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ርዕስ አንቀጽ

ስብስብ ለሰብአዊ መብቶች በኢትዮጲያ (ስሰመኢ) መንግስታዊ ያልሆነ፣ ለትርፍ ያልተቋቋመ እና ከፖለቲካ ነፃ የሆነ ለሀገራችን ሰብአዊ መብቶች አያያዝ መሻሻል ጥልቀት ያላቸው የሰብአዊ መብት ምርምሮችን በመስራት በማስረጃ የተደገፉ ምክረ ሀሳቦችን የሚያቀርብ እና በሰብአዊ መብቶች ዙሪያ የተለያዩ ስልጠናዎችን የሚሰጥ ተቋም ነው።

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ከላይ ከተጠቀሱት ስራዎች በተጨማሪ ስብስብ ለሰብአዊ መብቶች በኢትዮጲያ በሰብአዊ መብቶች ዙሪያ የሚያጠነጥን እና ሰብአዊነት በሚል ርዕስ የሚያሳትመውን መጽሄት ከሚያዚያ ወር 2013 ዓ.ም ጀምሮ ለአንባቢያን እያቀረበ ይገኛል። መፅሄታችን የተለያዩ በሰብአዊ መብቶች ዙሪያ ግንዛቤን የሚፈጥሩ እንዲሁም በወቅታዊ የሰብአዊ መብቶች አያያዝ ላይ ያተኮሩ ጽሁፎችን የሚይዝ ሲሆን የድርጅታችን ሰራተኞች እንዲሁም ከውጪ ያሉ ጸሀፊዎች ስራዎቻቸውን የሚያቀርቡበት አምድ ነው። አብዛኞቹ በመጽሄቱ ውስጥ የሚታተሙት ጽሁፎች ወቅታዊ ሁኔታዎችን ግምት ውስጥ ያስገቡ እና አፋጣኝ ትኩረትን የሚሹ ጉዳዮች ላይ የሚያተኩሩ ናቸው። በመሆኑም መፅሄቱ አንባቢያን ሰብአዊ መብቶችን በተመለከት ግንዛቤ የሚያገኙበትን እንዲሁም ጸሀፊዎች ያስተዋሏቸውን ትኩረት የሚሹ ጉዳዮች ለማህበረሰቡ እና ለሚመለከታቸው አካላት የሚያደርሱበትን እድል የሚፈጥር ነው። በመሆኑም ተደራሽነቱን ታሳቢ በማድረግ በመጽሄቱ የሚካተቱ አብዛኛዎቹ ጽሁፎች በአማረኛ የሚሆኑ ሲሆን በእንግሊዘኛ የተጻፉ ጽሁፎችም የሚካተቱ ይሆናል።

መጽሄቱ የ2014 ዓ.ም. የመጀመሪያ እትም የሆነውንና የድርጅቱን 3ኛ እትም በዚህ ወር ይዞላቹ ቀርቦአል። በዚህኛው እትም ሶስት ጽሁፎች የተካተቱ ሲሆን የመንግስት የሴቶች ንፅህና መጠበቂያ የማቅረብ ሀላፊነት፤ የታራሚዎች የመምረጥ መብት በኢትዮጲያ፤ የህፃናት ሀሳብን የመግለፅ መብትን የሚዳስሱ ፅሁፎች ተካተዋል።

Menstrual Hygiene Management and State Responsibility

Yabsera Alemneh Seneshaw*

Abstract

History tells us how human rights are connected with dignity; and menstruation is all about dignity, therefore menstrual health is a human right. Unfortunately, the core international human right instruments failed to recognize menstrual health as a human right even the so-called women's conventions i.e., Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and Maputo protocol failed to recognize menstrual health, which is women's issue, as one of women's right. Menstrual hygiene management (MHM) compromises safe menstrual materials together with awareness and information, access to adequate and clean water and soap, and disposal management with privacy and dignity. MHM is connected to health, education, privacy and employment. Lack of good MHM deprives realization of women's and girls' human rights. As menstrual health is a matter of human rights, a state has an obligation to respect, protect and fulfill. This paper will focus on how menstrual health is related to human rights and states responsibility concerning MHM.

Menstrual Health and Human right

Menstruation is a biological authenticity that every women face during her reproductive age as it is a key sign for reproductive health. Menstrual hygiene management requires access to menstrual materials, adequate and clean water including soap and waste/disposal management in a private and dignified manner during menstruation.[1] A state has an obligation to respect, protect and fulfill the elements of MHM since menstrual health is a human right issue. As it can be inferred from UDHR preamble human rights are linked with human dignity and menstruation is somehow all about dignity. Apart from this menstruation and its management is interrelated with the other human rights. Badly, the core international

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[1] Khansadhina Afifah Wardana, Human Rights Framework on Menstrual Health and Hygiene, Advances in Economics, and Management Research, vol. 140, 2020 p. 140

human right instruments failed to recognize MHM as a human right issue even the so-called women's conventions failed to recognize MHM, which is a women's issue. Some say this is due to the fact that the drafters of these international human right instruments were men.

How is menstrual health related to human right?

Menstruation is related to health, education, employment, privacy, gender equality, and empowerment of women.

Right to health

Health right is affirmed in many international human right laws as a fundamental right. The term *'Health*' shall be understood within the scope of definition given by the constitution of the World Health Organization; stating "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity." [2] The right to health is a corner stone for the attainment of other human rights and at the same time; the recognition of other human rights are essential for the attainment of right to health.[3] The committee on CESCR in its General Comment no.14[4] established a comprehensive guideline to address the issue on the implementation of article 12 of the CESCR. The general comment stipulated that for the realization of highest attainable standard of health it is necessary to consider the enjoyment of a variety of facilities, goods, services, and conditions. Access to safe, potable and adequate sanitation is considered as determinants of health right.[5] The general comment further added that the scope of the right to health is neither limited to the right to be healthy nor the right to health care. Rather "the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life."[6] General Comment no.14 sets out

[2] The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61States, and entered into force on 7 April 1948. Amendments adopted by the Twenty-sixth, Twenty-ninth, Thirth-ninth and Fifty-first World Health Assemblies came into force on 3 February 1977, 20 January 1984, 11 July 1994 and 15 September 2005 respectively 2 Pan American Health Organization, The Right of Young People To Health and Gender Identities: Findings, Trends, and Targets for Public Health Action, PAHO, Washington, (2011), p. 3

[3] Universal Declaration of Human Rights, 1948, reprinted in Bownline, I.,and Goodwill-Gill, G., (eds), Basic Documents of Human Rights, 5th ed., Oxford university Press, Oxford, New York, article 25(1)

[4] CESCR General Comment No. 14: The Right to the Highest Attainable Standard of health (Art. 12), Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000

[5] Pan American Health Organization, The Right of Young People To Health and Gender Identities: Findings, Trends, and Targets for Public Health Action, PAHO, Washington, (2011), p. 3

[6] General comment No.14 on the right to health, Committee on CESCR, 2000

interrelated and essential elements that constitute the right to health, the so-called 3AQ; these are availability, accessibility, acceptability and quality.[7] Connecting these MHM, menstrual supplies need to be available in terms of health care facilities, accessible economically and without discrimination, acceptable with respect to medical ethics and culturally acceptable and with quality.

Approaching MHM from a human rights perspective implies acting effectively and comprehensively to improve the lives of women and girls. As stated in the UDHR preamble, all human beings should be respected for their inherent dignity. This is impossible for women and girls to achieve without good menstrual hygiene management.[8] It is critical to provide women and girls with safe, healthy and effective access to menstrual health management. Thus the enjoyment of women's health right is vital to their life and well-being and their ability to participate in all areas of public and private life. If girls do not have access to menstrual material, they may resort to alternative materials to absorb the blood. These alternative materials are usually unclean and unsafe which expose these girls to infections of the cervix and uterine cavity. This will in turn affect women and girls' health right which is recognized under the core human rights instruments.

Right to Education

Education is both the act of teaching knowledge to others and receiving knowledge from others. Education as a fundamental human right lies at the heart of UNESCO's mission and is enshrined in the UDHR as well as in many other international human right instruments. The right to education is one of the key principles underpinning the education 2030 Agenda[9] and sustainable Development Goal 4 (SDG4)[10] adopted by the international community. SDG4 is right-based and seeks to ensure the full enjoyment of the right to education as it is fundamental to achieve

[7] Reproductive rights are human rights: A handbook for national human right institutions, United Nations, 2014, p.83, 128

[8] "Menstrual hygiene rights are human rights. Period. 13Feb 2017" www.wvi.org

[9] UNESCO, UNDP, UNFAM UNHCR, Unicef, UN WOMEN, WB, ILO, Education 2030 incheon Declaration and Framework for Action the implementation of SDG 4: Ensure inclusive and equality quality education and promote lifelong learning opportunities for all, 2015. *see also* http://uis.unesco.org/site/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf

[10] United Nations, Transforming our world: The 2030 agenda for sustainable development, A/Res/70/1, *see also* http://sustaniabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustaniable%20Develpoment%20web.pdf

sustainable development.[11] Women's and girls' who cannot access menstrual products either due to unaffordability or unavailability will eventually be absent from school. The repeated absence from school usually leads to a decrease in their performance and in certain cases it might lead to drop-out. Even sometimes staying at home and missing school during menstruation due to the difficulty to manage periods will lead to early marriage and expose them to sexual violence.[12]

Education is a pathway to employment. The right to employment is recognized under many international human right instruments. If right to education is deprived, right to employment as well will be lost hence both these rights are interrelated. This makes women to be economically dependent and struggle throughout their life.

Right to Privacy

Privacy is related to dignity Women and girls' who do not have access to sanitary products, privacy facilities or other basic components of MHM prefer to stay home and miss school during menstrual hygiene period. As stated earlier, menstruation is linked with dignity and using unhygienic materials to manage period, undermines the notion of human dignity by teasing, rejection, and humiliation associated to menstruation. The lack or inability to privately manage menstruation, including the inablility to wash, dry and discreelty discard disposable materials, as well as lack of ensuring shealter structures and public facilities providing inadequate privacy for girls and women who may need to change their menstrual materials, will have an impact on women's right to privacy.

Gender equality

Menstrual health is a comprehensive phrase that encompasses both menstrual hygiene management (MHM) and the broader systemic issues/aspects that connect menstruation with health, well-being, gender, education, equity, empowerment, and rights.[13] Lack of menstrual hygiene management and the shame associated with menstruation have a negative influence on gender equality.

[11] https://en.unesco.org/themes/right-to-education

[12] A Toolkit for integrating Menstrual Hygiene Management (MHM) Humanitarian Response: The Full Guide, Columbia University, 2017, p. 80

[13] An opportunity to address menstrual health and gender equality, FSG

The human right council on its draft resolution[14] tried to show the link between menstrual hygiene management, human rights and gender equality and forwarded measures that needed to be taken by a state to have an effective menstrual hygiene management. In order to talk about empowering women either in economic or political aspect first thing that bar women and girls from realizing their human rights needs to be avoided. To empower women in economy and politics first these women need to be educated and healthy and such rights must be enjoyed by them otherwise talking about gender equality and empowerment is pointless. Women's health right and right to education will be realized when the state protects and fulfills a proper MHM.

MHM and State Obligation

Regarding human rights, state has an obligation to respect, protect and fulfill. As MHM is a cross-sectorial issue, to deliver an effective response, the various sectors must coordinate to ensure that the three central components are addressed. These are MHM materials and supplies, MHM supportive and MHM information.[15] It is their right to feel and look as healthy as possible, as well as to have dignity and control over their bodies. A state has a legal obligation to guarantee that every woman and girl can exercise their right to health to the utmost extent possible.[16] Moreover, the human right council drafted a resolution in 2021 on menstrual hygiene management, human rights and gender equality.[17] Among the rational to draft such resolution is that the silence of human right instruments to deal with menstrual hygiene in leaves a room to give limited attention in their policies, programming and resource allocation and these indirect inferences made MHM to be seen as not priority and further sanitary products as luxury products.[18] The other rational is to draft the resolution on menstrual hygiene management human rights and gender equality is understanding the relation between MHM and human rights and how effective MHM will enhance gender equality. The resolution also provides measures to ensure effective MHM so as to prevent menstruation from barring women and girls from enjoyment of their human

[14] United Nations General Assembly drafted resolution 47/…Menstrual hygiene management, human rights and gender equality, 5 July 2021

[15] Menstrual Hygiene Management and Women's Economic Empowerment: A review of Existing Evidence, USAIDS Water, Sanitation, and Hygiene Partnerships and Learning for Sustainability (WASHPaLS) Project, Washington, DC, December 2019, p.1

[16] Supra note 4

[17] Supra note 14

[18] Ibid

rights. Among the measures stated in the resolution;[19]

to ensure that women and girls have equitable access to affordable, safe and clean water
to eliminate or reduce sale taxes on menstrual hygiene management products
to integrate menstrual hygiene management into relevant national policies
to include information on progress made and challenges affecting menstrual hygiene management in relevant periodic report to human rights treaty bodies and to the Working Group on the Universal Period Review

The state has a legal commitment under international human rights law to guarantee that women and girls can exercise their right to health to the utmost degree possible.[20] Concerning right to education, the Committee on CEDAW recommends states to ensure adequate facilities, hygiene education, and resources for menstrual hygiene so as to reduce the number of absentee girls and dropping out of school.[21] States obligation regarding health right can also be found on CESCR general comment no.14 and CEDAW general recommendation no.24.

Conclusion

Menstrual health is a comprehensive phrase that encompasses both menstrual hygiene management (MHM) and the broader systemic issues/aspects that connects menstruation with health, well-being, gender, education, equity, empowerment, and rights. MHM compromises these three components cumulatively, these are; (i) articulation, awareness, information and confidence to manage menstruation with safety and dignity using safe hygienic materials together with (ii) adequate water and agents and spaces for washing and bathing with soap and (iii) disposal of used menstrual absorbents with privacy and dignity. Even though we cannot directly and explicitly infer that MHM is a human right from the core intentional human right documents, this does not rule out the possibility that MHM is related to human rights. Because MHM is one of the fundamental determinants of a woman's

[19] Supra note 14
[20] CESCR General Comment No. 14: The Right to the Highest Attainable Standard of health (Art. 12), Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000
[21] Committee on the Elimination of Discrimination against Women, "General recommendation No. 34, On the rights of rural women," U.N Doc. CEDAW/C/GC/34 (2016) and General Recommendation No.36 On the rights of girls and women to education

entitlement to the highest attainable standard of health care.

Menstrual health as it connects to health right particularly it is encompassed under sexual and reproductive health right. When women and girls lack the materials and facilities to manage their menstrual health, they may suffer unfavorable health implications. Menstruation stigma can also discourage women and girls from seeking treatment for menstruation related diseases or pain, limiting their access to the best possible health and well-being. The above listed basic human rights will be affected due to improper MHM. Thus if a state did not consider menstrual health as a human right, the right to health, privacy, education, and employment will be violated and result in gender inequality and early marriage. From this it can be understood that menstrual health is a matter of human rights. However, there is a widespread assumption that menstruation is a non-essential issue, and that tampon tax is a luxury good. Period Products are not luxury! Taxing sanitary goods in and of themselves is unconstitutional and discriminatory against women since tampon tax is a sex-based tax. To promote gender equality and to empower women in all aspects of life efficient and effective MHM is expected from states.

የሕግ ታራሚዎች/የተጠርጣሪዎች የመምረጥ መብት በኢትዮጵያ

ማህሌት ንጉሴ*

የመምረጥ መብት በአንድ ማህበረሰብ ወይም ህዝብ ውስጥ ዲሞክራሲያዊ ስርዓትን ለማዳበር እንድሁም ሌሎች መብቶችን ለማረጋገጥ ወሳኝ ሚና አለው፡፡ በዲሞክራሲያዊ ስርዓት ሰዎች ይመሩኛል፣ ያስተዳድሩኛል፣ለመብቶቼ መከበር ይሰራሉ ብለው የሚያስቧቸውን አካላት ይመርጣሉ፡፡ የመምረጥ መብት ልክ እንደ ራስን በራስ የማስተዳደር፣በፖለቲካ የመሳተፍ እና ለሌሎችም መብቶች መረጋገጥ መሰረት ወይም ዋልታ ልንለው እንችላለን፡፡

በሁሉም የፖለቲካ ስርዓት ውስጥ የመምረጥ መብት ላይ የሚጣሉ ማዕቀቦች አሉ፡፡ ለአብነት ያህል በእድሜ 18 ያልሞሉ ህጻናት፣ የአዕምሮ እክል ያለባቸው (በፍርድ የተከለከሉ) ሰዎች እንዲሁም በአንዳንድ ስርዓቶች ውስጥ ታራሚዎች ከመምረጥ መብታቸው እንዳይጠቀሙ ይከለከላሉ፡፡[1] በመርህ ደረጃ የህግ ታራሚዎች መምረጥ መብት ያላቸው ሲሆን እንደ አንዳንድ ሀገራት ህግ እና እንደፈጸሙት ወንጀል ግን የመምረጥ መብታቸው ሊታገድባቸው የሚችልባቸው ሁኔታዎች አሉ፡፡[2]

በአለም አቀፍ የህግ ድንጋጌዎች ማለትም እንደ የአለም አቀፍ የሰብዓዊ መብቶች ድንጋጌ (UDHR) አንቀጽ 21፣[3] የሲቪል እና ፖለቲካ መብቶች አለምአቀፍ ቃል ኪዳን (ICCPR) አንቀጽ 25[4] እንዲሁም እንደ የአፍሪካ የሰዎች እና የሕዝቦች መብቶች ቻርተር (ACHPR) አንቀጽ 13[5] ያሉት የህግ ማዕቀፎች ለሰዎች በፖለቲካ ተሳትፎ ላይ የመካተት እንዲሁም የመምረጥ እና የመመረጥ መብትን ያጎናጽፋሉ፡፡ የእነዚህ አንቀፆች መንፈስ የሚያስረዳው በሰዎች መካከል ለመብታቸው መከበር በዘር፣ በሀይማኖት፣ በጾታ፣ በማንነት ወይም ባሉበት ሁኔታ ልዩነት ሊኖር እንደማይገባ እና በዚህም ምክንያት ከመብቶቻቸው ሊገደቡ እንደማይገባ ነው፡፡ እንዲሁም አባል ሀገራት ለሰዎች መብት መከበር ያለ ምንም አድልዎ ሊሰሩ እንደሚገባ የሲቪል እና ፖለቲካ መብቶች አለምአቀፍ ቃል ኪዳን ICCPR አንቀጽ 2(1) በግልጽ ይደነግጋል፡፡[6]

የህግ ማዕቀፉ እንዲህ ተቀምጦ ሳለ በተለያዩ ወገኖች ግን የመምረጥ መብት ለታራሚዎች የሚገባ መብት ነው ወይ በሚለው ዙሪያ የሚነሱ ሁለት አበይት ክርክሮች አሉ፡፡ በአንድ በኩል ታራሚዎች የመምረጥ መብት አላቸው የሚሉ ሲሆኑ በሌላ በኩል ደግሞ ታራሚዎች የመምረጥ መብት ሊኖራቸው አይገባም የሚሉ ናቸዉ።

ታራሚዎች የመምረጥ መብት አላቸው ብለው የሚከራከሩት ወገኖች የሚያነሱት ነጥብ ፡- የመምረጥ መብት የዜግነት መብት ሲሆን በምንም መልኩ ከቅጣት ጋር መያያዝ የሌለበት እንደሆነና ታራሚዎች ምንም እንኳን ህግ ጥሰው በቅጣት ላይ ቢሆኑም የህብረተሰቡ አካል መሆናቸውን ወይም ዜግነታቸውን ግን አያጡም ፡፡

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* ጸሀፊዋ ከባህር ዳር ዩኒቨርሲቲ በህግ የመጀመሪያ ዲግሪ አላት፡፡

[1] Officer of united nations high commissioner for human rights , general comment no 25 ‘the right to participate in public affairs, voting rights and the right of equal access to public service, 1996-2001 https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf

[2] Ibid

[3] Universal Declaration of Human Rights Article 21, www.un.org/en/universal-declaration-human-rights/

[4] International covenant on civil and political rights , article 25, 1976 https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[5] African charter on human and peoples right article 13, 1986 https://au.int/en/treaties/african-charter-human-and-peoples-rights

[6] Supra note 4 article 2(1)

እነዚህ ታራሚዎች በእስር እያሉም ይሁን ቅጣታቸውን ጨርሰው፣ በምሕረት ወይም በይቅርታ ሲለቀቁ በሚቀላቀሉት ማህበረሰብ በምርጫ ላይ በመሳተፍ የበኩላቸውን የማበርከት መብት አላቸው። ከዚህ በተጨማሪ ምርጫ ሥዎች መንግስትን ወይም ተመራጮች ላይ ለመብቶች መከበር ግፊት የሚያደርጉበት እና መብታቸውን የሚያስከብሩበት አንዱ መንገድ ነው። ታራሚዎች ህግን በመጣሳቸው ሊያጡ የሚገባቸው እንደ መንቀሳቀስ መብት (the right to movement)፣ የግለኝነት መብት (the right to privacy)፣ በማህበራዊ ጉዳዮች ላይ የመሳተፍ መብታቸውን እና መሰል መብቶች ሲያጡ እንደ ሌሎች ሰዎች ሁሉ የመሰረታዊ ሰብአዊ መብቶች ተጠቃሚ ናቸው። ለእነዚህ መብቶች መከበር ደግሞ ይወክለኛል ለመብቶቼ መከበር ይሰራል ብለው የሚያስቡትን አካል የመምረጥ መብታቸውን ሊነፈጉ አይገባም! ብለው ይከራከራሉ።[7]

በሌላ በኩል ታራሚዎች የመምረጥ መብት ሊኖራቸው አይገባም ብለው የሚከራከሩት ደግሞ፡- ህግን የጣሱ ሰዎች የህብረተሰቡን ደንብ የጣሱ ናቸው ። እነዚህ ሰዎች እንዲመርጡ መፍቀድ ማለት ህጉን እነሱ በተመቻቸው መንገድ እንዲቀለብሱት እድል ማመቻቸት እንዲሁም በሌሎች ህግን በሚያከብሩ ሰዎች ላይ አሉታዊ ተጽእኖ መፍጠር ማለት ነው። ታራሚዎች እንዲመርጡ ተፈቀደላቸው ማለት የራሳቸውን ፍላጎት ለማስጠበቅ በማሰብ ለወንጀል ቅነሳ የማይሰራና ለህግ ማስከበር የማይጥር አካል ሊመርጡ ይችላሉ በማለት ተቃውመው ይከራከራሉ። [8]

የሀገራት ተሞክሮ

የተለያዩ ሀገራት በታራሚዎች የመምረጥ መብት ዙርያ የተለያዩ ተሞክሮዎች አሏቸው። የዩክሬንን ልምድ ስናይ ታራሚዎች በአካባቢያዊ ምርጫ ላይ የመምረጥ መብት የሌላቸው ሲሆን ይህም የሆነበት ዋና ምክንያት ታራሚዎች በእስር ባሉበት ወቅት የሚኖሩበት አካባቢ አባላት ላይሆኑ የሚችሉበት አጋጣሚ ሰፊ በመሆኑ ነው። [9] የኩየት ተሞክሮ ስናይ ታራሚዎች መምረጥ የሚችሉት እንደፈጸሙት ወንጀል ክብደት ነው።በኩየት በተለይም የእምነት ማጉደል እና በመሰል ወንጀሎች የተፈረደባቸው ሰዎች የመምረጥ መብት እንደሌላቸው ጸሃፊያን ያስረዳሉ። [10] በተመሳሳይ በብራዚል ታራሚዎች የመምረጥ መብታቸውን የሚያጡት ከስነ ምግባር አንጻር የመምረጥ መብት ቢሰጣቸው አግባብ የማይሆን ከሆነና በፖለቲካ ተሳትፎው ላይ አሉታዊ ተጽእኖ ሊያሳድሩ ይችላሉ ተብለው በሚገመቱ ታራሚዎች ላይ ነው።[11] እንደ ቤልጂየም፣ ኢትዮጵያ እንዲሁም ቱኒዝያ ያሉ ሀገራት ደግሞ የመምረጥ መብት የሚታገደው በዳኞች ውሳኔ እንደ ተጨማሪ ቅጣት መሆኑን እናያለን።[12]

የታራሚዎች የመምረጥ መብት በኢትዮጲያ፣ የህግ ማዕቀፎች እና ተግባራዊ ተግዳሮቶች

ከላይ ለመግለጽ እንደተሞከረው በአለም አቀፍ ደረጃ ለሰዎች የመምረጥ መብት የሚያጎናጽፉ የሕግ ማዕቀፎችን በተለይም የአለም አቀፍ የሰብዓዊ መብቶች ድንጋጌ (UDHR) አንቀጽ 21፣ የሲቪል እና የፖለቲካ መብቶች አለምአቀፍ ቃል ኪዳን (ICCPR) አንቀጽ 25 እንዲሁም የአፍሪካ የሰዎች እና ሕዝቦች መብቶች ቻርተር (ACHPR)

[7] Zemenu tekalegne yemenu, 'prisoners right to vote in Ethiopia: unconstitutional stalled human right',(2016) Elixil law.
[8] Ibid
[9] Balijeet kaus, 'prisoners right to vote : citizen without a vote in a democracy has no existance' 2019 https://www.epw.in/engage/article/prisoners-right-vote-citizen-without-vote, last accessed 27/9/2021.
The right of prisoners to vote global overview. https://www.penalreform.org/resource/right-prisoners-vote-global-overview/ last accessed 27/9/2021.
[10] Ibid
[11]Ibid
[12] Ibid

አንቀጽ 13 ስናይ ማንም ሰው በቀጥታም ይሁን በመረጣቸው ተወካዮች በሀገሩ ባሉ የፖለቲካ ምህዳሮች ላይ የመሳተፍ መብት አለው፡፡ ይህም ማለት ሰዎች በህግ መብታቸውን እስካላጡ ወይም ብቁ እስከሆኑ ድረስ የመምረጥ እና የመመረጥ መብት አላቸው ማለት ነው፡፡

ይህ ጉዳይ ወደ እኛ ሀገር ሲመጣ ሀገራችን ኢትዮጵያ ከላይ የተጠቀሱት የህግ ማእቀፎች አባል ስትሆን የህገ መንግስቱ አንቀጽ 9 አለም አቀፍ ስምምነቶች ልክ እንደ ሀገሪቱ ህጎች ሁሉ ተፈጻሚነት እንዳላቸው ያሳያል፡፡[13] ይህ የህጎች ሁሉ የበላይ የሆነው ሕገ-መንግስት በአንቀጽ 38 መሰረት “ማንኛውም ኢትዮጵያዊ ዜጋ በቀለም፣ በዘር፣ በብሄር፣ በሀይማኖት፣ በፖለቲካ አመለካከት ወይም በሌላ አቋም ላይ የተመሰረተ ልዩነት ሳይደረግበት የመምረጥ ፣ በማናቸውም የመንግስት ደረጃ በየጊዜው በሚካሄዱ ምርጫዎች የመመረጥ መብት አለው፡፡”[14] ይህንን የህገ-መንግስቱን አንቀጽ ስንተነትነው በተለይም **ሌላ አቋም** ወይም በእንግሊዘኛ **other status** የሚለው ቃል ላነሳነው ሀሳብ እንደ ጥሩ መነሻ በመሆን ለታራሚዎች መብት እንደ መከራከርያ ሊያገለግለን ይችላል፡፡ ይህ አንቀጽ ሰዎች ያሉበትን ሁኔታ በማየት መብታቸውን እንዳያጡ የተቀመጠ ሲሆን የአንቀጹን አውዳዊ ፍቺ ሰፋ አድርገን ስናየው ለፍርድ ቀርበው በእስር እያሉም ይሁን ለፍርድ ላልደረሱ ለቀጠሮ እስረኞች መብት መረጋገጥ የቆመ ነው ፡፡ በኢትዮጵያ የወንጀል ህግ አንቀጽ 2 በህጋዊነት መርህ (principle of legality) መሰረት መብት ላይ የሚደረጉ ገደቦች በህግ የተገለጹ ካልሁነ ወይም በግልጽ ክልከላ ወይም ቅጣት ባልተቀመጠበት ሁኔታ መብትን መንፈግ አግባብ አለመሆኑና ከሰብአዊ መብት እሳቤ/ፍልስፍና ተቃራኒ መሆኑን መረዳት ያስፈልጋል፡፡[15] ከዚህ በተጨማሪ በወንጀል ህጉ መሰረት በሀገር ላይ የሚደረጉ ወንጀሎችን ልክ እንደ የሀገር ክህደት፣ ስለላ እና መሰል ወንጀሎችን በፈጸሙ ሰዎች ላይ የመምረጥ መብት እገዳ እንደሚጥል ይጠቁማል፡፡[16] ከላይ የተጠቀሱት ወንጀሎች እንዳሉ ሆነው ለሌሎች ወንጀሎችም ዳኞች አግባብነቱን እና አስፈላጊነቱ በማየት እንደ ተጨማሪ ቅጣት የመምረጥ መብት ላይ ገደብ ሊጥሉ እንደሚችሉ አንዳንድ ጽሁፎች ያስረዳሉ፡፡[17] ይህም ማለት አንድ ሰው እስረኛ ወይም ታራሚ በመሆኑ ብቻ የመምረጥ መብቱን አያጣም ማለት ነው፡፡ የመምረጥ መብቱን የሚያጣው የሰራው ወንጀል በሞት ወይም በእድሜ ልክ ጽኑ እስራት የሚያስቀጣ ሲሆን እንዲሁም በችሎት በግልጽ የመምረጥ መብቱን እንዲያጣ የተፈረደበት እንደሆነ ነው፡፡ ከእነዚህ ዋና ዋና የህግ ማዕቀፎች በተጨማሪ የኢትዮጵያ የምርጫ፣ የፖለቲካ ፓርቲዎች ምዝገባና የምርጫ ሥነምግባር አዋጅ ቁጥር ፱162/2011 መሰረት ምርጫ ቦርድ ከምርጫ ክልላቸው ርቀው በካምፕ የሚኖሩ ወታደሮች ሲቪል ሰራተኞች ፣ በከፍተኛ ትምህርት ተቋማት የሚማሩ ዜጎች ፣ ከመኖርያ ቀያቸው የተፈናቀሉ ዜጎች እንዲሁም በእስር ቤት ውስጥ የሚገኙ የመምረጥ መብታቸው ያልተገፈፈ ዜጎች በምርጫ የሚሳተፉበትን ሁኔታ ለማመቻቸት መራጮች በሚገኙበት ቦታ ወይም አካባቢ ልዩ ምርጫ ጣቢያ ሊቋቋም እንደሚችል ይጠቁማል፡፡[18] ይህ አንቀጽ በግልጽ በእስር ቤቶች በልዩ ሁኔታ የምርጫ ጣቢያ መቋቋም እንዳለበትና በህግ የመምረጥ መብታቸውን ላላጡ ሰዎች ሁሉ የዚህ መብት ተጠቃሚ እንደሆኑ ያረጋግጥልናል፡፡ ነገር ግን ወደ አፈጻጸሙ ስንመለስ ኢትዮጵያ ውስጥ

[13] Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia 1995 article 9.
[14] Ibid article 38
[15] Proclamation no.414/2004 the criminal code of the federal democratic republic of Ethiopia, article 2
[16] Supra note 7
[17] The right of prisoners to vote global overview. https://www.penalreform.org/resource/right-prisoners-vote-global-overview/ last accessed 27/9/2021.
[18] Proclamation No. 1162/2019The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation article 17.

ይህንን መብት የማስከበር ስራዎች ላይ ከፍተኛ ክፍተት ይታያል፡፡ በሀገራችን እንኳን የተፈረደበት ታራሚ ይቅርና ፍርድ የሚጠባበቁ በቀጠሮ ያሉ እስረኞች እንኳን በምርጫ ይሳተፉሉ ብሎ ማሰብ አዳጋች ነው፡፡ በተለይም ፍርድን የሚጠባበቁ ሰዎችን መብት ማሳጣት ማለት በህገ መንግስቱ መሰረት እንደ ንጹህ የመገመት መብት (presumption of innocence) የሚለውን መሰረታዊ መብት መጣስ ይሆናል፡፡[19]

በሀገራችን የታራሚዎችን የመምረጥ መብት የሚያረጋግጥ የህግ ማዕቀፍ ያለ ቢሆንም ይህ ፅሁፍ ትኩረቱ ካደረጋቸው ቡድኖች ማለትም በማረሚያ ቤት ካሉ ሰዎች አንፃር ግን ብዙ ክፍተቶች አሉ፡፡ ይህ ክፍተት በዜጎች መካከል ልዩነት ከመፍጠሩም ባለፈ የታራሚዎችን ወይም ተጠርጣሪዎችን መብት ያላግባብ እንዲጣስ መንገድ ከፍቷል፡፡ ስለዚህ በማረሚያ ወይም ጊዜያዊ ማቆያ ቤት ያሉ ሰዎች የሀገሪቱ ዜጋ እንደመሆናቸው፤ በህግ ጥላ ስር በመሆናቸው ምክንያት ልዩነት ሳይደረግ በሀገራዊ ምርጫዎች መሳተፍ እንድችሉ መብታቸውን ማረጋገጥ ይገባል፡፡ ይህ ሲባል ግን በህግ ወይም በዳኞች ውሳኔ ይህንን የመምረጥ መብታቸውን የተነፈጉትን አያካትትም፡፡ ስለሆነም መንግስት እንዲሁም የሚመለከታቸው አካላት ከመራጮች ምዝገባ ጀምሮ እንደ የመራጮች ስልጠና እንዲሁም ኮሮጆዎችን በማዘጋጀት ልክ እንደሌሎች መብቶች ሁሉ በማረሚያ ቤት ያሉ ሰዎችም የመምረጥ መብት እንዲከበር፣ እንዳይጣስ አስፈላጊ ሁኔታዎችን በማሟላት ለመብቱ መረጋገጥ መስራት ይኖርባቸዋል፡፡ በማረሚያ ቤት ያሉ ሰዎች የመምረጥ መብት ካልተረጋገጠ መንግስት ለምርጫ ያሰጉኛል የሚላቸውን ሰዎች ወይም ቡድኖች ወደ ማረሚያ በመወርወር የመምረጥ እንዲሁም የመመረጥ መብታቸውን ሊነፍግ እና ተሳትፏቸውን ሊገድብ የሚችልበት ሁኔታ ሰፊ በመሆኑ ምርጫ ቦርድን ጨምሮ የሚመለከታቸው አካላት ሁሉ ለታራሚዎች እና በቀጠሮ ላሉ ተጠርጣሪዎች የመምረጥ መብት መረጋገጥ የበኩላቸውን ቢያደርጉ መልካም ነው፡፡

[19] Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia 1995 article 20

Freedom of Expression as a Right of Children

Bersabeh Solomon*

Freedom of expression has been given recognition at the International, Regional, and National level as a core human right. The Universal Declaration of Human Rights (UDHR)[1] under article 19 has given recognition to the right to freedom of expression and provides*:*

> *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

Likewise, we find the right recognized under the ICCPR[2] and regional human right treaties also provide a protection to the right and guarantee freedom of expression. Freedom of expression covers the right to receive and impart information and ideas of all kinds through different media of the persons choice.[3] Here the mode of expression could vary and the expressed information also encompass various forms of information.[4] Freedom of opinion which is provided alongside freedom of expression includes the right to hold opinions of any kind for whatever reason that the person chooses.[5] This right also includes the right not to be forced to hold a certain opinion or not to hold a certain opinion.[6] This right is essential for the protection and promotion of human rights and constitutes the necessary pre condition of the protection of the right to democracy.[7]

The right is not however without limits and there could be limitations and the limitations are provided under article19(3) of the ICCPR. The right is thus limited when it is provided by law and is necessary with the intent to respect the rights and reputations of others, for public order, health, or morals. This therefore implies that the limit should be

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[1] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (herein after UDHR)

[2] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (herein after ICCPR)

[3] Human Rights Committee, "Human Rights Committee 102nd Session General Comment No. 34" (2011), para 12 p 3

[4] Id para 11 p 3

[5] Id para 9 p 2

[6] Id para 10 p 3

[7] Id p 1 para 2 and 3

legal, legitimate, and proportional to the aim that it is intended to achieve.

The international human right treaties provided above guarantee freedom of expression to all which could also encompasses children. In addition to these instruments there needs to be a consideration of the Convention on the Rights of the Child[8] which deals with the rights of children. Accordingly, freedom of expression has been given recognition under article 13 which reads as follows:

1. *The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*
2. *The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
   a) *For respect of the rights or reputations of others; or*
   b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

One peculiar feature of the CRC is that there is no inclusion of the right to hold opinions without interference which is one of the features of the ICCPR.[9] The extent of the recognition of the right by the state in preventing excessive abuse of the right or interference by states is a bit unclear.[10] There could be cases in which the right of children's freedom of expression could be legitimately limited by parents but it may not conform to the international limitation standards.[11] As a way to resolve this conflicting ways there could be possible solutions which could relate to the use of legislations which extreme restrictions by parents and at the same time ensure respect for the exercise of the right.[12] And in addition there could be the use of awareness creation programs as well as the use of complaint mechanism in place.[13]

[8] Convention of the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990) General Assembly resolution 44/25 (herein after CRC)
[9] Article 19, "Kid's Talk Freedom of Expression and the UN Convention on the Rights of the Child" <https://www.article19.org/data/files/pdfs/publications/children-kid-s-talk.pdf> accessed September 25, 2021, p 15 and 16
[10] Id, p 17 and 18
[11] Ibid
[12] Id p 18
[13] Ibid

At the regional level the African Charter on Human and Peoples Rights[14] has incorporated the right under article 9. In addition, Article 7 of the African Charter on the Rights and Welfare of the Child[15] has given recognition to Freedom of Expression and provides:

> *"Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws."*

When looking at the conditions provided in ACRWC in that there are no limits or restrictions to the limitations provided as they are set without any conditions so long as permitted by law.[16] In addition there is a limit to the protection of freedom of expression of a child that is "capable of communicating his opinions freely".[17]

In the case of Ethiopia, the Constitution[18] has provided freedom of expression under article 29. In addition, the FDRE Constitution under article 13(2) provided that the international human rights treaties that Ethiopia has adopted would also be applicable in relation to human rights. This in turn results in the applicability of the principles of the rights along with the limitations of the rights. Hence, it can be said that in dealing with the right of children's freedom of expression we see that there is the possibility of referring to those human rights treaties that the state is a party to.

As has been indicated, the right to freedom of expression is related to and is a base for the protection of other human rights. Thus, this makes it necessary to have a protection measure of the rights and children be guaranteed with this right to ensure the protection of their other rights as well. Seeing the Ethiopian context of the protection of the right we can see that there is a lack of specific legislation regarding children. This is a problem as the protections that need to be specific to children will be lacking and the protections will be similar as those of others. But children being a vulnerable section of the

[14] African Charter on Human and Peoples Rights (Adopted 27 June 1981, entered into force 21 October 1986), OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

[15] African Charter on the Rights and Welfare of The Child, (entered into force Nov. 29, 1999) OAU Doc. CAB/LEG/24.9/49 (1990) here in after ACRWC

[16] Supra note 9, p 17

[17] See "La charte africaine sur les droits et le bien-être de l'enfant. Essai de présentation" (1996) 820 *Penant: revue de droit des pays d'Afrique* 53, p. 57 cited in ibid

[18] Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1/1995, (herein after FDRE Constitution)

society need special protection and attention in relation to their rights.

If we look at the case of New Zealand there is a positive involvement of the youth in the Prime Minister's Youth Advisory Forum established in New Zealand in 1998.[19] It provides 15 youngsters aged between 12 and 25 to be able to meet three times a year with Cabinet Members and the prime minister.[20] It is aimed at providing young children with the chance to speak directly to the prime minister and cabinet on issues concerning them and other government issues as well.[21] This forum being a way for young people to express themselves and will have positive impacts on the rights of children. Such positive actions could have positive impacts and allow children's views to also be included and heard. And this experience could be taken as a sign of positive actions that enables children to freely express themselves.

Thus, there needs to be a consideration of the absence of proper legal protection of the rights of children in relation to expression and more needs to be done. There needs to be attention towards ensuring their right to expression and educating the public of its importance. Coming up with possible ways that could enable children to freely express themselves in family settings and in public places is thus critical. Considering the society that we live in Ethiopia we need to consider the impact that this will have on children's development and growth. Enabling them to express themselves will also further their other human rights. In addition, hearing the views of children would be a great way to involve them in the areas that concern them and make it more inclusive. There should also be a consideration of the positive action of other nations that we need to take into account regarding ensuring freedom of expression.

[19] Ministry of Youth Affairs, 'Children in New Zealand: United Nations Convention on the Rights of the Child – Second periodic report of New Zealand', Government of New Zealand, Wellington, December 2000. cited in UNICEF and Inter-Parliamentary Union, "A Handbook on Child Participation in Parliament" <http://archive.ipu.org/pdf/publications/child-parl-e.pdf> accessed October 23, 2021.

[20] Ibid

[21] Ibid

Association for Human Rights in Ethiopia



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