon on the...*

self-contradiction!

groups of offences which are excluded from pardoning or amnesty by legislator or any organ is genocide, summary exaction, forcible disappearance and torture<sup>28</sup> This express exclusion implies that other than such types of offence state organs' could give pardon and amnesty. And any other 'state organs' implies that also that state governments have pardoning authority. Thus Art 28 and Art 55 (5) may reconciled by extending the power of pardoning to the regional states as well.

How?

Here Art 28 has expressly exclude some sort of offences from the pardoning or amnesty power of the president. There fore, Art 28 is serving as a limitation to the power of the president while Art 71 (7) is not go further to deal the limitation as it deals about the conferring of power to the president. However, the president is allowed to Commute death penalty to life imprisonment even in the case of genocide and any of crimes mentioned under Art 28 (1) of the constitution this is as Art 28 (2) reads "In case of persons Convicted of any crime stated in sub-article 1 of this provision and sentenced with the death penalty the ahead of state may with out prejudice to the provisions here in above, Commute punishment to life imprisonment."<sup>29</sup>

The 1995 Constitution has not clear provision that vest amnesty on other president of the federal government, but it can be argued that pardon is wider and hence includes amnesty. The specific reference to the word amnesty might not be much importance The Constitution do not say some thing whether individuals could raise the issue of pardon or amnesty as right , then the question whether pardon or amnesty is a right or not and other procedure issues are answer by the proclamation number of 395/2004 for procedure of pardon.

Why do you need to draw such distance - took 9

Under Art 11 of the proclamation the question of whether pardon is a right or not is answered. The wording of this article is as follows; "Any person who is Convicted and sentenced by a court may, unless the granting of pardon is prohibited law, apply for pardon in person or through his spouses, close relatives, representatives or lawyer."<sup>30</sup> This clearly displays that pardon is a right to demand but this does not mean is enforceable as immediate as the convicted requires. This is because of wording of Art 3

self-contradictory

On the next page, you said it is a privilege



→ that is privilege  
Any person who is convicted and sentenced ---

that reads “there is a board that shall examine cases of pardon and submit recommendation there on to the president.”<sup>31</sup> Therefore, upon the fulfillment of certain requirements the convict could make application for pardon. However, the final delivery of pardon depends on the recommendation of the board and the president. This implies that pardon under the Ethiopian legal system is a privilege under fulfillment of certain conditions but is not a right.

The proclamation has established a board that examines the conditions of the convicted who apply for pardon. This Board, after examination of the conditions, submits an application to the president and takes announcement of the decision of the president over the application as the wording of Art 4 (1) and Art 6(2) of the proclamation. Here the power of the president upon fulfillment of certain conditions seems nothing but delivering of pardon with observing of the limitations imposed on the power of granting of the president especially of Art 28 of the constitution.

The proclamation has also established a specific article that deals about the purpose which reads as follows “the main purpose of granting pardon is to ensure the welfare and interest of the public.”<sup>32</sup> This implies that the basic objective of pardon is preservation of the interest of the society at large. It is not to give benefit to the individual convict. Therefore, the power of the president on pardon application submitted by the board is based on whether the welfare of the society is possible to be attained by pardon or execution of the judgment. The president exercises this pardoning power based on the conditions submitted by the board and the requirements of the peace of the society. Here pardon is different from amnesty because it is given to a single person, in any other way has similarity because of its destination i.e. both have the purpose of preserving the welfare of the society.

As there is a procedure of application for pardon, the proclamation adopts provisions for revocation of pardon. Under Art 16 the revocation of pardon is made before the pardon decision reaches the convicted person. But the revocation of pardon should be based on reasonable grounds that lead to revocation. This is because the responsible body to accept pardon is the board and abuse of the power may occur where they are left with open and absolute power of revocation of pardon. The individual should



## CHAPTER- THREE

### END NOTES

1. Ababa paules Tzadia, The Fetha Negest ( the law of kings), Faculty of law, HSIU,1968,p.294
2. James C.N paul and Christopher, Ethiopian constitutional Development, Faculty of law, HSIU, 1966, p240
3. Ibid
4. Id, 241
5. Ibid
6. Ibid
7. Art 16 of 1931 constitution
8. Meseret, The role of executive president on capital punishemnet,p.48, Thesis (2003)
9. Ibid
10. Ibid
11. Art 11, The 1955 constitution
12. James C.N and Christopher cited at note 2, p.252
13. Ibid
14. Ibid
15. Meseret,cited at note 8,
16. Art 54 and 57 the 1955 Revised constitution
17. Art 239 of penal code of Ethiopia Negarit Gazetta 158/57
18. Art 229 of criminal code of Ethiopia proc No 414/2004
19. Art 239 (2) of penal code of Ethiopia Negarit Gazette
20. Id
21. Art 240 of penal code
22. Art 241(2)
23. Ibid (1)
24. Meseret, cited at note 8 P.54
25. Ibid

be protected from abuse. However, what would be the effect when the pardon decision reaches to the convict person and was because of fraud or deceit? The answer will be based on Art 16(2) of the proclamation which makes then to be no effect.

The proclamation is also establishing certain procedure for revocation of the pardon application. Art 17(1) says that the revocation and reasons of revocation should be announced to the convict person in language he clearly understand.<sup>33</sup> This is for purpose of protection of the convict. And sub article 2 of the same provision gives the chance to defend against the revocation made.

The proclamation as the title displays is procedure of pardon. Whether this proclamation is applicable to amnesty or not is the question to rise. Here the different between pardon and amnesty are so basic that is the type of offence and the offender of the crime. Therefore, there is basic difference of condition between pardon and amnesty. And as the provisions of the proclamation shows that the application of the proclamation is to individual offender which could be regulated their cases and condition by the board. Where as the cases of groups of individuals could not be regulated by the board and will difficult to the president to examine the conditions submitted by the board. There fore, this procedure could not extend to amnesty.

↓  
Ridiculous

## CHAPTER –FOUR

### NATIONAL RECONCILIATION IN ETHIOPIA

#### 4.1 Conflict Resolution in General

Before immediately going to main part of the chapter, it is better to say something about conflict and conflict resolution system in general. Conflict is the divergence on certain issue caused by divergence of interest issue caused by divergence of interest between individual and groups. In any society any society one can find conflicting interests, which may cause conflict between its members.

The black's dictionary defines conflict as follows.

*A conflict or controversy; a conflict or claim or claim or right, assertion of right; claim or demand on one side, met by contrary Claims or allegation on other.<sup>1</sup>*

This is logic that every activities of human being is subjected to endless interest to be in better than others. This concept could be confirmed by the idea of famous philosopher who came to the conclusion of "human beings are selfish by nature" Most of the time the interest of one person may not be in line with the interest may faced resistance form others because the interest of the other is against the declared one. This is the result of mismatch of the unlimited demand of human beings with the limited one. This is the result of mismatch of the unlimited demand of human beings with the limited resource the earth has.

However, conflicts can be managed and resolved through various mechanisms involving dialogue and discussion. These mechanisms may be given in a constitution, laws, regulation, rules and customary norms and practice of a society. This does not mean that those conflict resolutions have an upper hand over those laws and formal judicial organs which could resolve confect if any. However, though the state tries to regulate conflict by its formal indicial organs and legislations, because of different



26. Art 71 of the constitution of the Federal democratic Republic of Ethiopia proc.  
No1 Negarit Gazette
27. Ibid Art 55
28. Ibid Art 28
29. Id,(2)
30. Art 12 of the pardon procedure proc No 395/2004 Negarit Gazette
31. Id, Art 3
32. Id, Art 4
33. Art 17 of pardon procedure proc No 395/2004

reasons the need of those conflict resolution mechanisms will arise. Some of these reasons are high cost of judicial litigation, excessive delays and the major participation of lawyers and the judges in the litigation of formal judiciary this technically exclude the active participant as well as most interesting parties to the case. When the case conceals plenty numbers of persons the case confronts two problems. One of the problems is difficulty or regulation of the case observing the procedure of criminal procedure such as proving beyond reasonable the guilty of persons. The second problem the basic motive of each person in the case will not be heard because of lack or resource. For these and any other justification the need to rely on those alternative dispute mechanism for purification, place and order of the society.

Alternative dispute resolution assumed the attributes of a law reform movement in the early 1970 's when many observes in the legal and academic communities began to have serious concerns about" the negative effect of the formal court litigation.<sup>2</sup>

Following and application of rule of law is a very important and mandatory prerequisite for proper management of conflict resolution mechanisms, but customary laws and practices have their, own irreplaceable role in resolving conflict in peaceful and successful condition whether such conflict arise among individuals or group some of the followings or observation to be consider when conflict is managed to be resolved in the consideration of the interest of parties in the conflict. They should not feel sense of interference as to Hanson. He further stated, gusting Leonardo Greenalgn 91986:50), that conflict management is the processes or resolving cognitive barrier to agreement.<sup>3</sup>

Mebrate Haile on his part shares the Hanson's idea and stated seems like as below.

*It is, therefore, possible to conclude that things are returned to the established or if the conflict is resolved and if the conflicting parties attended their business or other wise no feeling of intervention of any sort.<sup>4</sup>*

Beyond the above general condition, there are several conditions that should be observed. These conditions may be termed as techniques conflict resolution. These Techniques have different name from writer to writer. To mention some of these techniques accommodation, avoidance, domination, compromise and collaboration are approaches to be taken as an appropriate techniques of conflict management according to hansou.<sup>5</sup>

According to Donnelly, the strategies of conflict management are avoided domination, problem solving, bargaining and persuasion.<sup>6</sup>

Here it is important to deal about the jurisdiction of these traditional conflict-solving tribunals. The jurisdiction of these traditional tribunals is basically based on the consent of the conflicting parties; it is not mandatory by its nature. Usually the religious leaders, elders and adhoc committee established to a give conflict will mostly demand one party to settle the difference between other parties. Then these parson or groups of person refer the disputable issue to customary tribunals determine the a mount of compensation if there is disagreement among the parties when decision is made elders and religious leaders.<sup>7</sup> There tribunals serve as an appellate jurisdiction to individual parties.

However, the appellate jurisdiction tribunals are serving as first instance when the conflict is collective conflict. This is because that collective conflict are so serious than individual conflict and has a devastating impact unless they are able to be curved a soon as possible.<sup>8</sup> The type of case these appellate jurisdiction entertain could be civil or criminal.<sup>9</sup>

Now a days states of the world have recognized the importance of these conflict resolution mechanisms and give emphasis to include these mechanisms in their legislation or has include them by which judges in with the discretion to order the parties to settle through these traditional conflict resolution mechanisms. These mechanisms have spread their scope by providing different branches. Today, these mechanisms have divided in to primary and hybrid mechanisms. The primary conceals arbitration, negotiation, and mediation. The hybrid includes minitrial, natural evaluation, summary judgment and facilitation.<sup>10</sup> However: the researcher wants to give emphasis to the reconciliation means of non-judicial justices system.



## 4.2 Reconciliation concept

Reconciliation is a new concept to the world conflict resolution system. And the application of reconciliation is guest to the world countries and especially to individual's conflicts. Because of this the researcher wants to give emphasis.

Reconciliation has not universally accepted an applicable principle and standards. Individual countries follow different procedures of reconciliation. This may be the difference ground of the conflict, the law of the state and the political situation of the state.<sup>11</sup> The concept also has not single definition that is accepted by all scholars and practitioners. However, every one acknowledges at least four critical components identified by John Paul Lederach...truth, justice, mercy and peace.<sup>12</sup> Lederach's use of "mercy" suggested that the idea behind reconciliation has religious roots. It is a critical theological notion in all the Abrahamic faiths as part of their building their personal relation with God. For those who ask, "what would Jesus do" reconciliation is often not just an important issue but the most critical one in any conflict.<sup>13</sup>

In most recent years, reconciliation has become an important matter for people who approach conflict resolution from secular perspective. For than the need for reconciliation grows out pragmatic, political realities of any conflict resolution.<sup>14</sup> Because of this reconciliation become one of the hottest topic increasingly in "hot field of conflict resolution" It refers to large number of activities that help turn temporary peace of an agreement which ends the fighting in to a last end to the conflict it self. Though reconciliation and the related processes of restorative and transitional justices parties to the dispute explore an over came the pain parties brought during the conflict an finds ways to build trust an alive cooperatively with each other.<sup>15</sup> And conflict resolution professional use a number of techniques to try to foster reconciliation.<sup>16</sup> By far the most famous of them is the south African's truth and reconciliation commission that held hearing in to the human right abuse during the apartheid era and held out the possibility of amnesty to people who showed genuine remorse for their action<sup>17</sup>

contribution the reconciliation process. The most successful efforts at reconciliation have, in fact have been led by teams of "locals" from both side of the divided. Thus Desmond Tutu, a black man, chaired the TRC while its vice president was Alex Borain, a white pastor. Both were out spoken opponents of apartheid, but they made certain to includes white who had been supporters of the old regime until quite near its end.<sup>23</sup> The role of NGO in reconciliation process of south Africa was an exceptional they had give better contribution than state and third party.

Where as the contribution of these individuals, states and third party in Sierra Leon reconciliation is different from that of South Africa. The contribution state in Sierra Leon was go beyond facilitation for recompilation. The government was up establishing special court to try those war and political criminals who contribute a lot to the civil war passed in Sierra Leon and those who are committed grave crimes. These special courts are established by the support of United Nations, the U.K, US and the wider community at the request of the TRC established in Sierra Leon.<sup>24</sup> This implies the paramount contribution of third party to the reconciliation and the government.

What is the purpose of reconciliation? What then its effect? The purpose of reconciliation is to curve the existing disturbance in a given country. Besides this it enable to the parties to give and accept amnesty for the passed horror they exercised.<sup>25</sup> This implies that reconciliation has the effect of amnesty where there is large mass population in the conflict in which the government could not control by its formal judiciary system. The other purpose of conciliation is the finding of the true motive of the parties pleased amnesty for peace to last ever.<sup>26</sup> The judicial litigation besides disability to solve such type of problem beyond control, court litigation creates winner & loser sense among parties .But reconciliation do not create such sense for because it is based on true submission of the wounded and the offenders.

Here with related token the effect of reconciliation amounts to be amnesty. This is because those participants of the mass crime are pardoned by the wounded.<sup>27</sup> The government who is the acting organ on be half of the people could not proceed any body else who is part in reconciliation, unless other wise this would not objectively made in the interest of the society, were after all the purpose of penal code which are peace & order of the society have already achieved by reconciliation.



### When reconciliation is needed?

Reconciliation matters because the consequence of not reconciliation can be enormous. In Fenolser Hamso's term, to may peace agreement orphaned. That is, the parties reach an agreement that stops the fighting but does little to take the parties towards stable place, which can only accure when the issues that gave rise to the conflict in the first place are addressed to the satisfaction of all.<sup>18</sup> With out reconciliation the best one can normally hope for is the kind of armed stand off we have seen in Cyprus for nearly 30 Years. At worst, with <sup>out</sup> reconciliation, the fighting can be break out again, as we have seen the tragic beginning of the second "Intifada" in Israel vs Palestine of 200.<sup>19</sup>

The contribution of different parties to the reconciliation process has different degree of emphases from one party to other party participates and from country to country. Under the south Africa's reconciliation the contribution these party (state, individuals& third party) in not the same. The contributing of individuals was paramount.

*By its nature, reconciliation is a "bottom up" process and thus cannot be imposed by the state or any other institution. However, government can do to promotion and provides opportunities for people to come to grip with the past.<sup>20</sup>*

This implies that, in South Africa's reconciliation, paramount emphasis is given to the individual's interest to the reconciliation process. Individual interest was the main quid line of South African reconciliation. The state has the role of facilitator or makes appropriation of good condition for the successfulness of reconciliation. For his purpose, in South Africa the TRC heard testimony form over, 22,000 individuals and an application for amnesty from another 1000. The TRC'S success and publicity surrounding it have led new regime in such adverse countries as east Timote and Yugoslavia to form truth commission of one sort or another.<sup>22</sup>

The role of third party during South Africa's remobilization in so least and even more less than the state. The local leaders of the individual where with significant



Where does reconciliation come under?

### 4.3 Reconciliation in Ethiopia

To day conflict resolution Ethiopia generally takes to forms .One is through formally recognized institutions. The Other mechanisms are unrecognized one. These unrecognized mechanism are homed to be informal judicial system. These judicial systems are including those compromise, conciliations and arbitrations.

It was emperor Haile selassiel who legally recognized these disputes resolution me charismas under the 1960 civil code. Here these dispute resolution mechanisms are recognized by in civil code only. There is no recognition of informal judicial in penal code. The concept of reconciliation is at all new concept in Ethiopia or not existed at all as means of dispute resolution mechanism.

However, practically the reconciliation mechanism is applicable in civil and criminal cases in different parts of the country by the society. The society use the reconciliation as dispute resolving mechanism for group or individual conflicts and give judgments to criminal acts including homicide cases

#### 4.3.1 Prospect of Reconciliation in Ethiopia

Modern day, Ethiopia is with war of ideologies that leads to political unrest and confusion. This had made the country a perfect political laboratory of ideological wars in Africa. The opportunity cost of debates and struggle has been immense. Innocent lives of the brightest Sons and daughters of the country lost. Society has been highly divided and polarized. Suspicious and coercion increased. Liberty and precious time for development lost. In calculable amount of resource wasted Millions opted to live overseas. These all are indicators of beginning of upheaval

It is light time that the government to recognize the serious ness of the problem. This because the problem of suspicious and dividing has raised after the 3<sup>rd</sup> national election

*“----- Several actions of the regime, prior or after the election kindle the way to ethnic sectarianism and possible dishelm ferment of nation. No doubt the country is at a critical political crossroads. Appropriate measures need to be taken.”<sup>28</sup>*

## CHAPTER FOUR

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## Conclusion and Recommendation

Many legal writers admitted the necessity of pardon and amnesty in conditions where the general legal norms have resulted in harsh or unjust, or unacceptable result or where for political reasons the rule of law should be set aside. It is true that such kind of cases might arise in any legal system in which cases of pardon or amnesty might be still needed. So pardon as a legal device for tempering justice with mercy and for fighting the wrongs of justice should be forever preserved.

Besides the legal restrictions that are imposed up on the pardoning power should also be preserved. Though the discretion that is involved in the pardoning power are necessary because of the nature of the pardoning act it self seems very broad and certain standards to narrow down the scope of this discretion are required. More over in order to use the pardoning power properly and effectively i.e. to achieve the purpose for which it was retained there should be procedural laws and conditions that regulates the exercising of pardoning power. This is particularly necessary in Ethiopia. In Ethiopia much of the legal history displays that procedural laws and conditions were not established by law unlike the proclamation for procedure of pardon of nearest time i.e. the promulgation of the proclamation number 395/2004. This should be encouraged for its protection of arbitrary use of the pardoning authority. However,, there seems a gap as to regulate amnesty by procedures and conditions that are predetermined by law. This is so as to minimize the political purpose of amnesty but to increase the legal role of the term.

Under Ethiopian penal code the effect of pardon and amnesty is different. This is because pardon has the effect on the criminal record of the convict but amnesty has not any effect on the criminal record of the convict.i.e. this is to mean that pardon has the effect of recidivism on the person who is offender of new crime once up on in the future unlike amnesty. The effect of both pardon and amnesty as to the civil consequences of the act is identical i.e. both of them are not extended to abolish the civil consequence of the act. Therefore, the power of pardoning for the civil consequence of the act is at the hand of the victim.

Ethiopia has recognized those traditional conflict resolution mechanisms such as arbitration, compromise and conciliation. This is because that the state came with

limitation of different type when tries to regulate every acts of its subjects by formal judiciary organ. And there is a practice of criminal case reconciliation in different part of the state. The need of reconciliation in many countries is raised and some of them are adopting to their legal system by legislation.

Ethiopia is advisable to give recognition for reconciliation because of the following justification; Ethiopia is the home of multination country where the inevitability of collective conflict based on nation is high and regulation of such conflict by formal courts is so costly and difficult. Reconciliation has the effect of mercy which is equivalent with the amnesty. Then because of the above mentioned, justifications adoption of reconciliation to penal law as conciliation in civil code under specific justifications adoption of reconciliation to penal law as conciliation in civil code under special circumstance is advisable.

*different*

*Reconciliation even tho  
RSA is not a standing inst-  
tution incorporated into the legal  
system. Rather, it is ~~was~~ <sup>was</sup> ~~one shot~~  
a temporary method of dispute settlement*

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